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S. HRG. 110–138

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

FEBRUARY 6, MARCH 13, APRIL 11, JUNE 20, AND JULY 19, 2007

PART 1

Serial No. J–110–8

Printed for the use of the Committee on the Judiciary

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NOMINATIONS OF JOHN PRESTON BAILEY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA; OTIS D. WRIGHT, II, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA; AND GEORGE H. WU, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

TUESDAY, FEBRUARY 6, 2007

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

The Committee met, pursuant to notice, at 2:37 p.m., in room 226, Dirksen Senate Office Building, Hon. Patrick J. Leahy (Chairman of the Committee) presiding.

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

Chairman LEAHY. Good afternoon. I apologize for the voice. I guess I'm just not used to cold weather, or at least not in Washington.

We're holding our first confirmation hearing of the new Congress for three nominations for important lifetime appointments to Federal District Courts. The nominees before us today, John Preston Bailey for the Northern District of West Virginia, Otis D. Wright for the Central District of California, and George H. Wu of the Central District of California, each come to us with the support of their home State Senators.

I know Senators Feinstein, Boxer, and Rockefeller would have liked to have been here today to introduce the nominees, but there's a closed, members-only briefing on the National Intelligence estimate that was issued last week on the situation in Iraq, and they were there. Rather than reschedule this—I know all of you made plans—we wouldn't.

We made some progress. At our first executive business meeting, the Judiciary Committee reported out five judicial nominations about 2 weeks after they were sent to us.

Three of these were vacancies determined by the Administrative Office of the U.S. Courts to be judicial emergencies. All five are

among those returned to the President without Senate action at the end of last Congress.

I should note that there are no objections from the Democratic side, but apparently when the Republican Senators objected to going forward with one of the President's judicial nominees, or a couple of them, in September and December, it held it all up.

In any event, we pulled them back up. Five of them were confirmed by the Senate, and it showed it can be done. Judge Wood was the first one confirmed this year. Both Senators Chambliss and Isaacson were concerned about him, and we were able to do it.

Senators Zinhoff and Coburn were concerned about Judge Freizell. They had hoped to get him confirmed last year and they said they knew that the hold was on their side of the aisle, which, for those of you who don't understand it, when you're getting down toward the end of the session, any Senator, either party, can basically hold things up. So, they had.

I felt that they should have gone through, and I have assured those four Senators I would put them on the agenda immediately this year, and they were. Senator Feinstein and Senator Boxer worked very hard on the two from California.

Going over the numbers last night—I will brag just a tiny bit—with the five confirmations last week, we've confirmed more of President Bush's nominations in 18 months I have served as Judiciary Committee Chairman, and the more than 2 years when Senator Hatch chaired the committee with a Republican Senate Majority, or during the last Congress when we had a Republican Senate Majority.

I just mention that to those who think Democrats hold them up. I do it to encourage our Republican friends to try to move as quickly on President Bush's nominees as I am, because some of them—not the four Senators I mentioned earlier, all of whom went out of their way to praise what we did on this—but some have been trying to raise a scare.

After I became Chairman, they ranted that "the sky is falling" and we would not proceed on any judicial nominations. I actually suggested to the administration, I'd give them their choice. We could move it at the rate that we did in the 18 months we were in Majority, or the rest of the time when they were.

I might say, Mr. Chairman, while you have been setting the NASCAR record coming down the hall, I've been basically filibustering up here.

[Laughter.]

But I had a good teacher.

Senator Byrd, who is, of course, the president pro tem of the U.S. Senate, the longest-serving member for our body—years ago, when my seniority moved up a tad, I was given my choice of seats and I chose the role with Senator Byrd.

There's three seats there: Senator Byrd, Senator Dodd, and myself. I used to call it the white-haired role, but I guess it's two white-hairs and one bald guy.

[Laughter.]

But it's worked out well.

Senator Byrd, I'll put the rest of my statement in the record. I'll yield to you and then to Congresswoman Capito, my fellow Italian-American.

Congresswoman, in case you thought I was joking, my mother is first-generation Italian-American. I didn't want you to think I was just joking.

Go ahead, Senator Byrd.

Senator BYRD. Thank you, Mr. Chairman. Ms. Capito.

We know each other, Mr. Chairman, so we have to do a little exchanging here.

Chairman LEAHY. Well, as you know, I've visited your beautiful State on a number of occasions. Much of it, with the hills, the valleys and the mountains, it made me think of my own State of Vermont.

But I also know that in West Virginia, it's small enough, you tend to know each other. But of course, also in West Virginia, Senator Byrd, everybody knows you. I know how well the Congresswoman does in her elections, and they ought to know her, too. So go ahead, please, sir.

PRESENTATION OF JOHN PRESTON BAILEY, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA BY HON. ROBERT BYRD, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator BYRD. Thank you. Thank you, Mr. Chairman.

Colleagues on the committee and other members of the Judiciary Committee, I am pleased to appear before you today to introduce you to an esteemed colleague of mine, a fine West Virginia lawyer named John Preston Bailey.

Mr. Bailey hails from the big, beautiful city of Wheeling, West Virginia. It used to be the old jumping-off place for people who wanted to come over on the old road that ran from Baltimore over to Wheeling, and then from there, I believe it was over to Vandalia, was it?

Representative CAPITO. The national highway. The National Road.

Senator BYRD. The old National Road. Yes. And I believe it went on over to—it eventually ended up, where, down in St. Louis?

Representative CAPITO. The middle part of the country.

Senator BYRD. All right. Is that St. Louis or St. Louis?

Mr. Bailey hails, as I say, from the beautiful city of Wheeling. And Mr. Bailey has been nominated by the President for a seat on the Federal bench in the Northern District of West Virginia.

Mr. Bailey is a splendid choice for this judgeship. Currently, he is senior partner at the firm of Bailey, Riley, Buke & Harmon. Not only is Mr. Bailey well versed in administrative law, but he is also a successful litigator, competent in both civil and criminal litigation.

John Bailey graduated from West Virginia University's College of Law in 1976, where he was a member of the West Virginia Law Review. He was admitted to the State Bar of West Virginia that same year, and clerked for 2 years thereafter with the Honorable Charles H. Haydon, II, who at that time was the U.S. District

Judge for both the Northern and Southern Districts of West Virginia.

Mr. Bailey is extremely well-qualified to be confirmed as a Federal judge. He worked as an assistant prosecuting attorney in the mid-1980's and he served as chairman of the Worker's Compensation Appeals Board in West Virginia from 1985 to 1991.

He sat on the Executive Council of the West Virginia Bar Association for 6 years, and was elected to be president of that association in 1992. He was, thereafter, elected and he served as president of the West Virginia State Bar from 2003 to 2004. Before that, he served as vice president of the State Bar and as a member of the Bar's Board of Governors.

More recently, in fact, just last year he was also bestowed the honor of Fellow by the West Virginia Bar Foundation. In bestowing that honor upon Mr. Bailey, Tom Tinder, the executive director of the West Virginia Bar Association, stated that Mr. Bailey is a "true leader" of his community.

John Preston Bailey has been a member of the Order of the Coif, the Order of the Barristers, a member of the Moot Court Board, the Ohio County Bar Association, the West Virginia Trial Lawyers Association, and the National Association of Criminal Defense Attorneys.

I can attest to the fact that Mr. Bailey comes highly recommended by West Virginians of all stripes and varying legal viewpoints. He is a smart, independent thinker. He is hardworking. He has had over 30 years' of experience as a licensed attorney.

As a result, he recognizes the solemn responsibility with which a Federal judge is charged. He must interpret impartially and with proper contemplation of, and respect for, the three—let me say that again, the three—separate branches of our government, provisions that have been approved by the Congress and signed into law by our President.

Mr. Bailey has an excellent reputation and a keen intellect. Based on my understanding of Mr. Bailey's character and impressive credentials, I believe that he will make—yes, he will make—a fine Federal judge.

For all the reasons mentioned, I am pleased to introduce him to my colleagues today, and I urge them to support his nomination to be a U.S. District Court Judge for the Northern District of West Virginia.

So, Mr. Chairman, I want to join our illustrious Congresswoman here, who does a fine job in her work. She is the lovely daughter of a former colleague of mine in the House of Representatives, and a man for whom I have a deep appreciation, the Honorable Arch Moore.

So, I am proud to be here with you. Man, look at her smile. That's enough to win the whole committee's approval.

[Laughter.]

All right. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you. Senator Byrd, we will also put a statement from your distinguished colleague, Senator Rockefeller, in with yours.

Congresswoman, please feel free to go ahead.

PRESENTATION OF JOHN PRESTON BAILEY, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA BY HON. SHELLY MOORE CAPITO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Representative CAPITO. Thank you, Mr. Chairman. I appreciate the opportunity to testify in front of the committee, and it certainly is always a pleasure for me to be with our esteemed Senator, Senator Byrd.

When you mentioned that everybody in West Virginia knows Senator Byrd, without question, and if they're not sure, if they're on a road or by a building, they know you, too, Senator Byrd, very, very well.

Senator BYRD. Thank you.

Representative CAPITO. He has a large imprint on our State. Certainly his words of approval and appreciation for John Bailey go a long way, I'm sure, for this committee in seeking approval for his nomination.

But it's a wonderful opportunity for me today to come in support of my friend John Bailey's nomination to the U.S. District Court for the Northern District of West Virginia, which I don't live in the Northern District, but I was born in the Northern District so I know lots of those areas.

Mr. Chairman and members of the committee, I realize you have been evaluating Mr. Bailey's experience, but I wanted to talk briefly about something that I also believe is an important aspect of John, and that is his broad understanding of the District for which he is nominated to serve.

You mentioned in your opening statement that West Virginia and Vermont have a lot of similarities. You sort of stole my little statement here.

Chairman LEAHY. Sorry.

Representative CAPITO. In that we all know one another and we're very proud of our heritage and our West Virginia roots. John has very strong West Virginia roots and is well-known in his community for many reasons. So, I appreciate that, John.

I've actually known John 30 years. I know it's hard to believe by looking at either one of us we would know anybody 30 years, but we have.

After he earned his Juris doctorate at West Virginia University, he has spent, as Senator Byrd said, 30 years practicing law in West Virginia, spending a great amount of time gaining experience and earning respect in the courtroom.

In addition, I believe John has the very important attributes of intelligence, honesty, which I believe you will see in the answers to his questions, even-handedness, and a sprinkling of what I think is a much-needed attribute: a great sense of humor.

John is active outside the courtroom as well, serving, as the Senator mentioned, a second time as president-elect of the West Virginia State Bar Association, and he has also been on the Association's Executive Committee and on the Board of Governors.

As I am sure you are aware, the committee is aware, and the President is certainly aware, the U.S. District Court for the Northern District of West Virginia is currently short-handed due to the untimely death of the greatly respected Judge Craig Broadwater,

and also of the senior status recently acquired by the equally respected Frederick Stamp, Jr.

The President has made a wonderful choice in nominating John Bailey to this position. In light of these vacancies, in my belief, John Bailey is uniquely qualified. I ask that you look favorably upon his nomination and see to it that John Bailey can continue to serve the State of West Virginia.

I thank you for your time.

Chairman LEAHY. Thank you. I also appreciate the bipartisan support of him, and I appreciate both of you being here. As I mentioned, Senator Rockefeller is chairman of the Intelligence Committee so he has to preside over this closed meeting.

I know you both have a million other things to do, so I thank you for coming out. I'll try not to be too rough in your absence.

Senator BYRD. Thank you, Mr. Chairman. Thank you, members of the committee. Thank you.

Representative CAPITO. Thank you. Great to see you.

Chairman LEAHY. Besides, I try to be nice to former prosecutors.

If the three nominees would step forward, please, and raise your right hands.

[Whereupon, the nominees were duly sworn.]

Chairman LEAHY. Thank you. Please sit down.

We've heard the introduction of Mr. Bailey. As I said, he has served as a prosecutor, now an attorney, in Wheeling, West Virginia.

I would note on Mr. Wright, he's been nominated to a seat in the U.S. District Court for the Central District of California, which is also a judicial emergency. I will put statements of both Senator Feinstein and Senator Boxer in the record. They're also at the same briefing.

But Judge Wright has been nominated after a distinguished 27-year legal career; State trial judge, lawyer in the State government and private practice. He was born in Tuskegee, Alabama during the era of Jim Crow segregation.

He overcame the barriers of formalized segregation and graduated from California State University of Los Angeles, Southwestern Law School, and ended up as a judge in the Superior Court of California, the county of Los Angeles, and assigned to the high-volume substance abuse court. Judge, when I looked at those statistics, "high volume" is an understatement, what goes before your court.

He served for 3 years as a U.S. Marine on active duty. As the father of a Marine, I must note that. He served as a Los Angeles County sheriff's deputy for 11 years before becoming a Deputy Attorney General at the California Justice Department. He spent 22 years in private practice with Wilson, Elser, Moskowitz, Adelman, & Dicker. So, I'm glad that he is here.

And Mr. Wu has been nominated to serve on the U.S. District Court for the Central District of California. He has a 32-year legal career as a State trial judge, Assistant U.S. Attorney, private practitioner, and academic.

He has 10 years' experience at the bench as a judge in the Los Angeles Superior Court and Los Angeles Municipal Court. He served as Assistant U.S. Attorney in the Civil Division, the U.S.

Attorney's Office for the Central District of California, Assistant Chief of— private practice—I'm going over this somewhat in length because Senator Feinstein and Senator Boxer can't be here—from the law firm of Lathem, Watkins, Los Angeles office, Lebeouf. How do you pronounce it? Lebeouf, Lamb, Libby & McCray. Professor of law at the University of Tennessee, and born in New York City.

I might say, I'm glad to see all of you. Mr. Bailey, please don't take this at all the wrong way. You come here with great credentials. In coming from a State which has probably the lowest percentage of minorities in the country, I feel we have to, though, as a country make more of a step toward diversity on our courts.

If confirmed, Judge Wright will become the 90th African-American judge currently on the Federal bench. If he is confirmed, Judge Wu will be only the ninth Asian-Pacific American judge of the Federal bench, and the sixth active judge.

In the last 6 years, there's been only 18 African-American judges nominated to the Federal bench, compared to 53 in the first 6 years President Clinton's. Of 875 seats in the Federal Judiciary, only five active Asian-Pacific American judges. Only two nominated in the last 6 years, neither to a seat in the Federal Circuit Court.

I think outstanding lawyers like Dean Harold Cole of Yale, Professor Gudenlu of Boat Hall School of Law, attorneys Karen Marasacki, John Yang, Debra Yang. We have a lot. I just mention this as an area where, as a Nation, we have to do more.

Obviously, the first thing we look for is the ability to be a judge. I have always—before I vote for anybody, and I've been voting for judicial nominees for 33 years now—I asked myself, if I were appearing before that judge, whether I was plaintiff, defendant, no matter what my case, would I be treated fairly? That's what I want. In our confirmation hearings we hear a lot about stare decisis, and this question is always asked.

Mr. Bailey, how do you feel about that? Is this an iron-clad rule or does it depend upon the court?

Mr. BAILEY. Mr. Chairman, I believe that stare decisis is a very important part of the legal system because it lends predictability to the law. And if the law is predictable, as it should be, then that leads to the resolution of disputes and also gives the people of this country an idea what standards and rules they are expected to live by.

Chairman LEAHY. Before we go to the other two, I've made a—after all these years here and conducting hundreds of these, I forgot what I think is one of the most important things.

Mr. Bailey, would you introduce any member of your family here? Because some day in the archives of the Bailey family, they'll see their names on this official transcript.

Mr. Bailey.

STATEMENT OF JOHN PRESTON BAILEY, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

Mr. BAILEY. Thank you, Senator Leahy. Yes. With me today are my three children: my son, John P. Bailey, II, my son, Brian J. Bailey, and my daughter, Jenna Bailey.

[The biographical information of Mr. Bailey follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   John Preston Bailey

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

   Judge, United States District Court for the Northern District of West Virginia

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

   Riley Building, Suite 900
   53 Fourteenth Street
   Post Office Box 631
   Wheeling, WV 26003-0081

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

   1951; Wheeling, West Virginia

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   Divorced. One dependent child.

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

   West Virginia University College of Law
   August 1973 through May 1976
   Juris Doctor degree awarded May 16, 1976

   Dartmouth College
   September 1969 through June 1973
   A.B. in Government awarded June 10, 1973

West Virginia University
January 1972 through December 1972
No degree - credits transferred to Dartmouth College

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

Bailey, Riley, Buch & Harman, L.C.
Wheeling, West Virginia
July 1978 to present
Presently Senior Principal
This firm has had several prior names:
Bailey & Riley; Byrum, Bailey & Riley; Byrum & Bailey; and
Bailey, Byrum & Vieweg

Kalkreuth Roofing & Sheet Metal, Inc.
Wheeling, West Virginia
November 1984 to present
Director and Secretary; no ownership interest

The Sweeney Group, Inc.
Wheeling, West Virginia
December 1979 to present
Secretary; no ownership interest

GJR Enterprises, Inc.
Wheeling, West Virginia
December 1996 through May 2005
Secretary, Director and part owner

West Virginia State Bar
Charleston, West Virginia
May 1992 through May 1995; May 1998 through May 2005
Officer and member of Board of Governors

West Virginia Bar Association
Charleston, West Virginia
September 1989 through September 1994
Officer and member of Executive Council

West Virginia Workers' Compensation Appeal Board
Charleston, West Virginia
October 1985 through March 1989
Chairman

Assistant Prosecuting Attorney for Ohio County, West Virginia
Wheeling, West Virginia
January 1985 through February 1986

American Heart Association, Ohio County Chapter
Wheeling, West Virginia
Approximately 1980 - 1985

Law Clerk to Honorable Charles H. Haden II
United States District Court for the Northern and
Southern Districts of West Virginia
Parkersburg, West Virginia
July 1976 through June 1978

Bailey, Byrum & Vieweg
Wheeling, West Virginia
Summer Employee
May 1975 through August 1975
May 1974 through August 1974

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

No military service.

9. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Fellow of the West Virginia Bar Foundation
Order of the Coif
Order of Barristers
Moot Court Board
National Moot Court Team
Staff Writer, West Virginia Law Review
Phi Delta Phi Scholarship Winner
Phi Delta Phi Graduate of the Year

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

Member, American Bar Association
State Bar Delegate to House of Delegates, 2004 - 2005

Member, West Virginia State Bar
President, 2003 - 2004
President-Elect, 2002 - 2003
Vice President, 2001 - 2002
Board of Governors, 1992 - 1995, 1998 - 2005

Member, West Virginia Bar Association
President, 1992 - 1993
Executive Counsel, 1989 - 1994

West Virginia State Bar Judicial Improvement Committee
Member, 1985 to present
Chairperson, 1991 - 1997

West Virginia State Bar Ad Hoc Committee on Judicial Selection
Member, 1993 to present
Chairperson, 2004 to present

Member, West Virginia Trial Lawyers

Member, Ohio County Bar Association

Member, Special Ad-Hoc Committee of the West Virginia State Bar to review the then proposed West Virginia Rules of Evidence and report to the West Virginia Supreme Court of Appeals

11. **Bar and Court Admission:**

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

West Virginia Law License, May 1976
Ohio Law License, November 1978

There have been no lapses in any of the above licensures.

b. **List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for**

any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Admitted, United States District Court for the Southern District of West Virginia, 1976
Admitted, United States District Court for the Northern District of West Virginia, 1976
Admitted, West Virginia Supreme Court of Appeals, 1976
Admitted, United States Court of Appeals for the Fourth Circuit, 1977
Admitted, Ohio Supreme Court, 1978
Admitted, Supreme Court of the United States, 1981
Admitted, United States District Court for the Southern District of Ohio, 2000
There have been no lapses in any of the above admissions.

12. **Memberships**:

a. **List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.**

Member, St. Michael Parish, Wheeling, West Virginia., 1991-present
Parish Counsel, 1992-1995
Member, Fort Henry Club, a dining club in Wheeling, West Virginia. 1993-present. No positions held.
Member, Serra Club, 1997-2000. No positions held.
Member, Order of Symposiarchs, 1978-1994. President, 1992-93.
Member, Wheeling Rotary Club, 1978-1984. No positions held.
Board Member, American Heart Association, Ohio County Chapter, 1980-1985. No officer positions held.

b. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.**

No, I have never belonged to any such organizations.

13. <u>Published Writings and Public Statements</u>:

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

Note, "Zoning-Modification of Zoning Ordinance Use Restrictions," 78 West Virginia Law Review 522 (1975-76).

While State Bar President, I wrote a series of ten (10) president's columns for the West Virginia Lawyer Magazine.

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

I filed an amicus curiae brief before the West Virginia Supreme Court of Appeals on behalf of the West Virginia State Bar in McMahon v. Advanced Title Services Company of West Virginia, No. 032853.

I filed an amicus curiae brief in the Circuit Court of Ohio County, West Virginia on behalf of the West Virginia State Bar in Moore v. Dickison, Civil Action No. 04-C-42 W.

The Judicial Selection Committee of the West Virginia State Bar, of which I was chairperson, issued its report to the Board of Governors.

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

None other than in the previous subsection.

d. **Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not**

speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

President's Address given as West Virginia Bar Association President on January 30, 1993.

Acceptance speech given as incoming State Bar President in May, 2003, at Snowshoe Resort in Slatyfork, West Virginia.

Speech given to law students in September, 2003, at the West Virginia University College of Law in Morgantown, West Virginia.

Farewell speech given as outgoing State Bar President in March, 2004, at the Greenbrier Resort in White Sulphur Springs, West Virginia.

e. **Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.**

Appearance on "The Law Works," a weekly television program aired by the West Virginia Public Broadcasting station, discussing judicial selection. The program was aired in February, 2004.

Appearance on "The Law Works," a weekly television program aired by the West Virginia Public Broadcasting station, discussing the work of the West Virginia State Bar. The program was aired in May, 2002.

I am certain that while a candidate for the West Virginia House of Delegates in 1980 I gave a number of talks and interviews. I have no records of these.

14. **<u>Judicial Office</u>: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None.

15. **<u>Citations</u>: If you are or have been a judge, please provide:**

a. **citations for all opinions you have written (including concurrences and dissents);**

b. **a list of cases in which certiorari has been requested or granted;**

c. **a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

d. **a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

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

f. **citations to all cases in which you were a panel member in which you did not issue an opinion.**

I have never served as a judge.

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

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

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

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

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

I have never served as a judge.

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

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

you have had for elective office or unsuccessful nominations for appointed office.

Vice Chairman, City of Wheeling Charter Review Board, 1991 - 1992 (elected)

Chairman, West Virginia Workers' Compensation Appeal Board
October 1985 through March 1989 (gubernatorial appointment, Arch A. Moore, Jr.)

Assistant Prosecuting Attorney for Ohio County, West Virginia
January 1985 through February 1986 (prosecutorial appointment, Patricia Valentino Kutsch)

Delegate, Republican National Convention, 1984 (elected)

Member, Panel of Bankruptcy Trustees
United States Bankruptcy Court for the Northern District of West Virginia
1978 - 1980 (appointment, John H. Kamlowsky, Bankruptcy Judge)

I was an unsuccessful candidate for the West Virginia House of Delegates in 1980.

b. **List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

1998 Justice John McCuskey for West Virginia Supreme Court Campaign - I served on the Northern Panhandle Committee and performed various campaign related tasks.

1988 Assisted State Chairman James E. Altmeyer with the Bush-Quayle Campaign.

1988 Ohio County Campaign Chairman for Governor Arch A. Moore, Jr.

1982-1990 Chairman, Ohio County Republican Executive Committee

1984 Delegate to the Republican National Convention

1980 John P. Bailey for House of Delegates Campaign

18. Legal Career: Please answer each part separately.

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

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

Law Clerk to Honorable Charles H. Haden II
United States District Court for the Northern and Southern
Districts of West Virginia
July 1976 through June 1978

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

I have never been a solo practitioner.

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

Bailey, Riley, Buch & Harman, L.C.
Wheeling, West Virginia
July 1978 to present
Senior Principal (1993 to present)
Principal (1982 - 1993)
Associate (1978 - 1981)
This firm has had several prior names:
Bailey & Riley; Byrum, Bailey & Riley; Byrum & Bailey;
Bailey, Byrum & Vieweg

b. Describe:

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

After completion of my clerkship with Judge Haden, I joined the law firm with which I am still a member. As a practitioner in a small firm in a relatively small town for almost thirty years, my practice experience has been very diverse. I have handled the full spectrum of legal matters, including prosecution of crimes, up to and including murders, and the defense of criminal cases, up to and including murders. I have handled a significant number of plaintiff's personal injury cases, and have been successful in obtaining fair compensation for my injured clients. However, I have not made plaintiff's work the focus of my practice. I have also defended a significant number of cases, including mass toxic tort

trials, employment discrimination suits, and personal injury cases. I have also handled complex construction litigation, lender liability actions, fair trade practices cases, eminent domain cases and litigation in bankruptcy court.

My practice has not been limited solely to litigation. I have drafted wills and trusts and have handled numerous estates. I have advised small businesses on various business matters. I have also represented governmental agencies and handled many matters before administrative tribunals.

ii. your typical clients and the areas, if any, in which you have specialized.

My practice experience has been very diverse. I have not "specialized" in any area of the law.

My typical clients have been injured persons, insurance companies, small and mid-sized businesses, governmental agencies, and criminal defendants.

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

I would estimate that 70% of my practice has been in litigation. I appear in court frequently and have done so throughout my career.

i. Indicate the percentage of your practice in:

1. **federal courts;** 20%
2. **state courts of record;** 70%
3. **other courts.** 10% (administrative bodies)

ii. Indicate the percentage of your practice in:

1. **civil proceedings;** 80%
2. **criminal proceedings.** 20%

d. 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 tried hundreds of cases, many of which when I served as an assistant prosecuting attorney. I have been lead counsel on 95% of the cases that I have tried.

i. **What percentage of these trials were:**
   1. **jury;** 80%
   2. **non-jury.** 20%

e. **Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.**

In 1981, I was one of counsel that prevailed in an action by two banks against a third bank which had established a bank holding company in violation of state law. We prevailed in the trial court, and the ruling was affirmed by the West Virginia Supreme Court. Security National Bank & Trust Co. v. First W. Va. Bancorp, Inc., 166 W.Va. 775, 277 S.E.2d 613 (1981). The other side filed an appeal to the United States Supreme Court. We filed a motion to dismiss the appeal, and on January 11, 1982, the Supreme Court dismissed the appeal for want of a substantial federal question. First West Virginia Bancorp, Inc. v. Security National Bank & Trust Co., 454 U.S. 1131, 102 S.Ct. 986, 71 L.Ed.2d 284 (1982). Due to the fact that is has been over 25 years since I filed the motion, I am unable to locate a copy.

19. **Litigation: Describe the ten (10) 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 representation;**

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

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

A. Johnson v. General Motors Corporation

190 W.Va. 236, 438 S.E.2d 28 (1993)

From 1989 through 1993, I represented two minors, Gregory and Andrew Johnson, injured in an automobile accident (one a paraplegic). The injuries in the case were exacerbated by the presence and use of lap only seat belts in the rear seats, which we contended constituted a product defect. I served as lead counsel through virtually all aspects of the litigation, including investigation, motion practice, discovery, trial and appeal.

The case was tried before Hon. John T. Madden in the Circuit Court of Marshall County, West Virginia. We were able to obtain settlements of $600,000 and jury verdicts totaling $3,162,545, which were affirmed on appeal by the West Virginia Supreme Court of Appeals, consisting of Hon. W. T. Brotherton, Jr., Hon. Richard Neely, Hon. Thomas B. Miller, Hon. Thomas E. McHugh, and Hon. Margaret L. Workman

My co-counsel in the case was Cheryl Dean Riley, Esquire of my firm.

The opposing counsel were James D. Lamp, Esquire, Lamp, O'Dell, Bartram, Levy & Trautwein PLLC, Post Office Box 2488, Huntington, WV 25725-2488, (304) 523-5409, and E. Thom Rumberger, Esquire and Debra K. Wilkinson, Esquire, Rumberger Kirk & Caldwell, 300 S. Orange Avenue, #1400, Orlando, FL 32801, (407) 872-7300.

B. Kronjaeger v. Buckeye Union Insurance Company

200 W.Va. 570, 490 S.E.2d 657 (1997)

From 1992 through 1997, I represented a widow, Stella R. Kronjaeger, seeking underinsurance benefits for severe injuries suffered by her late husband in an automobile accident almost ten years previously. The Hon. Fred Risovich, II of the Circuit Court of Ohio County, West Virginia granted summary judgment to the insurer and an appeal was taken. The West Virginia Supreme Court of Appeals reversed the summary judgment and remanded fo trial. Thereafter, the parties entered into a confidential settlement. I served as lead counsel through virtually all aspects of the litigation, including investigation, motion practice, discovery, appeal and settlement. My co-counsel was Cheryl Dean Riley of my firm.

The Justices of the West Virginia Supreme Court of Appeals that reversed the summary judgment were Hon. Margaret L. Workman, Hon. Arthur M. Recht, Hon. Thomas E. McHugh, Hon. Robin Davis, and Hon. Elliott E. Maynard.

The opposing counsel was Stephen J. Dalesio, Esquire, Davies, McFarland & Carroll, PC, One Gateway Center, Floor 10, Pittsburgh, PA 15222-1416, (412) 338-4747.

C. B. F. Specialty v. Chas. M. Sledd Company

197 W.Va. 463, 475 S.E.2d 555 (1996)

From 1993 through 1996, I represented a cigarette distributor, Chas. M. Sledd Company, which was sued by a competitor alleging that my client had sold cigarettes below cost, in violation of the West Virginia Unfair Trade Practices Act. The case was tried before Hon. Thomas A. Bedell of the Circuit Court of Harrison County, West Virginia, and resulted in a defense verdict in favor of my client. The plaintiff appealed the verdict, which was affirmed on appeal. I served as lead counsel through virtually all aspects of the litigation, including investigation, motion practice, discovery, trial and appeal. My co-counsel was
Christopher Paull Riley, Esquire, of my firm.

The Justices of the West Virginia Supreme Court of Appeals that affirmed the favorable verdict were Hon. Thomas E. McHugh, Hon. Margaret L. Workman, Hon. Franklin D. Cleckley, Hon. Arthur M. Recht, and Hon. Joseph P. Albright.

The opposing counsel were Jerald E. Jones, Esquire and Norman T. Farley, Esquire, West & Jones, Post Office Box 2348, Clarksburg, WV 26301-2348, (304) 624-5501.

D. In re Asbestos Cases (Kanawha Mass III)

Kanawha County, WV, Civil Action No. 92-C-8888

My firm represented Sepco Corporation, a manufacturer of asbestos containing products (gaskets), from approximately 1989 through 2001. In April and May, 1994, I represented Sepco in a mass trial involving some 8,000 plaintiffs. The mass trial was to determine whether the products were defective, whether punitive damages were warranted, and a punitive damage multiplier. The trial judges were Hon. Larry V. Starcher (now Justice) of the Circuit Court of Monongalia County, West Virginia, and Hon. A. Andrew MacQueen III of the Circuit Court of Kanahwa County, West Virginia. The trial resulted in a defense verdict for Sepco Corporation. I served as lead counsel through trial preparation and trial and participated in discovery and motion practice. My co-counsel was Anne Dieckmann Harman, Esquire, of my firm.

The opposing counsel was Scott S. Segal, Esquire, The Segal Law Firm, 810 Kanawha Boulevard E., Charleston, WV 25301, (304) 344-9100.

E. Stache v. Consolidation Coal Company

Marshall County, WV, Civil Action No. 98-C-206 M

From 1996 through 2003, I represented a minor, Elliott Stache, grievously injured in an automobile accident. Prior counsel had sued and recovered liability benefits from the other driver, but the recovery would not have been sufficient to care for the paraplegic youth. The other driver was employed as a foreman by the coal company which had required him to work excessive hours over an extended period. The case was filed before Hon. John T. Madden of the Circuit Court of Marshall County, West Virginia. The defense removed the case to Federal court, and there was also extended litigation on whether the case should be remanded. Ultimately, the case was remanded back to the Circuit Court of Marshall County by Hon. Frederick P. Stamp, Jr. of the United States District Court for the Northern District of West Virginia. The case was ultimately settled with a confidential settlement.

I served as lead counsel through virtually all aspects of the litigation, including investigation, motion practice, removal litigation, discovery, and settlement. My co-counsel was Cheryl Dean Riley, Esquire of my firm.

Opposing counsel were James R. Miller, Esquire and Rodger L. Puz, Esquire, Dickie, McCamey & Chilcote, P.C., Two PPG Place, Suite 400, Pittsburgh, PA 15222-5402, (412) 281-7272.

F. United States v. Clements

713 F.2d 1030 (4th Cir. 1983) and
728 F.2d 654 (4th Cir. 1984)

In 1982, I was appointed to represent a criminal defendant, Calvin Demonsier Clements, charged with purchasing a firearm while a convicted felon. The same defendant was also charged with kidnapping and murder in state court. I did not represent him on the state charges. The primary

issue was the legality of the search that led to the seizure of the firearm. My client was convicted in a trial before Hon. Charles H. Haden II of the United States District Court for the Northern District of West Virginia. The conviction was reversed by a three judge panel of the United States Court of Appeals for the Fourth Circuit. The decision was then taken in banc, where the conviction was affirmed by an evenly split court.

I served as sole counsel through virtually all aspects of the litigation, including investigation, motion practice, suppression hearing, discovery, trial and appeals.

The panel of the Fourth Circuit that reversed the conviction consisted of Hon. Sam J. Ervin, III, Hon. Robert F. Chapman, and Hon. Albert V. Bryan

The members of the en banc court were Hon. Harrison L. Winter, Hon. Donald S. Russell, Hon. H. Emory Widener, Jr., Hon. K. K. Hall, Hon. J. Dickson Phillips, Hon. Francis D. Murnaghan, Hon. James M. Sprouse, Hon. Sam J. Ervin, III, Hon. Robert F. Chapman, and Hon. Albert V. Bryan

My opposing counsel was John Reed, Esquire, Assistant United States Attorney.

G. State of West Virginia v. Lassiter

177 W.Va. 499, 354 S.E.2d 595 (1987)

In 1985 and 1986, I served as a special assistant prosecuting attorney for Marshall County, West Virginia, to prosecute Mr. Lassiter for a murder which occurred at the West Virginia State Penitentiary in Moundsville. A trial before Hon. Steven Narick, Circuit Court of Marshall County, West Virginia, resulted in a verdict of guilty of first degree murder, with mercy. The verdict was affirmed on appeal, although I did not participate in the appeal process.

I served as co-lead counsel through virtually all aspects of the litigation, including investigation, motion practice, discovery, and trial. I did not participate in the appeal. In addition to the customary issues, this case included issues of change of venue and statements by a co-conspirator.

My co-counsel was John E. Gompers, Esquire, Gompers, McCarthy & McClure, 60 Fourteenth Street, Wheeling, WV 26003, (304) 233-2450

My opposing counsel was Robert H. McWilliams, Esquire, Assistant United States Attorney, Wheeling, West Virginia (then Marshall County Public Defender).

H. Walsh v. Wheeling Jesuit University

Ohio County, WV, Civil Action No. 01-C-182 G

In 2001 and 2002, I represented Wheeling Jesuit University in an employment discrimination case against claims of breach of contract, negligent misrepresentation, constructive fraud, equitable estoppel, and tort of outrage brought by an employee that had been terminated. The case was tried before Hon. Martin J. Gaughan of the Circuit Court of Ohio County, West Virginia, and resulted in a defense verdict.

I served as lead counsel through virtually all aspects of the litigation, including investigation, motion practice, discovery, and trial. My co-counsel was Christopher Paull Riley, Esquire of my firm.

Opposing counsel was William A, Kolibash, Esquire, Phillips, Gardill, Kaiser & Altmeyer, 61 Fourteenth Street, Wheeling, WV 26003, (304) 232-6810.

I. Security National Bank & Trust Co. v. First W. Va. Bancorp, Inc.

166 W.Va. 775, 277 S.E.2d 613 (1981)

From 1978 through 1981, I represented two banking institutions, Security National Bank & Trust Co. and Half Dollar Trust and Savings Bank, in a declaratory judgment action seeking a determination that the defendant banking institution was a multi-bank holding company in violation of state law. Hon. Floyd R. Tarr (deceased) of the Circuit Court of Ohio County, West Virginia declared that the defendant holding company was in violation of state law, which declaration was affirmed by West Virginia Supreme Court. Defendant appealed to United States Supreme Court which, upon our motion, dismissed the appeal.

After joining the firm in 1978, I served as lead counsel through trial and appeals. My co-counsel was my father, George G. Bailey (deceased) of my firm.

The Justices of the West Virginia Supreme Court that affirmed the lower court decision were Hon. Sam R. Harshbarger, Hon. Thomas B. Miller, Hon. Darrell V. McGraw, Jr., Hon. Thomas E. McHugh, and Hon. Richard Neely.

The opposing counsel were George F. Beneke, Esquire (deceased), Beneke & Bremer, Wheeling, WV 26003 and members of Arnold & Porter, Washington, DC.

J. Hare v. City of Wheeling

171 W.Va. 284, 298 S.E.2d 820 (1982)

In 1981 and 1982 I represented Frank Hare and all others similarly situated in a class action seeking to invalidate the City of Wheeling's police service charge as violative of the tax limitation amendment to the West Virginia Constitution. The Hon. Arthur M. Recht of the Circuit Court of Ohio County, West Virginia entered an adverse judgment, which was appealed to the West Virginia Supreme Court of Appeals. That Court reversed the judgment and found that the police service charge was invalid as violative of the State Constitution.

I served as lead counsel through virtually all aspects of the litigation, including investigation, motion practice, discovery, trial and appeal. My co-counsel was my father, George G. Bailey (deceased) of my firm.

The Justices of the West Virginia Supreme Court were Hon. Darrell V. McGraw, Jr., Hon. Richard Neely, Hon. Sam R. Harshbarger, Hon. Thomas B. Miller and Hon. Thomas McHugh.

The opposing counsel was John Marshall, III, Esquire, Wheeling City Solicitor, Wheeling, WV.

20. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed

lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activities in which I have been involved would include the following:

Representation of indigent persons on criminal matters, domestic matters, and in routine legal problems;

Obtaining fair compensation for grievously injured individuals who had been told by others that there was no means of recovery;

Representing the Ohio County Public Service District as it expanded water service to almost all of the rural areas of Ohio County and parts of Brooke and Marshall County and sewer service to a large service area. I have represented this governmental body for over twenty years through many construction projects and administrative proceedings;

Handling numerous complex cases, including construction disputes, toxic torts, and coal mining reclamation disputes;

Serving the legal profession through my involvement in the West Virginia State Bar and the West Virginia Bar Association, serving as an officer, board member, chairperson of committees and member of committees.

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

    I have not taught any courses.

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

    I am a participant in my law firm's money purchase plan and am an equity owner in the law firm. No arrangements have been made.

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

    No.

24. **<u>Sources of Income</u>: 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.)**

    See attached financial disclosure report, Form AO-10.

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

    See attached financial net worth statement.

26. **<u>Potential Conflicts of Interest</u>:**

    a. **Identify the parties, 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. Explain how you would address any such conflict if it were to arise.**

       The only initial conflicts would be those involving existing cases within my law firm and my existing clients. I am aware of no cases involving my firm or clients presently pending in Federal court.

    b. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

       I will be aware of the necessity of being vigilant to avoid conflicts and the appearance of conflicts. I am aware of and will follow the Code of Conduct for United States Judges and all other guidelines applicable to the Federal judiciary.

27. **<u>Pro Bono Work</u>: 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 always taken very seriously the obligation that I have as a lawyer to serve the disadvantaged. I and the members of my firm regularly volunteer as part of the Ohio County Pro Bono Project, devoting hundreds of hours. I also have participated in screening for West Virginia Legal Aid. For many years, I have accepted appointments for criminal cases in Federal and state courts. I have also been appointed numerous times by the Fourth Circuit Court of Appeals to represent indigent persons on appeal. I have also accepted an appointment by the Ohio County Family Court to serve as guardian ad litem on a pro bono basis for an incarcerated individual in a divorce case. This appointment took numerous hours.

28. <u>Selection Process</u>:

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

My experience in the judicial selection process began with my learning that Judge Stamp intended to take senior status. When I learned that there would be a vacancy in the judiciary, I submitted my resume to Hon. Shelley Moore Capito and subsequently had an interview with her. It is my understanding that Congresswoman Capito submitted a number of names to the White House. I was privileged to be selected to attend an interview at the White House on March 9, 2006, where I was interviewed by White House and Justice Department personnel. After completing the nomination paperwork and undergoing a background check by the Federal Bureau of Investigation, my nomination was submitted to the Senate on June 28, 2006. Upon the adjournment of the Senate in December 2006, my nomination was returned to the President. I was renominated for the position on January 9, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) Bailey, John P	2. Court or Organization Northern District of W. Va.	3. Date of Report 1/10/2007
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - nominee	5. ReportType (check appropriate type) ◉ Nomination, Date 1/9/2007 ○ Initial ○ Annual ○ Final	6. Reporting Period 1/1/2006 to 12/31/2006
7. Chambers or Office Address 900 Riley Building P.O. Box 631 Wheeling, WV 26003	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☐ **NONE** - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	President	Bailey, Riley, Buch & Harman, L.C.
2.	Director & Secretary	Kalkreuth Roofinh & Sheet Metal, Inc.
3.	Secretary	The Sweeney Group, Inc.
4.	Executor	Estate #1
5.	Trustee	Trust #1
6.	Trustee	Trust #2
7.	Secretary & Director	GJR Enterprises, Inc.

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

☐ **NONE** - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	2005	Bailey, Riley, Buch & Harman, L.C. Profit Sharing Plan

	Name of Person Reporting	Date of Report
	Bailey, John P	1/10/2007

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	2005	Bailey, Riley, Buch & Harman, L.C. -salary & bonus	142,434
2.	2006	Bailey, Riley, Buch & Harman, L.C. -salary & bonus	129,801

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

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

	DATE	SOURCE AND TYPE
1.	2006	Bailey Behavioral Health - salary

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ **NONE** - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.		EXEMPT

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Bailey, John P	1/10/2007

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

☐ **NONE** - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.		EXEMPT	

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

☐ **NONE** - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	United Bank	VISA card	J
2.	U.S. Dept. of Education	Parent Loan for children's education	M
3.	College Foundatioa, Inc.	Parent Loan for daughter's education	L

FINANCIAL DISCLOSURE REPORT
Page 1 of 4

Name of Person Reporting	Date of Report
Bailey, John P	1/10/2007

VII. INVESTMENTS and TRUSTS -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A -H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
1. Reserve Fund Primary	B	Interest	J	T	Exempt				
2. IRA #1	B	Dividend	K	T					
3. - Prime Obligations Fund 10									
4. - CCE Spinco, Inc.									
5. - Merck and Company common									
6. - Medco Health Solutions									
7. - Time Warner, Inc.									
8. - CVS Corp.									
9. - Home Depot Inc.									
10. - Clear Channel Communications									
11. Bailey, Riley, Buch & Harman Profit Sharing Plan	E	Dividend	N	T					
12. Mass Mutual Life Insurance	A	Dividend	J	T					
13. Estate #1	A	Interest	J	T					
14. Trust #1	G	Int. & Div.	P2	T					
15. - JPMorgan Liquid Assts Mny Mkt Investment	D	Interest	M	T					
16. - JPMorgan Chase & Co (com)	A	Dividend	K	T					
17. - Wesbanco Inc (com)	E	Dividend	O	T					
18. - General Electric (c0m)	B	Dividend	L	T					

1. Income/Gain Codes: (See Columns B1 and D4) A = $1,000 or less; B = $1,001-$2,500; C = $2,501-$5,000; D = $5,001-$15,000; E = $15,001-$50,000; F = $50,001-$100,000; G = $100,001-$1,000,000; H1 = $1,000,001-$5,000,000; H2 = More than $5,000,000
2. Value Codes: (See Columns C1 and D3) J = $15,000 or less; K = $15,001-$50,000; L = $50,001-$100,000; M = $100,001-$250,000; N = $250,000-$500,000; O = $500,001-$1,000,000; P1 = $1,000,001-$5,000,000; P2 = $5,000,001-$25,000,000; P3 = $25,000,001-$50,000,000; P4 = More than $50,000,000
3. Value Method Codes: (See Column C2) Q = Appraisal; R = Cost (Real Estate Only); S = Assessment; T = Cash/Market; U = Book Value; V = Other; W = Estimated

Name of Person Reporting	Date of Report
Bailey, John P	1/10/2007

VII. INVESTMENTS and TRUSTS

← income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A -H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19. - 3M Co (com)	B	Dividend	K	T					
20. - Masco Corp (com)	B	Dividend	L	T					
21. - General Mills Inc. (com)	B	Dividend	K	T					
22. - Heinz H J Co (com)	C	Dividend	L	T					
23. - Proctor & Gamble (com)	D	Dividend	N	T					
24. - BP P L C Sponsored ADR	C	Dividend	M	T					
25. - Chevron Corp (com)	C	Dividend	M	T					
26. - Exxon Mobil Corp (com)	D	Dividend	N	T					
27. - Citigroup Inc (com)	B	Dividend	L	T					
28. - FHLMC (com)	A	Dividend	J	T					
29. - Marsh & McClennan Cos Inc (com)	A	Dividend	J	T					
30. - Bristol Myers Squibb Co (com)	E	Dividend	O	T					
31. - Wyeth (com)	D	Dividend	O	T					
32. - Dow Chemical Co (com)	D	Dividend	M	T					
33. - PPG Inds Inc (com)	B	Dividend	L	T					
34. - Ishares TR Dow Jones US Real Est Idx (mutual fund)	B	Dividend	L	T					
35. - JPMorgan Diversified Mid Cap Growth (mutual fund)	A	Dividend	J	T					
36. - JPMorgan Diversified Mid Cap Value (mutual fund)	A	Dividend	J	T					

1. Income/Gain Codes:	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$30,000
(See Columns B1 and D4)	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes:	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
(See Columns C1 and D3)	N = $250,001-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes:	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

Name of Person Reporting	Date of Report
Bailey, John P	1/10/2007

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
37. - JPMorgan International Equity Index (mutual fund)	A	Dividend	J	T					
38. - JPMorgan Small Cap Growth Fund (mutual fund)	A	Dividend	J	T					
39. - JPMorgan Small Cap Value Fund (mutual fund)	A	Dividend	J	T					
40. - Dominion Res Inc VA New (com)	B	Dividend	L	T					
41. - Cisco Sys Inc (com)	A	Dividend	J	T					
42. - Dell Inc (com)	A	Dividend	J	T					
43. - Intel Corp (com)	A	Dividend	J	T					
44. - Microsoft Corp (com)	A	Dividend	K	T					
45. - AT & T Inc (com)	A	Dividend	K	T					
46. - Bellsouth Corp BLS Group (com)	C	Dividend	M	T					
47. - Verizon Communications (com)	C	Dividend	L	T					
48. - United Parcel Svc Inc Cl B	A	Dividend	K	T					
49. - Charlotte NC Wtr&Swr Sys Ref Ser A Dtd 03/03/05	C	Interest	J	T					
50. - Greensboro NC Pub Impt Ser A Dtd 02/01/05	C	Interest	L	T					
51. - Raleigh NC Comb Enterprise Sys Rev Dtd 05/04/04	C	Interest	M	T					
52. - University NC Sys Pool Rev Ser A Dtd 10/29/03	B	Interest	L	T					
53. - Mason Cnty WV Single Family Mtg Dtd 08/01/79	B	Interest	K	T					
54. - Mecklenburg Caty NC Pub Impt Ser A Dtd 02/01/05	C	Interest	L	T					

1. Income/Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = More than $50,000,000		
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Estimated		

Name of Person Reporting	Date of Report
Bailey, John P	1/10/2007

VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A -H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
55. - Rowan Cnty NC Ref Dtd 04/01/05	C	Interest	M	T					
56. - Appalachian St Univ NC Rev Ref Dtd 04/20/05	C	Interest	M	T					
57. - Mecklenburg Cnty NC Pub Impt Ser B Dtd 08/01/02	B	Interest	L	T					
58. - Goldsboro NC Ref Dtd 04/01/05	C	Interest	M	T					
59. - Beauford Cnty NC Dtd 04/01/05	C	Interest	M	T					
60. - Brunswick Cnty NC Cmnty College Ser A Dtd 04/01/05	C	Interest	M	T					
61. - East Carolina Univ NC Univ Rev Ref Ser A Dtd 06/19/03	C	Interest	L	T					
62. - Harbor FDS Intl Fund	B	Dividend	M	T					
63. - JPMorgan Highbridge Stat Mkt Neutral Fund	A	Dividend	L	T					
64. - JPMorgan Multi-Cap Mkt Neutral Fund	A	Dividend	L	T					
65. - Raleigh NC Comb Enterprise Sys Rev Ref 05/05/05	C	Interest	L	T					
66. - Cabarrus Cnty NC Pub Imp 09/01/06	B	Interest	L	T					

1. Income/Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C1 = $2,501-$5,000	D = $5,001-$15,000
	E = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000
2. Value Codes: (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000	
3. Value Method Codes: (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market
	U = Book Value	V = Other	W = Estimated	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Bailey, John P	1/10/2007

VIII ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part VII. Investments and Trusts:

Estate #1 is an estate of an unrelated individual for whom I was appointed executor. I have no beneficial interest in the estate. The estate is fully administered, the final accounting has been filed, and all of the assets have been distributed. The final accounting was just filed and has not been approved. While, as Executor, I had investment authority, the investment decisions were handled by a Trust Company.

Trust #1 is an inter vivos trust established by a client. I am one of three trustees. I have no beneficial interest in the Trust. While as a Trustee, I would have investment discretion, all investment decisions are made by a trust company.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Bailey, John P	1/10/2007

IX. CERTIFICATION.

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

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

Signature _____ Date 1-10-2007

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		6	200	Notes payable to banks -secured			0
U.S. Government securities -add schedule			0	Notes payable to banks -unsecured (VISA)		14	500
Listed securities -add schedule			0	Notes payable to relatives			0
Unlisted securities -add schedule			0	Notes payable to others			0
Accounts and notes receivable:			0	Accounts and bills due			500
Due from relatives and friends			0	Unpaid income tax			0
Due from others			0	Other unpaid income and interest			0
Doubtful			0	Real estate mortgages payable -add schedule		311	981
Real estate owned-add schedule		350	000	Chattel mortgages and other liens payable (auto loans)		9	250
Real estate mortgages receivable			0	Other debts-itemize:			
Autos and other personal property		23	000	Parent educational loans		188	500
Cash value-life insurance		2	700				
Other assets itemize:							
IRA account		39	500				
Firm profit sharing		213	500				
Interest in firm		25	000	Total liabilities		524	231
				Net Worth		135	669
Total Assets		659	900	Total liabilities and net worth		659	900
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor			0	Are any assets pledged? (Add schedule)			NO
On leases or contracts			0	Are you defendant in any suits or legal actions?			NO
Legal Claims			0	Have you ever taken bankruptcy?			NO
Provision for Federal Income Tax			0				
Other special debt			0				

AFFIDAVIT

I, John Preston Bailey, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2-1-2007
(DATE)

(NAME)

Karen L. Barnhart
(NOTARY)

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
KAREN L. BARNHART
Bailey, Riley, Buch & Harman, L.C.
Post Office Box 631
Wheeling, West Virginia 26003
My Commission Expires Apr. 9, 2016

Chairman LEAHY. Thank you very much.

Judge Wright, do you have any family members here?

STATEMENT OF OTIS D. WRIGHT, II, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Judge WRIGHT. No, Mr. Chairman, I do not.

[The biographical information of Judge Wright follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Otis Dalino Wright, II
   Otis Delano Wright, Jr.

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

   District Court Judge

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

   Residence: Rancho Palos Verdes, CA

   Office: 415 West Ocean Blvd., Dept. 3,
   Long Beach, CA 90802

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

   1944, Tuskegee, Alabama

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   I am married to Evelyn Rhaney Wright (formerly Evelyn Franconia Rhaney). Her occupation is LCSW (licensed clinical social worker) in private practice under the name Evelyn R. Wright, Adult, Child & Family Counseling Services, 609 Deep Valley Drive, Suite 200 Rolling Hills Estates, CA 90274. I have no dependent children.

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

   Southwestern School of Law, 1976 – 1980, J.D., 1980
   California State University at Los Angeles, 1969 – 1976, B.S., 1976
   Los Angeles Southwest College, 1967 – 1969 A.A.
   Peralta Community College, 1962-1963, no degree

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

   12/05/2005 to present, Superior Court of California, County of Los Angeles, Judge.

   1983- 2005, Wilson, Elser, Moskowitz, Edelman & Dicker LLP, associate and partner.

   1980 – 1983, California Department of Justice, Deputy Attorney General.

   1969 – 1980, Los Angeles County Sheriff's Department, Deputy Sheriff.

8. **<u>Military Service and Draft Status</u>: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.**

   1963 – 1966, U. S. Marine Corps, Sgt. E-5, 2059919.
   1966 – 1969, U. S. Marine Corps Reserve, Sgt. E-5, honorable discharge.

9. **<u>Honors and Awards</u>: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

   None.

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

    California State Bar, Los Angeles County Bar Association, American Bar Association, Langston Bar Association, Association of Southern California Defense Counsel, California Association of Black Lawyers, California Judges' Association, American Judges' Association.

11. **<u>Bar and Court Admission</u>:**

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

       The Bar of the State of California and California Supreme Court, 1980

    b. **List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for**

any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States District Court, Central District of California, 1981
United States District Court, Eastern District of California, 1984
United States District Court, Southern District of California, 2001
United States Court of Appeals, Ninth Circuit, 1985
Supreme Court of the United States, 1986.

There have been no lapses of membership.

12. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

None.

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

N/A

13. Published Writings and Public Statements:

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

None.

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

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

None.

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

None.

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

None.

e. **Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.**

In early September 2006 I was interviewed by the Metropolitan News and the Daily Journal, two newspapers that report on matters of interest to the legal community. The Metropolitan News was following up on the White House press release of the recent federal judgeship nominations to the U.S. Senate. The Daily Journal interview was merely part of its customary practice of profiling all judges and it was merely my turn.

14. **<u>Judicial Office</u>: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

On October 28, 2005 I was appointed by Governor Arnold Schwarzenegger to the California Superior Court, for the County of Los Angeles. The court to which I was initially assigned and am presently assigned, is a high volume Substance Abuse Court. There I handle driving under the influence arraignments, pre-trial, motions and

sentencing. I also monitor three drug diversion programs (Proposition 36, Deferred Entry of Judgment and Drug Court) for felony and misdemeanor non-violent drug possession offenders, including probation violation sentencing hearings.

15. **Citations: If you are or have been a judge, please provide:**

    a. **citations for all opinions you have written (including concurrences and dissents);**

    b. **a list of cases in which certiorari has been requested or granted;**

    c. **a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

    d. **a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

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

    f. **citations to all cases in which you were a panel member in which you did not issue an opinion.**

I have written no opinions. Only two rulings have been reduced to writing. I issued on order of dismissal which has been appealed, but of the date of this submission, the court of appeal has neither heard oral argument nor issued a decision.

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

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

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

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

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

None.

17. <u>Public Office, Political Activities and Affiliations</u>:

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

None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

18. <u>Legal Career:</u> Please answer each part separately.

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

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

No. Not after graduation from law school.

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

No. I have never practiced alone.

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

1980 – 1983
California Department of Justice
Office of the Attorney General
300 S. Spring Street, Los Angeles, CA 90013
Deputy Attorney General

1983 – 2005
Wilson, Elser, Moskowitz, Edelman and Dicker LLP.
555 S. Flower Street, Suite 2800, Los Angeles, CA 90017
Associate from 1983 to 1987. Partner 1987-2005

2005 – present
Superior Court of California, County of Los Angeles
415 West Ocean Blvd., Dept. 3, Long Beach, CA 90802
Judge

b. Describe:

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

Immediately following graduation from law school I took a position as a graduate legal assistant with the California Attorney General's Office, Criminal Appeals Section. There I was permitted to prepare appellate briefs on non-complex criminal appeals. Upon my passage of the bar examination and admission to practice in California in December of 1980, I took a position as Deputy Attorney General in the same unit. During my three years with the office, I handled 200 appeals before the Court of Appeals and California Supreme Court. I also tried a number of criminal cases in those instances where the county prosecutor was required to disqualify itself. More often than not, those matters arose from crimes committed by inmates in the men's prison in San Luis Obispo, where the District Attorney's Office lacked sufficient staff to handle those cases together with the other criminal matters elsewhere in San Luis Obispo County.

In late 1983 I left the Attorney General's Office to join the Los Angeles office of Wilson, Elser, Moskowitz, Edelman and Dicker LLP, a New York firm which specializes in the area of insurance law for a large number of domestic insurers as well as Lloyds of London and a number of London market companies and syndicates. Typically, we handled all aspects of insurance law from drafting of policies and reinsurance treaties, providing coverage opinions, audits of insurance company claims departments, defense of insurance companies in direct actions by insureds for bad-faith and defense of insureds on a wide variety of matters.

ii. your typical clients and the areas, if any, in which you have specialized.

My practice over the years has been primarily civil. Other than my first three years as an attorney where I practiced chiefly in the area of criminal appeals, the following 22 years were as a defense attorney practicing in the area of civil litigation. From 1983 through approximately 1985 I handled primarily defense of public entities and because of my law enforcement background, the defense of police officers accused of excessive force or wrongful use of deadly force. During this same period, I was also heavily involved in the defense of real estate agents and brokers and insurance agents and brokers under their errors and omissions policies. In 1985 I was one of the attorneys responsible for the defense of the mechanical engineers who designed the HVAC system for the Las Vegas Hilton Hotel in a multi-district wrongful death case. I eventually took over sole handling of that case and saw it to its conclusion. I was also involved in the defense of the same engineering firm in connection with similar litigation which arose from a fire at the MGM Grand Hotel in Las Vegas. However, my involvement in the MGM case was of a more limited nature. Following those two hotel fire cases, there arose, almost predictably, litigation over insurance coverage for the damages arising from those two wrongful death cases and the resulting property damage and business interruption losses. In the 1990's my emphasis changed to environmental insurance coverage litigation. Greater awareness and stricter enforcement of CERCLA brought about a torrent of actions by both the U.S. E.P.A. as well as California EPA's Department of Toxic Substance Control to clean up both Superfund sites as well as other groundwater contamination due to leaking underground storage tanks, careless hazardous waste disposal and manufacturing practices by defense contractors and others. Again, the firm's clients were insurance companies which had insured, in some instances, decades earlier, companies such as Union Oil, Texaco, Rockwell, Aerojet-General, Conoco, Exxon, and Getty Oil. In the early 2000's California's emphasis shifted to groundwater contamination by perchlorate. Our clients were not the so-called potentially responsible parties for the contamination but their liability insurers. Large scale environmental insurance coverage remained my primary area of specialization up to and including the date of my appointment to the Superior Court in October of 2005.

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

Over the span of my legal career, the frequency of my court appearances

gradually declined. Initially while at the Attorney General's Office, I appeared in the Court of Appeals on average four days per week. As a new associate with Wilson Elser I appeared in court three or four times per week, not always on my own cases, but often at the request of a partner or senior associate to cover one of their appearances. Toward the end of my employment with Wilson Elser, I appeared in court on average once per month.

i. Indicate the percentage of your practice in:

1. federal courts; 5%
2. state courts of record; 95%
3. other courts.

ii. Indicate the percentage of your practice in:

1. civil proceedings; 90%
2. criminal proceedings. 10%

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

i. What percentage of these trials were:

1. jury; 91%
2. non-jury. 9%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None.

19. <u>Litigation</u>: Describe the ten (10) 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 representation;

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

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

a. *City of Laguna Beach* v. *Mead Reinsurance Corp.* (1990) 226 Cal.App.3d 822. In this case, we represented Mead Reinsurance Corporation, the general liability insurer for the City of Laguna Beach. A city public works project had resulted in land movement which affected a number of luxury homes. The city undertook a project to remedy the cause of the land movement and made a claim against its insurer for recovery of the cost of that project. The subject policy did not provide coverage for property damage due to land subsidence and therefore rejected the claim for the cost to remedy non-covered property damage. The matter was tried in Riverside Superior Court. The trial court's ruling on a motion *in limine*, barring our ability to introduce evidence of the subsidence exclusion, effectively deprived the insurer of its only defense in the case. The insurer requested that judgment immediately be entered against it so that an appeal could be taken. On appeal, the judgment was reversed and the court upheld the insurer's position that there was no obligation to reimburse the city for the cost of mitigation of non-covered claims. The city was represented by Jeffrey Wertheimer, Esq. of Rutan & Tucker in Costa Mesa. Judge Gordon R. Burkhart.

b. *Du* v. *Cardinal Transportation Lines.* This case was significant only in the curious way it developed and resolved. It involved a bus vs. pedestrian accident in which we represented the bus company. An elderly gentleman was struck and seriously injured by a tour bus in Chinatown, near downtown Los Angeles. The tour bus contained French nationals in Los Angeles on vacation. Other than the victim, the bus passengers were the only witnesses to the accident. The driver of the bus claimed never to have seen the pedestrian and only stopped when passengers began shouting that someone had been struck. Photographs taken at the scene as well as the position Mr. Du was found lying in the street strongly suggested that he was not in the crosswalk when he was struck. It was necessary to attempt to locate witnesses who were on the bus. Only a single witness, living in the South of France, was found. Plaintiff's attorney and I flew to France to depose this witness through a translator. In response to a general foundational question to establish her position on the bus and her opportunity to observe what had occurred, the witness embarked on a long narrative explanation which extended beyond the scope of the question asked. She fully explained what she saw and where the victim was (outside the crosswalk) at the time of the accident. This testimony was received without objection at the time. On the first day of trial, prior to any testimony, plaintiff sought to exclude this witness's testimony on the ground that her answer exceeded the scope of the question. The motion was granted.

This ruling effectively eviscerated the defense. The plaintiff's testimony, when offered, would therefore be unrefuted. When the victim took the stand to testify in his own behalf, it soon became apparent that he was suffering from some form of

dementia. The trial judge examined the witness sufficiently to determine that he was incompetent to testify. Because the plaintiff's entire case now hinged on this one witness, who was incompetent to testify, a non-suit was granted. It demonstrated that one must be careful about the impact of one's objections on one's own case. The case was tried in Norwalk Superior Court before Judge Robert Epstein. Plaintiff's counsel was Robert L. Luty, Esq. 11999 San Vicente, Ste. 340 L.A. 90049 (310) 472-7166.

c. *Mitratech, Inc. v. Wausau Insurance Companies, Case No. CVOO-6178 CM* Plaintiff was represented by S. Shawn Khastoo, Esq. 8601 Wilshire Blvd., Ste. 704, Beverly Hills, CA 90211, (310) 289-13 77. Mitratech was commissioned to write a software program to support various claims and client services functions of Wausau Insurance Company. Naturally there were problems in Mitratech's ability to deliver the product as contracted and on time. Because this was immediately prior to the year 2000 and the fears which this change in calendar caused all who relied on computerization, it was essential that the program be in place before the end of the 1999 calendar year. It was not, and the contract was cancelled. At the same time, Wausau was being consolidated with Liberty Mutual, a much larger company with its own computer programs. Mitratech felt that the real reason the contract was cancelled was because Liberty Mutual wanted Wausau to use the Liberty Mutual programs and not because of Mitratech's inability to deliver the product. This matter was hotly contested with depositions around the country. It was ultimately resolved on terms favorable to both sides. Principally, Mitratech wanted, and was given the opportunity to bid on Liberty Mutual work. This case will remain personally significant to Mr. Khastoo and me for a much different reason. On September 10, 2001, While in Boston conducting depositions of Liberty Mutual executives Mr. Khastoo and I became involved in a fairly contentious dispute culminating in our decision to terminate the depositions and catch an early morning United and American flights back to Los Angeles. We were both staying in the same hotel, and encountered each other that evening. We decided to remain in Boston and continue with the depositions as opposed to flying out of Boston on the morning of September 11, 2001. That proved to be a good decision.

d. *Steadfast Insurance Company v. Whittaker Corp., et al.* LASC Case No.BC51374. Judge Wendell Mortimer, Jr.; counsel: Alice Seebach, Esq. 800 Wilshire Blvd., Ste. 1020 Los Angeles, CA (213) 553-7900, Laura Pace Call, Esq. 515 S. Figueroa St. Ste. 1700, Los Angeles, CA (213) 623-7777, Jeffrey Woodruff, Esq. 800 Wilshire Blvd., Ste. 1400 Los Angeles, CA (213) 996-5100; Timothy Rivers, Esq. 1925 Century Park East, Ste. 1250 Los Angeles, CA (310) 551-7000, Keith Watson, Esq. 1776 "K" Street, N.W. Washington, D.C. (202) 719-7000, Ronald Peterson, Esq. 601 S. Figueroa St., Ste. 4000 Los Angeles, CA 90017 (213) 689-0200, Erin McGonagle, Esq. 1120 20th Street, N.W. Washington, D.C. 20036 (202) 457-1600. This is an insurance coverage action brought by an insurer which issued a $75 million policy to Whittaker Corporation to cover excess cleanup cost of a former munitions site. The site was sold by

Whittaker to Santa Clarita LLC with the understanding that the Steadfast policy would cover cleanup cost overruns, i.e., to the extent they exceeded $44 million. Whittaker and Santa Clarita LLC were sued in federal district court by five water agencies whose wells had become contaminated as a result of historic activities at the site. In late 2003 the water agencies prevailed on a motion for summary judgment establishing Whittaker's liability to the agencies for property damage. Steadfast took the position that its policy need not respond until Whittaker's historic general liability insurance policies, not written to cover this specific risk, were exhausted. The matter in state court was suddenly stayed when one of the parties filed bankruptcy. That bankruptcy action was still pending when I left the firm to take the bench.

e. *In re Hilton Hotel Fire Litigation,* Eighth Judicial District of Clark County, Nevada, Case No. A 20677, consolidated with Case No. CV-LV-81-631, HEC pending in the United States District Court for the District of Nevada. Eighteen state court and fourteen federal court actions were filed for wrongful death as were various cross complaints for indemnity and contribution as a result of a fire in the East Tower addition of the Las Vegas Hilton Hotel. Every contractor and subcontractor involved in the construction of the hotel was a party to the consolidated action. The litigation spanned approximately six years, with literally hundreds of deposition, often proceeding with five or six tracks of depositions per day, throughout the country. Ultimately a settlement was reached, but not until after the Thomas and Mack Arena in Las Vegas was converted into an enormous courtroom for trial. Thereafter, another five years of insurance coverage litigation was spawned to determine which of the dozens of insurers would be responsible for funding the settlement. That case too, was eventually settled.

f. *Four Star Oil, etc. v. Allianz Insurance Co., et al,* LASC Case No. BC 036944 was an insurance coverage action brought by Four Star Oil, Texaco and other oil companies against approximately 75 domestic insurers and many other British insurers seeking coverage for property damage and clean up for approximately 1800 sites in the United States and Canada. As with most cases of this magnitude, after an enormous amount of discovery, a settlement was reached.

g. *McColl-Frontenac, Inc., et al v. Adriatic Ins. Co., et al,* LASC Case No. BC 157394. This action was identical to the *Four Star* litigation in that it was brought by a successor in interest to Texaco Canada, Ltd., and sought insurance coverage from two dozen insurers for property damages stemming from soil contamination at nearly 200 service stations in Canada. This action involved nearly the same parties and counsel in the *Four Star* litigation and resulted in a similar settlement, primarily because the policies were the same.

h. *Marion Louise Hindin and A. Tod Hindin vs. Terra Nova Insurance Co., et al.* LASC Case No. BC 053991, Judge Richard C. Hubbell. Walter M. Yoka, Esq. Yoka & Smith, 707 Wilshire Boulevard, Ste. 5000 Los Angeles 90017 (213)

427-9797; Paula Daniels, Esq. Litt & Associates, 3435 Wilshire Boulevard, Ste. 100, Los Angeles, 90010-1912 (213) 386-3114. This case was essentially a $22,000 dispute over coverage for a stolen vehicle which evolved into a bad-faith matter with a seven figure demand. What makes this case significant is the ultimately unsuccessful, but creative tactic which plaintiff Tod Hindin, in pro per, employed to exact a settlement from the insurers. The insurance policy in question was written on Lloyd's of London paper. The subscribers to the policy were the Terra Nova Insurance Company and five Lloyd's Non-Marine Syndicates. There were over 7,700 individual members of those syndicates. During the early stages of discovery, Mr. Hindin obtained a list of those Names (individual members of each syndicate) and amended his complaint to add each of these Names as individual defendants. The filing fee merely to answer the complaint, at that time, would have been over $1.5 million. To say that the London market insurers were concerned about this development would be a gross understatement. If this became the common practice among plaintiff s attorneys, London could no longer risk writing policies in this country. We were ultimately able to successfully challenge the amendment of the complaint, and indeed had the entire complaint stricken, much to the relief of the London insurance market.

i. We represented one of Union Oil's insurers in *Union Oil of California* v. *Aetna et al.* where Union Oil's disposal activities, in this case, at an approved landfill called OII (Operating Industries, Inc.), a 190-acre facility located approximately 10 miles east of downtown Los Angeles, caused wide-spread ground water and air pollution. The site had been accepting hazardous chemicals since 1948 and ranked as one of the most hazardous sites in the country. Nearly 200 Potentially Responsible Parties were identified by the EPA, with whom a $340 million settlement was reached. Union Oil was one of those PRPs and looked to dozens of its former insurers for indemnity. Our clients obtained summary judgment on the pollution exclusion.

j. *Port of Oakland v. Beneficial Life Insurance Company,* U. S. District Court for the Northern District of California. This was an environmental insurance coverage case against a successor company to J. C. Penny Life, which purportedly issued a policy to the City of Oakland, California, insuring the Port of Oakland. Fairly wide-spread contamination emanating from operations on the port had badly contaminated the soil and the surrounding waterways. The actual policy could not be located. The Port did locate from its archives, a cover letter purportedly transmitting the policy in question. That letter, however, did not set forth any of the terms of the policy, including the policy limits. The court elected to utilize similar policies written during the same time period to other California public entities to infer what the coverage under the Port of Oakland policy would have been. That litigation was continuing at the time of my departure from the firm.

20. <u>Legal Activities</u>: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that

did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

There have been a number of other extremely large environmental insurance coverage actions where an entity has been involved in DOD related activities which, by the very nature of their operations, caused damage to the environment. In most cases, these activities preceded the enactment of CERCLA or Superfund statutes, and their operations and disposal techniques were done with the approval of the federal government. For example the Rockwell insurance coverage litigation involved its cleanup liabilities at and near the Rocketdyne facility in the San Fernando Valley, where it conducted testing on rocket engines; its operations at Rocky Flats Arsenal, where nearly 40 years of nuclear weapons production outside of Denver, Colorado had caused massive environmental pollution and contamination that is now in the process of a massive cleanup effort involving both hazardous and radioactive materials; plus numerous refineries throughout the country.

Our firm also represented one of Aerojet General Corp's insurers in *Aerojet General Corporation* v. *Transport Indemnity, et al,* over payment for Aerojet's cleanup obligations. It operated a production site which covers 5,900 acres near Rancho Cordova, 15 miles east of Sacramento. At its closest point the site is about 1/2 mile from the American River. There, Aerojet manufactured liquid and solid propellant rocket engines as well as a number of chemicals, including rocket propellant agents, agricultural, pharmaceutical, and other industrial chemicals. In addition, the Cordova Chemical Company operated chemical manufacturing facilities on the Aerojet complex from 1974 to 1979. Both companies disposed of unknown quantities of hazardous waste chemicals, including trichloroethylene (TCE) and other chemicals associated with rocket propellants, as well as various chemical processing wastes. Some wastes were disposed of in surface impoundments, landfills, deep injection wells, leachate fields, or by open burning. These chemicals were ultimately found in the American River and off-site in private wells and domestic water supply wells. Our clients obtained summary judgment shortly before trial on "loss in progress" provision in the policy.

Toward the end of my affiliation with my former firm, the chairman of the firm requested input from the partners on the issue of coverage under first party property damage insurance policies relative to the water and wind damage to the homes in New Orleans following Hurricane Katrina. Because we were counsel to a great many insurance companies, some of which had written policies to businesses and homeowners in the Gulf States, the firm wanted to be in a position to offer advisory opinions to those companies in advance of the claims coming in. I was one of those partners who conducted research and submitted an analysis of the general coverage issues. Naturally, without reference to a specific policy and analysis of specific policy language together with factual data on the mechanism of the storm and the precise damage to any given property, only general principles of coverage could be offered.

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

None.

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

I currently have $7,772 in the County of Los Angeles retirement plan. $4,134 in contributions and earnings plus $3,638 in vested county matching funds. With my former firm, I had a Partner Defined Contribution Plan which I have rolled over into an IRA with Fidelity Investments. The current account balance is $317,765.

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

No.

24. **<u>Sources of Income</u>: 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.)**

See my financial disclosure report, attached.

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

See attached Statement of Net Worth.

26. **Potential Conflicts of Interest**:

a. **Identify the parties, 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. Explain how you would address any such conflict if it were to arise.**

Over the years I have represented a good many insurance companies, agents and brokers and third party administrators. More than I can immediately recount. In the event litigation involving one of those parties came before me, a reasonable person might conclude that I might have a bias in favor of that former client. Consequently, my former representation of that client would be disclosed in accordance with my obligations under the Code of Conduct for United States Judges.

b. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

I will carefully watch for potential conflicts of interest, including matters in which a former client, either of mine, or of my former firm, is a party; matters in which my former firm, or one of its attorneys is counsel of record for a party; and matters related to any financial interest I may have. There are no particular categories of litigation that might present a potential conflict of interest, only parties and attorneys. In all circumstances, I will follow the Code of Conduct for United States Judges and all applicable statutes, policies and procedures established by the Judicial Conference.

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

In the latter part of 1992 I became one of the volunteer attorneys with HALSA (HIV-AIDS Legal Services Alliance) a program sponsored by the Los Angeles County Bar Association. HALSA provides legal services to those suffering with a terminal illness or disease. Our activities range from intervening on behalf of HALSA clients in matters of housing and employment discrimination to the preparation of wills and powers of attorney. I would typically receive a call from HALSA once per month, and more often than not, it was for the preparation of a will for someone in the later stages of AIDS. It was my practice to make immediate contact with the client, secure the necessary information and prepare a draft document. Many of the clients were already in a hospice and I would deliver the document to them the following day. If modifications were required, I would prepare a final document and deliver it the next day. I remained a volunteer attorney with HALSA up to the time of my appointment to the bench.

In the early 1990's my wife became involved as a member of the board of directors for Sunshine Mission / Casa de Rosa a non-profit organization which provided shelter for homeless and abused women. It also operated a 30 room hotel which offered lost cost housing to low-income women. In time, my wife became chair of the board and began steps to improve to conditions of the facility. She organized fund raising events and sought my assistance in performing maintenance and janitorial help. I also organized an office, had their old computer refurbished and trained some of the long-term staff in basic computer operation. We purchased food for the shelter and occasionally cooked on the weekends when the facility was without a cook on staff. Later I became involved in the re-drafting of the by-laws, the rental agreements and tenant covenants of good conduct. I was also requested, for time to time, to initiate unlawful detainer actions against hotel residents who had violated the good conduct covenant or failed to pay rent for three months or longer.

28. <u>Selection Process</u>:

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

Yes, there is such a selection committee, which, I assume, recommended my nomination.

This process began for me within a few weeks of my having taken the state bench when I had a telephone conversation with retired presiding justice of the Court of Appeals for the Second Appellate District in California, Charles S. Vogel. Justice Vogel indicated that if I had any desire to apply for the federal bench that I should call Eric George, a Beverly Hills lawyer, and the son of the Chief Justice of the California Supreme Court. Mr. George put me in contact with another retired justice of the court of appeals Elwood Lui, now with Jones Day. Justice Lui's office provided me with the application. That application was completed and submitted to Justice Lui in early January. On April 13, 2006 I was granted an interview with Justice Lui and the other members of the selection committee. On April 26, 2006 I met with and was interviewed by Mr. Gerald Parsky and Mr. Eric George. The following day I received a call from the office of Counsel to the President requesting that I come to Washington, D. C. for an interview. On May 15, 2006 I met with staff from the White House Counsel's office and from the Department of Justice. After a background investigation, and after completing all nomination paperwork, I was informed that my name would be forwarded to the Senate. The President nominated

me on September 5, 2006. My nomination was returned to the President upon the adjournment of the 109th Congress. The President resubmitted my nomination to the Senate on January 9, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
WRIGHT, OTIS D	USDC Central District of Calif	01/12/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge, nominee	5a. Report Type (check appropriate type) [X] Nomination, Date 01/09/2007 [ ] Initial [ ] Annual [ ] Final 5b. [ ] Amended Report	6. Reporting Period 01/01/2006 to 12/31/2006
7. Chambers or Office Address Los Angeles Superior Court 415 West Ocean Boulevard D/3 Long Beach, CA 90802	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

[ ] NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Member of the Board of Trustees	Southwestern School of Law, Los Angeles
2.	
3.	
4.	
5.	

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

[X] NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting WRIGHT, OTIS D	Date of Report 01/12/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2005	Wilson Elser, law firm. I was a partner with this law firm	$ 225,000
2. 2006	State of California - the Superior Court. Judge	$ 195,000
3.		
4.		
5.		

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

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

DATE	SOURCE AND TYPE
1. 01/01/06	self-employed psychotherapist
2.	
3.	
4.	
5.	

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

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1. Exempt	Exempt
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting WRIGHT, OTIS D	Date of Report 01/12/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. Exempt	Exempt	
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Bank of America	Mortgage on primary residence	O
2. American Express	Credit Card	K
3. Citibank	Credit Card	K
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
WRIGHT, OTIS D	01/12/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Fidelitys Investments: Roll-over IRA	A	None	O	T	Exempt				
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000	T =Cash Market	
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment		
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting WRIGHT, OTIS D	Date of Report 01/12/2007

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting WRIGHT, OTIS D	Date of Report 01/12/2007

IX. CERTIFICATION.

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

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

Signature Otis D Wright Date 1-12-07

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		49	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others		25	000
Accounts and notes receivable:				Accounts and bills due		190	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		811	000
Real estate owned-add schedule	1	300	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		250	000				
Cash value-life insurance		10	000				
Other assets itemize:							
Retirement accounts		325	537				
				Total liabilities	1	026	000
				Net Worth		908	537
Total Assets	1	934	537	Total liabilities and net worth	1	934	537
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, co-maker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 1,300,000
Real Estate Mortgages Payable	
Personal residence	$ 811,000

AFFIDAVIT

I, Otis D. Wright, II, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

1-12-07
(DATE)

(NAME)

Chairman LEAHY. And Judge Wu?

STATEMENT OF GEORGE H. WU, NOMINEE TO BE DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA

Judge WU. No, I do not, Senator.

[The biographical information of Judge Wu follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   George Howping Wu. No other names ever used.

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

   United States District Court Judge, Central District of California.

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

   Los Angeles Superior Court
   Stanley Mosk Courthouse, Department 33
   111 North Spring Street
   Los Angeles, CA 90012

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

   1950, New York City.

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   Single. No dependent children.

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

   College: Pomona College, September 1968 through June 1972, B.A. Degree in June 1972.

   Law School: University of Chicago Law School, September 1972 through June 1975, J.D. Degree in June 1975.

7. **Employment Record: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or**

otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

1) March 1996 to Present:	Los Angeles Superior Court Stanley Mosk Courthouse 111 North Hill Street Los Angeles, CA 90012 Superior Court Judge
2) October 1993 to March 1996:	Los Angeles Municipal Court Stanley Mosk Courthouse 111 North Hill Street Los Angeles, CA 90012 Municipal Court Judge
3) February 1991 to October 1993:	United States Attorney's Office Central District of California 1200 U.S. Courthouse 312 North Spring Street Los Angeles, CA 90012 Assistant Division Chief, Civil Division
4) October 1989 to February 1991:	LeBoeuf, Lamb, Leiby & MacRae 725 South Figueroa Street, Suite 3600 Los Angeles, CA 90017 Associate
5) June 1982 to October 1989:	United States Attorney's Office Central District of California 1200 U.S. Courthouse 312 North Spring Street Los Angeles, CA 90012 Assistant U.S. Attorney, Civil Division
6) August 1979 to June 1982:	University of Tennessee College of Law 1505 West Cumberland Ave. Knoxville, TN 37996 Assistant Professor of Law
7) June to September 1980: January to August 1979: August 1976 to October 1977:	Honorable Stanley N. Barnes U.S. Court of Appeals for the Ninth Circuit 312 North Spring Street Los Angeles, CA 90012 Law Clerk

8) October 1977 to December 1979: June 1975 to August 1976:	Latham & Watkins 633 West 5th Street Los Angeles, CA 90071 Associate
9) June to September 1974:	Kindel & Anderson 555 South Flower Street Los Angeles, CA 90071, Summer Associate
10) October 1973 to June 1974:	American Bar Foundation 750 North Lake Shore Drive Chicago, Illinois 60611 Researcher (part time)
11) Summers 1972 and 1973:	Madame Wu's Garden 2201 Wilshire Blvd. Santa Monica, CA 90403 Restaurant worker

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

   I have never served in the military.

9. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

   I have received numerous commendations from various federal agencies (such as the United States Air Force, United States Postal Service, United States Department of Agriculture, the Immigration and Naturalization Service, etc.) for successful litigation work as an Assistant United States Attorney. Also, I was presented with a "Special Achievement Award" by the United States Attorney's Office for the Central District of California.

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

    Los Angeles County Bar Association (1983-1992): Delegate and member of delegation study committees for 1984 and 1985 state bar conventions; member of Committee on Federal Courts and Practice in 1984 and 1985.

Barristers – Los Angeles County Bar Association (1983 - 1986): Co-Chairman of Government Attorneys Committee (1985 -1986); member of Legislation and Administration of Justice Committees (1983–1985).

Federal Bar Association (1983–1986): Member of Judicial Evaluation Committee (1984–1985).

Southern California Chinese Lawyers Association (1984 to present).

The Committee on Standard Jury Instructions-Criminal and The Committee on Standard Jury Instructions-Civil of the Superior Court of Los Angeles County, California: member (2000 – 2004).

11. Bar and Court Admission:

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

California, from 1975 to my appointment as a judge in 1993.

Under the Constitution of California, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office. See California Constitution Article 6, § 9.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

I was admitted to and allowed to practice in the following courts listed below from the indicated dates until my judicial appointment in 1993.

California State Courts, 1975
United States District Court for the Central District of California, 1976
United States Court of Appeals for the Ninth Circuit, 1976
Supreme Court of the United States, 1979.

12. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include

clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

None

b. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.**

I do not belong to any organizations which would fall within Question 12(b).

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

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

I wrote the draft of a chapter on class actions in the context of employment litigation. That draft was incorporated as Chapter 34: "Class Actions" in the 1979 Supplement to the Schlei & Grossman treatise Employment Discrimination Law published by the Bureau of National Affairs, Inc. I do not have a copy of that publication.

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

None, to my knowledge and current recollection.

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

None, to my knowledge and current recollection.

d. **Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures,**

panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I gave a speech at the Memorial Ceremony for the Honorable Stanley N. Barnes at the United States Court of Appeals for the Ninth Circuit on April 25, 1990 which was reported in 928 F.2d XCV.

e. **Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.**

None, to my knowledge and current recollection.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

I was appointed to the Los Angeles Municipal Court in October of 1993 by Governor Pete Wilson. At that time, Municipal Court judges handled misdemeanor cases, felony preliminary hearings, and civil actions where the amount in dispute was less than $25,000.

In March of 1996, I was elevated to the Los Angeles Superior Court by Governor Wilson. Superior Court judges handle felony cases and civil lawsuits where the claims involve more than $25,000. My current term of office expires on January 3, 2011.

California state trial judges have six year terms. At the end of a term, the judge faces the possibility that someone may run against him or her for that judicial seat. However, if no one elects to run against the judge, he or she automatically retains the position for another six years.

15. **Citations: If you are or have been a judge, please provide:**

a. **citations for all opinions you have written (including concurrences and dissents);**

I have been a state trial judge for over thirteen years. I have written literally hundreds of "statements of decision" (where the matter was tried without a jury) and "rulings" on various motions. In California, state trial court decisions/rulings/opinions are not

published but are merely retained in the court files. It has not been my practice to keep copies of every decision/ruling/opinion that I have written.

b. a list of cases in which certiorari has been requested or granted;

Under the California Constitution, state trial court decisions can be "appealed" to a Superior Court's Appellate Division or to a Court of Appeal depending upon the nature of and/or the amount in controversy. See California Constitution, Article 6, § 11. In turn, decisions of a Court of Appeal can be "appealed" to the California Supreme Court. Id. The term "certiorari" is not applied to those situations. However, the California Constitution does provide for appellate review of certain limited types of decisions by "writ of certiorari". Id., Article 6, § 10. Additionally, 28 U.S.C. § 1447 provides that, where a state court has resisted an application to remove a matter from state court to federal court, a United States District Court judge can issue a "writ of certiorari" to the state court to require the latter to transfer the action to the federal court. Finally, where review by the United States Supreme Court is sought from a decision of a state court, the application is made by petition for writ of certiorari. California state trial judges are not necessarily informed when a litigant decides to seek review to the United States Supreme Court through a petition for writ of certiorari.

I am not aware of any instance where a special "writ of certiorari" under California law was sought in one of my cases. I have never resisted a removal application and, hence, there has never been a writ of certiorari from a federal district court in any of my cases. At this time, I am aware of only one instance where there was a petition for certiorari filed with the United States Supreme Court involving one of my cases, but it was from the appellate court decision affirming my ruling. See People v. Cherry, LASC Case No. BA 148658, affirmed Cherry v. Superior Court (2001) 86 Cal.App.4th 1296, cert. denied sub nom. Cherry v. California, 534 U.S. 854 (2001).

c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

(1) Gueyffier v. Ann Summers, Ltd. (2006) 144 Cal.App.4th 166.

In this case involving a franchise dispute, I confirmed an international commercial arbitration award entered in California by the American Arbitration Association in favor of plaintiff, a French citizen residing in the United States, against the defendant, a British corporation. The franchise agreement provided, *inter alia,* that defendant/franchisor could not be found in violation of the contract unless the plaintiff/franchisee provided detailed written notice of the breach and a reasonable opportunity to cure. The arbitration clause in the contract also barred the arbitrator from modifying any of its material terms.

The arbitrator found that the serious violations by the defendant were such that "the effect of the breaches was not curable" and hence that the written advance notice requirement was "moot". Under applicable California law, "with narrow exceptions,

an arbitrator's decision cannot be reviewed for errors of fact or law." I held that the arbitrator's finding of mootness did not amount to a refusal to enforce the notice and cure provision. The appellate court disagreed and reversed. It concluded that the arbitrator had exceeded his powers because he had "modified and changed the explicit terms of the notice and cure requirement when he found it had been excused."

On January 17, 2007, the California Supreme Court granted a Petition for Review in this case. See Cal. LEXIS 218.

(2) City of Los Angeles v. Animal Defense League (2006) 135 Cal.App.4th 606.

Plaintiff City brought an action seeking limited injunctive relief against defendants animal rights activist and organization under California Code of Civil Procedure ("CCP") Section 527.8, which allows an employer to obtain a restraining order on behalf of an employee against fellow employees or third persons to prevent threats and/or violence in the workplace. I granted the City's request after it was shown that: 1) the defendants and others had engaged in a noisy demonstration in front of and at the entrance to the home of a director of the City's animal services department at night with some participants wearing masks and hooded sweatshirts over their faces frightening his wife and four minor children, and 2) the defendants had placed the director's home address on their web site with his name riddled with bullet holes. The appellate court held that I had erred in denying defendants' motion to strike the City's petition because: 1) the City's lawsuit was not an "enforcement action" under the anti-SLAPP statute and 2) that the City had failed to demonstrate a probability that it would prevail under Section 527.8.

(3) Caliber Bodyworks, Inc. v. Superior Court (2005) 134 Cal.App.4th 365.

Plaintiff employees bought a class action against their employer delineating thirteen causes of action mostly for violations of provisions of the Labor Code. Defendant employer demurred to all thirteen claims arguing that the plaintiffs had failed to satisfy certain pre-filing notice and exhaustion requirements. I overruled the demurrer in its entirety. The appellate court held that there were applicable pre-filing requirements as to the ninth, eleventh and twelfth causes of action but not as to the others. Hence, I was reversed as to only those claims.

(4) Net2Phone, Inc. v. Superior Court (2003) 109 Cal.App.4th 583.

This case arose under the earlier, pre-Proposition 64 version of the state's unfair competition statute. I ruled that, under the former law, a forum selection clause in a contract could not be enforced against a plaintiff suing under Bus. & Prof. Code Section 17200 who was not a party to the contract. The appellate court said it could.

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

(1) Barr v. Lakatos (2005 Cal. App. Unpub. LEXIS 10455).

Two issues were raised on appeal: 1) whether individual supervisors can be held personally liable for retaliation in violation of Government Code Section 12940(h), which is part of the California Fair Employment and Housing Act, and 2) whether plaintiff's

claims were barred under the immunity provisions in Government Code Section 820.2. I did not rule on the second issue. However, as to the first, in Reno v. Baird (1998) 18 Cal.4th 640, the California Supreme Court held for various policy reasons that, while an employer is liable for acts of discrimination by its supervisory employees, supervisors themselves are not subject to personal liability for acts of discrimination prohibited by Section 12940(a). The question then arises as to whether supervisors can be held personally liable for the same alleged discriminatory conduct when characterized by a plaintiff as an act of retaliation rather than an act of discrimination. Relying on such authorities as Chin, Cathcart California Practice Guide: Employment Litigation at Sections 7-702 through 7-707 on pages 7-84 through 7-85, I held that they could not. The appellate court said they could.

(2) Environmentalism Through Inspiration v. City of Los Angeles (2005 Cal. App. Unpub. LEXIS 9697).

This case involved the issue of whether a supplemental environmental impact report ("SEIR") was required as to a development project which had already gone through an initial environmental impact review that had been affirmed by the courts. I upheld the City's determination and rejected the plaintiffs' claim that new information and/or discretionary approvals arising after the initial environmental impact review warranted the preparation of a SEIR. The appellate court concluded that substantial evidence supported the city's determination with respect to all of the purported items of new information except that the city failed to determine whether groundwater dewatering in connection with the methane mitigation measures approved by the city council would result in new or substantially more severe significant environmental impacts.

(3) Bren v. Superior Court (2005 Cal. App. Unpub. LEXIS 9210).

In this lawsuit, plaintiffs served extensive discovery requests as to the defendant's finances for the past fifteen years on the grounds that such discovery was relevant to an issue as to child support. Defendant indicated that he would stipulate that: 1) "at all times material to this litigation, his annual gross income established him as an extraordinarily high earner as a matter of law, and that he had the ability to pay, and would have paid, any reasonable child support order which might have been made by a court in the paternity proceeding between the parties", and 2) "his average annual personal wage and dividend income during the past fifteen years since [his first child's] birth was $14,356,634 per year, which produced a presumptive support award for both children under formula guidelines that would be slightly over $130,000 a month". I held that, since the $130,000+ figure would be far in excess of any amount to which the children were reasonably entitled under the applicable law (no prior California court had ever awarded more than $60,000 a month), that the defendant's privacy interests under the California Constitution outweighed the plaintiffs' need for the information. The appellate court concluded that a reasonable child support amount could exceed $130,000 per month for the two young children who were living with their mother and hence reversed my order.

(4) Thorndal v. Provident Life & Accident Ins. Co. (2005 Cal. App. Unpub. LEXIS 7288).

The appellate court affirmed in part and reversed in part certain rulings that I made after the jury returned a verdict on some but not all of the causes of action in this insurance bad faith case.

(5) Ozeri v. Itzhaki (2005 Cal. App. Unpub. LEXIS 3923).

I dismissed the cross-complaint for non-payment of construction services: a) after having allowed the cross-plaintiff three previous opportunities to attempt to plead around the fact that he was not a licensed contractor and was therefore prohibited by Bus. & Prof. Code Section 7031 from maintaining an action to recover compensation for his services, and b) when cross-plaintiff's new allegations were factually inconsistent with his earlier pleadings. The appellate court reversed because it believed that there was a "reasonable possibility" that he could claim that he had provided his construction services on behalf of a properly licensed partnership.

(6) Williams v. Zuckerman (2005 Cal. App. Unpub. LEXIS 3189).

Plaintiff brought this legal malpractice lawsuit alleging that the dismissal of his initial medical malpractice action was due to the negligence and misconduct of the defendant attorneys who, plaintiff claimed, withdrew as his counsel after failing to respond to discovery and other acts of misfeasance. I granted summary judgment based upon the factual findings of the judge who refused to reinstate the medical malpractice case after plaintiff had hired new and able counsel because that judge found that: 1) there was discovery abuse on the part of the plaintiff himself, 2) he had made "evasive, misleading [and/]or untrue" statements to the court, and 3) he had not acted diligently. The appellate court ruled that I could not give collateral estoppel effect to those findings.

(7) Sherman v. Harbin (2004 Cal. App. Unpub. LEXIS 7608).

This case raised legal claims (e.g. breach of contract) which were tried to the jury and an equitable issue which was to be tried to the court immediately thereafter. The appellate court reversed my decision on the equitable issue concluding that it was inconsistent with the certain of the jury's factual findings.

(8) Peterson v. Jackson (2004 Cal. App. Unpub. LEXIS 2298).

Plaintiff sued Jesse Jackson, the Rainbow Push Coalition, and others claiming that he had been assaulted and his Constitutional and economic rights had been infringed by the conduct of the defendants at a public meeting sponsored by the Rainbow Push Coalition and Toyota Motor Sales U.S.A., Inc. I granted the defendants' anti-SLAPP motion as to most of those claims. The appellate court reversed in part stating: "After spending substantial time parsing out the parties' contentions on appeal, we conclude as follows: While we strongly question the merits of this lawsuit, we are compelled to hold that the anti-SLAPP statute does not apply to plaintiffs' first through sixth causes of action. We affirm the trial court's dismissal of the seventh cause of action only."

(9) Garoian v. Blaine (2004 Cal. App. Unpub. LEXIS 185).
The appellate court here held that I did not err in asking further questions of the jury following a verdict which was ambiguous. However, I was reversed as to part of the judgment which I rendered as to a statute of limitations issue because the court felt it was inconsistent with part of the jury's findings.

(10) Wright v. Stainback (2003 Cal. App. Unpub. LEXIS 10100).
This case involved a dispute as to whether the plaintiff owner of a concert piano had given it away or merely asked the defendant to keep it for him while he was undergoing criminal proceedings. The appellate court held that I erred in applying a delayed discovery rule and thus the cause of action for conversion was barred by the statute of limitations.

(11) Borten v. Laird (2003 Cal. App. Unpub. LEXIS 8036).
This case raised an issue of whether a non-resident tenant (who was found to be a resident of Texas but lived mostly in Italy) was entitled to the protection of the Santa Monica Rent Control Law. I did not reach the constitutional issues in this case because the rent control ordinances at issue had been revised and the plaintiff had not brought her case under those new provisions. The appellate court reversed my decision and ordered me to rule on the constitutional issues even though the matter was not ripe and a necessary party (the Santa Monica Rent Control Board) was not a party to the suit. On remand, after the Rent Control Board was brought into the case and the defendant tenant had voluntarily vacated the property and allowed her default to be taken, the matter was tried to the court and I entered a judgment in favor of the Rent Control Board. That decision was affirmed. See Borten v. Santa Monica Rent Control Board (2006) 141 Cal.App.4th 1485.

(12) Guilford v. In-patients Consultant Mgmt. (2003 Cal. App. Unpub. LEXIS 3630).
After the jury failed to answer certain special interrogatories, I allowed a judgment to be entered to conform to proof. However, I found that part of the judgment was barred by the relevant statute of limitations. The appellate court held that plaintiff's claim was not barred by the statute of limitations and that I had erred by refusing to instruct the jury on an element of damages.

(13) Fred Rappoport Co. v. Trigg (2003 Cal. App. Unpub. 1253).
This lawsuit involved the ownership of the rights to merchandise toys and other products derived from the song "Grandma Got Run Over By A Reindeer". Plaintiff was the licensee as to dramatization and other rights including some references to the sale of merchandise. Defendants were the composers of the song and their publishing companies. After a court trial, I held that the merchandising rights belonged to both parties. The appellate court reversed finding that they were owned exclusively by the composers and publishing companies.

(14) People v. Mena (Cal. Ct. App., Second Appellate District, Division 3, Case No. B143946).

The issue in this case was whether the Los Angeles Police Department had a sufficiently stated policy governing the opening of closed containers encountered during an inventory search of a vehicle. I had ruled that the department had such policy in the context of the facts presented in the case. The appellate court disagreed.

There may have been occasions where I have been reversed in an unpublished appellate opinion and I am not informed of that reversal. For example, if an appeal is taken after I have been assigned to another department and if there is a reversal in an unpublished opinion, that case will be handled by the judge who succeeds me in that court and I do not receive any notice. Additionally, I can be reversed as to rulings that I make orally on the record that are not memorialized in any writing by me. I have included those cases in the above list but cannot provide my unpublished opinions from those actions.

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

I have written literally hundreds of "statements of decision" (where the matter was tried without a jury) and "rulings" on various motions. In California, state trial court decisions/rulings/opinions are not published but are merely retained in the court files. It has not been my practice to keep copies of every decision/ruling/opinion that I have written.

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have never been a judicial officer where the case was addressed to a panel of judges.

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

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

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

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

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

In California, there is a statute which allows any litigant one opportunity for *any* reason to file a "peremptory challenge" asserting that he-she-or-it cannot receive a fair and impartial trial/hearing before the judicial officer assigned to that action. See CCP § 170.6. If that challenge is timely filed, the judge cannot contest or otherwise review it but must transfer the case for reassignment. That claim need not be based on actual or provable bias. It is simply a provision that allows any litigant one chance to "judge shop". Judges in California do not keep any record of such challenges. I am aware that I have, on rare occasion, been the subject of a peremptory challenge, but do not at this time have any information as to the party, attorney and/or reasons involved.

Also, CCP § 170.1 delineates the various grounds for disqualification of a judge. CCP § 170.3 outlines the procedure to be followed if a judicial officer believes there are grounds for his or her recusal. Even if there are grounds for disqualification, except in situations where the recusal would be based upon personal bias or prejudice or where the judge served as an attorney in the matter in controversy or is a material witness, the judicial officer can elect to inform the parties and their attorneys of the bases for disqualification and ask them if they wish to waive the disqualification.

As to the recusal topic, there are four items. First, because my brother is an attorney who has worked in the Los Angeles Office of County Counsel for almost two decades, anytime there is an appearance by attorneys from that office in a lawsuit, I inform the parties and counsel of the situation and ask if any participant wishes for me to recuse myself or if they are willing to waive that ground for disqualification. Second, in the beginning of 1996, while I was handling an unlawful detainer action as a Municipal Court judge in Federal National Mortgage Assn. v. Zaklam, LAMC Case No. 95X02102, a defendant (who was held to be a "vexatious litigant") filed a "statement of disqualification" charging me with bias against him as a result of certain rulings and a purported comment that I had made. Pursuant to CCP § 170.3, I filed an answer denying any basis for the disqualification and transferred the matter to another judge for determination. The defendant's statement of disqualification was held to be without merit. Third and fourth, one of my first assignments after being elevated to the Superior Court was in the Compton Courthouse where I was, for a time, the judge assigned to handle all pre-trial matters involving pro per criminal defendants. In November 1997 and January 1998, two different pro per defendants filed motions to disqualify me. See People v. Jimmie Johnson, LASC Case No. TA 049047, and People v. Cedric Johnson, LASC Case No. TA 037977. In both instances, the defendant's claims were amorphous and without factual references. Those motions were denied by other judges.

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

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

None.

b. **List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

None.

18. **Legal Career: Please answer each part separately.**

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

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

I clerked for the late Honorable Stanley N. Barnes, United States Court of Appeals for the Ninth Circuit, on three occasions (August 1976 to October 1977, January to August 1979, and June to September 1980).

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

I have never had a solo practice as an attorney.

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

November 1993 – Present
Los Angeles County Municipal/Superior Court
111 North Hill Street
Los Angeles, CA 90012
Judge

February 1991 – October 1993
United States Attorney's Office
300 North Los Angeles Street
Los Angeles, CA 90012
AUSA - Assistant Chief, Civil Division

October 1989 – February 1991
LeBoeuf, Lamb Leiby & MacRae
725 South Figueroa Street, Suite 3600
Los Angeles, California 90017
Associate attorney

June 1982 – October 1989
United States Attorney's Office
312 North Spring Street
Los Angeles, CA 90012
Assistant United States Attorney

August 1979 – June 1982
University of Tennessee College of Law
1505 West Cumberland Avenue
Knoxville, TN 37996
Assistant Professor of Law

October 1977 – December 1978 and
June 1975 – August 1976
Latham & Watkins
633 West 5th Street, Suite 4000
Los Angeles, CA 90071
Associate attorney

b. Describe:

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

I began my legal career as an associate a large law firm. There were no set assignments to any particular department and I worked on various projects involving corporate organizations, tax matters, labor relations, real estate, and general business litigation.

As an Assistant United States Attorney in the Civil Division of the Central District of California office in Los Angeles, my responsibilities covered the entire gamut of legal representation. This included initiating court actions, defending federal agencies/officers in lawsuits, motions practice, discovery, settlement negotiations, trial work, appellate brief writing and

oral argument, and giving legal advice in regards to potential and actual litigation matters.

I returned to private practice at the Los Angeles branch of a New York law firm where I handled civil litigation matters mostly in state court.

In 1991, I returned to the Office of the United States Attorney as an Assistant Chief in the Civil Division. My duties were the same as during my prior service, described above, except that there were additional supervisory responsibilities over other Assistant United States Attorneys.

ii. your typical clients and the areas, if any, in which you have specialized.

Typically, the clients that I represented while in private practice were large corporations such as Hughes Aircraft, Western Bancorporation, the Walt Disney Company and Porsche Cars North America, Inc. Eventually, I specialized in general business litigation.

As an Assistant United States Attorney, I represented the United States of America, federal government agencies, their officers and employees. I acquired knowledge and expertise in a wide range of substantive areas of civil and appellate litigation, including constitutional attacks on federal statutes and regulations, federal administrative law, government contracts, immigration matters, discrimination and civil rights law, medical malpractice, social security and Medicare law, drug asset forfeitures, and environmental law.

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

i. Indicate the percentage of your practice in:
1. **federal courts;**
2. **state courts of record;**
3. **other courts.**

When I was in the United States Attorney's Office, 98% of the practice was litigation and 99% was in federal courts (where I appeared very frequently) and the remaining 1% was in California state courts.

When I was in private practice, eventually litigation was about 75% of my workload. I only made occasional court appearances with about 15 % in federal court and 85% in California state court.

ii. Indicate the percentage of your practice in:
1. civil proceedings;
2. criminal proceedings.

My practice was almost entirely civil with occasional criminal issues arising in the context of civil proceedings.

d. 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 estimate that I have tried 25 cases to verdict or judgment. I was the sole counsel in 15 cases, primary counsel in 6, and associate counsel in 4.

i. What percentage of these trials were:
1. jury; 4%
2. non-jury. 96%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have only worked on one case before the United States Supreme Court, i.e. Douglas Oil Co. v. Petro Stops Northwest, 441 U.S. 211 (1979). My role was limited to researching and initially drafting only parts of the petition for certiorari and petitioner's briefs. I do not have a copy of those documents.

During my tenure with the United States Attorney's Office, I handled eight cases at the trial and/or circuit court levels where review or certiorari was granted by the Supreme Court. However, because the Office of the Solicitor General is assigned to represent the United States in all litigation before the Supreme Court, I was not involved in the proceedings before the Court.

19. Litigation: Describe the ten (10) 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 representation;

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

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

(1) United States of America on its own behalf and on behalf of the Chemehuevi Indian Tribe v. Jorgensen et al.
Federal District Court C.D.Ca., Case No. CV-92-3809
District Court Judge: Hon. Terry J. Hatter
Opposing Counsel: Robert Hargreaves
Best, Best & Krieger
74-760 Hwy. 111, #200
Indian Wells, CA 92210
(760) 568-2611

This action was brought by the United States of America on its own behalf and on behalf of the Chemehuevi Indian Tribe for damages from trespass and for ejectment from lands within the Chemehuevi Indian Reservation. The reservation is located in California along a portion of the desert next to the Colorado River. The dispute arose when a majority of the approximately 300 non-Indian lessees of mobile home lots in a section of the reservation ceased to pay rent to the Tribe and refused to enter into a new lease offered by the Tribe that had been approved by the Secretary of the Interior. The United States Attorney's Office was brought into the matter at the request of the Tribe and the Interior Department. Our office initially attempted to negotiate an agreement between the Tribe and the renters' association. When settlement discussions reached an impasse, we commenced lawsuits against ten of the recalcitrant lessees as "test" cases. The defendants raised a number of challenges including contentions that: 1) the land at issue was not part of the Chemehuevi Reservation since it had been purchased in 1941 as part of the Parker Dam Project and a 1974 action by the Interior Secretary returning the land to the Tribe was invalid; 2) the reservation had not been properly created in 1907 under applicable federal law; and 3) the Tribe was guilty of laches and "unclean hands" in regards to the its dealings with the lessees. After a series of motions, the district court on January 14, 1993 granted plaintiffs' motion for partial summary judgment recognizing the Chemehuevi Indian Reservation and the validity of the Tribe's claims to the land. That decision was affirmed on appeal in Havasu Landing Homeowners Ass'n v. Babbitt, 1996 U.S. App. Lexis 1795 (9th Cir. 1996).

(2) Community Cablevision Co. v. Federal Communications Commission
Federal District Court C.D.Ca., Case No. CV-93-3104
Judges: Hon. Dorothy Nelson, Laughlin Waters, and Manuel L. Real
Opposing Counsel: John J. Swenson and Douglas Swanson
Gibson, Dunn & Crutcher
333 South Grand Ave.
Los Angeles, CA 90071
(213) 229-7000
Counsel for Intervenor: Bruce J. Ennis, Jr.
Jenner & Block
601 Thirteenth Street

Washington, D.C. 20005
(202) 639-6000

Plaintiff Community Cablevision Company brought this action seeking declaratory and injunctive relief against the defendants claiming that Sections 4 and 5 of the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. §§ 534 and 535, violated the First Amendment. Those sections require cable television operators to devote a portion of their channel capacity to the carriage of certain local commercial and non-commercial educational broadcast stations. Plaintiff initially applied for a temporary restraining order to bar the application of the statute in its case. That application was denied by the district court judge. Thereafter, plaintiff moved for a preliminary injunction before a three judge panel consisting of district and appellate judges as provided in Section 23 of the 1992 Cable Act. The defendants again prevailed. The matter was resolved when the Supreme Court issued a decision in a related case. See Turner Broadcasting Systems, Inc. v. FCC, 512 U.S. 622 (1994).

(3) American Arab Anti-discrimination Committee v. Meese
Federal District Court C.D.Ca., Case No. CV 87-2107
Case Citation: 714 F.Supp. 1060 (C.D. Ca. 1989)
District Court Judge: Hon. Stephen V. Wilson
Opposing Counsel: Paul Hoffman
Schonbrun, DeSimone, Seplow, Harris & Hoffman
723 Ocean Front Walk
Venice, CA 90291
(310) 396-0731

Aliens and various organizations representing the interests of certain aliens challenged the deportation proceedings brought against six Palestinians who were members of the Popular Front for the Liberation of Palestine. At issue was the constitutionality of certain portions of the McCarran-Walter Act of 1952 and another statute which allowed the INS to deport aliens in the United States who advocated world communism or the unlawful destruction of property. The district court ruled against the government finding that: 1) the plaintiffs had standing and that the lawsuit was ripe for adjudication, and 2) the statutes violated the freedom of speech portion of the First Amendment which the court held was applicable to aliens in this country. The court of appeals reversed the district court because it found the controversy not to be ripe. See 940 F.2d 445 (9th Cir. 1991). I left the U.S. Attorney's Office while the matter was still pending in the district court on remand.

(4) Adult Video Association v. Meese
Federal District Court C.D.Ca., Case No. CV 87-7894
District Court Judge: Hon. Ronald S. Lew
Opposing Counsel: John Weston and G. Randall Garrou
Weston, Garrou & DeWitt
12121 Wilshire Blvd., Suite 900
Los Angeles, CA 90025
(310) 442-0072

Plaintiffs in this action were a nationwide association of producers of "adult" videos and products, various dealers in such materials, and individuals who view or otherwise utilize those products. Plaintiffs brought an action against the United States Attorney General seeking declaratory and injunctive relief which would prohibit federal law enforcement officials from using the provisions of the Comprehensive Crime Control Act of 1984 ("1984 Act") against the plaintiffs. Specifically, the 1984 Act: 1) added "dealing in obscene matter" as a predicate offense to the Racketeering Influenced and Corrupt Organizations Act; 2) included a provision whereby the federal courts could consider the safety of any person or of the community in making bail determinations; and 3) limited the discretion of sentencing judges by establishing set guidelines. Plaintiffs argued that the 1984 Act when applied to the "adult" video industry: 1) caused a "chilling effect" upon constitutionally protected expression in violation of the First and Fifth Amendments, 2) constituted an unlawful prior restraint, and 3) required the imposition of excessive fines, imprisonment, and bail in violation of the First and Eighth Amendments. The case was litigated through a series of motions. A judgment for the federal defendants was entered on January 8, 1990. A number of appeals followed with the government ultimately prevailing. See Adult Video Ass'n v. Barr, 960 F.2d 781 (9th Cir. 1992) (affirming in part and reversing in part); vacated and remanded sub nom. Reno v. Video Ass'n, 509 U.S. 917 (1993); on remand 41 F.3d 503 (9th Cir.1994).

(5) Matosian v. U.S. Department of the Air Force
Federal District Court C.D.Ca., Case No. CV 77-4297
District Court Judge: Hon. Robert M. Takasugi
Opposing Counsel: Bruce M. Stark
P.O. Box 842
Seal Beach, CA 90740-0842
(562) 598-2171

Plaintiff civilian employee brought a discrimination action against the Air Force and won a judgment in 1982. In the judgment issued by the court, the Air Force was enjoined from maintaining any practice of discrimination against the plaintiff and also from any acts of reprisal because of plaintiff's having won his lawsuit. In 1989, plaintiff brought a motion for contempt alleging that the Air Force had violated the district court's 1982 order in over twenty specific instances of discrimination in the period from 1983 to 1991. I handled the trial in this matter which was conducted in half day sessions for a period of over two months. On April 10, 1992, the court issued its decision finding in the government's favor as to all of the plaintiff's many claims.

(6) Atkinson-Baker & Associates, Inc. v. Kolts
9th Circuit Court of Appeals Case No. CA-93-55336
Case Citation: 7 F.3d 1452 (9th Cir. 1993)
Ninth Circuit Panel: Hon. Robert Beezer, Alex Kozinski, and Andrew Kleinfeld
Opposing Counsel: Michael T. Stoller
9454 Wilshire Blvd., Suite 500
Beverly Hills, CA 90212

(310) 443-5200

Church of Scientology Int'l v. Kolts
Federal District Court C.D.Ca. Case No. CV-93-1390
Case Citation: 846 F.Supp. 873 (C.D.Ca. 1994)
District Court Judge: Hon. Ronald S. Lew
Opposing Counsel: William T. Drescher
23679 Calabasas Rd., Suite 338
Calabasas, CA 91302
(818) 591-0039

These two related matters arose out of a litigation originally brought in 1985 by the Church of Scientology International, Inc. ("Scientology") against the Church of the New Civilization ("New Civilization"), a "split-off" group from the Scientology organization. Because of the complexity of the case and the antagonism of the parties, District Court Judge James Ideman appointed James G. Kolts, a retired Los Angeles Superior Court Judge, to serve as a special master pursuant to Rule 53 of the Federal Rules of Civil Procedure. During Judge Kolts' handling of the lawsuit, a number of disputes arose which lead certain entities to initiate lawsuits against him. I was appointed to represent Judge Kolts in his capacity as a special master in those cases.

The first lawsuit was brought by a court transcript reporting service (Atkinson-Baker & Associates) after Judge Kolts decided to change his practice of allowing the moving party to supply the reporting service for the court proceedings and, instead, to choose the service himself. That decision was made after the counsel for New Civilization objected to the use of the Atkinson-Baker firm because of alleged problems with its performance and because its owners were Scientology members who had contributed money to that organization. In bringing the lawsuit, Atkinson-Baker sought injunctive and declaratory relief asserting that Judge Kolts' decision violated its First Amendment rights to free exercise of religion and freedom of association and its Fifth Amendment rights to equal protection and due process. Accepting the government's arguments, the district court and the Ninth Circuit held that Judge Kolts' decision was a judicial act for which he was absolutely immune from liability.

In the second case, Scientology brought an action for injunctive and declaratory relief asserting that Judge Kolts had: 1) engaged in extrajudicial communications with a Time magazine reporter as well as with FBI and IRS agents about the organization, and 2) had acted with bias against it in his various rulings in the underlying litigation. The district court granted the defendant's motion to dismiss finding that: 1) Scientology could not state a claim for a violation of the Code of Conduct for United States Judges, 2) plaintiff was not entitled to injunctive or declaratory relief because there were already available and established remedies for dealing with plaintiff's complaints (such as a motion for removing the special master), and 3) the doctrine of absolute quasi-judicial immunity was applicable to Judge Kolts' conduct in the underlying case.

(7) Blackwell v. Thornburgh
Federal District Court C.D.Ca., Case No. CV-89-1650
Case Citation: 745 F.Supp. 1529 (C.D.Ca. 1989)
District Court Judge: Hon. Wm. Matthew Byrne, Jr.
Opposing Counsel: Carl Shusterman
624 South Grand Ave., Suite 1608
Los Angeles, CA 90017
(213) 623-4592

Plaintiff U.S. citizen challenged the constitutionality of a provision in the Immigration Marriage and Fraud Amendments of 1986, 8 U.S.C. §§ 1154(h) and 1255(e), which requires aliens who wed U.S. citizens while in deportation proceedings to reside outside of the country for two years before being allowed to return to the United States in a permanent resident status. Plaintiff argued that the two year foreign residency requirement violated his procedural and substantive due process rights as well as the equal protection clause. After a series of motions, the district court held that the statute was not unconstitutional.

(8) Mathis v. Pacific Gas & Electric Company
Federal District Court C.D.Ca. Case No. CV 86-4229
District Court Judge: Hon. Ferdinand F. Fernandez
Appellate Citation: 891 F.2d 1429 (9th Cir 1989)
Ninth Circuit Panel: Hon. William C. Canby, Jr., Charles Wiggins, and Diarmuid O'Scannlain
Opposing Counsel: Barrett S. Litt
Litt & Associates
3435 Wilshire Blvd., Suite 1100
Los Angeles, CA 90010
(213) 386-3114

Plaintiffs were three individual employees of contractors of Pacific Gas and Electric Company ("PG&E") at its Diablo Canyon Nuclear Power Plant ("Diablo Plant") in California and two unions that had some members who were employed at the Diablo Plant. The individual plaintiffs claimed that they were improperly barred by PG&E from the plant site for alleged security reasons which eventually led to the termination of (or other adverse effects on) their employment with the contractors. Plaintiffs asserted that, in engaging in such conduct, PG&E was acting pursuant to pressure or encouragement of the Nuclear Regulatory Commission ("NRC").

Basically, the plaintiffs sought injunctive relief against the NRC ordering it to require its nuclear power plant licensees (including PG&E) to provide due process hearings before the latter could deny an employee's access to the nuclear facility. The district court granted the NRC's and PG&E's motions to dismiss. On appeal, the Ninth Circuit affirmed the dismissal as to the federal defendant although it reversed the decision below as to PG&E.

(9) Schultz v. U.S. Customs Service
Federal District Court C.D.Ca. Case No. CV 91-0687
District Court Judge: Hon. Harry L. Hupp

Opposing Counsel: John P. Doyle (presently, he is a Los Angeles Superior Court Judge)
Los Angeles Superior Court
600 East Broadway, Dept. 2
Glendale, CA 91206
(818) 500-3528

Co-Defendant's Counsel: Roy Shults
Mitchell, Silberberg & Knupp
11377 West Olympic Blvd.
Los Angeles, CA 90064
(310) 312-3126

Plaintiffs were individuals who import sound recordings into the United States. Plaintiffs claimed that the United States Customs Service improperly detained their shipments of compact discs and other materials. They also charged that the Customs Service allowed co-defendant Recording Industry Association of America ("RIAA") to influence and dictate the agency's detention policies, which was part of the RIAA's plan to drive independent sound recording importers out of business. A majority of the action was dismissed based on defendants' motions. A settlement was reached prior to trial on the few remaining portions of the case.

(10) Wilmot Psychiatric/Medicenter Tucson v. Shalala
Federal District Court C.D. Ca. Case No. CV-91-4037
District Court Judge: Harry L. Hupp
Appellate Citation: 11 F.3d 1505 (9th Cir. 1993)
Ninth Circuit Panel: Hon. Stephen Reinhardt, T. G. Nelson and Frank A. Kaufman
Opposing Counsel: Patric Hooper
Hooper, Lundy & Bookman
1875 Century Park East, Suite 1600
Los Angeles, CA 90067
(310) 551-8111

A number of hospitals brought this action seeking judicial review of a decision by the Secretary of Health and Human Services denying reimbursement to medical facilities under the Medicare program for their expenses in providing complimentary meals to attending physicians with staff privileges at those hospitals. The district court agreed with the government's position (as did the Ninth Circuit on appeal) that such expenses were not necessary to the efficient delivery of health services and, hence, were not recoverable under the Medicare program.

20. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of

such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

For four years, I was a member on both the civil and criminal Committees on Standard Jury Instructions of the Los Angeles Superior Court. Those committees met bi-monthly to review new legislation and appellate court decisions to determine if new jury instructions (and any concomitant commentary or "use notes") should be drafted and/or if current ones should be revised or deleted. Prior to 2005, those instructions were utilized by most attorneys and judges throughout the state and were recommended by the California Judicial Council. See Section 5 of the California Standards of Judicial Administration.

While at the United States Attorney's Office I handled a myriad number of significant cases that were decided on dispositive motions in the federal district court and reviewed on appeal by the Ninth Circuit. The following is a list of citations as to some of them:

1) National Senior Citizens Law Center v. Social Security Admin., 849 F.2d 401 (9th Cir. 1988)
2) Scott v. Younger, 739 F.2d 1464 (9th Cir.), cert. denied, 465 U.S. 1078 (1984)
3) Mines v. Bowen, 715 F.Supp. 293 (C.D. Ca.), affirmed, 981 F.2d 1068 (9th Cir. 1989), cert. denied, 509 U.S. 903 (1993)
4) National Center for Immigrants' Rights v. INS, 644 F.Supp. 5 (C.D. Ca. 1985), aff'd 791 F.2d 1351 (9th Cir. 1986), vacated, 481 U.S. 1009 (1987).

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

I was an Assistant Professor of Law at the University of Tennessee College of Law from August 1979 to June of 1982. My courses of instruction were: civil procedure, torts, labor law, admiralty, and research and writing. I no longer have copies of a syllabus for those courses.

I have periodically been an instructor/lecturer in programs put on by: 1) the California Center for Judicial Education and Research, 2) the Los Angeles Superior Court, 3) non-profit groups (e.g. Southern California Chinese Lawyers Association), and 4) private education providers such as LexisNexis/Mealey Publications. With the former two entities, the programs were for judicial officers and, with the latter two, for private practitioners. The topics ranged from substantive areas (e.g. California unfair competition laws) to procedural issues (e.g. effective settlement practices).

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

The only items would be my Superior Court deferred compensation and retirement benefit plans from which I cannot begin to receive any funds prior to my being 59½ years old or postpone such receipt after age 70½ without incurring serious adverse tax consequences.

In addition, I still am a participant in the Thrift Savings Plan which I initially joined while a federal employee in the early 1980's.

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

I have none.

24. **<u>Sources of Income</u>: 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.)**

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

26. **<u>Potential Conflicts of Interest</u>:**

    a. **Identify the parties, 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. Explain how you would address any such conflict if it were to arise.**

Since becoming a judge, I have consciously minimized my investments (except in the mutual funds which are part of the Los Angeles Superior Court's 401 and savings plans) and outside sources of income. Therefore, at this time, I do not believe that I have any categories of litigation and/or financial arrangements that would present

potential conflicts of interest other than the situation where one of my few investments (such as a mutual fund) was involved as a party in the litigation in my court. Also, as indicated previously, my brother is an attorney with the Los Angeles Office of County Counsel. I would deal with actual/potential conflicts as delineated in my response to subsection (b) below.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If I am confirmed, I would familiarize myself with the criteria which define the scope of conflicts of interest for federal judges. Those standards are contained in 28 U.S.C. § 455.

Section 455(b) lists five scenarios where disqualification is mandated and cannot be waived. Fortunately, those scenarios are specific and clear. Therefore, once aware of them, compliance should not be a problem. In all circumstances, I will follow the Code of Conduct for United States judges and all associated statutes, policies and procedures established by the Judicial Conference.

Section 455(a) has a single broad rule that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." That provision is similar to the requirements of Canon 3(E) of the California Code of Judicial Ethics as supplemented by CCP § 170.1(a)(6)(A)(iii) and, hence, I am already cognizant of the various areas of concern. Moreover, I have previously reviewed secondary source materials to resolve questions on this subject. See e.g. Rothman California Judicial Conduct Handbook (1999). Additionally, if the ground for disqualification only arises under Section 455(a), the judge can accept the parties' waiver so long as "it is preceded by full disclosure on the record of the basis for disqualification." 28 U.S.C. § 455(e). It has been (and will continue to be) my practice to fully disclose information to litigants about matters which could give rise to questions or doubts about my impartiality.

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

I have been a judge from 1993 and, consequently, since that time I have not been a lawyer. Furthermore, during the period I was an Assistant United States Attorney, I was precluded from providing legal services outside of that office.

Since I have been a judicial officer and also while I was an AUSA, I have on a pro bono basis periodically taught substantive and procedural law courses and practicum for non-profit organizations such as the Southern California Chinese Lawyers Association. Also,

I have served as a judge for moot court competitions and mock trial exercises for both law schools and for high schools.

Between 1985 and 1993, I was a part of a group of attorneys who taught a free bar review course each year for minority and/or low income law school graduates who failed the California bar on more than one occasion. The program was organized by United States District Court Judge Robert M. Takasugi. In 1985 and 1986, I participated in the UCLA Mentor Program to provide tutorial instruction for minority first year law students with academic problems.

While at Latham & Watkins, I asked for the opportunity to and did represent a number of the law firm's various pro bono clients such as the Western Center for Law and Poverty.

28. Selection Process:

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

There is a selection process in my jurisdiction. I was informed by previous applicants that a bipartisan "Judicial Advisory Committee" ("JAC") reviews candidates for the federal district court in the Central District of California. I was advised to contact the Committee, which I did. I completed and returned an application form along with some authored decisions and letters of recommendation in December of 2005.

After a period of time, I was notified that the JAC wished to interview me. I met with the six JAC members on April 13, 2006. At the conclusion of the interview, the committee indicated they would seriously consider my application but could offer no assurances at that time. A few weeks later, I was asked to interview with Gerald Parsky and Eric George. At the end of that meeting, I was informed that the committee had decided to forward my name to the President for consideration.

Subsequently, I went to Washington, D.C. to meet with staff from the Office of Counsel to the President and from the United Stated Department of Justice. Following those interviews, I completed all nomination paperwork. I had periodic communication with the Department of Justice in connection with the preparation and submission of the paperwork. Thereafter, the President forwarded my nomination to the Senate on September 5, 2006. Following my

nomination, I completed a Senate Questionnaire. Later, I was asked to provide additional materials American Bar Association and was subsequently interviewed by a member of the ABA's Standing Committee on Federal Judiciary.

When the Senate adjourned in December 2006, my nomination was returned to the President. On January 9, 2007, the President forwarded my re-nomination to the Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Wu, George H	Central District of California	01/11/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5a. Report Type (check appropriate type)	6. Reporting Period
U.S. District Court - Nominee	[X] Nomination, Date 01/09/2007 [ ] Initial [ ] Annual [ ] Final 5b. [ ] Amended Report	01/01/2006 to 12/31/2006
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	
Stanley Mosk Courthouse 111 N. Hill St., Dept. 33 Los Angeles, CA 90012		

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

[X] NONE *(No reportable positions.)*

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

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

[X] NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2		
3.		

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Wu, George H	Date of Report 01/11/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2006	Los Angeles Superior Court	$ 189,403
2. 2005	Los Angeles Superior Court	$ 177,743
3.		
4.		
5.		

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

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

DATE	SOURCE AND TYPE
1.	No spouse
2.	
3.	
4.	
5.	

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

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1.	Exempt
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT
Page 3 of 6

Name of Person Reporting	Date of Report
Wu, George H	01/11/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1.	Exempt	
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. American Express	Credit card	None
2.		
3.		
4		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Wu, George H	01/11/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Bank of American Accounts	B	Interest	L	T	exempt				
2. Fidelity Rollover IRA	A	Interest	K	T					
3. Allianz PEA Growth (mutual fund)	A	Interest	J	T					
4. Los Angeles County 401(k)	D	Dividend	M	T					
5. Los Angeles County 457 Plan	C	Dividend	L	T					
6.									
7									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16									
17									

1 Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
2 Value Codes (See Columns C1 and D3)	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000	P4 =More than $50,000,000			
3 Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Wu, George H	Date of Report 01/11/2007

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Wu, George H	Date of Report 01/11/2007

IX. CERTIFICATION.

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

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

Signature George H. Wu Date January 11, 2007

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		71	781	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		27	563	Notes payable to relatives		30	000
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		2	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		374	717
Real estate owned-add schedule	2	000	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		102	000	Automobile loan		8	313
Cash value-life insurance				Credit line secured on residence		18	000
Other assets itemize:							
L.A. County 401(k) account		254	640				
L.A. County 457 Plan account		93	878				
Federal Thrift Savings Plan account		53	000	Total liabilities		433	030
				Net Worth	2	169	832
Total Assets	2	602	862	Total liabilities and net worth	2	602	862
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Fidelity Rollover IRA	$ 22,500
Allianz PEA Growth Mutual Fund	4,112
Fidelity Investments (misc. stocks & cash)	951
Total Listed Securities	$ 27,563
Real Estate Owned	
Personal residence	$ 2,000,000
Real Estate Mortgages Payable	
Personal residence	$ 374,717

AFFIDAVIT

I, **George H. Wu**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 26, 2007
(DATE)

(NAME)

State of California, County of Los Angeles.
Subscribed and sworn to (or affirmed) before me on this 26th day of January, 2007, by George H Wu, ~~personally known~~ to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.
Signature:

(NOTARY)

JUNG KI KIM
Commission # 1663962
Notary Public - California
Los Angeles County
My Comm. Expires May 4, 2010

Chairman LEAHY. We had moved this so expeditiously, I think a lot of you didn't have a chance to do anything. Mr. Bailey can drive here. The rest of you had a little bit of a trip to make.

Judge Wright, let me ask you the same question. If you're going to District Court, how strongly do you feel about stare decisis?

Judge WRIGHT. Thank you, Mr. Chairman. Like Mr. Bailey, I agree with his comments. I feel very strongly about it. There's only one court that doesn't have to follow it.

As Mr. Bailey says, it gives uniformity and predictability. It may actually keep matters out of the courts because if people have some guidance as to how the law would resolve their dispute, they're able to resolve those disputes without legal recourse. But it absolutely gives all of us guidance and I strongly believe in that doctrine.

Chairman LEAHY. In your case, your controlling courts would be either the Ninth Circuit or the Supreme Court itself?

Judge WRIGHT. That's correct, sir.

Chairman LEAHY. Thank you.

And Judge Wu, how do you feel?

Judge WU. I feel the same way, thank you, Senator, as my colleague, Judge Wright, and also Mr. Bailey. I really don't think I have anything else to add.

Chairman LEAHY. This may sound like a non-legal question, but I've heard this by other chairman of this committee, Senator Thurmond did, others did, and spoke about the fact that if you're a District Judge, this is a lifetime appointment unless you get appointed to some other court.

In a way, you don't have to be nice to anybody, but I would hope that that's not the attitude you might feel. You've all had litigation experience. You've all had people before you. You've all heard the words within the Bar that speak about Judge So and So, and they say, boy, he's just not very good to the litigants before him.

I believe in a judge, of course, having control of his court. But let me just ask you, Mr. Bailey. You've been in a lot of courts. You've seen good judges—and I'm not asking you for names, but you've seen good judges—and you've seen some that you probably wish you didn't have to appear before. What do you feel a judge should be like? What's the impression a litigation should get?

Mr. BAILEY. Mr. Chairman, I think that when a lawyer goes to the courtroom, he or she has already a great amount of stress as to whether he or she is going to do a good job for the client.

That person should not also have the stress of wondering whether he's going to be treated with respect or stress over whether he or she is going to get chastised for something unfairly. I think very strongly that the courts should be a place where you are heard, here people behave in an extremely civilized and professional manner. If confirmed, I will see that that occurs in my courtroom.

Chairman LEAHY. And Judge Wright, you've certainly had occasion to think about this in your own life as a judge. How do you feel on the issue of how people should be treated before they come before the court?

Judge WRIGHT. Yes, sir. Of course, you prefaced your question with "this is not a legal question", but I think it's an extremely appropriate question. There may be a place for arrogance. I'm not

sure what that place would be, but I am sure that it is not on the bench.

The courts do not belong to us. We are holding a public trust. The courts belong to the people. They need to be made to feel welcome, that this is a place for resolution of their disputes as opposed to any alternatives.

Our job is to administer the law fairly and impartially. It is not our place to assume a sense of power which we do not possess, a sense of superiority which we simply do not have. We are administering a public service. If, as I'm sure my two colleagues agree, you really love the institutions the way we do, you would not discredit it.

Chairman LEAHY. And Judge Wu?

Judge WU. Thank you, Senator. It's a little hard to be last, because everything I would like to say has usually already been said. But the only thing I would like—

Chairman LEAHY. That's never stopped Senators, you know.

[Laughter.]

I'll tell you, we have an expression: just because everything has been said doesn't mean everybody's said it.

Judge WU. Thank you. But at this point I'm not a Senator, so I would just simply like to add one point. There's always a cardinal rule, that you should treat others the way you'd like to be treated yourself. I think that is a cardinal rule that will stand in good stead for anyone who is a Federal District Court judge. Other than that, I would just simply agree with my colleague, Otis Wright, and also Mr. Bailey.

Chairman LEAHY. You know, this is somewhat of an abstract question, but back in 1938 the Supreme Court— and I'm not trying to see who knows most cases, and I'd forgotten myself until somebody brought it out to me—*United States* v. *Caroleen Products*.

That's a question of the responsibility of courts to protect the constitutional rights of individuals, especially the less powerful, and especially where the political system has not policed itself.

There's a footnote in there where they said, "Legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation is to be subjected to more exacting judicial scrutiny under the general prohibitions of the 14th Amendment than most other types of legislation."

Judge Wright, do you agree with that, that the courts have—if you're talking about constitutional rights of individuals, especially the less powerful, where their rights have not been maintained by the political system, does the court have a stronger duty to look carefully at what's being done?

Judge WRIGHT. Yes, Senator. The conduct which you describe, or which is described in that footnote, runs afoul of the constitutional protections. And, yes, it would be the duty of the court to correct that wrong.

Chairman LEAHY. Judge Wu?

Judge WU. I agree that it would be the duty of the courts to correct that law, but obviously to overturn an enactment by the legislative body is a decision which must be taken reluctantly, and only if there are no other alternatives.

And so there's always a presumption of the constitutionality of an enactment by the legislative body, so obviously that would have to be honored before one could take the tremendous step of overturning legislation.

Chairman LEAHY. And Mr. Bailey?

Mr. BAILEY. Again, I am last, or this time I am last, and I agree with what my cohorts have said. A statute should only be reluctantly overruled as a point of last resort. But if that statute is abridging the constitutional rights of those who cannot help themselves, there probably is a little lower hurdle than there is in the typical review of a statute.

Chairman LEAHY. Thank you.

You probably thought, when you filled out your questionnaire for this, that you're going to need a lifetime appointment just to get through all the questions and all. But they are helpful to the members of the committee.

Perhaps the fact that we don't have members in here hitting you with a lot of questions, that they felt pretty good about those. It makes our job easier. So unless any one of you has anything further to say, I'm going to recess this hearing, leave the record open long enough for people to ask questions.

[No response.]

No?

You are wise. Thank you. We stand in recess.

[Whereupon, at 3:15 p.m. the committee was recessed.]

[Submissions for the record follow.]

SUBMISSIONS FOR THE RECORD

Senator Dianne Feinstein
February 6, 2007

Introductory Statement for Central District of California Nominees Otis Wright and George Wu
Judiciary Committee Hearing
February 6, 2007

Thank you, Mr. Chairman.

It is my pleasure to introduce two distinguished nominees to the U.S. District Court for the Central District of California, Judge Otis Wright and Judge George Wu.

The Central District of California, based in Los Angeles, is the largest and busiest federal judicial district in the nation. When this Congress began, there were five vacancies on this court – more than twice as many as in any other judicial district in the country.

I am pleased that the Senate confirmed two new judges for this court last week, including one judicial emergency. However, there are still more nominations pending for the Central District of California than for any other district in the country.

I thank Chairman Leahy for moving the California judicial nominees quickly and for holding today's hearing.

Judge Wright is nominated to a seat that has been designated as a judicial emergency. It is my hope that this Committee and the full Senate will move quickly to confirm both him and Judge Wu.

Both of these nominees have already demonstrated a commitment to serving the people of California. They are both currently judges on the Superior Court for the County of Los Angeles.

Judge Wright is a graduate of California State University at Los Angeles and of the Southwestern School of Law.

After graduating from law school, Judge Wright was a Deputy Attorney General in the California Department of Justice for three years. During that time he specialized in criminal appeals.

He went on to join the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker, where he became a partner during a career that spanned more than twenty years. He practiced civil litigation in many areas with a particular focus on insurance coverage litigation.

While in private practice, Judge Wright was a volunteer attorney with the HIV-AIDS Legal Services Alliance. His work on behalf of those with HIV and AIDS included housing and employment discrimination cases, as well as preparing wills for the terminally ill.

Judge Wright's public service has not been limited to his legal career: he was a deputy sheriff in the Los Angeles County Sheriff's Department while attending college and law school, and before that he served in the U.S. Marine Corps and the Marine Corps Reserves.

Judge Wu has also had a distinguished career. He graduated from Pomona College and earned his law degree from the University of Chicago Law School.

After law school he clerked for the Honorable Stanley N. Barnes of the United States Court of Appeals for the Ninth Circuit and subsequently became a law professor at the University of Tennessee College of Law.

Then he clearly realized that there is no better place to live than California, and returned to Los Angeles, where he joined the U.S. Attorney's office in the Central District of California. He served as an Assistant U.S. Attorney and later as an Assistant Chief in the Civil Division.

He earned a Special Achievement Award for his work in the U.S. Attorney's office.

Judge Wu also worked for a time as an associate at the law firm of Latham & Watkins. While at that firm he did pro bono work for the Western Center for Law and Poverty, among other clients.

In California we have developed a bipartisan process for selecting federal district court nominees. Under this system, a committee of lawyers, including Democrats and Republicans, recommends qualified applicants to the President.

I am proud of this system and pleased to say that both of these nominees have been recommended by the Parsky Commission. This gives me confidence that they come to the bench without an ideological agenda and prepared to serve all the people of California.

Judge Wright and Judge Wu, I congratulate you on your nominations and look forward to your serving the people of California with wisdom, integrity, and humility.

Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee,
On First Judicial Confirmation Hearing of the 110th Congress
February 6, 2007

Today, we are holding our first confirmation hearing of the new Congress for three nominations for important lifetime appointments to federal district courts. The nominees before us today, John Preston Bailey for the Northern District of West Virginia, Otis D. Wright, II for the Central District of California, and George H. Wu for the Central District of California, each come to us with the support of their home state Senators.

I know Senators Feinstein, Boxer, and Rockefeller would have liked to be here today to introduce the nominees, but unfortunately a members briefing on the National Intelligence Estimate that was released last week on the situation in Iraq was scheduled for this time. I did not want to inconvenience the nominees, so we will proceed and insert their statements in support of these nominees in the record.

We have worked hard since convening this Congress to make significant progress in our consideration of judicial nominations. At our first executive business meeting, the Judiciary Committee reported out five judicial nominations little more than two weeks after they were sent to us. Three of these were for vacancies determined by the Administrative Office of the U.S. Courts to be judicial emergencies. All five were among those returned to the President without Senate action at the end of last Congress when Republican Senators objected to proceeding with certain of the President's judicial nominees in September and December last year.

Last week, those five nominees were confirmed by the Senate. I worked cooperatively with Members from both sides of the aisle on our Committee and in the Senate to move quickly to consider and report these judicial nominations so that we can fill vacancies and improve the administration of justice in our nation's federal courts. I appreciated the interests of Senator Chambliss and Senator Isaakson in the confirmation of Judge Wood, the first judge confirmed this year. Likewise, I was pleased to be able to respond to the needs of Senator Inhofe and Senator Coburn by expediting consideration of Judge Frizzell. I thank Senator Feinstein and Senator Boxer of California for their efforts on several of the nominations we considered last week and those before us today.

With the five confirmations last week we have confirmed more of President Bush's nominations in the 18 months I have served as Judiciary Committee Chairman than in the more than two years when Senator Hatch chaired the Committee with a Republican Senate majority or during the last Congress with a Republican Senate majority. That total is now 105 in 18 months.

I know some on the other side of the aisle have tried to raise a scare since I, again, became Chairman of the Judiciary Committee. They rant as if the sky is falling and we would not proceed on any judicial nominations. We have proceeded promptly and efficiently. We continue to do so with today's hearing. We are holding this hearing on

February 6. When a Republican chaired the Committee in 1999 and there was a Democratic President, the first hearing on a judicial nominee was not held until June 16.

I had initially thought that we would include the nomination of Norman Randy Smith of Idaho to the Ninth Circuit at the hearing today. However, with the cooperation of the Senators from California and the other Members of the Judiciary Committee, we may avoid another hearing on Judge Smith's nomination. In fact, I have listed his nomination on the agenda for an executive business meeting later this week.

I was pleased when the White House changed course and nominated Randy Smith for the Idaho seat on the Ninth Circuit. I had urged President Bush to take this action last year when he insisted on resubmitting Judge Smith's nomination for a California seat on the Ninth Circuit. I thank the President for finally doing the right thing. I will urge the Senate to confirm the nomination of Randy Smith to the vacant seat on the Ninth Circuit from Idaho. At long last Senator Craig and Senator Crapo will then have a judge on that important court from their home state.

I have long urged the President to fill vacancies with consensus nominees. The Administrative Office of the U.S. Courts list 54 judicial vacancies, 25 of them have been deemed to be judicial emergencies. So far this Congress, the President has yet to send us nominees for 17 of those outstanding judicial emergency vacancies.

I have also urged the President to nominate men and women to the federal bench who reflect the diversity of America. Racial diversity remains a pillar of strength for our country and one of our greatest natural resources. Diversity on the bench helps ensure that the words "equal justice under law," inscribed in Vermont marble over the entrance to the Supreme Court, is a reality and that justice is rendered fairly and impartially. Judicial decisions should reflect insight and experiences as varied as America's citizenry. A more representative judiciary helps cultivate public confidence in the judiciary which strengthens the independence of our federal courts.

A more representative judiciary also strengthens the fabric of our democracy. As we were reminded last month, while honoring the life of Dr. Martin Luther King, Jr., the promise of our democracy lies in building a nation more inclusive of all Americans.

The nominations before us today represent an important step towards achieving that promise. I am pleased that, if confirmed, Judge Wright would become the 90th African-American judge currently on the federal bench. If he is confirmed Judge Wu would be the 9th Asian-Pacific American judge on the federal bench, and the 6th active judge.

But there is still much work to be done. In six years, President Bush has nominated only 18 African-American judges to the federal bench, compared to 53 African-American judges appointed by President Clinton in his first six years in office. And out of the 875 seats on the federal judiciary, there are only five active Asian-Pacific American judges on the federal bench, less than 1 percent of all federal judges. President Bush has nominated only 2 Asian-Pacific American candidates, neither to a seat on a federal circuit court.

With outstanding lawyers like Dean Harold Koh of Yale, Professor Goodwin Liu of Boalt Hall School of Law at University of California at Berkeley, or attorneys Karen Narasaki, John Yang and Debra Yang, it is not as if there is a dearth of qualified candidates who would be universally endorsed. Our nation has highly qualified individuals of diverse heritages who would unify our nation while adding to the diversity of our courts. I hope the President will send us more consensus nominees that reflect the rich diversity of our nation. I welcome the nominees and their families to this hearing and I look forward to their testimony.

# # # # #

Statement of Senator John D. Rockefeller IV on the Nomination of John Preston Bailey to be a Judge on the U.S. District Court for the Northern District of West Virginia

February 6, 2007

Chairman Leahy, Senator Specter, members of the Judiciary Committee, it is my pleasure to offer my support for the nomination of John Preston Bailey to be a judge on the United States District Court for the Northern District of West Virginia.

I am sorry that an unavoidable scheduling conflict involving a Senate Select Committee on Intelligence Executive Session on the President's nominee to be the new Director of National Intelligence prevents me from being there in person to introduce Mr. Bailey. I had the opportunity to speak with Mr. Bailey yesterday, and I expressed to him my support, and apologized for not being able to be with him today in the Judiciary Committee. I told him also that I would be recommending to my Senate colleagues that they support his nomination.

My state of West Virginia has for most of the last century seen many of its best and its brightest young men and women move away for college or job opportunities and never return. Luckily, we also have those like John Bailey who decided to return, as he did after earning his undergraduate degree from Dartmouth. After his graduation from the School of Law at West Virginia University, John was a Law Clerk for the Honorable Charles Haden II. Judge Haden was a fair and decent man respected for his intellect and his diligent efforts to arrive at the correct outcome. When he is confirmed, as I strongly suspect he will be, I would hope that John Bailey would choose to emulate Judge Haden. If he does, all West Virginians will benefit.

In addition to his clerkship, John Bailey showed his dedication to public service through several years as a prosecutor in Ohio County, West Virginia. Ultimately, he would make his name in the legal world in the private practice of law. As he developed a practice that would eventually become the Wheeling firm of Bailey, Riley, Buch and Harman, John Bailey earned the respect of colleagues and legal adversaries alike. He was chosen by the West Virginia legal community to serve as President of the West Virginia State Bar and the West Virginia Bar Association, as well as being chosen as a member of the Board of Governors of the West Virginia Trial Lawyers Association.

Lawyers and judges in West Virginia, some of whom I have known for many decades, tell me they believe John Bailey will be a very capable judge because he's a great lawyer who takes the facts as he finds them and does not come to the table with preconceived notions as to what the outcome should be. If you combine those traits with a first rate intellect and solid educational and work credentials, all of which John Bailey has, I believe you have the formula for the kind of judicial nominee we should all hope to see come up to the Senate from Presidents of both parties.

I want to thank Chairman Leahy for his kind invitation to introduce John Preston Bailey today, and for the expeditious way he has moved this nomination through the process. Again, I am proud to recommend this nominee to members of the Judiciary Committee, and to each of my colleagues in the United States Senate.

NOMINATIONS OF HALIL SULEYMAN OZERDEN, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI; BENJAMIN HALE SETTLE, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON; AND FREDERICK J. KAPALA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

TUESDAY, MARCH 13, 2007

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

The Committee met, Pursuant to notice, at 10:07 a.m., in room 226, Dirksen Senate Office Building, Hon. Richard J. Durbin, presiding.

OPENING STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Good morning. This meeting of the Senate Judiciary Committee will come to order.

It is my pleasure to chair this hearing featuring three nominees for appointments to the Federal judiciary. I am proud that one of these nominees comes from my home State of Illinois, Judge Frederick Kapala of Rockford. He has been nominated to fill a seat on the U.S. District Court in the Northern District of Illinois.

The other two nominees who are here today are Benjamin Settle, I just met, who has been nominated for a District Court seat in the Western District of Washington; and Halil Ozerden—I hope I pronounced that correctly—who has been nominated for a District Court seat in the Southern District of Mississippi.

Mr. Settle and Mr. Ozerden have been nominated to fill vacancies that have been deemed by the U.S. courts to be judicial emergency districts. These are districts in which the number of cases filed per judge is very high, so it is important to fill these vacancies quickly.

Judge Kapala has been nominated to fill a vacancy in Rockford. It's the only judgeship in that city; it's been vacant since January. I want to thank Chairman Leahy for giving Judge Kapala and the other nominees swift consideration this year.

All three of today's nominees have the support of their home State Senators, but, due to scheduling conflicts, not all of the home State Senators could make it to our hearing. We are happy to have the Senators from Mississippi here to introduce the Mississippi nominee, Mr. Ozerden.

The Senate has already confirmed 10 judges in the 110th Congress and we have reported 15 judicial nominations out of committee. In total, we have confirmed 268 Article 3 judges under President Bush. It is a good track record.

I call, now, on Senators Lott and Cochran for opening remarks. By virtue of seniority or first arrival, Senator Cochran.

PRESENTATION OF HALIL SULEYMAN OZERDEN, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, BY HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Mr. Chairman, thank you very much for convening the hearing. I am very pleased to be here this morning with my colleague, Senator Lott, to introduce Sul Ozerden—Halil Suleyman Ozerden, but to his acquaintances and friends down in Mississippi he's just "Sul"—to recommend him for confirmation as a U.S. District Court judge for the Southern District of Mississippi.

Sul is very well qualified because of his education and experience to serve as a Federal judge. He is a highly respected lawyer with a keen sense of fairness. He will reflect great credit on the Federal judiciary, and our State.

Accompanying him today at the hearing are members of his family: his wife, Denise; his mother, Candace; and his aunt, Cordelia Green. Sul and Denise's children, Vivian and Harty, ages 3 and 1, remained on the Gulf Coast to take care of things down there.

[Laughter.]

His law partner, Cy Faneca, and his wife, Georgia Anne Faneca, are also here today.

Sul graduated magna cum laude in 1989 from the Georgetown University School of Foreign Service, where he was a member of Phi Beta Kappa. After graduating from Georgetown, he attended the U.S. Navy flight school in Pensacola, Florida and served for 5 years as a Naval officer.

He served as a bombardier and navigator aboard the A- 6E "Intruder" aircraft, and was awarded the Navy commendation medal for missions flown over Iraq during Operation Restore Hope in 1992 and 1993.

He also completed a 6-month deployment to the Western Pacific, and another to the Persian Gulf about the aircraft carrier U.S. Kitty Hawk from 1992 to 1994.

After his service in the Navy, he returned to college. He graduated from the Stanford University School of Law, where he was an associate editor of the Stanford Law Review.

Sul then served as a law clerk in the Eastern District of Louisiana, the Federal court there, to the Honorable Eldon E. Fallon, U.S. District Court judge.

He then returned to the Mississippi Gulf Coast and joined the law firm of Dukes, Dukes, Keating & Faneca, a highly respected firm in our State. Because of the cross-jurisdiction nature of law

practice on the Mississippi Gulf Coast, Sul became licensed not only to practice in Mississippi, but also in Alabama, Florida, and Louisiana.

He has practiced in State and Federal courts throughout the southeastern United States. He has routinely served as lead counsel on a wide range of complex cases, including general civil defense litigation, civil rights, and representation of local government entities.

Sul is ranked by his fellow lawyers at the highest level of professional excellence. In addition to his legal practice, Sul has consistently given his time and donated his abilities to the legal profession and to his community.

He is a mentor to students at Gulfport High School, where he graduated. He serves as president and is a board member of the Gulfport Chamber of Commerce. He has served as president of the Harrison County Young Lawyers Association. He is a graduate of the Leadership Gulf Coast and was recognized as one of South Mississippi's Top 40 Business Leaders Under 40 years of age.

Mr. Chairman, I am very pleased to recommend, without qualification, and sincerely, Sul Ozerden and recommend his approval and confirmation as a U.S. District Court judge. Thank you.

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

Senator DURBIN. Thank you very much, Senator Cochran.

Senator Lott?

PRESENTATION OF HALIL SULEYMAN OZERDE, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, BY HON. TRENT LOTT, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator LOTT. Thank you, Senator Durbin. I ask consent that my statement be put in the record as if delivered.

Senator DURBIN. Without objection.

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

Senator LOTT. I cannot add a whole lot more to his qualifications than what my distinguished senior Senator from Mississippi, Senator Cochran, has already provided. But I just want to congratulate the other nominees today. Thank you, Senator Durbin, for being here for this hearing.

I want to say that I am really honored and quite pleased to be here to support the nomination of Sul Ozerden to be a Federal District judge for the Southern District of Mississippi. I am very pleased that his mother is here, and his wife, Denise, and his senior law partner, Cy Faneca.

Senator Cochran has already referred to Cy Faneca. He and I were classmates at the University of Mississippi in the late 1950's and 1960's; we go back a long way. He is one of the most respected citizens that we have on the Gulf Coast.

And partially through his pointing out to me what an outstanding young man Sul Ozerden is, that I started watching him several years ago to just observe his progress in the community and in the practice of law. It is especially poignant, too, that his mother, Candace, is here; his father passed away last year.

I had a personal relationship with his father, too. I cast a somewhat unpopular vote back in the mid-1970's and Dr. Ozerden showed up at my office to advise me that, while it was an unpopular vote, he supported it and he appreciated it.

I never will forget it, because usually you don't have that happen, that somebody would show up in your office and say, you cast a tough vote and I want you to know I do appreciate it. So I always followed him in the community after that.

And then to see Sul, a second-generation American, be able to achieve such great heights in everything he's done in his life, it makes it particularly special that he's here today as a nomination for the Federal judiciary.

Sul has done an outstanding job in everything he's done in his life. He's always reached the greatest heights academically and in the military and in his professional and his private life. He's been exemplary, graduating, as Senator Cochran pointed out, as salutatorian from Gulfport High School, which is a large high school, going to Georgetown University School of Foreign Service on a Naval ROTC scholarship.

I must admit, maybe Senator Cochran has a special feeling for him on that basis alone, since he was a Naval ROTC scholar himself at the University of Mississippi in the 1950's. He graduated from Georgetown magna cum laude and Phi Beta Kappa in 1989.

He served 6 years on active duty, where he was an A–6E "Intruder" bombardier and navigator. He was awarded the Naval commendation medal for missions that he flew over Iraq during Operation Southern Watch in Somalia during Operation Restore Hope.

He went to Stanford Law School, where, as Senator Cochran noted, he was on the Law Review. He clerked for a Federal judge. He is with one of the most outstanding firms on the Gulf Coast, Dukes, Dukes, Keating and Faneca.

They have a varied practice: civil defense litigation, local law enforcement representation, representing government entities, commercial transactions and litigation. Cy has made sure that Sul had a variety of experience there in that law firm.

But, also, Sul has been involved in the community. As you know, Senator Durbin, this is the area that got hammered by Hurricane Katrina. We all have a heightened awareness and appreciation now for professional men and women and business men and women, and volunteers that have really pitched in and helped the community, helped everybody to try to recover. It is a long process, but Sul and his family have been right there in the middle of it.

He has also been a very active participant in his church. He serves on the building committee, and that is an extremely important position because the church was devastated by Hurricane Katrina.

I am convinced that this young man will be a credit to the Federal judiciary, to all of us that serve in Congress when we confirm his nomination, and it is a great honor and a pleasure for me to be here to be here to support his nomination here today.

Thank you.

Senator DURBIN. I want to thank Senator Lott and Senator Cochran. They both noted that the nominee has achieved the status of

Phi Beta Kappa. A friend of mine, Gene Callahan in Illinois, said he only missed Phi Beta Kappa by two grades: A and B.

[Laughter.]

Others have done much better. Thank you both for your introduction of the nominee this morning.

If I could ask the nominees to please come to the witness table for the oath. If you would all remain standing for just a moment here. If you would please raise your right hand.

[Whereupon, the witnesses were duly sworn.]

Senator DURBIN. Let the record reflect that all three responded in the affirmative. You may be seated.

Mr. Ozerden has had a very kind introduction by his two State Senators. I would like to, by way of introduction, say a word or two about the other two nominees.

First, the nominee, Benjamin Settle. Thank you for being here. The Senators from Washington are unable to attend the hearing, but I would like to briefly introduce you on their behalf.

Benjamin Settle is from Olympia, Washington and works at the law firm of Settle and Johnson in Shelton, Washington. He's had a distinguished 35-year legal career. He's done it all. You've served as a prosecutor, criminal defense lawyer, family law attorney, and corporate general counsel.

Mr. Settle served in active and reserve duty in the U.S. Army from 1969 until 1982, including a stint as Captain in the Judge Advocate General Corps. I am pleased to see that Mr. Settle has given pro bono legal services over the years to several nonprofit organizations committed to helping low-income people and the developmentally disabled.

Mr. Settle is married to a teacher, and they have one child who is a junior in college. After I introduce all three of you, I am going to ask you to introduce your families before you say a few words.

Our third nominee is one I have come to know, and enjoys a great reputation in my State. Judge Frederick Kapala is supported not only by myself, but also Senator Obama.

Judge Kapala has served with distinction as a State Court judge in Illinois for the past quarter-century, from 1982 to 2001, a Circuit Court judge in Rockford, serving over the years as presiding judge of the Criminal Division in the Juvenile Court.

In 2001, he was elevated to the Illinois Appellate Court and he has served on that court, the second-highest State court in Illinois, for the past 6 years.

Before he donned his judicial robes in 1982, Judge Kapala worked in private practice, served as a Special Assistant Attorney General in the Illinois Attorney General's Office prosecuting consumer fraud complaints. His first job out of law school was working as a prosecutor in the Winnebago County, Illinois State's Attorney's Office in 1976.

At that time, the Winnebago County State's Attorney was Philip Reinhard, who went on to become a Federal judge. Judge Kapala is following in the same footsteps 30 years later; it is Judge Reinhard's judgeship that Judge Kapala has been nominated to fill.

Judge Kapala served in the U.S. Army, both on active and reserve duty, from 1970 to 1980, attaining the rank of captain. He

graduated from the University of Illinois Law School, and undergrad at Marquette University.

He and his wife have two daughters. Judge Kapala will have a chance to introduce his family in a few minutes. He has been an outstanding citizen in the Rockford, Illinois community, an active member of two dozen different community groups and legal organizations, and is a community leader in many organizations that help at-risk children, the mentally ill, and people dealing with alcoholism.

He recently received a unanimous rating of "Well Qualified" by the American Bar Association, the highest rating a Federal judicial nominee can receive. In a 2006 poll taken by the Winnebago County Bar Association, 99 percent of those lawyers surveyed gave Judge Kapala a positive recommendation. That is nothing short of a miracle, that 99 percent of lawyers could agree on anything.

[Laughter.]

These are all qualities crucial for a judge to have, and Judge Kapala's near-perfect score suggests he has what it takes to be fair and impartial. I had a chance to sit down and meet with him recently.

Judge James Holderman, Chief Judge of the Northern District, called our office last week and said Judge Kapala is "a great judge and an excellent choice for the U.S. District Court vacancy." That is high praise from a top Federal District Court judge in our State.

I commend Congressman Dennis Hastert, our leading senior Republican in the House of Representatives, for recommending his nomination. It is the latest example of a successful bipartisan approach that we have encouraged in Illinois.

Finally, I want to note again that Judge Kapala has been nominated to fill the sole Federal judgeship in Rockford. This judgeship has been vacant since January, when Judge Reinhard took senior status. It is important to fill this seat as quickly as possible.

Let me call on the nominees at this point, each one, to say a few words of opening remarks and introduce their families.

Mr. Ozerden, if you would kick off.

STATEMENT OF HALIL SULEYMAN OZERDEN, NOMINEE TO BE DISTRICT JUDGE OR THE SOUTHERN DISTRICT OF MISSISSIPPI

Mr. OZERDEN. Thank you, Senator. I would simply like to thank the President for the nomination, thank the Chairman and the Committee for holding this hearing, thank Senator Cochran and Senator Lott for their support, and also thank my family for their support.

Here today I have my wife, Denise Dunaway Ozerden of Gulfport; my mother, Candace Ozerden of Gulfport; my aunt, Cordelia Green of Richmond, Virginia; and my law partner, Cy Faneca, and his wife Georgia Anne Faneca.

Senator DURBIN. Great. Glad to have you all here today. If you would like to go ahead and make an opening remark, then we will go to the other nominees for the same opportunity.

Mr. OZERDEN. I have no other statement at this time. Thank you, Senator.

[The biographical information of Mr. Ozerden follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Halil Suleyman "Sul" Ozerden

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

   United States District Judge for the Southern District of Mississippi

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

   Office: 2909 13th Street, 6th Floor, P. O. Drawer W, Gulfport, MS 39502

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

   1966; Hattiesburg, Mississippi

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Married. My wife's full name is Laura Denise Dunaway Ozerden (maiden name Dunaway). We have two dependent children.

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

   (1) Stanford Law School, August 1995 - May 1998; Juris Doctor (J.D.), June 1998

   (2) Georgetown University, School of Foreign Service, August 1985 - May 1989
   Awarded Bachelor of Science in Foreign Service in May 1989,
   Graduated Magna Cum Laude

   (3) Mississippi Gulf Coast Community College, May 1986 - August 1986; July 1996
   No degree awarded; attended summer classes during college and law school

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

A. Employment:

(1) Dukes, Dukes, Keating & Faneca, P.A.
2909 13th Street, 6th Floor, P. O. Drawer W, Gulfport, MS 39502
(1999 - Present)

(2) Hon. Eldon E. Fallon, United States District Judge, Eastern District of Louisiana
(1998-1999)(Law Clerk)

(3) United States Attorney's Office, Southern District of Mississippi
808 Vieux Marche, Suite 200, Biloxi, MS 30530 (Old Location)
1575 20th Avenue, Gulfport, MS 39501 (Current Location)
(July - August 1997)(Summer intern)

(4) Eaton & Cottrell, P.A. (now Balch & Bingham)
1310 25th Avenue, Gulfport, MS 39501
(June - July, 1997)(Summer intern)

(5) Harrison County District Attorney's Office
Harrison County Courthouse
1801 23rd Avenue, Gulfport, MS 39501
(July - August, 1996)(Summer intern)

(6) Hon. Kosta Vlahos, Senior Circuit Judge, Second Circuit Court District of Mississippi
Harrison County Courthouse
1801 23rd Avenue, Gulfport, MS 39501
(June - July 1996)(Summer Law Clerk)

(7) United States Navy, 1989-1995

B. Other Entities:

(1) Gulfport Chamber of Commerce (2000 - Present)(Board Member and 2006 President)

(2) Mississippi Gulf Coast Chamber of Commerce (2005 - 2006)(Board Member)

(3) Rotary Club of Gulfport (1999 - Present)(Board Member 2002-2004 & 2006-2008)

(4) Gulfport Business Club (1999 - Present)(2006 President)

(5) St. Peter's by the Sea Episcopal Church (1971 - Present) (Vestry Member 2002 - 2004 & 2006 - 2007)

(6) Harrison County Republican Club (2005 - Present)(Board Member)

(7) Harrison County Young Lawyers Association (2000 - 2003)(2003 President)

(8) Seisin, LLC (2005-Present) (Member)

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

I served six years of active duty in the United States Navy, from May 1989 - May 1995. I received an Honorable Discharge with the rank of Lieutenant/0-3. I was a member of the inactive reserve from May 1995 - July 1997. My serial number was my Social Security Number.

Particulars of my Navy service include:
–Flew Navy A-6E Intruders as a Bombardier/Navigator off of the aircraft carrier USS Kitty Hawk on two six month, Western Pacific/
Indian Ocean/Korean Peninsula deployments
–Awarded the Navy Commendation Medal for 14 combat missions flown over Iraq and Somalia in Operations Southern Watch and Restore Hope (1992-1993)
–Flew numerous other reconnaissance and support missions in the Persian Gulf region (1992-1993)
–Served as Mission Commander leading squadron sized flights of multiple aircraft on combat missions over Iraq during Operation Southern Watch
–Flew Close Air Support Missions to support U.S. Marine Corps operations in Somalia during Operation Restore Hope
–Flew numerous reconnaissance and air support missions during operations over the Sea of Japan and Korean Peninsula during standoff with North Korea over nuclear weapons program (1994)
–Logged 294 aircraft carrier landings, over 100 at night
–Achieved over 1000 mishap free jet hours flying A-6E Intruders
–Won First Place Award for Bombing Accuracy Competition among all Bombardiers, Naval Air Station Whidbey Island, Washington
–Led and supervised over 20 enlisted aviation electricians responsible for maintaining all electrical systems on 14 combat aircraft
–Served as Squadron Safety Department Head, helping squadron win annual Safety "S" Award for most effective safety program of all Pacific Fleet A-6E squadrons

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

(1) Awarded Navy Commendation Medal for combat missions flown over Iraq (Operation Southern Watch)(1992-1993) and Somalia (Operation Restore Hope) (1992)
(2) "BV" Rated Attorney by Martindale-Hubbell (2006)
(3) Associate Editor, Stanford Law Review (1997 - 1998)
(4) Johnson and Bibbs Law Review Award, Outstanding Contribution as an Associate Editor, Stanford Law Review (1998)

(5) Four Year Navy ROTC Scholarship, Georgetown University (1985-1989)
(6) Graduated Magna Cum Laude, Georgetown University (1989)
(7) Phi Beta Kappa, Georgetown University (1989)
(8) Finalist, Rhodes Scholarship Competition (1988 - 1989)
(9) One of South Mississippi's Top Ten Business Leaders under 40, *The Sun Herald* Newspaper (2005)
(10) Recipient, Harold Jenner Volunteer of the Year Award, Gulfport Chamber of Commerce (2003)
(11) Graduate, Leadership Gulf Coast, Mississippi Gulf Coast Chamber of Commerce (2002 - 2003)
(12) Paul Harris Fellow, Rotary Club of Gulfport
(13) Eagle Scout and Order of the Arrow, Boy Scouts of America, Troop 209, Gulfport, MS (1981 - 1982)

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

(1) Mississippi Bar, Member (1998 - Present)
(2) Florida Bar, Member (1999 - Present)
(3) Louisiana State Bar Association, Member (1999 - Present)
(4) Alabama Bar, Member (2000 - Present)
(5) American Bar Association, Member (1999 - Present)
(6) Bar Association of the Fifth Federal Circuit, Member (2000-Present)
(7) Harrison County Bar Association, Member (2002 - Present)
(8) American Inns of Court, Member (2000 - Present)
(9) Harrison County Young Lawyers Association
– Treasurer (2000 - 2001)
– Vice President (2001 - 2002)
– President (2002 - 2003)

11. **Bar and Court Admission**:

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

(1) Mississippi Bar (September 29, 1998 - Present)
(2) Florida Bar (April 16, 1999 - Present)
(3) Louisiana State Bar Association (October 15, 1999 - Present)
(4) Alabama Bar (May 5, 2000 - Present)

There have been no lapses in membership

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

in membership. Give the same information for administrative bodies that require special admission to practice.

(1) All Mississippi State Courts
(September 29, 1998 - Present)
(2) United States District Court, Southern District of Mississippi
(September 29, 1998 - Present)
(3) United States District Court, Northern District of Mississippi
(September 29, 1998 - Present)
(4) United States Court of Appeals for the Fifth Circuit
(October 6, 1998 - Present)
(5) All Florida State Courts
(April 16, 1999 - Present)
(6) All Louisiana State Courts
(October 15, 1999 - Present)
(7) United States District Court, Eastern District of Louisiana
(October 25, 1999 - Present)
(8) All Alabama State Courts
(May 5, 2000 - Present)
(9) United States District Court, Middle District of Alabama
(May 24, 2000 - Present)
(10) United States District Court, Southern District of Alabama
(June 23, 2000 - Present)
(11) United States District Court, Northern District of Alabama
(August 7, 2000 - Present)
(12) United States District Court, Northern District of Florida
(June 16, 2000 - Present)
(13) United States Bankruptcy Court, District of Delaware
(Pro Hac Vice Admission)(2002 - 2003)

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Other Organizations:
(1) Phi Beta Kappa (1989-Present)
(2) Gulfport Chamber of Commerce (2000-Present)
– Board Member (2000-2005)
– President (2006)
(3) Mississippi Gulf Coast Chamber of Commerce
– Board Member (2005-Present)

(4) Gulfport Business Club (1999-Present)
– Treasurer (2003)
– Vice President (2004-2005)
– President (2006)
(5) Rotary Club of Gulfport
– Board Member (2002-2004 & 2006-2008)
(6) St. Peter's By-the-Sea Episcopal Church (1971 - Present)
– Vestry Member (2002-2004 & 2006-2007)
(7) Harrison County Republican Club
– Board Member (2005-Present)
(8) Gulfport Yacht Club (1972-Present)
(9) Great Southern Club (2003-Present)
(10) Bayou Bluff Tennis Club (2004-Present)
(11) Les Cavaliers Mardi Gras Krewe (2005-Present)
(12) Mississippi Bar (1998-Present)
(13) Florida Bar (1999-Present)
(14) Louisiana State Bar Association (1999-Present)
(15) Alabama Bar (2000-Present)
(16) American Bar Association (1999-Present)
(17) Harrison County Bar Association (2002-Present)
(18) American Inns of Court (2000-Present)

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

No.

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

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

None, with the exception of editing certain portions of articles submitted for publication in the Stanford Law Review (1997 - 1998). As an Associate Editor for the Stanford Law Review my role was to edit for writing style rather than content, to confirm sources were correctly cited for the propositions for which they stood, and to ensure that proper citation rules were followed. I had no involvement in the editing of content or substance of any articles.

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

None.

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

None.

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

I have never given any formal speeches or lectures. I have served as a presenter at CLE's and airport legal issues conferences on the following occasions:

(1) July 15, 2005 – presenter at a CLE in Biloxi, Mississippi, sponsored by the University of Mississippi Center for Continuing Legal Education, whose address is Post Office Box 879, University, Mississippi 38677-0879, on the subject of "How to Try a Car Wreck Case." I had no prepared text and the subject of this presentation was some general practice pointers that one may wish to consider from the defense perspective in trying a car accident case. I relied on an outline for this presentation.

(2) May 22, 2006 – I was asked to stand in for the original presenter at an airport legal procedures conference in Nashville, Tennessee, sponsored by the Southeastern Chapter of the American Association of Airport Executives, whose address is 601 Madison Street, Alexandria, VA 22314, for the SEC-AAAE Annual Conference, Nashville, Tennessee. I gave a brief, ten minute presentation as part of a panel discussion on legal procedures airports may need to follow when making emergency purchases under state public purchasing laws following a natural disaster such as Hurricane Katrina. I did not have any prepared text

from which I spoke in making this presentation and am no longer in possession of the handwritten notes which I used.

(3) October 18, 2006 – I was asked to stand in for the original presenter at the Georgia Airports Association Conference in Savannah, Georgia, sponsored by Georgia Airports Association, whose address is Russell Regional Airport, 304 Russell Field Road, Rome, GA 30165, where I was asked to give a brief talk to airport managers on tips for developing uniform minimum standards by airports for use in managing the activities of their tenants. I did not have any prepared text and am no longer in possession of the handwritten notes I used.

None of the foregoing involved issues of constitutional law or legal policy.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

None. However, following my original nomination on September 5, 2006, I did receive inquiries from local newspapers seeking comment.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

15. **Citations**: If you are or have been a judge, please provide:

a. citations for all opinions you have written (including concurrences and dissents);

b. a list of cases in which certiorari has been requested or granted;

c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

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

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have never held judicial office.

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

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

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

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

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

I have never held judicial office.

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

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

None.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held an official title as part of any political campaign. I have volunteered by way of attending various campaign meetings or functions for the following campaigns:

(a) Re-election campaign of George Payne, Jr., Republican candidate for Sheriff of Harrison County, Mississippi (Fall 2003) (attended campaign functions and assisted with fundraising).

(b) Election campaign of Haley Barbour, Republican candidate for Governor of Mississippi (Fall 2003) (attended campaign functions and assisted with fundraising).

(c) Election campaign of Tate Reeves, Republican candidate for State Treasurer of Mississippi (Fall 2003) (attended campaign functions and assisted with fundraising). In conjunction with this campaign, I also co-sponsored a "Meet the Candidate" Breakfast.

(d) Election campaign of Brent Warr, Republican candidate for Mayor of the City of Gulfport, Mississippi (Spring 2005) (attended campaign functions and assisted with fundraising). In conjunction with this campaign, I co-hosted a fundraiser. I also served on Mayor-Elect Warr's Transition Team prior to his taking office.

(e) Re-election campaign of Billy Hewes III, Republican candidate for re-election to Mississippi State Senate (Fall 2003) (assisted with fundraising).

(f) Election campaign of Leonard Bentz, Republican candidate for Mississippi House of Representatives (Fall 2003) (assisted with fundraising).

(g) Re-election campaign for Senator Trent Lott, Republican Senator for Mississippi (2006) (attended campaign function and assisted with fundraising).

(h) Re-election campaign for Chip Pickering, Republican Member of Congress (Fall 2005) (attended campaign function and assisted with fundraising).

18. **Legal Career:** Please answer each part separately.

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

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

Law Clerk to Hon. Eldon E. Fallon, United States District Judge, Eastern District of Louisiana, August 1998 - August 1999.

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

I have never practiced alone.

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

(1) Dukes, Dukes, Keating & Faneca, P.A. 2909 13th Street, 6th Floor, P. O. Drawer W, Gulfport, MS 39502
(1999 - Present) (Private Practice Attorney)

(2) United States Attorney's Office, Southern District of Mississippi
808 Vieux Marche, Suite 200, Biloxi, MS 30530 (Old Location)
1575 20th Avenue, Gulfport, MS 39501 (Current Location)
(July - August 1997)(Summer intern)

(3) Eaton & Cottrell, P.A. (now Balch & Bingham)
1310 25th Avenue, Gulfport, MS 39501
(June - July, 1997)(Summer intern)

(4) Harrison County District Attorney's Office
Harrison County Courthouse
1801 23rd Avenue, Gulfport, MS 39501
(July - August, 1996)(Summer intern)

(5) Hon. Kosta Vlahos, Senior Circuit Judge, Second Circuit Court District of Mississippi
Harrison County Courthouse
1801 23rd Avenue, Gulfport, MS 39501
(June - July 1996)(Summer Law Clerk)

b. Describe:

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

During my entire time in private law practice, the general character of my law practice has been one of a general civil practice, primarily engaging in general civil defense litigation with some transactional work. My primary focus has been on the representation of local governmental entities for which our firm has served as general counsel, as well as on representation of other clients in general litigation matters ranging from torts to contracts to constitutional claims.

ii. your typical clients and the areas, if any, in which you have specialized.

Typical former clients include the Gulfport Biloxi Regional Airport Authority, Harrison County Sheriff's Office, and Harrison County Emergency Communications Commission, local governmental clients for

whom our firm is general counsel and for whom I have performed both defense litigation and transactional work. Other former clients have included Union Planters Bank (now part of Regions Bank), practicing in commercial litigation. I have also represented other, small business clients handling various contractual and commercial issues or disputes.

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

During my practice I have appeared regularly in court for trials, adversarial evidentiary hearings, scheduling conferences, pretrial conferences, and oral argument on various types of motions. I would estimate that 80% of my practice has been in litigation.

i. Indicate the percentage of your practice in:

(a)	federal courts:	40%
(b)	state courts of record:	40%
(c)	other courts:	20%

ii. Indicate the percentage of your practice in:

(a)	civil proceedings:	99%
(b)	criminal proceedings:	1%

d. 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 litigated over 45 cases to judgment. 17 of these were actual trials in federal or state tribunals of record. I was sole counsel for 14 of these trials, lead counsel with another attorney assisting me for 2 others, and supporting counsel for one.

i. What percentage of these trials were:

(a)	jury:	15%
(b)	non-jury:	85%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None.

19. **Litigation**: Describe the ten (10) 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 representation;

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

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

(1) In Re ANC Rental Corporation, et al.: (Gulfport-Biloxi Regional Authority v. ANC Rental Corporation, et al.), Chapter 11 Case No. 01-11200(MFW)(jointly administered), United States Bankruptcy Court, District of Delaware

I represented the Gulfport-Biloxi Regional Airport Authority in this matter, which was an adversarial trial in the context of a major national bankruptcy case, specifically ANC Rental Corporation, the parent company for National Car Rental and Alamo Rent-A-Car.

I prepared all substantive pleadings filed on behalf of the Gulfport-Biloxi Regional Airport Authority, with modifications to conform to the local Delaware rules made by our Delaware co-counsel. I also traveled to Wilmington, Delaware, with the Airport's Executive Director and conducted an adversarial evidentiary trial in which I put on direct testimony and documentary evidence, and cross-examined the witness for the Debtors before the Bankruptcy Court. The substantive issue was the Airport Authority's objection to the attempts of the Debtors to reject their National Car Rental Lease with the Airport Authority and then assign that Lease to the parent company, ANC Rental Corporation, which then in turn was proposing to "dual brand" by permitting both of its subsidiary rental car companies, National and Alamo, to begin conducting operations at the Gulfport-Biloxi International Airport under a single lease, and without the permission of the Airport Authority. Following the trial, the Court expressed reservations about the Debtors' requested relief, ordered additional briefing and did not grant the relief that National Car Rental had requested, relief which it had previously granted National at the vast majority of other airports in the United States. While the Airport Authority's objection was still pending, Debtors formally withdrew their request to "dual brand" at the Gulfport-Biloxi International Airport and agreed to pay Airport Authority attorneys' fees incurred in objecting to their proposed rejection of National Car Rental's Lease with the Airport.

(a) Date of Representation: July 2002 - October 2003
(b) Name of Court and Judge: The Honorable Mary F. Walrath, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware
(c) Co-Counsel and Counsel for Other Parties:
Selinda A. Melnik, Esq.
Edwards, Angell, Palmer & Dodge, LLP

919 North Market Street, Suite 1500
Wilmington, DE 19801
Tel: (302)-425-7103
Local Delaware Co-Counsel for Gulfport-Biloxi Regional Airport Authority

Bonnie Glantz Fatell, Esq.
Blank, Rome, Comisky & McCauley, LLP
1201 Market Street, Suite 2100
Wilmington, DE 19801
Tel: (302) 425-6425
Attorney for Debtors

Janice M. McAvoy, Esq.
Fried, Frank, Harns, Shiver & Jocobson
One New York Plaza
New York, NY 10004
Tel: (212) 859-8182
Attorney for Debtors

M. Channing Powell, Esq.
1915 23rd Ave.
P.O. Box 4253
Gulfport, MS 39502
Tel: (228) 864-5321
Attorney for Defendants Budget Rent-A-Car, Thrifty Rent-A-Car and Avis Rent-A-Car

(2) James Melear v. Harrison County and Harrison County Sheriff, George Payne, Individually And in His Official Capacity, Civil Action No. 1:03cv674RoRo, United States District Court, Southern District of Mississippi, Southern Division

I represented the Harrison County Sheriff in this case, which was a federal civil rights lawsuit and wrongful death claim pursuant to 42 U.S.C. § 1983 and related state law theories of liability. In this case, Plaintiff was incarcerated at the Harrison County Adult Detention Center awaiting trial on various child molestation charges when he became involved in an altercation with another inmate in which the other inmate gouged out the Plaintiff's eyeballs. Plaintiff died of other medical complications subsequent to filing suit. Plaintiff alleged that the Sheriff was liable to him for failure to protect him from the assault. The Court rendered a judgment in favor of the Sheriff.

(a) Date of Representation: July 2003 - March 2006
(b) Name of Court and Judge: Honorable John M. Roper, Chief United States Magistrate Judge, United States District Court for the Southern District of Mississippi

(c) Co-Counsel and Counsel for Other Parties:

Mark Verret, Esq.
Allen & Gooch
3900 North Causeway Blvd., Suite 1450
Metairie, Louisiana 70002
Tel: (504) 836-5200
Co-Counsel for Harrison County Sheriff

Keith Landry, Esq.
Allen & Gooch
1015 St. John Street
Lafayette, LA 70501-6711
Tel: (337) 291-1000
Co-Counsel for Harrison County Sheriff

Karen Young, Esq.
Meadows Riley Law Firm
Post Office Drawer 550
Gulfport, MS 39502
Tel: (228) 864-4511
Counsel for Harrison County

Robert H. Tyler, Esq.
Tyler Law Firm
P.O. Box 1124
Biloxi, MS 39533
Tel: (228) 436-4682
Counsel for Plaintiff

Ashley Hutchings Hendren, Esq.
1117 Washington Avenue
Ocean Springs, MS 39564
Tel: (228) 872-8878
Counsel for Plaintiff

Daphne L. Pattison, Esq.
Pattison Law Firm, P.C.
P.O. Box 291
Biloxi, MS 39533
Tel: (228) 374-5554
Counsel for Plaintiff

(3) Clyde Adams v. City of Gulfport, Gulfport-Biloxi Regional Airport Authority and Park Investment Partners, LLC, d/b/a Ashton Park Apartments; and Gulfport-Biloxi Regional Airport Authority, Third Party Plaintiff v. Moran, Seymour, and Associates, Inc., Third

Party Defendant, Cause No. A-2401-2003-314, Circuit Court of Harrison County, Mississippi, First Judicial District

I represented the Defendant, Gulfport-Biloxi Regional Airport Authority in this litigation which was originally filed in Harrison County Circuit Court, removed to the United States District Court for the Southern District of Mississippi, and then remanded to Harrison County Circuit Court.

This case involved a property line dispute over the placement of a sewer line in conjunction with the development by the Airport Authority of an office park development. Plaintiff alleged that the Airport Authority's tie-in to his sewer line, which he claimed he had privately constructed on his own property, gave rise to a federal takings and other constitutional claims, as well as state law claims for trespass, conversion, and related claims. The Court rendered a judgment in favor of the Airport Authority.

(a) Date of Representation: June 2003 - May 2006.

(b) Name of Court and Judge: Honorable Jerry O. Terry, Circuit Court Judge, Circuit Court of Harrison County, First Judicial District, Gulfport, Mississippi, and Honorable Louis Guirola, Jr., United States District Judge, United States District Court for the Southern District of Mississippi, Southern Division

(c) Co-Counsel and Counsel for Other Parties:

Bill Waller, Sr., Esq.
Glenn S. Swartzfager, Esq.
Waller & Waller
220 South President Street
P.O. Box 4
Jackson, MS 39205-0004
Tel: (601) 354-5252
Attorneys for Plaintiff

Harry Hewes, Esq.
Jeff Bruni, Esq.
Gulfport City Attorney's Office
P.O. Box 1780
Gulfport, MS 39502
Tel: (228) 868-5811
Attorneys for Defendant City of Gulfport

Rodger Wilder, Esq.
Balch & Bingham, LLP
1310 25th Avenue
P.O. Box 130
Gulfport, MS 39502
Tel: (228) 864-9900
Attorney for the Defendant Park Investment Partners, LLC, d/b/a Ashton Park Apartments

Johnny L. Nelms, Esq.
Watkins, Ludlam, Winter & Stennis, P.A.
P.O. Drawer 160
Gulfport, MS 39502
Tel: (228) 822-8527
Attorney for Third Party Defendant Moran, Seymour, and Associates, Inc.

(4) Joyce Blango, Individually and on Behalf of the Wrongful Death Beneficiaries of Bryant O'Neal Patterson v. Harrison County Sheriff's Department, Harrison County, Mississippi; the Harrison County Board of Supervisors; and Jerry Strickland, Civil Action No. 1:03cv722RRo, United States District Court, Southern District of Mississippi, Southern Division

I represented the Harrison County Sheriff's Department in this case, which was a federal civil rights lawsuit involving allegations of medical malpractice and wrongful death arising out of the death of an inmate incarcerated at the Harrison County Jail. The decedent had been stabbed several months prior to his incarceration, but his outer wounds had healed by the time he became incarcerated in Harrison County. While incarcerated, he died of complications connected to the remaining internal injuries which were not immediately apparent. Plaintiff claimed that the Defendants violated his federal civil rights, denied him adequate medical treatment, and committed medical malpractice in not diagnosing his injuries and preventing his death. The Court rendered a judgment in favor of the Harrison County Sheriff's Department in this case.

(a) Date of Representation: December 2003 - August 2005
(b) Name of Court and Judge: Honorable Louis Guirola, Jr., United States District Judge, and Honorable John M. Roper, Chief United States Magistrate Judge, United States District Court, Southern District of Mississippi, Southern Division
(c) Co-Counsel and Counsel for Other Parties:

Mark Verret, Esq.
Allen & Gooch
3900 North Causeway Blvd., Suite 1450
Metairie, Louisiana 70002
Tel: (504) 836-5200
Co-Counsel for the Harrison County Sheriff's Department

Joseph P. Hudson, Esq.
Hudson & Smith
P.O. Box 908
1600-24th Avenue, Suite A
Gulfport, MS 39502-0908
Tel: (228) 863-3095
Counsel for Plaintiff

Karen Young, Esq.

Meadows Riley Law Firm
P.O. Drawer 550
Gulfport, MS 39502
Tel: (228) 864-4511
Attorney for Harrison County

(5) Stacey Walters Cooley v. Harrison County by its Board of Supervisors, Bobby Eleuterius, Larry Benefield, Marlin Ladner, William Martin, and Connie Rockco; Harrison County Sheriff's Dept; Harrison County Sheriff George Payne, Jr.; and Mississippi Bureau Of Narcotics, Civil Action No. 2:01cv62PG, United States District Court, Southern District of Mississippi, Hattiesburg Division

I represented the Harrison County Sheriff's Department, Harrison County Sheriff George Payne, Jr., and Deputy Pauline Blackwell in this matter, which was a case involving a claim by Plaintiff of mistaken identity, false arrest, and false imprisonment. Plaintiff claimed that she was wrongfully arrested, pursuant to an indictment by the Harrison County District Attorney and subsequent warrant, which the Harrison County Sheriff directed the Sheriff of another County, Jones County, to execute, resulting in the Plaintiff being arrested at her home and incarcerated during a Thanksgiving holiday. It was subsequently determined that a different individual with the same name as the Plaintiff was the person who should have been indicted, but that the Sheriff of Harrison County caused to be arrested the person who had, in fact, been indicted, the Plaintiff. The wrong biographical information was supplied to the District Attorney prior to indictment. The Court rendered a judgment in favor of my clients.

(a) Date of Representation: February 2001 - March 2003
(b) Name of Court and Judge: Honorable Charles Pickering, United States District Judge, United States District Court for the Southern District of Mississippi, Hattiesburg Division
(c) Co-Counsel and Counsel for Other Parties:

Len Melvin, Esq.
Leonard Melvin, Esq.
Melvin and Melvin Attorneys at Law
P. O. Box 221
Hattiesburg, MS 39403-0221
Tel: (601) 583-1990
Attorneys for Plaintiff

Karen J. Young, Esq.
Meadows Riley Law Firm
P.O. Box 550
Gulfport, MS 39502
Tel: (228) 864-4511
Attorney for the Harrison County Board of Supervisors

Peter Cleveland, Esq.

Special Assistant Attorney General
P.O. Box 220
Jackson, MS 39205
Tel: (601) 359-3680
Attorney for the Mississippi Bureau of Narcotics

(6) Sherry Watford and Jean Lewis v. City of Biloxi, Harrison County, Sheriff George Payne, Jr., Individually and in His Official Capacity; Officer David Abbott, Individually and in His Official Capacity; Deputy Coley James Judy, Individually and in His Official Capacity; Deputy Brenda Lilyrose, Individually and in Her Official Capacity; John Does 1-20, Civil Action No. 1:02cv11GuRo, United States District Court, Southern District of Mississippi, Southern Division

I represented Sheriff George Payne, Jr., Deputy Coley James Judy, and Deputy Brenda Lilyrose in this matter. In this case, Plaintiff was arrested on a charge of disorderly conduct and resisting arrest. Upon arrival at the Harrison County Jail, she claimed that she was subjected to excessive force, alleging that she was beaten and pepper sprayed while restrained. The Court rendered a judgment in favor of my clients in this case.

(a) Date of Representation: January 2002 - January 2005
(b) Name of Court and Judge: Honorable Walter Gex, United States District Judge, and Honorable Louis Guirola, Jr., United States District Judge, United States District Court for the Southern District of Mississippi, Southern Division
(c) Co-Counsel and Counsel for Other Parties:

Kathryn N. Nester, Esq.
Christopher & Nester, PLLC
P. O. Box 982
Jackson, MS 39211
Tel: (601) 898-3303
Attorney for Plaintiffs

Kay Wilkerson, Esq.
Post Office Box 4105
Gulfport, MS 39502
Tel: (228) 868-8849
Attorney for Plaintiffs

Karen Young, Esq.
Meadows Riley Law Firm
Post Office Drawer 550
Gulfport, MS 39502
Tel: (228) 864-4511
Attorney for the Harrison County

Emilie Whitehead, Esq.
Post Office Drawer 289

Biloxi, Mississippi 39533
Tel: (228) 374-2100
Attorney for the City of Biloxi

(7) Fay W. Hendrix v. Stanbro R.V. Center, Gulf Stream, Inc. and Union Planters Bank, Civil Action No. 1:02cv00784GuRo, United States District Court, Southern District of Mississippi, Southern Division

I represented Union Planters Bank in this matter. In this case, Plaintiff alleged that she had purchased a defective motor home from a Co-Defendant recreational vehicle dealer, and that by virtue of the assignment of the sales contract and financing agreement to Union Planters Bank, the Bank was also liable to her for rescission of the contract and return of her money. Plaintiff alleged theories of legal liability under the Uniform Commercial Code, various express and implied warranties under state law, the Federal Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq. I obtained a judgment of dismissal in favor of Union Planters Bank in the case.

(a) Date of Representation: August 2002 - August 2004
(b) Name of Court and Judge: Honorable David Bramlette, United States District Judge, United States District Court for the Southern District of Mississippi, Southern Division
(c) Co-Counsel and Counsel for Other Parties:

William W. Dreher, Jr., Esq.
Post Office Box 968
Gulfport, Mississippi 39502
Tel: (228) 822-2222
Attorney for Plaintiff

Joe Meadows, Esq.
Meadows Riley Law Firm
P.O. Box 550
Gulfport, MS 39502
Tel: (228) 864-5411
Attorney for Gulf Stream, Inc.

Benjamin M. Watson, Esq.
P.O. Box 22567
Jackson, MS 39225-2567
Tel: (601) 948-5711
Attorney for Stanbro R.V. Center

(8) James O. Mullins, Jr. v. William A. Haden and the Harrison County Sheriff's Department, Cause No. A 2401-2002-0672, Circuit Court of Harrison County, Mississippi, First Judicial District

I represented William A. Haden and the Harrison County Sheriff's Department in this matter. This case involved an automobile collision in which a Sheriff's investigator rear-ended the Plaintiff, causing minor vehicle damage but, according to the Plaintiff, triggering severe medical injuries in connection with a condition from which he suffered known as trigeminal neuralgia. The Court rendered a judgment in favor of my clients.

(a) Date of Representation: August 2002 - January 2004
(b) Name of Court and Judge: Honorable Robert Walker, Circuit Court Judge, Circuit Court of Harrison County, First Judicial District

(c) Co-Counsel and Counsel for Other Parties:
Brehm T. Bell, Esq.
125 Court Street
Bay St. Louis, MS 39520
Tel: (228) 467-0006
Attorney for Plaintiff

(9) Joseph D. Carmel d/b/a Automotive Development and Marketing v. Union Planters Corporation d/b/a Union Planters Bank National Association, Cause No. A 2401-2002-0581, Circuit Court of Harrison County, Mississippi, First Judicial District

I represented Union Planters Bank in this matter, which involved allegations by Plaintiff, a business account holder with the Bank, that the Bank was liable for damages due to improper deposits, withdrawals, and forged signatures on checks by some of the business' employees. Plaintiff claimed that these items were improperly paid by the Bank, and that the Bank was liable to him for not preventing this forgery, pursuant to the Uniform Commercial Code and banking law. I obtained a judgment of dismissal in favor of the Bank.

(a) Date of Representation: October 2002 - September 2003
(b) Name of Court and Judge: Honorable Jerry O. Terry, Circuit Court Judge, Circuit Court of Harrison County, First Judicial District
(c) Co-Counsel and Counsel for Other Parties:
Robert Myers, Jr., Esq.
Owen and Galloway
Post Office Drawer 420
Gulfport, Mississippi 39502-0420
Tel: (228) 868-2821
Attorney for Plaintiff

(10) Donald E. Harris v. Forrest County, Mississippi; Forrest County Sheriff William Robert McGee, Individually, and in His Official Capacity as Sheriff of Forrest County, Mississippi; Harrison County Sheriff, George Payne, Individually and in His Official Capacity as Sheriff of Harrison County, Mississippi; and John Does One, Two, and Three, Individually and in Their Official Capacities as Deputy Sheriffs and/or Jailors of

Forrest County and/or Harrison County, Mississippi, Civil Action No. 2:03cv604Ro, United States District Court, Southern District of Mississippi, Hattiesburg Division

I represented the Harrison County Sheriff and several individually named deputies in this matter, which is a federal civil rights lawsuit alleging that Plaintiff was wrongfully incarcerated for a period of four months in a case of mistaken identity. Plaintiff, a white male, was detained pursuant to a warrant for the arrest of a black male with the same name as the Plaintiff's. This case is presently pending on appeal.

(a) Date of Representation: December 2003 - January 2007

(b) Name of Court and Judge: Honorable Stanwood R. Duval, Jr., United States District Judge, United States District Court for the Southern District of Mississippi, Hattiesburg Division

(c) Co-Counsel and Counsel for Other Parties:

Edward P. Connell, Jr., Esq.
Merkel & Cocke
A Professional Association
Post Office Box 1388
Clarksdale, Mississippi 38614
Tel: (662) 627-9641
Attorney for Plaintiff

Karen Young, Esq.
Meadows Law Firm
1720 23rd Avenue
P. O. Box 550
Gulfport, MS 39502
Tel: (228) 864-4511
Attorney for Harrison County

James K. Dukes, Esq.
Dukes Law Firm
Post Office Box 2055
Hattiesburg, MS 39403-2055
Tel: (601) 544-4121
Attorney for Forrest County

Mark Verret, Esq.
3900 North Causeway Blvd., Suite 1450
Metairie, Louisiana 70002
Tel: (504) 836-5200
Co-Counsel for Harrison County Sheriff, George Payne, and John Does One, Two, and Three, as Deputy Sheriffs and/or Jailors of Harrison County, Mississippi

Keith Landry, Esq.

Allen & Gooch
1015 St. John Street
Lafayette, LA 70501-6711
Tel: (337) 291-1000
Co-Counsel for Harrison County Sheriff, George Payne, and John Does One, Two, and Three, as Deputy Sheriffs and/or Jailors of Harrison County, Mississippi

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

I have performed no lobbying activities for any client or organization.

Have appeared in and litigated as either sole, lead, or co-counsel of record over 80 cases in federal and state courts and administrative tribunals, many of which involved federal constitutional or civil rights issues.

Drafted rules and regulations governing commercial use activities at the Gulfport-Biloxi International Airport. Appointed to serve as Administrative Hearing Officer by governing board of Gulfport-Biloxi Regional Airport Authority. Jurisdiction included hearings over matters such as employment or personnel matters, allegations of discrimination in application of rules, and allegations of violations of any airport ordinances or Federal Aviation Administration regulations by airport tenants and concessionaires.

Participated in drafting contracts for the Harrison County Emergency Communications Commission relating to the implementation of a fifteen million dollar project for a unified emergency communications system for all of Harrison County, Mississippi, which ultimately resulted in Harrison County having the only operable communications system on the Mississippi Gulf Coast during Hurricane Katrina.

Defended Equal Employment Opportunity Commission complaints by employees involving allegations ranging from employment discrimination and violations of the Americans with Disabilities Act to sexual harassment. My involvement included researching the facts and the law and preparing appropriate legal responses to the EEOC in each case.

Engaged in activities aimed at promoting civility and professionalism within the practice of law in our local community by participating in American Inns of Court and becoming active in a leadership capacity in the Harrison County Young Lawyers Association, as Treasurer, Vice President, and then President of the Association. In my capacity as

President of the Harrison County Young Lawyers Association, I also participated in state-wide meetings and functions of the Young Lawyers Division of the Mississippi Bar.

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

    None.

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

    (a) Dukes, Dukes, Keating & Faneca, P.A. – I am a 5% shareholder in the firm. If I am confirmed for this position, I expect to receive a payment from the firm for a buy-out of my shares. The current value of these shares is approximately $56,553.00, plus I was owed and very recently received a payment from the firm's now closed profit sharing plan in the amount of $2,660.00.

    (b) Seisin, LLC – I am the owner of a 5% interest in this limited liability company, which owns a single piece of real property in Gulfport, Mississippi. Therefore, I have an indirect interest in 5% of the value of this real property.

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

    No.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)

    See attached financial disclosure report.

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

    See attached Financial Net Worth Statement and related schedules.

26. **Potential Conflicts of Interest**:

a. Identify the parties, 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. Explain how you would address any such conflict if it were to arise.

While I do not believe there are any specific categories of litigation which might present a conflict of interest, cases involving specific parties with whom I currently have or have recently had financial or other close relationships would be situations in which I would consider recusing myself. In particular, I do not believe it would be appropriate for me to preside over any case involving my current law firm, whether it is a party or counsel of record for a party, for the appropriate period of time as prescribed by law or canons of judicial ethics. I believe that any matter involving Seisin, LLC, would also require my recusal for as long as I hold any interest in it, and for a period of time after I have terminated my interest in that entity, as prescribed by law or canons of judicial ethics.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would follow the Code of Conduct for United States Judges, applicable statues, and relevant rules governing judicial conduct in addressing this issue. Because my business and financial interests are limited, I do not expect there to be many situations which would present a conflict.

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

(1) I have represented an indigent criminal defendant in a criminal case in State court. I devoted approximately 30 hours of my time to this case.

(2) As a product of public schooling, I am a strong believer in the importance of public education. For this reason, from 1999 until May 2006, I volunteered my time as a Mentor for an at-risk student in the Gulfport Municipal Public School District. From 1999 until his recent graduation from high school this past May, I worked with the same student, beginning when he was in the 6th grade. My role as a Mentor was to encourage and assist him to remain in school and to earn a high school diploma, which he did. I estimate that I devoted approximately 300 hours over the course of six years working with this student.

28. **Selection Process**:

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

There is no such selection commission in our jurisdiction of which I am aware.

My experience in the selection process began with my expressing an interest in this position to the Senators and their staffs. During the course of their considering a number of other candidates who were interested in the position, I had the opportunity to meet and interview with staff members from both Senators' offices and ultimately met with both Senators.

After my name was submitted to the President for his consideration, I was contacted by the White House Counsel's Office on or about May 26, 2006, and asked to come to the White House for an interview. I interviewed with members of the White House Counsel's Office on May 31, 2006. I was contacted on June 28, 2006, by the White House Counsel's Office to advise me that the President had decided to move forward with the selection process, and on June 30, 2006, I was contacted by the Department of Justice to begin completion of all nomination paperwork. Later I was contacted by attorneys from the Department of Justice and was interviewed by the Department of Justice on August 8, 2006. Following the conclusion of all interviews, I was contacted by White House Counsel's Office on or about August 30, 2006, and advised that the President had decided to nominate me for the position. I was formally nominated on September 5, 2006. My nomination was returned to the President on December 9, 2006. I was renominated on January 9, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Ozerden, Halil S	U.S. District Court, S.D. Miss	01/10/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
District Judge - Nominee	[X] Nomination, Date 01/09/2007 [ ] Initial [ ] Annual [ ] Final 5b. [ ] Amended Report	01/01/2006 to 12/31/2006
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
2909 13th Street, 6th Floor P.O. Drawer W Gulfport, Mississippi 39502	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

[ ] NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Shareholder/Partner/Attorney	Dukes, Dukes, Keating & Faneca, P.A.
2. President/Chairman	Gulfport Chamber of Commerce
3. Director	Mississippi Gulf Coast Chamber of Commerce, Board of Directors
4. President/Executive Committee	Gulfport Business Club
5. Director	Rotary Club of Gulfport, Mississippi, Board of Directors

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

[ ] NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2003	Dukes, Dukes, Keating & Faneca, P.A., Shareholders agreement with current law firm; requires buyout of shares upon departure from firm
2. 1999	Dukes, Dukes, Keating & Faneca, P.A., 401k plan with current firm; self-directed investments while an employee of the firm
3. 1999	Dukes, Dukes, Keating & Faneca, P.A. Profit sharing plan with current firm; no control (plan terminated on 12/15/2006)

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Ozerden, Halil S	Date of Report 01/10/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2005	Dukes, Dukes, Keating & Faneca, P.A., salary	$ 113,000.00
2. 2005	Dukes, Dukes, Keating & Faneca, P.A., car allowance	$ 7,800.00
3. 2005	Seisin, LLC, rent/passive income	$ 589.00
4. 2006	Dukes, Dukes, Keating & Faneca, P.A., salary	$ 119,854.13
5. 2006	Dukes, Dukes, Keating & Faneca, P.A., car allowance	$ 7,800.00
6. 2006	Seisin, LLC, rent/passive income	$ 1,000.00
7. 2006	Dukes, Dukes, Keating & Faneca, P.A. Profit Sharing Plan termination/closeout	$ 2,660.00

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2006	Self-employed (Realtor), sales commissions
2.	
3.	
4.	
5.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1. EXEMPT	
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Ozerden, Halil S	Date of Report 01/10/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. EXEMPT		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Wachovia Bank, N.A. (as successor by merger to Southtrust Bank)	5% personal guaranty on loan to Seisin, LLC, for purchase of real property located in Gulfport, MS	J
2. USAA Federal Savings Bank	Credit card used for vehicle purchase	K
3. Sallie Mae Servicing	Student loans (law school)	J
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Ozerden, Halil S	01/10/2007

VII. INVESTMENTS and TRUSTS *-- income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. BancorpSouth Bank, bank accounts	A	Interest	K	T	EXEMPT				
2. Navy Federal Credit Union, bank accounts	A	Interest	J	T					
3. Rental Property #1 (through Seisin) (2005)($260,000)	A	Rent	N	R					
4. Dukes, Dukes, Keating & Faneca, P.A., shares		None	L	U					
5. Dukes, Dukes, Keating & Faneca, P.A., profit sharing	C	Distribution							
6. U.S. Savings Bond	A	Interest	J	T					
7. Mississippi Affordable College Savings Trust	A	Dividend	J	T					
8. The Hartford Director Variable Annuity	A	Dividend	J	T					
9. Brokerage Account #1 (Dukes, Dukes, Keating & Faneca 401k)									
10. ---Stifel Nicolaus Money Market	A	Dividend	J	T					
11. ---Hancock Holding Common Stock	A	Dividend	J	T					
12. ---McDonald's Corp. Common Stock	A	Dividend	J	T					
13. ---Microsoft Corp. Common Stock		None							
14. ---American Balanced Mutual Fund	A	Dividend	J	T					
15. ---DWS Value Series/ Dreman High Return Mutual Fund	A	Dividend	J	T					
16. ---Eaton Vance Worldwide Health Science Mutual Fund	A	Dividend	J	T					
17. ---John Hancock U.S. Global Leaders Growth Mutual Fund	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Ozerden, Halil S	01/10/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. —John Hancock Classic Value Fund II	A	Dividend	J	T					
19. —ING Principal Protection Mutual Fund	A	Dividend	J	T					
20. —Munder Mid Cap Core Growth Mutual Fund	A	Dividend	J	T					
21. Brokerage Account #2 (Stifel Nicolaus Joint Stock Account)									
22. —Stifel Nicolaus Money Market	A	Dividend	J	T					
23. —Washington Mutual Investors Mutual Fund	A	Dividend	J	T					
24. IRA #1 (Stifel Nicolaus IRA)									
25. —Stifel Nicolaus Money Market	A	Dividend	J	T					
26. —Capital World Growth & Income Mutual Fund	A	Dividend	J	T					
27. —Growth Fund of America Mutual Fund	A	Dividend	J	T					
28. —Hancock Holding Common Stock	A	Dividend	J	T					
29. MassMutual Permanent Life Insurance	A	Interest	J	T					
30. State Farm Whole Life Insurance	A	Interest	J	T					
31. Allstate Universal Life Insurance	A	Interest	J	T					
32. Southern Farm Bureau Universal Life Insurance	A	Interest	J	T					
33. Whitney Bank, bank accounts	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Ozerden, Halil S	Date of Report 01/10/2007

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Ozerden, Halil S	Date of Report 01/10/2007

IX. CERTIFICATION.

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

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

Signature _____ Date Jan. 10, 2007

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		26	000	Notes payable to banks-secured		18	620
U.S. Government securities-add schedule			250	Notes payable to banks-unsecured			
Listed securities-add schedule		49	122	Notes payable to relatives		44	000
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		3	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		272	000
Real estate owned-add schedule		350	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		75	000	Vehicle loan		22	095
Cash value-life insurance		22	678	Student loan		3	929
Other assets itemize:							
5% Interest in Investment real estate		13	099				
Value of shares in law firm		56	553				
				Total liabilities		363	644
				Net Worth		229	058
Total Assets		592	702	Total liabilities and net worth		592	702
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		13	099	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Series EE Bonds	$ 250
Listed Securities	
401(k) account	
Hancock Holding	$ 4,015
McDonalds	4,538
American Balanced Fund	2,877
DWS Value Series, Inc.	4,735
Eaton Vance Growth	3,074
John Hancock Series Global Leaders Growth	4,463
ING Principal Protection Fund	1,152
Munder Mid-Cap Core Growth Fund	3,279
General Money Market	88
Individual Retirement Account	
Capital World Growth and Income fund	2,158
Growth Fund of America, Inc.	4,036
Hancock Holding	1,324
Washington Mutual Investors Fund	3,614
Mississippi College Savings Trust Fund	2,060
Hartford variable annuity	7,709
Total Listed Securities	$ 49,122
Real Estate Owned	
Personal residence	$ 350,000
Real Estate Mortgages Payable	
Personal residence	$ 272,000

AFFIDAVIT

I, Halil Suleyman "Sul" Ozerden, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

JAN. 29, 2007
(DATE)

(NAME)

Monique Durkin
(NOTARY)

MONIQUE DURKIN NOTARY My Commission Expires 05/11/10 PUBLIC HARRISON COUNTY

Senator DURBIN. All right.

Mr. Settle?

STATEMENT OF BENJAMIN HALE SETTLE, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

Mr. SETTLE. Thank you, Mr. Chairman. Thank you for holding this hearing. I, too, thank my two Senators from my State for supporting me. Of course, I thank President Bush for his confidence shown in me by nominating me to this position.

I would like to introduce my wife, Lynn. And perhaps—they're back there—they can raise their hand so, Mr. Chairman, you can see who they are. My wife, Lynn; my brother-in-law, Colonel Chuck Allen. He came down from Carlisle. He is a teacher at the War College.

Gary Burleson is here. He is the Mason County prosecutor. He's known me since he was six, and I told him that I was glad that I was up here speaking about me and not himself, since he knows many stories that I would just as soon not have on the record.

[Laughter.]

Then we also have here other friends from Mason County that have come out here: Kenan Butler is here, a long-time friend of the family; Wyla Wood and Joel Meyer, from a public utility. There is the American Public Power Association meeting this week, so fortunately they could attend, as well as Commissioner Jack Janda, for coming from the public utility district there in Mason County. So, I am grateful that they were all able to attend today.

Senator DURBIN. Mason County is well represented.

Mr. SETTLE. Yes. Thank you.

[The biographical information of Mr. Settle follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Benjamin Hale Settle

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

   United States District Judge for the Western District of Washington

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

   103 S. 4th Street, Suite 200
   P.O. Box 1400,
   Shelton, Washington 98584

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

   1947, Olympia, Washington

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   I am married to Lynn Meredith Settle, maiden name Lynn Meredith Sheehy. She is a teacher at Mason County Christian School, located at 470 E. Eagle Drive, Shelton, Washington 98584. I have one child, Elizabeth, who is still claimed as a dependent. She is a junior in college.

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

   Willamette University College of Law; September, 1969 through May 1972; J.D., 5/14/72

   Claremont McKenna College; September, 1965 through June, 1969; B.A. 6/8/69

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

<u>Employment:</u>
1997-Present - Settle & Johnson, P.L.L.C., Member (paid)
103 S. 4th Street, P.O. Box 1400, Shelton, Washington, 98584
1991-1997 - Heuston, Settle & Johnson, Partner (paid)
103 S. 4th Street, P.O. Box 1400, Shelton, Washington, 98584
1988-1991 – Heuston & Settle, Partner (paid)
103 S. 4th Street, P.O. Box 1400, Shelton, Washington, 98584
1986-1988 - Heuston, Settle & Whitehouse, Partner (paid)
103 S. 4th Street, P.O. Box 1400, Shelton, Washington, 98584
1977-1986 - Heuston & Settle, Partner (paid)
103 S. 4th Street, P.O. Box 1400, Shelton, Washington, 98584
1976 - Don Miles Attorney, Employee (paid)
(no current address)
1973-1976 - U.S. Army, Captain, Judge Advocate General Corps (paid)
1972 – Don Miles Attorney, Employee (paid)
(no current address)
1971 - REA Express (delivery company not in existence today), summer relief driver (paid)
1970 - Lynch and Lynch Attorneys, Summer Intern
(no current address) (paid)
1969 - Olympia Brewing Co., Employee – summer employment (paid)
(no current address)

<u>Other Organizations:</u>
2000-2005 - Paradise View Estates, L.L.C., Member (passive investment/nonpaid)
(no current address)
1998(est)-Present - Angle Building, L.L.C., Member
103 S. 4th Street, P.O. Box 1400, Shelton, Washington, 98584 (passive investment rental income/ nonpaid)
1994-1996 - Black Hills Gymnastics, Inc., Director/Vice President (passive investment/nonpaid)
(no current address)
1983(est)-1990(est) - Exceptional Foresters, Inc., Director, 1982-1988 (est.) (nonpaid)
2009 W. Railroad Ave., Shelton, Washington, 98584
1983-Present – First Baptist Church, Governing Board, Elder from 1989 to present (nonpaid)
428 W. Cota, Shelton, Washington, 98584

1982 (est) - Present, Shelton Mason County Chamber of Commerce, Director 1985 to 1988 (est) (nonpaid)
221 W. Railroad Ave, Shelton, Washington 98584
1981 (est) to Present - Shelton Rotary Club, Director in 1986 (est.) (nonpaid)
P.O. Box 633, Shelton, Washington, 98584

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

I was appointed a Second Lieutenant (O-1) in the United States Army Reserve on June 8, 1969. I entered on active duty on January 20, 1973. I was honorably released from active duty on June 30, 1975 as a Captain (O-3) and transferred to the Army Reserve. I received an honorable discharge on January 9, 1982.

9. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

None other than Army Commendation Medal awarded twice

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

Washington State Bar Association
Legislative Committee – approximately 1992-1995
Judicial Recommendation Committee – approximately 1999-2001
Special Investigative Counsel – approximately 2000-2004

Federal Bar Association

11. **Bar and Court Admission:**

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

Washington State Bar Association – unified bar admitted to all Washington State Courts – 10/12/72 to present

b. **List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.**

Washington State Courts – 10/12/72 to present

United States District Court District of Western Washington – 1972-present

U.S. Court of Military Appeals – 1973 to present (My membership may have terminated at the end of my active duty.)

12. **Memberships**:

a. **List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.**

Other organizations to which I belong or have belonged and not previously listed are:

Washington State Association of Public Utility District Attorneys, 1981 to present
Washington Society of Hospital Attorneys, 1979 to present
Washington Association of Municipal Attorneys, 1989 to 2003
Shelton Kiwanis Club, 1978 to 1981
Mason County Economic Development Council, 1988 (est.) to present

b. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.**

When I first joined a Rotary Club in 1981 (listed in question 7) it was a male only organization. Shortly after I joined there was a movement within the club, which I supported, to open the club to women. This occurred during a time when Rotary International was exploring the need to remove any gender discrimination. I believe our club changed before the official policy of the national organization changed, which it did.

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

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

The only written materials that would fall under these categories that I have written would be letters written to the editor in our local newspaper over the last 30 years. I do not know of the number but it might be around 10. I have not kept any copies of those letters. Generally, the letters were in support of levies and bonds for schools and other local entities. Some would be in support of political candidates.

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

The only written materials that would fall into this category that I can think of would be reports developed in investigations of bar complaints against other lawyers for the Washington State Bar Association in my capacity as Special Investigative Counsel. These reports are, of course, confidential and not subject to public disclosure.

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

The only written materials that would fall into this category would be legal opinions provided to my governmental clients (city, school district, hospital and public utility districts) and would be protected information under the attorney/client privilege. Of course, this would constitute a significant body of material over 30 years.

d. **Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not**

speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

In past years I have been a guest speaker at Shelton High School on career day and for government classes to speak on the legal system. I have been similarly spoken to the classes at the Olympic Community College on the subject of the American legal system. I have not kept any notes from such presentations which were essentially given from brief handwritten notes before each presentation. The content of these presentations did not vary significantly and were general description of our federal and state constitutions with emphasis on the court systems.

e. **Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.**

The only such interview I can recall giving is the one recently given to my hometown newspaper after my nomination.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

I have not served as a judge. On a few occasions over the last 20 years I have been appointed to serve as a Judge Pro Tempore in Mason County Superior (the trial court of primary jurisdiction in Washington) and District Court (trial court of limited jurisdiction). None of this activity resulted in the issuance of written opinions.

15. **Citations: If you are or have been a judge, please provide:**

a. **citations for all opinions you have written (including concurrences and dissents);**

b. **a list of cases in which certiorari has been requested or granted;**

c. **a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

d. **a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

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

f. **citations to all cases in which you were a panel member in which you did not issue an opinion.**

I have not served as a judge.

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

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

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

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

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

I have not served as a judge.

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

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

I have held no public offices.

b. **List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify**

the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I served as the county coordinator for each of Senator Slade Gorton's campaigns for Attorney General for the State of Washington and his four campaigns for the U.S. Senate. I served in a similar capacity for the unsuccessful candidacy for Governor of the State of Washington by Dino Rossi in 2004. These were non-paid volunteer positions and involved arranging for placing of yard signs, doorbelling, telephone calling and planning candidate appearances.

18. **Legal Career: Please answer each part separately.**

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

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

I did not serve as a clerk.

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

I have never practiced alone.

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

1972 and 8/76 to 2/77 -Don Miles, Attorneys,
4th and Capitol Way
Olympia, WA 98501
associate attorney

1/73 to 7/76 – United States Army
Judge Advocate General's Corps; attorney

1977 to Present - Settle & Johnson, P.L.L.C.,
P.O. Box 1400,
Shelton, Washington 98584
Member since 1997. I was a partner in each of the firm's previous configurations, 1977-1997.

b. Describe:

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

My private practice has changed over the years. After leaving the Army, I was engaged in litigation and criminal defense work. In the early 80's I discontinued my criminal defense work and in the mid 80's stopped handling divorces. My practice evolved into general litigation and commercial law practice over the next 10 years. My practice has in recent years become one of general counsel to several municipal and private corporate entities.

ii. your typical clients and the areas, if any, in which you have specialized.

As corporate general counsel I provide daily advice to key clients which include two public utility districts, a hospital, a school district, the largest shellfish company on the west coast, a local telephone company and one of the largest evergreen product producers in the country. The areas of commercial contract law, governmental regulation, real estate, and employment law are particular areas of emphasis.

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

In the first half of my law career I appeared in court frequently. In the last few years my partner has handled the litigation responsibilities for the firm and I appear in court occasionally. I have also continued to represent clients in arbitration and mediation proceedings.

i. Indicate the percentage of your practice in:

1. **federal courts;** 2%
2. **state courts of record;** 98%
3. **other courts.** 0%

ii. Indicate the percentage of your practice in:

1. **civil proceedings;** 100% after about 1985
2. **criminal proceedings.** Before 1985 approximately 25%

d. 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 tried approximately 80 cases to verdict or judgment. Of these, I would estimate over 50 were as sole counsel, five to ten as Chief Counsel, and over 20 as Associate Counsel.

i. What percentage of these trials were:

1. **jury;** Approximately 10%
2. **non-jury.** More than 90%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None

19. Litigation: Describe the ten (10) 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 representation;

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

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

1. *Washington Manufactured Housing Association v. Public Utility District No. 3 of Mason County*, 124 Wn. 2d, 878 P.2d 1213 (1994). The case was heard before Judge James B. Sawyer in Mason County Superior Court and the Washington State Supreme Court.

In this case, which occurred over the years 1992-1994, I represented the Defendant/Respondent Mason County Public Utility District No. 3, a public electric distribution utility. The utility imposed a connection charge on older mobile homes brought into the county that did not meet certain energy efficiency standards. The Washington Manufacturing Association brought the suit to enjoin this practice alleging that the utility did not have the authority to impose such a charge because manufactured homes construction were exclusively regulated by

HUD and thus the field had been preempted. Additionally, Plaintiff asserted a violation of the commerce clause which was rejected by the court. The trial court upheld the connection standard and the charge. The Plaintiff received a direct appeal to the Washington State Supreme Court. That court affirmed the decision. I was the lead counsel and presented the oral argument before the Washington State Supreme Court.

Co-counsel was my partner Robert W. Johnson who may be reached at our offices. Opposing counsel was represented by Russell A. Austin, Jr. who is now deceased.

2. *State v. Nelson*, 26 Wash. App. 612, 613 P.2d 1204 (1980). The case was tried twice in Mason County Superior Court, Judge Robert J. Doran, and appealed and heard twice before Division Two of the Washington State Court of Appeals.

In this murder case, spanning the years 1976 to 1980, I was assigned lead counsel as a public defender and was assisted by Ward Rathbone at the trial level. The Defendant was charged with first degree murder which carried a life sentence as punishment. A jury returned a verdict of second degree murder and he was sentenced to twenty years in prison (he was released after 12 years). I represented the defendant on appeal and the court of appeals reversed the conviction on the basis of an improper jury instruction. Nelson was retried and convicted of second degree murder and with same resulting sentence. I represented the defendant on the second appeal asserting several errors all of which were rejected and the conviction stood.

Co-Counsel in the two trials was Ward Rathbone, 2430 Chamber Ct., Olympia, Washington, 98504, 360-753-6823. I handled the appeals.

Opposing counsel in the first trial was Byron McClanahan, 419 Euclid W, Shelton, Washington 98584 360-426-8182. Opposing counsel for the second trial and the two appeals was Gary Burleson, 521 N. 4th Street, Suite A, Shelton, Washington 98584, 360-426-9670.

3. *Taylor United, Inc. v. Department of Revenue*, Not reported in P.3d, 114 Wash. App. 1080, 2002 WL 31895142, Wash. App. Div. 2, December 31, 2002. The case was tried before the Board of Tax Appeals, the Mason County Superior Court, Judge James B. Sawyer, and appealed to Division Two of the Washington State Court of Appeals.

From 1999 through 2002, I represented the plaintiff in a successful challenge to a tax audit conducted by the Washington State Department of Revenue concerning a shellfish excise tax. The tax was over $200,000.00. The taxpayer, the largest shellfish grower on the west coast, claimed an exemption from the tax because it had raised the shellfish itself from seed. The trial court granted the relief and the Department appealed. The Court of Appeals affirmed the trial court decision in

an unpublished opinion. I took the case through the administrative appeals. My partner and I tried the case to the trial court and both handled the appeal. My partner appeared for the oral argument on the appeal.

My law partner Robert Johnson was my co-counsel.

Opposing counsel was Debra E. Casparian and Anne E. Egeler of the Washington State Attorney General's Office, 1125 Washington SE, Olympia, Wa. 98501, 360-753-6200.

4. *In the Matter of Smith*, 30 Wash. App. 943, 639 P. 2d 779 (1982). The case was tried before Judge Hewitt A. Henry (deceased) and before Division Two of the Washington State Court of Appeals.

This case involved the dismissal of a deputy sheriff by the Mason County Sheriff. The reason given for the dismissal was that the deputy while off duty and driving on a public highway had displayed a firearm in an intimidating fashion to another motorist. The matter was appealed to a civil service commission which upheld the termination but on separate grounds. The trial court reversed the civil service commission and reinstated the deputy. The Sheriff unsuccessfully appealed the decision to the Washington State Court of Appeals. I was lead counsel in the case beginning with the civil service appeal through the appeals to the trial court and the court of appeals. My representation of the deputy sheriff began in August 1979 and was completed in January 1982.

I was assisted by my then partner, B. Franklin Heuston, 1004 Laurel Street, Shelton, Washington 98584, 360-426-4793.

Opposing counsel were Byron McClanahan, 419 Euclid W, Shelton, Washington 98584, 360-426-8182, and Richard Adamson, P.O. Box1186, Shelton, Washington 98584, 360-426-2754.

5. *Chemical Bank v. Washington Public Power Supply System*, 99 Wn. 2d 772, 666 P. 2d. 329 (1983). The case was tried before Judge H. Joseph Coleman (ret.), in King County Superior Court and appealed to the Washington State Supreme Court.

This case began as a declaratory judgment brought by Chemical Bank as a bond trustee for bondholders owning 2.25 billion dollars of municipal bonds issued by the Washington Public Power Supply System in order to build two nuclear generating plants in Washington State. The purpose of the action was to seek an order declaring that the participants' agreement, which were the virtual security for the bonds and which were signed by twenty-three publicly owned utilities with WPPSS were legally binding and that these public entities had the legal authority to enter into them. The trial court ruled that the entities had such authority and the contracts were legally binding upon them. The Washington State Supreme

Court reversed that decision and ruled that such authority to enter into these agreements was lacking. The result was one of the largest municipal bond defaults in history. I represented as general counsel two public utilities which were named defendants in the lawsuit, Mason County Public Utility Districts Nos. 1 and 3. I played a significant role in the selecting lead counsel, Albert R. Malanca, and providing weekly assistance to him and his associates in developing and researching legal theories and arguments. Other local attorneys were also involved, but those from his firm who worked on this case with Mr. Malanca, who is now deceased, would probably indicate that my contribution, along with perhaps another local attorney, was instrumental to the effective overall representation of the group of defendants. The litigation spanned the years 1981-1983.

Lead counsel was Albert R. Malanca, deceased. He was assisted by Donald Cohen, 600 University St., Suite 2100, Seattle, Washington 98101, 206-676-7531.

Principal opposing counsel was Michael Mines, 701 Pike St., Suite 1400, Seattle, Washington 98101, 206-292-9988.

6. *In re Washington Public Power Supply System Securities Litigation,* MDL No. 551, U.S. District Court Western District of Washington at Seattle, (1983-1988). The case was initially assigned to Judge Richard M. Bilby and within a year re-assigned to Judge William D. Browning.

This litigation was commenced as a class action in both Oregon and Washington federal district courts in response to the default of the bonds which were involved in the litigation described in number 5 above. Plaintiff bondholders joined with Chemical Bank as bond trustee to recover damages against the bond issuer, WPPSS, the public utilities that had participated in the nuclear generating projects, underwriters, bond counsel, architects and other professionals involved in the development and financing of the nuclear plants. Albert R. Malanca was selected to serve as lead counsel in defending this litigation which claimed over six billion dollars in damages against all defendants jointly and severally. If successful, many public utilities were faced with bankruptcy. I was involved for a five-year period, 1983-1988, in assisting lead counsel and his associates in the strategic managing of the case as well as assisting in research and other case preparation. The case went to trial in 1988 and was terminated after two months when a settlement was reached. My client, which had an exposure for over sixty-six million dollars if the jury apportioned liability on the basis of my utility's percentage share of the plants, settled for just over two and one-half million dollars.

Lead counsel for my group of utilities, was Albert R. Malanca, deceased. He was assisted by Donald Cohen, 600 University St., Suite 2100, Seattle, Washington 98101, 206-676-7531.

Principal opposing counsel were Paul M. Bernstein (deceased), Melvyn I. Weiss, One Pennsylvania Plaza, 49th Floor, New York, New York 10119, 212-946-9326 and Michael Mines, 701 Pike St., Suite 1400, Seattle, Washington, 98101, 206-292-9988.

7. *Public Utility District No. 1 of Klickitat County v. International Ins. Co.,* 124 Wn. 2d 789, 881 P. 2d 1020 (1994). The case was tried before King County Superior Court Judge LeRoy McCullough and reviewed by the Washington State Supreme Court.

This case was among several in which several utilities, including the two public utility districts for which I was general counsel, brought suit against insurance companies who had sold them liability policies. This suit particular suit resulted in a judgment against the defendant in the amount of thirteen million dollars plus interest and attorneys' fees after a trial to a judge. I assisted in the management and oversight of this litigation as well as appeared as an important witness. The result of this and other related insurance litigation in which I assisted, though not an attorney of record, was that my client Mason County Public Utility District No. 3 recovered all but $800,000.00 of its share in the settlement of the MDL 551 securities litigation. The other smaller utility I represented paid less than $200,000.00 towards the settlement. This case closed this chapter of a series of potentially devastating lawsuits over a span of eleven years against two utilities that I represented. The experience involved me in the arena of complex litigation and class action lawsuits. The litigation spanned the years 1989-1994.

Lead counsel in the case was Albert R. Malanca who is deceased. Donald S. Cohen acted as co-counsel. He may be reached at 600 University St., Suite 2100, Seattle, Washington, 98101, 206-676-7531.

Opposing lead counsel on appeal was Charles K. Wiggins, 241 Madison Ave. N., Bainbridge Island, Wa. 98110, 206-780-5033 and trial lead opposing counsel was Daniel F. Mullin, 701 5th Ave., Suite 2850, Seattle, Wa. 98104, 206-622-2295.

8. *United States of America, et al., v. State of Washington,* U.S. District Court, Western District of Washington at Seattle, Case No. C70-9213, Subproceeding No. 89-3 (Shellfish). The case was tried before Judge Edward Rafeedie. The case was appealed and heard by the Ninth Circuit Court of Appeals.

This lawsuit was commenced in 1989 as part of litigation that had its origin in 1970 and had resulted in Indian tribes in Washington State securing treaty rights to fish. The essence of that ruling was that the treaties guaranteed to Indian fishers the right to take one-half of the fish runs in Washington waters. The subproceeding was brought by the United States and the tribes to secure treaty rights to shellfish in the Puget Sound. I have been general counsel to the largest shellfish grower on the West Coast for over two decades. The suit threatened the very existence of my client and other growers. The trial court ruled that the tribes

had a right to harvest up to one-half of the naturally occurring shellfish. Growers retained the right to all of the shellfish that were the product of human labor and activity. The case went to the 9th Circuit Court of Appeals where the case was generally affirmed but remanded for implementation on its ruling that clarified that naturally occurring shellfish beds were those that could produce a sufficient quantity to sustain a commercial livelihood.

Lead counsel for the shellfish growers has been Michael Himes, 1201 3rd Ave. 40th Floor, Seattle, Washington 98101, 206-359-8667. Opposing lead counsel has been Phillip E. Katzen, 100 S. King Street, Suite 560, Seattle, Washington 98104.

9. *Boulton v. Finlay Hydrascreens, Ltd., et. Al,* Mason County Superior Court Cause No. 97 2 11605 3, (1997).

This case was brought by a widow and mother of three young children to recover damages for wrongful death of her husband in an industrial accident. Her husband was killed when he became entangled in a conveyor belt on a portable machine that processed wood wastes. The suit alleged that the defendant manufacturer of the machine had negligently designed the equipment and had failed to provide adequate warnings as to the dangers of the machine. The case was settled before trial for $850,000.00. I shared lead counsel role in representing the widow with Frederick D. Gentry. The case involved hiring several experts and extensive discovery. The case spanned the years 1997-1999.

Co-lead counsel was Frederick D. Gentry, 320 N. Columbia St., Olympia, Washington 98507, 360-943-8040.

Opposing counsel were Thomas J. Collins, 710 9th Ave., Seattle, Washington 98104, 206-682-0610 and Robert Casey, 1201 Pacific Ave., Tacoma, Washington 98402, 253-572-4500.

10. *Estate of Barry Rodgers v. Bruce Bell and Frank Tobinski,* Thurston County Cause No. 83-2-1249-7 (1983). The case was tried before Judge Gerry Alexander of the Thurston County Superior Court. He is now the Chief Justice of the Washington Supreme Court.

This case was commenced by Leslie Rodgers as executor of his son's estate for the wrongful death of his son arising from a hunting accident in which the fourteen year-old son was fatally injured due to the negligence of two other men that had been part of a hunting party that included the father. One of the defendants left his rifle loaded while it was being transported in a boat. The other defendant had tied the parties' rifles together by tying a line through the trigger loops of each of the rifles and securing them with the same line to the boat. The boat capsized in a river and Barry went to fetch the boat by getting a hold of the line. His pulling on the line resulted in one of the rifles discharging and mortally wounding him. The case went to trial but was settled before the plaintiff's case

was finished for $150,000.00 which at the time was one of the largest amounts paid for the wrongful death of a minor in Thurston County. I shared the co-lead counsel for the plaintiffs and took the primary role in presenting the case at trial before the settlement. This was a very emotional and painful process for the parents and made more so because of allegations of contributory negligence of the father. The case spanned the years 1983-1984.

Co-lead counsel was Stephen T. Whitehouse, 601 W. Railroad Ave., Shelton, Washington 98584, 360-426-8255. Opposing counsel was Ralph Swanson of Olympia, Washington who is now deceased.

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

I have had a significant involvement in complex litigation as general counsel in providing strategy, research and oversight of engaged lead counsel. This has been necessary because of my responsibilities of general counsel to several clients that require my regular availability to handle emergent problems. As a result I have had the opportunity to work closely with some of the best litigators in the state.

There have been many opportunities to help clients navigate through legislative or regulatory requirements. One especially challenging and fascinating period of my practice has been in the last seven years in my assisting a public utility district pioneer the introduction of fiber optic communication facilities in my rural county. This process began with my playing an important role is assisting lobbyists before the Washington State Legislature in developing and passing legislation that allowed public entities the authority to provide wholesale telecommunication services. This has been important to rural communities such as Mason County to be able to recruit and retain businesses. My utility has been a leader in implementing this authority which has required my constant and careful involvement. The utility has not wanted to compete with retail service providers but rather facilitate their presence by constructing infrastructure.

I also played a key role in the formation of a large network of fiber optic transmission through a joint effort of many public utilities. My legal services were provided to that organization, NoaNet, in not only the formation but in the early contracting with companies such as Cisco Systems, Inc. As the result of this organization and lower electric rates than are available in many parts of the country, large "server farms" are locating to rural Washington State.

As general counsel to several public and private corporations, I have had the responsibility to represent them before other regulatory bodies and provide oversight to their legal compliance programs. It has been a matter of some professional satisfaction that my clients have appreciated my strong track record of keeping them out of legal difficulties.

In years past I served in the capacity of Judge Pro Tempore in Mason Count Superior and District Courts. I have had considerable experience serving as both an arbitrator and mediator over the years. I have enjoyed the confidence of the local bar and been selected to handle many arbitration cases which are governed by local court rules for mandatory arbitration rules. In recent years I have also successfully mediated several matters.

I have served The Washington State Bar Association in three different capacities. It appointed me to act as Special Investigative Counsel for several years. This responsibility involved investigating bar complaints by clients against their lawyers. I also served two terms on the Judicial Recommendation Committee. This group of lawyers reviewed the qualifications of lawyers seeking appointment by the Governor of the State of Washington to Washington appellate courts. Finally, I served two terms on the Legislative Committee. It was its responsibility to analyze proposed legislation that would directly bear upon the practice of law and make recommendations to the Board of Governors as to whether it should take a position on the legislation.

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

    1975 – Business Law, University of Puget Sound, Adjunct MBA program in Olympia, Washington. The course involved the standard subjects of a basic business law course. I have not retained any materials from that class.

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

    None

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

No

24. **<u>Sources of Income</u>: 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.)**

    See attached Financial Disclosure Statement

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

    See attached Net Worth Statement

26. **<u>Potential Conflicts of Interest</u>:**

    a. **Identify the parties, 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. Explain how you would address any such conflict if it were to arise.**

    There are a number of areas of concern regarding conflicts of interest that would require my attention if I were to become a federal district court judge in the Western District of Washington. The first area would be in any litigation in which a former law partner was acting as legal counsel for a party or was himself a party. Second would be any case in which a former client was a party. Additionally, I will be sensitive to any case that involves another entity which has had a close relationship with a past client of mine or which involves parties with whom I have had personal relationships, such as family and friends. Finally, I would watch for cases in which a party is a publicly traded company in which I or my wife had owned stock. In all cases and situations, I would fully comply with the Code of Conduct for United States Judges and applicable statutes.

    b. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

    If confirmed, I will follow all policies and procedures regarding conflicts and recusal. The conflicts should be identified when a case is assigned. I would expect to review thoroughly the initial pleadings of every case assigned to me at the earliest possible time to determine if there exists in that litigation any suggestion of a conflict. If there is, the matter should be re-assigned in an expeditious manner.

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

For more than twenty years I have volunteered my legal services for legal assistance programs administered by the Puget Sound Legal Foundation which became the Northwest Justice Project. This involved three to four referrals a year representing low income individuals in civil matters. Most of these were landlord/tenant disputes or other property law matters. I have also given pro bono legal assistance to many nonprofit corporations that have assisted the poor or disadvantaged. One in particular, the Exceptional Foresters, Inc., provides shelter and occupational opportunities to the developmentally disabled. I also served on its board for six years.

28. **<u>Selection Process</u>:**

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

In October of 2005 I was encouraged by several people to apply for the vacancy in the Western District of Washington Federal District Court at Tacoma. After consultation with my wife, family, lawyers and judges I did apply. I submitted my application to a commission consisting of six lawyers, three of whom were appointed, I believe, by Senator Murray and three by Congressman Doc Hastings. I was selected by the commission for an interview along with ten other applicants. I was informed that three names, including mine, would be forwarded first to Senator Murray. I was asked to make an appointment with Senator Patty Murray which was arranged and conducted. She told me that she would forward one, two or three of the names on to the President. My name was forwarded and I was given an appointment to meet with staff from the White House Counsel's Office and from Department of Justice. I met with them on August 16, 2006 at the White House and was notified within two weeks that I was the

preliminary choice for the position. After completing nomination paperwork, I was advised that my name would be submitted as the nominee. My nomination was forwarded on November 15, 2006 and returned to the President on December 9, 2006. I was renominated on January 9, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Settle, Benjamin H	Western District of Washington	01/10/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) ☒ Nomination, Date 01/09/2007 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2006 to 12/31/2006
7. Chambers or Office Address 103 S 4th St. P. O. Box 1400 Shelton WA 98584	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Member	Settle & Johnson, PLLC
2. Member	G. C. Angle Buidling, LLC
3. Member	Paradise View Estates, LLC
4.	
5.	

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

☒ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 7	Name of Person Reporting Settle, Benjamin H	Date of Report 01/10/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2006	Settle & Johnson, PLLC - Draws	$ 132,000.00
2. 2005	Settle & Johnson, PLLC - Draws	$ 123,872.00
3.		
4.		
5.		

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

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

DATE	SOURCE AND TYPE
1. 2006	Mason County Christian School - employment income
2. 2005	Mason County Christian School - employment income
3.	
4.	
5.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1. Exempt	
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 7	Name of Person Reporting Settle, Benjamin H	Date of Report 01/10/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Key Bank	Commercial Building Mortgage	M
2. Ruth Angle	Commercial Building Mortgage	M
3. Pueblo Bonito	Time Share	J
4. Key Bank	Line of Credit	K
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Settle, Benjamin H	01/10/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Amgen, Inc. - AMGN (Common)	A	Dividend	J	T	Exempt				
2. BHP Billiton Ltd - BHP (Common)	A	Dividend	J	T					
3. Microsoft Corp. - MSFT (Common)	A	Dividend	L	T					
4. Costco Wholesale Corp New COST (Common)	A	Dividend	J	T					
5. Paccar, Inc - PCAR (Common)	A	Dividend	J	T					
6. Starbucks - SBUX (Common)	A	Dividend	J	T					
7. Goldman Sachs Gwth & Inc Stragegy Fund CL B - GOIBX 2005-6	A	Dividend	J	T					
8. Capital World Growth & Income Fund CL B - CWGBX	A	Dividend	K	T					
9. Investment Company of America CL A AIVSX	A	Dividend	J	T					
10. Investment Company of America CL B AICBX	A	Dividend	J	T					
11. Washington Mutual Investors Fund CL A AWSHX	A	Dividend	J	T					
12. General Electric Co. - GE (Common)	A	Dividend	J	T					
13. Johnson & Johnson - JNJ (Common)	A	Dividend	K	T					
14. Fundamental Investors Fund CL B AFIBX - 2005	A	Dividend	J	T					
15. Goldman Sachs Emerging Markets Equity Fund CL B -GEKBX 2006	A	Dividend	K	T					
16. Goldman Sachs International Equity Fund CL A - GSIFX	A	Dividend	J	T					
17. Qualcomm, Inc. - 2006	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Settle, Benjamin H	01/10/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Intel Corporation - 2006	A	Dividend							
19. G. C. Angle Building, LLC - 2005	F	Rent	L	U					
20. G. C. Angle Building , LLC - 2006	F	Rent	L	U					
21. Echelon Corp - 2005	A	Dividend							
22. Ford Motor Co. - 2005	A	Dividend							
23. JDS Uiphase - 2005	A	Dividend							
24. Nokia Corp. - 2005	A	Dividend							
25. Real Networks - 2005	A	Dividend							
26. Sycamore Networks- 2005	A	Dividend							
27. Visteon Corp - 2005	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Settle, Benjamin H	Date of Report 01/10/2007

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

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Settle, Benjamin H	Date of Report 01/10/2007

IX. CERTIFICATION.

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

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

Signature _____ Date 1/11/07

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		82	000	Notes payable to banks-secured		8	274
U.S. Government securities-add schedule				Notes payable to banks-unsecured		15	080
Listed securities-add schedule		258	472	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		445	321
Real estate owned-add schedule	1	125	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		87	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		468	675
				Net Worth	1	083	797
Total Assets	1	552	472	Total liabilities and net worth	1	552	472
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Amgen Inc.	$ 3,005.84
BHP Billiton	10,176.00
Costco	5,287.00
Microsoft	68,319.68
Paccar	4,867.50
Starbucks	3,542.00
General Electric	12,927.18
Johnson & Johnson	39,451.00
Goldman Sachs Growth Fund	8,677.49
Goldman Sachs Emerging Market	21,253.39
Goldman Sachs International	10,212.64
Fundamental Investors Fund	12,346.64
Capital World Growth Fund	33,111.34
Investment Company of America	14,095.31
Washington Mutual Investment	11,199.44
Total Listed Securities	$ 258,472.45

Real Estate Owned	
Personal residence	$ 350,000
Seasonal Home (50% interest)	375,000
Recreation lot	100,000
Commercial building (50% interest)	300,000
Total Real Estate Owned	$ 1,125,000

Real Estate Mortgages Payable	
Personal residence	$ 160,027
Commercial building	285,294
Total Real Estate Mortgages Payable	$ 445,321

AFFIDAVIT

I, Benjamin H. Settle, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 31, 2007
(DATE)

(NAME)

(NOTARY)

Senator DURBIN. Judge Kapala?

STATEMENT OF FREDERICK J. KAPALA, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS

Judge KAPALA. Thank you, Mr. Chairman. I appreciate those kind words. I will do my utmost to live up to them. I thank you for chairing this hearing. I thank you for your support, and that of Senator Obama. I certainly thank Senators Lott and Cochran for appearing here this morning, and certainly to the President for nominating me.

With your permission, I'd like to acknowledge the people that are with me here today.

Senator DURBIN. Yes.

Judge KAPALA. I have my wife, Jill; my daughters, Candy and Katie; Katie's friend, Dylan Whitcher; and my very dear friend, Mike Dunn, and his son Peter. I'm thankful that they're here with me today to support me, and I waive any further opening statement.

[The biographical information of Judge Kapala follows.]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Frederick Joseph Kapala

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

   Residence: Rockford, Illinois

   Office: 6801 Spring Creek Road, Suite 2A
   Rockford, Illinois 61114-7420

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

   September 5, 1950 in Rockford, Illinois

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

   I am married to Jill D. Kapala (Maiden name: Jill D. Balentyne). She is a homemaker and Substitute Elementary School Teacher at Holy Family Catholic School; 4407 Highcrest Road; Rockford, Illinois 61107

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

   University of Illinois College of Law, 1973 to 1976; J.D. granted May 16, 1976

   Marquette University, 1968 to 1972; B.A. granted May 21, 1972

   Since graduating from undergraduate school, I have taken non-credit courses at the National Judicial College, the National College of Juvenile and Family Law Judges, and Rock Valley College. No degrees were received from any of these institutions.

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.**

   1982 – Present; State of Illinois; Associate Judge (1982-1994), Circuit Judge (1994-2001), Appellate Justice (2001-present).

1977 – 1982; Pedderson, Menzimer, Conde, Stoner and Killoren; attorney

1976 – 1977; County of Winnebago; Assistant State's Attorney

1972 – 1975; Rockford Ornamental Shop; Welder

I am or have been a member of the Board of Directors of the following not-for-profit civic organizations:

1997-present; Anderson Gardens
1996-1998; Rotary Club of Rockford
1996-1998; Rockford Rotary Charitable Association
1993-1995; Macktown Living History Education Center
1986-1989; Barbara Olson Center of Hope
1983-1989; Al-Care of Rockford

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.**

I served in the United States Army, active and reserve duty 1970-1980, attained the rank of Captain, and was honorably discharged on May 20, 1980.

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

Phi Beta Kappa member- liberal arts honors society

Pi Gamma Mu member- social science honors society

Magna Cum Laude graduate- Marquette University

Moot Court Board member- University of Illinois College of Law

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.**

Winnebago County Bar Association

Boone County Bar Association

Illinois State Bar Association

American Bar Association

I practiced law in Florida and Wisconsin where bar association membership is mandatory. Consequently, I was a member of the Florida Bar and the State Bar of Wisconsin. Because judges in Illinois are prohibited from practicing law, I voluntarily took inactive status in those organizations after joining the judiciary. At any time by petition I may resume the practice of law in these states.

Illinois Judicial Conference- Committee on Discovery Procedures, 2001-present, chairperson 2004-present

Judicial Inquiry Board, 2001-present, chairperson 2006

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.

Other than the bar associations listed in question 9 above, I belong to no organizations that are active in lobbying before public bodies.

Other organizations to which I belong are:

Anderson Gardens, 1997-present

Boy Scouts, Blackhawk Area Council Nominating Committee, 2001-present

Rotary Club of Rockford, 1990-present

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.

State of Illinois, October 18, 1976;

State of Florida, June 18, 1979;

State of Wisconsin, December 18, 1981;

United States District Court for the Northern District of Illinois, January 10, 1977;

United States Court of Appeals for the Seventh Circuit, March 27, 1981;

Supreme Court of the United States, May 4, 1981;

United States Court of Claims, April 30, 1981;

United States Tax Court, May 1, 1981.

There have been no lapses of membership in any of the above courts with the exception of Florida and Wisconsin, where I am on Inactive Status.

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.**

I have no published writings other than opinions I have authored as an appellate court judge.

During my legal career I have given many speeches involving constitutional law. Most of the speeches were delivered extemporaneously, some with the aid of notes, and some with manuscripts. With only one exception, I have no copies of my notes or manuscripts.

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

I am in excellent health. The date of my last physical examination was September 25, 2006.

14. **Judiclal Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

In 1982, I was appointed Associate Circuit Court Judge of the 17th Judicial Circuit, Winnebago and Boone Counties, Illinois. This is a general trial court. During the time I was an associate judge I was appointed as the presiding judge of the juvenile court division in Winnebago County from 1989-1991.

In 1994, I was elected Circuit Court Judge of the 17th Judicial Circuit, Winnebago and Boone Counties, Illinois. During my tenure as a circuit judge I was appointed as the

presiding judge of the criminal court division in Winnebago County from 1995 to 2001. I was reelected in 2000, and in 2006 for a six-year term.

In 2001, I was assigned to the Appellate Court of Illinois, Second District, which takes appeals from the 15th (Ogle, Lee, Carroll, Jo Daviess, and Stephenson Counties) 16th (De Kalb, Kane, and Kendall Counties), 17th (Winnebago and Boone Counties), 18th (Du Page County), and 19th (Lake and McHenry Counties), Judicial Circuits of Illinois. This is a court with general appellate jurisdiction.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

(1) citations for the ten most significant opinions you have written:

Wolf v. Menard, Inc., 364 Ill. App. 3d 338, 846 N.E. 2d 605, 301 Ill. Dec. 280 (March 8, 2006).

Ford Motor Credit Co. v. Sperry, 344 Ill. App. 3d 1068, 801 N.E. 2d 954, 280 Ill. Dec. 9 (November 3, 2003) (Kapala J., dissenting).

Du Page County Election Comm'n v. State Board of Elections, 345 Ill. App. 3d 200, 800 N.E. 2d 1278, 279 Ill. Dec. 695 (December 11, 2003).

Wilson ex rel. Geiger v. Hinsdale Elementary School Dist. 181, 349 Ill. App. 3d 243, 810 N.E. 2d 637, 284 Ill. Dec. 847 (May 27, 2004).

People v. Mulvey, 366 Ill. App. 3d 701, 853 N.E. 2d 68, 304 Ill. Dec. 536 (July 19, 2006).

In re Arthur H., Jr., 338 Ill. App. 3d 1027, 789 N.E. 2d 890, 273 Ill. Dec. 716 (May 12, 2003) (Kapala J., dissenting).

People v. Banuelos, 345 Ill. App. 3d 970, 804 N.E. 2d 670, 281 Ill. Dec. 705, 186 Ed. Law Rep. 509 (February 4, 2004).

Salgado v. Marquez, 356 Ill. App. 3d 1072, 828 N.E. 2d 805, 293 Ill. Dec. 495 (April 20, 2005).

Haupt v. Sharkey, 358 Ill. App. 3d 212, 832 N.E. 2d 198, 295 Ill. Dec. 47 (June 16, 2005).

People ex rel. Ryan v. Agpro, Inc., 345 Ill. App. 3d 1011, 803 N.E. 2d 1007, 281 Ill. Dec. 386 (January 27, 2004).

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings:

As an appellate court judge:

a. People v. Grever, 353 Ill. App. 3d 736, 819 N.E.2d 6, 289 Ill. Dec. 94 (2004), which was affirmed in part and reversed in part by the Illinois Supreme Court in People v. Grever, 222 Ill. 2d 321, 856 N.E. 2d 378, 305 Ill. Dec. 573 (2006).

This was an appeal by a criminal defendant convicted of eight counts of official misconduct. The appellate court reversed five of defendant's eight convictions and affirmed the remaining three convictions. The Illinois Supreme Court reversed that part of the appellate court decision affirming the three convictions. In doing so, the Illinois Supreme Court disagreed with the appellate court's conclusion that the language "the amount and kind of all outstanding indebtedness due and unpaid" in the statute delineating the duties of a township supervisor includes both amounts owed by the township and amounts owed to the township. The Illinois Supreme Court interpreted the term "indebtedness" to mean only amounts owed by the township.

b. In re Marriage of Bates, 342 Ill. App. 3d 207, 794 N.E. 2d 868, 276 Ill. Dec. 618 (2003), which was affirmed by the Illinois Supreme Court in In re Marriage of Bates, 212 Ill. 2d 489, 819 N.E. 2d 714, 289 Ill. Dec. 218 (2004).

The appellate court opinion rejected a contention that section 506 of the Illinois Marriage and Dissolution of Marriage Act denied procedural due process rights to the petitioner because the statute allowed the "child representative" to submit a recommendation without testifying. The appellate court reasoned that there were three possible situations in which a child representative might act as an advocate for the child: (1) based upon evidence presented at trial; (2) based upon information provided by investigators or witnesses; and (3) based upon his own observations as a direct witness. The appellate court concluded that section 506(a) did not prohibit a party from cross-examining the child representative acting in the third situation and, therefore, that section 506(a) did not deny procedural due process rights to the petitioner and was not unconstitutional as contended on appeal. The appellate court held further that the trial court erred in denying a request to have the child representative testify to the extent that the child representative's recommendation was based upon his own observations.

Nevertheless, the appellate court concluded that the error was harmless and affirmed the judgment of the trial court.

On appeal, the Illinois Supreme Court disagreed and held that section 506(a)(3) was unconstitutional as applied in this case. The court, however, agreed that any error in failing to grant the request to have the child representative testify was harmless and affirmed the judgment of the appellate court.

As a trial court judge:

a. People v. Robinson, 324 Ill. App. 3d 553, 755 N.E. 2d 1034, 258 Ill. Dec. 215 (2001).

I granted the State's motion to dismiss defendant, Allen Robinson's, postconviction petition as untimely. The Appellate Court reversed and remanded in holding that defendant's postconviction counsel was ineffective for failing to argue that defendant's mental condition may have caused the late filing thus relieving him of culpable negligence.

b. People v. Brazee, 316 Ill. App. 3d 1230, 738 N.E. 2d 646, 250 Ill. Dec. 430 (2000).

Defendant, Kenneth Brazee, was charged with aggravated criminal sexual assault and criminal sexual assault. I sentenced defendant to 11 years' imprisonment after he pleaded guilty to the criminal sexual assault charge in exchange for the State's agreement to dismiss the aggravated criminal sexual assault charge. The Appellate Court vacated the 11-year sentence holding that, because of defendant's age, an adult sentence would have been required based on the aggravated criminal sexual assault charge, but when the State dismissed that charge defendant could only be sentenced as a juvenile on the remaining criminal sexual assault charge. The Appellate Court remanded the cause and directed me to enter an order sentencing defendant under the Juvenile Court Act to time served.

On remand, an issue arose as to whether a judgment of conviction of criminal sexual assault remained intact. I ruled that the judgment of conviction remained. On appeal from that ruling the Appellate Court in People v. Brazee, 333 Ill. App. 3d 43 (2002), modified my order by entering an adjudication of delinquency and vacating the judgment of conviction.

c. People v. Griffin, 305 Ill. App. 3d 326, 713 N.E. 2d 662, 239 Ill. Dec.131 (1999).

During a residential burglary prosecution I granted defendant, Mark Griffin's, request to waive his right to counsel and to proceed pro se. Thereafter, defendant pleaded

guilty and I sentenced him to an 11-year prison term. After I admonished defendant pursuant to Supreme Court Rule 605(b), he asked whether a motion to vacate his sentence was required to perfect an appeal. He also asked, "Can I be appointed an attorney to represent me in this appeal?" I told him that he was so entitled but I declined to advise defendant further. The Appellate Court held that defendant's questions constituted a revocation of his earlier waiver of his right to counsel. The Appellate Court reversed and remanded the cause for the appointment of counsel and the preparation and presentment of any post-plea motions.

d. People v. Barraza, 303 Ill. App. 3d 794, 708 N.E.2d 1256, 237 Ill. Dec. 216 (1999).

I presided over the jury trial. The appellate court held that defendant was denied a fair trial due to the prosecutor's improper remarks during the State's rebuttal closing argument. The appellate court also determined that my instructions to the jury regarding the improper remarks did not cure the error. The conviction was reversed and remanded for a new trial.

e. In re Cutsinger, 186 Ill. App. 3d 219, 542 N.E.2d 414, 134 Ill. Dec. 235 (1989).

The appellate court reversed an order I issued finding respondent to be a person subject to involuntary admission and hospitalizing him in the Department of Mental Health and Developmental Disabilities. The appellate court held that the factual basis for the medical opinion that respondent was reasonably expected to inflict serious physical harm upon another in the near future was insufficient.

f. People v. Simmons, 293 Ill. App. 3d 806, 689 N.E.2d 418, 228 Ill. Dec. 546 (1998).

I presided over the jury trial. The appellate court held that defendant was denied a fair trial due to the prosecutor's improper questioning of the arresting officer concerning defendant's post-arrest silence. During trial, I sustained defense counsel's objections to the improper questions, but the appellate court held that the improper questions were later compounded by the prosecutor's improper comments during closing argument even though there was no objection to the improper comments made during closing argument. The conviction was reversed and remanded for a new trial.

g. People v. Arrington, 297 Ill. App. 3d 1, 696 N.E.2d 1229, 231 Ill. Dec. 658 (1998).

After defendant was found guilty of attempted robbery and aggravated battery, I sentenced him to two consecutive 9-year prison terms. The appellate court held that there was no substantial change in the nature of the criminal objective of the respective crimes. Thus, the appellate court affirmed the convictions but modified defendant's sentences to run concurrently.

h. People v. Quigley, 183 Ill.2d 1 (1998); (People v. Quigley, No. 2--95--1643 (unpublished order under Supreme Court Rule 23).

Defendant, Michael Quigley, was charged with two driving under the influence of alcohol offenses, one a misdemeanor and one a felony, in separate prosecutions based on the same incident. The misdemeanor charge was dismissed on speedy-trial grounds. Defendant moved to dismiss the felony charge based on compulsory joinder and double jeopardy grounds. I denied the motion to dismiss finding that the charges were not subject to compulsory joinder because the two charges were not based on the same act such that the State was not required to bring the two charges in a single prosecution. I also found no double jeopardy bar to the felony charge. The Appellate Court affirmed my ruling. The Illinois Supreme Court reversed my ruling and that of the Appellate Court. The court held that the two charges were based on the same act of driving under the influence and should have been brought in a single proceeding under the compulsory joinder statute. In turn, the court held that both charges were subject to the same 160-day speedy-trial period and the felony charge was therefore barred on speedy trial grounds.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions:

a. People v. Andrews, 364 Ill. App. 3d 253, 845 N.E. 2d 974, 301 Ill. Dec. 109 (March 24, 2006).

b. Keller v. Henderson, 359 Ill. App. 3d 605, 834 N.E. 2d 930, 296 Ill. Dec. 125 (August 9, 2005), appeal denied 217 Ill. 2d 603 (2006).

c. People v. Cordero, 358 Ill. App. 3d 121, 830 N.E. 2d 830, 294 Ill. Dec. 418 (June 10, 2005).

d. People v. Kipfer, 356 Ill. App. 3d 132, 824 N.E. 2d 1246, 291 Ill. Dec. 996 (March 10, 2005).

e. People v. Smith, 346 Ill. App. 3d 146, 803 N.E.2d 1074, 281 Ill. Dec. 453 (January 20, 2004), aff'd 214 Ill. 2d 338, 827 N.E. 2d 444, 292 Ill. Dec. 915 (January 30, 2004).

16. **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.**

Appointed to the Illinois Judicial Inquiry Board, December 2001 to present

Appointed as a Republican Precinct Committeeman for 1981-1982

Appointed Special Assistant Illinois Attorney General, 1981-1982

Appointed as an Assistant State's Attorney for Winnebago County Illinois, 1976-1977

17. 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;

I did not serve as a clerk.

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

I never practiced alone.

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;

1982 – Present; Judge, State of Illinois
6801 Spring Creek Road, Suite 2A
Rockford, Illinois 61114-7420
(Appellate Judge, 2001-present; Circuit Judge, 1994-2001; Associate Judge, 1982-1994.)

1977 – 1982, Attorney
Pedderson, Menzimer, Conde, Stoner and Killoren
120 West State Street
Rockford, Illinois, 61101

1976 – 1977, Assistant State's Attorney
Winnebago County State's Attorney's Office
400 West State Street
Rockford, Illinois 61101

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?**

I began my legal career with the Winnebago County State's Attorney's Office. From August 1976 through August 1977, I prosecuted primarily traffic and misdemeanor cases. I was in private practice from August 1977 through October 1982. I handled practically all types of legal transactional matters and litigation in State courts. The vast majority of my cases were in Illinois. I spent a considerable amount of time in Bankruptcy Court and participated in a number of cases in the United States District Court. During 1981-1982, I also served as a Special Assistant Attorney General in the Illinois Attorney General's office prosecuting consumer fraud complaints. I was appointed as an associate circuit court judge in October 1982 and have served as a judge since that date.

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

My practice was generalized and included representing virtually every type of entity or person.

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.**

I appeared in court frequently.

2. **What percentage of these appearances was in:**
   - **(a) federal courts:** 5%
   - **(b) state courts of record:** 95%
   - **(c) other courts:**

3. **What percentage of your litigation was:**
   - **(a) civil:** 70%
   - **(b) criminal:** 30%

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.**

   As sole counsel I have tried approximately 100 cases. I tried ten cases as associate counsel.

5. **What percentage of these trials was:**
   (a) jury: 15%
   (b) non-jury: 85%

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

1. *Mary Palmour v. John Tillis, M.D.*, United States District Court for the Northern District of Illinois, Western Division, docket number 80-C-0127; The Honorable P. Michael Mahoney and the Honorable Stanley J. Roskowski; September 25, 1980.

   I was retained by Medical Protective, a medical malpractice insurance carrier, to represent Dr. Tillis. I handled pre-trial investigation; preparation of pleadings; discovery; and pre-trial hearings. Plaintiff claimed that Dr. Tillis failed to make a timely diagnosis of squamous cell carcinoma of the cervix. The issue was whether the delayed diagnosis would have made any difference as to the type or effectiveness of treatment. With the participation of Judge Roskowski the parties entered into a structured settlement before trial which was later reduced to a lump sum payment.

   Co-counsel:
   Edwin D. Muderlak, 16453 Waller Road, Durand, Illinois; 815-248-2459

   Opposing Counsel:
   Joseph P. Spiezer, 1814 Highland Oaks Blvd. Lutz, FL 33559; 815-519-9020

2. *In re Marriage of Theresa M. Foltz and Danny L. Foltz;* Circuit Court for the 17th Judicial Circuit, Winnebago County, Illinois, docket number 82-D-135; The Honorable John C. Layng; February 2, 1982.

   This was a bitterly contested divorce between two Rockford City police officers involving issues of custody of the minor child, support, maintenance, and division of property. I provided the sole legal representation of Mr. Foltz from service of summons until the final judgment order. With the participation of Judge Layng the case was negotiated after the trial had started.

   Opposing Counsel:
   Daniel J. Cain, 321 West State Street #700 Rockford, IL 61101. 815-962-5490

3. *Scott D. Mills v. Rebecca M. St. Vincent*; Circuit Court for the 17th Judicial Circuit, Winnebago County, Illinois, docket number 80-L-193; The Honorable Robert C. Gill; May 9, 1980.

   I conducted every aspect of Mr. Mills representation from investigation through jury trial. Plaintiff claimed that as he was riding his motorcycle on Harrison Road in Rockford, Illinois, defendant negligently turned left across his path of travel causing a collision and injuries to him. Defendant claimed that because plaintiff had been drinking and driving recklessly he was guilty of sufficient contributory negligence to relieve her of liability. The jury returned a verdict in favor of the defendant.

   Opposing Counsel:
   Don M. Mateer, 401 West State Street #400 Rockford, IL 61101. 815-965-7745

4. *David Y. McKay v. M-S-T Aviation, Inc. and Belvidere Airport Authority, Ltd.*; Circuit Court for the 17th Judicial Circuit, Boone County, Illinois, docket number 79-LM-61; The Honorable Robert J. French; September 17, 1979

   I was retained by United States Aviation Underwriters Inc., an aircraft industry liability insurer, to take the case over from their previous attorney for trial, and represented M-S-T Aviation, Inc. and Belvidere Airport Authority, Ltd. The plaintiff claimed that in breach of a lease contract the agents of defendants removed his Cessna 150 airplane from its hanger and failed to return it before a windstorm upended it resulting in damages to plaintiff. At a non-jury trial I was able to persuade the trial judge that someone other than defendants' agents removed the airplane from its hanger. The judge entered a verdict in favor of the defendant.

Opposing Counsel:
Lois Cannell Ramon, 530 South State Street, Rockford, IL 61008. 815-544-0316

5. *In the case of William Keitch*; Department of Health and Human Services, Social Security Administration, Office of Hearings and Appeals, docket number 390-14-8336 HA; Judge James F. Drzewiecki; 1981-1982.

   I entered my appearance on January 15, 1982, and thereafter handled the investigation, preparation and hearing pertaining to Mr. Keitch's claim. Suffering from a peptic ulcer, spastic bowel, and chronic headaches, Mr. Keitch filed a claim for social security disability benefits. His claim was denied. Mr. Keitch retained me to seek reconsideration through an appeal to an administrative law judge. The administrative law judge entered a judgment that was "wholly favorable to the claimant" and granted full disability benefits.

6. *Donald T. Renfro Jr. v. Sundstrand Corp.*; Industrial Commission of Illinois, docket number 79-WC-58861, Judge Louis J. Faletti; October 19, 1979

   I represented Mr. Renfro, who suffered from Marfan's syndrome, an inherited condition which affects the wall of the aorta causing it to dilate and compromise the aortic valve. Mr. Renfro claimed that his duties at work included heavy manual lifting which caused damage to his heart entitling him to disability benefits. The hearing officer denied his claim.

   Opposing Counsel:
   George Picha, 1639 North Alpine #300 Rockford, IL 61107. 815-227-4300

7. *Mary M. Broge v. James C. Peacock D.D.S.*; Circuit Court for the 17th Judicial Circuit, Winnebago County, Illinois, docket number 79-L-438; The Honorable John S. Ghent and The Honorable John C. Layng; November 5, 1979

   I was retained by Medical Protective, a dental malpractice insurance carrier, to represent Dr. Peacock. I was assisted by attorney Edward M. Maher, who was retained by a co-insurer. We cooperated in handling all of the investigation, preparation of pleadings, discovery and pre-trial proceedings in connection with Dr. Peacock's defense. Plaintiff claimed that Dr. Peacock negligently treated her by providing her with artificial teeth that were anchored by "certain unorthodox and experimental implants and pins." The case was settled before trial.

   Co-counsel:
   Edward M. Maher, 2601 Reid Farm Road, Rockford, IL 61114. 815-636-9600

Opposing Counsel:
Louis R. Gilbert (deceased)
Steven G. Vecchio, 400 West State Street, Rockford, Il 61101 815-987-2503, and
Bernard J. Natale, 308 West State Street #470, Rockford, IL 61101. 815-964-4700

8. *Georgia L. Colby and Richard A. Colby v. Allie J. Malthe*; Circuit Court for the 17th Judicial Circuit, Winnebago County, Illinois, docket number 80-L-334; The Honorable Robert C. Gill; August 4, 1980

   I represented Georgia L. Colby and Richard A. Colby and managed every aspect of plaintiff's case from investigation through final resolution including plaintiffs' complaint, defendant's counterclaim, and various subrogation matters. Georgia L. Colby claimed that she was traveling southbound on U.S. Highway 51 in Roscoe, Illinois, when defendant, who was turning right onto U.S. Highway 51 from McCurry Road, pulled in front of her causing a collision and injuring her. Richard A. Colby claimed loss of consortium. In his counterclaim, defendant claimed that he was southbound on U.S. Highway 51 just south of its intersection with McCurry when the vehicle driven by Mrs. Colby collided with the rear of his which resulted in damages to him. Before trial the case was settled for the maximum amount of defendant's insurance policy.

   Opposing Counsel:
   Don M. Mateer, 401 West State Street #400 Rockford, IL 61101. 815-965-7745 and Randolph G. Cook, deceased.

9. *Town of East Troy v. Harish Puri*; Circuit Court of Walworth County, Wisconsin, docket number 82-L-2835-36; The Honorable Robert D. Reed; April 13, 1982.

   I handled every aspect of Mr. Puri's defense. He was charged with speeding and operating a motor vehicle while intoxicated. After the jury failed to reach a verdict the judge declared a mistrial due to a hung jury. The case was subsequently resolved by plea negotiation.

   Opposing Counsel:
   Patrick J. Hudec, 2100 Church Street East Troy, WI 53120. 262-642-3000

10. *Robin Zander v. Sverre Falkenhaug*; Circuit Court for the 17th Judicial Circuit, Winnebago County, Illinois, docket number 80-L-509; The Honorable Alford R.

Penniman, The Honorable Harris H. Agnew, and The Honorable David F. Smith; April 10, 1980.

Mr. Zander retained me to represent him in connection with a claim against the builder of his house. I handled all of the investigation, preparation of pleadings, discovery, and pre-trial proceedings up until when I was appointed as an associate judge at which time I turned the case over to another attorney. Mr. Zander purchased a newly-built single-family house and discovered that it had substantial construction defects. Mr. Zander sued Mr. Falkenhaug claiming breach of contract and breach of implied warranties. The case concluded with a money judgment in favor of Mr. Zander.

Co-counsel:
Steven P. Zimmerman, 1707 East State Street Rockford, IL 61104. 815-399-1400

Opposing Counsel: William T. Cacciatore, 321 West State Street #900 Rockford, IL 61101, 815-965-7500, and Anthony A. Savaiano, 535 Loves Park Drive, Loves Park, IL 61111. 815-654-3060

19. **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.)**

CASA:
In 1989, I was selected as the presiding judge of the juvenile court in Winnebago County, Illinois. My predecessor had introduced a Court Appointed Special Advocate (CASA) program into our local juvenile court. A CASA program provides screened and trained community volunteers to independently investigate and monitor at risk children and families and to advocate for the best interest of children who come into the juvenile court system primarily as a result of being abused or neglected. Very early in my tenure as presiding judge it became apparent to me that the more information that I could gather regarding the parties that come before me, the better I could do my job. CASA volunteers provide an intimate personal perspective on the families who come into juvenile court. As such, they supplement the work of other social service agencies such as the Illinois Department of Children and Family Services. Our CASA program operated as an independent not-for-profit organization. Its advocates appeared in court and provided an assessment of the family situation and a recommendation as to what course of action was in the best interest of the children.

I was an enthusiastic supporter of the Winnebago County CASA program (and the sister program which grew alongside it in Boone County, Illinois). I did all that I could as a

juvenile court judge to assure that it prospered. These efforts included helping to train volunteers (complete with production of a video on court procedures), conducting swearing-in ceremonies, and accommodating our court procedures to best make use of the work of our CASA volunteers. Our CASA program flourishes today and continues to play a vital role in assisting distressed children and families.

Teen Court:
I have come to learn that authoritative intervention to avoid and deter anti-social behavior is more successful if it is introduced earlier rather than later in a person's life. In 1992, shortly after concluding my juvenile court duties I became interested in teen peer review court. Teen court allows young people ages 16 and under who are charged with minor infractions of the law to avoid the application of the Illinois Juvenile Court Act by admitting their wrongdoing and referring themselves to a teen court program. In teen court, teenagers serve as attorneys and judges to evaluate the offender's conduct and impose sanctions which may include community service, sitting as a teen court juror, or writing a letter of apology.

In 1998, after overcoming several legal hurdles and a critical reaction by the local press, I assisted in the establishment of a local teen court program under the auspices of a local township government. Since then it has served hundreds of young people in our area. I continue to serve as one of the teen court judges.

In 2000 National Public Radio produced a documentary featuring our local teen court program.

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.**

   IRA held with Morgan Stanley, approximate value $33,000.

   Retirement benefits as a judicial employee of the State of Illinois which are expected to be 85% of my salary at the time I retire.

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 will resolve any potential conflicts of interest in accordance with the Code of Conduct for United States Judges. There are no categories of litigation which pose a potential conflict of interest. The only financial arrangements I foresee as having a potential conflict of interest are those involving the assets and liabilities of myself and my family.

   As an Illinois Appellate Court judge I am subject to the Code of Judicial Conduct of Illinois. Cannon 63C of that Code proscribes that "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might be reasonably questioned." I scrupulously adhere to this mandate.

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

   No.

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.)**

   See attached Financial Disclosure Report.

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

   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.**

   I have neither held a position nor played a role in a political campaign other than my own campaigns for election and retention as a Circuit Judge.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Kapala, Frederick J	District Court, N D Illinois	12/07/2006
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) ☒ Nomination, Date 12/05/2006 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 1/1/2005 to 11/30/2006
7. Chambers or Office Address 6801 Spring Creek Road Rockford, IL 61107	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Trustee	Trust # 1
2. Trustee	Trust # 2
3. Trustee	Trust # 3
4. Trustee	Trust # 4
5. Trustee	Trust # 5
6. Director	Anderson Gardens, an Illinois not-for-profit corporation
7. Trustee	Trust # 6
8. Trustee	Trust #7

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 9/30/2006	State of Illinois Retirement System, pension benefits payable at retirement at or after age 55
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 8	Name of Person Reporting Kapala, Frederick J	Date of Report 12/07/2006

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2004	State of Illinois - Circuit Court Judge compensation	$ 148,581.43
2. 2005	State of Illinois - Circuit Court Judge compensation	$ 142,689.68
3. 2006	State of Illinois - Circuit Court Judge compensation	$ 146,182.22
4.		
5.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	
5.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1. EXEMPT	
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 8	Name of Person Reporting Kapala, Frederick J	Date of Report 12/07/2006

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. EXEMPT		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Wanda Brunngart	personal loan	K
2.		
3.		
4.		
5.		

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Name of Person Reporting	Date of Report
Kapala, Frederick J	12/07/2006

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Chase Bank account # 1	A	Interest	J	T	EXEMPT				
2. Chase Bank account # 2	A	Interest							
3. Chase Bank account # 3	E	Interest							
4. Blackhawk Bank account # 1	A	Interest	J	T					
5. Blackhawk Bank account # 2	A	Interest	J	T					
6. Blackhawk Bank account # 3	D	Interest	M	T					
7. Blackhawk Bank account # 4	C	Interest							
8. US Bank account	A	Interest	J	T					
9. Union Trust Co. account	B	Interest							
10. N.Y. Community Bank account	B	Interest							
11. Stillwater Bank account		Interest	L	T					
12. Heritage Cash Trust	A	Interest	J	T					
13. RJ Bank deposit program	A	Interest	J	T					
14. First Trust S&P Target SMID 60 Portfolio	A	Dividend	J	T					
15. First Trust Equity Income Select # 7	A	Dividend	K	T					
16. First Trust Portfolios L. P. Large-Cap Growth Port Series 8	A	Dividend	K	T					
17. First Trust Portfolios L. P. Large-Cap Value Port. Series 8	A	Dividend	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (Including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. First Trust Target VIP June 2006	A	Dividend	J	T					
19. Van Kampen Strategic Growth Lrg-Cap 2006-2 Wrap	A	Dividend	K	T					
20. Van Kampen Great Intl Firms, series 28 - Cash Wrap 5.5	A	Dividend	J	T					
21. Van Kampen Global 45 Div Strategic Port 2006-03	A	Dividend	K	T					
22. DWS Multi Mkt Income Trust	A	Dividend	J	T					
23. ING Prime Rate Tr SH Ben Int	B	Dividend	K	T					
24. Ishares Tr S&P500 Grw	A	Dividend	K	T					
25. Ishares Tr S&P500 Value	A	Dividend	K	T					
26. Ishares Tr Msci EAFE IDX	A	Dividend	J	T					
27. Ishares Tr Rusl 2000 Valu	A	Dividend	J	T					
28. Trust # 1, trustee and income beneficiary	A	None	J	T					
29. Drugstore.com stock									
30. Trust # 2, trustee and income beneficiary	A	None	J	T					
31. Drugstore.com stock									
32. IRA # 1	A	Dividend	J	T					
33. Kinross Gold corp. stock									
34. Time Warner, Inc. stock									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. IRA # 2	A	Interest	K	T					
36. Drugstore.com stock									
37. Morgan Stanley Money market									
38. Mary Anderson, note receivable		None	J	T					
39. Real Estate # 1, Winnebago County, Illinois (2005, $100,000)		None	L	R					
40. Real Estate # 2, Winnebago County, Illinois (2003, $25,000)	A	Rent	K	R					
41. Real Estate # 3, Winnebago County, Illinois ($47,129)		None	K	S					
42. Real Estate # 4, Ashland County, Wisconsin ($19,775)		None	K	S					
43. Trust # 6, income beneficiary	A	Interest	J	T					
44. Wachovia Securities Bank Sweep Option									
45. Trust # 7, income beneficiary	B	Interest	K	T					
46. Wachovia Securities Bank Sweep Option									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)		T =Cash Market	
	U =Book Value	V =Other	S =Assessment		
			W =Estimated		

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Name of Person Reporting	Date of Report
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Part I. Positions and Part VII. Investments and Trusts. For Trusts # 3, 4 and 5 no assets are reported in Part VII. The reporting person resigned as trustee in March 2006 and transferred all records to the successor trustee. Neither the reporting person, the reporting person's spouse nor the reporting person's dependent children have any beneficial interest in Trusts # 3, 4, or 5. Neither Trust # 3, 4 nor 5 was created by the reporting person, his spouse or any dependent child.

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Name of Person Reporting	Date of Report
Kapala, Frederick J	12/07/2006

IX. CERTIFICATION.

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

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

Signature [signature] Date 12-7-06

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		259	683	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		206	826	Notes payable to relatives		34	000
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		1	000
Due from relatives and friends		9	375	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		105	005
Real estate owned-add schedule		476	904	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		60	000				
Cash value-life insurance							
Other assets itemize:							
CD		100	000				
Trust accounts		50	252				
IRA Accounts		39	000	Total liabilities		140	005
				Net Worth	1	062	035
Total Assets	1	202	040	Total liabilities and net worth	1	202	040
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
First Trust S&P Target SMlD 60 Portfolio	$ 10,204
First Trust Equity Income Select #7	16,009
First Trust Portfolios L.P. Large-Cap Growth Portfolio Series 8	27,648
First Trust Portfolios L.P. Large-Cap Value Portfolio Series 8	25,415
First Trust Target VIP June 2006	11,417
Van Kampen strategic Growth Large - Cap 2006-21 647	14,675
Van Kampen Great International Firms, Series 28	11,255
Van Kampen Global 45 Dividend Strat Port 2006-03	15,529
DWS Multi Mkt Income Tr	10,695
ING Prime Rate Tr SH Ben Int	14,952
lshares Tr S&P500 Grw	15,712
lshares Tr S&P500 Value	15,817
lshares TR Msci EAFE IDX	10,140
lshares Tr Rusl 2000 Valu	7,358
Total Listed Securities	$ 206,826
Real Estate Owned	
Personal residence	$ 285,000
Vacant lot (50% interest)	100,000
Vacant farmland	25,000
Mobile home and lot (25% interest)	19,775
Single family residence and lot (24.5% interest)	47,129
Total Real Estate Owned	$ 476,904
Real Estate Mortgages Payable	
Personal residence	$ 105,005

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.**

I am prohibited by Rule 65F of the Illinois Code of Judicial Conduct from practicing law. As a consequence I have been unable to offer pro bono work since October 1982 when I became a judge. There were numerous instances during the time when I practiced law that I provided free legal services to people who could not afford them, but that representation would have been over 24 years ago. Unfortunately, I kept no records of these clients or cases and cannot specifically recall them.

During my tenure as the presiding judge of the juvenile court in my judicial circuit I worked diligently to integrate a Court Appointed Special Advocate (CASA) Program into our court system. A CASA program operates as a not-for-profit organization which provides screened and trained volunteers to independently investigate and monitor at risk children and families without regard to income or ability to pay and to advocate for the best interest of the children who come into the juvenile court system primarily as a result of being abused or neglected.

While I was the presiding judge of the criminal division of my judicial circuit, I assisted in the establishment of a local teen court program under the auspices of a local township government. Teen court allows young people ages 16 and under who are charged with minor infractions of the law to avoid the application of the Illinois Juvenile Court Act by admitting their wrongdoing and referring themselves to a teen court program. Teen court participants frequently come from low-income households, broken homes and dysfunctional families. In teen court, teenagers serve as attorneys and judges to evaluate the offender's conduct and impose sanctions which may include community service, sitting as a teen court juror, or writing a letter of apology. Periodically, I continue to serve as one of the teen court judges.

In the past, I served as a member of the Board of Directors of Al-Care of Rockford which, without regard to ability to pay, provided counseling and residential treatment to people who suffer from alcoholism. I also served as a member of the Board of Directors of the Barbara Olson Center of Hope which provides vocational and rehabilitative services to adults with mental disabilities.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that**

invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- 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?

I do not belong to any organization which discriminates, nor have I ever belonged to any such organization.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is no selection commission in my jurisdiction to recommend candidates for nomination to the federal courts.

My experience in this judicial selection process began on November 17, 2005, when I submitted a questionnaire, curriculum vitae, writing sample and a list of references to House Speaker Dennis Hastert through the office of Representative Don Manzullo. I subsequently received a call to appear for an interview on March 30, 2006, in the Speaker's conference room at the Capitol. There I discussed my qualifications to serve as a district court judge with Speaker Hastert and several Republican Members of Congress from Illinois. Later, on July 17, 2006, I was given the opportunity to interview with representatives of the Office of Counsel to the President and the Department of Justice at the White House. Immediately after this interview I went to Senator Orrin Hatch's office and introduced myself to a member of his staff. Sometime thereafter, the Senator graciously agreed to a meeting with me which took place at his office in Washington. Following a background investigation, and after completing all nomination paperwork, my nomination was forwarded to the Senate on December 5, 2006. I was interviewed by Senator Richard Durbin on December 13, 2006.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped-many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

A judge should not allow his or her rulings to be affected by any personal preference as to how he or she would like a case to end. The judge's role in litigation is to assure that the parties abide by the rules of evidence while establishing the facts, then to apply the law to those facts (or facilitate the jury's ability to do so), and in that way decide the case. As to statutory and constitutional interpretation, if there is binding precedent interpreting the statute or constitutional provision a judge must adhere to it, if not, a judge must give effect to the intent of the legislature or framers of the constitution as expressed by the plain meaning of the words they wrote. The words of a statute or the Constitution have survived the legislative or drafting process. Thus, they are entitled to deference and respect. This deference also requires a judge to adhere to the principle that statutes are presumed to be constitutional.

The separation of powers doctrine is at the core of our constitutional system. It wisely separates the makers of the law from those who interpret and apply the law. Thus, although a judge applies existing law to decide cases and controversies, a judge is not endowed with the power to create the law. A judge's job is to determine what the law is, not what he or she thinks the law ought to be. As a result, a judge must decide only the

case before him or her, and must not use his or her authority to impose a social agenda. In accordance with this premise, a judge must strictly enforce jurisdictional requirements for standing and ripeness, and refrain from issuing advisory opinions that do not resolve a current case or controversy. The bench is no place for a social engineer. If the judiciary adheres to these principles it will avoid the criticism outlined above.

AFFIDAVIT

I, Frederick J. Kapala, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

December 15, 2006
(DATE)

(NAME)

(NOTARY)

"OFFICIAL SEAL"
PATRICIA J. KASMAR
Notary Public, State of Illinois
My Commission Expires 12/22/08

Senator DURBIN. Thank you.

I'm going to ask a few general questions and address them to all three, and you can each respond.

Judge Kapala, let me start with you because this is a lifetime appointment and there is a fear on this side of the table, and a fear among lawyers, that once receiving a lifetime appointment, it will go to the head of a judge and they will become imperial in their courtrooms and lose the humility which we like to think is part of life, and part of good service.

Tell me about your experience as a lawyer, practicing lawyer, with judges—you do not have to name names—and your views about this concern of the judiciary.

Judge KAPALA. Mr. Chairman, many times I hear judges talk about the courtroom to which they're assigned as "my courtroom". I've done it from time to time. But I think that's a misnomer. No judge owns a courtroom. The courtroom is owned by the people in the well of the court, and it's there to resolve their legal controversies.

I like to think of the courtroom as a place where I have the privilege to work. I know in the past, one other nominee who sat in this room mentioned that a person will remember being mistreated long after that person will remember who won or lost the case. I think that is a very important comment to take to heart, and I subscribe to it.

Senator DURBIN. Mr. Settle?

Mr. SETTLE. Thank you, Mr. Chairman.

I think that's a very important quality for a judge to have, is a proper measure of humility. The courtroom setting can be a very tense environment. I think that the litigants particularly -the lawyers are more accustomed to it, but even the lawyers deserve courtesy for the court—this is a foreign environment for them.

I think that a good judge will work hard to put those litigants and witnesses at ease when they're in that courtroom. I think that that's a quality that should never change in a Federal court judge.

Senator DURBIN. Mr. Ozerden?

Mr. OZERDEN. Thank you, Mr. Chairman. The service of a judge is something I look at as a public service, as a judge as a public servant. My belief is that it's critical that judges treat all lawyers and litigants with courtesy and respect, because for the vast majority of lawyers and litigants, the only contact they will have with the Federal judicial system is at the District Court level. If they're not treated fairly, it undermines confidence in the system overall.

Senator DURBIN. The other general question I'd like to ask before a few specifics, we like to believe, those of us who have practiced law, or lawyers, that this system of justice is balanced and fair. Yet, we know that many times in the courtroom there are Davids and Goliaths.

Many times there will be parties before you in civil and criminal cases who don't have the resources that others have. In that circumstance, it is a real test for the court to view both fairly and honestly and to treat them that way.

I'd like to know what, in your life's experience, would give a person standing before you who is poor, has modest representation, what they believe is a good claim or a good defense, and wants to

know if that judge sitting up on that bench could even identify with their life, what would you say, Mr. Ozerden?

Mr. OZERDEN. Mr. Chairman, first of all, I would say that being impartial and fair to all parties is critical. It goes back again to the question of the public having confidence in the judicial system. I people don't feel that judges and courts are fair and impartial, it undermines our entire system.

From my own perspective, my father was an immigrant. He came to this country with one suitcase and $100 in his pocket. When we were a young family growing up, we struggled financially a great deal. I remember what that's like.

Also, I think my service in the Navy is very important also, because the Navy is an extremely diverse environment. You have people of all ethnic backgrounds, all economic backgrounds.

So, I've had a lot of experience in the Navy dealing with people who were very, very different from me, and I think that's going to really help me learn to understand where they're coming from.

Senator DURBIN. Mr. Settle, you've been a criminal prosecutor and a defense lawyer. You've probably seen some of the people I've just described in the courtroom. Tell me about your experience and what kind of confidence it may give to that defendant who may feel that this judge is totally removed from my life experience.

Mr. SETTLE. Mr. Chairman, I did serve as a criminal defense lawyer in the Army Judge Advocate General's Corps, and I served many soldiers from various socioeconomic backgrounds. That taught me much about life generally and the circumstances in which they grew up. It definitely required paying attention to those things.

When we say the Pledge of Allegiance, we say "justice for all". I think it's one of the real challenges of our court system to recognize that "justice for all" is a difficult goal to meet, understanding that different individuals who will come before a court have different resources.

That is something I think that a Federal judge very much must keep in mind, is that though it is equal justice for all, it is not equal resources for all, and that that's part of the court's responsibility.

Senator DURBIN. Judge Kapala?

Judge KAPALA. Mr. Chairman, I know what it's like to live economically disadvantaged. When I was born, my parents lived in a garage that had been converted into an apartment. From there, we moved to a four-room house—not four bedrooms, four rooms—and five of us lived there; my mom, my dad, myself, my brother, my sister, and my dad's father, who had some health problems, and we cared for him to make sure that he would be all right. My brother and I shared a bed.

I know what it's like to buy clothes a couple sizes too large so you can grow into them. I know what it's like to go to a penny candy store and not have a penny in your pocket. Our house had a flat tin roof, no garage, no basement. I expect that the people in my neighborhood would receive the same treatment before the law that anyone would receive.

Canon 63 of the Illinois Code of Judicial Ethics requires judges to not manifest, by word or deed, any bias or prejudice based upon socioeconomic status, and I will scrupulously adhere to that canon.

Senator DURBIN. I'd like to ask some specific questions, if I could. Judge Kapala, I'll stay with you for a moment. First, let me preface these remarks by saying I know that, in the course of a political campaign, all of us have said things which may go to an extreme and, as we reflect on them later, have a different view.

I'd like to refer to one of your campaign statements in 1994, where your slogan was "A Tough Judge for Tough Times". And you said in an interview that year that you had been given the nickname "Maximum Fred" because you were a local prosecutor early in your career who often sought maximum sentences for criminal defendants.

Can you tell me now, from the perspective of time and as you reflect on it and in your new role, whether that is something that you would like to be known as when it comes to your Federal judicial post?

Judge KAPALA. Thank you, Mr. Chairman, for that question. When I made that statement, I was a prosecutor. Every job I've ever had in my life has received my full commitment, my full devotion. Sometimes as a prosecutor you have cases before you that require the maximum sentence.

It's a sad fact of our world that there are some people who are heartless people, who receive enjoyment from inflicting pain and suffering on others. And to those people, I think the law should treat harshly.

But I understand that we shouldn't view everyone through the same lens. There are people who are not heartless. There are people who are good, decent people that have made a mistake. There are people who are afflicted with different challenges in their life and they need to be treated differently.

As a Federal District judge, if I am fortunate enough to be confirmed, I have the benefit of sentencing guidelines. I know that the Supreme Court has said they are advisory now instead of mandatory, but I will pay strict deference to those guidelines. You can be assured, sir, that I will tailor my sentences and my approach to the law based upon the characteristics of the cases that come before me.

Senator DURBIN. You've been a judge for 25 years. What's the toughest decision you've ever had to make as a judge?

Judge KAPALA. For three of those years I was the presiding judge of our Juvenile Court. One of the toughest rulings that I've had to make was to terminate a person's parental rights. To that person, it's just as if that child had died because they'll never see that child again, they'll never watch them grow up, watch them go to school, see them get married, have grandchildren. That is a heart-wrenching decision.

But the other side of that coin is, sometimes, even after you've taken a parent or a child out of the home, through counseling, hard work, and education you can restore a parent to fitness.

And although it's been one of the hardest decisions in my career to terminate a parent's parental rights, there are few decisions that are more gratifying than to be able to give a child his or her parent

back to them. So, I've gone to both extremes as a presiding justice of the Juvenile Court.

Senator DURBIN. Mr. Settle, in your questionnaire submitted to the Judiciary Committee you said that 98 percent of your practice has been in the State court and a small percentage, 2 percent, before the Federal court. Tell me about the learning curve as you seek a spot here on the Federal judiciary.

Mr. SETTLE. There will be a learning curve, Mr. Chairman, there is no question about that. But I don't come without understanding and knowing the Federal rules of evidence and the Federal rules of procedure.

Those were the rules that we were to follow, and did follow, when I was in the Army in the Judge Advocate General's Corps. The State of Washington has adopted both those two uniform Federal rules of both evidence and procedure.

And, of course, I spent about two-thirds of my career as a litigator in State court, spending lots of time in litigation, working with those rules. So, I think that though it's going to be a new environment for me, and I surely intend to work hard to get up to speed with the uniqueness of the Federal court as opposed to State court, I believe that all of that background and experience will serve me well, if I am confirmed.

Senator DURBIN. I would like to ask you about a question which haunts us all, and it's not directed to you personally. But I think when we talk about justice in our country, we have to be sensitive to the fact that race is an issue and that many people of color believe that the system is stacked against them.

They see disproportionate numbers of their brothers and sisters who were arrested, prosecuted, and incarcerated. I think they feel that the system just is not fair when it comes to the question of race. What has been your life experience in dealing with racial issues before the courts?

Mr. SETTLE. Mr. Chairman, I alluded earlier to my experience in the Judge Advocate General's Corps, and I think that that was the first opportunity that I really got to be in a position to understand someone who came from a different background and a different circumstance than I did. It was an education.

I don't know how to explain, other than to say that in any courtroom, if I were to be confirmed as judge, I would think it extremely important to treat every litigant, regardless of their race, with a great deal of respect and be able to convey that to everyone in that situation.

When I was a criminal defense lawyer, I worked hard to get to know my client. I might spend the first session finding out about the facts underlying the alleged charge and I would go back to the stockade, or if my client was not incarcerated pending trial I would have that person come in, and get to know them.

Will Rogers said, "I never met a man I didn't like", and I found that that was the case also with criminal defendants. They are people just like you and me. Sometimes, especially on a first offense, it's very important that that experience of that individual, that they go away believing in their system and in the whole criminal justice process.

Senator DURBIN. Mr. Ozerden, in your questionnaire you indicated that 99 percent of your legal practice has been civil, a very small percentage criminal. In the Federal judiciary, about 1 out of 4 cases that you will face will be criminal in nature. How are you going to deal with that learning curve?

Mr. OZERDEN. Thank you, Mr. Chairman. Throughout my career, although my civil practice has been the vast majority of my practice, I have had some criminal exposure so I think that that will help me. I also had some experience as a Federal judicial law clerk at the District court level, where I saw criminal cases and assisted with the judge trying those cases.

So, I have had some exposure with the criminal system. I think that that's going to be a foundation I can build from. The docket in the Southern District of Mississippi, where I will be working, is predominantly civil.

But I think, with the experience I have had throughout my practice and the resources I'll have through the Administrative Office of Courts and other judges, if I'm confirmed, will assist me in making that transition.

Senator DURBIN. Mr. Ozerden, I'm a little older than you are. In my lifetime, I can recall, while attending Georgetown School of Foreign Service, the civil rights era. It was a painful era for our country, and particularly painful for your home State of Mississippi as we look back on it.

I asked a question earlier of Mr. Settle. I'd like to ask the same of you. As I understand it, the largest percentage of African-American population of any State is Mississippi, and race is part of your justice system that you are now asking to be part of as well.

I'd like your reflections on the issues of race and justice from a Mississippi perspective, from a perspective as a Federal judge.

Mr. OZERDEN. Thank you, Mr. Chairman. If I'm confirmed for this position, from my perspective, the most important thing in my charge will be to be fair and impartial to all parties, regardless of their ethnic background and economic background.

I have had the opportunity, because I've practiced in a smaller community, that when I've been involved in cases I have seen people of different backgrounds and I've had that exposure to them in the courtroom.

In a larger community, sometimes you may only deal with large companies and that sort of thing when you're in court, but I have had the exposure to, in a smaller community, people of different backgrounds. I think that will enable me to understand where they're coming from. Again, the main thing is for me to be fair and impartial, and I will do that.

Senator DURBIN. Thank you.

I have no further questions. Perhaps some of my colleagues will submit questions to you before your nominations come before the full Judiciary Committee.

I want to thank all the nominees for being here today, and thank your families and friends for joining you. I'm sure it's a memorable day in your lives to take this step forward. We are anxious to give you a fair hearing before the full committee, and hope to move these nominations in an expeditious manner. Again, thank you all for being here today.

This meeting of the Senate Judiciary Committee stands adjourned.

[Whereupon, at 10:45 a.m. the hearing was adjourned.]

[Questions and answers and submissions for the record follow].

SUBMISSIONS FOR THE RECORD

Statement of Senator Thad Cochran
Senate Judiciary Committee
Nomination Hearing for Sul Ozerden
Tuesday, March 13, 2007, 10:00 am, Dirksen 226

Mr. Chairman,

I am pleased to be here this morning to introduce Sul Ozerden, and to recommend to the Judiciary Committee his confirmation as a federal judge for the Southern District of Mississippi.

Sul is well-qualified, in his education, skill, experience, and philosophy, to serve as a federal judge. Sul has become a skilled practitioner with a

deep knowledge of the law. He would reflect credit on the Federal Judiciary.

I want to welcome the members of Sul's family attending today's hearing—his wife, Denise; his mother, Candace; and his aunt, Cordelia Green. Sul and Denise's children, Vivian and Harty, ages 3 and 1, remained on the Gulf Coast to take care of everything.

His friends, as well as mine, Cy and Georgia Anne Faneca are also here today. Cy has been a mentor to Sul for many years, even before Sul joined Cy's law firm. No one was more surprised than Cy

when, after degrees from Georgetown and Stanford and five years of military service, Sul decided to return to the Gulf Coast to practice law.

I know that Sul will talk more about his father during his remarks. Born and raised in Turkey, the late Halil Ozerden later became a naturalized citizen of the United States, earning masters and doctoral degrees in psychology from the University of Southern Mississippi. His son may soon become a federal judge, a true testament to the American dream.

Sul graduated magna cum laude in 1989 from the Georgetown University School of Foreign Service, where he was a member of Phi Beta Kappa and served as a Navy Reserve Officers' Training Corps Battalion Executive Officer.

After graduating from Georgetown, Sul attended the United States Navy Flight School in Pensacola, Florida. He then spent the next five years as a Commissioned Naval Officer, achieving the rank of Lieutenant.

He served as a Bombardier and Navigator aboard A-6E "Intruder" aircraft. He was awarded

the Navy Commendation Medal for missions flown over Iraq during Operation: Restore Hope in 1992 and 1993. He completed six-month deployments to the Western Pacific and to the Persian Gulf aboard the aircraft carrier U.S.S. Kitty Hawk from 1992 to 1994.

After serving his country for five years, Sul returned to law school and graduated in 1995 from the Stanford University School of Law, where he served as an Associate Editor on the Stanford Law Review.

Sul then served for one year as a Law Clerk to the Honorable Eldon E. Fallon, United States District Judge for the Eastern District of Louisiana.

In 1999, Sul returned to the Mississippi Gulf Coast and joined the law firm of Dukes, Dukes, Keating & Faneca, a well-respected law firm in Gulfport.

Because of the cross-jurisdiction nature of law practice on the Gulf Coast, Sul became licensed in Mississippi, Alabama, Florida, and Louisiana. He has practiced in state and federal courts throughout the Southeastern United States.

Sul has routinely served as lead counsel in complex litigation cases, focusing on general civil defense litigation, civil rights claims defense, and representation of local governmental entities, including the Harrison County Sheriff's Department and the Gulfport-Biloxi International Airport.

Sul received an AV Peer Review Rating from Martindale-Hubbell. An AV rating is a significant accomplishment and a sign that Sul's peers rank him at the highest level of professional excellence. Sul also received a unanimous "Qualified" rating from the American Bar Association's Standing Committee on the Federal Judiciary.

In addition to his legal practice, Sul has consistently given his time and his abilities to the legal profession and to his community. He is a mentor to students at Gulfport High School, where he graduated. He serves as President and as a Board Member for the Gulfport Chamber of Commerce.

He has served as President of the Harrison County Young Lawyers Association. He is a graduate of Leadership Gulf Coast and was recognized as one of South Mississippi's Top 40 Business Leaders Under 40.

Like everyone else in the Gulf Coast Region, Sul and his family were personally affected by Hurricane Katrina. Despite the impact on his personal and profession life, Sul remained, like so many on the Gulf Coast, optimistic about the recovery and rebuilding process.

Few decisions made by a United States Senator have a farther-reaching effect than the recommendation to the President of an individual for a federal judgeship.

Over the years, Mississippi has established a reputation of having one of the finest federal benches

in the country. Sul will certainly continue that legacy of federal jurisprudence.

I am pleased that the President submitted Sul's name to the Senate for consideration. I hope the Judiciary Committee will approve this nomination expeditiously.

Thank you, Mr. Chairman.

United States Senate
Committee on the Judiciary

Nomination Hearing for Halil Suleyman (Sul) Ozerden

March 13, 2007

Introductory Statement of
United States Senator Trent Lott

Mr. Chairman, it is my pleasure to have this opportunity to introduce Sul Ozerden before this committee. I am delighted that the President has seen fit to nominate Sul to the United States District Court for South Mississippi.

During my time in the Senate, I have had the opportunity to deal with countless judicial nominees. Seldom have I seen a nominee that comes as highly recommended – and who is as highly credentialed – as Sul Ozerden. As a son of Gulfport, Mississippi, who served his country in the military, this nomination provides Sul the rare opportunity to serve both his community and his country as a federal judge.

Sul attended Gulfport's public schools from first grade through graduation, finishing second in his class at Gulfport High School in 1985. He then attended Georgetown University's School of Foreign Service on a Navy ROTC Scholarship, graduating *magna cum laude* and Phi Beta Kappa in 1989. Following graduation, he served six years active duty as a commissioned officer and naval flight officer in

the United States Navy, where he achieved the rank of Lieutenant as an A-6E "Intruder" Bombardier/Navigator. He was awarded the Navy Commendation Medal for missions flown over Iraq during "Operation Southern Watch" and Somalia during "Operation Restore Hope."

After his military service, he earned his law degree from Stanford Law School and clerked for a United States District Court Judge in New Orleans before returning home to enter private practice in Gulfport. He is currently a shareholder in the firm of Dukes, Dukes, Keating & Faneca, where his primary areas of practice are general civil defense litigation, representation of local law enforcement and governmental entities, and commercial transactions & litigation.

In addition to his professional accomplishments, Sul has also become a leader in the Gulf Coast community. He has served as a mentor in the Gulfport Public School District. He has been named "Volunteer of the Year Award" by the Gulfport Chamber of Commerce. He served on the Board of Directors – and as President of – the Gulfport Chamber of Commerce. He also served as the President of the Gulfport Business Club. He was also named as one of the Sun Herald's "Top 10 Business Leaders Under 40" for South Mississippi. His tireless commitment to the future of the Mississippi Gulf Coast Region is sincerely appreciated by those of us who love the region.

He is an active member in his church, St. Peter's By-the-Sea Episcopal Church, where he is on the church's Building Committee –

an extremely important position within a church seeking to rebuild from devastation caused by Hurricane Katrina.

President Bush has nominated one of south Mississippi's finest for one of Mississippi's most important positions. Sul's academic credentials, brilliant mind, analytical legal skills, world experiences, and common sense are rare qualities in one person. The Federal Judiciary is lucky to have the opportunity to secure the services of Sul Ozerden. I look forward to the committee's approval of this fine nominee, and to confirmation by the full Senate.

NOMINATIONS OF DEBRA ANN LIVINGSTON, NOMINEE TO BE CIRCUIT JUDGE FOR THE SECOND CIRCUIT; ROSLYNN RENEE MAUSKOPF, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK; RICHARD JOSEPH SULLIVAN, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK; AND JOSEPH S. VAN BOKKELEN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF INDIANA

WEDNESDAY, APRIL 11, 2007

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

The Committee met, pursuant to notice, at 10:16 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Charles E. Schumer, presiding.

Present: Senator Schumer.

Senator SCHUMER. The hearing will come to order, and I apologize for being late.

Our first witness is Senator Richard Lugar, one of our fine leaders in the Senate, who has waited patiently. So without further ado, Senator Lugar.

PRESENTATION OF JOSEPH S. VAN BOKKELEN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF INDIANA, BY HON. RICHARD LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator LUGAR. Well, thank you very, very much, Mr. Chairman. It is a great pleasure and honor to be here today to introduce an outstanding district court nominee for the Northern District of Indiana, Joseph Van Bokkelen.

I would first of all like to thank you, Mr. Chairman, and the Chairman of the Judiciary Committee, Chairman Pat Leahy, and the Ranking Member, Senator Arlen Specter, for holding this hearing today and for moving so quickly on this nomination. I am pleased that Joe is joined here today by his wife, Sally; his daughter, Kate; Dr. Paul and Betsy Hauser; and Bud and Cathy Huey.

In July of last year, Judge Rudy Lozano informed me of his decision to assume senior status after a distinguished career of public service. He was a remarkable leader on the Federal bench, and I applaud his leadership to Indiana and to the legal community.

Given this upcoming vacancy and the need for strong leadership, I was pleased to commend to President Bush Joe Van Bokkelen to serve on the Federal court in the Northern District of Indiana. I have known Joe for many years, have been impressed with his high energy, resolute integrity, and remarkable dedication to public service.

Joe Van Bokkelen attended Indiana University where he received both his undergraduate and law degrees. He then served in the Indiana Attorney General's office, followed by his first experience in the United States Attorney's Office in the Northern District.

After many years of private practice, Joe assumed his current position of United States Attorney for the Northern District of Indiana on September 21, 2001. His performance in this position has been nothing short of remarkable. He has undertaken the most aggressive public corruption initiative in the history of the office. Since 2002, over 30 public officials have been indicted and convicted.

Joe has also used his office to target the use and possession of illegal firearms, combat gang activity, implement drug-demand reduction programs, and cultivate community partnerships. Likewise, Joe has demonstrated leadership in the Justice Department, where he serves on several of the Attorney General's Advisory Committees, including Violent and Organized Crime, White Collar Crime, Sentencing Guidelines, and the Region Information Sharing Working Group.

Newspapers across northern Indiana contain articles and editorials applauding his determination to bring about effective law enforcement. The Northwest Indiana Times recently commented that Joe Van Bokkelen "has an excellent track record for the 5 years he has led the U.S. Attorney's Office in Northern Indiana." He has received a number of high performance ratings, including the AV Rating from Martindale-Hubbell and the highest judicial rating from the American Bar Association. Outside of his public service, Joe is involved in a number of community activities and civic organizations.

I would like to thank you again, Mr. Chairman, for this opportunity to present Joe Van Bokkelen to the Committee. I believe that he will demonstrate remarkable leadership to northern Indiana and will appropriately uphold and defend our laws under the Constitution.

Thank you, sir.

Senator SCHUMER. Thank you, Senator Lugar, and your strong recommendation of Mr. Van Bokkelen will go a long way with this Committee, so we thank you for being here.

Senator LUGAR. Thank you very much.

Senator SCHUMER. I would now ask our four nominees to come forward. Would they please take their seats? Debra Livingston, Roslynn Mauskopf, Richard Sullivan and Joseph Van Bokkelen.

I have an opening statement. I did not give that so that Senator Lugar could get on his way, but I think before I give my opening statement, why don't you all stand, raise your right hand. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth?

Ms. LIVINGSTON. I do.

Ms. MAUSKOPF. I do.

Mr. SULLIVAN. I do.

Mr. VAN BOKKELEN. I do.

Senator SCHUMER. Please be seated.

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

Senator SCHUMER. Well, good morning, everybody, and I thank you all for being here. I want to observe that our nominees this morning are Federal prosecutors or former Federal prosecutors, which is very timely given our Committee's investigation into whether the Department of Justice has impinged on prosecutorial independence. We have two sitting U.S. Attorneys: Ms. Mauskopf from my home Eastern District of New York, Brooklyn and four other great counties; and Mr. Van Bokkelen for the Northern District of Indiana. We also have two former Assistant U.S. Attorneys, both Mr. Sullivan and Ms. Livingston having served in the Southern District of New York. And as if that were not enough, I understand we have at least one other Assistant U.S. Attorney among the family members today. So that is all very good news.

I also want to point out, take the liberty sitting in the chair here as the Chairman of the Subcommittee that oversees the courts, and being a New Yorker, having three of the four nominees come from New York, I want to point out that the record we in New York have for a system of nominating Federal nominees works. It has worked very well for the 6 or 7 years—everyone has heard about the rancor that goes on in the nomination of judges, but in New York it has worked quite well in the past. There is often rancor in other parts of the country, but very little in the quiet, bashful State of New York. So I am glad to see that that happens.

But, seriously, it is because in New York we have an effective and bipartisan way to select qualified and moderate candidates—not too far right, not too far left—for the bench. And apropos of that point, let me note that Senator Clinton, whom I work with very closely in these areas, will be submitting a statement of support for all three of the nominees from New York, which I am sure the Judiciary Committee will appreciate.

Now, let me introduce our nominees here today. First, Debra Livingston for the Second Circuit, which is an appellate court, as you all know.

Ms. Livingston's career so far has spanned private practice, criminal prosecution, and academia. She is currently Vice Dean and the Paul J. Kellner Professor of Law at the Columbia University Law School, one of the finest in the country, where she teaches criminal procedure and evidence, in addition to a seminar on national security and terrorism. She has written extensively on law

enforcement accountability and other criminal law issues, and she is co-author of a criminal procedure casebook.

Ms. Livingston is a graduate of Princeton University and received her J.D. from Harvard Law School, my alma mater, where she served as an editor of the Harvard Law Review. I was not so fortunate to be on the Law Review.

After completing her J.D., Ms. Livingston began her legal career by clerking for Judge J. Edward Lumbard on the U.S. Court of Appeals for the Second Circuit. So, if confirmed, this would really be her second time serving the Second Circuit Court.

From 1986 to 1991, Ms. Livingston, as was mentioned, was an Assistant U.S. Attorney in the Southern District of New York, where she prosecuted public corruption cases and served as the Deputy Chief of Appeals in the Criminal Division. Before and after her time as prosecutor, Ms. Livingston was an associate at the major New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison—again, where I served for one summer. That was all I lasted there.

She entered academia in 1992 at the University of Michigan Law School and then returned to New York in 1994 to join the faculty of Columbia Law School. She also served as Commissioner on the New York City Civilian Complaint Review Board for many years, from 1994 until 2003.

Ms. Mauskopf has served since 2002 as the U.S. Attorney for the Eastern District of New York, where she oversees all Federal criminal and civil cases in Brooklyn, Queens, Staten Island, Nassau, and Suffolk counties. She is originally from Washington, D.C., earned her undergraduate degree from Brandeis University, and her J.D. from the Georgetown University Law Center.

Ms. Mauskopf is a veteran public servant, having served as the New York State Inspector General from 1995 to 2002. That office is responsible for investigating misconduct in all executive branch agencies for the State. While serving in that capacity, Governor Pataki also appointed her as Chair of the Governor's Moreland Act Commission on New York City Schools. Prior to her appointment as Inspector General, Ms. Mauskopf served as an assistant district attorney in Manhattan, where she prosecuted violent crimes and white-collar cases, among other matters. In the district attorney's office, Ms. Mauskopf rose to become the Deputy of the Special Prosecutions Bureau in 1992 and Chief of the Frauds Bureau in 1993 to 1995.

Richard Sullivan—or it says "Rich" Sullivan.

Mr. SULLIVAN. Either one is fine.

Senator SCHUMER. OK. Well, the card says "Richard" and my notes say "Rich." Last but not least, let me introduce Rich Sullivan. This is a nice friendly hearing, so you can call me "Chuck" and I will call you "Rich."

[Laughter.]

Senator SCHUMER. Mr. Sullivan is the General Counsel of Marsh & McLennan Companies, Inc. That is a global professional services firm. He is a native of Long Island and attended William & Mary College. Mr. Sullivan earned his J.D. from Yale Law School, began his legal career as a clerk to Judge David Ebel in the U.S. Court of Appeals for the Tenth Circuit in Colorado.

Like most native New Yorkers, he did not leave for too long and returned after his clerkship to practice law for several years with the firm of Wachtell, Lipton, Rosen & Katz. In 1994, Mr. Sullivan left private practice to become a Federal prosecutor, serving as Assistant U.S. Attorney in the Southern District of New York from 1994 to 2005. He became a supervisor of the General Crimes Unit, then chief of the Narcotics Unit. Later, then-U.S. Attorney Jim Comey named Mr. Sullivan the founding chief of the newly created International Narcotics Trafficking Unit, dedicated to investigating and prosecuting the world's largest narcotic-trafficking and money-laundering organizations.

During his last 3 years in the office, from 2002 to 2005, Mr. Sullivan was also Director of the New York-New Jersey Organized Crime Drug Enforcement Task Force, where he managed the activities of law enforcement officers conducting investigations and prosecutions for a major Federal task force. I should note that while Mr. Sullivan was with the Southern District of New York, he supervised my chief counsel, Preet Bharara, right here. You probably read his glowing article in Time Magazine. His mother enjoyed it very much, he informed me. But Preet has only had wonderful things to say about Rich Sullivan. I guess that is why it says "Rich."

Anyway, I thank these three nominees for being here, and my colleague, Senator Lugar, has introduced Mr. Van Bokkelen. I am introducing these three nominees not as Chairman so much but as the Senator from New York.

So before I move on, I would like to give each of the nominees a chance to introduce families or friends who they might have with them today, because I know this a proud day, not only for the nominees but for their families. You know, we all know how our families are being us every step of the way, and we would not be there, I am sure you all agree with me, without the support our families have given us.

So why don't we first go to Professor Livingston. Do you have any people you might like to introduce?

STATEMENT OF DEBRA ANN LIVINGSTON, NOMINEE TO BE CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Ms. LIVINGSTON. Yes, Senator. I have with me today my husband, John McEnany, and my father, Robert Livingston. I was lucky enough to receive notice of this hearing when my parents were in New York. My mother, Sara Livingston, would have liked to be here, but she is home helping to take care of our—

Senator SCHUMER. Would they wave or like to stand up so we can see them both? Thank you. Congratulations to both of you.

[The biographical information of Ms. Livingston follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Debra Ann Livingston

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

   United States Circuit Judge for the Second Circuit

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

   Columbia Law School
   435 West 116th Street
   New York, NY 10027

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

   1959; Waycross, GA.

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Married to John Merritt McEnany
   Associate U.S. Attorney, Southern District of New York
   1 St. Andrew's Plaza, New York, NY 10007.

   1 child.

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

   Harvard Law School, 1980-82, 1983-84, J.D. granted in 1984

   Princeton University, 1977-80, A.B. granted in 1980.

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

July 1994 - Present: Columbia Law School. 435 West 116th Street, NY, NY 10027. Associate Professor, July 1994 - July 2000; Professor, July 2000 - present; Paul J. Kellner Professor, July 2004 - present; Vice Dean, July 2005 - July 2006. At Columbia I serve on the Board of Directors of the Columbia Journal of Law and Social Problems, a student journal. I also serve as a co-director of Columbia's Center on Crime, Community & Law.

Summer 1994 – Winter 2003: New York City Civilian Complaint Review Board. 40 Rector Street, NY, NY 10006. Commissioner

July 1992 - July 1994: University of Michigan Law School. 625 South State Street, Ann Arbor, MI 48109. Assistant Professor.

January 1991 - May 1992: Paul, Weiss, Rifkind, Wharton & Garrison. 1285 Avenue of the Americas, NY, NY 10019. Associate.

October 1986 - January 1991: U.S. Attorney's Office, Southern District of New York, 1 St. Andrews Plaza, NY, NY 10007. Assistant U.S. Attorney, October 1986 - January 1991; Deputy Chief of Appeals, July 1990 - January 1991.

September 1985 - October 1986: Paul, Weiss, Rifkind, Wharton & Garrison. 1285 Avenue of the Americas, NY, NY 10019. Associate.

September 1984 - September 1985: Law Clerk to Hon. J. Edward Lumbard, U.S. Court of Appeals for the Second Circuit, 40 Foley Square, NY, NY 10007.

Summer, 1984: Cravath, Swaine & Moore. Worldwide Plaza, 825 Eighth Avenue, NY, NY 10019. Summer Associate.

Academic Year, 1983 - 84: Harvard University. University Hall, Cambridge, MA 02138. Teaching Fellow; Resident Pre-Law Advisor, Lowell House.

Summer, 1983: Paul, Weiss, Rifkind, Wharton & Garrison. 1285 Avenue of the Americas, NY, NY 10019. Summer Associate.

August 1982 - May 1983: United Nations High Commissioner for Refugees. P.O. Box 2-121, Rajdamnern Road, Bangkok, Thailand. Legal Intern.

August 1982: American Baptist Foreign Mission Society. 197/1 Silom Road, Road 303, Bangkok 5, Thailand. Intern.

Summer, 1982: Debevoise & Plimpton. 919 Third Avenue, NY, NY 10022. Summer Associate.

Academic Year, 1981 - 82: Harvard Law School. 1563 Massachusetts Avenue, Cambridge, MA 02138. Teaching Assistant.

Summer, 1981: Sams, Gerstein & Ward, 66 West Flagler Street, Miami, FL 33130. Summer Intern.

Summer, 1980: Western Electric Company, Gateway 11, Newark, NJ 07102. Summer Intern.

1980 - 1983: State Attorney, Dade County, FL, 1351 N.W. 12th Street, Miami, FL 33125. Secretarial Assistant (part-time).

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

   I have not served in the military.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Paul J. Kellner Chair in Law, Columbia Law School, 2004.

   L. Hart Wright Award, by the University of Michigan Law School Student Senate for "excellence in teaching," 1993.

   Editor, *Harvard Law Review*, volumes 95 and 97, 1981-82 and 1983-1984.

   Certificate of Distinction in Undergraduate Teaching, Harvard-Danforth Center for Teaching and Learning, Harvard University, 1984.

   Harvard J.D. degree awarded *magna cum laude*, 1984.

   Princeton A.B. degree awarded *magna cum laude*, 1980.

   Election to Phi Beta Kappa, 1980.

   R.W. Van de Velde Prize, by Princeton's Woodrow Wilson School for excellence in independent academic work, 1979.

National Merit Scholar, 1977

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

Association of the Bar of the City of New York: Member, 1985 - present. I was a member of the City Bar's Council on Criminal Justice from June 1996 to June 1999.

New York State Bar Association: Member, 1985 - 1987.

The Grand Jury Project, New York State Office of Court Administration: Member, 1997 - 1999.

Advisory Panel for Research on Community Lawyering, U.S. Department of Justice, National Institute of Justice: Conference participant, February 1999.

11. **Bar and Court Admission**:

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

New York State, 1985.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

New York State courts, 1985.

United States District Court for the Southern District of New York, 1985.

United States District Court for the Eastern District of New York, 1986.

United States Court of Appeals for the Second Circuit, 1988.

There have been no lapses in membership in any of the above courts.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly

participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

West End Collegiate Church. Member, 2003 to present.

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None.

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

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

COMPREHENSIVE CRIMINAL PROCEDURE, with Ronald J. Allen, Joseph L. Hoffman, and William J. Stuntz (2nd ed., Aspen, 2005).

COMPREHENSIVE CRIMINAL PROCEDURE, with Ronald J. Allen, William J. Stuntz & Joseph L. Hoffmann (1st ed., Aspen, 2001).

Secret Evidence and the Courts in the Age of Nat'l Security. Panel Report: Issues in Article III Courts, 5 Cardozo Pub. Law, Policy & Ethics J. 501 (forthcoming February, 2007)

The Unfulfilled Promise of Citizen Review, 1 Ohio State J. Crim. L. 653 (2004).

Maximizing the Value of Citizen Review: Lessons from New York City, in 5 Government, Law and Policy Journal 27 (Fall 2003).

Citizen Review of Police Complaints: Four Critical Dimensions of Value, published by the Nat'l Ass'n for Citizen Oversight of Law Enforcement at http://www.nacole.org (Fall, 2002).

Racial Profiling Under Attack (with Samuel R. Gross), 102 Colum. L. Rev. 1413 (2002).

Prosecution: United States Attorney, in 3 Encyclopedia of Crime and Justice 1253 (Macmillan, 2nd ed., 2002).

Vagrancy and Loitering Laws, in 4 Encyclopedia of Crime and Justice 1613 (Macmillan,2nd ed., 2002).

Gang Loitering, the Court and Some Realism About Police Patrol, 1999 Supreme Court Review 141.

Remarks on Zero Tolerance Policing Initiatives, 35 Crim. L. Bulletin 383 (July - August, 1999).

Police Reform and the Department of Justice: An Essay on Accountability, 2 Buff. Crim. L. Rev. 815 (1999).

Police Patrol, Judicial Integrity, and the Limits of Judicial Control, 72 St. John's L. Rev. 1353 (1998).

Police, Community Caretaking and the Fourth Amendment, 1998 U. Chi. Legal F. 261.

Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing, 97 Colum. L. Rev. 551 (1997).

A Tribute to Jerry Israel: A Friend with a Messy Office, 94 Mich. L. Rev. 2443 (1996).

Brutality in Blue: Community, Authority, and the Elusive Promise of Police Reform, 92 Mich. L. Rev. 1556 (1994)(reviewing Above the Law: Police and the Excessive Use of Force).

'Round and 'Round the Bramble Bush: From Legal Realism to Critical Legal Scholarship, 95 Harv. L. Rev. 1669 (1982), reprinted in Essays on Critical Legal Studies 296 (Harv. L. Rev. Ass'n, 1986).

Death Penalty: Barclay v. Florida, Barefoot v. Estelle, and Zant v. Stephens, 97 Harv. L. Rev. 118 (1983).

As an editor on the Harvard Law Review, I assisted in editing numerous articles, notes, and other material for that journal; I do not specifically recall any of these pieces. To the best of my recollection, I also while in law school assisted modestly in the preparation of a letter to The Boston Globe. I signed the letter along with several other Harvard Law School students. As best as I can recall, the letter took issue with public statements by Harvard Law School professor Alan Dershowitz to the effect that newspapers should abandon the policy of refraining from publishing the names of rape victims. I do not have a copy of this letter and have been unable to locate it.

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

As a Commissioner on New York City's Civilian Complaint Review Board, I assisted in editing a report issued in June 2001 entitled, "Street Stop Encounter Report: An Analysis of CCRB Complaints resulting from the New York Police Department's 'Stop & Frisk' Practices." In addition, as a member of The Grand Jury Project, I assisted in the preparation of a report to Chief Judge Judith S. Kaye and Chief Administrative Judge Jonathan Lippmann of the New York courts. I have provided copies of both reports.

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

None.

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

As a law professor, I have spoken on legal issues in my field on a number of occasions over the past fifteen years. Most of these remarks were delivered extemporaneously or using notes, which I have not retained. The following is a list of the events I can specifically recall, but there may be others that I cannot recall at this time:

1. University of Mississippi School of Law, Lanar Law Center, P.O. Box 1848, University, MS 38677, March 24, 2006. I spoke to an audience composed primarily of state appellate judges at a Fourth Amendment conference sponsored by the Law School's National Center for Justice & the Rule of Law. The subject matter of the talk was Fourth Amendment purpose analysis and the so-called "wall" between the law enforcement and intelligence communities. The event

was videotaped. I am not in possession of the videotape, but one can be obtained from the National Center for Justice & the Rule of Law.

2. Benjamin N. Cardozo School of Law, NY, NY, December 5, 2005. I moderated a panel discussion on the use of classified evidence in Article III courts. As moderator, I prepared a summary of the panelists' remarks that will soon be published in Cardozo's *Public Law, Policy and Ethics Journal.* I included a PDF version of the summary in response to Question 13a.

3. Columbia Law School, NY, NY, September 27, 2005. I was one of three panelists who commented on remarks made by Israeli Supreme Court Justice Elyakim Rubinstein. The event was entitled, "Law and Counter-Terrorism: An Israeli Perspective with Comments on U.S. Issues." A video is available at www.iijs.columbia.edu/events/archive.html.

4. Federal Bar Council, 123 Main Street, Suite L100, White Plains, NY 10601. Kona, HI, February 4, 2005. I was one of four panelists to speak at the annual retreat of New York's Federal Bar Council on issues arising from the war on terror. I spoke principally about information sharing. I am not in possession of a copy of the text.

5. Columbia Law School, NY, NY, April 12, 2004. With Marcia Coyle of the *National Law Journal*, I moderated a panel discussion on the Patriot Act. The event was covered in the *National Law Journal* and can be viewed at: http://www.law.columbia.edu/center_program/crime/symposia/patriot. I am not in possession of the *National Law Journal* coverage.

6. New York University School of Law, 40 Washington Square South, NY, NY 10012, March 24, 2004. I gave a Hoffinger Lecture at New York University School of Law on the dismantling of the so-called FISA wall.

7. The National Academies, 500 Fifth Street, N.W., Washington, D.C. 20001, May 20, 2003. I made brief remarks to the Roundtable on Social and Behavioral Sciences and Terrorism on Fourth Amendment issues with the use of profiles.

8. Columbia Law School, 435 West 116th Street, NY, NY 10027, Fall, 2003. I gave the annual address to the first year class on behalf of the faculty.

9. National Association for Citizen Oversight of Law Enforcement, Cambridge, MA, November 15, 2002. I was the keynote speaker at the annual NACOLE conference. The published materials listed in response to Question 13a include a citation to my remarks.

10. New York University School of Law, 40 Washington Square South, NY, NY 10012, November 15, 2001. I spoke in a seminar conducted by Professor Jerome Skolnick on the subject of citizen review.

11. Columbia Law School, 435 West 116th Street, NY, NY 10027, October 27, 2001. I made remarks to the Alumni Class of 1951, outlining features of the Patriot Act.

12. Columbia Law School, NY, NY, October 16, 2001. I appeared as part of a panel at the Law School entitled, "Legal Implications of the Domestic Response to 9/11." I made brief remarks on information sharing between the law enforcement and intelligence communities. A video is available at http://www.columbia.edu/cu/news/vforum/01/domesticPolicy/

13. Russell Sage Foundation, 112 East 64th Street, NY, NY 10021, September 6, 2001. I presented remarks on citizen review to the Legitimacy Working Group, a panel of scholars doing work in the field of policing.

14. Columbia University, NY, NY. December, 2000. I made brief remarks at the request of Columbia's Office of Public Affairs on the subject of police reform. A videotape was made of these remarks and is available at http://www.columbia.edu/cu/news/media/00/debraLivingston/index.html

15. Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138, December 5, 2000. I spoke at a Harvard seminar conducted by Professor William Stuntz on the subject of citizen review.

16. Nat'l Inst. of Justice, 810 Seventh Street, N.W., Washington, D.C. 20531, February 18, 1999. I attended and made brief remarks at a conference on the subject of community safety law.

17. Columbia University, 435 West 116th Street, NY, NY 10027, January 19, 1999. I made remarks to the Public Policy Consortium at Columbia University on the subject of police accountability.

18. New York County Lawyer's Association, 14 Vesey Street, NY, NY 10007, October 13, 1998. I participated in a panel discussion entitled "Policing Quality of Life Offenses: A Safer City But at What Cost?"

19. Association of Court of Claims Judges of the State of New York, Saratoga Springs, NY, September 17, 1998. I spoke to an audience of judges on the subject of *Chicago v. Morales*, 527 U.S. 41 (1999), which was then pending before the Supreme Court.

20. School of Criminal Justice, State University of New York, Albany, NY, April 24, 1998. I spoke on the subject of zero tolerance policing and the law, and then participated in a panel discussion. The published materials listed in response to Question 13a include a citation to a summary of these remarks, published in the Criminal Law Bulletin.

21. St. John's University School of Law, Queens, NY, April 3, 1998. I participated in a panel discussion on the relationship of stop and frisk law to the substantive criminal law. The published materials listed in response to Question 13a include a citation to a summary of the panel presentation, published in St. John's Law Review.

22. The Association of the Bar of the City of New York, Council on Criminal Justice, 42 West 44th Street, NY, NY 10036, January 17, 1998. I gave a lecture on the regulation of police discretion at the Council's retreat. The retreat was held on the overall subject, "Quality of Life: What Qualities? Whose Lives?"

23. The Association of American Law Schools, 1201 Connecticut Avenue, N.W., Suite 800, Washington, DC 20036. Annual Meeting, San Francisco, CA, January 9, 1998. I made remarks at a panel discussion entitled, "Challenging Orthodoxy: Criminal Justice at the Turn of the Century." My remarks were on the subject of community policing and police discretion.

24. University of Chicago Legal Forum, University of Chicago Law School, 1111 East 60th Street, Chicago, IL 60637, November 8, 1997. I participated in a symposium held by the Chicago Legal Forum. I made remarks on the subject of stop and frisk law.

25. University of Michigan Law School, 625 South State Street, Ann Arbor, MI 48109, October 31, 1997. I gave a lecture to the Michigan faculty on the subject of community policing and the legal regulation of police discretion.

26. University of Virginia School of Law, 580 Massic Road, Charlottesville, VA 22903, April 18, 1997. I spoke to the Virginia faculty on the subject of quality of life policing.

27. The Association of the Bar of the City of New York, 42 West 44th Street, NY, NY 10036, June 3, 1996. I participated in a panel discussion entitled "Cameras in the Courtroom: Trials and the Media."

28. 1995 National Workshop for Judges of the U.S. Court of Appeals, San Diego, CA, June 25, 1995. *Criminal Law and Procedure: The 1994 Term.* I gave a talk summarizing highlights of the Supreme Court's 1994 Term in the fields of criminal law and procedure.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I rarely speak to reporters on legal issues in my field. I have on occasion done so, but have no record of these occasions. I am not in possession of any clips or transcripts responsive to this question.

I do recall speaking to someone from FactCheck.org on the subject of delayed notification search warrants in September 2004. The resulting article is available at www.factcheck.org/article259.html.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

15. **Citations**: If you are or have been a judge, please provide:

    a. citations for all opinions you have written (including concurrences and dissents);

    b. a list of cases in which certiorari has been requested or granted;

    c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

    d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

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

    f. citations to all cases in which you were a panel member in which you did not issue an opinion.

    I have not served as a judge.

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

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

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

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

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

I have not served as a judge.

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

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

Commissioner, New York City Civilian Complaint Review Board, 1994-2003. I was appointed to this position by New York City Mayor Rudolph W. Giuliani.

Assistant United States Attorney, Office of the United States Attorney for the Southern District of New York, October 1986 - January 1991. Deputy Chief of Appeals, July 1990 - January 1991. Career position, first appointed by United States Attorney Rudolph W. Giuliani.

Law Clerk to Hon. J. Edward Lumbard, U.S. Court of Appeals for the Second Circuit, September 1984 - September 1985. Appointed by Judge J. Edward Lumbard.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have not worked for a political party or played a role in a political campaign.

18. **Legal Career:** Please answer each part separately.

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

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

I served as a law clerk to the Honorable J. Edward Lumbard, United States Circuit Judge for the Second Circuit, 1984 - 1985.

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

I have not practiced alone.

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

Summer, 1984: Summer associate, law firm of Cravath, Swaine & Moore, Worldwide Plaza, 825 Eighth Avenue, NY, NY 10019;

September 1984 - September 1985: Law clerk to Hon. J. Edward Lumbard, U.S. Court of Appeals for the Second Circuit, 40 Foley Square, NY, NY 10007;

September 1985 - October 1986: Associate, law firm of Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, NY, NY 10019;

October 1986 - January 1991: Assistant U.S. Attorney, Office of the United States Attorney for the Southern District of New York, 1 St. Andrew's Plaza, NY, NY 10007. Deputy Chief of Appeals, July 1990 - January 1991;

January 1991 - May 1992: Associate, law firm of Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, NY, NY 10019;

July 1992 - July 1994: Assistant professor, University of Michigan Law School, 625 South State Street, Ann Arbor, MI 48109;

July 1994 - Present: Columbia Law School. 435 West 116th Street, New York, NY 10027. Associate professor, July 1994 - July 2000; Professor, July 2000 - present; Paul J. Kellner Professor, July 2004 - present; Vice Dean, July 2005 - July 2006.

b. Describe:

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

I have devoted the major portion of my legal career to education and public service. I also worked for a period in a private law firm.

I began my service in 1984 as a law clerk to Judge J. Edward Lumbard, U.S. Court of Appeals for the Second Circuit. After my appellate clerkship, I joined the firm of Paul, Weiss, Rifkind, Wharton and Garrison as an associate. During this, the first of two periods of employment with this firm, I worked on a variety of state and federal litigations, including a significant pro bono matter that was tried in the Eastern District of Virginia during my tenure.

I joined the U.S. Attorney's Office for the Southern District of New York in October 1986. I was a member of the Criminal Division and was responsible for both criminal trials and appeals. While an Assistant United States Attorney, I prosecuted numerous cases, including six jury trials. I argued before the Second Circuit in connection with these and other cases on five occasions. In July 1990, I was made a Deputy Chief of Appeals. Thereafter my work focused exclusively on briefing cases before the Second Circuit and on preparing fellow Assistants for argument.

In January 1991, I returned to Paul, Weiss, Rifkind, Wharton and Garrison as an associate. Until May 1992, when I left the firm to become a law professor, I worked on a number of commercial litigation matters in a variety of different fields.

I began my teaching career in 1992, at the University of Michigan. There I taught Evidence and Criminal Procedure. During my first year of teaching, I received the L. Hart Wright Award, which is awarded by Michigan's Student Senate to the outstanding teacher or teachers of the year.

I came to Columbia in 1994 as an associate professor. I became a full professor in 2000 and in 2004 became the Paul J. Kellner Professor of Law at Columbia. I have also served as Vice Dean of the Law School. My principal areas of teaching at Columbia have been Criminal Investigations and Evidence. With Ronald Jay Allen at Northwestern University School of Law, Joseph Hoffmann at Indiana University – Bloomington School of Law,

and William J. Stuntz at Harvard Law School, I am the author of COMPREHENSIVE CRIMINAL PROCEDURE, a casebook that is now in its second edition.

ii. your typical clients and the areas, if any, in which you have specialized.

During my time as an Assistant United States Attorney, I represented the United States in criminal proceedings. At Paul, Weiss, Rifkind, Wharton & Garrison, I had a diverse practice in both state and federal courts that spanned numerous substantive fields.

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

I specialized exclusively in litigation both as an Assistant United States Attorney and as an associate at Paul, Weiss, Rifkind, Wharton & Garrison. When I was an Assistant United States Attorney (1986-1991), I appeared in court frequently. On both occasions as an associate at Paul, Weiss, Rifkind, Wharton & Garrison, I appeared in court, though not as frequently as when I was an Assistant United States Attorney.

i. Indicate the percentage of your practice in:

1.	federal courts;	90%
2.	state courts of record;	9%
3.	other courts.	1%

ii. Indicate the percentage of your practice in:

1.	civil proceedings;	25%
2.	criminal proceedings.	75%

c. 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 tried seven cases to verdict or judgment. While an Assistant United States Attorney, I served as associate counsel in two jury trials, chief counsel in three, and sole counsel in one. At Paul, Weiss, Rifkind, Wharton & Garrison I served as associate counsel in one bench trial.

i. What percentage of these trials were:

1.	jury;	86%
2.	non-jury.	14%

d. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

19. **Litigation**: Describe the ten (10) 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 representation;

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

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

1. Licensing Corp. of America v. National Hockey League Players Ass'n, 153 Misc.2d 126 (N.Y. Sup. Ct. 1992). This case began as an action by the Licensing Corporation of America for a declaratory judgment that its exclusive representation agreement with the National Hockey League Players Association ("NHLPA") remained in full force. After the agreement was terminated by the NHLPA, the Licensing Corporation of America brought a claim for breach. During my second tenure at Paul, Weiss, Rifkind, Wharton & Garrison, from February 1991 into May 1992, I was associate counsel for the Licensing Corporation of America and in this capacity conducted discovery and represented the client in connection with extensive pretrial proceedings. The case proceeded to trial before Justice Herman Cahn in New York County Supreme Court after I left the firm. It ultimately settled after the Licensing Corporation won a verdict at trial.

Max Gitter, now at Cleary, Gottlieb, Steen & Hamilton, One Liberty Plaza, New York, NY 10006 (Tel.: (212) 225-2000), was chief counsel for the Licensing Corporation of America. Lynn A. Neils, now an Assistant United States Attorney in the Southern District of New York, 1 St. Andrews Plaza, New York, NY 10007 (Tel.: (212) 637-2627), was an associate counsel. The National Hockey League Players Association was represented by John R. McCambridge of Grippo & Elden, 111 S. Wacker, Chicago, IL 60606. (Tel.: (312) 704-7750).

2. Instructional Systems, Inc. v. Computer Curriculum Corporation, 130 N.J. 324 (1992). This case concerned the question whether a contractual relationship between the Computer Curriculum Corporation, producers of a computerized-educational learning system, and Instructional System, Inc., its regional distributor, constituted a "franchise" within the meaning of the New Jersey Franchise Practices Act. While at Paul, Weiss,

Rifkind, Wharton & Garrison, from about March 1991 into March 1992, I was associate counsel for the Computer Curriculum Corporation in connection with proceedings before the New Jersey Supreme Court. I participated extensively in the briefing though I did not argue the case. The New Jersey Supreme Court ultimately rejected our argument that Instructional Systems, Inc. did not constitute a franchisee for the purpose of New Jersey's franchise law. The case settled after I left the firm.

Jay Greenfield, Paul, Weiss, Rifkind, Wharton & Garrison, 1284 Avenue of the Americas, New York, NY 10019 (Tel.: (212) 373-3000), was chief counsel for the Computer Curriculum Corporation. Andrew T. Berry, McCarter & English, Four Gateway Center, 100 Mulberry Street, Newark, NJ 07102 (Tel.: (973) 639-2097), was associate counsel. With me on the brief before the New Jersey Supreme Court were Teresa Moore, also at McCarter & English (Tel.: (973) 639-7925), and Michael Gerber, formerly at Paul, Weiss, Rifkind, Wharton & Garrison and now at the National Association of Insurance & Financial Advisors, 2901 Telestar Court, Falls Church, VA 22042. (Tel.: (703) 770-8100). Instructional Systems, Inc. was represented by Peter N. Perretti, Riker, Danzig, Scherer, Hyland & Perretti, Headquarters Plaza, One Speedwell Avenue, Morristown, NJ 07962 (Tel.: (973) 538-0800).

3. F.D.I.C. as Receiver of Guardian Bank v. Eckert, Seamans, Cherin & Mellott, 754 F. Supp. 22 (E.D.N.Y. 1990). This case involved claims of breach of fiduciary duty, malpractice, fraud, and negligent misrepresentation against Eckert, Seamans, Cherin & Mellott in connection with the firm's representation of Guardian Bank, N.A. While at Paul, Weiss, Rifkind, Wharton & Garrison for the second time, from about January 1991 into the following year, I was associate counsel for Eckert, Seamans, Cherin & Mellott in the matter, which was before Judge Mishler in the Eastern District of New York. In this case I was principally involved in taking and defending depositions and otherwise conducting discovery. The case settled after I departed from Paul, Weiss, Rifkind, Wharton and Garrison.

Mark H. Alcott, Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, NY 10019 (Tel.: (212) 373-3000), acted as chief counsel for Eckert, Seamans, Cherin & Mellott. Gerard Harper and Daniel Beller, also at Paul, Weiss, Rifkind, Wharton & Garrison, also participated in the case. Franz Paasche, Clark & Weinstock, 52 Vanderbilt Avenue, New York, NY 10017 (Tel.: (212) 953-2550), and David Dean, James & Hoffman, 1101 17th Street, Suite 510, Washington, D.C. 20036 (Tel.: (202) 496-0500), were associate counsel in this matter. The F.D.I.C. was represented by Evan Widlitz, then at Reid & Priest, now Thelen, Reid & Priest, 875 Third Avenue, New York, NY 10022. (Tel.: (212) 603-2000). He is now with Weld Limited, 445 Park Avenue, New York, NY 10022. (Tel.: (212) 307-3169).

4. In re Doe, 860 F.2d 40 (2d Cir. 1988). In the summer and fall of 1988, I represented the United States as lead counsel in connection with civil contempt proceedings against Ferdinand Marcos, former president of the Philippines, and his wife, Imelda Marcos, for failure to comply with federal grand jury subpoenas. The contempt proceedings before Judge John Walker, Jr., then in the Southern District of New York, culminated in an

appeal by the Marcoses to the Second Circuit. I briefed and argued the case before the Second Circuit on behalf of the Government. The Marcoses attempted to show cause for disobeying the subpoenas by arguing that they retained head-of-state immunity, that United States law required that they be permitted to assert a privilege under the Philippine Constitution against subpoena compliance, and that the grand jury lacked authority to obtain the evidence sought by the subpoenas. In a published opinion, the Second Circuit affirmed the order holding the Marcoses in civil contempt.

With me on the brief before the Second Circuit were Charles G. LaBella, now with the firm of LaBella & McNamara, 401 West A Street, Suite 1150, San Diego, CA 92101 (Tel.: (619) 696-9200), Celia Goldwag Barenholtz, now at Kronish, Lieb, Weiner & Hellman, 1114 Avenue of the Americas, New York, NY 10036 (Tel.: (212) 479-6000), and Rudolph W. Giuliani, then the U.S. Attorney for the Southern District of New York and now at Giuliani Partners, 5 Times Square, New York, NY 10036. (Tel.: (212) 931-7300). Principal counsel for the appellants was Richard A. Hibey who is now with Miller & Chevalier, 655 Fifteenth St., N.W., Suite 900, Washington, D.C. 20005-5701. (Tel.: (202) 626-5888).

At the conclusion of the grand jury proceedings, racketeering charges were brought against the Marcoses. During the period from October 1988 through July 1990, I was an associate counsel during extensive pretrial proceedings and during a jury trial before Judge John F. Keenan in the Southern District of New York. This trial resulted in the acquittal of Imelda Marcos and Adnan Khashoggi, a co-defendant. Ferdinand Marcos died before the trial began. The chief counsel at trial for the United States was Charles G. LaBella. Denis McInerney, now with Davis, Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017 (Tel.: (212) 450-4477), was an associate counsel. Imelda Marcos was represented by Gerry Spence, The Spence Law Firm, P.O. Box 548, 15 South Jackson Street, Jackson Hole, Wyoming 83001 (Tel.: (307) 733-7290), and John Bartko, now of Bartko, Zankel, Tarrant & Miller, 900 Front Street, Suite 300, San Francisco, CA 94111 (Tel.: (415) 956-1900). Adnan Khashoggi was represented by James P. Linn, the James P. Linn Law Firm, The Tower, 1601 NW Expressway, Suite 1710, Oklahoma City, Oklahoma 73118. (Tel.: (405) 239-6781).

5. United States v. Gregory Baranik and Lev Gendler, Cr-87-00584-01 (S.D.N.Y. 1987). This case involved a conspiracy to defraud Citibank and Manufacturers Hanover Trust Company and to possess counterfeit securities of those banks, as well as charges stemming from the actual possession, sale, and attempted sale of counterfeit bank securities. Defendant Gregory Baranik pled guilty before trial. Lev Gendler was convicted on all counts after a jury trial before Judge Miriam Cedarbaum in the Southern District of New York. From June 1987 to December 1987, I prosecuted this matter in pretrial proceedings. I served as sole counsel for the United States at the trial of the case in December 1987. I thereafter represented the United States in connection with sentencing proceedings. I briefed and argued the case on appeal before the Second Circuit by Mr. Gendler. Mr. Gendler's conviction was affirmed without published opinion in December 1988. See U.S. v. Gendler, 868 F.2d 1268 (2d Cir. 1988).

Mr. Baranik was represented by Leonard Joy, Legal Aid Society, Federal Defender of New York, Inc., 52 Duane Street, 10th Floor, New York, NY 10007. His telephone number is (212) 417-8738. Mr. Gendler was represented by David Gordon of Gordon & Horwitz, 148 East 78th Street, New York, NY 10021. (Tel.: (212) 772-6625). With me on the brief before the Second Circuit were Kerri L. Martin, now Kerri Martin Bartlett, who can be reached by contacting the Office of the United States Attorney for the Southern District of New York, 1 St. Andrew's Plaza, New York, NY 10007 (Tel.: (212) 637-2627), and Rudolph W. Giuliani, then the United States Attorney for the Southern District of New York and now at Giuliani Partners, 5 Times Square, New York, NY 10036. (Tel.: (212) 931-7300).

6. United States v. Fe Santos, Cr-87-00229-01 (S.D.N.Y. 1987). This case involved the sale and possession with intent to distribute of "crack" cocaine. Fe Santos was convicted after a jury trial before Judge Charles Metzner in the Southern District of New York. I prosecuted this matter in pretrial proceedings beginning in May 1987 and served as chief counsel for the United States at the trial of the case in June. I also represented the United States in connection with post-trial proceedings and with sentencing in July, 1987. The conviction was briefed and argued on appeal by another Assistant United States Attorney; it was affirmed without published opinion at 837 F.2d 1087 (2d Cir. 1987).

My associate counsel at trial was G. Robert Gage, Jr., now at Gage, Spencer & Fleming, 410 Park Avenue, New York, NY 10022. (Tel.: (212) 768-4900). Ms. Santos was represented at trial by Daniel Felber, now at Balsam, Felber & Goldfield, 99 Wall Street, 21st Floor, New York, NY 10005. (Tel.: (212) 422-4600).

7. U.S. v. Alexander Suto and Joseph Aglialoro, Cr-86-00482-01 (S.D.N.Y. 1987). This case involved a conspiracy to traffic in stolen United States savings bonds and related substantive charges. The co-defendants, Suto and Aglialoro, were convicted on all counts after a jury trial before Judge John F. Keenan in the Southern District of New York. I served as chief counsel for the United States at the trial of this case in March and April 1987. I subsequently represented the United States in sentencing proceedings in May. I briefed and argued the case before the Second Circuit on appeal by the defendant, Alexander Suto. The case was affirmed on appeal in October 1987 without published opinion. See U.S. v. Suto, 835 F.2d 1430 (2d Cir. 1987).

My associate counsel at trial was Frederico Virella. Mr. Virella is now the Executive Assistant United States Attorney in the Southern District of New York, 1 St. Andrew's Plaza, New York, NY 10007. His telephone number is (212) 637-2568. Alexander Suto was represented by Neil Getnick, 521 Fifth Avenue, New York, NY. His telephone number is (212) 376-5666. Joseph Aglialoro was represented by Leonard Levenson, 225 Broadway, New York, NY 10007, at (212) 732-0522. With me on the brief before the Second Circuit were Aaron R. Marcu, now at Covington & Burling, 1330 Avenue of the Americas, New York, NY 10019 (Tel.: (212) 841-1078), and Rudolph W. Giuliani, then the United States Attorney for the Southern District of New York and now at Giuliani Partners, 5 Times Square, New York, NY 10036 (Tel.: (212) 931-7300).

8. U.S. v. Raul Familia, Cr-86-01044-01 (S.D.N.Y. 1987). This case involved the distribution and possession of "crack" cocaine in the vicinity of a school. The defendant, Raul Familia, was convicted after a jury trial before Judge Leonard Sand in the Southern District of New York. From November 1986 to February 1987, I represented the United States in pretrial proceedings, including a pretrial suppression hearing and related motion practice. I also served as chief counsel for the United States at the trial in February 1987. Upon Mr. Familia's conviction, I represented the United States in connection with sentencing proceedings in April 1987.

My associate counsel at trial was Linda Imes, now at Richard, Spears, Kibbe & Orbe, One World Financial Center, New York, NY 10281. Her telephone number is (212) 530-1810. Mr. Familia was represented by Andres Aranda, Aranda & Guttlein, Suite 707, 291 Broadway, New York, NY 10007. His telephone number is (212) 608-7575.

9. U.S. v. Benedicto Pena, 814 F.2d 654 (2d Cir. 1987). The defendant, Benedicto Pena, was convicted in the Southern District of New York of conspiracy to commit mail theft and of theft from the mails. I represented the United States in the latter half of 1986 and in 1987 in connection with Mr. Pena's appeal to the Second Circuit. I briefed and argued the case for the United States. The issue on appeal was whether the District Court had erred in admitting certain evidence that tied Mr. Pena to the scene of the crime. The case was affirmed on appeal without published opinion in February 1987. See U.S. v. Pena, 814 F.2d 654 (2d Cir. 1987).

With me on the brief were Bruce Green, now at Fordham School of Law, 140 West 62nd Street, New York, NY 10023 (Tel.: (212) 636-6851), and Rudolph W. Giuliani, then the United States Attorney for the Southern District of New York and now at Giuliani Partners, 5 Times Square, New York, NY 10036. (Tel.: (212) 931-7300). To the best of my recollection, Mr. Pena was represented on appeal by the Legal Aid Society, Federal Defenders Services Unit, now the Federal Defenders of New York, Inc., 52 Duane Street, 10th Floor, New York, NY 10007. (Tel.: (212) 417-8710).

10. Giarratano v. Murray, 668 F. Supp. 511 (E.D. Va. 1986), *aff'd in part and rev'd in part*, 836 F.2d 1421 (4th Cir. 1988), *aff'd on reh'g en banc*, 847 F.2d 1118 (4th Cir. 1988), *rev'd*, 492 U.S. 1 (1989). This case involved a class of indigent death row inmates who filed suit pursuant to 42 U.S.C. § 1983 against officials of the Commonwealth of Virginia asserting that Virginia was constitutionally required to provide them with counsel in post-conviction proceedings. From October 1985 into September 1986, while at Paul, Weiss, Rifkind, Wharton, & Garrison, I served as an associate counsel in this matter representing the class. I participated in pretrial proceedings and acted as an associate counsel at the trial before Judge Robert R. Merhige, Jr. in the Eastern District of Virginia. I also participated in the post-trial briefing. After I had left Paul, Weiss, in December 1986, Judge Merhige ordered partial relief, declaring that indigent Virginia death row inmates were entitled to the appointment of counsel upon request to assist in pursuing habeas relief in the state courts. This order was affirmed en banc in the Fourth Circuit Court of Appeals but was rejected on certiorari review by the United States Supreme Court.

The chief counsel on behalf of the class at trial was Steven E. Landers, then a partner at Paul, Weiss, Rifkind, Wharton & Garrison, and now at P.O. Box 692 (43 Potash Road), Litchfield, CT 06759 (Tel.: (860) 567-0569). Associate counsel included Jonathan Sasser, now at Ellis & Winters, P.O. Box 33550, Raleigh, NC 27636 (Tel.: (919) 865-7000), and Martha Geer, who is now a judge on the North Carolina Court of Appeals, 1 West Morgan Street, Raleigh, NC 27601 (Tel.: (919) 733-0496). The defendants were represented by Richard F. Gorman, III, then Virginia's Assistant Attorney General and now in private practice at 117 South 14th Street, Suite 300, Richmond, VA 23218 (Tel.: (804) 783-1010).

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

During my legal career, my principal work outside the context of litigation has been in the field of legal education. I have taught the traditional courses in Evidence, Criminal Law, Criminal Investigations and Criminal Adjudication. As stated previously, I am the co-author of COMPREHENSIVE CRIMINAL PROCEDURE, a casebook that covers both constitutional criminal procedure and significant statutory material related to the investigation and adjudication of criminal cases. I have written articles that address a variety of legal topics, from the Fourth Amendment to the void-for-vagueness doctrine. In recent years, I have helped to develop a research seminar at Columbia entitled, "Legal Issues in the War on Terror." In this seminar, Columbia students undertake to write significant research papers addressing legal questions at the intersection of national security, law enforcement, and counterterrorism.

In addition to these responsibilities, I have served as a Director of the Law School's Center on Crime, Community & Law. The Center sponsors periodic research seminars at the Law School on important topics in the field of criminal justice, along with related symposia and colloquia. I served as Vice Dean of the Law School in the 2005-2006 academic year, during which time I was responsible for planning the curriculum and heading the School's adjuncts program.

From 1994 to 2003, I was a Commissioner on New York City's Civilian Complaint Review Board ("CCRB"). New York's CCRB is an independent, mayoral agency that has responsibility for investigating complaints brought against New York City Police Department officers and alleging one of four types of police misconduct: wrongful use of force; abuse of authority; discourtesy; or use of offensive language. The Board has a team of about 120 investigators who receive and investigate complaints. The agency has subpoena authority, which it uses to obtain relevant evidence. Case reports prepared by CCRB investigators are reviewed by Board members, sitting in panels of three. Based on its investigations, the Board recommends discipline to the Police Commissioner.

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

While at Columbia, I have taught the following courses in the semesters specified:

Criminal Adjudication: Fall, 1994; Spring, 1996; Spring, 2001. This is the basic course in selected constitutional and statutory issues associated with the criminal adjudication process. The course covers the charging decision, bail and detention, the right to speedy trial, guilty pleas and plea bargaining, discovery and disclosure, the jury trial right and related issues, and double jeopardy.

Evidence: Fall, 1995; Fall, 1997; Fall, 1998; Fall, 2000; Spring, 2002; Fall, 2004. This is the basic course in evidence. It focuses on the Federal Rules of Evidence.

Criminal Investigations: Spring, 1997; Spring, 1998; Spring, 1999; Fall, 1999; Fall, 2001; Spring, 2003; Spring, 2006; Fall, 2006. This is the basic course in constitutional and statutory issues associated with the investigation of crime. It covers Fourth, Fifth, and Sixth Amendment law related to criminal investigations. Electronic surveillance, the use of undercover agents, and the grand jury process are also covered.

Criminal Law: Spring, 1995; Spring, 2007. This is the basic course in criminal law. It covers the traditional criminal law concepts, focusing major attention on the Model Penal Code.

Seminar, Policing: Fall, 1995; Spring, 1997, Spring, 1998, Spring, 2001. This research seminar focused on the police in a democratic society and on the legal regulation of police.

Seminar, Legal Education: Fall, 1998; Fall, 2002. This seminar, for students contemplating teaching careers, explored the history and theory of legal education in the United States. I co-taught this seminar with Professor Peter Strauss.

Seminar, Legal Issues in the War on Terror: Spring, 2004; Spring, 2005, Spring, 2006. This research seminar focused on legal questions at the intersection of national security, law enforcement, and counterterrorism. I co-taught this seminar with Professor Harold Edgar.

At Michigan, I taught Evidence in the Fall of 1992 and 1993. In Spring of 1993 and 1994, I taught a survey course in criminal procedure that covered selected topics in both the investigation and adjudication of criminal cases. Finally, I taught a seminar that addressed ethical issues in the criminal process.

22. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted

contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

While I was employed at both Michigan and Columbia, both universities made contributions to retirement plans on my behalf; these funds will be available to me when I reach retirement age. In addition, I do expect to receive royalty payments from Aspen Publishers, 111 Eighth Avenue, New York, NY 10011, in connection with future sales of the second edition of my co-authored casebook, COMPREHENSIVE CRIMINAL PROCEDURE.

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

    I have no plans, commitments or agreements of this type. I hope to be able to teach law school courses on a part time basis at Columbia Law School. Any such engagement would be in accordance with the Code of Conduct for United States Judges and Second Circuit policies.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

26. **Potential Conflicts of Interest**:

    a. Identify the parties, 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. Explain how you would address any such conflict if it were to arise.

       My spouse, John Merritt McEnany, is currently the Associate United States Attorney in the Southern District of New York. If confirmed, potential conflicts-of-interest during my initial service would include cases in which he has acted as a lawyer in the proceeding. I would also be sensitive to any other cases from the Southern District of New York in which my impartiality might reasonably be questioned by virtue of my spouse's employment.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will resolve any conflict of interest by consulting both the letter and spirit of the Code of Conduct for United States Judges, the Ethics Reform Act of 1989, 28 U.S.C. § 455, and any other relevant guidelines.

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

I participated while at Paul, Weiss, Rifkind, Wharton & Garrison in a pro bono case in which a class of indigent Virginia death row inmates asserted a constitutional claim to counsel in post-conviction proceedings. I acted as an associate counsel in the trial of this matter before Judge Robert R. Merhige, Jr. in the Eastern District of Virginia and also participated in the post-trial briefing. I personally spent more than 600 hours on this matter.

At Columbia, I have encouraged students to participate in pro bono activities. While at the Civilian Complaint Review Board, I helped arrange for interested Columbia students to fulfill their pro bono obligation by providing assistance to the Board. Several students volunteered their time by doing legal research or helping to assemble cases.

28. **Selection Process**:

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

Shortly before January 18, 2006 I was invited to an interview with the Office of Counsel to the President. I was informed that the interview concerned a possible United States Circuit Court appointment. I interviewed with members of that Office on January 18, 2006. Later that same day, I interviewed with lawyers from the Justice Department. I thereafter completed nomination paperwork. I had a few brief telephone conversations with White House or Justice Department personnel regarding the completion of that paperwork and the nomination process. The President submitted my nomination to the Senate on June 28, 2006.

My nomination was returned to the President on December 9, 2006. I was renominated on January 9, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AO-10
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (Last name, First name, Middle initial) Livingston, Debra A.	2. Court or Organization Second Circuit	3. Date of Report 1/13/2007
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. Circuit Judge nominee	5. ReportType (check appropriate type) (●) Nomination, Date 1/9/2007 ( ) Initial ( ) Annual ( ) Final	6. Reporting Period 1/1/2006 to 12/31/2006
7. Chambers or Office Address Columbia Law School 435 W. 116th Street New York, New York 10027	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

☐ NONE - (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Paul J. Kellner Professor of Law	Columbia Law School
2.	Vice Dean (July 2005-July 2006)	Columbia Law School

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

☐ NONE - (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	2/1999	Aspen Publishers, royalty payments on sales of co-authored casebook, Comprehensive Criminal Procedure

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Livingston, Debra A	1/13/2007

III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions)

A. Filer's Non-Investment Income

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1.	3/29/05	Aspen Publishing (book royalties)	$5650.91
2.	4/6/06	Aspen Publishing (book royalties)	$9808.67
3.	2005	Columbia Law School (salary/benefits)	$221,883.06
4.	2006	Columbia Law School (salary/benefits)	$270,509.06
5.	10/13/06	Aspen Publishing (book royalties)	$1,467.38

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

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

	DATE	SOURCE AND TYPE
1.		

IV. REIMBURSEMENTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE - (No such reportable reimbursements.)

	SOURCE	DESCRIPTION
1.	Exempt	

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

☐ NONE - (No such reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		

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

☑ NONE - (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			

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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A -H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions)									
1. New York State Dormitory Authority, City Univ. Bond	A	Interest	J	T	Exempt				
2. TIAA-CREF stock (Retirement a/c)	A	Dividend	K	T					
3. Fidelity Contrafund (Retirement a/c)	C	Dividend	K	T					
4. Fidelity Convertible Securities (Retirement a/c)	A	Dividend	K	T					
5. Fidelity Growth Co. (Retirement a/c)	A	Dividend	K	T					
6. Fidelity Equity Income II	A	Dividend	J	T					
7. Fidelity Magellan	D	Dividend	K	T					
8. U.S. Savings Bonds	A	Interest	J	T					
9. Citibank checking/savings	B	Interest	L	T					
10. Brokerage #1 Citibank Bank Deposit Program	C	Interest	L	T					
11. Brokerage #1 Gov't Portfolio CL A	A	Interest	J	T					
12. TIAA Real Estate (Retirement a/c)		Dividend	L	T					
13. TIAA Traditional Annuity (Retirement a/c)	A	Dividend	K	T					
14. Vanguard 526 Morgan Growth Admiral	D	Dividend	N	T					
15. Vanguard 548 Small-Cap Admiral	B	Dividend	M	T					
16. Vanguard 078 Asset Allocation	A	Dividend	K	T					
17. Vanguard 081 Int'l Growth (Retirement a/c)	D	Dividend	M	T					
18. Vanguard 122 Life Growth Portfolio	A	Dividend	K	T					

1. Income/Gain Codes: (See Columns B1 and D4)	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes: (See Columns C1 and D3)	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes (See Column C2)	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
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VII. INVESTMENTS and TRUSTS – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19. Vanguard 163 N.Y. Tax Exempt	A	Interest	K	T					
20. Vanguard 593 Growth & Income Admiral	C	Dividend	M	T					
21. Vanguard Moderate Age-Based Moderate Growth		Dividend	K	T					
22. Vanguard Hi-Yield Corporate Fund (Retirement a/c)	B	Dividend	K	T					
23. Vanguard Index 500 (Retirement a/c)	B	Dividend	M	T					
24. Vanguard Inflation-Protected Securities (Retirement a/c)	A	Dividend	K	T					
25. Vanguard REIT Index Fund (Retirement a/c)	B	Dividend	L	T					
26. Vanguard Wellington Fund (Retirement a/c)	D	Dividend	M	T					

1. Income/Gain Codes:	A = $1,000 or less	B = $1,001-$2,500	C = $2,501-$5,000	D = $5,001-$15,000	E = $15,001-$50,000
(See Columns B1 and D4)	F = $50,001-$100,000	G = $100,001-$1,000,000	H1 = $1,000,001-$5,000,000	H2 = More than $5,000,000	
2. Value Codes:	J = $15,000 or less	K = $15,001-$50,000	L = $50,001-$100,000	M = $100,001-$250,000	
(See Columns C1 and D3)	N = $250,000-$500,000	O = $500,001-$1,000,000	P1 = $1,000,001-$5,000,000	P2 = $5,000,001-$25,000,000	
	P3 = $25,000,001-$50,000,000		P4 = $More than $50,000,000		
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash/Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part II:
-I do not expect to receive any deferred income as described in this part. While I was employed at the University of Michigan School of Law and Columbia Law School, both employers made contributions to retirement plans on my behalf; these funds will be available to me when I reach retirement age. Harvard Law School Professor William Stuntz and I have also discussed selecting and editing a collection of criminal procedure scholarship for law students. If completed, the compilation will be published by Foundation Press.
-At present I have no agreements regarding future employment. However, I hope to be able to teach law school courses on a part-time basis at Columbia Law School. Any such engagement would be strictly subordinate to my duties as a judge and subject to the regulations and procedures governing such activity.
Part IILB:
Spouse is employed by the United States Department of Justice.
Part VII:
-TIAA retirement account statements and the statements for the NY 529 college savings account in which Vanguard Moderate Age-Based Moderate Growth is held do not report dividend/income detail. All income in all mutual funds is automatically reinvested in the given fund.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Livingston, Debra A	1/13/2007

IX. CERTIFICATION.

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

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

Signature _____ Date 1/13/07

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		88	048	Notes payable to banks-secured			
U.S. Government securities-add schedule		7	000	Notes payable to banks-unsecured			
Listed securities-add schedule	1	821	767	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		165	334
Real estate owned-add schedule		425	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		165	334
				Net Worth	2	206	481
Total Assets	2	371	815	Total liabilities and net worth	2	371	815
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
United States Savings Bonds	$ 7,000
Listed Securities	
CREF Stock (fund)	$ 35,109
Fidelity Contrafund	47,075
Fidelity Conv Sec	31,788
Fidelity Growth Co.	38,217
Fidelity Equity Income II	12,362
Fidelity Magellan	33,279
NYS Dormitory Authority bonds	5,038
Smith Barney CitiBank Bank Dep. Prog	77,126
Smith Barney Government Portfolio	8,768
TIAA Real Estate	89,885
TIAA Traditional Annuity	33,655
TSP C Fund	244,624
TSP G Fund	69,356
TSP S Fund	15,066
Vanguard 078 Asset Allocation	23,936
Vanguard 081 Int'l Growth	105,959
Vanguard 122 Life Growth Portfolio	45,816
Vanguard 163 NY Tax Exempt	21,814
Vanguard 526 Morgan Grwth Admiral	254,684
Vanguard 548 Small Cap Admiral	105,488
Vanguard 593 Growth & Inc. Admiral	155,172
Vanguard Coll Mod Age-Based:Mod Grth	25,549
Vanguard Hi-Yield Corporate Fund	18,560
Vanguard Index 500	139,685
Vanguard Inflation-Protected Securities	27,435
Vanguard REIT Index Fund	50,745
Vanguard Wellington F.	105,576
Total Listed Securities	$1,821,767
Real Estate Owned	
Personal residence	$ 425,000
Real Estate Mortgages Payable	
Personal residence	$ 165,334

AFFIDAVIT

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

Feb. 17, 2007
(DATE)

(NAME)

2/17/07
(NOTARY)

GEORGE J. MA
Notary Public, State of New York
No. 01MA6116017
Qualified in New York County
Commission Expires Sept. 20, 2008

Senator SCHUMER. How about Ms. Mauskopf?

STATEMENT OF ROSLYNN RENEE MAUSKOPF, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK

Ms. MAUSKOPF. Thank you, Senator Schumer. Today I have with me my mother, Regina Mauskopf, who is very, very proud to be here and I think would not be embarrassed to note in the Congressional Record that she is about to turn 90.

Senator SCHUMER. God bless. And a Holocaust survivor.

Ms. MAUSKOPF. A Holocaust survivor, along with my father, Barry Mauskopf, who passed away a few years ago and who is with us in spirit. I am happy to have both of them here.

Senator SCHUMER. Amen.

Ms. MAUSKOPF. I am also very happy to have my home-State Senator chairing this hearing.

Senator SCHUMER. Thank you. And would you just like to wave, Mrs. Mauskopf? Thank you. And many more years to you. May God give you many more years.

[The biographical information of Ms. Mauskopf follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Roslynn Renee Mauskopf. My former married name was Roslynn R. Mundell.

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

   United States District Judge for the Eastern District of New York

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

   Office address: United States Attorney's Office
   Eastern District of New York
   One Pierrepont Plaza
   Brooklyn, New York 11201

   Place of residence: New York, New York

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

   1957; Washington, DC

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Divorced. I have no children.

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

   Georgetown University Law Center, Washington DC;
   August 1979 – June 1982; JD 1982, *cum laude*

   Brandeis University, Waltham MA; August 1975 – June 1979;
   BA 1979, *magna cum laude and highest honors in French literature*

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

   9/02 – present: United States Attorney, Eastern District of New York

   1/99 – 9/02: Chair, Governor's Moreland Act Commission on New York City Schools

   10/95 – 9/02: New York State Inspector General, Office of the State Inspector General

   8/82 – 10/95: Assistant District Attorney, New York County District Attorney's Office

   6/81 – 8/81: Summer Intern, United States Attorney's Office, Southern District of New York

   6/80 – 6/81: Research Assistant, Professor William W. Greenhalgh, Georgetown University Law Center

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

   I have not served in the military.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Phi Beta Kappa

   Louis Dembitz Brandeis Scholar

   Anna S. Aaronson Award in French Literature

   Pi Alpha Alpha Medal, 2000

   New York Police Department Retired Detectives Association Award, 2001

   Department of Justice, Spirit of Justice Award, 2002

   Federal Bureau of Investigation Recognition, 2002

New York State Ethics Commission Recognition, 2002

New York State Department of Correctional Services Recognition, 2002

New York State Police Awards, 2002, 1995 and 1990

United States Marshals Service Regional Fugitive Task Force Award, 2002

Ellis Island Medal of Freedom, 2003

Citation, Nassau County Legislature, 2003

New York County District Attorney's Office Hogan-Morgenthau Award, 2003

Sid Jacobson Jewish Community Center Recognition, 2003

Yashar/Judges and Lawyers Chapter of Hadassah Recognition, 2003

Brandeis Association/Jewish Lawyers of Queens County Recognition, 2003

New York County Lawyers Association Outstanding Woman of the Bar, 2004

Waterfront Commission of New York/New Jersey Recognition, 2004

Federal Drug Agents Foundation Award, 2005

Federal Law Enforcement Officers Foundation Woman of the Year Award, 2006

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

New York State Bar Association, approx. 2001-03

New York State Women's Bar Association, approx. 1996-2002

Attorney General's Advisory Committee, 2005–present
Member of the following subcommittees: Civil Rights, Sentencing, Office of Management and Budget, Violent and Organized Crime, Security Working Group; Former member of the Victim-Witness Subcommittee.

President's Corporate Fraud Task Force, 2002-present

Department of Justice/National Association of Attorneys General/National District Attorneys Association Executive Working Group, 2006-present

New York State-Federal Judicial Council Advisory Board, 2003–present

Federal Bar Council, New York, New York approx. 2003-04

Association of the Bar of the City of New York, approx. 1993-2003 (Served as a member of the Criminal Justice Council and the Standing Committee on Criminal Advocacy)

American Bar Association, 1980-82 (student member)

11. **Bar and Court Admission**:

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

State of New York, First Judicial Department; January 1983
My membership is current, and has not lapsed at any time.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

New York State courts

United States District Court for the Eastern District of New York; June 1984

United States District Court for the Southern District of New York; June 1984

United States Court of Appeals for the Second Circuit; August 2002

Supreme Court of the United States; December 2000

All memberships are current, and none have lapsed at any time.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

President, Board of Directors, 240 Central Avenue Owners Association (residential co-op board), 1986 – 1993

Board of Directors, Capital Repertory Theatre, Albany, NY, 1998 – 1999

Second Vice President, National Association of Inspectors General, 1997 – 1998

New York Regional Inspector General Forum, 1998 – 2001

Association of New York State Chiefs of Police, 1997 – 2001

Advisory Board, John Jay College of Criminal Justice, Graduate Program in Public Administration, 1997 - 2001

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I do not hold membership in any organization that discriminates on the basis of race, sex or religion, nor have I ever belonged to any such organization that discriminates through either formal membership requirements or the practical implementation of membership policies, including those listed in response to Question 12a above.

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

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

During my tenure as State Inspector General, the Office of the State Inspector General issued over 1200 public reports on completed investigations. The Governor's Moreland Act Commission on New York City Schools issued four reports detailing its findings. During my tenure as United States Attorney, two Letters to the Editor were published, one in the *New York State Bar Association Journal* (in approximately March 2003) and the other in the *New York Law Journal* (July 2004).

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association,

committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I contributed to the preparation of New York State Executive Order 39, entitled "Reforming the Office of the State Inspector General," signed by Governor George E. Pataki on June 17, 1996. I also contributed to the preparation of New York State Criminal Procedure Law section 2.10(68), signed in to law on July 18, 2000, granting peace officer status to employees of the Office of the State Inspector General.

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

I have not provided or issued any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation to public bodies or public officials, nor have others done so on my behalf.

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

As State Inspector General, I gave several speeches on the role of the State Inspector General.

As United States Attorney, I have been called upon frequently to speak on the work of the office, or on various legal or law enforcement topics. Most of these speeches or panel discussions were extemporaneous, or with notes that I did not retain. To the best of my recollection, below is a list of the events at which I spoke.

11/15/02	Remarks on my Investiture as United States Attorney, Ceremonial Courtroom, United States District Court, Eastern District of New York, Brooklyn, New York

1/15/03	Keynote Speaker, Hogan-Morgenthau Association Annual Dinner, Tavern on the Green, New York, New York. I was the recipient of the Hogan-Morgenthau Award, presented annually to a former Assistant District Attorney in the New York County District Attorney's Office.
1/16/03	Welcoming Remarks, Eastern District Alumni Association Reception, Heights Casino, Brooklyn, New York
1/29/03	Museum of Jewish Heritage Reception, City Hall Restaurant, New York, New York. I spoke about the influence of my parents on my work as a prosecutor and as United States Attorney.
2/4/03	Museum of Jewish Heritage Generation to Generation Committee Meeting, New York, New York. I gave remarks similar to those on 1/29/03.
3/6/03	Panelist, Baruch College Roundtable on Corporate Fraud, New York, New York
3/12/03	Keynote Speaker, New York State Police Women's History Month Celebration, New York State Police Academy, Albany, New York
3/25/03	Keynote Speaker, Federal Bureau of Investigation/New York Field Division Women's History Month Celebration, New York, New York
4/8/03	Welcoming Remarks, Crime Victim's Week Breakfast, 290 Broadway, New York, New York, sponsored by the Department of Justice Office of Victims of Crime, honoring crime victims service providers.
4/9/03	Welcoming Remarks, East New York Weed and Seed Homeland Security Town Hall Meeting, Thomas Jefferson High School, Brooklyn, New York
5/13/03	Luncheon Speaker, Sid Jacobson Jewish Community Center REACH Luncheon, George Washington Manor, Roslyn, New York
5/19/03	Keynote Speaker, Yashar/Judges and Lawyers Chapter of Hadassah Spring Dinner, Nassau County Bar Association, Mineola, New York
6/12/03	Luncheon Speaker, New York Criminal Defense Lawyers Association Meeting, The Yale Club, New York, New York

6/19/03	Keynote Speaker, Installation Dinner, Women's Bar Association of the State of New York, Nassau County, New York
9/23/03	Luncheon Speaker, New York State Bar Association, Health Law Section, Annual Continuing Legal Education Program on Fraud, Abuse and Compliance Issues in Health Law, Marriott Marquis Hotel, New York, New York
9/24/03	Keynote Speaker, Henry F. Williams International Homicide Seminar Banquet, New York State Police Academy, Albany, New York
10/8/03	Brandeis University Alumni Association - Young Lawyers Chapter Reception, Brandeis House, New York, New York
10/15/03	Inspector General Association National Conference, United Nations Plaza, New York, New York
10/18/03	Panelist, Corporate Fraud Roundtable, New York Council of Defense Lawyers Biennial Retreat, Rye Brook, New York
11/13/03	Speaker, American Corporate Counsel Association Continuing Legal Education Program on Corporate Fraud, Uniondale, New York
11/18/03	Panelist, Continuing Legal Education Roundtable on Federal Sentencing Issues, sponsored by the National Law Journal, Columbia University, New York, New York
11/19/03	Panelist, Continuing Legal Education Roundtable on Criminal Law, sponsored by New York University, New York, New York
11/20/03	Speaker, Lawyers Committee of the Anti-Defamation League, New York, New York.
11/26/03	Welcoming Remarks, Federal Bar Council Annual Thanksgiving Luncheon, Waldorf-Astoria Hotel, New York, New York
3/16/04	Luncheon Speaker, American Academy of Professional Law Enforcement (APPLE), American Stock Exchange, New York, New York
3/18/04	Panelist, Federal Bar Council Continuing Legal Education Seminar on Corporate Fraud, New York, New York

3/30/04	Speaker, Federal Bar Council, Meeting of the Committee on Second Circuit Courts, held at the offices of Covington and Burling, New York, New York
4/21/04	Keynote Speaker, Columbia Law School Women's Student Bar Association Spring Dinner, Columbia Law School, New York, New York
7/13/04	Luncheon Speaker, United States Department of Labor Office of Inspector General and Office of Labor Racketeering National Training Conference, San Diego, California
9/22/04	Panelist, Access to the Courts: A Primer for the Press, Practitioners, Prosecutors and the Public, Continuing Legal Education Program, Association of the Bar of the City of New York, New York, New York
11/9/04	Keynote Speaker, Brandeis Association/Jewish Judges and Lawyers of Queens Installation Dinner, Hillcrest Jewish Center, Queens, New York
5/9/05	Panelist, US Attorney's Roundtable Discussion, President's Council on Integrity and Efficiency (PCIE) Annual Training Conference for Inspectors General, Philadelphia, Pennsylvania
6/9/05	Keynote Speaker, United Jewish Appeal (UJA) White Collar Lawyers Committee Reception, The Princeton Club, New York, New York
6/13/05	Welcoming Remarks, United States Marshals Service Fugitive Training Seminar, Hofstra University, Uniondale, New York
8/2/05	Welcoming Remarks, National Night Out Celebration, Far Rockaway Weed and Seed Steering Committee, Far Rockaway, New York
9/23/05	Luncheon Speaker, New York State Bar Association, Health Law Section, Annual Continuing Legal Education Program on Fraud, Abuse and Compliance Issues in Health Law, The Yale Club, New York, New York
10/18/05	Acceptance Speech, Federal Drug Agents Foundation Awards Reception, Pierre Hotel, New York, New York
12/15/05	Panelist, Federal Bar Council Continuing Legal Education Program on Deferred Prosecution Agreements in Corporate Fraud

Cases, Ceremonial Courtroom, United States Courthouse, Southern District of New York, New York, New York

2/14/06 Acceptance Speech, Woman of the Year Award, Federal Law Enforcement Officers Association (FLEOA) Foundation Reception, New York, New York

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I was interviewed by the media in connection with my appointments as State Inspector General (October 1995), Moreland Act Commission Chair (January 1999), and United States Attorney (September 2002). During my service in these positions, I issued press releases and held or participated in press conferences to provide information related to the results of investigations or cases. On a few occasions, I supplemented those press conferences with media interviews.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

15. **Citations:** If you are or have been a judge, please provide:

a. citations for all opinions you have written (including concurrences and dissents);

b. a list of cases in which certiorari has been requested or granted;

c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

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

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have never been a judge

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

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

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

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

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

    I have never been a judge.

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

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

9/02-present:	United States Attorney, Eastern District of New York (Appointed by President George W. Bush and confirmed by the United States Senate)
10/95-9/02:	New York State Inspector General (Appointed by Governor George E. Pataki)
1/99-9/02:	Chair, Governor's Moreland Act Commission on New York City Schools (Appointed by Governor George E. Pataki)
8/82-10/95:	Assistant District Attorney, New York County (Appointed by District Attorney Robert M. Morgenthau)

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held a position with or played a role in any political party, election committee, or political campaign.

18. **Legal Career:** Please answer each part separately.

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

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

I have not served as a judicial clerk.

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

I have not practiced alone

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

9/02-present: United States Attorney, Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201

10/95-9/02: State Inspector General, Office of the State Inspector General, Executive Chamber, State Capitol, Albany, NY 12224 and 61 Broadway, 12th Floor, New York, NY 10006

1/99-9/02: Chair, Governor's Moreland Act Commission on New York City Schools, 61 Broadway, 12th Floor, New York, NY 10006

8/82-10/95: Assistant District Attorney, New York County District Attorney's Office, One Hogan Place, New York, NY 10013

b. Describe:

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

As an Assistant District Attorney (8/82-10/95), I handled all aspects of criminal prosecution from the inception of the complaint through sentence. I served in a variety of capacities including Chief, Frauds Bureau (1/93-10/95), Deputy Chief, Special Prosecutions Bureau (2/92-1/93), Assistant District Attorney, Frauds Bureau (6/87-2/92), and Assistant District Attorney, Trial Division (8/82-6/87), with special assignments in the Juvenile Crimes Unit and the Domestic Violence and Child Abuse Unit.

As State Inspector General (10/95-9/02), I led the statewide office responsible for investigating corruption, fraud, criminal activity, conflicts of interest and other misconduct in all Executive Branch agencies. Teams of investigators worked proactively, often with state, local and federal law enforcement agencies and prosecutors on cases involving bribery, theft, bid-rigging, procurement and other types of fraud against the government, narcotics, excessive use of force, ethics violations, abuse of office and other forms of corruption.

Contemporaneous with my service as State Inspector General, I served as Chair of the Governor's Moreland Act Commission (1/99-9/02). The Commission examined the operations and fiscal affairs of the New York City Board of Education and the New York City School Construction Authority with respect to their management of, and accountability for, unprecedented levels of state funding and issued four reports detailing its findings.

As United States Attorney for the Eastern District of New York (9/02-present), I supervise an office of approximately 170 attorneys. I am responsible for the management of all federal criminal prosecutions in the district, as well as all civil matters involving the United States brought or defended by the office.

ii. your typical clients and the areas, if any, in which you have specialized.

As an attorney in public service for my entire career, I did not have private clients. My area of specialty has been criminal investigation and prosecution.

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

As an Assistant District Attorney, I appeared before courts and grand juries virtually on a daily basis. As State Inspector General and Chair of the Moreland Act Commission, I did not appear in court but personally supervised the legal activities of each entity. Similarly, as United States Attorney, I have not appeared in court, but I personally supervise the legal activities of the office, particularly in significant matters, including overseeing and personally directing matters that involve extensive courtroom proceedings.

i. Indicate the percentage of your practice in:
   1. federal courts; 20%
   2. state courts of record; 80%
   3. other courts.

ii. Indicate the percentage of your practice in:
   1. civil proceedings; 10%
   2. criminal proceedings. 90%

d. 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 tried approximately 25 cases to verdict; 21 as sole counsel and 4 as co-counsel.

i. What percentage of these trials were:
   1. jury; 80%
   2. non-jury. 20%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never practiced before the Supreme Court of the United States.

19. **Litigation:** Describe the ten (10) 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 representation;

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

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

1. People v. Steven J. Romer Ind. No. 2322/91
Supreme Court, State of New York, County of New York; the Honorable John A.K. Bradley; Approx. 11/90 - 3/92

In this case I represented the People of the State of New York against the defendant, Mr. Romer. I was solely responsible for all aspects of investigation and trial from initial complaint through verdict, including extensive grand jury proceedings, multiple search warrants, complex pre-trial motions, and over three-month trial. The defendant, an attorney, stole over $15 million in client funds and forged bank and other documents that were provided to his clients to create the appearance that their funds were properly held. The defendant concocted an elaborate scheme to stage his disappearance and alleged death, and was arrested after a lengthy investigation and search. After a three-and-a-half-month jury trial, Romer was convicted of multiple counts of Grand Larceny in the First Degree, Forgery in the First Degree, and other crimes, and sentenced to 7 1/2 to 22 1/2 years in state prison, and full restitution. At the time, this case represented the largest theft of client funds in US history.

Opposing counsel: defendant *pro se* (currently incarcerated)

2. People v. Thomas Gambino, Joseph Gambino, et al. Ind. No. 11859/90;
People v. David Stuart, et al. Ind. No. 11858/90
Supreme Court, State of New York, County of New York; Hon. Thomas B. Galligan (retired); Approx. 1/88 - 1/92

I represented the People of the State of New York against seventeen individual and corporate defendants, including organized crime bosses Thomas and Joseph Gambino and entities that they controlled. They were charged with Enterprise Corruption (New York State's RICO statute), extortion, coercion, antitrust crimes, larceny and other crimes in connection with organized crime's half-century stranglehold over trucking in New York City's garment industry. Along with co-counsel, I handled all aspects of the investigation including eavesdropping, wiretap and search warrants, an extensive financial investigation, all aspects of the grand jury presentation and motion practice, and witness and trial preparation. I did not participate in the abbreviated trial due to ongoing trial at same time (People v. Romer, above).

In a classic organized crime racket, defendants conspired to allocate territory within the garment center to specific truckers, prevented businesses from choosing their own trucker, and used threats and violence to extort millions in "mob taxes" from businesses forced to use members of the cartel. Investigation entailed multiple eavesdropping, wiretap and search warrants, and three sophisticated undercover operations in which investigators opened an undercover garment factory and trucking company, and posed as

employees of the target companies. In mid-trial, defendants pleaded guilty to antitrust and other crimes and were sentenced to over $12 million in fines and penalties, and forced to give up control of their garment center trucking operations. The Court also appointed a special master to oversee this divestiture and monitor ongoing trucking operations in the garment center to eliminate the cartel's influence and dominance.

Co-counsel: Former Assistant District Attorney Eliot Spitzer, now Attorney General, State of New York, State Capitol, Albany, NY 12224. (518) 474-7330

Opposing counsel: Gerald Shargel, 1585 Broadway, New York, NY 10036. (212) 969-5670

3. People v. Ray Mercer
Supreme Court, State of New York, County of New York; the Honorable Jeffrey Atlas; Approx. 2/93 – 3/94

I represented the People of the State of New York against the defendant, Mr. Mercer, a professional boxer charged with Sports Bribery. I was solely responsible for all aspects of the investigation, pretrial proceedings, and trial from initial complaint through verdict, including extensive grand jury proceedings involving access to media sources, and securing a new jury instruction in a case of first impression under the Sports Bribery statute. Defendant offered a $100,000 bribe to his opponent in the middle of a fight in an effort to persuade his opponent to throw the fight. The bribe offer, which was captured on ringside microphones for television broadcast, was ultimately rejected and Defendant's opponent won, securing the right to fight for the world heavyweight championship. After a multi-week jury trial, defendant was found not guilty.

Opposing counsel: Dominic Amorosa, 233 Broadway, New York, NY 10279. (212) 406-7000

4. People v. Harry C. Partridge, Joseph Siggia and Paul Adler Ind. No. 2975/87; Supreme Court, State of New York, County of New York; the Honorable Allen Murray Myers (retired); Approx. 8/86 - 3/88

I represented the People of the State of New York against the Defendants who were charged with bribery, perjury, larceny and other crimes in connection with a corrupt scheme to profit from government leases. Along with co-counsel, I handled all aspects of this matter from investigation, through trial and post-verdict litigation, including lengthy and complex grand jury investigation, significant pre-trial motion practice, trial, and post-verdict motions.

Mr. Partridge, a real estate developer, Mr. Siggia, a New York State official, and Mr. Adler, a lobbyist, manipulated a government program controlled by Mr. Siggia to steer leases for state offices to a building owned by Mr. Partridge. In exchange for the leases,

Patridge agreed to hire Siggia upon his retirement from state service as the building manager. Defendants also stole state funds by inflating the costs of renovations and other improvements required under the leases.

After a five-week jury trial, defendants Partridge and Siggia were convicted of perjury and acquitted of all other charges. Adler was acquitted of all charges. Post-trial, the court set aside the convictions of Partridge and Siggia and dismissed the indictment. The appellate court reinstated the jury's verdict as to Siggia, and affirmed dismissal of the charges as to Partridge (163 AD2d 113, Appellate Division, First Department, 1990).

Co-counsel: Assistant District Attorney Peter Casolaro, New York County District Attorney's Office, One Hogan Place, New York, NY 10003. (212) 335-9000

Opposing counsel: James O. Druker, Kase and Druker, 1325 Franklin Avenue, Garden City, NY 11530. (516) 746-4300

5. People v. Joseph Reynolds, et al. Ind. No. 8681/95
Supreme Court, State of New York, County of New York; the Honorable Leslie Crocker Snyder; Approx. 1/93 - 10/95

I represented the People of the State of New York in this multi-year investigation leading to the indictment of numerous companies and individuals, including attorneys, insurance adjusters and others, involved in the payment of kickbacks to corrupt insurance company adjusters responsible for settling personal injury claims. The investigation uncovered a longstanding scheme involving the use of a network of middlemen -- independent, self-appointed brokers referred to as "ten percenters" -- who used their vast corrupt contacts to transmit bribes from the attorneys to the insiders. As Chief of the Frauds Bureau, I supervised and directed this multi-year investigation from its inception, through the resulting indictments and trials. The investigation involved sophisticated undercover operations, numerous wiretaps and search warrants, and complex grand jury proceedings, and the resulting indictments generated extensive pre-trial motion practice and multiple trials resulting in numerous convictions.

In addition, several matters arising out of this investigation were referred to the United States Attorney for the Eastern District of New York, including one which led to successful prosecution of two attorneys and their firm for mail fraud in the case of United States v. Rybicki, (99-CR-566 (CBA)). During my tenure as United States Attorney for the Eastern District, the convictions in this matter were affirmed on appeal. United States v. Rybicki, 287 F.3d 257 (2d Cir. 2002), reaffirmed on rehearing *en banc*, 354 F.3d 124 (2d Cir. 2003), cert. denied 543 U.S. 809 (2004).

Counsel supervised: Former Assistant District Attorney and Assistant United States Attorney Daniel R. Alonso, Kaye Scholer LLP, 425 Park Avenue, New York, NY 10022 (212) 836-7025

Opposing counsel: Peter Driscoll, 565 Fifth Avenue, New York, NY 10017. (212) 986-4030

6. People v. Chong Kak Lee, et al. Ind. No. 11859/90
Supreme Court, State of New York, County of New York; the Honorable Herbert Berman (retired); Approx. 10/89 - 10/90

I represented the People of the State of New York against individual and corporate defendants charged with tax evasion, offering false instruments for filing, and other crimes. I handled all aspects of the case from the initial complaint through indictment, motion practice and pleas. I directed a broad investigation that included a complex undercover operation, electronic surveillance, and the execution of multiple search warrants. I handled extensive grand jury proceedings that included complex financial analyses and tax secrecy issues.

Defendants, all members of the same family, owned one of the largest beer distributorships in New York City and evaded over $200,000 in State and City taxes. Their scheme was uncovered through a long-term undercover investigation in which law enforcement agents posed as a buyer of the business and discovered that the defendants kept two sets of books to hide from taxing authorities the true income of the business. As a result of this investigation, two individuals and two corporate defendants pled guilty. The court sentenced one defendant to jail, and ordered all defendants to pay significant fines and all back taxes owed. This matter was also referred to the Internal Revenue Service which resulted in a subsequent prosecution for federal tax evasion.

Opposing counsel: James DeVita, 305 Madison Avenue, New York, NY 10165 (212) 922-1080

7. Investigation of Richard Hartman
Approx. 10/87 – 10/88

I represented the People of the State of New York in a highly-publicized investigation of Richard Hartman, at the time the attorney for the New York City Patrolmen's Benevolent Association, for diverting millions of dollars in client escrow funds to pay gambling debts. Together with co-counsel, I handled all aspects of a lengthy and complex grand jury investigation, briefing and litigation of significant legal issues related to the investigation, and negotiations culminating in a non-prosecution agreement that led to Hartman's resignation from the bar and ensured that all escrow funds were repaid.

Co-counsel: Former Assistant District Attorney John Moscow, Rosner Moscow and Napierala, 26 Broadway, New York, NY 10004 (212) 785-2577

Opposing counsel: Stephen B. Kaufman, 277 Park Avenue, New York, NY 10017. (212) 826-0820

8. People v. Juan Suros Ind. No. 7976/89
Supreme Court, State of New York, County of New York; the Honorable Richard B. Lowe III; Approx. 3/89 - 1/91

I represented the People of the State of New York against the Defendant, a prominent California heart surgeon and avid coin collector, who stole over $1 million in rare coins and medals from the American Numismatic Society, a museum of which Mr. Suros was a benefactor. I handled all aspects of this matter from the initial complaint through indictment, plea and post-conviction litigation, including an extensive grand jury investigation that involved securing out-of-state witnesses and evidence, interstate search warrants through which the stolen property was recovered, and multiple expert witnesses. The Defendant pled guilty to Grand Larceny in the First Degree, was sentenced to six months in jail and five years probation, and a fine equal to the amount of the theft.

Opposing counsel: Donald Birnbaum, Sandback and Birnbaum, 200 Old Country Road, Mineola, NY 11501 (516) 248-8000
Court:

9. Matter of Public Employees Federation, AFL-CIO v. State of New York Case No. U-18291, Public Employment Relations Board; the Honorable Gordon Mayo; Approx. 10/96 - 12/99

Along with co-counsel, I represented the Office of the State Inspector General in defending a labor practice action filed with the Public Employment Relations Board (PERB). I supervised and assisted co-counsel in preparing witnesses and other evidence for a hearing in this matter at PERB, and in researching and preparing briefs filed in connection with the action both at PERB and on appeal in the Supreme Court of the State of New York.

This matter was brought under the Taylor Law by the Public Employees Federation (PEF), a union representing state employees, alleging that a new Governor's Executive Order restructuring the Office of the State Inspector General violated negotiated union contracts. Specifically at issue was a provision of the Executive Order requiring all state employees (including PEF members) to report to the Office of the State Inspector General corruption, criminal activity and other misconduct by state employees, and face disciplinary action for failing to so do. Following a hearing at PERB, the action was dismissed. A subsequent appeal was also dismissed. (Matter of Benson v. Cuevas, Supreme Court, State of New York, Albany County, Index No. 3301-00).

Co-counsel: Maureen Seidel, Governor's Office of Employee Relations, 2 Empire State Plaza, Albany, NY 12223 (518) 473-1416; Ralph Rossi, Former Counsel, Office of the State Inspector General, now General Counsel, Charter Schools Institute, 41 State Street, Albany, NY 12207 (518) 433-8277

Opposing counsel: Steven Klein, Public Employees Federation, 1168-70 Troy-Schenectady Road, Albany, New York 12205. (518) 785-1900

10. People v. Patricia McCorgray Ind. No. 9168/87
Supreme Court, State of New York, County of New York; the Honorable Thomas Galligan (retired); Approx. 4/87 - 12/88

I represented the People of the State of New York against the defendant, an administrative assistant at the State College of Optometry, who stole over $30,000 in patient payments from the college clinic. I handled all aspects of case from arrest through trial. Following a jury trial, defendant was convicted of grand larceny, and sentenced to probation and restitution.

Opposing counsel: Martin B. Adelman, 225 Broadway, New York, NY 10007 (212) 732-4343
Court:

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

As United States Attorney, I supervise an office of approximately 170 attorneys, one of the largest United States Attorney's Offices in the nation. The majority of my work is directly related to the supervision of court cases, and in addition, a significant portion of my legal activities goes beyond litigation. I am responsible for developing and implementing the mission, goals and direction of the office to address most effectively both national and local priorities in a district with over eight million residents and broad and complex law enforcement challenges. I supervise and direct some of the nation's most significant investigations, prosecutions and appeals related to terrorism, corporate fraud, violent crime, narcotics trafficking, organized crime, public corruption and civil rights. In addition, I supervise and direct defensive and affirmative civil cases and appeals, including tort, employment and commercial litigation, immigration, bankruptcy and social security matters, and affirmative environmental, forfeiture and civil RICO actions, among others. My responsibilities include working closely with federal, state, local and international law enforcement and prosecutors to develop mission and resource partnerships that maximize crime control strategies and initiatives.

As New York State Inspector General from October 1995 to September 2002, I restructured, rebuilt and led a 95-member investigative agency responsible for the state's independent anti-corruption program. I authored a gubernatorial Executive Order and secured necessary legislation that accorded the agency broad new responsibilities and powers, shifted control of corruption investigations from executive-branch agencies to the Office of the State Inspector General, enhanced whistleblower protection for state employees, and imposed an affirmative obligation for state employees to report corruption to the State Inspector General. Utilizing these new powers, I supervised and

directed teams of attorneys, agency investigators and federal, state and local law enforcement officers in the investigation of thousands of complaints of corruption, criminal activity, ethics violations and abuse of office. Significant legal issues permeated these investigations, including challenges to the agency's new powers and questions related to statutory or regulatory matters, among others. Many of these investigations resulted in criminal prosecution, disciplinary action, ethics sanctions, and recommendations for systemic reform that have improved the efficiency and accountability of state agencies.

Similarly, as Chair of the Governor's Moreland Act Commission on New York City Schools from January 1999 to September 2002, I was responsible for creating and leading a new investigative entity charged with examining the operations and fiscal affairs of the New York City Board of Education and the New York City School Construction Authority. I wrote the gubernatorial Executive Order defining the Commission's mandate and powers, hired staff, and played an active role overseeing the significant legal and investigative work leading to the Commission's findings. As detailed in its public reports, the Commission uncovered systemic abuses in the manner in which the Board of Education reported student attendance and enrollment for funding purposes by including on active student rosters children who had died, moved out of the city or country, attended private schools, or were chronic truants. In addition, the Commission found systemic mismanagement and violations of law in the City's $10-billion capital planning and school construction program that directly affected the quality of the learning environment for over one million school children.

Throughout my career, I have been active in hiring and training young lawyers as well as some of the most senior and skilled in an effort to instill fairness, integrity, respect for the law and the rights of others, and the ability to make sound, lawful and reasoned decisions. I have also engaged in significant outreach to community groups, educational institutions, bar associations, practitioners, law enforcement agencies, and other relevant constituencies in an effort to cultivate relationships, encourage dialogue on legal issues of mutual concern, and improve the profession and the administration of justice.

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

    Legal Research and Writing Seminar, Georgetown University Law Center, 1980 – 1982. This course was required for all first-year law students and was taught by select second- and third-year students under the supervision of a faculty coordinator. The course focused on teaching and honing legal research techniques and effective legal writing and oral advocacy. The course culminated in a traditional moot court competition for all first-year students.

22. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted

contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

As a result of my prior service with New York State, I hold investments in mutual and other funds through the New York State Deferred Compensation Plan, and am a vested member of the New York State Employee's Retirement System. Under the standard terms of these arrangements, I am entitled to collect full pension benefits at age 62, and must begin drawing deferred compensation funds no later than age 70.5.

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

    I have no plans, commitments or agreements to pursue outside employment, with or without compensation, in the future.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)

    See attached Financial Disclosure Report

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

    See attached Net Worth Statement

26. **Potential Conflicts of Interest:**

    a. Identify the parties, 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. Explain how you would address any such conflict if it were to arise.

       During my initial period of service, should I be confirmed as a judge in the Eastern District of New York, I would anticipate possible conflicts-of-interest resulting from cases or matters that were handled by the United States Attorney's Office during my tenure as United States Attorney.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In this situation, and in all others where there is an actual or potential conflict, I will follow the Code of Conduct for United States Judges and all other applicable rules and guidelines relating to conflicts of interest. As I have always done throughout my career, I will strive to adhere to both the letter and the spirit of such rules and guidelines.

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

I have served as a government attorney for my entire career. Consistent with ethical and other restrictions on outside activities by government attorneys, I have committed to my responsibilities under this Canon by providing service without compensation in several areas as follows:

I have participated in activities for improving the legal system and profession through active participation with bar associations, including the Federal Bar Council, the New York State-Federal Judicial Council Advisory Committee, the Association of the Bar of the City of New York, and others.

I have engaged in service to educational organizations as a Member, Advisory Board, Graduate Program in Public Administration, John Jay College of Criminal Justice; External Reviewer of John Jay's Criminal Justice Program for its accreditation by the Middle States Association; and by giving period lectures at colleges and law schools.

I have been involved with community groups such as the Capital Repertory Theatre in Albany, New York and as speaker and participant at several events related to holocaust remembrance sponsored by various Jewish community groups.

My service as Chair of the Governor's Moreland Act Commission on New York City Schools was without compensation. The Commission's work directly impacted the effective and responsible administration of the City's multi-billion dollar school construction program and the quality of the learning environment for over one million public school children.

As United States Attorney, I have been directly involved with and promoted our office's involvement in a number of community-based initiatives, including our Weed and Seed Program, designed to rid distressed communities of crime and establish community programs and initiatives to help improve the quality of life of community residents, and through our sponsorship of a summer camp for disadvantaged youth.

28. **Selection Process:**

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

On or about May 9, 2006, I was invited to interview with Governor George E. Pataki's Federal Judicial Screening Committee, and did so on May 19, 2006. As a result of this interview, the Screening Committee recommended my nomination. On or about May 30, 2006 I interviewed with staff from the White House Counsel's Office and the Department of Justice. Following these interviews, I was notified that the President had cleared my name for further review as a potential nominee. After completing all the required nomination paperwork and undergoing a background investigation, I was informed that the President would be submitting my name as a nominee. My nomination was submitted to the Senate on August 2, 2006. My nomination was returned to the President on December 9, 2006. On January 9, 2007, I was notified that the President would be re-submitting my name as a nominee, and my nomination was submitted to the Senate on that same date.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No one involved in the process of selecting me as a judicial nominee discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how I would rule on such case, issue or question.

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Nomination Report

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App. §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
MAUSKOPF, Roslynn R.	U.S. District Court, Eastern District of New York	January 10, 2007
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* U.S. District Judge - Nominee	**5. Report Type (check appropriate type)** _X_ Nomination, Date January 9, 2007 ___ Initial ___ Annual ___ Final	**6. Reporting Period** January 1, 2006 to December 31, 2006
7. Chambers or Office Address One Pierrepont Plaza Brooklyn, New York 11201	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

	POSITION	NAME OF ORGANIZATION/ENTITY
[X]	**NONE** (No reportable positions.)	
1		
2		
3		

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

	DATE	PARTIES AND TERMS
[ ]	**NONE** (No reportable agreements.)	
1	1982	New York State Employees Retirement System – vested; full pension at age 62 as a result of prior state/local government service
2	1995	New York State Deferred Compensation Plan – 457 Deferred Compensation Plan with prior employer. No contributions or withdrawals made since 8/02. Must begin withdrawals at age 70.5

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

A. Filer's Non-Investment Income

	DATE	SOURCE AND TYPE	GROSS INCOME
[X]	**NONE** (No reportable non-investment income.)		
1			$
			$
3			$

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

[ ]	**NONE** (No reportable non-investment income.)		
1		Not Applicable	
2			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
MAUSKOPF, Roslynn R.	January 10, 2007

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
[ ]	**NONE** (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
[ ]	**NONE** (No such reportable gifts.)		
1	EXEMPT		$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
[X]	**NONE** (No reportable liabilities.)		
1			
2			
3			
4			
5			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
MAUSKOPF, Roslynn R.	January 10, 2007

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "X" after each asset exempt from prior disclosure	(1) Amt. Code1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code2 (J-P)	(2) Value Method Code3 (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income,									
1 New York State Employees Retirement System	C	Interest	L	T	Exempt				
2 Janus Fund		None	J	T					
3 Fidelity OTC Portfolio		None	J	T					
4 Wells Fargo Stable Income Fund		None	L	T					
5 JP Morgan Chase Accounts	A	Interest	K	T					
6 SunTrust Bank Accounts	A	Interest	K	T					
7 PNC Bank CDs	A	Interest							
8 Citibank CDs	B	Interest	L	T					
9									
10									
11									
12									
13									
14									
15									
16									
17									

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	MAUSKOPF, Roslynn R.	January 10, 2007

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

Part III – Non-Investment Income: The only non-investment income received during the reporting period was my salary from the United States Government.

IX. CERTIFICATION.

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

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

Signature Roslyn R. Mauskopf Date January 10, 2007

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

FINANCIAL STATEMENT
NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		104	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		104	300	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		465	280	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
New York State Pension Cash Value		70	690				
U.S. Government Thrift Savings Plan		49	900				
				Total liabilities			0
				Net Worth		894	170
Total Assets		894	170	Total liabilities and net worth		894	170
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		NO	
On leases or contracts				Are you defendant in any suits or legal actions?		NO	
Legal Claims				Have you ever taken bankruptcy?		NO	
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

Janus Fund	$ 14,300
Fidelity OTC Portfolio	10,400
Wells Fargo Stable Income Fund	79,600
Total Listed Securities	$ 104,300

Real Estate Owned

Family member's residence	$ 465,280

AFFIDAVIT

I, ROSLYNN RENEE MAUSKOPF, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 23, 2007
(DATE)

Roslyn R. Mauskopf
(NAME)

Samuel D. Noel
(NOTARY)

SAMUEL D. NOEL
Notary Public, State of New York
No. 01N04964348
Qualified in Kings County
Commission Expires April 2, ~~[illegible]~~ 2010

Senator SCHUMER. Rich Sullivan, you can introduce your family by their nicknames, too.

[Laughter.]

STATEMENT OF RICHARD JOSEPH SULLIVAN, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Mr. SULLIVAN. I actually will. My father is here today, John "Jack" Sullivan.

Senator SCHUMER. Jack.

Mr. SULLIVAN. He is a Flushing-born, now Long Island resident for many years. My wife, Anne, and our twin daughters could not be here today. My father-in-law is in the hospital, so she is caring for him.

Senator SCHUMER. We wish him a speedy recovery.

Mr. SULLIVAN. Thank you, Senator.

[The biographical information of Mr. Sullivan follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Richard Joseph Sullivan

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

   United States District Judge for the Southern District of New York

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

   Work: Marsh & McLennan Companies, Inc.
   1166 Avenue of the Americas
   New York, NY 10036

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

   1964 – Manhasset, New York

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   Married: Anne Navarro; Current Occupation: Full-time homemaker; part-time bookkeeper for Dr. Julia Katz, MD, 450 North End Avenue, #17B, New York, NY 10282.

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

   Yale Law School, September 1987-May 1990, JD 1990.

   College of William & Mary, August 1982-May1984, August 1985-May 1986, BA 1986

   Georgetown University, August 1984-May 1985 (Visiting Student)

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

Marsh Inc., 1166 Avenue of the Americas, New York, NY, General Counsel, May 2006-Present.

Marsh & McLennan Companies, Inc., 1166 Avenue of the Americas, New York, NY, Deputy General Counsel-Litigation, July 2005-Present.

United States Attorney's Office for the Southern District of New York, One St. Andrew's Plaza, New York, NY, Assistant United States Attorney, September 1994-July 2005.

Wachtell Lipton Rosen & Katz, 51 W. 52nd Street, New York, NY, Associate, November 1991-August 1994.

United States Court of Appeals for the 10th Circuit, 1929 Stout Street, Denver, CO, Law Clerk to the Honorable David M. Ebel, September 1990-September 1991.

McCutchen Doyle Brown & Enersen, 3 Embarcadero Center, San Francisco, CA, Summer Associate, July-August 1990.

Gibson Dunn & Crutcher, 200 Park Avenue, New York, NY, Summer Associate, May-July 1990.

Federal Courts Study Commission, 141 Church Street, New Haven, CT, Intern to Judge Jose Cabranes, October 1989-April 1990.

Cahill Gordon & Reindel, 80 Pine Street, New York, NY, Summer Associate, July-September 1989.

McCutchen Doyle Brown & Enersen, 3 Embarcadero Center, San Francisco, CA, Summer Associate, May-July 1989.

Organized Crime Strike Force, United States Attorney's Office, District of Connecticut, 141 Church Street, New Haven, CT, Intern, October 1988-April 1989.

Mayer Brown & Platt, 71 S. Wacker Drive, Chicago, IL, Summer Associate, May-Sept. 1988.

Governor's Office, Commonwealth of Virginia, Speechwriter, June 1987-August 1987.

New York City Urban Fellows Program, New York City Police Department, September 1986-June 1987.

Governor's Office, Commonwealth of Virginia, Governor's Fellows Program, June-August 1986.

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

None.

9. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Henry L. Stimson Medal, Association of the Bar of the City of New York (2003). Presented to the outstanding Assistant United States Attorney for the Southern District of New York.

Federal Prosecutor of the Year Award, Federal Law Enforcement Foundation, New York, New York (1998). Presented by Louis Freeh, then-Director of the Federal Bureau of Investigation, on behalf of the Federal Law Enforcement Foundation to the outstanding Assistant United States Attorney for the Southern District of New York.

International Narcotic Enforcement Officers Association, Federal Prosecutor's Award/International Award of Honor (1997, 1998, 2002, 2003). Presented in recognition of superior achievement in international narcotics prosecutions.

Organized Crime Drug Enforcement Task Force, Special Award of Honor (2004). Presented in recognition of outstanding contributions to the federal OCDETF program.

Phi Beta Kappa, Alpha Chapter (College of William & Mary). Student Speaker. (1986)

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

American Inns of Court, New York Chapter, Executive Committee (2006-Present)

American Bar Association, Criminal Justice Section & Tort, Trial and Insurance Section

Association of the Bar of the City of New York

Association of Corporate Counsel

Federal Bar Council, New York

Federalist Society for Law and Public Policy Studies

New York County Lawyers Association

11. Bar and Court Admission:

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

New York, 1993

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

New York State courts (1993)

United States District Court for the Southern District of New York (1993)

United States District Court for the Eastern District of New York (1993)

United States Court of Appeals for the Second Circuit (1995)

There have been no lapses in membership.

12. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Council of Insurance Agents & Brokers, Legal Committee (2006- Present)

St. Joseph's Roman Catholic Church, New York, NY (2003- Present)

New York Road Runners Club (1992- Present)

Memorial-Sloan Kettering Cancer Center, Volunteer (1995-2002)

International Narcotic Enforcement Officers Association (2001-2005)

b. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.**

None of the organizations listed above currently discriminate or formerly discriminated, to the best of my knowledge.

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

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

None

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

None

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

None.

d. **Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given,**

the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

Although I have given numerous speeches and panel presentations on legal topics, I typically speak extemporaneously (with notes or a powerpoint) and not from a prepared text. Presentations and speeches I have given include the following:

Sentencing Guidelines Panel, Federal Criminal Practice Institute, New York, New York, sponsored by the Federal Bar Council and New York County Lawyers Association (May 6, 2006).

"What Every Criminal & Corporate Lawyer Needs To Know About Monitors," New York City Bar & International Association of Independent Private Sector Inspector Generals (IAIPSIG) (December 6, 2005).

"Fundamental Principles of the American Legal System: Federalism and Separation of Powers," New York County Lawyers Association, American Law Academy (July 25, 2005).

"Money Laundering, Terrorist Financing and the USA PATRIOT Act," Anti-Money Laundering Conference, Quito, Ecuador, sponsored by the Ecuadorian Association of Private Banks and the U.S. Department of State (March 10, 2005).

"Foreign Wiretaps and Other International Issues," Title III Seminar, U.S. Department of Justice - National Advocacy Center, Columbia, South Carolina (January 6, 2005). I no longer possess notes for this presentation.

"Privacy, Crime and Security in the 21st Century," Practising Law Institute, Privacy Law 2004: New Developments & Compliance Issues in a Security-Conscious World, at 349-90 (December 2004).

"Witness Preparation and Trial Testimony in an Adversarial Judicial System," Colombian National Police Academy, Bogotá, Colombia, sponsored by U.S. Department of Justice (OPDAT) (October 27, 2004).

"The PATRIOT Act and the International War Against Money Laundering," Colombian Banking Superintendency, Bogotá, Colombia, sponsored by the Colombian Banking Association and the U.S. Department of State (October 26, 2004).

Sentencing Guidelines Panel, Federal Criminal Practice Institute, New York, New York, sponsored by the Federal Bar Council and New York County Lawyers Association (October 16, 2004).

"Operation White Dollar and The Black Market Peso Exchange," Pan-American Congress on the Prevention of Money Laundering Activities, Cartagena, Colombia, sponsored by the Latin American Federation of Banks, the Colombian Ministry of Justice, the Colombian Banking Association, and the U.S. Department of Justice, Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) (July 29, 2004). I no longer possess notes for this presentation.

"The Strike Force Model for Narcotics and Money Laundering Enforcement," New England OCDETF Conference, Newport, Rhode Island (June 3, 2004)

"International Evidence Gathering," Colombian National Police Headquarters, Bogotá, Colombia (November 20, 2003).

"International Narco-Trafficking and Money Laundering," Council on Foreign Relations, New York, New York (March 19, 2003).

e. **Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.**

None.

14. **Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

None.

15. **Citations: If you are or have been a judge, please provide:**

a. **citations for all opinions you have written (including concurrences and dissents);**

b. **a list of cases in which certiorari has been requested or granted;**

c. **a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

d. **a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

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

f. **citations to all cases in which you were a panel member in which you did not issue an opinion.**

I have never served as a judge.

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

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

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

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

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

I have never served as a judge.

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

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

None.

b. **List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify**

the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

18. <u>Legal Career:</u> Please answer each part separately.

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

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

I served as a clerk to the Honorable David M. Ebel, United States Court of Appeals for the Tenth Circuit, from September 1990 – September 1991.

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

I have never practiced alone.

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

Marsh Inc., 1166 Avenue of the Americas, New York, NY, General Counsel, May 2006-Present.

Marsh & McLennan Companies, Inc., 1166 Avenue of the Americas, New York, NY, Deputy General Counsel-Litigation, July 2005-Present.

United States Attorney's Office for the Southern District of New York, One St. Andrew's Plaza, New York, NY, Assistant United States Attorney, September 1994-July 2005.

Wachtell Lipton Rosen & Katz, 51 W. 52nd Street, New York, NY, Associate, November 1991-August 1994.

b. Describe:

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

At Wachtell Lipton, I was a litigation associate specializing in securities litigation, white collar criminal defense, commercial litigation, and internal corporate investigations.

At the United States Attorney's Office, I was a criminal prosecutor assigned at various times to the Office's General Crimes, Narcotics and Violent Gangs Units. In 1999, I became a supervisor in charge of the Office's General Crimes Unit. Thereafter, I became chief of the Narcotics Unit, where I supervised more than 30 Assistant United States Attorneys and hundreds of federal, state and local law enforcement officers in the investigation and prosecution of narcotics cases involving some of the largest and most sophisticated national and international criminal enterprises. In 2002, I was named as the founding chief of the Office's newly created International Narcotics Trafficking Unit, a senior unit dedicated to investigating and prosecuting the world's largest narcotics trafficking and money-laundering organizations. From 2002-2005, I also served as Director of the New York/New Jersey Organized Crime Drug Enforcement Task Force, where I managed the activities of more than 350 federal, state and local law enforcement officers engaged in investigations and prosecutions under the auspices of the federal Organized Crime Drug Enforcement Task Force (OCDETF) Program.

In July 2005, I joined Marsh & McLennan Companies, Inc. ("MMC") as Deputy General Counsel for Litigation. In that capacity, I oversee and direct all litigation and regulatory matters involving MMC, a global professional services firm with 55,000 employees and annual revenues of approximately $11 billion. MMC is the parent company of Marsh (the world's largest insurance broker and risk specialist), Guy Carpenter (the world's leading reinsurance specialist), Kroll (the world's leading investigative and risk consulting company), Putnam Investments (one of the nation's largest investment management companies), and Mercer (a major global provider of pension, human resources and business consulting services).

In May 2006, I became the General Counsel and a Managing Director of Marsh Inc., the world's largest insurance broker and risk management firm, with more than 25,000 employees and annual revenues of approximately $5 billion. In that capacity I advise senior management on all legal matters and supervise the activities of approximately 70 attorneys in 21 countries. I continue to act as Deputy General Counsel-Litigation for MMC.

ii. your typical clients and the areas, if any, in which you have specialized.

In private practice, my typical clients included corporations, investment banks, financial institutions, and individual officers and employees of such institutions. As an Assistant United States Attorney, my client was the United States of America.

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

I have been a litigator for my entire career (though as General Counsel of Marsh I also handle non-litigation matters).

While at Wachtell Lipton, I rarely appeared in court.

As an Assistant United States Attorney in the Southern District of New York, I appeared in court frequently, averaging 5 or more appearances a week between 1994 and 1999, and approximately 5 or more a month between 2000 and 2005 (when I was a supervisor).

As an in-house lawyer at MMC, I supervise 70 in-house lawyers and dozens of outside law firms that represent the company in court. Due to the nature of my practice and responsibilities, I have yet to make an appearance in court.

i. **Indicate the percentage of your practice in:**
   1. **federal courts;** 100%
   2. **state courts of record;**
   3. **other courts.**

ii. **Indicate the percentage of your practice in:**
   1. **civil proceedings;** 10%
   2. **criminal proceedings.** 90%

d. **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.**

19 Trials – 14 as sole or chief counsel; 5 as supervising second chair

i. **What percentage of these trials were:**
   1. **jury;** 95%
   2. **non-jury.** 5%

e. **Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.**

None.

19. **Litigation: Describe the ten (10) 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 representation;**

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

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

For each of the cases described below, I served as the principal Assistant United States Attorney (or one of the principal Assistant United States Attorneys) responsible for all phases of the investigation and prosecution.

A. United States v. George Enrique Herbert, 03 Cr. 211 (SHS); 2005 WL 106909 (SDNY) (Jan. 19, 2005). Investigation, extradition, prosecution and trial of George Enrique Herbert, a Belizean national responsible for transporting more than 30 tons of cocaine from Colombia to Belize en route to the United States. Defendant was convicted at trial and sentenced to 33 years' imprisonment.

Judge: Sydney H. Stein.

Co-Counsel: AUSA Anirudh Bansal, One St. Andrew's Plaza, New York, NY (212-637-2516).

Opposing Counsel: George Santangelo, 75 Maiden Lane, Suite 504, New York, NY (212-269-4488).

B. United States v. Johnny Martinez, 99 Cr. 1048 (DC); 464 F.3d 184 (2d Cir. Sep.12, 2006). Investigation, prosecution, extradition and trial of Johnny Martinez for his participation in a 1997 contract murder and heroin conspiracy. Following his extradition from the Dominican Republic, defendant was convicted at trial and sentenced to life imprisonment.

Judge: Denny Chin.

Co-Counsel: Former AUSA Marc Mukasey (now at Bracewell Giuliani, 1177 Avenue of the Americas, New York, NY (212-508-6134)).

Opposing Counsel: Bobbi C. Sternheim, 666 Third Avenue, 17th Floor, New York, NY (212-697-4090).

C. United States v. Alcides Ramon Magana, et al., 01 Cr. 021 (GEL); 2005 WL 1403222, 2d Cir. (June 14, 2005) (No. 04-2843); 322 F.Supp.2d 359 (SDNY) (April 29, 2004). Investigation and prosecution of leaders of Mexico's powerful Southeast Cartel, responsible for transporting more than 200 tons of cocaine from Colombia to the United States via Mexico. Defendant Jorge Manuel Torres Teyer pleaded guilty to narcotics conspiracy and weapons charges two weeks before trial. Defendants Victor Manuel Adan Carrasco and Oscar Moreno Aguirre pleaded guilty on the first day of trial immediately prior to jury selection to all counts of the indictment, which included narcotics conspiracy and weapons charges. A hearing to resolve disputed factual issues related to sentencing for all three defendants was held in March 2004, after which the defendants were sentenced to terms of 456, 264, and 204 months, respectively. Defendant Gilberto Salinas Doria is awaiting trial in the Southern District of New York following his extradition to the United States from Mexico in January 2007; defendants Alcides Ramon Magana, Mario Ernesto Villanueva Madrid, and Jose Albino Quintero Meraz are in custody in Mexico awaiting extradition to the United States on this indictment.

Judge: Gerard E. Lynch.

Co-Counsel: AUSA Anirudh Bansal, One St. Andrew's Plaza, New York, NY (212-637-2516).

Opposing Counsel: For Defendant Jorge Torres Teyer: Paul Warburgh, 36 W. 44th Street, New York, NY (212-689-8970); For Defendant Victor Carrasco: George R. Goltzer, 200 W. 57th Street, New York, NY (212-608-1260); For Defendant Oscar Moreno Aguirre: Winston Lee, 319 Broadway, 5th Floor, New York, NY (212-267-1911).

D. United States v. Mario Villanueva Madrid, et al., 02 Cr. 416 (NRB); 302 F. Supp.2d 187 (SDNY) (Dec. 18, 2003). Investigation and prosecution of former Mexican Governor Mario Villanueva Madrid and others, including Lehman Brothers Vice President Consuelo Marquez, for their participation in a scheme to launder more than $20 million in narcotics proceeds through U.S. financial markets. Villanueva Madrid is currently incarcerated in Mexico where he faces criminal charges and awaits extradition to the United States on this indictment. Marquez pleaded guilty shortly before trial to multiple counts of money laundering and bank fraud.

Judge: Naomi Reice Buchwald.

Co-Counsel: AUSA Anirudh Bansal & AUSA Lauren Goldberg, One St. Andrew's Plaza, New York, NY (212-637-2516/1040).

Opposing Counsel: For Defendant Consuelo Marquez: Robert Morvillo, 565 Fifth Avenue, New York, NY (212-856-9600); For Lehman Brothers: Betty Santangelo, Schulte Roth & Zabel, 919 Third Avenue, New York, NY (212-756-2587).

E. United States v. Robert Banks, et al., 99 Cr. 1048 (DC); 112 Fed.Appx. 779, 2004 WL 2413402 (2d Cir. Oct.27, 2004). Investigation, prosecution and trial of narcotics trafficking organization responsible for distributing over 300 kilograms of heroin and

murder in aid of racketeering. Defendants Robert Banks and Diego Mojica pleaded guilty to narcotics trafficking and weapons charges and were sentenced to 372 and 210 months, respectively; defendant Andres Peralta pleaded guilty to narcotics trafficking, weapons and murder charges and is awaiting sentencing; and defendants Jaime Gomez and Thomas Marmolejas were convicted at trial on narcotics trafficking, weapons and murder charges and were sentenced to life imprisonment.

Judge: Denny Chin.

Co-Counsel: Former AUSA Marc Mukasey (now at Bracewell Giuliani, 1177 Avenue of the Americas, New York, NY (212-508-6134)).

Opposing Counsel: For Defendant Robert Banks: Bruce Maffeo, 233 Broadway, Suite 2701, New York, NY (212-404-7040); For Defendant Jaime Gomez: Sabrina P. Shroff, 351 Broadway, New York, NY (212-625-3304) & Lynne F. Stewart (disbarred following criminal conviction); For Defendant Thomas Marmolejas: Valerie Amsterdam (disbarred following criminal conviction).

F. United States v. Francisco Maisonet, et al., 97 Cr. 817 (DC); 213 F.3d 627 (2d Cir. May 17, 2000); 28 Fed.Appx. 34, 2001 WL 1485674 (2d Cir. Nov. 16, 2001); 1998 WL 355414 (SDNY Jul.1, 1998). Investigation, prosecution and trial of 25-member racketeering organization responsible for numerous murders and for distributing more than $100,000 worth of heroin per day in the Hunt's Point section of the Bronx. The leaders of the organization -- defendants Francisco Maisonet, Jose Maisonet, Jose Vasquez, and Angel Flores -- pleaded guilty before trial and received sentences of 45 years, 40 years, life imprisonment, and 35 years, respectively; three other leaders of the organization – Miguel Rodriguez, Jr., Guillermo Negron, and Kerry Clark – were convicted at trial and received sentences of life imprisonment, life imprisonment, and 30 years, respectively; defendant Edwin Rivera was convicted at trial and sentenced to 188 months imprisonment for his participation in the brutal assault of a government witness in retaliation for the witness' testimony in the racketeering prosecution; defendant Pat V. Stiso – a Bronx defense attorney – pleaded guilty two weeks before trial to narcotics trafficking, money laundering and obstruction of justice charges and was sentenced to 87 months imprisonment; the remaining narcotics defendants pleaded guilty before or during trial and received sentences ranging from 10-30 years imprisonment.

Judge: Denny Chin.

Co-Counsel: AUSA John Hillebrecht, One St. Andrew's Plaza, New York, NY (212-637-2210); former AUSA Dani James (212-219-0099).

Opposing Counsel: For Defendant Francisco Maisonet: Steven Kartagener, 225 Broadway, Suite 2700, New York, NY 212-732-9600); For Defendant Jose Vasquez: Martin Siegel, 150 Broadway, New York, NY (212-349-9190); For Defendant Miguel Rodriguez, Jr.: Alan Futerfas, 260 Madison Avenue - 22nd Floor, New York, NY (212-684-8400); For Defendant Guillermo Negron, Jr.: Labe Richman, 305 Broadway, New York, NY (212-227-1914); For Defendant Edwin Rivera: John Jacobs (deceased); For

Defendant Pat V. Stiso: Benjamin Brafman, 767 Third Avenue, New York, NY (212-750-7800); later Paul Shechtman, 425 Park Avenue, New York, NY (212-223-0200); For Anthony DiFiore (non-prosecution agreement): Thomas Fitzpatrick, 500 Fifth Avenue, 33rd Floor, New York, NY (212-930-1290); the remaining defendants were represented by various other attorneys.

G. United States v. Sheldon Walker, et al., 96 CR. 736 (HB); 191 F.3d 326 (2d Cir. Sep.7, 1999). Prosecution and trial of New York attorney and others responsible for a massive immigration fraud involving the filing of thousands of fraudulent asylum applications to the INS. Defendants Sheldon Walker and Rashed Khan were convicted at trial and sentenced to 42 months and five months, respectively.

Judge: Harold Baer.

Co-Counsel: Former AUSA Patrick Smith (now at King & Spalding, 1185 Avenue of the Americas, New York, NY (212-556-2123)).

Opposing Counsel: For Defendant Sheldon Walker: Robert Morvillo, 565 Fifth Avenue, New York, NY (212-856-9600); For Defendant Rasheed Khan: Maranda Fritz, 780 Third Avenue, New York, NY (212-471-6200).

H. United States v. Wander Salvador, et al., 98 Cr. 484 (LMM); 98 Cr. 197 (RPP); 205 F.3d 1327, 2000 WL 232286 (Table) (2d Cir. Feb.28,2000); and 2006 WL 2034637 (SDNY Jul.19, 2006). Investigation, prosecution, extradition and trial of a 30-member narcotics organization responsible for distributing hundreds of kilograms of heroin in the New York Metropolitan area. Defendant Walter Wallace was convicted at trial and sentenced to 20 years imprisonment; defendant Wander Salvador was arrested as a fugitive in the Dominican Republic and extradited to the United States; he thereafter pleaded guilty to narcotics trafficking charges and, after a lengthy sentencing hearing, was sentenced to a term of 270 months; all other defendants pleaded guilty to various indictments before trial and received sentences ranging from 5-30 years.

Judges: Lawrence McKenna; Dominic DiCarlo (deceased).

Co-Counsel: Former AUSA Mark Harris (now at Proskauer Rose, 1585 Broadway, New York, NY (212-969-3530)).

Opposing Counsel: For Defendant Walter Wallace: Dan Nobel, 401 Broadway, New York, NY (212-219-2870); For Defendant Wander Salvador: Bruce Kaye, 11 Park Place, New York, NY (212-385-8000); For Defendant Robinson Reyes: Lisa Cahill, Hughes Hubbard & Reed, One Battery Park Plaza, New York, NY (212-837-6155); the remaining defendants were represented by various other attorneys.

I. United States v. Robert Schreiber, et al., 191 F.3d 103 (2d Cir. Sep.2, 1999). Investigation, prosecution and trial of 21-member narcotics organization responsible for distributing tons of marijuana across the United States. Defendant Donald Bianco was convicted at trial and was sentenced to a non-custodial sentence pursuant to a downward

departure under the sentencing guidelines; all other defendants pleaded guilty before trial and received sentences to ranging from probation to 10 years imprisonment.

Judge: Loretta A. Preska.

Opposing Counsel: For Defendant Donald Bianco: John Jacobs (deceased) & Ann Moorman, 308 South School Street, Ukiah, CA (707-462-1844 or 415- 664-4600); for Defendant John Bianco: Valerie Amsterdam (disbarred following criminal conviction) & Benjamin Brafman, 767 Third Avenue, New York, NY (212-750-7800); for defendant Jaime Moreno: Vince Lacsamana, 455 W. Paseo Redondo, Tucson, AZ (520-620-6222); the remaining defendants were represented by various other attorneys.

J. United States v. Zhang Zi Da, et al., 96 Cr. 44 (DAB); 165 F.3d 16, 1998 WL 802071 (Table) (2d Cir. Nov. 12, 1998). Investigation, prosecution and trial of Chinese criminal organization responsible for alien-smuggling, kidnaping and hostage-taking. Defendants Zhang Zi Da and Zhang Zi Mei were convicted at trial and were sentenced to terms of 135 and 33 months imprisonment, respectively.

Judge: Deborah A. Batts.

Co-Counsel: Former AUSA Patrick Smith (now at King & Spalding, 1185 Avenue of the Americas, New York, NY (212-556-2123)).

Opposing Counsel: For Defendant Zhang Zi Da: Irving Cohen, 233 Broadway, New York, NY (212-964-2544); For Defendant Zhang Zi Mei: Paul McAllister, 401 Broadway, New York, NY (212-274-0920).

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

A. International Narcotics Trafficking Unit: In 2002, I was instrumental in creating a senior unit at the United States Attorney's Office dedicated to investigating and prosecuting the world's largest narcotics trafficking and money-laundering organizations. Recognizing the changing nature of narcotics enforcement, in which kingpin targets in Colombia and elsewhere were now, for the first time, vulnerable to extradition from abroad, I spearheaded the creation of the International Narcotics Trafficking Unit, which focused on these large, multi-national organizations. I served as chief of the Unit for more than three years, and supervised numerous successful prosecutions involving domestic and foreign law enforcement officers.

B. New York/New Jersey Organized Crime Drug Enforcement Task Force: From 2002-2005, I served as Director of the New York/New Jersey Organized Crime Drug Enforcement Task Force, where I oversaw the activities of more than 350 federal, state

and local law enforcement officers engaged in investigations and prosecutions under the auspices of the federal Organized Crime Drug Enforcement Task Force (OCDETF) Program. In 2004, I helped launch the New York City OCDETF Strike Force, a first of its kind, anti-narcotics task force comprised of more than 200 law enforcement officers from nine different federal, state and local agencies dedicated to investigating and prosecuting kingpin targets primarily responsible for the nation's illicit drug supply.

C. In re Leasehold Interests in Various Boeing 767 Aircraft, 04 Civ. 8199 (LMM). In 2004-2005, I supervised the investigation and resulting civil settlement with Avianca Airlines following the seizure of narcotics and other contraband aboard U.S.-bound flights from Colombia. As part of the settlement, Avianca consented to the imposition of an outside monitor, selected by the United States Attorney's Office, to oversee security for all U.S.-bound flights for a period of two years.

D. United States v. Usama Bin Laden, et al., 98 Cr. 1023 (KTD); 397 F.Supp.2d 465 (SDNY) (Nov. 02, 2005). In 2005, I served as the Government's lead-counsel in a successful four-day hearing in opposition to defendant Wadih El-Hage's motion for a new trial following his conviction and life-sentence for his role in the terrorist bombings of the United States Embassies in Kenya and Tanzania.

E. Marsh & McLennan Companies Inc. In late 2004, Marsh & McLennan Companies Inc. ("MMC") was rocked by allegations of serious misconduct by a small group of employees working in the company's Global Broking unit. This misconduct included allegations of bid rigging, steering and other criminal anti-trust violations, which resulted in the filing of a suit by the New York Attorney General and the New York Superintendent of Insurance. In the aftermath of these actions, MMC's stock plummeted 50%, and the company was forced to terminate its senior management and to layoff approximately 7,000 employees worldwide. In February 2005, the Company executed a settlement with the New York Attorney General that provided for the establishment of an $850 million settlement fund payable to MMC's insurance brokerage clients. Against this backdrop, I was hired by the Company's new management team in the Spring of 2005 to serve as Deputy General Counsel responsible for overseeing all litigation and regulatory matters affecting the company worldwide. In this capacity, and in my subsequent position as General Counsel of Marsh Inc., I have directed a number of significant matters that are central to the Company's revival including the following state regulatory investigations, securities litigation, Policyholder Class Action suits, and cooperating with state authorities in criminal actions against former employees.

F. General Counsel of Marsh, Inc. -- Realignment of Marsh Legal Department. In May 2006, I was named General Counsel of Marsh Inc., where I assumed responsibility for all legal matters at the world's largest insurance broker and risk specialist. In that capacity, I have overseen a global realignment of Marsh's legal department, which includes approximately 70 lawyers in 21 countries worldwide. In addition to naming chief legal officers for each of the company's three regions, I have also assigned lawyers to each of the company's principal practice groups and geographical subdivisions, thus enhancing accountability among the attorneys and ensuring that the Legal Department is better integrated into the company's core businesses.

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

    None.

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

    Upon separation from Marsh & McLennan Companies, Inc., I expect to receive: (1) my supplemental 401(k) (currently worth $15,421); (2) 2000 shares of MMC common stock (with a current value of approximately $62,510); and (3) options for 19,762 shares of MMC common stock (with a current value of approximately $25,352). I have been advised that the options described in #3 must be exercised within 5 years of my separation from the company. Since I expect to receive my 2006 bonus and stock awards in March 2007, these numbers may change significantly in the next several weeks.

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

    No. However, I would consider teaching a course at a local law school, as other judges in the Southern District of New York have done and continue to do. At the present time, I have taken no steps to pursue such a position. I would pursue outside teaching opportunities in compliance with the Code of Conduct for United States Judges.

24. **Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)**

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

26. **Potential Conflicts of Interest**:

a. **Identify the parties, 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. Explain how you would address any such conflict if it were to arise.**

Parties, categories of litigation, and financial arrangements that might present potential conflicts-of-interest during my initial service, should I be confirmed, would include matters involving Marsh, MMC or any affiliates or subsidiaries of MMC; cases involving my former law firm -- Wachtell Lipton Rosen & Katz; matters involving stocks I own or other financial interests I have, and cases where the United States is a party involving matters on which I directly worked or for which I supervised others while an Assistant United States Attorney.

For the foreseeable future, I would expect to advise the parties in all matters involving narcotics and related offenses of my prior relationship with the Government and elicit comments or additional information from the parties so as to identify and resolve any actual or potential conflicts of interest.

b. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

I recognize that conflicts and appearances of conflict may arise from time to time. Accordingly, I expect to establish a screening procedure to determine whether a particular case presents a conflict, following the Code of Conduct for United States Judges and all relevant statutes, including 28 USC 455, in resolving any such conflicts.

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

While at Yale Law School, I participated in the Jerome N. Frank Legal Services Program, where I provided legal services to homeless individuals and families in landlord-tenant disputes and other housing-related administrative proceedings. I participated in this clinical program for two semesters, averaging approximately 10-15 hours per week.

During my clerkship, I participated in an outreach program sponsored by the Denver United Way in which I provided advice and assistance to an elderly blind couple living on Social Security and Medicaid. I participated in this program for approximately 1 year, averaging approximately 5-10 hours per month.

While at Wachtell Lipton, I dedicated approximately 100 hours to various pro bono projects, including a landlord-tenant dispute, a small claims commercial dispute, a dispute over insurance coverage, and research in connection with a civil appeal.

From 1994 to 2005, I returned to full-time public service as an Assistant United States Attorney in the Southern District of New York. Nevertheless, while at the United States Attorney's Office, I volunteered one night per week (approximately three hours each Monday night) in the Children's Playroom at Memorial Sloan Kettering Cancer Center. Although non-legal in nature (I typically oversaw the Monday night bingo and black jack games for children and teens receiving in-patient treatment at the hospital), I assisted some of the families in matters relating to benefits and insurance coverage. I participated in this program from February 1995 until 2002.

Since coming to Marsh & McLennan, I have joined the Association of Corporate Counsel's Corporate Counsel Pro Bono Coordinators program, which is dedicated to identifying appropriate pro bono projects for in-house legal departments. I am also currently participating in the Legal Aid Society's Criminal Appeals Bureau Volunteer Program, where I am handling the appeal of an indigent appellant convicted of manslaughter in New York State Supreme Court. To date, I have dedicated approximately 35 hours to this project.

28. <u>Selection Process</u>:

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

My experience with the judicial selection process began in August 2006, when I received a call from a former colleague in the U.S. Attorney's Office who was then employed in the White House Staff Secretary's Office. During that call, my former colleague inquired if I would be interested in a judgeship on the Southern District of New York. I expressed interest in the position and shortly thereafter forwarded a copy of my resume to the White House. On October 25, 2006, I received a call from the White House Counsel's Office inviting me to come for an interview at the White House. Two days later, on October 27, 2006, I met at the White House with staff from the White House Counsel's Office and Department of Justice. On December 15, 2006, I was informed that the President was considering my nomination to the Southern District bench and requested that I

complete various forms connected with that process. On February 15, 2007, my nomination was forwarded to the United States Senate.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Sullivan , Richard J	Southern District of New York	02/16/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
US District Judge -- Nominee	☒ Nomination, Date 02/15/2007 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2006 to 1/30/2007
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Marsh Inc 1166 Avenue of the Americas New York, NY 10036	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Managing Director and General Counsel	Marsh Inc.
2. Vice President and Deputy General Counsel-Litigation	Marsh & McLennan Companies Inc.
3.	
4.	
5.	

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2005	Federal Employees Pension Plan; pension upon age 65
2. 2005-2007	Marsh & McLennan Companies Inc Pension Plan; pension upon retirement age 65
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Sullivan , Richard J	Date of Report 02/16/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2005	Marsh & McLennan Companies, Inc	$ 207,475.33
2. 2006	Marsh & McLennan Companies, Inc.	$ 606,520.02
3. 2007	Marsh & McLennan Companies, Inc.	$ 39,583.00
4.		
5.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2006	Self-employed; part-time bookkeeper
2.	
3.	
4.	
5.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1.	EXEMPT
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Sullivan, Richard J	Date of Report 02/16/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.		EXEMPT	
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Sullivan , Richard J	Date of Report 02/16/2007

VII. INVESTMENTS and TRUSTS -- *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Roslyn Savings Bank Accounts	B	Interest	J	T	EXEMPT				
2. Roslyn Savings Bank - CD	B	Interest	L	T					
3. JPMorgan Chase Bank Accounts	A	Interest	L	T					
4. New York Community Bancorp Common Stock	D	Dividend	K	T					
5. Merrill Lynch Institutional Tax Exempt Fund (Money Market)	A	Interest	M	T					
6. Merrill Lynch 529 College Savings Accounts	A	Interest	L	T					
7. Merrill Lynch Nuveen Tradewinds International Fund	A	Dividend	K	T					
8. Merrill Lynch Matthews Pacific Fund	A	Dividend	J	T					
9. Merrill Lynch NFJ Dividend Value Fund	A	Dividend	K	T					
10. Merrill Lynch American Funds Growth Fund of America	A	Dividend	K	T					
11. Merrill Lynch Third Avenue Value Fund	A	Dividend	K	T					
12. Merrill Lynch Cohen & Steers Realty Shares	A	Dividend	J	T					
13. Merrill Lynch Loomis Sayles Bond Fund	A	Dividend	L	T					
14. Fidelity IRA Magellan Fund	B	Dividend	J	T					
15. Salomon Smith Barney IRA Dow Street Unit Investment	B	Dividend	J	T					
16. Fidelity Institutional Short Term Goverment	A	Dividend	J	T					
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Sullivan , Richard J	Date of Report 02/16/2007

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Sullivan , Richard J	Date of Report 02/16/2007

IX. CERTIFICATION.

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

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

Signature _____ Date 2/16/07

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		276	339	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		42	611	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule				Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		38	000				
Cash value-life insurance							
Other assets itemize:							
See attached schedule		370	250				
				Total liabilities			
				Net Worth		727	200
Total Assets		727	200	Total liabilities and net worth		727	200
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

AFFIDAVIT

I, RICHARD JOSEPH SULLIVAN, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/22/07
(DATE)

Richard Joseph Sullivan

Marie Angione
(NOTARY)

MARIE ANGIONE
NOTARY PUBLIC, State of New York
No. 01AN4742102, Qual. in Queens County
Certificate Filed in New York County
Commission Expires Oct. 31, 20 29

Senator SCHUMER. And Mr. Van Bokkelen.

STATEMENT OF JOSEPH S. VAN BOKKELEN, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF INDIANA

Mr. VAN BOKKELEN. In my case, Senator Lugar introduced all my family members. I am excited that they are here, in particular, Dr. Paul and Betsy Hauser who are my wife's stepmother and husband.

[The biographical information of Mr. Van Bokkelen follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Joseph Scott Van Bokkelen

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

   District Court Judge, Northern District of Indiana

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

   US Attorney's Office, 5400 Federal Plaza, Suite 1500, Hammond, IN 46320

   Home: Munster, IN

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

   1943
   Chicago, IL

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   Wife: Sally W. Van Bokkelen (Maiden name: Huey)
   Occupation: Head of Christian Education and Mission Outreach
   Spouse's Employer: Westminster Presbyterian Church, Munster, IN 46321

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

   Indiana University School of Law, 1966-1969, Doctor of Jurisprudence, 1969
   Indiana University, 1963-1966, Bachelor or Arts, 1966
   Wabash College, 1961-1963

7. **Employment Record: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or**

otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

President, Stony Lake Property Homeowners' Association (2006-07) - uncompensated.

United States Attorney, Office of the United States Attorney for the Northern District of Indiana; September 21, 2001 to present - salary.

Partner, Goodman, Ball, Van Bokkelen & Leonard, P.C. (1978 through September, 2001), Highland, Indiana - share of the profits.

Member, Board of Directors, Northwest Indiana Habitat for Humanity (Hammond, Indiana, from 2000 to 2001) - uncompensated.

Member Lake County, Indiana, Public Defender Board (1999 to 2001) - uncompensated.

President, Westminster Presbyterian Church (1995 through 1998) - uncompensated.

Adjunct professor at the Valparaiso University School of Law (Valparaiso, Indiana, 1992) - uncompensated.

Appointed Special Prosecutor by the then Lake County Prosecutor, Jack Crawford, to investigate the murder of a very prominent politician/lawyer in Lake County, Indiana. I served that function from 1983 through 1985 - received payment for services.

Board member for Forest Ridge Academy (1982 through 1992). This is a not-for-profit elementary school (Schererville, Indiana) - uncompensated.

Partner, Wilson, Donnesberger, Van Bokkelen & Reid, Hammond, Indiana (March 1975 through March 1978) - share of profits.

Assistant United States Attorney, Office of the United States Attorney for the Northern District of Indiana (March, 1972 through March, 1975) - salary.

Office of Indiana Attorney General, Indianapolis, Indiana (1969 through March 1972); Deputy Attorney General (1969-1970); Assistant Attorney General (1971 through 1972) - salary.

1966 through November of 1969, full-time law student with some part-time summer employment with the Indiana Highway Department, Indianapolis, Indiana (1966 and 1967) - compensated for summer work with State Highway Department.

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

   None

9. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

   Named the Outstanding Assistant United States Attorney for Northern District of Indiana (1974)
   Awarded the AV rating by Martindale & Hubbell
   Nominated as a Fellow by the Indiana Bar Foundation
   Calumet Council of the Boy Scouts - Honoree Legal Community Recognition Dinner - May 1, 2006

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

    I am a member of:

    * American Bar Association
    * Seventh Circuit Bar Association
    * Indiana State Bar Association
    * Lake County Bar Association
    * Fellow (Indiana Bar Foundation)

    Currently:

    I serve on the United States Attorney General's Advisory Committee subcommittees: 1.) Sentencing Guidelines; 2) White Collar Crime; 3) Violent and Organized Crime; and 4) Regional Information Sharing Working Group.

    Co-chair of the South Bend, Indiana, Weed and Seed Initiative and the Glen Park, Gary, Indiana, Weed and Seed Initiative.

    Oversee this District's Anti Terrorism Advisory Council as directed by the United States Attorney General.

    A member of the Executive Board of the Lake County High Intensity Drug Trafficking Area. Lake County Indiana was designated by Congress as a single county HIDTA. It is a congressional program with Department of Justice participation. The purpose is to reduce the supply of illegal drugs and reduce street violence associated with drugs and gangs.

Executive board member of the Indiana Governor's Counter Terrorism and Security Council and the Indiana Fusion Center. These are both part of the Indiana Department of Homeland Security and are funded by the US Department of Homeland Security.

Previously:

* Master in the Calumet Inns of Court
* National Association of Criminal Defense Lawyers
* President of the Northwest Indiana Federal Bar Association
* Chairman of the Criminal Justice Act Committee for the United States District Court for the Northern District of Indiana (as a result of the recommendations of that committee, the judges for the United States District Court for the Northern District of Indiana proceeded forward to establish a Community Defender program for the Northern District of Indiana)
* Member of Lake County, Indiana, Public Defender Board (named to the Board by the judges of the Lake County Criminal Courts). The Board was organized to create an independent Public Defender organization in Lake County, Indiana).
* Certified ADR Mediator for the State of Indiana

11. **Bar and Court Admission**:

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

    1969 - State of Indiana. There has been no lapse in membership.

    b. **List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.**

    United States District Court for the Northern and Southern Districts of Indiana (1969); United States Court of Appeals for the Seventh Circuit(1973); Supreme Court of the United States (1973); United States District Court for the Western District of Pennsylvania (by special admission); United States District Court for the Northern District of Illinois (by special admission); Indiana Supreme Court (1969).

    There has been no lapse in membership.

12. **Memberships**:

    a. **List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to**

which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Hammond, Indiana Rotary Club (1976-1978)
Woodmar Country Club, Hammond, Indiana (Social Member for one year until I resigned in the late 80's or very early 90's). It is no longer in business as it sold all of it's assets in 2005.

b. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.**

None of the organizations with which I have been associated have discriminated on the basis of race, sex, or religion.

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

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

The articles which I have written prior to becoming the United States Attorney have been for use by the Indiana Continuing Legal Education Forum as part of their Continuing Legal Education seminars and local Bar Association seminars. The articles have involved issues such as media law/federal sentencing guidelines/civil rights litigation, etc. The articles do not express opinion other than in the sense of a review of the applicable law. I have never written concerning Constitutional law or legal policy. The articles were available to not only the seminar attendees, but also to members of the Indiana State Bar Association and public. I have attached the articles which I could find.

I prepared an Op-Ed article concerning the Patriot Act which was circulated to newspapers in the Northern District of Indiana. A copy of the article is attached.

I only recollect one letter to the editor which I wrote. I do not have a copy of it. The letter was to the Northwest Indiana Times (Munster, Indiana) and would have been sent in either the spring or early summer 2001. An article had appeared in

the newspaper which was erroneously critical of the Acting United States Attorney. I pointed out the factual errors of the article.

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

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

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

As a general rule I have never kept copies of speeches, talks, etc. that I have given. Since becoming United States Attorney, while I regularly am asked to speak to groups, I still do not save copies of my speeches. I have attached what working drafts that I could find together with listing the speeches that I have given based upon my calendar. I do not know if this is a complete list.

10/12/06; Valparaiso Chamber of Commerce, Valparaiso, IN; Public Corruption Investigations

8/17/06; South Bend, Indiana Police Department; Project Safe Neighborhoods, Straw purchases of firearms

8/8/06; School Resource Officer Conference, Merrillville, Indiana; The role of SRO in detecting gangs

6/6/06; Benjamin Harrison Inns of Court, Fort Wayne, Indiana; Patriot Act

5/18/06; Munster, Indiana Police Department; Role of Police Officers in public safety

5/11/06; National Citizens Police Academy Association Conference, South Bend, Indiana; Violent crime reduction

4/25/06; National Association of Attorney Generals, Chicago, Illinois; The necessity of cooperation between State Attorney Generals and USAOs

3/3/06; Indiana State Bar Assoc., Annual Bench & Bar Conference, Culver, Indiana; FISA/Patriot Act

3/3/06; NW Indiana New Police Recruits Diversity Training, IUN, Gary, Indiana; The importance in understanding Cultural Diversity in Police Work

1/10/06; Highland, Indiana Lions Club; Public Corruption investigations

3/21/05; State and Local Law Enforcement Anti-Terrorism training, Highland, IN; The importance of state and Local law enforcement to the detection and prevention of terrorist acts

2/22/05; Valparaiso University; Symposium on National Security and Civil Liberties; Patriot Act

10/29/04; South Shore Metropolitan Economic Monthly meeting, Purdue Calumet, Hammond, Indiana; Operation Restore Public Integrity - public corruption initiative

7/2/04; Kiwanis Club, Merrillville, IN; Patriot Act

5/18/04: CPA Forensic Fraud Examiners, Michigan City, IN; Role of United States Attorney's Office in Fraud Investigations

4/20/04; St. Joseph County Law Enforcement Conference, South Bend, IN; Keeping Our Communities Safe Initiative

2/10/04; Guest Lecturer, Valparaiso University School of Law, Valparaiso, IN; Patriot Act

12/11/03; Lake County, Indiana Bar Association Criminal Defense lawyers section; Federal Sentencing Guidelines and USAO/NDIN policies

12/6/03; Northwest Indiana Chapter of the ACLU, Indiana University NW, Gary, IN; Patriot Act

11/12/03; Valparaiso Kiwanis Club, Valparaiso, IN; What the United States Attorney's Office does

11/8/03; Valparaiso University Peace and Justice Symposium, Valparaiso, IN; Patriot Act

11/4/03; Davenport College, Hammond, IN; Ethics in Government

10/1/03; South Bend Rotary Club, South Bend, IN; Patriot Act

9/5/03; Lake County (Indiana) Quality of Life Council, Purdue-Calumet University Hammond, In; Ethics in Government

6/27/03; Northwestern University Center for Public Safety School for Police Staff and Command Graduation - keynote speaker; The importance of information sharing in investigations together with strong command procedures

6/25/03; Indiana State Board of Accounts state wide meeting - keynote speaker Merrillville, IN; Role of State Board of Accountants in public corruption investigations

5/14/03; Porter County, Indiana Inns of Court, Valparaiso, IN; Patriot Act

4/17/03; Highland, Indiana Kiwanis Club; Project Safe Neighborhoods/Keeping Our Communities Safe

4/14/03; Grant County, Indiana Business Leaders Luncheon, Upland, IN; Anti-Terrorism Advisory Council/Could a terrorist act happen here?

2/27/02; Federal Community Defenders of the Northern District of Indiana, Fort Wayne, IN; Sentencing Guidelines and United States Attorney's Office sentencing policies

11/16/02; First Presbyterian Church youth group, Gary, IN; Violent Crime and teenagers

7/11/02; Indiana Prosecutors Association Summer Meeting, Merrillville, IN; The need for partnerships between local and federal prosecutors - getting the best bang for the buck

6/20/02; Indiana Fraternal Order of Police annual state meeting, Merrillville, IN; general law enforcement speech

4/25/02; Allen County Medical Association meeting, Fort Wayne, IN; Civil and Criminal investigations

2/15/02; Indiana University South Bend, South Bend, IN: What the United States Attorney's Office does

1/21/02; Valparaiso University Hate Crimes, Valparaiso, IN: Prosecution of hate crimes

e. **Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.**

12/16/05; WLTH Talk Radio, Merrillville, IN; Public Corruption Investigations

5/9/05; WJOB Talk Radio, Hammond, IN; Patriot Act

5/5/05; WLTH Talk Radio, Merrillville, IN; Patriot Act

12/13/04; WNDU-TV, South Bend, IN: Project Safe Neighborhoods/Project Disarm Firearms Initiative

I regularly hold press conferences regarding the return of Grand Jury Indictments involving matters of public interest. Generally, the office tape records the press conferences in case there is any question as to what was said, but these recordings are not transcribed. I have never listened to any of the recordings.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. **Citations**: If you are or have been a judge, please provide:

a. citations for all opinions you have written (including concurrences and dissents);

b. a list of cases in which certiorari has been requested or granted;

c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

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

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have never served as a judge

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

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

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

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

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

    I have never served as a judge

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

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

    Deputy/ Assistant Attorney General for the State of Indiana 1969-1972 (Appointed by Theodore Sendak (deceased), the Indiana Attorney General).

    Assistant United States Attorney for the Northern District of Indiana 1972-1975 (Appointed by Richard Kliendienst, the US Attorney General. The United States Attorney was William C. Lee).

United States Attorney for the Northern District of Indiana Sept. 2001 to present (Appointed by President George W. Bush)

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held an office or rendered services to any political party and or election committee. Many years ago, I was a poll watcher for the Republican party in the election for the Mayor of Hammond, Indiana.

18. **Legal Career:** Please answer each part separately.

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

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

I did not serve as a clerk to a judge

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

I never practiced alone.

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

Office of Indiana Attorney General, Indianapolis, Indiana (1969 through March 1972); Deputy Attorney General (1969-1970); Assistant Attorney General (1971 through 1972).

Assistant United States Attorney, Office of the United States Attorney for the Northern District of Indiana (March, 1972 through March, 1975). In 1973 through March of 1975, I was assigned by the United States Attorney the responsibility for the operation of the Hammond Division of the United States Attorney's Office, Hammond, Indiana.

Partner, Wilson, Donnesberger, Van Bokkelen & Reid, Hammond, Indiana (March 1975 through March 1978). The firm was a general

litigation firm. I joined the firm as a partner upon leaving the Office of the United States Attorney. The firm is dissolved.

Goodman, Ball, Van Bokkelen & Leonard, P.C. (1978 through September, 2001), Highland, Indiana. The firm is dissolved.

Office of the United States Attorney for the Northern District of Indiana; United States Attorney, September 21, 2001 to present.

b. Describe:

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

In my private practice after I left the U.S. Attorney's Office (1975-2001) the firms with which I have been associated have been basically general practice firms. My emphasis has always been in litigation, both civil and criminal. Both the civil and criminal cases tend to be complex in their nature. This has continued throughout my career. As the USA (Sept. 2001 to present), I oversee all the office litigation, both civil and criminal. I direct the mission of the office including its various priorities both national and district wide. I am in court regularly monitoring the performance of the Assistant United States Attorneys and review their work product.

ii. your typical clients and the areas, if any, in which you have specialized.

Prior to becoming USA for the Northern District of Indiana, I represented many public officials during investigations and prosecutions by the U.S. Attorney's Office. I represented one of the two major newspapers serving Lake County, Porter County, Jasper County, and Newton County, and have from time to time represented the major news outlets in Chicago, Illinois, in matters involving First Amendment rights. Earlier in my career I had an extensive practice involving both defending landowners whose property was being acquired by governmental organizations, together with representing governmental organizations in condemning property. I have handled many Civil Rights cases, both representing those who have felt that their Civil Rights have been violated through employment practices, etc., and municipalities who have been sued by individuals. Since becoming USA NDIN, my clients are exclusively Federal Agencies.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the

frequency of your appearances in court varied, describe such variance, providing dates.

Between 1975 through 2001, I appeared in Court quite regularly.

Since becoming United States Attorney, I have participated in two criminal jury trials, though not as lead counsel. I also appear from time to time at sentencing hearings and motion hearings though again not as lead counsel. Also I am requested by the sitting Judge to appear in a matter regarding an issue the Judge has which he/she wants me to address.

i. Indicate the percentage of your practice in:

1. **federal courts;** 60%
2. **state courts of record;** 40%
3. **other courts.**

ii. Indicate the percentage of your practice in:

1. **civil proceedings;** 30%
2. **criminal proceedings.** 70%

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

Over the course of my career, I have tried in excess of 100 cases to verdict, excluding those cases which were resolved by summary proceedings, such as a motion to dismiss and/or summary judgment. For the most part, in the cases which have been tried to verdict I would have been sole or chief counsel.

i. What percentage of these trials were:

1. **jury:** 60%
2. **non-jury:** 40%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never appeared before the Supreme Court of the United States

19. **Litigation: Describe the ten (10) 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 representation;**

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

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

(1) As an Assistant United States Attorney I prosecuted a drug gang located in Gary, Indiana, with connections to the South Side of Chicago known as the "Family" street gang. These prosecutions occurred from approximately 1973 through my departure in March of 1975. There was basically one overall investigation which led to a number of indictments being returned, but all the indictments were inter-related as to the core group of the gang. These cases were the result of one of the first joint investigations conducted by the FBI, DEA, and IRS.

(a) United States v Hillsman, 522 F.2d 454 (7th Cir., 1975)(Honorable Allen Sharp, United States District Court for the Northern District of Indiana, presiding at trial), Harold Abrahamson, 200 Russell Street, Hammond, Indiana 46320, (219)937-1500. This specific case involved an assault on a Federal Agent.

(b) United States v Jeffers, et al, 520 F. 2d 1256 (7th Cir., 1975)(Honorable Allen Sharp, United States District Court for the Northern District of Indiana, presiding at trial). Max Cohen, 200 E. 90th Drive, Merrillville, Indiana 46410, (219)769-1600. This was a drug conspiracy case involving five defendants.

(c) United States v. Harris, et al, 542 F.2d 1283 (7th Cir., 1976)(Honorable Allen Sharp, United States District Court for the Northern District of Indiana, presiding at trial), Harold Abrahamson, 200 Russell Street, Hammond, Indiana 46320, (219)937-1500; Nick J. Thiros, 200 E. 90" Drive, Merrillville, Indiana 46410,(219)769-1600;Terrence L. Smith, 9696 Gordon Drive, Highland, Indiana 46322,(219)922-1000; Steven R. Crist, 9245 Calumet Avenue, Suite 200, Munster, Indiana 46321, (219)836-0200; Michael Muenich, 3235 45th Street, Suite 304, Highland, Indiana 46322, (219)922-4141; Sheldon Cohan, 7448 Broadway, Merrillville, Indiana 46410, (219)769-7122; Hawk P. Kautz, 101 W. 75th Place, Merrillville, Indiana 46410, (219)736-1923; This case involved a trial of twelve defendants who were involved in the Family street gang.

(d) United States v Davis, 514 F.2d 1085 (7th Cir., 1975)(Honorable Allen Sharp, United States District Court for the Northern District of Indiana, presiding at trial). Counsel was John P. Bushemi, 8959 Broadway, Merrillville, Indiana 46410, (219)769-8100. Defendant was charged with possession and transportation of a firearm as part of the overall investigation of the Family street gang.

(e) United States v Williams, 385 F. Supp. 897 (N.D. Ind., 1974) aff'd, 529 F.2d 529 (7th Cir. 1976) (Honorable Allen Sharp, United States District Court for the Northern District of Indiana, presiding at trial. Counsel was James E. Foster, 5253 Hohman Avenue, Hammond, Indiana 46320, (219)933-4700. The issue was whether Williams, having been charged with a conspiracy, could, without violating the double jeopardy proscription, be charged with a substantive offense arising out of an overt act named in the same conspiracy.

In all of these matters I represented the United States of America as an Assistant United States Attorney. My participation was as chief trial counsel.

(2) James C. Matlock v City of Gary, 932 F.2d 658 (7th Cir., 1991)(Magistrate Judge Andrew Rodovich, United States District Court for the Northern District of Indiana, presiding at trial). Note: Was overruled in part by Salazar v. City of Chicago, 940 F.2d 233 (7th Cir., 1991).I represented James C. Matlock, plaintiff/appellee, as trial counsel. The case was brought pursuant to 42 U.S.C §1 983 (the Civil Rights Statute) alleging that Matlock was transferred from his position as legal investigator in the City's law department to the position as a turn-key in the City Jail based upon his political affiliation. Matlock had supported former Mayor Richard Gordon Hatcher against Thomas Barnes in the Democratic primary election for mayor of Gary. Barnes defeated Hatcher in a very hard-fought election. His salary was reduced from $15,192.00 a year to $11,635.00 a year. A five-day jury trial was held in this matter. A jury found in favor of Matlock that the transfer was politically motivated and awarded to Matlock compensatory damages. The importance of this case was it reinforced the rule of law that non-policy making municipal employees are free to express their First Amendment rights and support candidates of their choice. Defendant's attorneys were MacArthur Drake, 504 Broadway, Suite 506, Gary, Indiana 46402, (219) 882-6004 and Hamilton Carmouche, 5425 Broadway, Merrillville, Indiana 46410,(219)755-4230.

(3) Lake Superior Court, Juvenile Division, plaintiff, v Lake County, Indiana, Board of Commissioners, et al, Lake Circuit Court, Juvenile Division, sitting at Gary, Indiana, Cause Number 45D06-9602-JM-00841 -0,.(Special Judge was the Honorable David Matsey, Starke County, Indiana, Circuit Court presided at trial. I was trial counsel with Attorney Ned Ruff. This matter involved a mandate action brought by the Judge of the Lake County Superior Court, Juvenile Division, against the Board of Commissioners and County Council of Lake County for the purpose of mandating the County to build a new juvenile court and related facilities. As co-counsel, I represented the Lake County Juvenile Court. The Juvenile Court facilities in Gary, Indiana, in 1997 were inadequate, unhealthy, dangerous, and totally inappropriate for the effective functioning of the Lake County Superior Court, Juvenile Division. The Juvenile Court Judge, Judge Mary Beth

Bonaventura, took the unprecedented action of mandating the Commissioners and Council to build an entirely new facility. After a trial, the Special Judge who was appointed by the Indiana Supreme Court pursuant to the mandate procedures found in favor of Judge Bonaventura and mandated the building of an entirely new facility in Crown Point, Indiana, with the final cost being $23,000,000.00. This was the largest judicial mandate ever affirmed in the State of Indiana at the time. Opposing counsel was John S. Dull, Government Center, 2293 N. Main Street, Crown Point, Indiana 46307, (219) 755-3058; Gerald Bishop, 2115 W. Lincoln Highway, Merrillville, Indiana 46410, (219)738-2400. Nathaniel Ruff, 9111 Broadway, Suite C, Merrillville, IN 46410 (219)738-2949 co-counsel for Judge Bonaventura.

(4) United States v Fischbach & Moore, Inc. et al.(576 F.Supp. 1384,(D.C.Pa.,1983)(The Honorable Maurice Cohill, United States District Court for the Western District of Pennsylvania presided at trial). The government in this case alleged criminal bid rigging by the largest electrical contracting companies in the United States at that time involving electrical construction projects at the Western Pennsylvania works of United States Steel Corporation. I represented James Oesterle, (Cedar Lake, Indiana)the president of Tri-City Electric Company (Hammond, Indiana)as trial counsel. In total, there were eleven corporations and individuals charged. However, only seven defendants went to trial, including my client. At the close of the government's case, both my client and his company were acquitted by the court. All the other remaining defendants were found guilty by the jury.

Department of Justice, Antitrust Div., Washington, DC for U.S.
1)Hays Gorey, Jr. 202-307-0000
2)Gary S. Humble - 423-752-5140
3)Mark C. Schecter - 202-383-6890

Other attorneys:

4)Joseph S. Van Bokkelen, Goldsmith, Goodman, Ball & Van Bokkelen, P. C., Highland, Indiana for James L. Oesterle. 219-937-5600

5)Charles Scarlata, Pittsburgh, PA for Tri City Elec. Co. Inc. - Deceased

6)H. Yale Gutnick, Strassburger, McKenna, Messer, Shilobod & Gutnick, Four Gateway Center, Suite 2200, 444 Liberty Ave., Pittsburgh, PA for Joseph J. Rodgers. 412-281-5423

7)Norman H. Seidler, Lord, Day & Lord, New York City -Deceased

8)Gordon B. Spivack, Lord, Day & Lord - Deceased

9)P. Jerome Richey, Buchanan & Ingersoll, Pittsburgh, PA for Fischbach and Moore, Inc 412-831-4000

10)Melvin Schwartz, Baskin & Sears, P.A., Boca Raton, FL - No info
11)Harold Gondelman, Gondelman, Baxter, McVerry, Smith, Yatch & Trimm, 310 Grant Street, Pittsburgh, PA for Frederic B. Sargent and Ralph D. Vryenhoek 412-471-8521

12)John P. McComb, Jr., Buchanan & Ingersoll, Pittsburgh, PA - Deceased

13)Robert F. McDermott, Jones, Day, Reavis & Pogue, Washington, DC - 202-879-3939

14)Marianne Corr, Jones, Day, Reavus & Pogue, Washington, DC - 401-421-2800

15)Robert J. Cindrich, Pittsburgh, PA for the Howard P. Foley Co. - 412-647-6351

16)Clyde Armstrong, Thorp, Reed & Armstrong, Pittsburgh, PA for Paul E. Arbogast - Deceased

17)Jeffrey C. Slade, Paul, Weiss Rifkind, Wharton & Garrison, New York City - 212-594-6554

18)Jay Topkis, Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York for Lord Elec. 212-373-3317

19)Jon Hogue, Pittsburgh, PA for Lord Elec. - 412-263-5650

20)Peter F. Gass, Friedman & Gass, P.C., New York City for E.C. Ernst, Inc. - 941-761-9800

21)Deborah Fabricant, Friedman & Gass, P.C., New York City for E.C. Ernst, Inc. - 949-660-0481

22)Peter N. Wang, Friedman & Gass, P.C., New York City for E.C. Ernst, Inc. - 202-682-7474

(5) John George Diamond v United States 649 F. 2d 496 (7th Cir., 1981)(The Honorable Philip McNagny, United States District Court for the Northern District of Indiana, Hammond Division presided at trial). Diamond was charged as part of a conspiracy involving corruption among the top public officials in Gary, Indiana. On December 12, 1962, upon the government's sua sponte motion, the indictment against Diamond was dismissed after one of his co-defendants changed his plea to guilty. I filed on behalf of Diamond a complaint with the United States District Court for the Northern District of Indiana (Hammond Division) requesting that the government "be ordered to expunge from the records maintained by [it] all references to [Diamond's] indictment and arrest."

The government filed a motion to dismiss alleging that the complaint failed to state a claim. The trial court granted the motion, and from that ruling Diamond appealed. The Court of Appeals for the Seventh Circuit reversed the district court judge. The importance of this case was it was the first time that the Seventh Circuit ruled on an expungement request. The case became a lead case concerning the burden of proof required to have an arrest record expunged. The Government was represented by AUSA Charles B. Miller, U.S. Attorney's Office, 5400 Federal Plaza, Suite 1500, Hammond, Indiana 46320. Mr. Miller's current address could not be located.

(6) United States of America v Franklin, 546 F. Supp. 1133 (N.D. Ind., 1982)(Honorable Allen Sharp, United States District Court for the Northern District of Indiana, presiding at trial) The case drew considerable public interest for the reason that Franklin was accused of violating the Civil Rights of Vernon E. Jordan by attempting to kill him. On August 17, 1982, after a jury trial, Franklin was found not guilty. The court enjoined the participants in the trial and all others, from attempting to interrogate the jury about the contents of their deliberations or the reasons for their verdict. My client (whom I represented as co-counsel with Lawrence Gunnels (Deceased)Chicago, IL) the Chicago Tribune Company, together with others that joined the Chicago Tribune Company, filed a written motion to reconsider and vacate the order concerning communication with jury members. The court having not acted on the motion, The Chicago Tribune Company, on August 23, 1982, and the other parties filed a writ of mandamus in the United States Court of Appeals for the Seventh Circuit and that court on August 24, 1982, ordered that the trial court judge commence the hearing immediately on the petition. A hearing was thereafter conducted. As a result, the court modified its original order to leave the matter as to whether or not the jury would talk to the media up to the exclusive decision of the members of the jury panel. The attorneys involved were: Martin W. Kus, 916 Lincoln Street, LaPorte, Indiana 46352, (219)362-1577; J. Frank Kimbrough, 803 S. Calhoun Street, Ft. Wayne, Indiana 46802, (260)425-9777.

(7) Kincaid v Rusk, 670 F. 2d 737 (7th Cir, 1982)(Honorable Allen Sharp, United States District Court for the Northern District of Indiana, presiding at trial) Kincaid sought declaratory relief and compensatory damages pursuant to 42 U.S.C §1983 for numerous alleged violations of his Constitutional rights while he was a pre-trial detainee in the custody of the Sheriff of Tippecanoe County, Indiana. I was court-appointed by United States District Court Judge Allen Sharp to represent Kincaid. The district court judge entered judgment against Kincaid and in favor of the Sheriff of Tippecanoe on all claims. The Court of Appeals for the Seventh Circuit reversed in part finding that Kincaid's rights were violated by the Sheriff in enforcing an official policy which arbitrarily barred access by pre-trial detainees to reading material other than soft-bound (paperback) books and magazines. The Court of Appeals also reversed the finding of qualified immunity for the Tippecanoe County Sheriff and his denial of access to reading material. Opposing counsel was Frederick Hoffman, Suite 700, 300 Main Street, Lafayette, Indiana 47902 (deceased).

(8) United States Steel Corporation v Fri, 364 F. Supp. 1013 (N.D.Ind., 1973)(The Honorable George N. Beamer (Deceased), United States District Court for the Northern District of

Indiana, Hammond Division presided at trial). As an Assistant United States Attorney, I represented the United States Environmental Protection Agency. The United States Steel Corporation sought to have an order issued by the United States Environmental Protection Agency ordering United States Steel Corporation to implement a program for control of emissions stayed. This was one of the first compliance actions brought by the U.S. EPA. United States Steel Corporation operated the largest integrated steel mill and other facilities at the time on the shore of Lake Michigan, Gary, Indiana. The court found in favor of the United States EPA, denied the motion to dismiss and denied the stay requested by United States Steel Corporation. Attorneys were James T. Harrington, Suite 250, 150 N. Michigan Avenue, Chicago, Illinois 60601, (312)558-1000; Harvey M. Sheldon, 222 N. LaSalle Street, Suite 300, Chicago, Illinois 60606, (312)704-3504.

(9) Town of Munster v Sherwin-Williams Company, Inc., 825 F. Supp. 197 (N.D.Ind., 1993)(The Honorable Andrew Rodovich, United States District Court for the Northern District of Indiana presided at trial) reversed 27 F. 3d 1268 (7th Cir. Ct. App., 1994) I represented Sherwin-Williams. The plaintiff, Town of Munster, purchased land to use as a sanitary landfill. The land was adjacent to the existing Munster landfill and was undeveloped. Apparently, in the early 1950's, a portion of the land was used for unauthorized dumping. In 1985, the United States Environmental Protection Agency determined that the drum site contained hazardous waste as defined by the Comprehensive Environmental Response Compensation Liability Act. Subsequently, after the Town removed the hazardous waste, it filed a private party contribution action against Sherwin-Williams Company. The trial court found after a trial on the merits in favor of Sherwin-Williams. The Seventh Circuit Court of Appeals reversed finding that the equitable defense of laches was not permitted by the Comprehensive Environmental Response Compensation Liability Act. The Town of Munster was represented by its Town Attorney, Eugene Feingold, 625 Ridge Road, Suite A, Munster, Indiana 46321, (219)836-8800.

(10) Beauty Guard Manufacturing Company of Calumet Region, Inc., V Indiana State Board of Tax Commissioners, et al, 266 N.E. 2d 61 (Ind. App. Ct. En Banc, Judges Hoffman, Sullivan, Buchanan, Loudermilk, Roberson, Stanton, White, and Sharp.(1971)) I represented the State Board of Tax Commissioners as a Deputy Attorney General for the State of Indiana in this matter. The matter involved the Constitutionality of the State of Indiana's 1969 Removal Act which act permitted the State Board of Tax Commissioners to file a petition for removal of the case from the circuit or superior court to the Appellate Court of Indiana. The Appellate Court thereafter would act as a trial court. Based upon a statewide reassessment, over 300 cases were removed to the Appellate Court. The Court upheld the Constitutionality of the Removal Act, and the Court thereafter proceeded to resolve the assessment issues as a trial court. Counsel was Kenneth Reed, 200 Russell Street, Hammond, Indiana 46320, (219)937-1500; Donald Gray, 1244- 1 19th Street, Whiting, Indiana 46394, (219)659-1125 for Queen Anne Candy Company; James E. Schreiner, 9635 Saric Court, Highland, Indiana 46322 (219)922-3901 for Jack Gray Transport Company; G. Edward McHie, 53 Muenich Court, Hammond, Indiana 46320 (219)931-1707 for Inlander Steindler Paper Company.

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

The enactment of the Federal Sentencing Guidelines in November of 1987 caused one of the most significant changes in the way Federal criminal defendants were sentenced. The role of the Court to some extent was limited in fashioning sentences from what it had been prior to that time. The role of the USA in determining the ultimate sentence to be imposed increased considerably. The role of the Probation office changed from trying to assist the Court in fashioning a sentence to ensuring the Court knew all the sentencing implications of the Guidelines. I quickly set about before the guidelines became effective to make sure I understood their implication for my clients. No longer would impassioned pleas for leniency at the time of sentencing carry the day. Further, there was a penalty if you recommended to your client to go to trial when your client was factually guilty of the charge. It became important to try and negotiate with the USA prior to the Indictment being returned. In other words, to best serve your client you had to become to the extent possible more proactive at the pre-indictment stage. The benefits of cooperation, early pleas and departure issues had to be fully understood as part of the plea agreement process. In this district I believe that I was one of the first to really appreciate the effect of the sentencing guidelines and how to best serve my clients. As a result, I was asked to teach courses on the Sentencing Guidelines to Bar Associations, and consult with attorneys. Of course with the Booker case, this has all changed.

I was named as a special prosecutor in the murder investigation of a very prominent local politician. I was hired because of the strong political overtones and the perception that I was above political influences. This investigation was highlighted by the television programs "Unsolved Mysteries" and "Inside Edition". It was also featured in the best-selling book in Chicago by Ed Baumann and John O'Brien entitled "Getting Away With Murder". The person who was murdered was a former City Attorney for the City of East Chicago, Indiana, and probably one of its most prominent politicians. The chief suspect in the murder was the Chief Deputy of the East Chicago Police Department. Although the evidence was not sufficient to obtain the return of an indictment charging anyone in the matter, the case continues to invoke considerable interest.

As head of the committee appointed by the Honorable Allen Sharp, United States District Court for the Northern District of Indiana (South Bend Division) to review compensation under the Federal Criminal Justice Act (CJA), my committee spearheaded the effort to develop a federal defender system for the Northern District of Indiana, which system based upon my committee's recommendation was approved by the judges for the United States District Court for the Northern District of Indiana, and has now been fully implemented. This has considerably increased the quality of the representation for indigent defendants.

I was also a member of the first board which established the Independent Public Defender System for Lake County, Indiana. Prior to establishing the Independent Board, the Public Defenders worked for the criminal court judges of Lake County, Indiana. This raised issues of bias and potential conflicts of interest. As a result of the efforts of the Public Defender Board for Lake County, Indiana, the Public Defenders are now employees of the Public Defender Board and are responsible to its Executive Public Defender. The funding is totally independent of the courts. As with the federal community defenders, the quality of counsel has improved.

I am very proud of the work of the United States Attorney's Office (USAO) during my tenure as USA. When I assumed the position, I observed that there was no overall Management review of the decision to bring or not bring criminal cases. The district was somewhat unique in that there are three division offices (Hammond, South Bend and Ft. Wayne). I observed that each seemed to operate independent of the other and each AUSA seemed to operate pretty much on their own. In order to ensure that the criminal cases that were being brought (or declined) were worthy of Federal prosecution, I instituted a procedure by which a prosecution memoranda setting forth in considerable detail facts of the proposed case had to be approved by the AUSAs supervisor (together with circulating a copy of the prosecution memo to the Criminal Chief, FAUSA and the USA) prior to being presented to a Grand Jury. This helped in determining that cases that were being submitted for Indictment were of the type and quality that one would expect of Federal Indictments and the USAO. It also required a close look at the merits of the case. One of the most difficult decisions a USA makes is to not prosecute a case when the investigating agency is urging prosecution.

When I became United States Attorney, the impression of Northwest Indiana, and in particular Lake County, Indiana (Gary), was that public corruption was rampant. A former US Attorney General noted in 1963 that Lake County, Indiana was the most corrupt county in the United States. Not much had changed when I was appointed. I assumed my position with a zero tolerance for public corruption. I put together a public corruption task force with the name "Operation Restore Pubic Integrity". Due to the efforts of this task force, in the last five years, over 35 people have been indicted on various public corruption charges. As the result, there are new community efforts to bring about ethical government through a number of local initiatives. The efforts of this office have been heralded in the media both locally and nationally. This will be one of the lasting legacies of my tenure as United States Attorney and the United States Attorney's Office.

The national program directed at reducing illegal use of firearms, Project Safe Neighborhoods, has been strongly embraced in this district. The City of Gary generally leads the nation in the number of homicides based upon population. The City of South Bend has encountered a rising crime rate connected to guns. As the result, a very aggressive firearms program has been implemented which has led to a reduction in violent crime within the district. This again makes a difference in the community.

I have performed no lobbying activities on behalf of any client or organization.

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

    I taught for two semesters a trial techniques course at Valparaiso University School of Law as an Adjunct Professor (1992). I have no syllabus.

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

    I still from time to time receive money from my old law firms' receivables though the amounts received are minimal as most of the amounts that were collectible have been collected. I will receive payments upon retiring from the Federal Thrift Savings Plan. I have no other public retirement plans or other deferred compensation plan from any previous employer.

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

    No

24. **Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)**

    See attached Financial Disclosure Report

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

    See attached Net Worth Statement

26. **Potential Conflicts of Interest**:

a. **Identify the parties, 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. Explain how you would address any such conflict if it were to arise.**

My most obvious conflict of interest is based upon my current position as the United States Attorney for the Northern District of Indiana. The second area is my former partners. I still from time to time receive my share of money the firm receives (it is no longer active). As long as there is money for me to receive, I would recuse myself from any case involving my former partners even though I have no interest in the case.

b. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

I would follow the Code of Conduct for United States Judges. With regards to matters pending in the United States Attorney's Office while I was United States Attorney, I expect that the United States Attorney's Office would note on its prosecution memorandums and civil intake that I am recused from any matter that was pending in the office while I was United States Attorney. Same would be true for any other matter. Should I be confirmed, a print out of all matters of any nature that were then currently open in the office would be given to me for a conflicts check. I would initially expect the United States Attorney's Office to run the conflicts check on matters.

27. **<u>Pro Bono Work</u>: 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.**

Northwest Indiana Habitat for Humanity. This organization builds and finances homes for people who cannot obtain conventional financing to purchase a home, and particularly, builds its homes in disadvantaged areas of Northwest Indiana. I was a Board member and contributed approximately 10+ hours a month in Habitat matters. Prior to joining the Board of the Northwest Indiana Habitat for Humanity, I provided legal services to Habitat free of charge.

I have been on the panel for the Federal Criminal Justice Act making myself available for appointments to represent people charged with federal crimes who could not retain a private attorney. From 1975 to August, 2001 I averaged approximately one case per year.

Through Westminster Presbyterian Church, Munster, Indiana, I participated in the delivery of food to the homeless shelter in Hammond, Indiana. I also provided legal work for the church at no charge.

I have also provided free legal services to various organizations that operate food pantries and other services to the needy and homeless. This was done on an as-needed basis. I provided pro bono mediation services based upon my certification as an Alternative Dispute Resolution Mediator.

Since becoming United States Attorney, my opportunities to participate in serving the disadvantaged have diminished. I was required to resign my board position with the Habitat for Humanity for the reason that as United States Attorney I could not participate in asking people to donate money.

I participate in a prison ministry known as Kairos. Although I cannot, because of my position, actually work inside the prison, I help bake cookies and participate in evening prayers both for the team members who are in the prison for the weekend and the prisoners who are participating in the program. This year for the first time I am participating in the same way for Kairos Outside, which is a three day weekend for the wives and other family members of those who are in prison.

28. **Selection Process**:

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

In early July 2006, I learned that Judge Rudy Lozano was going to advise both the President and Senator Richard Lugar that he would be taking Senior status. I contacted Senator Lugar's office and expressed an interest in the position. There was no formal selection committee. Since Senator Lugar already had my resume from the time I applied for the United States Attorney position in February of 2001, I was asked to update my resume.

In the latter part of July, 2006, I received a telephone call from Senator Lugar's office advising me that Senator Lugar was forwarding my name to the White House for consideration.

On August 9, 2006, I met with Deputy White House Counsel William Kelly. Approximately a month later, I was advised that subject to the background check it was the intention of President Bush to nominate me for the position of United States District Court Judge for the Northern District of Indiana. The Department of Justice provided me with nomination paperwork to complete. I had a number of conversations with the Department of Justice, regarding the completion of that paperwork.

On January 9, 2007, my nomination was submitted the Senate.

b. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.**

No.

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Nomination Report

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App. §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Van Bokkelen, Joseph S.	U.S. District Court/NDIN	01/10/2007
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* District Court Judge Nominee	**5. Report Type (check appropriate type)** ___ Nomination, Date 1/9/2007___ ___ Initial ___ Annual ___ Final	**6. Reporting Period** 1/1/06 to 12/31/06
7. Chambers or Office Address U.S. Attorney's Office 5400 Federal Plaza, Ste. 1500 Hammond, IN 46320	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer _____ Date_____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	**NONE** (No reportable positions.)	
1	President	Stony Lake Property Owners Association
2		
3		

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

	DATE	PARTIES AND TERMS
☐	**NONE** (No reportable agreements.)	
1	2001	Goodman, Ball, Van Bokkelen & Leonard (former law firm which is no longer active - 25% of my receivables)
2		

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

	DATE	SOURCE AND TYPE	GROSS INCOME
A. Filer's Non-Investment Income			
☐	**NONE** (No reportable non-investment income.)		
1	2005	Goodman, Ball, Van Bokkelen & Leonard (former law firm - law firm is no longer	$ 1,005
		active - represents 25% interest in receivables)	$
3			$

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

☐	**NONE** (No reportable non-investment income.)		
1	2005	Westminster Presbyterian Church (Salary)	
2			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Van Bokkelen, Joseph S.	1-10-07

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
☐	**NONE** (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
☐	**NONE** (No such reportable gifts.)		
1	Exempt		$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	**NONE** (No reportable liabilities.)		
1	Shelby State Bank	Vacation Cottage	M
2			
3			
4			
5			

*Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000
N=$250,001-$500,000 O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000
P2=$5,000,001-$25,000,000 P3=25,000,001-50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Van Bokkelen, Joseph S.	1-10-07

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

Description of Assets (including trusts/accounts)	Income during reporting period (1) Amt. Code I (A-H)	(2) Type (Div, rent, or int)	Gross value at end of reporting period (3) Value Code II (J-P)	(4) Value Method Code III (Q-W)	Transactions during reporting period (1) Type (Sale, purchase, exchange, gift, redemption)	(2) Date Month-Day	(3) Value Code I (J-P)	(4) Gain Code I (A-H)	(5) Identity of buyer/seller (if private transaction)
Place "(X)" after each asset exempt from prior disclosure.									
☐ NONE (No reportable income,									
1 Progress Energy	A	Div	J	T	Exempt				
2 General Electric	A	Div	J	T					
3 Bell South	A	Div	J	T					
4 BP Amoco	A	Div	K	T					
5 Exxon/Mobil	A	Div	K	T					
6 Verizon	A	Div	J	T					
7 Franklin Dynatech Fund	A	Div	K	T					
8 MFS Emerging Growth A	A	Div	K	T					
9 MFS Research Fund	A	Div	K	T					
10 Janus Worldwide Fund	A	Div	K	T					
11 AT&T	A	Div	J	T					
12 Merrill-Lynch Retirement Plus									
13 AIM Cap Appreciation	A	Div	J	T					
14 - AIM VI Core Equity	A	Div	J	T					
15 - Alliance Bernstein LG Cap Growth	A	Div	J	T					
16 - Black Rock S&P 500 Index VI	A	Div	J	T					
17 - Roszel/Alliance CCM CAP APP	A	Div	J	T					

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Van Bokkelen, Joseph S.	1-10-07

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period (1) Amt. (Excl. Gifts)	B. Income during reporting period (2) Type (Div., rent or int.)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. Gross value at end of reporting period (2) Type Code (T, P, C)	D. Transactions during reporting period (1) Date (Month-Day)	D. Transactions during reporting period (2) Type (Purch., sale or exchange)	D. Transactions during reporting period (3) Partial Sale Price (Excl. Zeros)	D. Transactions during reporting period (4) Type (Gift, inherit. or exchange)	D. Transactions during reporting period (5) Identity of buyer/seller (if private transaction)
Place "X" here if each asset exempt from prior disclosure									
☐ **NONE** (No reportable income, assets, or transactions)									
18 Fidelity Funds (spouse) Community									
19 Hospital Retirement Account									
20 - Contra Growth	A	DIV	J	T					
21 - Growth and Income	A	DIV	J	T					
22 - Fidelity Fund (spouse) Presbyterian Church									
23 - Equity Income	A	DIV	J	T					
24 - U.S. Bond Index	A	DIV	J	T					
25 AXA Equitable (spouse IRA)									
26 - EQ/Equity 500 Index	A	DIV	J	T					
27 AG Edwards (spouse IRA)									
28 - Centennial Money Market	A	Interest	J	T					
29 - MFS Emerging Growth Class A	A	DIV	K	T					
30 - MFS Emerging Growth Class B	A	DIV	J	T					
31 - MFS Global Equity Fund Class A	A	DIV	K	T					
32 - Small Cap World Fund Class A	A	DIV	K	T					
33 AXA Equitable/IRA									
34 - Marsico Focus	A	DIV	L	T					

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Van Bokkelen, Joseph S.	1-10-07

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (e.g., div., rent or int.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-P)	(5) Identity of buyer/seller (if private transaction)
Place "X" after each asset exempt from prior disclosure									
☐ **NONE** (No reportable income, assets, or transactions)									
35 - Alliance Bernstein Value	A	DIV	L	T					
36 - JP Morgan Core Bond	A	DIV	K	T					
37 - Alliance Bernstein Growth & Income	A	DIV	L	T					
38 - Alliance Bernstein Qty Bond	A	DIV	K	T					
39 - Equity 500 Index	A	DIV	L	T					
40 MFS Investments IRA									
41 - MFS Growth Opportunities Fund A	A	DIV	K	T					
42 - MFS Mid Cap Growth Fund A	A	DIV	K	T					
43 - MFS Strategic Growth Fund A	A	DIV	J	T					
44 - MFS Mew Discovery Fund A	A	DIV	K	T					
45 Fidelity Fund									
46 - Cash Reserves	B	DIV	K	T					
47									
48 Centier Bank	A	INT	J	T					
49 Community Trust	A	INT	J	T					
50 Peoples Bank	A	INT	J	T					
51 Vincent I	A	RENT	J	T					

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Van Bokkelen, Joseph S.	1-10-07

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

Description of Assets (including trust assets)	A. Value of Asset (Place "(X)" after each asset exempt from prior disclosure)	B. Income during reporting period	C. Gain or loss during reporting period	D. Value of Asset at close of reporting period	E. Transactions during reporting period				
	Amt. Code (1-4)	Type Code (1-8)	Value Code (1-4)	Value Method Code (1-5)	Type (buy, sell, exchange, redemption)	Date Month-Day	Value Code (J-P)	Gain Code (A-D)	Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions)									
52									
53									
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[illegible]

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Joseph S. Van Bokkelen	1-10-07

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

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

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

Signature _____ Date 1/13/07

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to

Committee on Financial Disclosure
Judicial Conference of the United States
Administrative Office of the U.S. Courts
Suite 2301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		20	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		202	100	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		220	000
Real estate owned-add schedule		875	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		20	000				
Cash value-life insurance		32	400				
Other assets itemize:							
Retirement accounts		716	000				
				Total liabilities		220	000
				Net Worth	1	645	500
Total Assets	1	865	500	Total liabilities and net worth	1	865	500
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Progress Energy	$ 13,500
General Electric	4,000
Bell South	6,100
BP Amoco	18,500
Exxon/Mobil	50,000
Verizon	4,500
Franklin Fund (Dynatech)	25,600
MFS (Emerging Growth A)	17,600
MFS (Research Fund)	28,500
Janus Fund	30,000
AT&T	3,800
Total Listed Securities	$ 202,100

Real Estate Owned	
Personal residence	$ 600,000
Property 2	200,000
Property 3	75,000
Total Real Estate Owned	875,000

Retirement Plans	
Merril-Lynch	$ 10,700
AXA Equitable Accumulator IRA #1	360,000
Community Hospital IRA	24,500
Westminster Presbyterian Church IRA	18,900
AG Edwards IRA	95,800
AXA Equitable Accumulator IRA #2	8,500
Federal Thrift Savings Plan	100,000
MFS IRA	97,600
Total Listed Securities	$ 716,000

Real Estate Mortgages Payable	
Personal residence	$ 120,000
Property 2	100,000
Total Real Estate Mortgages Payable	220,000

AFFIDAVIT

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

___January 26, 2007_____
(DATE)

_____
(NAME)

Mary L. Hatton 1-26-07
(NOTARY)

MARY L HATTON
NOTARY PUBLIC STATE OF INDIANA
LAKE COUNTY
MY COMMISSION EXP. APR. 16,2008

Senator SCHUMER. Great. Well, thank you very much, and welcome to all the families, and now I have a few questions for each of the nominees.

First, this one is for Debra Livingston. First, could you please identify two judges or Justices whom you admire and explain the reason why.

Ms. LIVINGSTON. I am a believer in judicial restraint, Senator, and so as a result of that, I very much admire the work of judges that have embodied that philosophy in their work. Justice Jackson comes immediately to mind. People love him for his writing and for the beauty of that writing. But he was a firm believer that part of the judicial task is to confine yourself to the appropriate role.

I could also mention Justice Harlan, who also embodied this in his judicial philosophy.

I should also say I cannot subscribe to all the opinions of both of those Justices, but their general overall philosophy I am very much sympathetic with.

Senator SCHUMER. And one from New York, one from New Jersey. That is very nice, too. OK.

You spent 15 years as a law professor, first at the University of Michigan and since 1994 at Columbia. Prior to entering academia, you practiced law for 8 years. What can you tell the Committee to assure us your past courtroom experience provides a sufficient background for you to assess the district court records that you would review as an appellate judge?

Ms. LIVINGSTON. Well, I did have a significant court experience as a prosecutor and as a Second Circuit clerk where I was able to observe firsthand how Second Circuit judges go about assessing the work of the district court.

As a law professor, I have written and thought and taught in the fields of procedure, so I have remained immerse in thinking about procedural law and how judges implement the rule of law. And so I think am very sensitive to the role of the appellate court in supervising district courts.

Senator SCHUMER. OK. Now, in 1998, you participated in a roundtable discussion about Terry v. Ohio. That was the landmark Supreme Court case that established police may stop and frisk a person for weapons based on reasonable suspicion. You praised the Terry decision because, "The Court in Terry did not foster the illusion of judicial control" over the day-to-day encounters between police and citizens.

In your view, what is the proper role of the courts in regulating how police and other actors exercise the discretion granted to them by the criminal law?

Ms. LIVINGSTON. Well, Senator, judges have a profound responsibility to decide the cases and controversies that come before them, and in that context there will be Fourth, Fifth, other Bill of Rights provisions raised that implicate police behavior. And courts articulate standards that then come to influence the operation of police departments.

In that particular roundtable, I was speaking to the wisdom, I thought, of the Terry v. Ohio opinion in recognizing that that is a very important role, but that the judiciary cannot be the only part of Government that plays a role in promoting and fostering police

accountability. So legislatures and the Executive have also historically played an important role and have helped foster reform in police departments, along with the Judiciary.

Senator SCHUMER. Thank you. OK. Now for the district court nominees. First I have some questions that I will ask all of you, and we will go with them seriatim. The same question I first asked Professor Livingston, it is one of my favorites, and that is, please identify two judges or Justices whom you admire and explain the reason for your selection. Ms. Mauskopf?

Ms. MAUSKOPF. I also admire Justice Jackson, not only for his body of work as a Supreme Court Justice, but he served as an Attorney General of the United States; he was also the chief prosecutor at the Nuremberg trials. He also gave, as Attorney General, one of the seminal speeches about the Federal prosecutor. And in that speech, which I quote to every Assistant United States Attorney that I swear in, he talks about the awesome power that a Federal prosecutor holds. A prosecutor has more control over life and liberty than any other person in America. And it is something that has always been in the forefront of my mind as a prosecutor from my days in the D.A.'s office to my days at U.S. Attorney, and it is something that will be in the forefront of my mind, should I be confirmed as a Federal district court judge.

Senator SCHUMER. OK. Do you have another one?

Ms. MAUSKOPF. Supreme Court Justice?

Senator SCHUMER. Anybody. It could be two judges or Justices, either one.

Ms. MAUSKOPF. I think one of my favorite district court judges whom I admire greatly, who serves on the Eastern District bench, is Judge Nicholas Garaufis, who comes at his work obviously as a great lawyer, with great legal skill, but with great common sense and practical experience. And to me, as a district court judge, the combination of those two attributes make for a great district court judge.

Senator SCHUMER. I think you have summed up Judge Garaufis. He is a new judge. Somehow the wheel has given him a whole lot of controversial cases right away, but he has done a great job and I agree with you. I agree with you about all of these. You picked very well, both of you.

Mr. Sullivan?

Mr. SULLIVAN. Well, the first judge who would come to mind would be Michael Mukasey, whose seat I would be taking if I were fortunate enough to be confirmed. I thought Judge Mukasey always exhibited tremendous intelligence, independence, and treated all litigants and lawyers with great respect. And I thought that was exactly what a district judge should be, and I think he was recognized as a model district judge.

Another judge would be Denny Chin, also in the Southern District, who I think I had four trials before, and I was always struck by how he made defendants and defense lawyers and prosecutors feel that they had a fair shake at the trial. And I remember on one occasion a defendant, who had been convicted, nevertheless thanked the Court for conducting a fair trial. I thought that speaks volumes about the man.

Senator SCHUMER. Thank you. I will let the record show that I recommended Judge Mukasey to become Attorney General. Not that I want to throw any politics into this hearing. So I think highly of him as well.

Mr. Van Bokkelen?

Mr. VAN BOKKELEN. Mine, likewise, would be district court—

Senator SCHUMER. You do not have to pick New York judges, Mr. Van Bokkelen.

[Laughter.]

Mr. VAN BOKKELEN. I was trying to write down some names of New York judges I could remember. I came up with zero. But there would be district court judges, because that is where I spent my whole life, prosecuting cases and defending cases in district court. And three of them would be:

Judge Michael Kanne, who sits on the Seventh Circuit now, but, however, was in the Northern District of Indiana; as a matter of fact was a fraternity brother of mine; Judge Phil McNagny, who is deceased; and Judge George Beamer, who was a judge when I became an Assistant U.S. Attorney, at a much younger age than I am right now, and who guided me through a lot of things, particularly the role of a prosecutor, the limits of prosecutorial authority, and how to conduct yourself.

Senator SCHUMER. Good. OK. And let me now ask some specific questions of each of our nominees based on their experience.

For U.S. Attorney Mauskopf, you have spent essentially all of your career, legal career, as a prosecutor in the State and Federal systems, but you have spent little or no time representing the other side in the criminal justice system. What can you tell the Committee to assure us that, if confirmed, you will be able to fairly consider the claims and rights of criminal defendants who come into your courtroom?

Ms. MAUSKOPF. I think the first order of a prosecutor in considering any case that comes before a prosecutor is to think about the other side. In fact, I was taught that from my first days in the Manhattan D.A.'s office, and I have done that in assessing each case, each issue that has come before me as a prosecutor, and as a result of doing that throughout my entire career, I have earned a reputation from being a fair and honest prosecutor, one with integrity, one that considers both sides fairly.

It is equally important, it has been equally important throughout my career as a prosecutor, as the IG, to determine not to bring charges as well as to bring charges. So seeking justice is the primary role of a prosecutor, and that ensures that both sides are considered.

Senator SCHUMER. Thank you.

And for Mr. Sullivan, you served for over a decade as a prosecutor in the Southern District, the same district that you have now been nominated to serve as a judge. You left the U.S. Attorney's Office relatively recently. What can you tell the Committee to assure us you will be able to fairly consider the cases brought by Federal prosecutors who worked with you or under your supervision in the U.S. Attorney's Office?

Mr. SULLIVAN. Well, I agree with much of what Ms. Mauskopf just said. I think a prosecutor's first role is to do justice and to

make sure that in making charging decisions, which are monumental decisions in an individual's life, that they have great—they have certainty, to a moral certainty, about the guilt of the individual being charged and would hold prosecutors to an extremely high standard. I think I had a reputation for doing that when I was supervising assistants, that we should never lightly indict anyone. And I would expect prosecutors to adhere to that norm when they appeared in front of me.

I would also expect them to treat defendants and defense lawyers with great respect. You know, our system of justice is, I think, the envy of the world, and much of it turns on the respect with which we treat accused individuals who are innocent until proven guilty.

Senator SCHUMER. Thank you, Mr. Sullivan.

And for Mr. Van Bokkelen, you are currently serving as the U.S. Attorney for the Northern District. That is the same district where you have been nominated, just like Mr. Sullivan. So what can you tell the Committee to assure us you will be able to fairly consider cases brought by Federal prosecutors who worked for you in the U.S. Attorney's Office?

Mr. VAN BOKKELEN. Well, one difference I have is the better part of my career has been spent defending people, those charged by the Government with crimes. And when I was in private practice, I did a lot of pro bono defense work. I was one of the founding members of the Federal Community Defender Program, which now operates in our district. So I have been on both sides of representational matters.

The fact is, as I move from one position over to the other position—I think I did that without a problem—I make sure I instituted in my district a very detailed prosecution memorandum to make sure the cases we were bringing were worthy of Federal prosecution and reminded my prosecutors at all times that one of the most difficult decisions to be made when an agency is pushing very hard is the decision not to prosecute. And if a case is prosecuted, it should be prosecuted because it is worthy of a prosecution, not simply because someone thinks a crime may or may not have been committed.

Senator SCHUMER. OK. And one other question for all of our district court nominees. You know one of the things this Committee is talking about now is the firing of the U.S. Attorneys. So just, in general—I do not want to ask you about any of the specifics, but in your view, what is the proper balance between the need for prosecutorial independence and the President's prerogative to appoint U.S. Attorneys? We will start with Ms. Mauskopf and move our way over.

Ms. MAUSKOPF. I think the President's prerogative and the Attorney General's prerogative to set the criminal justice priorities for an administration is entirely appropriate, and it is part of the role of a U.S. Attorney to carry out those priorities and to particularize those priorities within a particular district. It is also the role of the U.S. Attorney to address whether or not the national priorities are as much of a priority within that particular district and to assess what other priorities need to be addressed within a judicial district.

The balance is a delicate one, and it is one that both the executives, the Attorney General and the President, as well as the U.S.

Attorney, have to—there has to be a dialog. There has to be a discussion. And there has to be a complete understanding on both sides as to how those priorities and prerogatives are going to be carried out.

Mr. SULLIVAN. Well, I would agree with much of that answer. I would add, I think, that I think it is vitally important for individuals in a district to believe that their United States Attorney is above politics.

In New York, I will say that the three United States Attorneys whom I served—Mary Jo White, Jim Comey, and David Kelley—were perceived that way, and there is a tremendous importance attached to that perception. I do not think anyone I ever dealt with ever felt for a moment that decisions made by the office were in any way tainted by petty political considerations or that indictments were brought because of pressure brought to bear. I think that is a tremendously important thing, that kind of independence and presumption of good faith on the part of U.S. Attorneys.

Mr. VAN BOKKELEN. I agree with the answer of my colleagues, and one other thing I think supports that is the fact that Senator Bayh, in fact, is supporting my nomination, which I failed to acknowledge. I think that speaks pages to what is perceived by both sides as to the function I have served, and it has been very much down the line and I have called them as they needed to be called.

Senator SCHUMER. Do any of the four of you want to add anything else?

[No response.]

Senator SCHUMER. Thank you all for coming, and the hearing is adjourned.

[Whereupon, at 10:46 a.m., the Committee was adjourned.]

[Questions and answers and a submission for the record follow.]

QUESTIONS AND ANSWERS

ROSLYNN R. MAUSKOPF

April 30, 2007

Senator Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Dear Mr. Chairman:

Enclosed are my responses to the written questions from Senator Feingold.

Sincerely,

Roslyn R. Mauskopf

Roslynn R. Mauskopf

Enclosure

cc: Senator Arlen Specter
Ranking Member

Roslynn Renee Mauskopf
Responses to Questions for the Record from Senator Feingold

1. In the June 2004 decision of *People v. LaValle*, the New York Court of Appeals ruled that the state's death penalty statute was unconstitutional. Nevertheless, the federal government has continued to aggressively seek death penalty convictions in New York. There are a number of other jurisdictions in which the federal government is actively seeking the death penalty where local laws do not authorize capital punishment.

a) Please explain your view of the propriety of the federal government pursuing federal death penalty cases in jurisdictions where the death penalty is not available under state or local law.

Response: Courts have held that the federal government may properly pursue federal death penalty cases in jurisdictions where the death penalty is not available under state or local law. In deciding whether to pursue such cases, federal prosecutors are guided by the principles set forth in the United States Attorneys' Manual. Key among them is the need to ensure that there is a federal interest in the matter that substantially outweighs the interests of the state or local authorities. Factors to consider in this regard include the state's interest in prosecuting, the extent to which the criminal activity transcends state boundaries or implicates specific federal interests, and where prosecution will be most effective. Under this analysis, the availability of the death penalty (or its unavailability in the state) may also be a factor.

b) In some cases, the federal government is pursuing death penalty prosecutions in jurisdictions where there is a specific prohibition against or clear opposition to the death penalty, rather than a mere absence of legal authority, as is the case in New York. For example, the Puerto Rican constitution contains an explicit prohibition on the death penalty, yet the federal government has insisted that it should be allowed to seek the death penalty in cases it brings in Puerto Rico. Similarly, in Arizona, the Attorney General overruled U.S. Attorney Paul Charlton's conclusion that pursuit of the death penalty in a case involving a Navajo defendant and Navajo victims on Navajo land would be inappropriate because the Navajo Nation opposes capital punishment. Does your analysis of this question change at all when the federal government is ignoring an explicit prohibition of or clear opposition to the death penalty in the local jurisdiction at issue?

Response: As an initial matter, I do not know anything about the case in Arizona, and I am not familiar with the issues regarding the applicability of the federal

death penalty in Puerto Rico. There are important and complex legal, factual and policy issues surrounding the pursuit of a federal death penalty prosecution in the face of an explicit prohibition of or clear opposition to the death penalty in the local jurisdiction. As a result, the issue is difficult to address in the abstract. For example, under the current Federal Death Penalty Act, Congress has specifically exempted from the federal death penalty individuals who are subject to the criminal jurisdiction of an Indian tribal government unless the particular tribe consents to the imposition of the federal death penalty upon its citizens. However, Congress has not carved out a similar exemption for the states. The important and complex issues related to the pursuit of federal death penalty prosecutions in jurisdictions where there is a specific prohibition against or opposition to capital punishment are regularly addressed by the courts. If confirmed, I would look to the law, including Supreme Court and other precedent, and apply it to the facts of the particular case in addressing any such issue.

2. According to the *New York Law Journal*, as of July 2006 the Attorney General had authorized 37 federal death penalty prosecutions in New York. As far as I am aware, only one federal death penalty prosecution brought in the state of New York has resulted in a sentence of death. Death penalty prosecutions clearly require a significant allocation of resources by the U.S Attorney's Office bringing the case. Judge Frederic Block of the Eastern District of New York has publicly criticized the way the federal government seeks death verdicts, claiming that the Department of Justice's decision to pursue the death penalty in a case over which he presided was "a total misappropriation" of resources and was "absurd." Judge Block has detailed the burden that each death penalty prosecution places on the system and contrasted that burden with the budget cuts and resource shortages your office has faced.

a) **During your time as U.S. Attorney for the Eastern District of New York, in how many cases have you pursued a death sentence? In how many cases did a death sentence result?**

Response: During my tenure as U.S. Attorney for the Eastern District of New York, this office has evaluated evidence of death-eligible crimes against more than 100 individual defendants pursuant to the federal death penalty statute and the relevant provisions of the United States Attorneys' Manual through the process described more fully below in response to Question 2(b). The Attorney General has authorized pursuing the death penalty against 12 defendants, including some who are charged as co-defendants for their participation in the same criminal activity. To date, four defendants have been tried in capital proceedings. All have been convicted; one received a death sentence for his role as the triggerman in the murder of two undercover New York City detectives.

b) **Please provide your views on how to balance the costs and perceived benefits of pursuing death penalty prosecutions, particularly in a jurisdiction like New York where every case but one has not resulted in a death sentence. How have you made the decision whether to recommend to the Attorney General that he authorize you to seek the death penalty in an individual case?**

Response: The decision whether to recommend to the Attorney General that he authorize our office to seek the death penalty rests on a thorough and exacting evaluation of the merits of each individual case, conducted by a committee of highly experienced, senior career prosecutors in this office. The analysis is extremely rigorous and is conducted pursuant to the requirements of the federal death penalty statute itself as well as the principles set forth in the relevant provisions of the United States Attorneys' Manual. While there are many factors that weigh in the analysis, the key criteria include: assessing the strength of the evidence and proof of guilt; determining and weighing the aggravating and mitigating factors to ensure that the aggravating factors sufficiently outweigh the mitigating factors to justify a sentence of death as required by law; assessing whether the prosecution entails a substantial federal interest; and assessing any legitimate law enforcement or prosecutorial reason that weighs for or against seeking the death penalty. Costs may be evaluated as a prosecutorial consideration. This process is designed to ensure that death penalty recommendations to the Attorney General reflect the best exercise of the collective prosecutorial judgments of this office based on the merits of each case, and are fair, consistent, without bias or prejudice, and in the best interests of the United States.

c) **Former U.S. Attorney Mary Jo White has publicly commented that pursuit of too many death penalty cases means that other, meritorious prosecutions cannot be pursued because there are simply not enough resources to go around. According to Justice Department Statistics, since 2002, the year you took over the Eastern District of New York office, your office has seen a 44% decrease in overall prosecutions. At the same time, it has pursued a marked increase in death penalty prosecutions. Please comment on the effect that pursuit of multiple death penalty cases has had on your office's ability to prosecute other types of cases.**

Response: Death penalty cases, like other complex prosecutions in areas such as corporate fraud or civil rights, are indeed labor and resource intensive. They have particular impact on the ability of the assigned prosecutors, who largely specialize in these cases, to handle other similar matters, particularly when the cases are being tried. While I am not familiar with the particular statistic cited, I am familiar with how our resources and caseload are affected by myriad

factors including pursuit of multiple complex prosecutions not limited to death penalty cases, budget, and agency referrals, among others. As such, I believe that the pursuit of multiple death penalty prosecutions does not significantly affect our ability overall to prosecute other types of cases, given the size and structure of the office, the range of prosecutorial expertise on our staff, and the dedication of our prosecutors who rise to the occasion to take on more responsibility when resources become stretched.

3. As you know, former Attorney General Ashcroft's decision in 2003 to overrule the recommendation of your office that the death penalty not be pursued in the Jairo Zapata case—thereby invalidating the plea negotiations—garnered significant media attention. A wide range of legal experts commented that Attorney General Ashcroft made a bad policy decision, regardless of the specifics of the individual case. Ultimately, Attorney General Ashcroft relented and a plea agreement was entered.

a) **Please provide specific statistics on how many times you recommended for and against pursuing the death penalty in eligible cases, breaking down the data into the time periods before and after the Attorney General's initial decision in the Zapata case? Please include for each time period the numbers on how often your recommendation—either for or against death—was overruled by the Attorney General.**

Response: The decision to seek the death penalty in all federal prosecutions rests solely with the Attorney General. As such, I am not at liberty to disclose information concerning the internal deliberations within the Department of Justice relative to death penalty decisions, including the recommendations by a United States Attorney to the Attorney General.

b) **Please discuss any effect that the invalidation of the plea agreement in the Zapata case had on your subsequent decisions whether to pursue death penalty prosecutions. To what extent did the initial invalidation of the plea have a chilling effect on your office's willingness or ability to negotiate plea agreements or on your own willingness to submit recommendations against seeking the death penalty in eligible cases?**

Response: The Zapata matter presented a unique set of circumstances that had no affect on any other matter or decision. As the public record indicates, the written plea agreement at issue in this case, while signed by the parties, was contingent on the Attorney General's decision whether or not to seek the death penalty. This plea agreement never became valid because the Attorney General initially decided to seek the death penalty. The offer of a contingent plea agreement in death-eligible cases prior to receiving the Attorney General's

decision has never been the practice of my office during my tenure, and this case was a clear anomaly. As such, this case had no effect on my subsequent decision to pursue death penalty prosecutions. Nor did it have any immediate or long-term chilling effect on my office's willingness or ability to negotiate plea agreements, or on my own willingness to submit recommendations against seeking the death penalty.

c) **In your statements to the press about the Zapata matter, you endorsed Ashcroft's decision to overrule the recommendations of your office. As you know, Governor Pataki provided strong support to your bid to become a U.S. Attorney, and is himself a strong proponent of the death penalty who made that issue a central theme of his first campaign for governor. This led to a suggestion that your statements did not reflect an evaluation of the merits of the individual case but instead reflected an ideological affiliation with or loyalty to death penalty proponents. Can you appreciate why, under the circumstances, your statements endorsing Ashcroft's decision to overrule your own earlier recommendation could have seemed suspect to some observers?**

Response: The press statements in this matter, conveyed through an office spokesman, articulated two facts: 1) that the decision to seek the death penalty is solely the province of the Attorney General, and 2) that the death-eligible case would rely on specific aggravating factors related to the heinousness of the crime and the defendant's significant prior history of violence. The full record in this matter, including the facts of the case, its anomalous procedural history including the contingent plea agreement, and its ultimate resolution by plea, clearly demonstrates that the press statements and my decisions in this matter were entirely proper and appropriate, based wholly on an evaluation of the merits of the case, and not based on any ideological affiliation with or loyalty to death penalty proponents.

d) **What can you point to in your record to demonstrate that, if confirmed, you could fairly adjudicate a death penalty case? Can you understand why a defendant in such a case might be concerned about your record?**

Response: Over 25 years of service as a prosecutor and public servant, I have earned among the bench, the bar and the community a solid reputation for fairness, honesty, integrity, professionalism, skill as a lawyer, good judgment, and respect for the rule of law and the rights of others. Throughout my career, I have always listened to differing views of the law and the facts from defense attorneys and their clients, victims, law enforcement professionals, colleagues and others. I have always considered these views fairly and reasonably in evaluating guilt or innocence, bringing cases, making charging decisions,

litigating on the merits, and recommending sentences that are just and appropriate. I have been a tenacious advocate for the interests of justice in all cases and I have never hesitated to exercise compassion where the interests of justice so require. My reputation has been earned through my work in all types of cases, including over 100 death-eligible matters that have been handled during my tenure as United States Attorney, the overwhelming majority of which were not pursued as capital cases. My record and my reputation clearly demonstrate my strong commitment to ensuring that the federal death penalty is applied in the exceptional cases that truly justify a sentence of death as required by law, and that my decisions in all death-eligible cases have been made on the merits of each individual case, fairly and honestly, pursuant to the rule of law, with compassion, and with the utmost of respect for the rights of all. I understand that if confirmed as a United States District Judge, my role would be different. Guided by the same core values, skills and traits through which I have earned my reputation, I would adjudicate all cases including death penalty cases fairly, honestly, and objectively, with compassion and integrity, based solely on the merits of the case and pursuant to the rule of law and applicable precedent, through careful and thoughtful deliberation after listening to differing views, ensuring always that the rights of all are fully respected and scrupulously honored.

4. As you may know, the Department of Justice has indicated that one of the main reasons why Paul Charlton, the U.S. Attorney for the District of Arizona, was fired was because of his opposition in two cases to the Department's decision to seek the death penalty over his objections. In essence, Charlton was seen as obstructing the Department's objective of expanded use of the federal death penalty. According to a recent news report, New York is second in the country for authorized federal death penalty cases since 1988, with the U.S. Attorney's Office for the Eastern District of New York generating a large portion of those cases. Moreover, New York has the greatest number of potential death penalty cases awaiting the Attorney General's decision on whether to seek the death penalty.

a) **Please discuss whether you ever received pressure or encouragement, directly or indirectly, from the Department of Justice or others in the Administration to pursue more federal death penalty prosecutions.**

Response: I have never received pressure or encouragement, directly or indirectly, from the Department of Justice or others in the Administration to pursue more federal death penalty prosecutions.

b) **Please discuss whether your office's record of seeking the death penalty was ever a topic of discussion in interviews or discussions you had with the**

Administration or Department of Justice officials regarding whether you would be nominated for a position on the federal bench.

Response: My office's record of seeking the death penalty was never a topic of discussion in interviews or discussions I had with the Administration or Department of Justice officials regarding whether I would be nominated for a position on the federal bench.

c) **Can you understand why one might draw the inference that—just as Charlton was punished for not vigorously pursuing federal death penalty prosecutions—you now are being rewarded for vigorously pursuing federal death penalty prosecutions?**

Response: As discussed more fully in response to Question 3(d), my record and my reputation as a lawyer, prosecutor and public servant, built in this community over the past 25 years through my handling of many different types of cases, clearly demonstrate my qualifications for service as a United States District Judge. I have earned a reputation for fairness, honesty, integrity, compassion, skill as a lawyer, solid judgment, professionalism, and respect for the rule of law and the rights of others. It is through these core traits, skills and values that I have achieved a significant record of accomplishment and have garnered the respect of the bench and bar, and my peers and adversaries alike. And it is these same core traits, skills and values that I would bring to the bench should I be confirmed as a United States District Judge.

SUBMISSION FOR THE RECORD

STATEMENT OF HILLARY RODHAM CLINTON ON THE NOMINATIONS OF DEBRA ANN LIVINGSTON, RICHARD SULLIVAN, AND ROSSLYNN MAUSKOPF TO THE FEDERAL BENCH

April 11, 2007

I am honored today to introduce three New Yorkers, Debra Livingston, Richard Sullivan, and Rosslynn Mauskopf, each of whom the President has nominated to the federal bench. Each has enjoyed a career marked by achievement and distinction, and most importantly, by public service. If confirmed to the bench, I am certain that each of them will continue to exhibit the character and qualities that have been the hallmarks of their careers – a respect for the rule of law and a devotion to pursuing justice and fairness.

Debra Ann Livingston, who has been nominated to be a Circuit Judge for the Second Circuit, is currently vice dean of the Columbia Law School and a tenured Professor of Law. Upon graduating from Princeton *magna cum laude* and Phi Beta Kappa, Professor Livingston went on to attend Harvard Law School, where she served with distinction as an Editor of the *Harvard Law Review*. Following law school, she clerked for the Honorable J. Edward Lumbard of the U.S. Court of Appeals for the Second Circuit, the same court to which she has been nominated.

Following a brief stint in private practice, Professor Livingston served as an Assistant U.S. Attorney for the Southern District of New York where she prosecuted public corruption cases and served as Deputy Chief of Appeals. From 1994-2003, she served as Commissioner of the New York City Civilian Complaint Review Board.

Professor Livingston began her academic career at the University of Michigan Law School in 1992. In 1994, she joined the faculty of Columbia Law School, receiving tenure in July of 2000. At Columbia, her principal areas of teaching are criminal law, procedure, and evidence. Professor Livingston serves on the Board of Directors of the *Columbia Journal of Law and Social Problems* and co-directs the Columbia Law School's Center on Crime, Community and Law.

Richard Sullivan, who has been nominated to a seat on the U.S. District Court for the Southern District of New York, has also had a distinguished career. Mr. Sullivan graduated from the College of William and Mary in 1986, and obtained his J.D. from Yale Law School in 1990. Prior to his current employment as general counsel to Marsh & McLennan Companies, Inc., a global professional services firm, Mr. Sullivan was an Assistant United States Attorney in the Southern District of New York. He worked in that capacity for eleven years, where he distinguished himself by serving as the chief of the International Narcotics Trafficking Unit and as the Director of the New York/New Jersey Organized Crime Drug Enforcement Task Force. As Director, Mr. Sullivan was tasked with managing the activities of more than 350 federal, state and local law enforcement officers engaged in investigations and prosecutions under the federal Organized Crime Drug Enforcement Task Force (OCDETF) Program.

Rosslynn Mauskopf has been nominated to be a U.S. District Court Judge for the Eastern District of New York. Since 2002, Ms. Mauskopf has served as the U.S. Attorney for the Eastern District of New York, a position that requires her to supervise the 170 attorneys who are responsible for managing all federal criminal prosecutions in the Eastern District of New York and all civil matters involving the United States.

Ms. Mauskopf, who received her undergraduate degree from Brandeis University and law degree from the Georgetown University Law Center, began her legal career in 1982 as an Assistant District Attorney at the New York County District Attorney's Office. During her tenure, she served in a variety of capacities, including as Chief of the Frauds Bureau, Deputy of the Special Prosecutions Bureau, Assistant District Attorney in the Frauds Bureau, and as Assistant District Attorney in the Trial Division.

In 1995, Ms. Mauskopf became the State Inspector General for the State of New York, making her responsible for investigating corruption, fraud, criminal activity, and misconduct in all Executive Branch agencies. While Inspector General, Ms. Mauskopf oversaw investigations in bribery, theft, bid-rigging, procurement, and fraud cases. She also chaired Governor Pataki's Moreland Act Commission on New York City Schools, which examined the operations of New York City capital spending on education.

We are fortunate to have lawyers such as these who are both qualified and willing to devote themselves to public service and serve as judges. I am

sure that once they are confirmed, they will continue to dedicate themselves to the rule of law and commit themselves to applying the law in a just and fair manner. I commend Senator Schumer for his tireless efforts in making sure that our federal judiciary is honored with men and women of such distinction.

NOMINATIONS OF WILLIAM LINDSAY OSTEEN, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF NORTH CAROLINA; MARTIN KARL REIDINGER, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA; TIMOTHY D. DEGIUSTI, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA; AND JANIS LYNN SAMMARTINO, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

WEDNESDAY, JUNE 20, 2007

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

The Committee met, pursuant to notice, at 2:35 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Dianne Feinstein, presiding.

Present: Senator Feinstein.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. I apologize to my colleagues and to those who are interested in our nominees for being late. I do not like to be late. Everything is coming down at one time, and I think probably the other Senators understand what I mean. In any event, I am very pleased to welcome Senators Inhofe, Dole, and Burr to this judicial nominations hearing. We have four distinguished judicial nominees on the agenda today, and we welcome them as well. We look forward to hearing from them after the introductions.

One of our most important constitutional duties is to consider the President's judicial and executive branch nominations, and today's hearing continues the progress that we have made in the 5½ months since this Congress began.

The Senate has confirmed 18 nominees so far this year. As Chairman Leahy recently pointed out, that is more judges than were confirmed in the entire 1996 session of Congress when President Clinton was in office, and we are only at the midpoint of this session. Chairman Leahy is also justifiably proud of the fact that

during the Bush Presidency, the Senate Judiciary Committee under Democratic control has confirmed more circuit judges, more district judges, and more total judges than under either of the Republican Chairmen who worked with Republican majorities in the Senate.

The reason I go into this is it is often mentioned back and forth in the Judiciary Committee, and so every chance on this side of the aisle we get to straighten the record, I like to do it.

In any event, we still do not rubber stamp each judicial nominee, of course, and we try to act as quickly as possible to confirm nominees. So I would like to hear from the three Senators who are here. I would like to indicate that Senator Coburn would be present to support his nominee, but as I think most know, he has had surgery and is recovering. As soon as he comes back, he will put comments in the record.

Who was the first Senator on the spot? Does anyone have a time issue?

[No response.]

Senator FEINSTEIN. Well, then, I will go to the woman automatically. Senator Dole, would you proceed?

PRESENTATION OF WILLIAM LINDSAY OSTEEN, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, AND MARTIN KARL REIDINGER, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA, BY HON. ELIZABETH DOLE, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator DOLE. Thank you very much, Chairman Feinstein, for holding today's hearing. It is my great privilege to be here and to introduce two outstanding North Carolinians who are nominees for district judgeships in my home State: William Osteen, Jr., for the Middle District, and Martin Reidinger for the Western District. Both Bill and Martin have amassed impressive records of accomplishment in their legal careers. I am proud to have recommended them to President Bush, even though they both went to the University of North Carolina for their undergraduate and law degrees, a fact this Duke alumni just had to overlook. And let me add that Bill's mother, Joanne, has been a treasured friend of mine since our Duke days together.

Bill Osteen has deep roots in North Carolina, receiving his education in our State, as I have mentioned, and practicing law there for the past two decades. In 2004 and 2005, Business North Carolina included him in its Legal Elite, the cream of the crop, selected not by the editors of the magazine but by State bar colleagues. Bill has broad experience in both criminal and civil litigation. As we all know, criminal cases make up a substantial and increasingly large portion of a Federal district judge's docket, and Bill is well equipped to handle this important aspect of the job. He estimates that he has served as the counsel of record in more than 100 Federal criminal cases. Bill also knows his way around a courtroom. In an age when most cases are resolved through settlement or plea agreement, Bill has taken over 30 cases to trial. On the strength of this experience, I have no doubt that Bill will be able to make the transition to district judge without missing a beat.

In addition to a distinguished professional life, Bill also has a very full personal life. He is a dedicated family man to his wife, Elizabeth, and their two children—Anne Bennett and Bill—and he is a man of faith, actively involved in the First Presbyterian Church of Greensboro.

It is also notable that Bill has been nominated to succeed his father to this seat. Bill's father, William Osteen, Sr., has served the Middle District with great distinction, and I know that he must be proud indeed of his son's many accomplishments. It is a rare and remarkable feat that a son has the opportunity to serve in his father's one-time place on the bench, and I am honored to tout Bill's many qualifications here today.

And I am also honored to introduce Martin Reidinger, the President's nominee for the Western District of North Carolina. Martin, too, is a man of significant professional achievement. For the past 23 years, he has practiced law in Asheville with Adams, Henson, Carson, Crow & Saenger. Martin, I understand that you drove all the way from the beautiful and probably a lot cooler mountains of Asheville to muggy Washington to be with us today, and, folks, that is nearly 500 miles. And we are glad to see some of your strongest supporters—your wife, Patti, and family here with you today.

Martin has vast civil litigation experience handling matters running the gamut from employment law to land disputes. He frequently appears in Federal courts and has litigated to a verdict or judgment nearly 200 cases over the past two decades. In addition, Martin has served as the President and Secretary Treasurer of the Buckham County Bar Association, and he currently sits on the Board of Directors for Pisgah Legal Services, which provides free civil legal services to low-income people who are unable to afford an attorney. In fact, in 2004, Martin accepted the North Carolina State Bar's Outstanding Pro Bono Services Award for his law firm's commitment to giving back to their community.

Martin and Bill come to this Committee with impeccable credentials, and I am confident that they both would serve with great distinction as members of the Federal judiciary. Both have earned the respect of their colleagues and peers, many of whom have contacted me to voice support for their nominations. It is my great privilege to give them my strongest endorsement.

Thank you again for holding this hearing for two of North Carolina's most talented and capable legal minds. Currently, our State has four district court vacancies, so I urge this Committee to act with due speed on these nominations, and I thank you very much, Madam Chairman.

Senator FEINSTEIN. Thank you, Senator Dole.

Senator Inhofe?

PRESENTATION OF TIMOTHY D. DEGIUSTI, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA, BY HON. JAMES M. INHOFE, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. Well, thank you, Madam Chairwoman. I am proud to lend my support to the nominee here behind me, Timothy

DeGiusti, for the United States District Court for the Western District of Oklahoma.

He was born in Oklahoma City, where he continues to live with his wife, Elaine, and they have four children. He has led a life of excellence and is no stranger to public service.

He enlisted in the Army National Guard as well as the Army ROTC Program at the University of Oklahoma in 1981. In 1985, he received his B.A. with distinction in ethics and religion at the University of Oklahoma and officially joined the Army Reserves.

After graduating from the University of Oklahoma College of Law in 1988, Tim became an associate at Andrews Davis, an Oklahoma City firm where he ultimately became a partner. Since 2000, he has been as a partner in the Oklahoma City firm Holladay, Chilton & DeGiusti. He is a member of the Order of Barristers and was named by Oklahoma Governor Brad Henry to be a member of the Oklahoma Uniform Laws Commission, where he serves as a delegate to the National Conference of Commissioners of Uniform State Laws.

I would comment also that he has been strongly recommended by Governor Henry who is a Democrat, so he has broad professional, personal and bipartisan support.

From 1990 to 1993, Tim DeGiusti served on active duty as trial counsel for the United States Army's Judge Advocate Generals Corps, trying 57 courts martial cases. He continued to work as a military lawyer in the Army Reserves until 1999 and in the Army National Guard until 2003.

He has taught courses in military law and trial techniques at the University of Oklahoma College of Law as an adjunct professor and has authored articles such as "Unlawful Command Influence: Raising and Litigating the Issue," which appeared in The Army Lawyer in 1993.

Tim was named among the 2006 Oklahoma Super Lawyers and has received the Martindale and Hubbell "peer review rating", which is the most prestigious of ratings. He is also listed among Best Lawyers in America in 2007 and has received the American Bar Association's highest rating of "well-qualified." His public service also extends to pro bono legal services and long involvement in the Knights of Columbus.

I have to pause here and say that he happens to be the son-in-law of someone who is a very close friend of mine, Judge Ralph Thompson, with whom I served many years ago in the State legislature. And so I know that Judge Thompson and his wife, Tim's father-in-law and mother-in-law are very proud to be here today to watch this process take place.

Timothy DeGiusti receives my full recommendation to serve as district judge for the Western District of Oklahoma, and I ask you to quickly approve his nomination.

Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you, Senator Inhofe.

Senator Burr?

PRESENTATION OF WILLIAM LINDSAY OSTEEN, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, AND MARTIN KARL REIDINGER, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA, BY HON. RICHARD BURR, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator BURR. Madam Chairwoman, thank you, and I think it is safe to say that Senator Dole and I are here in support of two incredible candidates today. It is a privilege to be here to introduce the Committee to two honorable North Carolinians who are here in hopes of becoming United States district court judges in our home State. Both Bill Osteen, Jr., and Martin Reidinger have the qualifications, the experience, and the temperament to be outstanding judges.

Bill Osteen—it is not the first time, as Senator Dole said, that a Bill Osteen has been in front of this Committee for this position. Over 15 years ago, his dad was considered by this Committee, and he has served with unbelievable distinction for his career on the bench. But make no mistake about it. Bill Osteen, Jr., is not here today because his father was an outstanding judge. Bill is here today because he is qualified in his own right to serve on the Federal bench, and he is the best person to keep this strong judicial legacy alive.

Born in Greensboro, North Carolina, Bill attended the University of North Carolina at Chapel Hill for graduate and undergraduate school. Like Senator Dole, being a Wake Forest graduate, it is difficult for both of us to bring so many Tar Heel graduates to the Hill. But, clearly, the experience and the education they have is not a disqualifier.

Bill's professional legal experience is diverse. He has litigated a wide range of cases, handling both civil and criminal cases, and he is familiar, very familiar, with the Federal procedure. But perhaps most importantly, in addition to his impressive professional qualifications, Bill is a good man. I had the pleasure of meeting Bill's family today before this hearing. I can tell you that he is a good person. He is a good son. He is a good dad to his two children, Anne Bennett and Bill, and he is a good husband to his wife, Elizabeth. I urge the members of this Committee to support Bill's nomination and to confirm him to serve on the North Carolina Federal bench.

Martin—

Senator FEINSTEIN. Thank you—excuse me.

Senator BURR. I have got one more, if I could.

Senator FEINSTEIN. Please, go ahead.

Senator BURR. Thank you, Madam Chairwoman. Martin Reidinger, as Senator Dole said, is from Asheville, North Carolina. Traditionally, in North Carolina, it seems like the Western District is always served by somebody out of Charlotte, North Carolina. However, the Western District of North Carolina spans western 200 more miles past Charlotte. Martin resides in Asheville. It is located in that beautiful western region in the Blue Ridge Mountains.

Like Bill Osteen, a Carolina graduate, undergrad and graduate school, Martin has a well-established Federal practice in western

North Carolina. Throughout his career, he has handled all types of cases, presented a wide range of clients and has appeared in all levels of State and Federal court. He truly represents western North Carolina.

So often nominees for this judicial district, as I said, reside in Charlotte. We are proud of the fact that we have got the people with the experience and the education and the temperament, that are homegrown, that can serve on the bench. I am pleased that the strong legal minds of western North Carolina were not overlooked during this nomination process and one of their own is here today. He is also here because his qualifications of a good person, a great dad, a great person put him at the top of the list of candidates that should be considered.

Madam Chairwoman, you have before you today two qualified nominees with a wealth of legal experience who maintain the requisite judicial temperament to make an excellent Federal judge. I hope that you will give these nominations prompt and favorable consideration, and I urge my colleagues to expedite these nominations.

I thank the Committee for their time.

Senator FEINSTEIN. Thank you very much, Senator Burr, and I would like to thank all three Senators. You know, your testimony really is meaningful. It becomes part of the official record. I know the candidates appreciate it, and I want you to know the Committee appreciates it as well.

PRESENTATION JANIS LYNN SAMMARTINO, NOMINEE TO DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. I am going to say a few words on behalf of Judge Sammartino from San Diego, but if you wish to be excused, please feel free. And I would like to put in the record at this time a statement of the Chairman, Senator Patrick Leahy. Thank you again so much.

I am very pleased to say a few words on behalf of the nominee for the District Court of the Southern District of California, Judge Janis Lynn Sammartino. She is a graduate of Occidental College at the University of Notre Dame Law School. After earning her law degree, she served as a law clerk in the Superior Court of South Bend, Indiana. Since then, she has devoted herself to service to her city and her State, and, of course, that State is the best State in the Union—California.

Judge Sammartino worked for 18 years as a Deputy City Attorney in San Diego. In her first 2 years as a deputy in the Criminal Division, she prosecuted more than 50 criminal cases in front of juries and an equal number of bench trials. She was then promoted to the Municipal Law Section of the Civil Division. She has played a key role in the design and implementation of the city's Facilities Benefit Assessment Program, a funding mechanism designed to finance public improvements in the city. When the program was challenged in court, she was part of the litigation team that defended it successfully.

She later served as principal legal advisor to the city of San Diego on redevelopment issues, played a major role in the construction of the Horton Plaza Retail Center, which has been really responsible to a great extent for the refurbishment of the downtown of San Diego. And she rose to the rank of Senior Chief Deputy City Attorney.

But if that is not enough, she was appointed to the municipal court in 1994 and to the superior court in 1995. As a testament to her skills as both a judge and a leader, her fellow judges elected her to be assistant presiding judge from 2004 to 2005 and then presiding judge as of January of 2006. She now oversees the second largest trial court in California, which is also the third largest trial court in the Nation. Clearly, her judicial career has given her experience in a wide range of areas, and I am very pleased to recommend her.

I should say that she is a product of the screening committee in which we have three Republicans and three Democratic appointments who sit and screen judges. And we have had a very good track record. All of our judges have been confirmed.

So I would like to ask the four potential judges to come forward, and I will administer the oath. If you would stand and raise your right hand and affirm the oath when I complete its reading. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. OSTEEN. I do.

Mr. REIDINGER. I do.

Mr. DEGIUSTI. I do.

Judge SAMMARTINO. I do.

Senator FEINSTEIN. Thank you, and you may be seated. Now, let me begin by saying that this is not a controversial group of potential judges, so to that extent, at least you can relax. I would like to invite each of you to say a few words and to introduce your family. Then I will ask a few questions and that will be it. So if we can go right down the line. Mr. Osteen, if you would like to begin.

STATEMENT OF WILLIAM LINDSAY OSTEEN, JR., NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Mr. OSTEEN. Senator, thank you for your words in your opening statement. All of us here I believe greatly appreciate the concern that the Senate shows in discharging its duties in reviewing these nominations. I would like to thank the President for trusting me sufficiently to nominate me for consideration to this position. I would also like to thank Senators Burr and Dole for their kind comments here today as well as their support throughout this process.

Most of all, I would like to thank the people that I am getting ready to introduce to this Committee. They have shown tremendous support of me throughout every endeavor that I have undertaken, and I would like to start with my wife, Elizabeth Osteen; my daughter, Anne Bennett Osteen; my son, Bill Osteen; and then I would like to turn to my father, Judge William L. Osteen, or Bill Osteen; my mother, Joanne Osteen; my brother, Bob Osteen, and

his fiancee, Jennifer Justice. I have one other brother who now resides in the great State of California, outside of Long Beach, California, and he unfortunately was unable to be here today. But had he not been tied up with work, he would certainly have been here by my side.

Thank you.

[The biographical information of Mr. Osteen follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   William Lindsay Osteen, Jr.
   (Bill)

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

   United States District Judge for the Middle District of North Carolina

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

   Adams & Osteen
   201 W. Market Street, Suite 410
   Greensboro, NC 27401

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

   1960; Greensboro, North Carolina

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   I am married to Elizabeth Holt Osteen. Elizabeth now works in the home, although she maintains her CPA license. Elizabeth continues to handle, on a limited basis, a few of the final affairs of Intex Corporation (now doing business as Print Plant, Incorporated), a closely-held textile business which closed in June of 2004.
   Elizabeth and I have two children.

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

   UNC-Chapel Hill School of Law, Chapel Hill, North Carolina; Fall 1984 – May 1987; JD, 1987

   UNC-Chapel Hill, Chapel Hill, North Carolina; Fall 1978 – May 1983; B.S., 1983

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

   October 1987 to present: Adams & Osteen; Associate (1987-1991), Partner (1991 – present)

   1985 – 1987: Epting and Hackney, law clerk

   Summer 1985: Security Builders, Inc., laborer

   1983 – 1984: Guilford Labs, chemical analyst/ technician

   1983: United Van Lines, laborer

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

   I have not served in the military.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Selected by *Business North Carolina* for inclusion in the *Legal Elite*, Criminal Law (2004, 2005, 2006)

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

    North Carolina State Bar

    North Carolina Bar Association
    Member; Past Member of the Criminal Justice Council
    Chair, Criminal Justice Council, 2000-2001

    CJA Panel Attorney, Middle District of North Carolina (Member of the CJA Advisory Committee)

    American Bar Association (member; no offices held)

Fourth Circuit Judicial Conference

American Board of Trial Advocates

Greensboro Bar Association

National Association of Criminal Defense Lawyers

Former Member, North Carolina Academy of Trial Lawyers

Former Member, Chief Justice Joseph Branch Inns of Court

Former Member, Greensboro Chapter of the Inns of Court

11. **Bar and Court Admission**:

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

North Carolina State Bar, 1987

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

North Carolina courts, 1987

United States District Court for the Middle District of North Carolina, 1987

United States District Court for the Western District of North Carolina, 1990

United States District Court for the Eastern District of North Carolina, 1991

United States Court of Appeals for the Fourth Circuit, 1988

There have been no lapses of membership in the above courts.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

First Presbyterian Church, Worship Committee member and Usher

Greensboro Country Club, Member

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I am not a member of any organization that discriminates on the basis of race, sex or religion and have never held membership in any such organization.

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

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

Letter to the Editor, Greensboro Daily News, February 26, 2004, "Don't Rush to Convict In Shaken Baby Cases."

Letter to the Editor, Greensboro Daily News, February 23, 2005, regarding gubernatorial appointments.

As Chairman of the Criminal Justice Council of the North Carolina Bar Association during 2000-2001, I was responsible for drafting *The Chair's Comments*, published in the November 2000, April and June, 2001 Criminal Justice Section newsletter.

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

In 2000, James Maxwell, President of the North Carolina Bar Association, asked the Criminal Justice Section Council of the North Carolina Bar Association for a recommendation in favor of or opposing a moratorium on the death penalty in North Carolina. As chair of the Criminal Justice Section Council of the North

Carolina Bar Association, I led that discussion on a moratorium on the death penalty in North Carolina.

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

I addressed the North Carolina Senate Judiciary I Committee in April of 2003 on the issue of a two-year moratorium on the death penalty in the State of North Carolina. I do not have copies or a transcript of my remarks.

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

NC Bar Foundation CLE program - "Elementary Evidence in Criminal Court: Introducing Pictures, Documents, Offers of Proof, Voir Dire" (March, 1991). I do not have copies of notes or a prepared text for this presentation.

NC Bar Foundation CLE program - "Preparation for and Effective Strategies at Sentencing." (October, 2003)

Fourth Circuit Seminar, "Criminal Law Update 2002" – Panel Discussion, "Dealing Effectively with a Hostile, Indifferent or Otherwise Difficult Prosecutor: A Defense Perspective" I do not have copies of notes or a prepared text for this presentation.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Lawyers Weekly, September 11, 2000.

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial offices.

15. **Citations**: If you are or have been a judge, please provide:

    a. citations for all opinions you have written (including concurrences and dissents);

    b. a list of cases in which certiorari has been requested or granted;

    c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

    d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

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

    f. citations to all cases in which you were a panel member in which you did not issue an opinion.

    I have not served as a judge.

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

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

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

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

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

    I have not served as a judge.

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

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

I have not held public office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I served as campaign manager for Ralph A. Walker (North Carolina Court of Appeals). It is my best recollection that I served as his campaign manager during the 1992 and 1994 campaigns.

I have supported the campaigns for Senator Dole, Senator Burr, Senator Helms, Congressman Coble, Governor Martin, both Presidents Bush, and President Reagan as well as other candidates. I have personally and publicly endorsed various Republican candidates for political office.

18. **Legal Career:** Please answer each part separately.

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

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

I did not serve as a clerk to a judge.

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

I have not practiced alone.

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

1987 – Present: Adams & Osteen
201 W. Market Street, Suite 410
Greensboro, NC 27401

b. Describe:

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

I have practiced with the same firm since my graduation from law school. That firm, now Adams & Osteen, was started by my father, William L. Osteen, and J. Patrick Adams. The firm had five attorneys when I joined. The firm is presently comprised of two lawyers, Pat Adams and Bill Osteen, Jr.

I would describe my practice as primarily federal criminal litigation and state civil litigation. I have also handled federal civil cases and state criminal cases. I also handle certain general practice matters for clients including real estate, corporate and estate work.

The federal criminal litigation which I have handled has included drugs, forfeitures, firearm, fraud, tax, perjury and obstruction of justice, money-laundering, environmental pollution, fraudulent loan brokering, fraudulent defense contract billing and generally all types of criminal matters excluding, for the most part, rape or murder.

The civil litigation that I have handled includes issues such as business disputes, breach of contract, insurance coverage, collections, unfair and deceptive trade practices, RICO and similar business contract and tort issues; real estate, will caveat; legal malpractice, dental malpractice, breach of fiduciary duty and constructive trusts.

ii. your typical clients and the areas, if any, in which you have specialized.

My typical former clients consist of individuals and small businesses that have been involved, in some way, with the criminal or civil process.

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

I appear in court frequently. I have appeared as counsel of record in probably more than 100 federal criminal cases.

i. Indicate the percentage of your practice in:
   1. federal courts; 60%
   2. state courts of record; 40%
   3. other courts.

ii. Indicate the percentage of your practice in:
1. civil proceedings; 20%
2. criminal proceedings. 80%

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

I have tried, as counsel for a party, twenty-three cases to verdict or judgment.

i. What percentage of these trials were:
1. jury; 74%
2. non-jury. 26%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have filed Petitions for Certiorari to the Supreme Court of the United States on a few occasions in criminal cases. Those petitions have been denied so I have not appeared before the Supreme Court of the United States.

19. **Litigation**: Describe the ten (10) 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 representation;

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

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

1. U.S. v. Hilton, 87CR280, Middle District of North Carolina, The Honorable Hiram H. Ward.

My father and I were counsel for the defendant in this, my first jury trial. I assisted with much of the legal research involved in the case. The case was a prosecution for tax evasion, and the United States was proceeding upon the net worth theory. The defense was the cash hoard defense. The verdict was not guilty.

Opposing counsel, representing the United States, was Harry L. Hobgood, Assistant United States Attorney, 101 S. Edgeworth Street, Greensboro, NC 27401, (336) 333-5351.

2. U.S. v. Scearce, 2:91CR196, Middle District of North Carolina, The Honorable Frank W. Bullock, Jr.

   I have included this case as representative of several criminal trials. Each criminal trial seems to present its own unique factual and legal issues, no matter how ordinary the charges themselves may be. This case involved issues of firearm possession and drug distribution.

   Opposing counsel, representing the United States, was Lisa B. Boggs, Assistant United States Attorney, 101 S. Edgeworth Street, Greensboro, NC 27402, (336) 333-5351.

3. U.S. v. Andre Lamont Cannon, 4:91CR256-10, Middle District of North Carolina, The Honorable N. Carlton Tilley, Jr.:

   This case was a marijuana conspiracy, prosecuted primarily on the basis of testimony from cooperating co-conspirators. My client acknowledged his guilt, but denied quantities as were being alleged by the government witnesses. My client pled guilty and the case proceeded to sentencing before Judge Tilley. The guidelines were relatively new at this time and evaluating the credibility of witnesses for sentencing purposes was an unexplored area of fact-finding under the sentencing guidelines. The case proceeded to sentencing on our objection to drug quantities. The government called its star witness. He attributed large quantities of marijuana to my client but he also lied on the witness stand about the participation of a co-conspirator, his son.

   The Court rejected the testimony of the government's witness and determined drug quantity in accordance with other, more reliable evidence in the case.

   Opposing counsel, representing the United States, was Assistant U.S. Attorney David B. Smith, now in private practice at 1005 North Elm Street, Greensboro, NC 27401, (336) 574-2533.

4. U.S. v. Glover, 1:98CR306, Middle District of North Carolina, The Honorable N. Carlton Tilley, Jr.: This was another federal sentencing case, and involved factual and legal issues affecting the sentencing guidelines.

   The United States Attorney, in connection with various state and local agencies, had started a Stop the Violence Program. In summary, the agencies targeted individuals known to be involved with drugs or other crime and invited these individuals in for a presentation. The presentation had two parts. In the first part the agencies tried to warn the targeted individual of the end result of the criminal

conduct – prison or death. In the second part, the agencies made all kinds of local assistance available to the individuals to help them withdraw from a lifestyle of crime.

My client was targeted for the program. He had been involved in a drug conspiracy. He responded well to the program, finding gainful employment and withdrawing from criminal activity.

My client was subsequently indicted for his participation in an historical conspiracy as a result of his conduct prior to participation in the program.

Our argument at sentencing was that the court should consider, in determining an appropriate sentence, my client's successful participation in the program. The United States Attorney's office objected to such consideration.

Ultimately the court imposed a sentence that was significantly less than might otherwise have been imposed and one which reflected the defendant's successful participation in the program.

Opposing counsel, representing the United States, were Robert A. J. Lang, Assistant United States Attorney, 101 S. Edgeworth Street, Greensboro, NC 27401, (336) 333-5351, and the then U.S. Attorney, Walter C. Holton, Jr., now with Grace, Holton, Tisdale and Clifton, 301 N. Main Street, Suite 100, Winston-Salem, NC 27101, (336) 725-9428.

5. Webster v. Selective, 91 CVS 10127, Guilford County Superior Court, The Honorable Judge Catherine C. Eagles: This case lasted approximately nine years. Wayland Cooke and I jointly represented the plaintiffs. The case was tried twice; the first trial resulted in a mistrial after approximately five days of trial.

   The second trial resulted in a verdict for the plaintiff. There were a number of complicated issues throughout the trial. The appeal of this case is noteworthy because of the novel state issue of judicial admissions. The appeal citation is Webster v. Selective, 125 N.C. App. 36, 479 S.E.2d 243 (1997)

   The Defendant, Selective Insurance Company, at the first trial was represented by Bruce Berger, then with Yates, McLamb and Weyher, 412 Fayetteville Street Mall, Raleigh, NC 27602, (919) 835-0900. At the second trial, Selective was represented by Randolph (Randy) M. James, 116 N. Spruce Street, Winston-Salem, NC 27120, (336) 724-7707 and an attorney from Atlanta, Georgia, Jefferson (Jeff) C. McConnaughey, now with Cozen O'Connor, Suite 2200, SunTrust Plaza, 303 Peachtree Street, N.E., Atlanta, GA 30308, (404) 572-2000.

   My co-counsel, Wayland Cooke, now practices with the firm of Cahoon & Swisher, North Cooke & Landreth, 100 South Elm Street, Suite 300, Greensboro, NC 27401, (336) 275-1231.

6. Kincaid v. Libby Hill, 91 CVS 5785, Guilford County Superior Court, Guilford County, North Carolina, The Honorable Judge William Z. Wood, Jr.: This case was a bench trial. My client was an independent restaurant operator for a restaurant business called Libby Hill.

   When my client decided to leave the business, he was sued by Libby Hill for refusing to pay for seafood product that he had purchased through the business. We answered and filed a counterclaim, alleging that Libby Hill had breached its contract with my client in failing to supply "higher quality" seafood at a lower cost.

   The issue in the case turned on the interpretation of language contained in the preamble as well as the body of the contract. That language, we contended, required Libby Hill to sell "higher quality" seafood product to its restaurant operators at a lower cost. The trial took several days and involved review of numerous records as well as testimony from various seafood restaurant operators. Judge Wood found in favor of my client, Mr. Kincaid, and the case was later settled.

   Opposing counsel in this case was Amiel J. Rossabi, now with Forman Rossabi and Black, 3623 N. Elm Street, Suite 200, Greensboro, NC 27455, (336) 378-1899.

7. Custer v. Hall, 4:90CV35, Federal Court for the Western District of Virginia, The Honorable Jackson L. Kiser, Judge Presiding. This was a legal malpractice case brought in the Western District of Virginia under diversity jurisdiction.

   Judge Kiser ruled orally from the bench dismissing the plaintiff's case. His decision was affirmed by the Fourth Circuit Court of Appeals in an unpublished decision, Custer v. Hall (4th Cir. No. 91-2673, 1992).

   Opposing counsel for the Plaintiff was Gary Bowman, then with Martin, Hopkins, Lemmons & Edwards. I believe Mr. Bowman is now Gary M. Bowman, P.C., 306 Market Street S.E., Roanoke, VA 24011.

8. Oakley v. Lemons et.al. The Honorable Thomas W. Ross, North Carolina Superior Court, 96 CVS 4794: Oakley was a civil RICO case. I represented the defendant Lemons.

   Oakley was noteworthy to me for the RICO cause of action and the resulting motion to dismiss. RICO was designed to deal primarily with organized crime, but for a period of time that statute became widely used in many different types of civil actions. In this case, the plaintiff sought to apply the RICO statute in the context of the employer/employee relationship. Oakley resulted in a directed verdict for my client at the close of the plaintiff's evidence.

Opposing counsel, for the plaintiff, was M. Douglas Berry, Gabriel Berry & Weston, LLP, 214 Commerce Place, Greensboro, NC 27401, (336) 274-9381.

9. U.S. v. Sam Johnson, C-CR-89-191: Western District of North Carolina, The Honorable Robert Potter, United States District Judge: Sam Johnson was a minister that was prosecuted for perjury in the Western District of North Carolina. His case arose from the investigation by the United States Attorney of Jim Bakker and the PTL Ministries investigation. The majority of the criminal charges were the result of the defendant's responses that he "did not know" or "did not remember" the answer to questions propounded in the grand jury investigation. I was assistant counsel. My responsibilities including briefing the question of the evidence required to take the case to the jury when the questioned response was "I don't know." I was also responsible for preparing witnesses and conducting certain examinations during the presentation of the defendant's case.

   Opposing counsel, representing the United States, was Assistant United States Attorney Max O. Cogburn, Jr., now with Cogburn, Goosmann, Brazil and Rose, P.A., 77 Central Avenue, Suite H, Asheville, NC 28801, (828) 258-0150.

10. U.S. v. Greg Steven Cooke, 6:95CR160, Middle District of North Carolina, The Honorable Judge James A. Beaty, Jr.: Greg Steven Cooke was charged in the Middle District with one count of conspiracy to possess with intent to distribute cocaine and two counts of distributing cocaine within 1000 feet of a school. The offenses were alleged to have occurred several years before the indictment was issued. Following a trial, Greg was convicted of the conspiracy counts but acquitted of the substantive offenses.

    Following trial, several motions for a new trial were filed on Greg's behalf and ultimately, following a hearing, Judge Beaty denied those motions in a lengthy opinion. Those post-trial motions were the most involved and lengthy post-trial proceedings (with the exception of the Carter capital case mentioned hereinafter) with which I have been involved.

    Opposing counsel, representing the United States, was Assistant United States Attorney Paul A. Weinman, 101 S. Edgeworth Street, Greensboro, NC 27401, (336) 333-5351.

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

I became involved in the case of Carter v. Lee, a death penalty case, with the post-conviction proceedings. These proceedings started with a Motion for Appropriate Relief filed in state court. In addition Habeas proceedings were conducted in federal court, with an appeal to the Fourth Circuit. Desmond Carter was ultimately executed on December 10, 2002. The primary issue raised in Desmond Carter's case was the effective assistance of trial counsel. I prepared and argued the appeal in the Fourth Circuit. I was also responsible for preparing and arguing the clemency petition to the Governor of North Carolina, Mike Easley.

In addition to the litigation described herein, I have had experience in mediation and arbitration. In Guilford County Superior Court, all civil cases are now subject to mediation. As a result, I have settled a number of civil cases during the course of mediation. I have arbitrated several cases through the Guilford County District Court arbitration requirements.

From time to time, I have assisted new lawyers with their training on the CJA panel for the Middle District of North Carolina. I am a member of the committee that reviews the applications for the CJA panel.

As a director of the Greensboro Bar Association (1995) and as a member of the Criminal Justice Council, I have participated in policy and administrative leadership of those two organizations.

I have not performed lobbying activities for any organization.

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

    I have not taught any courses.

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

    I do not expect to receive any future benefits from my present firm or any other relationship. If I am confirmed as a federal district judge, I expect to close my law practice. I do not expect or anticipate any continuing payments from my law partnership of almost nineteen years once we determine the final distribution at the time I close my practice.

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

    I do not have any such plans.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)

    See attached Financial Disclosure Report.

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

    See attached Net Worth Statement.

26. **Potential Conflicts of Interest**:

    a. Identify the parties, 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. Explain how you would address any such conflict if it were to arise.

       Potential conflicts of interest that might arise during my initial service experience might arise from investments my wife and I own. Second, I have friends, both inside and outside the legal profession, whose relationships are very important to me. If, in my opinion, those personal relationships affect the impartiality, or the appearance of impartiality, of the Court, then the Court is responsible for candidly acknowledging that issue and recusing itself from a case. Many of these personal relationships can be dealt with from the outset of the assignment of a case. I will comply with all rules regarding appearances in a court by former partners, family members and that type of personal interest conflict.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

       If confirmed, I will carefully follow the Code of Conduct for United States judges and applicable statutes, as well as policies and procedures promulgated by the Judicial Conference.

27. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in

serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

For a period of time I participated in the Greensboro Bar Association's Reading Program, in which I went to Foust Elementary School and read with a student that was in need of some type of assistance.

We do not have a formal *pro bono* program in our firm. However, each year my partner and I have taken cases at substantially reduced rates or performed services at substantially reduced rates or for no fee. These types of things include estate matters, wills or other services.

28. **Selection Process**:

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

    I am not aware of a selection commission in our jurisdiction to recommend candidates to the federal courts. In my particular case, through various individuals, I made our senators aware that I was interested in seeking a judgeship.

    I was asked to complete, and did complete, questionnaires for both Senator Dole and Senator Burr. During that process I was interviewed by staff from Senator Burr's office.

    I later interviewed with staff from the Department of Justice and from the White House Counsel's Office. Following these interviews, I completed all the nomination paperwork. My nomination was submitted to the United States Senate on September 29, 2006. That nomination was returned to the President on December 9, 2006. I was renominated on January 9, 2007.

    b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

    No.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Osteen Jr., William L	Middle District of NC	01/10/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5a. Report Type (check appropriate type)	6. Reporting Period
US District Judge- Nominee	[X] Nomination, Date 01/09/2007 [ ] Initial [ ] Annual [ ] Final 5b. [ ] Amended Report	01/01/2005 to 12/31/2006
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
Adams & Osteen 201 W Market Street, Suite 410 Greensboro, NC 27401	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

[ ] NONE *(No reportable positions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Partner	Adams & Osteen
2.		
3.		
4.		
5.		

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

[X] NONE *(No reportable agreements.)*

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT
Page 2 of 6

Name of Person Reporting	Date of Report
Osteen Jr., William L	01/10/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2004	Adams & Osteen - patnership distribution (earnings from self-employment)	$ 96,943
2. 2005	Adams & Osteen - partnership distribution (earnings from self-employment)	$ 88,929
3. 2006	Adams & Osteen - partnership distribution (earnings from self-employment)	$ 108,150
4.		
5.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2005	Print Plant, Incorporated - self-employed, financial consultant fee
2. 2006	Print Plant, Incorporated - self-employed, financial consultant fee
3.	
4.	
5.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1. Exempt	
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Ostseen Jr., William L	Date of Report 01/10/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☒ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1.		
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Ottens Jr., William L	01/10/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of the spouse and dependent children. See pp. 54-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Bank of America Common Stock	C	Dividend	K	T	Exempt				
2. Wachovia Accounts	A	Interest	L	T					
3. BB&T	A	Interest	K	T					
4. Genworth Financial- Variable Universal Life Policy #1									
5. Fidelity Growth	A	Dividend	J	T					
6. Oppenheimer Midcap	A	Dividend	J	T					
7. IRA rollover #1									
8. First Trust Target VIP Port CUSIP # 30270R589	B	Dividend	K	T					
9. Bond Fund of America Class C Symbol: BFACX	A	Dividend	J	T					
10. Franklin Income Fund Class C Symbol: FCISX	A	Dividend	J	T					
11. Phoenix Real Estate Securities Symbol: PHRCX	A	Dividend	J	T					
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A –$1,000 or less	B –$1,001 - $2,500	C –$2,501 - $5,000	D –$5,001 - $15,000	E –$15,001 - $50,000
	F –$50,001 - $100,000	G –$100,001 - $1,000,000	H1 –$1,000,001 - $5,000,000	H2 –More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J –$15,000 or less	K –$15,001 - $50,000	L –$50,001 - $100,000	M –$100,001 - $250,000	
	N –$250,001 - $500,000	O –$500,001 - $1,000,000	P1 –$1,000,001 - $5,000,000	P2 –$5,000,001 - $25,000,000	
	P3 –$25,000,001 - $50,000,000		P4 –More than $50,000,000		
3. Value Method Codes (See Column C2)	Q –Appraisal	R –Cost (Real Estate Only)	S –Assessment	T –Cash Market	
	U –Book Value	V –Other	W –Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Osteen Jr., William L	Date of Report 01/10/2007

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Osteen Jr., William L	Date of Report 01/10/2007

IX. CERTIFICATION.

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

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

Signature William L. Osteen, Jr. Date 1/11/07

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		62	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		32	362	Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		58	960
Real estate owned-add schedule		300	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	000				
Cash value-life insurance							
Other assets itemize:							
Mutual Fund retirement account		34	210				
Tax account		10	000				
				Total liabilities		58	960
				Net Worth		409	612
Total Assets		468	572	Total liabilities and net worth		468	572
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax		10	000				
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Bank of America	$ 32,362
Real Estate Owned	
Personal residence	$ 300,000
Real Estate Mortgages Payable	
Personal residence	$ 58,960

AFFIDAVIT

I, William L. Ostrem, Jr., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/28/07
(DATE)

William L. Ostrem, Jr.
(NAME)

My commission expires: 3/26/10

Arlene V. Henza
(NOTARY) Arlene V. Henza

ARLENE V. HENZA
NOTARY PUBLIC
GULFPORT, HARRISON COUNTY, MISSISSIPPI

Senator FEINSTEIN. Thank you very much.

Mr. Reidinger?

STATEMENT OF MARTIN KARL REIDINGER, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Mr. REIDINGER. Thank you, Senator. First of all, I would like to very much thank this Committee for having this hearing today and giving me this opportunity to be here, and I would like to thank you, Senator, for being here to chair this hearing.

I want to express my thanks to Senator Dole and Senator Burr for those very flattering introductions that they gave and also for their support in this process as they have recommended to the President that I be nominated.

I would also like to express my thanks to President Bush for nominating me, to give me this opportunity, and to show that confidence that he has in me in order to advance that nomination.

I would also like to introduce my family. They are very much responsible for very much of who I am. Behind me a couple rows back is my wife, Patti; our oldest daughter Heather McCrory, our daughter Sarah, our daughter Alex, and our son, Max.

Thank you very much, Senator.

[The biographical information of Mr. Reidinger follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Martin Karl Reidinger

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

   United States District Judge for the Western District of North Carolina

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

   Adams Hendon Carson Crow & Saenger, PA
   P.O. Box 2714
   Asheville, NC 28802

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

   1958, New Haven Connecticut

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   Patti Reidinger (pre-marriage name: Patti Annette Chester)
   Full time mother and homemaker
   Number of dependent children: 3

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

   University of North Carolina at Chapel Hill School of Law, 1981-84
   J.D. with Honors, 1984

   University of North Carolina at Chapel Hill, 1977-81; B.A., 1981

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

   1984-present Adams Hendon Carson Crow & Saenger, PA
   2003–present 72 Patton Associates, LLC, (formerly 72 Patton Associates)
   2005-present Pisgah Legal Services, Board member
   1982, 1983 Freelance Summer Legal Researcher

8. **<u>Military Service and Draft Status</u>: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.**

   I have not served in the military.

9. **<u>Honors and Awards</u>: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

   NC Bar Association Statewide Small Firm Pro Bono Award 2004 (Firm Award)

   Order of the Coif

   North Carolina Law Review

   Jefferson Pilot Foundation Scholar

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

    28th Judicial District Bar.
    President 2003-04, Secretary-Treasurer 1989-92,
    Member 1984-Present

    North Carolina Bar Association, 1984-Present.

    NCBA Local Bar Services Committee, 2003-Present, Chair 2005-Present.

    Select Drafting Committee of the North Carolina Board of Law Examiners

11. Bar and Court Admission:

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

North Carolina, admitted 1984.

There have been no lapses in membership to my knowledge.

b. **List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.**

North Carolina (all courts), admitted 1984.

United States District Court for the Western District of North Carolina, admitted 1984.

United States Court of Appeals for the Fourth Circuit, admitted 1985.

Supreme Court of the United States, admitted 1994.

There have been no lapses in membership to my knowledge.

12. Memberships:

a. **List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.**

Arden Rotary Club, Arden, NC

Paul Harris Foundation (Paul Harris Fellow and Sustaining Member)

b. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or**

the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I have never been a member of any group that practices such discrimination

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

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

"Responsible Citizens v. City of Asheville: A New Analysis of the Taking Issue or a Step Into Confusion?" North Carolina Law Review, 62 N.C. L.Rev. 1389 (1984); reprinted as

"The Taking Issue in North Carolina" in North Carolina Zoning and Land Use Law, Michael Brough, editor, published by the Local Government Law Section of the North Carolina Bar Association, 1987.

Formal Discovery: Purposes and Types. Continuing Legal Education Manuscript. Published by Half Moon, 1997.

"Why Bother?" A Message from the President, Bar Briefs, District Bar Magazine/Newsletter, October 2003.

"The Ghost of Boogie Pegram," A Message from the President, Bar Briefs, District Bar Magazine/Newsletter, January 2004.

"Improving Your Serve," A Message from the President, Bar Briefs, District Bar Magazine/Newsletter, April 2004.

The Walton War and the Georgia-North Carolina Boundary Dispute. Self-published, 1981.

Transylvania County, An Early History. (co-authored with Kevin S. Norris). Self-published, 1973.

Several Articles in the Dictionary of North Carolina Biography, University of North Carolina Press, 1981-1996.

"The Walton War," Article in the Encyclopedia of North Carolina, University of North Carolina Press, 2006.

b. **Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar**

association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None

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

In about 1996 I appeared before a study panel commissioned by the North Carolina General Assembly that was to make recommendations for changes to North Carolina's involuntary municipal annexation statute. The gist of my remarks was that the urbanization formulas set out in the statute were not good measures of the urbanization of a proposed annexation area. To my knowledge no transcript or other records of my comments exist.

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

As Chair of the North Carolina Bar Association Local Bar Services Committee I have served as the moderator of the NCBA Bar Leadership Institute on January 20, 2006, and January 19, 2007. My remarks consisted of thanking sponsors, introducing speakers, encouraging participants to submit their speaker evaluation forms, presenting an award to the keynote speaker, and urging the participants to make good use of the knowledge that they obtained at the Institute. To my knowledge there are no transcripts or other recordings of the proceedings.

e. **Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.**

I have been asked by media reporters on numerous occasions to comment on cases that I had pending. I have no record of the specific dates and I have no clips or transcripts of my comments.

14. **<u>Judicial Office</u>: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

I have never held a judicial office.

15. **<u>Citations</u>: If you are or have been a judge, please provide:**

    a. **citations for all opinions you have written (including concurrences and dissents);**

    b. **a list of cases in which certiorari has been requested or granted;**

    c. **a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

    d. **a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

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

    f. **citations to all cases in which you were a panel member in which you did not issue an opinion.**

    I have never served as a judge.

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

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

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

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

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

I have never served as a judge.

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

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

I served as President and Secretary-Treasurer of the 28th Judicial District Bar. The 28th Judicial District Bar is a subdivision of the North Carolina State Bar, which is a State agency. Those positions were elected positions by the vote of the membership of the District Bar.

b. **List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

Buncombe County Republican Party, Vice Chair 1999-2001, Treasurer 1993-97, Secretary 1992, and Convention Chair many times since 1990.

18. **Legal Career: Please answer each part separately.**

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

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

I did not serve as a clerk.

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

I have never practiced alone.

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

1984-present, Adams Hendon Carson Crow & Saenger, PA P.O. Box 2714 (72 Patton Avenue), Asheville, NC 28802
Associate 1984-89, Shareholder 1989-present.

b. Describe:

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

My practice has always been a general civil litigation practice. Over the past ten or twelve years my practice has been concentrated primarily in the areas of general business litigation, construction litigation, municipal litigation, land disputes and employment law, even though I have continued to handle cases in other areas. Prior to that time my litigation practice was more varied, including some personal injury litigation, bankruptcy litigation and domestic litigation, in addition to the areas mentioned above. In 2003 I became certified by the State of North Carolina as a Superior Court Mediator, and I now mediate an average of about two to three cases per month.

ii. **your typical clients and the areas, if any, in which you have specialized.**

I have represented individuals and corporations bringing suit against municipalities; I have defended municipalities against individuals and corporations. I have represented general contractors against project owners and subcontractors; I have represented project owners and subcontractors against general contractors. I have represented construction sureties on performance and payment bond claims; I have made claims against sureties on performance and payment bonds. I have represented General Motors and car dealerships in litigation; I have brought suits against auto makers and dealers. I have sued insurance companies; I have defended insurance companies. My practice has been quite varied as to areas of practice, and has also been very balanced between representing plaintiffs and defendants.

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

Approximately 95% of my practice is litigation. I have appeared in court frequently. With the advent of mandatory mediation in Superior Court in North Carolina (around 1993) the frequency of my trying cases has decreased somewhat. Between motions practice and trial practice I am still in court, on average, approximately three times per month.

i. **Indicate the percentage of your practice in:**
   1. **federal courts;** 40%
   2. **state courts of record;** 60%
   3. **other courts.**

ii. **Indicate the percentage of your practice in:**
   1. **civil proceedings;** 95%
   2. **criminal proceedings.** 5%

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

I have litigated to a verdict or judgment approximately 180 cases over the past twenty-two years. I would estimate that I have served as sole counsel in approximately 40% of these cases, chief counsel in approximately 40%, and associate counsel (second chair, etc.) in approximately 20%.

i. **What percentage of these trials were:**
   1. **jury;** 55%
   2. **non-jury.** 45%

e. **Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.**

I have filed a Petition for Certiorari with the Supreme Court of the United States in Biltmore Square Associates v. City of Asheville, 513 U.S. 824 (1994). The Petition was denied, and therefore there were no briefs or oral arguments.

19. **Litigation: Describe the ten (10) 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 representation;**

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

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

1. Edmondson v. American Motorcycle Association (AMA), 54 F. Supp. 2d 544 (1999). I served as lead counsel for the plaintiff in this lawsuit regarding the termination of a joint venture that conducted the premier motorcycle roadracing series in the United States. The matter was tried before the Honorable Lacy H. Thornburg, United States District Judge in Federal District Court for the Western District of North Carolina. Judgment was entered for the plaintiff, and the defendants appealed to the Fourth Circuit Court of Appeals. The judgment was affirmed as to most substantive aspects of the defendants' liability but was remanded for a further hearing on the correct computation of damages. 243 F.3d 537 (2001). The remainder of the case was settled prior to the final hearing. I was lead counsel at the trial, had primary responsibility for the argument of motions and for handling the appeal and personally handled almost all of the depositions and discovery.

I represented the plaintiff, Roger Edmondson, regarding this matter from 1995 through its conclusion in 2001. My co-counsel was my law partner, Ward Hendon, P.O. Box 2714, Asheville, NC 28802, (828) 252-7381. Principal counsel for the defendants was Edward A. Matto of Bricker & Eckler, LLP, 100 South Third Street, Columbus, OH 43215, (614) 227-2300.

2. Thrash v. City of Asheville, 327 N.C. 251, 393 S.E.2d 842 (1990). I served as lead counsel for the plaintiffs in this lawsuit challenging an involuntary municipal annexation. The case was tried to a conclusion before the Honorable Claude Sitton, Superior Court Judge, and appealed to the North Carolina Court of Appeals and then to the Supreme Court of North Carolina, which held for my clients. This case was a landmark decision regarding North Carolina's involuntary annexation statute. Prior to this case the courts had allowed municipalities great flexibility in making determinations whether an area met the land use requirements for annexation. In this case the Supreme Court ruled that a court reviewing an annexation should make its own determination of whether the area in question meets the statutory land use standards by applying those standards to the evidence of the actual land use as its exists in the area. In requiring municipalities to meet the letter of the statutory standards, this ruling has substantially limited the use of involuntary annexation in North Carolina as a mere means of generating municipal revenue without the provision of major municipal services. I served as lead counsel at trial and in the appeal, and I personally handled the depositions and discovery.

I represented these plaintiffs from the institution of the suit in 1987 through the appeals and then through litigation on a subsequent attempt to annex their property that lasted until 1994. My co-counsel was my law partner Jerry Crow, P.O. Box 2714, Asheville, NC 28802, (828) 252-7381. The principal counsel for other plaintiff groups were Robert King and Daniel G. Clodfelter of Moore & Van Allen, PLLC, 100 North Tryon Street, Suite 4700, Charlotte, NC

28202, (704) 331-1000, and Herbert L. Hyde of Asheville (Mr. Hyde is now retired and no office address or telephone number are available). Principal counsel for the defendant was William F. Slawter, One Oak Plaza, Suite 208, Asheville, NC 28801, (828) 258-2447.

3. RCDI v. Patel. This was a series of lawsuits involving the construction of a hotel. The case information and docket numbers were: Cincinnati Insurance v. Patel et al., Buncombe County 98 CvS 967; RCDI Construction, Inc. et al. v. Rocky Ridge Hospitality Corp., et al. Buncombe County 98 CvS 1072; Biltmore Village Carpet, Inc. v. RCDI Construction, Inc., et al., Buncombe County 98 CvS 178; Diboco Fire Sprinklers, Inc., v. RCDI Construction, Inc., et al., Buncombe County 98 CvS 388; RCDI Construction, Inc. et al. v. Spaceplan/Architecture Planning & Interiors, PA, et al., United States District Court WDNC 1:00 CV177-C; RCDI Construction Inc. v. Fidelity and Deposit Company of Maryland, et al., Buncombe County 99 CvS 3026; RCDI Construction, Inc. v. USF&G, Buncombe County 99 CvS 3145. I was one of two lead counsels for the general contractor's performance bond surety and subsequently for the general contractor on the subrogation claims against several subcontractors. The hotel suffered a catastrophic failure almost immediately upon its opening, and essentially had to be demolished and rebuilt. The surety's total loss was approximately $8 million, but after the recoveries from the subcontractors the surety recouped approximately 99.91% of that loss. The litigation involved extremely complex issues related to the interface of engineering issues and construction law with insurance law. I personally handled all of the courtroom work in these cases, such as the argument of all motions, and I handled about half of the depositions and written discovery. I handled all aspects of the one case that was litigated to a judgment, and handled the appeal of that case.

I represented my clients in this matter from 1998 through the conclusion of the last subrogation claim in 2003. My chief co-counsel was Thomas E. Crafton of Alber, Crafton PSC, Hurstbourne Place, 9300 Shelbyville Road, Suite 1300, Louisville KY 40222, (502) 815-5000. There were approximately 75 other attorneys involved in this matter, as there were about 40 parties. Principal counsel for the owner of the project (our chief adversary on the primary claim before the subrogation claims) was Frank P. Graham of Asheville who is now deceased. Other attorneys who played significant roles in this litigation were Steve M. Pharr, now of Pharr & Boynton, PLLC, 2720 Georgetown Drive, Winston-Salem, NC 27106, (336) 721-2400, Jack Draper of Arnett Draper & Hagood, P.O. Box 300 Knoxville, TN (865) 546-7000, and Ralph W. Meekins of Teddy & Meekins, PLLC, P.O. Box 1330, Shelby, NC 28151. All of the state court cases were before the Honorable Robert D. Lewis, Superior Court Judge. The one case of this group that was in Federal Court was before the Honorable Lacy H. Thornburg, United States District Judge.

4. Cabarrus County v. City of Concord. Case information and docket numbers: Craft Development, LLC, et al. v. City of Concord , et al., Cabarrus County 03CvS 2400 and Morrison et al. v. City of Concord, et al., Cabarrus County 03 CvS 2462. I served as lead counsel for Defendant Cabarrus County in these consolidated actions. The City of Concord had attempted to regulate development outside its boundary and outside its extraterritorial jurisdiction by placing development conditions on the extension of its water and sewer utilities. This was challenged by two developers and by the County in its cross claims against the City. I personally handled the briefing of all dispositive motions and made all

court appearances during the period that I represented the County. This case raised issues of first impression in North Carolina regarding the limits of authority of a municipal utility provider that also served as a regional utility provider. This case addressed these novel issues in that uncertain area of the law where local government entities are operating businesses (utility enterprises) in order to exercise their governmental control. The case was very closely watched by local governments and entities that represent and assist local governments. The issues were thoroughly briefed, and the briefs have been obtained by many interested parties throughout the state. On the date the case was scheduled to be heard a new Board of County Commissioners took office, and this facilitated a settlement between the City and County. As such, these novel issues will have to be decided in another case. The litigants in that next case, however, will probably be making reference to the briefs that have been obtained from the court file in this matter.

I represented Cabarrus County in this matter from August 2004 until its conclusion earlier this year. The judge who handled this case was the Honorable Clarence E. Horton, Jr., Superior Court Judge. My co-counsels for the County were County Attorney Marilyn Porter, and subsequent County Attorney Fletcher L. Hartsell, Jr. of Hartsell & Williams, P.O. Box 368, Concord, NC 28026, (704) 786-5161. Ms. Porter is no longer with the County, but now serves as counsel to the Mecklenburg County Sheriff's Department, 700 East 4th Street, Charlotte, NC 28202, (704) 336-2543. The principal attorneys for the other parties were James E. Scarbrough of Ferguson Scarbrough & Hayes, P.O. Box 444, Concord, NC 28026, (704) 788-3211, who represented the plaintiffs; Daniel G. Clodfelter of Moore & Van Allen, PLLC, 100 North Tryon Street, Suite 4700, Charlotte, NC 28202, (704) 331-1000, who also represented the plaintiffs, and Albert M. Benshoff, Concord City Attorney, P.O. Box 308, Concord, NC 28026, (704) 920-5214, who represented the City.

5. Pennebaker v. Fuller. Case information and docket number: In re: R. Bruce Fuller, United States Bankruptcy Court for the Western District of North Carolina, A-B-89-10703. In this bankruptcy proceeding I was sole counsel for a lender who had a claim against a Debtor-in-Possession who owned and operated a nightclub. The Debtor had sought to reorganize under Chapter 11 of the Bankruptcy Code, but we prevailed in having the Court order a reorganization by the systematic liquidation of the Debtor's assets, including the nightclub property.

I represented the claimant in this matter, A.E. Pennebaker Company, Inc. beginning in 1987 with the attempts to recover the debt owed, and then through the bankruptcy and through the sale of the property, which was concluded in 1995. The judge presiding over this matter was the Honorable George Hodges, United States Bankruptcy Judge for the Western District of North Carolina. Principal counsel for the Debtor in this case was Robert M. Pitts of Pitts Hay & Hugenschmidt, 137 Biltmore Avenue, Asheville, NC 28801, (828) 255-8085.

6. Legal Services Corporation v. Pisgah Legal Services, United States District Court for the Western District of North Carolina 1:05-CV-71. In this case title was challenged to the building that serves as the primary office for the legal services organization for a six county area that includes Asheville (Pisgah Legal Services). I was one of a group of attorneys who volunteered our time to defend this suit on a pro bono basis. In dividing the labor between

this group of attorneys, my law partner Ward Hendon and I took on the task of writing the brief supporting our motion to dismiss the action. I wrote a substantial portion of the brief and take particular pride in the section pertaining to the application of North Carolina's new statutory Rule Against Perpetuities as well as the common law Rule Against Perpetuities to the title issues at hand. Very shortly after the filing of our motion and brief, and before the filing of a response thereto by the plaintiff, the case was settled leaving PLS with an unencumbered title.

I represented PLS in this matter from the filing of the lawsuit in early 2005 until its conclusion last summer. The matter was before the Honorable Lacy H. Thornburg, United States District Judge for the Western District of North Carolina. My co-counsels in this matter included Robert B. Long, Jr. of Long Parker Warren & Jones, PA, P.O. Box 7216, Asheville, NC 28802, (828) 258-2296, and Larry McDevitt of VanWinkle Buck Wall Starnes & Davis, PA, P.O. Box 7376, Asheville, NC 28802, (828) 252-2991. The plaintiff was represented by Raboteau T. (Rob) Wilder of Nelson Mullins Riley & Scarborough, LLP, 100 North Tryon Street, Suite 2400, Charlotte, NC 28202, (704) 417-3120.

7. Akins and Bowers v. City of Thomasville. Case information and docket numbers: Akins, et al. v. City of Thomasville, Davidson County 95 CvS 1977, COA97-42; Akins et al. v. City of Thomasville, Davidson County 96 CvS 1423, COA98-1142; Bowers, et al. v. City of Thomasville, Davidson County 96 CvS 1673, COA97-1391; Bowers et al. v. City of Thomasville, Davidson County 99 CvS 1696, COA00-601, 143 N.C. App. 291, 547 S.E.2d 68 (2001). I represented the plaintiffs in this series of suits challenging several involuntary annexations by the City of Thomasville. The first group of annexation ordinances was held by the Court to be invalid because the areas were found not to meet the urbanization standards of the statute (following Thrash v. Asheville, see above). Some of the ordinances in the City's second attempt to annex these areas were held improper because the City proposed to charge a differential rate for water utility services in portions of the annexation area. Ultimately the City made substantial changes in the proposed annexations and was successful in annexing only about half of the area originally proposed for incorporation into the City. I served as lead counsel in the trials of these matters and on all the appeals. I personally handled all of the depositions and written discovery.

I represented these property owners in the areas surrounding Thomasville from the filing of the first of these suits in 1995 until the conclusion of the last of these actions in 2001. There were several judges who heard the various parts of these matters, including the Honorable Russell G. Walker, Jr., the Honorable William H. Helms, the Honorable Hollis M. Owens and the Honorable Sanford L. Steelman, Jr., Superior Court Judges. The principal counsel for the City was Roddey M. Ligon, Jr. of Womble Carlyle Sandridge & Rice, One West Fourth Street, Winston-Salem, NC 27101, (336) 721-3600.

8. Clark et al. v. Asheville Contracting Company, et al., Buncombe County 80 CvS 1904, 80 CvS 1445, 80 CvS 1446, 80 CvS 1447, 80 CvS 1448, 80 CvS 1449, 80 CvS 1450, 80 CvS 1451, 80 CvS 1452, 80 CvS 1453, 80 CvS 1454, 80 CvS 1455, 80 CvS 1457, 80 CvS 1458, 80 CvS 1459, 80 CvS 1460. This was a group of sixteen lawsuits that were consolidated for trial and appeal. I served as associate counsel for defendant Asheville Contracting Company

(ACC) which had built Interstate Highway 240 through the "open cut" in Beaucatcher Mountain in Asheville. The plaintiffs were owners of property near the open cut who complained that ACC's manner of disposing of the rock waste from the cut constituted a common law nuisance. The cost of disposing of the waste in the manner advocated by the plaintiffs would have cost the defendants approximately $16 million, thus greatly increasing the cost of the project or bankrupting my client, the contractor. The case was tried to a conclusion before the Honorable Terry Sherrill, Superior Court Judge, and judgment was entered holding that the contractor's disposal method did not constitute a nuisance. The judgment was affirmed on appeal. I handled approximately half of the trial of this matter and wrote the brief on appeal to the Court of Appeals.

I represented ACC in this matter from 1984 until the disposition of the final appeal in 1991. The matter had actually been pending prior to my coming to this firm. An earlier appeal of this case yielded a very important decision regarding the law pertaining to injunctions, but I was not appreciably involved in that portion of the case. Lead counsel for defendant ACC was my law partner Ward Hendon. Principal counsel for the plaintiffs was Robert B. Long, Jr. of Long Parker Warren & Jones, PA, P.O. Box 7216, Asheville, NC 28802, (828) 258-2296. Principal counsel for the Department of Transportation was Assistant Attorney General Alfred Salley, who is now deceased.

9. Harned v. Piper Aircraft, Piper Aircraft Bankruptcy. Case Information and docket number: In Re: Piper Aircraft Corporation, United States Bankruptcy Court for the Southern District of Florida, 91-31884-BKC-RAM. In this case I represented a lender who had entered into a sale and lease back arrangement for two aircraft with the airplane manufacturer, Piper Aircraft. When Piper then filed for Chapter 11 bankruptcy, our client held one of the ten largest unsecured claims. I, therefore, served as a member of the unsecured creditors committee in the bankruptcy proceeding. The committee oversaw the continued operation of Piper during the bankruptcy and the sale of the company as a going concern. I list this among the most significant matters in which I have been involved because it was a case of such national notoriety and international scrutiny because it had a major impact upon the aircraft manufacturing industry in the United States. Piper was one of only three general aircraft manufacturers in the United States at that time, and preserving it as a viable operation was important to that industry and the economy of the area where its manufacturing concern was located. I served was one of ten members of the committee, so my individual role was not that large, but the work of the committee as a whole was extensive. My client ultimately received full payment on his claim, and Piper (New Piper) remains a thriving general aviation manufacturer to this day.

I handled this matter from the initial negotiations with Piper regarding this claim in 1989 until the consummation of the sale of Piper to New Piper Aircraft, Inc. in 1995, which provided the funds for the payment of the claims. The bankruptcy proceedings were before the Honorable Robert A. Mark, United States Bankruptcy Judge for the Southern District of Florida. The principal counsel with whom I dealt in this matter was Howard J. Berlin of Kluger Peretz Kaplan & Berlin, PL, 201 South Biscayne Blvd., 17th Floor, Miami, FL 33131, (305) 379-9000, who served as counsel to the creditors committee. With a bankruptcy of this size, there were dozens of other attorneys representing various parties.

10. Overlook Associates v. Froehling and Robertson, Inc. Case information and docket number: Paving Enterprises, Inc. v. Reliance Insurance Company, et al., Buncombe County 90 CvS 4054. This was a major construction case in which I was lead counsel for defendant Froehling and Robertson Inc. (F&R), an engineering firm. The owner of the project brought suit alleging that the site work was improperly engineered and performed, resulting in massive differential settling of a large shopping center building and serious damage to the building. Our defense was based upon the owner's directives countermanding several important engineering requirements for the site work. The case settled as we were in the courtroom to begin trial. I handled all of the courtroom work in arguing motions, and I took all the depositions and prepared the written discovery in this case.

I handled this matter for F&R from the filing of the suit in 1990 until the resolution of the case in 1993. My co-counsel in the matter was William H. Hoofnagle, III of Florance Gordon & Brown, 1900 One James Center, 901 East Cary Street, Richmond, VA 23217, (804) 697-5100. Principal counsel for the contractor was John C. Cloninger who is now with Cloninger Elmore Hensley & Searson, PLLC, 366 Merrimon Avenue, Asheville, NC 28801 (828) 252-1786, and William Doris who was then with Smith Currie & Hancock, 2700 Marquis One Tower, 245 Peachtree Center Avenue, NE, Atlanta, GA, (404) 521-3800, was principal counsel for the project owner.

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

I have been certified as a Superior Court Mediator by the State of North Carolina since 2003. I mediate, on average, two to three cases per month. Over ninety percent of the cases I mediate settle at mediation. I have the reputation for being one of the few mediators in Western North Carolina willing to take on the mediation of construction cases (which tend to be complex), even though I mediate other types of cases as well. The categories of cases that I mediate are similar to the types of cases that I litigate.

I have been very active in the District Bar for our Judicial District, serving as President in 2003-04, and having served as Secretary-Treasurer in 1989-92. During my term as President I tried to emphasize maintaining a cooperative and collegial atmosphere among the bar by maintaining high standards of professional courtesy and professional conduct.

Beginning with my year as District President I have served on the Local Bar Services Committee of the North Carolina Bar Association. I have served as Chair of that committee for 2005-06, and again for 2006-07. This committee seeks to further the cooperation between local bar groups, and between the state organizations and local ones.

In my capacity as Chair I am the chief planner for the Bar Leadership Institute that is conducted every January. It is a training session for local bar leaders. In planning these programs I have tried to maintain the emphasis on having the bar promote professional courtesy, professional conduct and cooperation.

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

I taught a class in Building Code Law and Administration at Asheville-Buncombe Technical Community College from 1991 to 1993. The subject matter of the course consisted of the framework of building regulation, and the permitting, inspection and enforcement processes under North Carolina law. To my recollection there was no printed syllabus for the course.

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

My agreement with my law firm calls for the payment of trailing receipts of receivables. It is impossible to calculate the amounts or timing of such payments in advance, but it is anticipated that the amount of such payment will be less than $100,000 and should likely be paid within twelve months of my departure from the firm. I anticipate that I will be paid for my interest as a shareholder in the firm at the time of my departure.

I, along with four of my law partners own 72 Patton Associates, LLC, which owns the building in which our law firm operates. At my departure my partners will have an option to purchase my interest in the LLC. If they exercise that option, I anticipate a payment in the approximate amount of $160,000 within 90 days of my departure. If they do not exercise that option, then I anticipate that the net income of the LLC will be used to reduce the debt of the LLC. My 20% share of such debt reduction would be approximately $17,000 per year.

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

No.

24. **Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year,**

including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)

See attached Financial Disclosure Report

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

    See attached Net Worth Statement

26. **Potential Conflicts of Interest:**

    a. **Identify the parties, 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. Explain how you would address any such conflict if it were to arise.**

    Regarding litigation that I see as likely presenting conflicts or potential conflicts during my initial service, should I be confirmed, the most likely to arise would be cases in Federal District Court that were being handled by my firm during my tenure with the firm. In addition, in conjunction with four of my law partners I currently own the building which houses the offices of my firm. Until such time as my part ownership of that building is terminated I would avoid any conflict-of interest or potential conflict-of-interest resulting from my part ownership.

    b. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

    In all situations, I would resolve potential conflicts of interest by reference to 28 U.S.C. §455, the Code of Conduct for United States Judges, the Judicial Conference Guidelines and the Ethics Reform Act of 1989. I would strive to apply not only the letter of these provisions but the spirit as well.

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

Since I first became licensed to practice law I have participated in the Mountain Area Volunteer Lawyers. This is an organization that is administered through the legal services organization for a six county area that includes Asheville (Pisgah Legal

Services). As a participant in this program I receive approximately two referrals per year of disadvantaged persons needing legal assistance. I have handled minor consumer litigation and have drafted wills, powers of attorney, health care powers of attorney and living wills for these clients on a pro bono basis.

I have also served on a pro bono basis to assist a client who is completely disabled due to a brain injury. This representation had continued on a regular basis for many years and is on-going. This client sometimes needs assistance with legal matters such as the restoration of her food stamp benefits or the preparation of a health care power of attorney and sometimes needs help with such basic matters as getting her check book balanced or figuring out what her debts are.

I currently serve on the board of directors for Pisgah Legal Services (the legal services organization for a six county area that includes Asheville).

In 2005, when a lawsuit was brought in federal court challenging the title to the building of Pisgah Legal Services (PLS) from which it operates, I was one of several attorneys who defended PLS on a pro bono basis. Of this group I was one of two attorneys who wrote an extensive brief on our motion to dismiss the action. Shortly after the filing of our brief the case settled with PLS retaining undisputed title to the property (see above).

My firm has always been committed to providing pro bono legal services to the financially disadvantaged. Such services are an integral part of the safety net of our society, and are a perfect example of how the safety net does not necessarily need to be funded directly by the taxpayers. In recognition of our firm's commitment to pro bono service, we received the North Carolina Bar Association Small Firm Pro Bono Services Statewide Award for 2004.

28. <u>Selection Process</u>:

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

The selection process leading to my nomination has been as follows. After consulting with several active Republicans and practicing attorneys in Western North Carolina I submitted letters to Senator Dole and Senator Burr asking that I be considered in their process for recommending potential nominees to replace Judge Graham Mullen who had announced his intent to take senior status. I was

interviewed by staff from Sen. Burr's office and later interviewed with staff from Senator Dole's office. A few weeks later, I was informed that I would be among the persons that Senator Dole and Senator Burr would be recommending to the White House for nomination to the position of District Court Judge. Very soon thereafter I was contacted by the Office of White House Counsel to set up an appointment for an interview at the White House. I came to Washington on June 16, 2006, to meet with staff from the White House Counsel's Office and the Department of Justice. About ten days after that interview I was informed that it was the President's intent to nominate me for this position. After completing all the nomination paperwork, my nomination was submitted to the Senate on September 29, 2006. My nomination was returned to the President on December 9, 2006. I was re-nominated on January 9, 2007.

b. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.**

No.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Reidinger, Martin K	U.S. District Court, WDNC	01/11/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5a. Report Type (check appropriate type)	6. Reporting Period
U.S. District Judge - Nominee	☒ Nomination, Date 01/09/2007 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	01/01/2006 to 12/31/2006
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
Adams Hendon Carson et al 72 Patton Avenue Asheville, NC 28801	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Shareholder, Officer	Adams Hendon Carson Crow & Saenger, PA
2. Member	72 Patton Associates, LLC
3. Board Member	Pisgah Legal Services
4.	
5.	

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2005	Adams Hendon Carson Crow & Saenger, PA - Shareholders Agreement
2. 2005	72 Patton Associates, LLC - Members Agreement
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Roldinger, Martin K	Date of Report 01/11/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2005	Adams Hendon Carson Crow & Saenger, PA	$ 259,467
2. 2006	Adams Hendon Carson Crow & Saenger, PA	$ 207135
3.		
4.		
5.		

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	
5.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1.	Exempt
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Reidinger, Martin K	Date of Report 01/10/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1.	Exempt	
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☒ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1.		
2.		
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Reidinger, Martin K	Date of Report 10/03/2006

VII. INVESTMENTS and TRUSTS — *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period (1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	C. Gross value at end of reporting period (1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Bank of America Accounts	D	Interest	N	T	Exempt				
2. 72 Fulton Associates	D	Rent	M	Q					
3. Brokerage Account #1									
4. - American Balanced Fund BALCX	A	Dividend	K	T					
5. - Deposit Account	A	Interest	J	T					
6. - Europacific Growth Fund ASPCX	A	Dividend	K	T					
7. First Eagle Global Fund FESGX	A	Dividend	K	T					
8. - Franklin Income Fund FCISX	A	Dividend	K	T					
9. - GE	A	Dividend	J	T					
10. - Growth Fund of America GFACX	A	Dividend	K	T					
11. - Hartford Capital Application Fund HCACX	A	Dividend	L	T					
12. - John Hancock Classic Value Fund JCVCX	A	Dividend	K	T					
13. - Legg Mason Partners Mid Cap Core Fund MCBLC	A	Dividend	J	T					
14. - Legg Mason Value Trust LMVTX	A	Dividend	K	T					
15. - Mass Investors Growth Stock Fund MIGDX	A	Dividend	K	T					
16. - Mass Investors Trust MITCX	A	Dividend	K	T					
17. - UTS SPDR Trust SPY	A	Dividend	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P1 =$1,000,001 - $5,000,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000 P2 =$5,000,001 - $25,000,000	L =$50,001 - $100,000 P4 =More than $50,000,000	M =$100,001 - $250,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
Reidinger, Martin K	10/03/2006

VII. INVESTMENTS and TRUSTS – *income, value, transactions (include those of the spouse and dependent children. See pgs. 34-37 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Brokerage Account #2					Exempt				
2. - Pimco Total Return PTTRX	A	Dividend	M	T					
3. - Vanguard Windsor II VWNFX	A	Dividend	M	T					
4. - American Funds Growth Fund RGAFX	A	Dividend	M	T					
5. - American Funds Euro Pacific RERFX	A	Dividend	L	T					
6. - Third Avenue Small Cap Value Fund TASCX	A	Dividend	L	T					
7. - T Rowe Price New Horizons Fund PRNHX	A	Dividend	L	T					
8. Brokerage Account #3									
9. NFEBX Columbia Marsico Focused Equity Fund	A	Dividend	J	T					
10. Brokerage Account #4									
11. NFEBX Columbia Marsico Focused Equity Fund	A	Dividend	J	T					
12. Real Property Buncombe County NC partial interest		None	M	Q					
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000 Q =Appraisal	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000 T =Cash Market	
3. Value Method Codes (See Column C2)		R =Cost (Real Estate Only) U =Book Value	V =Other S =Assessment	W =Estimated	

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting Reidinger, Martin K	Date of Report 01/10/2007

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

Dates of Appraisals:

Part VII, Page 4, Line 2 - 72 Patton Associates: 11/29/2005

Part VII, Page 4A, Line 12 - Real Property: 12/31/2003

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting Reidinger, Martin K	Date of Report 01/10/2007

IX. CERTIFICATION.

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

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

Signature _____ Date 1/11/2007

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		279	066	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		962	215	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		132	608
Real estate owned-add schedule		505	672	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		140	600				
Cash value-life insurance							
Other assets itemize:							
72 Patton Associates LLC		178	805				
				Total liabilities		132	608
				Net Worth	1	933	750
Total Assets	2	066	358	Total liabilities and net worth	2	066	358
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		200	000	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
BALCX American Balanced Fund	$ 15,840
AEPCX EuroPacific Growth Fund	22,404
FESGX First Eagle Global Fund	21,304
FCISX Franklin Income Fund	17,836
GE	8,510
GFACX Growth Fund of America	36,291
HCACX Hartford Capital Appreciation Fund	54,467
JCVCX John Hancock Classic Value Fund	37,267
MCBLC Legg Mason Partners Mid Cap Core Fund	11,417
LMVTX Legg Mason Value Trust	31,865
MIGDX Mass Investors Growth Stock Fund	30,727
MITCX Mass Investors Trust	26,711
UTS SPDR Trust SPY	50,046
PTTRX Pimco Total Return	103,062
VWNFX Vanguard Windsor II	150,950
RGAFX American Funds Growth Fund	132,594
RERFX American Funds Euro Pacific	69,618
TASCX Third Avenue Small Cap Value Fund	74,013
PRNHX T Rowe Price New Horizons Fund	62,573
NFEBX Columbia Marsico Focused Equities Fund	4,720
Total Listed Securities	$ 962,215

Real Estate Owned	
Personal residence	$ 395,000
Undeveloped land (partial interest)	110,672
Total Real Estate Owned	505,672

Real Estate Mortgages Payable	
Personal residence	$ 132,608

AFFIDAVIT

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

2/2/2007
(DATE)

(NAME)

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

Sworn to and Subscribed before me, Rebecca L. Ledford, this the 2 day of February 2007.

Rebecca L. Ledford
NOTARY PUBLIC

My Commission Expires: 05-24-2009

Senator FEINSTEIN. Thank you very much.

Mr. DeGiusti, please proceed.

STATEMENT OF TIMOTHY D. DEGIUSTI, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA

Mr. DEGIUSTI. Thank you, Senator Feinstein, for holding this hearing, and thanks to the other Committee members as well. I would like to thank President Bush for nominating me and thank Senators Inhofe and Coburn for their support and thank Senator Inhofe for his introduction.

My family members who are here with me are my wife, Elaine; my father-in-law, Judge Ralph Thompson; his wife, my mother-in-law, Barbara Thompson; my brother-in-law, Frank Campbell; sister-in-law, Lisa Campbell; and my sister, Cynthia Kadish. I also have a friend who has made the trip to be here today, my old boss from active duty Army days, Colonel (Retired) Bill Condron.

Thank you.

[The biographical information of Mr. DeGiusti follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Timothy Don DeGiusti

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

   United States District Judge for the Western District of Oklahoma

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

   Office: 204 N. Robinson, Ste. 1550
   Oklahoma City, OK 73102

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

   1962;
   Oklahoma City, OK

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   Married; Elaine Thompson DeGiusti; Homemaker
   Wife's Maiden Name: Elaine Bizzell Thompson
   4 children, 3 are dependent minors

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

   University of Oklahoma College of Law; 1985-1988; Juris Doctor degree received May 1988.

   University of Oklahoma, 1981-1985; B.A. with Distinction, Ethics and Religion, 1985.

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

2000-Present, Holladay, Chilton & DeGiusti, PLLC, Oklahoma City, OK (Partner)
1998-2003, Adjunct Professor of Law, University of Oklahoma College of Law
1993-2000 Andrews, Davis Law Firm, Oklahoma City, OK (Associate, 1993-1995; Partner 1995-2000)
1990-1993, U.S. Army Judge Advocate General's Corps (Trial Counsel)
1988-1990, Andrews Davis Law Firm, Oklahoma City, OK (Associate)
1987, Andrews, Davis Law Firm, Oklahoma City, OK (Summer Law Clerk)
1986, Edmonds, Cole Law Firm, Oklahoma City, OK (Summer Law Clerk)

2005-Present, Luther Bohanon American Inn of Court (Officer)

8. **<u>Military Service and Draft Status</u>: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.**

In 2003 I completed 22 years of military service, active and reserve. My assignments are summarized as follows:

a) 1981-1983, enlisted service with the Oklahoma Army National Guard;
b) 1981-1983, simultaneous participation in Army ROTC officer training at the University of Oklahoma;
c) 1983-1985, Second Lieutenant, Infantry, Oklahoma Army National Guard;
d) 1985-1986, inactive reserve status, U.S. Army Reserve Control Group;
e) 1986-1989, First Lieutenant, Infantry, U.S. Army Reserve (Company Commander 1988-1989);
f) 1989-1990, Captain, Infantry, Oklahoma Army National Guard (Battalion Staff Officer);
g) 1990-1993, active duty, Captain, U.S. Army Judge Advocate General's Corps (Trial Counsel);
h) 1993-1999, Captain (1993-1997), Major (1997-1999), Judge Advocate, U.S. Army Reserve;
i) 1999-2003, Major, Staff Judge Advocate, 45th Infantry Brigade, Oklahoma Army National Guard.

My "serial number" was my Social Security number. All periods of service are characterized as "honorable."

9. **<u>Honors and Awards</u>: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

   a) 2007 Best Lawyers in America;
   b) 2006 Oklahoma Super Lawyers;
   c) Martindale-Hubbell "AV" peer review rating (highest possible rating);
   d) Military awards and decorations include: Distinguished Military Student, Army ROTC; Commandant's List Graduate, Infantry Officer's Basic Course; Honor Graduate, U.S. Army Judge Advocate General's School 122nd Basic Course; Meritorious Service Medal (1st and 2nd awards); Army Commendation Medal (1st and 2nd awards); National Defense Service Medal; Army Achievement Medal; Overseas Service Ribbon; Army Reserve Components Achievement Medal; and the Oklahoma Distinguished Service Medal;
   e) Order of Barristers, University of Oklahoma College of Law;
   f) Dean's Honor Roll, University of Oklahoma College of Law;
   g) President's Honor Roll and Dean's Honor Roll, University of Oklahoma.

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

   a) Oklahoma Bar Association;
   b) Oklahoma County Bar Association;
   c) Commissioner, Oklahoma Uniform State Laws Commission, 2003-Present;
   d) Oklahoma Bar Association Uniform Laws Committee, 2005-Present;
   e) Luther Bohanon American Inn of Court, member, 1997-2000 and 2002-present; Officer, 2005-Present.

11. **<u>Bar and Court Admission</u>:**

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

      State of Oklahoma: Supreme Court of Oklahoma, admitted 1988

   b. **List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.**

      State: Supreme Court of Oklahoma, admitted 1988;
      Federal: United States Court of Appeals for the Tenth Circuit, admitted 1988; United States District Court for the Western District of Oklahoma, admitted 1988;

United States District Court for the Northern District of Oklahoma, admitted 1989;
United States Army Court of Military Review, admitted 1990;
United States Court of Appeals for the Armed Forces, admitted 1998.

There have been no lapses in membership in any of these courts.

12. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

a) 45th Infantry Division Association, 1999-Present;
b) Quail Creek Golf and Country Club, social member, 2006-Present;
c) Oklahoma City Men's Dinner Club, 1998-1999;
d) Knights of Columbus, 1993-1994.

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I have not belonged to, and would not belong to, any organization which practices "invidious" discrimination on the basis of race, sex, or religion. I have been a member of two fraternal organizations:

a) Knights of Columbus, 1993-1994. The Knights of Columbus is a Catholic men's organization that was formed in the late 1800s. Its primary goals are charitable.

b) Oklahoma City Men's Dinner Club, 1998-1999. This club consists of Oklahoma City area businessmen and meets about eight times per year for a dinner program by nationally known speakers. One such meeting each year is attended by spouses of members.

My membership in each of the above-listed organizations was short-lived, and both were discontinued a number of years ago.

13. Published Writings and Public Statements:

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

"Unlawful Command Influence: Raising and Litigating the Issue," The Army Lawyer, September 1993.

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

None

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

None

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

As an adjunct professor at the University of Oklahoma College of Law from 1998-2003, I gave numerous lectures while teaching courses on military law and on trial techniques. I have also taught occasional continuing legal education seminars for the Oklahoma Bar Association on issues related to civil litigation. To my knowledge, none of my lectures have been recorded.

e. **Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these**

interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

None

14. **<u>Judicial Office</u>: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.**

I have held no judicial office.

15. **<u>Citations</u>: If you are or have been a judge, please provide:**

    a. **citations for all opinions you have written (including concurrences and dissents);**

    b. **a list of cases in which certiorari has been requested or granted;**

    c. **a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

    d. **a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;**

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

    f. **citations to all cases in which you were a panel member in which you did not issue an opinion.**

I have never served as a judge.

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

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

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

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

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

I have never served as a judge.

17. <u>Public Office, Political Activities and Affiliations</u>:

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

I have not held public office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never held membership or office in any political party or election committee. I have never held a position or played a role in a political campaign.

18. <u>Legal Career:</u> Please answer each part separately.

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

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

I did not serve as a clerk to a judge.

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

I have never practiced alone.

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

2000-Present, Holladay, Chilton & DeGiusti, PLLC;
204 North Robinson, Suite 1550, Oklahoma City, OK 73102;
(Partner)

1998-2003, University of Oklahoma College of Law;
(Adjunct Professor of Law)

1993-2000, Andrews, Davis Law Firm;
100 North Broadway, Suite 3300, Oklahoma City, OK 73102
(Associate, 1993-1995; Partner 1995-2000)

1990-1993, U.S. Army Judge Advocate General's Corps
(Trial Counsel)

1988-1990, Andrews Davis Law Firm
100 North Broadway, Suite 3300, Oklahoma City, OK 73102
(Associate)

b. **Describe:**

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

Upon graduation from law school in 1988, I became an associate with the Oklahoma City law firm Andrews, Davis, Legg, Bixler, Milsten & Murrah. My practice focused in the area of business and general civil litigation.

In 1990 I left private practice for a three-year active duty tour in the U.S. Army Judge Advocate General's Corps. I was stationed in Germany, and served as a prosecutor and command legal advisor. During my time as an Army prosecutor (1990-1993), I tried 57 courts-martial cases, which were in essence federal criminal trials.

In 1993 I returned to private practice in Oklahoma City with my former law firm, Andrews, Davis. My practice again focused in the area of business and general civil litigation, with the addition of military law as a practice area. In 1995 I became a partner with the firm.

In 2000 I, along with two partners, formed the law firm Holladay, Chilton & DeGiusti, PLLC, where I currently practice. Our firm now has seven lawyers, and our practice concentrates mainly in the areas of business and

general civil litigation. Fifteen of the eighteen years I have practiced law have been mainly devoted to an active civil trial practice in state and federal courts. After I returned to private practice I occasionally represented military defendants in courts-martial as a civilian defense counsel. I have also represented military members and Department of Defense civilians in security clearance matters. Military and national security law remains a part of my current practice.

ii. your typical clients and the areas, if any, in which you have specialized.

Typical clients include corporations and other business entities, utility companies, general contractors, individuals involved in business disputes, and military members.

I consider myself to have particular experience and training in practice areas including business litigation, general trial practice, class action litigation, contract disputes, business torts, military and national security law, and criminal law.

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

i. Indicate the percentage of your practice in:

1. **federal courts;** 50%
2. **state courts of record;** 50%
3. **other courts.**

ii. Indicate the percentage of your practice in:

1. **civil proceedings;** 80%
2. **criminal proceedings.** 20%

d. 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 tried over 70 cases to conclusion, including courts-martial cases in which a plea of guilty was entered but which also involved the presentation of witnesses, evidence and argument in the punishment phase. About 27 of the 57 courts-martial trials I prosecuted while on active duty were contested cases which did not involve guilty pleas. Overall, my cases are about equally divided between cases in which I was sole counsel, and cases in which I had co-counsel. In my civil practice, staffing almost always involves another lawyer of the firm as co-

counsel. Since 1995 I have been lead counsel in the great majority of cases in which I have been involved.

i. **What percentage of these trials were:**
   1. **jury:** 50%
   2. **non-jury:** 50%

e. **Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.**

I have not practiced before the Supreme Court of the United States

19. **Litigation: Describe the ten (10) 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 representation;**

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

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

a) U.S. v. Youngberg; 1992; LTC Buris C. Dale, Military Judge (retired; 254/780-4512); co-counsel, LTC Tony Jones (703/697-9235); defense counsel, MAJ Jim Hohensee. The appeals of this case are reported at 38 M.J. 635 (ACMR 1993), and 43 M.J. 379 (CAAF 1995).

This case was a contested first degree murder prosecution in which the victim was a female German civilian. The accused was an Army Private stationed in Bad Kreuznach, Germany. The case involved a particularly brutal murder, and the prosecution was based almost entirely on scientific evidence. Such evidence included fiber analysis, blood spatter analysis, fingerprint analysis, footprint analysis, forensic pathology, and DNA evidence. The crime was investigated by German police, and all of the expert witnesses, other than the forensic pathologist, were German. The case also involved speedy trial issues, as the accused was held in pretrial confinement on German authority for nine months.

The case was a general court-martial tried to a military jury. The accused was convicted and received a life sentence. The matter was not tried as a capital case at the

insistence of the German authorities. I was one of two trial prosecutors on the case, and took responsibility for half of the trial presentation.

b) U.S. v. Sombolay; 1991; COL Frank Ecker, Military Judge; co-counsel, COL Randy Kirkvold (915/568-6040); defense counsel, Edward Bellen and MAJ Jim Hohensee. The appeal of this case is reported at 37 M.J. 647 (ACMR 1993).

The case against SPC Albert Sombolay was, to my knowledge, the only espionage case from the first Gulf War. SPC Sombolay attempted to make contact with Iraqi officials during operation Desert Shield. He ultimately succeeded in contacting officials of another Middle East country, selling them certain information and items of U.S. military equipment, including biological and chemical protective equipment. Sombolay was arrested by military authorities and placed in pretrial confinement after tips prompted an investigation by intelligence personnel and military criminal investigators.

Sombolay ultimately entered a guilty plea; however, the trial of the punishment phase took several days and involved the presentation of numerous witnesses, including an expert in biological and chemical defensive equipment and antidote treatments. SPC Sombolay was convicted in accordance with his plea, and received a sentence of 34 years confinement, reduced to 19 years pursuant to a pretrial agreement. I was one of two prosecutors on the case. I handled the pretrial confinement matters, and my responsibilities at trial included presentation of the biological and chemical defense expert witness.

c) U.S. v. Flores; 1993; COL Larry D. Vick, Military Judge (retired; 910/884-0121); defense counsel, Edward Bellen and COL Christopher Garcia (703/697-3387). This case is not reported.

Second Lieutenant Flores was a physician's assistant stationed in Baumholder, Germany. He sexually assaulted at least seven women during the course of routine pelvic examinations. The case was a contested general court-martial tried to a military jury. Because the accused was a medical officer and the numerous victims were from the same military community, the case had a significant impact on that community. The case also involved extensive, detailed expert testimony to address the accused's defense that he had properly performed the examinations.

The accused was convicted, was dismissed from the service (the equivalent of a dishonorable discharge), and was sentenced to 5 years of confinement. I was the sole prosecutor on the case, and received an Army Achievement Medal in recognition of the difficult nature of the prosecution.

d) U.S. v. Armstrong; 1992; LTC Richard Hough, Military Judge; defense counsel, (then) CPT Ramona Melson (currently with the Federal Communications Commission, 202/418-7240). This case is not reported.

This was a contested child sexual abuse case which involved two teenage female victims. The accused, a Staff Sergeant stationed at Baumholder, Germany, was the natural father of the victims. Prior to trial, one of the victims recanted her testimony previously given at a preliminary hearing, and refused to testify at trial. The case presented challenging evidentiary issues, and ultimately required the placement of the testifying victim into foster care. The accused was convicted, and was sentenced to a dishonorable discharge and 12 years of confinement.

I was the sole prosecutor assigned to the case as well as the victim/witness liaison officer.

e) U.S. v. Mundell; 1993; COL Frank Ecker, Military Judge; co-counsel, COL William Condron (retired; currently with the Pension Benefit Guaranty Corporation, 202/326-4400); defense counsel, LTC Jeffrey Pederson (currently assigned to the Office of the Judge Advocate, USAREUR, 011-49-6221-57-8023 or 7532). The appeal of this case is reported at 40 M.J. 704 (ACMR 1994).

The accused, SPC Lloyd Mundell, was tried at a general court-martial to a military jury at Bad Krueznach, Germany. SPC Mundell, a male soldier, was accused of non-consensual sodomy and indecent assault involving two male victims who were both intoxicated at the time the offenses were committed. Because the victims were intoxicated, the case was made primarily with circumstantial evidence. Evidence of uncharged prior misconduct of a similar nature was also presented. The accused was convicted, and was sentenced to a dishonorable discharge and confinement for 20 years.

I was one of two prosecutors on the case, and took responsibility for half of the trial presentation. A challenging aspect of the case was that, due to the unexpected illness of the prosecutor originally assigned to the case, my co-counsel and I took up the case less than two weeks before trial, yet obtained a conviction.

f) U.S. v. Huff; 1995; Tinker Air Force Base, Oklahoma; Lt. Col. Linda S. Murnane, Military Judge (retired; 502/595-4024); co-counsel, Lt. Col. John K. Weis (210/536-3301); government counsel, Capt. Linette I. Wilson and (then) Capt. Paul D. Barkhurst (210/299-2346). This case is not reported.

This was a contested case in which I was the civilian defense counsel representing an Air Force Technical Sergeant accused of maltreatment of subordinates, and assault and battery. The case was tried to a military jury.

The accused was found not guilty of the maltreatment counts, but convicted of the assault charge. Nevertheless, after presentation of sentencing evidence in extenuation and mitigation, the accused received a sentence consisting only of a reprimand. Tsgt. Huff continued to serve in the Air Force until retirement, and was honorably discharged. I was the lead trial defense counsel, and took responsibility for substantially all of the presentation of the case.

g) Karin Morrison, et al. v. Oklahoma Natural Gas Co., Case No. CJ-2002-855, District Court for Carter County, Oklahoma. The assigned trial judge was Judge Lee Card. This case is not reported.

The plaintiffs sued Oklahoma Natural Gas Company ("ONG") in 2002 asserting class action allegations of improper sales tax charges. The plaintiffs claimed that they, and others similarly situated, were incorrectly charged municipal sales taxes when they did not live within the boundaries of a municipality. I represented ONG as lead counsel.

ONG initially moved for dismissal on jurisdictional grounds, which was granted by the trial court. The Oklahoma Court of Civil Appeals reversed and remanded the case to the trial court. Because of the intervening passage of a new statutory provision in Oklahoma, class certification for the entire period claimed by the plaintiffs appeared doubtful. The case was ultimately settled, and disposed of through use of a settlement class involving comprehensive claims procedures.

I was lead counsel for ONG. ONG's corporate general counsel was Joe McCormick (405/551-6896). Local counsel for ONG in Carter County was Brent Bahner (580/223-4321). Opposing counsel was Gregg Renegar (405/285-8118).

h) Larry J. Wasson v. Francis J. Harvey, Secretary of the Army, CIV-04-945 C, U.S. District Court for the Western District of Oklahoma. The assigned trial judge was Judge Robin Cauthron. This case is not reported.

This case was a class action on behalf of a class of 462 Army officers asserting that they were improperly denied promotion for failure to meet civilian education requirements. The case was filed in 2004. Defendant's challenges on jurisdictional grounds were defeated. The case was ultimately resolved through the certification of a settlement class. Through the settlement, each class member was reconsidered for promotion by a Special Selection Board, and each class member was deemed educationally qualified for promotion.

I, along with Joe White (405/858-8899), served as class counsel. Lead counsel for the defendant was MAJ Rebecca Ausprung, U.S. Army Litigation Division (703/696-1627).

i) Primus Automotive Financial Services, Inc. v. Central National Bank and Trust Company of Enid, CIV-00-538-M, U.S. District Court for the Western District of Oklahoma. The assigned trial judge was Judge Vickie Miles-LaGrange. This case is not reported.

The case was filed in 2000 by Primus Automotive Financial Services, a division of Ford Motor Company ("Primus"), seeking recovery for misrepresentation by a bank regarding the status of a checking account of one of its customers. The customer was indebted to Primus, which had extended automotive floor-plan financing. The case was

tried to a jury, which returned a verdict for the plaintiff, Primus. Both the theory of recovery, and the nature of expert testimony presented in support of Primus' case, were fairly unique.

I was lead counsel for Primus. My co-counsel was Jana L. Dunagan (405/924-3857). Opposing counsel was Katresa J. Riffel (580/234-8447).

j) Martha Sue Esco, et al. v. Bank One Trust Co., N.A., CIV-03-0842-C, U.S. District Court for the Western District of Oklahoma. The assigned trial judge was Judge Robin Cauthron. This case is not reported.

The plaintiffs, three beneficiaries of an irrevocable life insurance trust, filed suit in 2003 against Bank One as trustee asserting breach of trust. The plaintiffs alleged that Bank One negligently allowed life insurance held by the trust to lapse. The court granted summary judgment to the plaintiffs on the issue of liability, and the issue of damages was tried to the court. The court entered a damages judgment in favor of the plaintiffs. This case involved interesting damages evidence and expert testimony, which involved economic analysis of life insurance and life expectancy data.

I was lead counsel for the plaintiffs. Opposing counsel were Blaine Schwabe and Matthew Thompson (405/235-1110).

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

Other than teaching, which is addressed in the next question, among the most significant non-litigation legal activities I have pursued has been my service on the Oklahoma Uniform State Laws Commission.

Since 2003 I have served as a Commissioner of the Oklahoma Uniform State Laws Commission. I was appointed to the Commission by Governor Brad Henry. As an Oklahoma Commissioner, I am also a delegate to the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). NCCUSL has drafted numerous uniform laws, many achieving adoption in all fifty states, such as the Uniform Commercial Code. I currently serve on a NCCUSL drafting committee which is drafting a uniform act addressing interstate depositions and discovery of documents. I view my service as a Commissioner, and work with NCCUSL, as an important contribution to the advancement of the law.

21. Teaching: **What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course,**

and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

From 1998-2003 I taught courses in military law and trial techniques as an adjunct professor at the University of Oklahoma College of Law. Each course is described below.

At the suggestion of an associate dean of the law school, I designed a course covering many facets of military law. The title of the course was "Military Justice and the Law of War." The course combined lecture, guest speakers, and student participation to enhance the learning process. The course covered substantive and procedural aspects of the Uniform Code of Military Justice, and the Manual for Courts-Martial, as well as basic concepts within the law of war. The course was limited to about twenty students, and regularly had a waiting list of students hoping to get a spot in the class.

Each spring semester I taught a course called "Trial Techniques." The course was approached in a hands-on fashion. Students learned by doing, and the class culminated each semester with mock jury trials presented by the students. The course covered each major element of trial practice, including jury selection, opening statement, direct and cross-examination, and closing argument.

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

a) Yearly payments from Andrews Davis Legg Bixler Misten & Price (my former law firm) in the form of termination bonus and stock repurchase payments; payments fluctuate, and total approximately $850.00 per year.

b) Termination payment from Holladay, Chilton & DeGiusti, PLLC (current firm); such payment is expected to be approximately one-fourth of the appraised value of the hard assets of the firm, and fee payments attributable to my pre-termination work received during the 90 days following my termination.

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

None.

24. **Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year,**

including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

26. **Potential Conflicts of Interest:**

    a. **Identify the parties, 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. Explain how you would address any such conflict if it were to arise.**

    Any matter involving a former client and concerning which I gained some knowledge during such representation would present a potential conflict. I do not anticipate a significant number of such conflicts.

    b. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

    In any cases of actual or potential conflict, I will follow the Code of Conduct for United States Judges and all applicable policies and procedures.

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

From 1988-1990 I participated as counsel in several referred matters from Legal Aid of Western Oklahoma. A requirement of Legal Aid administration and referral is that the clients fall below certain income levels established by Legal Aid. The matters referred to me during this time were primarily family law matters. My services were provided on a *pro bono* basis. I estimate that approximately 30-50 hours were devoted to each such matter.

From 1995-approximately 1999 I participated as supervising counsel within my firm regarding several referred matters from Legal Aid of Western Oklahoma. My

services were provided on a *pro bono* basis. I estimate that approximately 5-10 hours were devoted to each such matter.

In 2004 I was appointed by Judge Joe Heaton to provide representation pursuant to the Soldiers and Sailors Civil Relief Act to Jeffery Urquhart in U.S. v. Urquhart, et al., CIV-03-1622-HE. My services were provided on a *pro bono* basis.

In 2005 I participated in the Oklahoma County Bar Association's "Ask a Lawyer" program, which provides *pro bono* legal advice to citizens throughout Oklahoma on a call-in basis. I participated in one shift of approximately 3 hours.

28. Selection Process:

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

No selection commission is currently used in my jurisdiction.

I communicated my interest in the judicial vacancy by letters to Senator James Inhofe and Senator Tom Coburn, and also provided my resume. I was then contacted by their respective chiefs of staff, and interviews were scheduled in Washington, D.C. I was separately interviewed by each senator and members of their staffs.

As a result of those interviews, my name and the names of at least two other candidates were submitted to the Office of White House Counsel for further consideration. I was subsequently interviewed in Washington, D.C. by two representatives of the Office of White House Counsel and one representative of the Justice Department. I was later selected by the President and my nomination was forwarded to the Senate on February 15, 2007.

b. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.**

No.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
DeGiusti, Timothy D	U.S. District Court, Okla.(W)	02/19/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge (nominee)	5a. Report Type (check appropriate type) ☒ Nomination, Date 02/15/2007 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	6. Reporting Period 01/01/2006 to 01/31/2007
7. Chambers or Office Address 204 N. Robinson, Suite 1550 Oklahoma City, Oklahoma 73102	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer_____ Date_____	

***IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Partner	Holladay, Chilton & DeGiusti, PLLC
2. officer	Luther Bohanon American Inn of Court
3. co-trustee	Trust #1A and Trust #1B (#1A and #B refer to separate accounts within the same Trust)
4. co-trustee	Trust #2
5.	

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2000	Andrews Davis Legg Bixler Milsten & Price termination agreement
2. 2007	Holladay Chilton & DeGiusti PLLC termination agreement
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 9	Name of Person Reporting DeGiusti, Timothy D	Date of Report 02/19/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2007 ytd	Holladay, Chilton & DeGiusti PLLC partner compensation	$ 22,690
2. 2006	Holladay, Chilton & DeGiusti PLLC partner compensation	$ 218,450
3. 2005	Holladay, Chilton & DeGiusti PLLC partner compensation	$ 203,100
4. 2006	Andrews Davis Legg Bixler Milsten & Price termination payments	$ 843.03
5. 2005	Andrews Davis Legg Bixler Milsten & Price termination payments	$ 953.70

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	
5.	

IV. REIMBURSEMENTS – *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1.	Exempt
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 9	Name of Person Reporting DeGiusti, Timothy D	Date of Report 02/19/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1.	Exempt	
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. Citibank	Credit card	J
2. Chase Bank USA	Credit card	J
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 9

Name of Person Reporting	Date of Report
DeGiusti, Timothy D	02/19/2007

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Rental Property, Oklahoma City	D	Rent	M	W	Exempt				
2. Bank of America accounts	A	Interest	J	T					
3. Chase Bank	A	Interest	J	T					
4. U.S.-Employees O.C. Federal Credit Union	A	Interest	J	T					
5. Oklahoma College Savings Plan		None	J	T					
6. Oklahoma College Savings Plan		None	J	T					
7. Edward Jones - IRA #1									
8. - Capital World Growth & Income Fund A	A	Dividend	J	T					
9. - Lord Abbett Affiliated Fund Cl B	A	Dividend	J	T					
10. - APA Common Stock	A	Dividend	K	T					
11. - EuroPacific Growth Fund Cl C	A	Dividend	J	T					
12. - AMCAP Fund A (sold)	A	Dividend							
13. Edward Jones - IRA #2									
14. - Capital World Growth & Income Fund A	A	Dividend	K	T					
15. - Lord Abbett Affiliated Fund B	A	Dividend	K	T					
16. - EuroPacific Growth Fund A	A	Dividend	K	T					
17. - New Perspective Fund A	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 9	Name of Person Reporting DeGiusti, Timothy D	Date of Report 02/19/2007

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. - AMCAP Fund A (sold)	A	Dividend							
19. Trust #1A									
20. - Edward Jones Money Market Investment Shares	A	Dividend	J	T					
21. - American Balanced Fund A (sold)	A	Dividend							
22. Trust #1B									
23. - Edward Jones Money Market Investment Shares	A	Dividend	K	T					
24. Trust #2									
25. - Edward Jones Money Market Investment Shares	A	Dividend	J	T					
26. - JP Morgan Chase & Co Global Bond	B	Interest	K	T					
27. - Grand River Dam Authority Rev Bond	A	Interest	J	T					
28. - BAC Common Stock	A	Dividend	J	T					
29. - CVX Common Stock	A	Dividend	J	T					
30. - KO Common Stock	A	Dividend	J	T					
31. - COP Common Stock	A	Dividend	J	T					
32. - DD Common Stock	A	Dividend	K	T					
33. - XOM Common Stock	A	Dividend	K	T					
34. - GE Common Stock	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	R =Cost (Real Estate Only) V =Other	S =Assessment W =Estimated	T =Cash Market	

FINANCIAL DISCLOSURE REPORT Page 6 of 9	Name of Person Reporting DeGiusti, Timothy D	Date of Report 02/19/2007

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. - PFE Common Stock	A	Dividend	J	T					
36. - PG Common Stock	A	Dividend	J	T					
37. - American Balanced Fund A	C	Dividend	M	T					
38. - Capital World Growth & Income Fund A	B	Dividend	M	T					
39. - Investment Company of America Fund A	B	Dividend	M	T					
40. - Washington Mutual Fund A	B	Dividend	M	T					
41. - ADP Common Stock A	A	Dividend	J	T					
42. - IBM Common Stock	A	Dividend	K	T					
43. - PEP Common Stock	A	Dividend	J	T					
44. - UNH Common Stock	A	Dividend	K	T					
45. - WMT Common Stock	A	Dividend	J	T					
46. - EuroPacific Growth Fund A	A	Dividend	L	T					
47. - Growth Fund of America Fund A	A	Dividend	L	T					
48. - New Perspective Fund A	A	Dividend	L	T					
49. - CMCSA Common Stock		None	J	T					
50. - UPL Common Stock		None	J	T					
51. - AMCAP Fund A (sold)	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less F =$50,001 - $100,000	B =$1,001 - $2,500 G =$100,001 - $1,000,000	C =$2,501 - $5,000 H1 =$1,000,001 - $5,000,000	D =$5,001 - $15,000 H2 =More than $5,000,000	E =$15,001 - $50,000
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less N =$250,001 - $500,000 P3 =$25,000,001 - $50,000,000	K =$15,001 - $50,000 O =$500,001 - $1,000,000 R =Cost (Real Estate Only)	L =$50,001 - $100,000 P1 =$1,000,001 - $5,000,000 P4 =More than $50,000,000	M =$100,001 - $250,000 P2 =$5,000,001 - $25,000,000 T =Cash Market	
3. Value Method Codes (See Column C2)	Q =Appraisal U =Book Value	V =Other	S =Assessment W =Estimated		

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Name of Person Reporting	Date of Report
DeGiusti, Timothy D	02/19/2007

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. - C-Common (sold)	A	Dividend							
53. - CLX - Common (sold)	A	Dividend							
54. - HD - Common (sold)	A	Dividend							
55. - ITW - Common (sold)	A	Dividend							
56. - UPL - Common (sold)		None							
57. -Puerto Rico Municipal Finance Agency Revenue Bond (sold)	B	Interest							
58. -VA State Housing Dev. Authority General Purp. Bond (sold)	B	Interest							
59. Holladay, Chilton & DeGiusti, PLLC 401(k)	D	Dividend	L	T					
60. - DWS Dreman High Return Equity - A									
61. - DWS Dreman High Return Equity - B									
62. - DWS Short Term Bond Fund - A									
63. - DWS International Fund - A									
64. - DWS Cash Investment Trust - A									
65. - DWS Short Term Bond Fund - B									
66. - DWS International Fund - B									
67. - DWS Cash Investment Trust - B									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
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2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000		P4 =More than $50,000,000		
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 8 of 9	Name of Person Reporting DeGiusti, Timothy D	Date of Report 02/19/2007

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

FINANCIAL DISCLOSURE REPORT Page 9 of 9	Name of Person Reporting DeGiusti, Timothy D	Date of Report 02/19/2007

IX. CERTIFICATION.

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

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

Signature _____ Date 19 Feb 2007

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		2	500	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		4	839
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		576	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		70	000				
Cash value-life insurance							
Other assets itemize:							
401(k) account		53	271				
IRA/Money Market investment accounts	1	152	254				
				Total liabilities		4	839
				Net Worth	1	849	186
Total Assets	1	854	025	Total liabilities and net worth	1	854	025
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	$ 427,000
Rental property	149,000
Total Real Estate Owned	$ 576,000

IRA and Money Market Investment Shares Accounts: $ 1,152,254
(See attached Financial Disclosure Report for detailed investments.)

AFFIDAVIT

I, Timothy D. DeGiusti, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

16 Feb 2007
(DATE)

(NAME)

(NOTARY)

LORI GORRELL
Notary Public
State of Oklahoma
Commission # 06007106 Expires 07/24/10

Senator FEINSTEIN. Thank you very much.

Judge Sammartino, welcome.

STATEMENT OF JANIS LYNN SAMMARTINO, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Judge SAMMARTINO. Thank you, Senator Feinstein, for holding this hearing and for chairing these proceedings today on behalf of the Committee on the Judiciary. Additionally, thank you is extended for your support in getting to this process and for your participation in the bipartisan commission that brings forward the nominees, and myself in particular, from California. It is very much appreciated.

I would like to thank President Bush for the trust and confidence that he has placed in me by bringing my nomination forward to this Committee.

Also, the other home-State Senator from the State of California, I would like to thank Barbara Boxer for her support, both in the bipartisan commission process and in bringing my name forward also to this Committee.

I have numerous people here with me today from the State of California, and I would like to introduce them quickly.

My mother and father, Marion and Angelo Sammartino are here from Oceanside, California. My two sons, Joseph Gardner and Jonathan Gardner. Joseph is from San Diego. Jonathan is from Berkeley, California. My sister, Stephanie McPherson, is currently residing in Richmond, Virginia. Joseph's wife, Christine, now from San Diego, California, and her mother, Maria Strzelczyk, from Glen Rock, New Jersey. My dear friend, Superior Court Judge Herbert Hoffman, retired from the Superior Court, from Delmar, California. And two very good friends who came from La Jolla, California, for the proceedings today: Connie and Don Goertz.

Again, I would like to thank the Committee for these proceedings today, Senator Feinstein.

[The biographical information of Judge Sammartino follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Janis Lynn Sammartino
   Janis Sammartino Gardner

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

   United States District Judge for the Southern District of California

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

   Office: San Diego Superior Court, 220 West Broadway; San Diego, CA 92101

   Residence: Solana Beach, California

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

   1950, Philadelphia, PA

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Divorced; no dependant children

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

   University of Notre Dame Law School; 1972 – 1975; J.D., May 1975

   Occidental College; 1968 – 1972; A.B., June 1972

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee

since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

1995 – Present, Judge
Superior Court of San Diego County
220 West Broadway
San Diego, CA 92101

1994 – 1995, Judge
Municipal Court of the City of San Diego
220 West Broadway
San Diego, CA 92101

1976 – 1994, Deputy City Attorney
San Diego City Attorney's Office
1200 Third Avenue, Suite 1620
San Diego, CA 92101

1975 – 1976, Law Clerk to Superior Court Judge Douglas Seely
101 South Main Street
South Bend, IN 46601

1974, Law Clerk
Higgs Fletcher & Mack
401 West A Street, Suite 2600
San Diego, CA 92101

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

   I have not served in the military.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   President-elect of America Inns of Court, Louis M. Welch Chapter
   Selected by "San Diego Magazine" as one of 50 San Diegans to watch in 2006.
   Phi Beta Kappa, Junior year induction, Occidental College
   Bachelor of Arts degree, Magna Cum Laude, Occidental College
   Outstanding Political Science Senior Award, Occidental College
   Political Science Departmental Honors, Occidental College

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

American Inns of Court, Louis M. Welch Chapter, Master and President-elect
Association of Business Trial Lawyers of San Diego, Member, 2001 to present,
Board of Governors 2001-2003 and 2006 to present
San Diego County Judges Association
National Association of Women Judges
State Bar of California, Inactive member
Public Law Section, Inactive member
San Diego County Bar Association
Environmental Law and Land Use Section
Public Lawyers Committee, Member and Chair - 1987 and 1988
Public Relations Committee, Member - 1986-1988
Lawyers Club of San Diego
California Women Lawyers
San Diego Superior Court Executive Committee, 2001 to present
California Judges Association, Judicial Ethics Committee, Member, 2003 to 2005
California Judicial Ethics Taskforce, Member, 2006 to present
Trial Court Presiding Judges Advisory Committee (TCPJAC) to the Judicial Council of California, Member 2006 to present
TCPJAC Executive Committee, Member, 2006 to present
TCPJAC Joint Legislation Subcommittee, Member, 2006 to present
TCPJAC Joint Issues Meeting Planning Subcommittee, Member, 2006 to present
Court Technology Advisory Committee (CTAC) to the Judicial Council of California, Member, 2006 to present
Trial Court Budget Working Group, Member, 2006 to present
Supervising Judges Education Ad Hoc Working Group, Member, 2006 to present
Enhanced Civil Assessment Working Group, Member, 2006 to present
California Judicial Education and Research (CJER) Continuing Judicial Studies Education Committee, Member, 2006 to present
California Bench-Bar Coalition, Member, 2006 to present

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.
December 1975 U.S. District Court, Southern District of California

The Bar of the State of California, 1975

Under the Constitution of California, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office. See California Constitution Article 6, § 9.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

California Supreme Court, 1975

United States District Court for the Southern District of California, 1975

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Phi Beta Kappa - Epsilon Chapter, San Diego
University of Notre Dame Law School Alumni Association
Women's International Center
A nonprofit education and service foundation which acknowledges, honors, and encourages women.
UCSD Medical Center Auxiliary
The purpose of the auxiliary is to support the medical center's programs in the areas of health care, education, and service to the community.
Stein Institute for Research on Aging, UCSD School of Medicine
The purpose of this organization is to support research, education, and patient care.
Board of Advisors of UCSD Medical Center - 1985-1993, president 1989 - 1990
Saint James Catholic Church, parishioner - 1983 to present
La Jolla Beach and Tennis Club

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed in 12a discriminate on the basis of race, sex, or religion.

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

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

Author, "Environmental Equity - The San Diego Experience," Land Use Forum (CEB, Vol. 2, No. 1/Winter 1993).

Author, "Affordable Housing and Growth Management - A Case Study," Land Use Forum (CEB, Vol. 1, No. 1/Fall 1991).

Co-author, "Facility Financing in the 1990's: The Second Step in Urban Growth Management," Journal of Urban and Contemporary Law (Vol. 38, 1990).

Co-author, "Growth Management v. Vested Rights, One City's Experience: A case Study of San Diego," American Bar Association Journal, The Urban Lawyer (Summer 1998, Vol. 20, No.3).

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

None

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

None

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

I gave the following speeches, without a text or notes:

January 18, 2007; North San Diego County Bar Association Dinner meeting; State of the Court

December 2, 2006; Certified Family Law Specialists (CFLS); San Diego County Bar Association Annual Winter Seminar; Overview of court issues and family law issues for 2007

October 22, 2006; Association of Business Trial Lawyers (ABTL); Annual Meeting: When Things Go Wrong; Presenter on Evidentiary Issues Panel

September 6, 2006; Association of Business Trial Lawyers (ABTL); Mini-Annual Seminar - Master of the Art: Building to the Close; Presided over opening statement presentation by member-attorneys

July 19, 2006; San Diego County Bar Association; Bridging the Gap; Overview of San Diego Superior Court

July 18, 2006; Certified Family Law Specialists (CFLS) Meeting; Court Issues Impacting the Family Law Division

July 13, 2006; Environmental Law Section of San Diego County Bar Association Meeting; Role of the Presiding Judge

June 15, 2006; North County Lawyers Association; 50th Anniversary of North County Bar; Dedicated Distinguished Jurist Gallery

April 20, 2006; Lawyers Club of San Diego; Bring Your Child to Work; Overview of San Diego Superior Court

December 2005; San Diego County Bar Association; Bridging the Gap; Overview of San Diego Superior Court

December 10,2005; Family Law Section of San Diego County Bar Association; Annual Winter Seminar; Introducing New Family Law Judges and Identification of Issues for Upcoming Year

March 21, 2005; Association of Business Trial Lawyers (ABTL); Monthly meeting; Civil Independent Calendar System Panel Discussion

September 18, 2004; Association of Business Trial Lawyers (ABTL); Mini-Annual Seminar- Trying the Punitive Damage Case; Presided over Examination of Expert Witnesses

September 15, 2004; California Judicial Education and Research (CJER); Annual Training; Instructor for Ethics for the Bench

July 26, 2004; International Teen Leadership Group; Visit to Courthouse; Introduction to San Diego Superior Court

June 10, 2004; San Diego County Bar Association; Bench-Bar Reception; Welcome to Graduating Law Students

April 22, 2004; Lawyers Club of San Diego; Bring Your Child to Work Day; Introduction to San Diego Superior Court

June 25, 2003; Litigation Section of California State Bar Association; Meeting; Discussion of Civil Independent Calendar System

October 29, 2002; The Bishop's School; Parents Meeting; How to Handle Freedoms (such as driving) Responsibly and the Consequences of Not Acting Responsibly

November 7 & 14, 2000; The Bishop's School; 9th and 10th Grades; How to Handle Freedoms (such as driving) Responsibly and the Consequences of Not Acting Responsibly

March 24, 1999; Torrey Pines High School Presentations; Classroom; How to Handle Freedoms (such as driving) Responsibly and the Consequences of Not Acting Responsibly

October 20, 1998; The Bishop's School; Parents Meeting; How to Handle Freedoms (such as driving) Responsibly and the Consequences of Not Acting Responsibly

March 14, 1998; Family Law Institute, California Judicial Education and Research (CJER); Annual Training; Panel on Settlements

January 21, 1998; San Diego County Bar Association; Bridging the Gap; Family Law Overview

December 7, 1996; Certified Family Law Specialists (CFLS); Seminar Panelist

April 29, 1995; San Diego County Bar Association; DUI Seminar; Trial Setting Department procedures, dispositions, sentencing parameters

April 30, 1992 ; La Jolla Bar Association; Monthly meeting; Role of City of San Diego's Land Use Policy on Economic Development

February 6, 1992; Land Use Committee of Environmental Law Section of San Diego County Bar Association Meeting; Panel on Land Use

November 16, 1989; California Association of Subdivision Consultants; Meeting; Issues Facing San Diego in Land Use

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

San Diego County Bar Association Bar Report, Oct. 18, 2006; "Presiding Judge Janis Sammartino Opens Up - Presiding Judge Shares Her Thoughts On San Diego's Growth, Emerging Technology and the Court's Relationship with the Bar"

Los Angeles Daily Journal; Nov. 1, 2005; "New Presiding Judge Sees Challenges Mount"

The (San Diego) Daily Transcript; Oct. 24, 2005; "New Presiding Judge Looks to Improve Access to Legal System"

North (San Diego) County Times; Oct. 10, 2005; "N. County woman prepares for job as presiding judge"

Los Angeles Daily Journal; Feb. 24, 1995; "She's Defined by Earnestness"

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Judge of the San Diego Superior Court, 9/29/95 to present. I was originally appointed to the Superior Court and subsequently reelected on 11/5/96 and 11/5/02. My current term ends 6/4/09. The Superior Court has original jurisdiction over all state criminal and civil cases in San Diego County.

Judge of the San Diego Municipal Court, 2/2/94 to 9/29/95 – appointed.
The Municipal Court had original jurisdiction over limited civil matters ($25,000 or less in controversy) and misdemeanor criminal matters (maximum six month jail sentence). In California in 1998, the Municipal Court was consolidated with the Superior Court.

15. **Citations**: If you are or have been a judge, please provide:

a. citations for all opinions you have written (including concurrences and dissents);

California state trial judges do not publish opinions on cases.

b. a list of cases in which certiorari has been requested or granted;

None to my knowledge.

c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

(1) Coldwell Banker v. Superior Court, 117 Cal. App.4th 158 (2004)

In Coldwell Banker, the buyers of a home sued Coldwell Banker for breach of its duty to disclose in the sale of a residence. Coldwell Banker demurred. I overruled the demurrer, and Coldwell Banker appealed. On appeal, the court reversed, ruling that the minor family member on whose behalf the suit was brought did not have a cause of action against Coldwell Banker because the minor was not a party to the sale transaction.

(2) 2,002 Ranch v. Superior Court, 113 Cal.App.4th 1377 (2003)

In 2,002 Ranch, I confirmed the recommendation of a special master regarding the application of the attorney-client privilege to documents sought in discovery. I then denied several discovery requests based on that privilege. Ranch appealed my discovery rulings. The court of appeal ordered that I personally review the requested discovery documents to determine on a document-by-document basis whether the privilege applied.

(3) Fisher v. First Interstate Bank, et al., 109 Cal.App.4th 1433 (2003)

Fisher v. First Interstate Bank involved the interpretation and application of a dragnet, or anaconda, clause in a trust deed. I found that as a matter of la granted w the dragnet clause defeated all of the plaintiff's claims, and I summary judgment for the defendants. On appeal, the appellate court ordered a reconsideration of my summary judgment order in light of additional parol evidence.

(4) Scripps Clinic v. Superior Court, 108 Cal. App.4th 917 (2003)

In Scripps Clinic, plaintiff sued Scripps Clinic for, among other things, medical malpractice, negligent infliction of emotional distress, breach of fiduciary duty, and violations of the Unruh and Cartwright Acts. Scripps moved for summary judgment, which I denied. On appeal the denial of summary judgment was affirmed as to plaintiff's claims for interference with contract, negligent infliction of emotional distress and breach of fiduciary duties. As to the other causes of action, the appellate court reversed the denial of summary judgment.

(5) Carver v. Chevron, 97 Cal.App.4th 132 (2002)

In Carver, a service station franchisee had sued Chevron for, among other things, breach of contract, fraud, and Cartwright Act violations. Carver was victorious at trial. I handled only the post trial attorney fees portion of the case. With respect to my award of attorney fees, the appellate court affirmed in part and reversed in part. The court of appeal ordered additional findings and apportionment of the fees so that any fees from the defense of the Cartwright Act claims could be excluded from recovery.

(6) Warren v. Sharabi, 2006 Cal.App. Unpub. LEXIS 3856

Warren v. Sharabi was an action for specific performance and breach of contract based on an agreement to purchase a home that was partially constructed. After a bench trial, I ruled in favor of the plaintiff and denied attorney fees. On appeal, the court affirmed the judgment and asked for further findings regarding the costs for specific upgrades the plaintiffs were to obtain. On remand, I made the findings of upgrade costs and awarded attorney fees. This ruling was appealed and was affirmed regarding the upgrade findings but was reversed with respect to the attorney fees.

(7) Swann v. DaimlerChrysler, 2004 Cal.App. Unpub. LEXIS 11491

Swann was a case involving the applicability of the Song-Beverly Consumer Warranty Act to an extended service contract. Swann alleged damages based on failure to repair a car manufactured by and under a service contract from Chrysler. The court of appeal affirmed the case and my decisions. However, during the course of the litigation and appellate process, the California Supreme Curt decided a case that held that service contracts are not warranties, and thus are not covered by the Song-Beverly Act, unless they state otherwise. As a result of the Supreme Court's ruling, the appellate court decision was reversed, and the case was remanded to me for further proceedings.

(8) Chow v. San Diego County Civil Service Commission, 2004 Cal.App. Unpub. LEXIS 9105

In Chow, a deputy sheriff sought a writ of mandate against the San Diego County Civil Service Commission. The deputy wanted to have his appeal of a written reprimand heard by the commission. I denied the writ and was affirmed on appeal. The portion of my ruling denying an alternative writ requiring an administrative appeal was reversed.

(9) Huff v. Holman, 2004 Cal.App. Unpub. LEXIS 8035

In Huff v. Holman, Huff sued the publisher and writer of an article for libel. Also named in the lawsuit were several individuals quoted in the article. A special motion to strike the complaint was brought pursuant to the anti-SLAPP statute. I granted portions of the motion and denied others. The court of appeal affirmed the portions of the motion I granted, but reversed the denial of the other portions finding they also should have been granted.

(10) Dysart v. Superior Court, 2003 Cal.App. Unpub. LEXIS 11740

Dysart was an action for legal malpractice. I concluded that triable of issues of fact existed as to two issues that would have tolled the statute of limitations, namely the date of actual injury and whether there was continuous representation by the lawyer. The court of appeal determined that the actual injury occurred at an earlier point in time and that the representation by the attorney was not continuous. The court of appeal ruled that summary judgment should have been granted.

(11) Kiss v. Titus Interactive, 2003 Cal.App. Unpub. LEXIS 11701

In Kiss, a wrongful termination and breach of contract case, I found that there were insufficient contacts with California to exercise personal jurisdiction over the defendant corporation, and I granted a motion to quash service of summons. The appellate court reversed my decision based on its finding that the defendant had voluntarily consented to the action.

(12) BCP/Fox Hollow LLC v. Alpha III, 2003 Cal. App. Unpub. LEXIS 8444

In BCP/Fox Hollow, the plaintiff sued for breach of contract in its attempt to repurchase its interest in a low-income housing project. I ordered a prejudgment attachment of $6.7 million in the Plaintiff's favor. The defendant contended that the order was improper because the plaintiff was not entitled to the full amount of the repurchase price. The court of appeal agreed with the defendant and reversed my order as to the amount of the attachment.

(13) Flower v. Pep Boys, 2003 Cal.App. Unpub. LEXIS 8095

Flower sued Pep Boys over the purchase of an engine that damaged her car. Numerous causes of action were alleged, and I granted a demurrer by Pep Boys to the fraudulent misrepresentation claim. I also granted a judgment on the pleadings against the plaintiff because she had signed a release of liability. The plaintiff appealed, and the court of appeal

concluded that I properly sustained the demurrer. As to other claims brought by plaintiff, the court reversed finding that an issue of fact existed as to whether the release of liability was signed by plaintiff under duress.

(14) Proud v. San Pasqual Union School District, 2002 Cal.App. Unpub. LEXIS 9149

In Proud, the plaintiff alleged that a closed session meeting of the school board was a hearing that required notice and hearing in open session when the topic was the dismissal of an employee and a vote to initiate the dismissal process. I ruled in favor of the plaintiff finding that notice and a hearing were required. The court of appeal reversed, holding that notice is not required for a meeting to determine the initiation of disciplinary proceedings.

(15) JLRB v. Jenny Craig, 2001 17 CAL.APP.3D 745

Plaintiff, JLRB Associates (landlord) sued Jenny Craig, Inc (tenant) over a commercial. The lawsuit alleged causes of action for fraud, and breach of contract. After a jury trial, the landlord prevail on all causes of action and was awarded both, compensatory and punitive damages. The Court of Appeals found that the evidence was insufficient for the jury's finding of fraud and reversed that portion of the case.

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

My rulings in the above cases are not in the form of unpublished opinions. Instead, they are almost completely civil law and motion orders that are in the form of brief rulings or minute orders. Practically, I am not able to get copies of these orders. None of the reversals or affirmances contain significant criticism of my rulings.

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

I infrequently write opinions after trial. I estimate that the percentage of written opinions is les than 5% of the cases over which I have presided. Those opinions I have written are filed by case name and number in the court clerk's office or are in storage.

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

None

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

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

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

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

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

    I have never been requested by a litigant or party to recuse myself for any reason. I have recused myself when I have a personal relationship with a litigant or attorney appearing in a case. I have also recused myself sua sponte in land use cases involving the San Diego City Attorney's Office, where I was previously employed.

    The San Diego Superior Court employs a recusal system that allows judges to identify the names of lawyers who cannot appear before that particular judge. If the random assignment of a case would cause the attorney to be assigned to a judge who listed the attorney on the judge's recusal list, the case is automatically reassigned.

    The San Diego Superior Court's computer system does not have the ability to search for case recusals. Thus, I am unable to provide specific information regarding my case recusals.

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

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

    None

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None

18. **Legal Career:** Please answer each part separately.

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

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

From August 1975 to February 1976 I was a Law Clerk to the Honorable Douglas Seely, Judge of the Superior Court, St. Joseph County, Indiana

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

I have never practiced alone.

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

1995 – Present, Judge
Superior Court of San Diego County
220 West Broadway
San Diego, CA 92101

1994 – 1995, Judge
Municipal Court of the City of San Diego
220 West Broadway
San Diego, CA 92101

1976 – 1994, Deputy City Attorney
San Diego City Attorney's Office
1200 Third Avenue, Suite 1620
San Diego, CA 92101

b. Describe:

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

Following my clerkship, I joined the San Diego City Attorney's Office in February 1976, as a Deputy in the Criminal Division. My first assignment was as a Trial Deputy, and I handled a wide variety of misdemeanor proceedings.

After trying over fifty jury cases and an equal number of bench trials, I specialized in pretrial motions and misdemeanor appeals. These latter experiences broadened my courtroom exposure from the Municipal Court to the Superior Court and to the Fourth District Court of Appeal.

In 1978, I was promoted to the Municipal Law Section of the Civil Division and represented a number of city departments, including the Engineering Department, Treasurer's Office, and Parks and Recreation Department. I handled all legal issues associated with these departments and had a major role in creating, implementing, and successfully litigating the Facilities Benefit Assessment (FBA) Program. The FBA is a financing mechanism for public improvements designed to implement the city's General Plan because of diminished financial resources after passage of the Jarvis-Gann Property Tax Limitation Initiative (Proposition 13). The appellate courts approved the FBA Program as a valid special assessment. This Program is used in San Diego's developing suburban communities and has served as an example throughout the state and nation.

I was subsequently assigned to handle redevelopment matters in the Planning and Property Division. I served as the City Attorney's liaison to the Centre City Development Corporation and as the principal legal advisor to the city on redevelopment. In these capacities, I had a major role in the planning and construction process of the Horton Plaza Retail Centre as well as numerous other buildings throughout the city's redevelopment project areas.

I have also worked in the design, adoption, and implementation of growth management techniques. My experience includes all aspects of the law related to land use, planning, and the subdivision process.

As Senior Chief Deputy City Attorney, I directly supervised the three civil advisory divisions of the City Attorney's Office - Municipal Law, Legislation and Public Affairs, and Planning and Property. I was also involved on a daily basis with the civil litigation attorneys, specifically those handling land use and environmental cases. In addition to these duties, I maintained an active land use practice representing the city.

From 1978 to 1994, as an attorney in the City Attorney's Civil Division, I was involved with civil land use litigation. I was co-counsel on two landmark cases involving the validation of San Diego's Facilities Benefit Assessment Program. As Senior Chief Deputy in the City Attorney's Office from 1991 to 1994, I regularly participated in all legal and strategy decisions with litigation deputies on pending cases.

In 1994 I became a California State Court Judge.

ii. your typical clients and the areas, if any, in which you have specialized.

My client was the City of San Diego, its Departments and officials.

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

Approximately 100% of my practice was in criminal litigation.

For two and one-half years, from 1976 to 1978, I appeared in San Diego Municipal Court every day. This practice consisted entirely of criminal prosecutions. During this period, I handled over 50 jury trials, over 50 non-jury trials, pretrial motions and appeals.

During the remainder of my time with the City Attorney's office, I appeared in court occasionally.

i. Indicate the percentage of your practice in:
   1. federal courts: 0%
   2. state courts of record; 100%
   3. other courts.

ii. Indicate the percentage of your practice in:
   1. civil proceedings; 100%
   2. criminal proceedings. 0%

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

I have tried over 100 cases to verdict or judgment as sole counsel. I tried 3 cases a co-counsel.

i. What percentage of these trials were:
   1. jury; 50%
   2. non-jury. 50%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

19. **Litigation**: Describe the ten (10) 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 representation;

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

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

1. J. W. Jones Companies v. City of San Diego, 157 Cal.App.3d 745, 203 Cal.Rptr. 580 (June 1984). Judge William L. Todd; Justices Butler, Brown and Cologne

Co- Counsel: Robert Freilich
Paul Hastings Janofsky & Walker LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
(213) 683-6314

Opposing Counsel: Lance Schaeffer
335 Ricardo Place
La Jolla, CA 92037
(858) 488-0226

Brian Forbes
DLA Piper Rudnick Gray Cary US LLP
4365 Executive Drive, Suite 1100
San Diego, CA 92121
(858) 638-6842

Michael Hogan
Hogan Guiney Dick LLP
225 Broadway, Suite 1900
San Diego, CA 92101
(619) 685-0282

2. City of San Diego v. James Holodnak, 157 Cal. App.3d 759, 203 Cal. Rptr. 797 (June 1984); Judge Jack Levitt; Justices Butler, Brown and Cologne

In these two cases, I represented the City of San Diego The Jones and Holodnak cases validated the city's use of the Facilities Benefit Assessment (FBA). The FBA was a financing mechanism for public improvements designed to implement the city's General Plan because of the diminished financial resources after the passage of the Jarvis-Gann Property Tax Limitation Initiative (Proposition 13). The FBA approach to public facilities financing was novel in California in the late 1970's. It was upon the advice of the City Attorney that an action was commenced to validate the FBA procedures in the Holodnak case. A property owner, J. W. Jones, sued the city in what became a companion case. The basic issue in both cases was whether the FBA was a valid special assessment or a special tax which violated Proposition 13. The appellate courts approved the FBA program as a valid special assessment. The decisions are frequently cited both in California and nationally with regard to financing and managing growth costs in developing suburban areas.

Co-Counsel: Robert Freilich
Paul Hastings Janofsky & Walker LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
(213) 683-6314

Opposing counsel: Donald R. Worley
Stephenson Worley Garratt Schwartz Garfield & Prairie, LLP
401 B Street, Suite 2400
San Diego, CA 92101
(619) 696-3500

3. City of San Diego and San Diego Unified School District v. the Municipal Court for San Diego Judicial District, 102 Cal.App.3d 775, 162 Cal. Rptr. 420 (February 1980); Judge Edward T. Butler; Justices Cologne, Weiner and Henderson

This case was filed at the request of the City Treasurer to challenge the Municipal Court's decision to cease processing notices of parking violations prior to the filing of a verified complaint with the court. This was an unusual case of court resources and city resources competing against each other during the post-proposition 13 era over the right to process parking violations. I represented the City of San Diego.

Co-Counsel: Ben Echeverria
14267 West 8th Cir Unit A
Arvada, CO 80005
(720) 596-4735

Ralph D. Stem
School & College Legal Services
313 West Winton Avenue, #372
Hayward, CA 94544
(510) 670-4135

Opposing Counsel: Donald Clark, County Counsel
Larry Davis, Deputy County Counsel
Office of the County Counsel
1600 Pacific Highway, Room 355
San Diego, CA 92101
(619) 531-4847

4. People of the State of California v. Louis J. Schneider, November 11, 1976; Judge Thomas Sagar.

Opposing counsel: Edward A. Applebaum
2725 Congress Street, Suite 2K
San Diego, CA 92110
(619) 291-1385

The defendant in this case was a man who represented himself to be a labor law attorney but was without a license to practice law in California, a violation of 6126 of the California Business and Professions Code. Charges were brought against the defendant when members of the local hospital association for whom he had been working as legal counsel complained to the City Attorney's Consumer Fraud Unit about the quality of legal services they received. This case was presented to a jury and the defendant was convicted.

5. People of the State of California v. John Sousa, March 9, 1976; Judge Earl Adams

Opposing counsel: Ramon Castro
4291 Arista St
San Diego, CA 92103
(619) 291-7628

This case involved the charge of driving under the influence and the defendant had an extremely high blood alcohol level. A day and a half of jury selection was followed by four days of trial. The dynamics of the jury selection process were unusual because the duration of the time and intensity of effort on that element of the trial was greater than usual in most misdemeanor cases. The defendant was convicted.

6. People of the State of California v. Jack Henry Sprague, June 16, 1976; Judge Kenneth Johns

Opposing counsel: Richard Westbrook (deceased)

This case was a drunk driving case in which the defendant refused a blood alcohol test. The defense attorney had been a mentor to me when I began my practice in the City Attorney's Office. The opportunity to see him as a defense attorney and for me to oppose him remains memorable.

7. People of the State of California v. Floyd Roydell Newman, February 24m 1976; Judge David Gill

Opposing counsel: J. R. Ferlin
2120 Pacific Street
Bellingham, WA 98226
(206) 733-1700

Discussed at Case 10 together with Cases 8, 9 and 10.

8. People of the State of California v. Lyra Stewart, April 8, 1976; Judge Earl Adams

Opposing counsel: John G. Phillips
1010 Second Avenue, Suite 1840
San Diego, CA 92101
(619) 234-0163

Discussed at Case 10 together with Cases 7, 9 and 10.

9. People of the State of California w. John Henry Krempp, Jr., August 9, 1976; Judge Judith Keep

Opposing counsel: Gary Green
P.O. Box 1648
Avon, CO 91620
(720) 204-1826

Discussed at Case 10 together with Cases 7, 8 and 10.

10. People of the State of California v. Suzanne Cohn, November 9, 1976; Judge Robert Cooney

Opposing counsel: James H. Pasto
4402 Fairmount Avenue
San Diego, CA 92116
(619) 281-7714

These last four cases represent unpredictable developments that can occur during a trial. Two of these cases were verdicts that surprised me as a prosecutor - one hung jury and one split verdict by a judge. Two of these cases were the subject of disposition during trial – one because a witness perjured himself and one because of major changes in a witness' testimony.

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

My most significant legal activities have taken place through my judicial duties over the past 12 years.

I was elected by the judges of the San Diego Superior Court to serve as the Presiding Judge for two years commencing in January 2006. As Presiding Judge, I am responsible for leading the court, and I am the court's spokesperson. Additionally, I establish policies and allocate resources in a manner that promotes access to justice for all members of the public, that provides a forum for the fair and expeditious resolution of disputes, that maximizes the use of judicial resources, that increases efficiency in court operations, and that enhances service to the public. I ensure effective management and administration of the court. Additionally, I am responsible for ensuring that the duties of all judges are performed timely and orderly.

I also serve as the San Diego Superior Court's representative to many Administrative Office of the Court committees, and I have been appointed to many statewide taskforces, such as the Statewide Judicial Ethics Taskforce, the Continuing Judicial Education and Research Committee on Continuing Judicial Studies, the Court Technology Advisory Committee to the Judicial Council, and the Trial Court Presiding Judge's Advisory Committee to the Judicial Council.

Our court is a high-volume operation handling 650,000 disputes of all types annually: criminal, civil, family law, probate, juvenile, and traffic. The San Diego Superior Court is the second largest trial court in California and the third largest trial court in the United States and has 155 judges and commissioners.

I was elected to the position of Assistant Presiding Judge and served from 2004 to 2005. In this position, I interacted with the Presiding Judge with regard to all duties described above. Specifically, I was delegated the areas of court security and technology.

Prior to serving as Presiding Judge and as Assistant Presiding Judge, I was a Civil Independent Calendar Trial Judge. I handled all my civil cases from the filing of the complaint through final resolution of the case. I was designated by the Presiding Judge to

hear matters arising under the California Environmental Quality Act (CEQA), pursuant to the California Public Resources Code sections 21000 et seq. Additionally, I was the trial judge for two statewide Judicial Council Coordination Proceedings: JCCP #2754 Breast Implant Cases and JCCP #'s 4204 and 4205 (E-file) Whole Sale Electricity Antitrust Cases I and II. I served in the Family Law Division of the Superior Court from September 1995 to December 1998. In that position, I handled all aspects of family law cases and was the Supervising Judge from July 1997 until December 1998.

From February 1994 to September 1995, I handled criminal cases as a Municipal Court Judge. My assignments gave me experience in all stages of a criminal case from arraignment through trial. I also presided over every level of criminal case from misdemeanors to the most serious felonies including three-strike cases and murder cases.

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

    Though I have never held an appointed teaching position at a law school, as an attorney, I guest lectured in law school classes at the University of San Diego on land use and real property related topics. Additionally, I have instructed on these topics and judicial ethics on continuing legal education panels.

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

    I have a deferred retirement from my employment with the city of San Diego. I also have a 401K account consisting of employer only contributions of the State of California in the amount of $1,500.00. Additionally I am a member of the Judges Retirement System (JRSI) for the State of California.

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

    No

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)

See attached Financial Disclosure Report

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

    See attached Net Worth Statement

26. **Potential Conflicts of Interest**:

    a. Identify the parties, 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. Explain how you would address any such conflict if it were to arise.

       Most potential conflicts are the result of personal relationships between the judge assigned to a case and the parties or attorneys in the case. Identification of the relationship and its disclosure by the court to all individuals in the case is the initial step taken by the judge. The attorneys then will confer with their clients and present their concerns to the court. The court decides the appropriate action, which may be recusal or disqualification. I handle all of the above procedures on the record to avoid any appearance of impropriety.

       Neither my financial arrangements nor any categories of litigation would create a potential conflict of interest during my service. However, if a concern regarding a conflict were to arise, I would act similarly to the practice I use for relationship conflicts.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

       In all cases, I will comply with applicable policies, procedures and statutes, including the Code of Conduct for United States Judges.

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

    The San Diego City Charter prohibits attorneys who are employed by the City Attorney from practicing outside of their city employment. Consequently, while I was employed by the City Attorney, providing free legal services was not possible pursuant to the city charter restrictions. During this period of time, however I served the disadvantaged in

other ways. I taught school of religion for over 10 years at my church and a major part of my curriculum focused on teaching the children to help less fortunate members of our community. Annually, my classes conducted food drives at Thanksgiving, adopted families at Christmas, visited senior citizen homes sharing entertainment and companionship, and collected books for literacy programs.

As a Judge, I have supported and encouraged programs in my court to assist individuals who represent themselves. People facing legal proceedings in the areas of family law, domestic violence, conservatorship and guardianship, and unlawful detainer actions are often at vulnerable points in their lives and face challenges when they represent themselves. Self help services and clinics for the increasing number of self represented have been a priority for me.

28. **Selection Process**:

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

Yes, there is a selection commission in my jurisdiction. I was aware of the opening on the federal bench and submitted an application. I interviewed with the San Diego county selection commission on September 22, 2006 and with Gerald Parsky on October 2, 2006. I went to Washington, D.C., on October 30, 2006 and interviewed with members of the White House Counsel's Office and the Department of Justice. After completing all nomination paperwork, my nomination was submitted to the Senate on March 19, 2007.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
SAMMARTINO, JANIS L	SOUTHERN DIST. OF CALIFORNIA	03/21/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5a. Report Type (check appropriate type)	6. Reporting Period
DISTRICT JUDGE - NOMINEE	[X] Nomination, Date 03/19/2007 [ ] Initial [ ] Annual [ ] Final 5b. [ ] Amended Report	01/01/2006 to 02/28/2007
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
220 W. BROADWAY SAN DIEGO, CA 92101	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

[ ] NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. BOARD OF GOVERNORS	ASSOCIATION OF BUSINESS TRIAL LAWYERS OF SAN DIEGO
2. PRESIDENT-ELECT	WELSH INN OF COURT
3. TRUSTEE	TRUST I
4.	
5.	

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

[X] NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting SAMMARTINO, JANIS L	Date of Report 03/21/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2005	SUPERIOR COURT OF SAN DIEGO COUNTY, SALARY	$ 134,918
2. 2006	SUPERIOR COURT OF SAN DIEGO COUNTY, SALARY	$ 146,382
3. 2007	SUPERIOR COURT OF SAN DIEGO COUNTY, SALARY	$ 28,500
4.		
5.		

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

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

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	
5.	

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

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1. EXEMPT	
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting SAMMARTINO, JANIS L	Date of Report 03/21/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. EXEMPT		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. WELLS FARGO	MORTGAGE ON RENTAL PROPERTY	J
2. PARENT PLUS LOANS	UNSECURED LOANS FOR SONS' COLLEGE TUITION	M
3. CHASE CARD SERVICES	UNITED MILEAGE PLUS VISA	J
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting	Date of Report
SAMMARTINO, JANIS L	03/21/2007

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. MITEK	A	Dividend	J	T					
2. FISERV	A	Dividend	K	T					
3. TEVA	A	Dividend	J	T					
4. PRUDENTIAL	A	Dividend	J	T					
5. IRA	F	Dividend	O	T					
6. LIFE INSURANCE - CASH VALUE	B		K	T					
7. TRUST I	E	Rent	P1	T					
8. - - PRIMARY RESIDENCE									
9. - - RENTAL PROPERTY									
10									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	
	P3 =$25,000,001 - $50,000,000	P4 =More than $50,000,000			
3. Value Method Codes (See Column C2)	Q =Appraisal	R =Cost (Real Estate Only)	S =Assessment	T =Cash Market	
	U =Book Value	V =Other	W =Estimated		

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting SAMMARTINO, JANIS L	Date of Report 03/21/2007

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting SAMMARTINO, JANIS L	Date of Report 03/21/2007

IX. CERTIFICATION.

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

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

Signature Janis L. Sammartino Date March 21, 2007

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		7	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured		164	500
Listed securities-add schedule		17	782	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		10	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		390	875
Real estate owned-add schedule	1	475	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		85	000	Car Lease		6	720
Cash value-life insurance		1	500				
Other assets itemize:							
IRA		597	648				
				Total liabilities		572	095
				Net Worth	1	611	835
Total Assets	2	183	930	Total liabilities and net worth	2	183	930
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
Mitek Systems, Inc. (MITK.OB)	$ 1,060
Fiserv, Inc. (FISV)	16,025
Teva (TEV A)	611
Prudential (PRU)	86
Total Listed Securities	17,782
Real Estate Owned	
Personal residence	$ 1,000,000
Rental property - condominium	475,000
Total Real Estate Owned	$ 1,475,000
Real Estate Mortgages Payable	
Personal residence	$ 380,423
Rental property	10,452
Total Real Mortgages Payable	$ 390,875

AFFIDAVIT

I, Janis Lynn Sammartino, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 21, 2007
(DATE)

Janis Lynn Sammartino
(NAME)

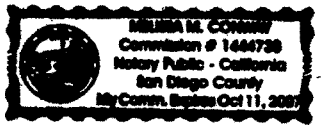
SEE ATTACHED CERTIFICATE
(NOTARY)

State of California

County of San Diego

Subscribed and sworn to (or affirmed) before me on this 21 day of March (month), 2007 (year) by Janis Lynn Sammartino, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Melissa M. Conway Melissa M. Conway, Notary Public



Senator FEINSTEIN. Thank you very much. Now a few questions, and I will ask each one of you to respond to the same question.

Over the past decade, the Supreme Court has struck down an unprecedented number of Federal statutes, most notably several designed to protect the civil rights of Americans, as beyond Congress's power under Section 5 of the 14th Amendment, for example, *Flores* v. *City of Boerne*, *Kimmel* v. *Florida Board of Regents*, *Board of Trustees* v. *Garrett*. The Supreme Court has also recently struck down Federal statutes as being outside the authority granted to Congress by the Commerce Clause, such as in cases of *U.S.* v. *Lopez* and *U.S.* v. *Morrison*.

What is your understanding of the scope of congressional power under Article I of the Constitution, in particular the Commerce Clause, and under Section 5 of the 14th Amendment? Who would like to start?

That is the first test. Who would like to start?

Mr. OSTEEN. Senator—

Senator FEINSTEIN. Judge Osteen? I mean, excuse me, Mr. Osteen.

Mr. OSTEEN. Thank you very much. Senator, my experience in the practice of Federal criminal law has been primarily in the—or in the Federal law has been primarily in the criminal and general business litigation. To a certain extent, the Commerce Clause principles that the Court has described flow into certain criminal cases through, for example, school zone doctrines and those types of things, various criminal statutes.

My views on this matter as a district judge nominee are very simply that the Supreme Court and the Congress set the rules and the precedent that I as a district court nominee am to follow, regardless of any personal feelings that I may have on the issue itself.

So in responding to the Senator's question, it is my belief that, regardless of any personal view that I may have on the Commerce Clause itself, it is my duty to apply the law as determined by the Supreme Court under the Constitution and apply those laws as passed by Congress.

Thank you.

Senator FEINSTEIN. Mr. Reidinger?

Mr. REIDINGER. Thank you, Senator. My feeling on this point is that the Supreme Court has given the lower courts a road map to follow with regard to federalism issues and with regard to Commerce Clause issues. And it would be the role of a district court judge and, if the Senate sees fit to confirm me, it would be my role to try to follow that road map to the best of my ability, to try to apply those statutes and apply that case law to those statutes to the best that I can.

Enactments of Congress have a presumption of constitutionality. It is not for a lower court to willy nilly find enactments of Congress to be unconstitutional, whether on federalism grounds or others. And, therefore, it is to be within that narrow scope that the Supreme Court has given us to apply that case law as it exists, but only to that extent.

Senator FEINSTEIN. Well, let me, because you are not really responsive to the question. The Commerce Clause is the basis for

which we legislate in many areas, and that is particularly true in the area of civil rights. So if you do not believe the Commerce Clause can cover this, the Congress has limited authority to legislate to correct major grievances of our society. And the purpose of the question is to try to ascertain what view you would have on the Commerce Clause as the basis for the legislation that the Congress might 1 day have before you.

Mr. REIDINGER. If I may followup in answer to that.

Senator FEINSTEIN. Please.

Mr. REIDINGER. I believe that the Supreme Court has also found the Commerce Clause to be a proper basis for a good deal of legislation.

Senator FEINSTEIN. Correct.

Mr. REIDINGER. And within those boundaries, I think that there are probably thousands of statutes based upon the Commerce Clause that are perfectly constitutional and would be found so, would be held so, and have been held so by the Supreme Court.

It is, first of all, the enactment of Congress with that presumption of constitutionality only to the extent that it has been tailored by the Supreme Court. That is the lodestar for the lower courts.

Senator FEINSTEIN. Mr. DeGiusti?

Mr. DEGIUSTI. Thank you, Senator. I concur with my colleague's comments, and the presumption of constitutionality at the district court level I believe cannot be overstated. That is the point of departure in considering a provision of legislation, and from there the courts should tread carefully in considering those matters and, of course, always follow the guidance, binding guidance from the courts of your circuit and that established by the Supreme Court.

Senator FEINSTEIN. Judge Sammartino?

Judge SAMMARTINO. Thank you, Senator Feinstein. I agree with the comments of the other nominees this afternoon. The Supreme Court has found a basis for the Commerce Clause to be a foundation for much of the legislation that is referenced. And, of course, as a district court judge, if I am fortunate enough to be confirmed by the Senate, I would follow the law and the guidance of the Supreme Court, of course, in handling those matters.

Senator FEINSTEIN. Thank you. I threw a hardball question at you. It was a question that you could go at very expansively or not at all. So let me do an easy one now.

How can you assure us that if politically sensitive cases come before you and in any case before you you will be able to disregard your own personal views and allegiances and decide the case only on the law and the facts before you? Judge Sammartino?

Judge SAMMARTINO. Thank you, Senator Feinstein. I would assure this Committee that any politically sensitive matter that would come before me would be decided solely on the merits of that and not on the basis of anything else. I would follow the law strictly as it is written and presented to me.

I think my background as a superior court judge has trained me well to make that transition to the Federal bench. It is what I have tried to do for the last 13 years, and I think that is what judges do first and foremost. They set aside their personal views and follow the law to the fullest extent possible.

Senator FEINSTEIN. Thank you.

Mr. DeGiusti?

Mr. DEGIUSTI. Senator, if I were to be confirmed as a district court judge, I would always endeavor first to faithfully apply the law as written, not as one might wish or think it should have been written, and apply that law to the facts at hand, impartially and fairly. And by doing so, I think one removes any political nature of the issues that are presented.

Senator FEINSTEIN. Thank you.

Mr. Reidinger?

Mr. REIDINGER. Thank you, Senator. I believe that in order to provide equal justice, our judicial system must rely on judges to be able to apply the law, to have the intellectual rigor and the intellectual honesty to apply the law as it is, not as it would otherwise benefit those whom the judge may know or not as the judge may otherwise wish the law to be, but to apply the law as it is. Only then can justice be administered equally across the board.

I would assure this Committee that I believe I bring to this position, if I am confirmed, that sort of intellectual honesty that is necessary, and I believe that I can do that in the administration of justice in this position, if I am confirmed.

Senator FEINSTEIN. Thank you, Mr. Reidinger.

Mr. Osteen?

Mr. OSTEEN. Senator, thank you for your interest in that. I have had the good fortune to practice law in the Federal district courts in the State of North Carolina. My experience has been that the judges that have held court in that State have done it with the utmost of integrity, without any sense of politics in the courtroom, and that is a tradition that I would strongly endeavor to continue.

It is my hope, if I am confirmed as a district judge by this Committee, that at the conclusion of my career people would not say that I was a conservative or a liberal judge, but instead would simply say that, "He followed the law and applied it as appropriate, without regard to any extraneous or irrelevant considerations."

Thank you.

Senator FEINSTEIN. Thank you very much.

Now, there has been a lot of discussion on the Committee from time to time about judicial activism and activist judges and exactly what that means. I would like to ask each of you to define "judicial activism" this afternoon. Mr. Reidinger, why don't you go first?

Mr. REIDINGER. Thank you, Senator. The way I would define "judicial activism" is a judge or a court going beyond applying the law as it is and in essence acting in a legislative or a quasi-legislative capacity, not just applying the law but creating the law in order to apply it. And with that definition, with that sort of understanding of what judicial activism is, I believe that it undermines our judicial system because then the litigants who are before any court do not have the confidence that that court is going to apply the law as it has been adopted by this Congress or as it has been adopted by State legislators or as it has been promulgated by the higher courts. They only have the confidence that that judge before whom they appear will be "fair." And I believe that undermines the equality of that justice.

Therefore, having that sort of activist approach, that sort of legislative or quasi-legislative approach on the bench is something to be steered clear from.

Senator FEINSTEIN. Thank you.

Anybody else who would like to comment? I thought he gave a pretty good definition. Are there any additions to that?

[No response.]

Senator FEINSTEIN. All right. A quick question and an easy one. What role does temper have for a judge? Judge Sammartino?

Judge SAMMARTINO. Temperament is a very important characteristic for a judge, and I think fundamentally, if I were confirmed as a district court judge—and any judge for that matter should have patience and an ability to deal with any litigant who walks into their courtroom in a completely fair and impartial basis. And that would include whether the litigant is self-representing or has a lawyer representing them. So it is an expansive view of it from my perspective because fundamentally, when somebody leaves your courtroom, I would like them to always leave with the feeling that the process was fair, it was complete, that they were heard in the totality, and whether they agree or disagree with my rulings, that they at least had that type of hearing.

Senator FEINSTEIN. You gave a very good description of "temperament." My question was "temper." What role would temper play, that of a judge? I was hoping it would be just a one-word answer.

Judge SAMMARTINO. It has no place in my courtroom. That is why maybe I misheard your question, Senator Feinstein. It has no place in the courtroom.

Senator FEINSTEIN. Anybody differ with that?

[No response.]

Let's talk about judicial ethics for a moment because the authority of the Federal judiciary rests, to a large extent, on its integrity and each judge is a holder of a collective trust because the unethical conduct of a single judge can tarnish the reputation of the entire judiciary. So a critical aspect of fitness for a Federal judgeship is the ability to meet the highest ethical standards.

What are the most important lessons you have learned, either in your law practice or in your judicial career, in your government service, that you will bring to the bench if confirmed as a district court judge? Mr. DeGiusti, let us start with you.

Mr. DEGIUSTI. Thank you, Senator. Senator, respect for the court, respect for the judicial process equates to respect for the rule of law. It is imperative in this country that our citizens have respect for the rule of law and they believe in the rule of law. And if district judges—or any judge, for that matter, does not uphold the highest level of integrity in the performance of their duties, then that respect for the rule of law can erode. And, of course, that would be the most unfortunate of things, and so for that reason, if confirmed, I will always endeavor to uphold the highest standards of integrity.

Thank you.

Senator FEINSTEIN. All right. Mr. Osteen, judicial ethics.

Mr. OSTEEN. Senator, I agree with what Mr. DeGiusti just said. I think as I understood the question, what are the most important

things or experiences you have had, or something along those lines, I would suggest to the court that when I started practicing law 20 years ago, I did not have a keen understanding or handle on all the ethical rules that we had to follow as attorneys. However, I have endeavored to follow those ethical rules throughout my career, and my experience has taught me that when an organization such as a bar association or a judiciary under the Code of Conduct sets forth certain rules, those rules are certainly to be followed whether or not they are clearly understood in every instance because they are important to the dignity and integrity of the profession.

My experience has been, even though I may have had questions about some things as we went along, my experience was that in following the rules, that was exactly the right path and the best course to take.

Thank you.

Senator FEINSTEIN. Mr. Reidinger?

Mr. REIDINGER. There is one thing I would add, and that is what I have learned about this topic in the practice of law. Throughout my career, I have had wonderful mentors, and if there is one thing I have learned from them, when it comes to issues of ethics, it is not a question of when you step over the line or when you get your toes near line. It is that you never get your toes near the line. If there is a question about whether something is ethical, that is probably a pretty good indication that is something you need to shy away from what even might be unethical. And it is not just a question of following the rules. It is a question of avoiding the appearance of impropriety. I think that not only goes for lawyers, it goes doubly for judges.

Senator FEINSTEIN. Thank you.

Judge Sammartino?

Judge SAMMARTINO. I agree with all the comments of the nominees this afternoon because I believe that the appearance of any question of an ethical concern is as important as an actual conflict, and I believe that for the reason that the trust and confidence in the system of justice that we have in America is critical to our collective well-being.

So when the question is raised, when a concern comes to mind or is asked, I think that is the time to take action and act accordingly.

Senator FEINSTEIN. One final question on the subject of recusal. Generally, Federal judges have great discretion when possible conflicts of interest are raised to make their own decisions about whether to recuse themselves from particular cases. So I think it is important that judicial nominees have a well-thought-out view of when recusal is appropriate.

Former Chief Justice Rehnquist made clear that he understood that the standard for recusal was not subjective; rather, it was objective. The standard was whether there might be any appearance of impropriety.

How would you interpret the recusal standard for Federal judges? Anybody?

Mr. REIDINGER. I will start with that one because I believe my answer to the last question really goes to the heart of this. When-

ever there is even a question to be there, even if it does not raise an actual ethical question, it may raise a question of the appearance of impropriety. And, therefore, just like Chief Justice Rehnquist said, when there is even a question, that is probably a good objective standard as to when a judge ought to recuse.

Senator FEINSTEIN. Judge Sammartino?

Judge SAMMARTINO. I agree with that also. Our greatest goal, should we all be confirmed as Federal district court judges, is to preserve public confidence in the system that we would become a part of. Once the question has been raised, I think we need to act accordingly to diminish that concern on the part of the litigants, so the appearance is as important as the actuality. And I would be very sensitive to that, as we are in the State of California on the State side.

Senator FEINSTEIN. Mr. DeGiusti?

Mr. DEGIUSTI. I agree with those comments, Senator. Clearly, the appearance of impropriety is as harmful as the existence of impropriety. So both have to be guarded against, and if the question is close at all, then a judge should recuse.

Senator FEINSTEIN. Thank you.

Mr. Osteen?

Mr. OSTEEN. Senator, I agree with what my colleagues have said. I do agree there is both a subjective and objective component to the recusal statutes. Recusal is not a matter to be taken lightly because I also believe a district judge has an obligation to hear all those cases that he can fairly hear, but certainly subject to the rules, both the subjective and objective components of those rules.

Senator FEINSTEIN. Thank you.

Thank you all very much. I am going to let you off easy. This will conclude the hearing. I would just like to say that the record will be held open for 1 week for written questions. I thank the nominees, and I adjourn the hearing.

[Whereupon, at 3:21 p.m., the Committee was adjourned.]

[A submission for the record follows.]

SUBMISSION FOR THE RECORD

Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee,
On Judicial Confirmation Hearing
June 20, 2007

Today, the Committee will hear from four more nominees for lifetime appointments to the federal courts – William Lindsay Osteen, Jr. to the District Court for the Middle District of North Carolina, Martin Karl Reidinger to the District Court for the Western District of North Carolina, Timothy D. DeGiusti to the District Court for the Western District of Oklahoma, and Janis Lynn Sammartino to the District Court for the Southern District of California.

All four of these nominees have the support of their home-state senators. I thank Senators Inhofe, Dole, and Burr for agreeing to come to the hearing to introduce their home-state nominees, and I thank Senator Feinstein for agreeing to chair this important hearing.

The Senate has confirmed 18 judges so far this year. It is not yet summer, and we have already confirmed more judges than were confirmed during the entire 1996 session when President Clinton's nominees were being reviewed by a Republican Senate majority. In that session, not a single circuit court nominee was confirmed.

The Judiciary Committee has already reported 25 nominees to lifetime appointments so far this year, and is holding a hearing today for four more, so the total number of judges confirmed will likely increase further soon.

We have already confirmed three circuit court judges, and we are not yet halfway through this year. Those three circuit court confirmations put us well ahead of the pace set in 1999 when a Republican-led Senate was considering the nominees of a Democratic President. At the end of that Congress, the last two years of the Clinton Administration, the Republican-led Senate returned to the President without action 17 of his appellate court nominees. I do not intend to duplicate that record any more than I intend to see the Senate pocket filibuster more than 60 of President Bush's judicial nominees, as Republicans did with President Clinton's.

The Senate has confirmed 118 judges while I have served as Judiciary Chairman. It is a little known fact that during the more than six years of the Bush Presidency, more circuit court judges, more district court judges, and more total judges have been confirmed in less time while I served as Judiciary Chairman than during the tenures of either of the two Republican Chairmen working with Republican Senate majorities.

The Administrative Office of the U.S. Courts lists 50 judicial vacancies, yet the President has sent us only 28 nominations for these vacancies. Twenty-two of these vacancies – almost half – have no nominee. Of the 15 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for six of

them. That means that more than a third of the judicial emergency vacancies have no nominee.

Of the 13 circuit court vacancies, more than half are without a nominee. If the President had worked with the Senators from Rhode Island, New Jersey, Maryland, California, Michigan and the other states with the remaining circuit vacancies, we could be in position to make even more progress.

As it is, we have cut the circuit vacancies in half, from 26 to 13. Contrast that with the way the Republican-led Senate's lack of action on President Clinton's moderate and qualified nominees resulted in circuit court vacancies increasing from 17 to 26. During most of the Clinton years, the Republican-led Senate engaged in strenuous efforts to keep circuit judgeships vacant in anticipation of a Republican President. To a great extent they succeeded.

With the cooperation of the President and with the cooperation of the Committee and the Senate, we can continue to make progress. I look forward to hearing from the nominees before us today.

# # # # #

NOMINATIONS OF JENNIFER WALKER ELROD, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT; RICHARD A. JONES, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON; AND SHARION AYCOCK, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI

THURSDAY, JULY 19, 2007

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

The Committee met, pursuant to notice, at 2:45 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Benjamin L. Cardin, presiding.

Present: Senator Cornyn.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. The hearing will come to order. And let me thank you all for your attendance.

I want to thank Senator Leahy—Chairman Leahy—for giving me the opportunity to chair this hearing.

This will be the first hearing that I've chaired for the confirmation of judges. And I consider that to be a great honor.

I think one of the highest responsibilities of a United States Senator of this Judiciary Committee is the consideration of appointments to the Federal bench. And I want to thank our three nominees for their commitment to public service and their willingness to serve. I welcome all three, along with your families, here today.

During my campaign for the U.S. Senate, I outlined to the people of Maryland what I would use in considering appointments to the Federal bench. I think it's extremely important to look at the qualifications of the nominees, as well as their judicial temperament, as well as their passion for the Constitution and its protections of the civil liberties of the people of our Nation. So I take this responsibility—this committee takes this responsibility—very, very seriously and I look forward to this hearing.

My father was a Circuit Court judge and I know the importance of being a judge. We rely upon our Judiciary Committee as an inde-

pendent branch of government, as a check and balance on the legislature, and on the executive branch of government.

Serving as a judge is a public service and a sacrifice, and I once again thank those who are willing to put themselves forward in that capacity. I particularly want to express my appreciation to your families for putting up with the sacrifices of serving as a judge.

We will hear from three panels today. The first will be our colleagues in the U.S. Senate who've requested an opportunity to be here. We will then hear from the nominee for the Circuit Court of Appeals, and then the two nominees for the District Court.

I would, next, normally recognize Senator Cornyn as a member of this committee, but I will start with Senator Lott.

PRESENTATION OF SHARION AYCOCK, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI BY HON. TRENT LOTT, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator LOTT. Well, thank you very much, Mr. Chairman. Thank you, Senator Cornyn and Senator Murray, for letting me go forward. Like you, too, I am involved in a hearing down on the second floor, and I'll run right back.

But I'm really particularly pleased to be here today. It's the first opportunity I've ever had of this nature. I'm here to endorse the nomination of Judge Sharion Aycock to be a Federal District judge in the Northern District of Mississippi.

She would be the first Federal District woman judge in the history of the State of Mississippi. I apologize that we have come to this point so late, but we have found an excellent nominee to be a good Federal judge—an excellent Federal judge—and to be the first woman in our Federal judiciary in Mississippi.

Her husband Randy is here with her today. We're delighted to see him. I told him to say good bye and wish her well as she ascends that place in the heavens known as the Federal bench.

I should note right at the beginning, she has received an ABA rating as "Unanimously Well Qualified". She currently sits on the Circuit Court bench in the First Circuit District of Mississippi. I first met her, I think, some 18, 19 years ago in a small town in north Mississippi. In fact, she was born in Tremont, Mississippi. It probably has a population of not 1,000, I don't guess, but not many people.

She graduated with honors there from high school. She attended Mississippi State University, where she graduated with a degree in political science. She received her law degree from Mississippi College School of Law. She served as co-editor-in-chief of the Law Review there, and finished second in her class.

After law school, she was employed by the C.T. Cleveland law firm in Fullton, Mississippi and she had an extensive private practice. She represented the Itawamba County Board of Supervisors, the Board of Education, the town of Tremont, the city of Fullton, and Northeast Mississippi Natural Gas District. She also served as the Itawamba County prosecuting attorney from 1984 to 1999.

She's been very active in her community. She's past president of the Itawamba County Development Council, which has done an ex-

cellent job, I know to my own knowledge. She served on the hospital foundation. She worked with the health services in the region. She served as chairman of the Prairie Girl Scouts Capital Fund. She has received the Itawamba County Good Citizen Award in 2000, and on and on and on. I mean, she's just been involved in everything in this community. She's been real active.

But she has primarily been recognized by Senator Cochran and me as an outstanding jurist in North Mississippi. She served as the First Judicial District President and Secretary, the first female President of the Mississippi Bar Foundation, and was honored as a Fellow of the Mississippi Bar.

So I think you get the drift here. I've watched her for many years. I must say that when we recommended her for consideration to the White House, there was an inquiry: is she a Democrat? And I said, you know, I don't know. It doesn't really matter. She's got the personal integrity, the character, the experience, the education, the demeanor to be a good Federal judge.

When you become a good, fair-minded Federal District judge, partisan politics or philosophy don't matter. This is an excellent nominee, and I fully, wholeheartedly recommend her to the committee and urge her expeditious approval by the committee so that she'll be sent to the floor so that she can assume her position on the Northern District District Court.

Thank you.

Senator CARDIN. Senator Lott, thank you very much for your testimony. We know your schedule, so if you need to leave, we certainly understand.

Senator LOTT. Thank you. Thank you.

Senator CARDIN. The senior Senator from Washington, Senator Murray.

PRESENTATION OF RICHARD JONES, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON, BY HON. PATTY MURRAY, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator MURRAY. Thank you very much, Mr. Chairman. Congratulations on chairing your first Judiciary hearing. To all of the members of your committee—I know they'll be coming in—I want to thank you for this opportunity.

I am very honored to be here today to introduce to the U.S. Senate a very distinguished lawyer. He is a King County Superior Court judge from my home State, Richard Jones. He is a man who enjoys broad bipartisan support and he deserves a seat on the Federal bench.

President Bush nominated Judge Jones to be a District Court Judge for the Western District of Washington State. Judge Jones is an excellent choice and I am very proud to be here to support him and to welcome him before the Judiciary Committee.

On this special day, Judge Jones is joined by a number of members of his family, and I want to take a minute to introduce them, if you want to stand up. His wife, Leslie is here with him; his sister, Theresa Frank; his niece, Dana Frank-Looney; his sister, Mardra Jay; and his brother-in-law, Christopher Jay. I want to thank all of them for being here today as well.

Mr. Chairman, if you were to ask lawyers and judges in my home State about Judge Jones, here are some of the descriptions that you would hear: "He is admired by everyone in the justice system." "He gives respect and he gets respect." "The test of one's performance is the way they handle the smaller cases. Richard displays precisely that same degree of sensitivity to all that appear before him."

One newspaper said, "In his courtroom, Jones is known for making eloquent statements that express just the sort of values needed in a judge." The Seattle Times went on to say, "This is a lifetime appointment with no room for mistakes, and we believe there is no mistake here."

Mr. Chairman, I couldn't agree more. Judge Jones has handled some of the most difficult cases in Western Washington in the past decade and he's won the respect of everyone who has come before him. He, in fact, heard the murder charges against Gary Ridgeway, also known as the Green River Killer.

Ridgeway pleaded guilty to 48 counts of aggravated first-degree murder in 2003, and is one of the most prolific serial killers in American history. It would be a tough case for any judge, but Judge Jones earned praise for the sensitivity and dignity he showed for the victims of the Green River Killer.

As a result of that case and in recognition of his long service to Washington State, in 2004 Judge Jones received the Judge of the Year Award from the Asian Bar Association of Washington, the King County Bar Association, the Washington State Bar Association, and the Washington State Trial Lawyers Association.

Both Senator Cantwell and I assisted the President in choosing Judge Jones from a list of very qualified candidates. When I met him, I was impressed with his sensitivity, with his professionalism, and his overall sense of fairness.

Throughout his career, Judge Jones has won high praise for his judicial demeanor and for the respect he shows all parties. He clearly meets the standards of fairness, evenhandedness, and adherence to the law that we except of our Federal judges.

In terms of his personal background, he graduated from Seattle University and the University of Washington School of Law. In private practice, Richard Jones successfully represented both plaintiffs and defendants in a variety of civil cases.

As a county and Federal prosecutor, he had extensive experience prosecuting criminal cases. And most recently as a full-time King County Superior Court judge, Richard Jones has distinguished himself and won broad support. Since he was first appointed in 1994, the voters of King County have reelected him three times.

I know that I speak on behalf of a large number of the people in my State's legal and law enforcement community in saying our Federal bench will be stronger when Richard Jones is confirmed.

So it is my pleasure to be here today to introduce this great lawyer and judge to the committee, to support his nomination fully, and to help make him our newest Federal judge. I urge this committee to approve this nomination promptly, and I hope we can confirm Judge Jones before the full Senate quickly.

Thank you very much, Mr. Chairman.

Senator CARDIN. Senator Murray, thank you for your testimony. We appreciate it very much.

We are now pleased to have the entire Senate delegation here. Starting with the senior Senator, Senator Hutchison.

PRESENTATION OF JENNIFER ELROD, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT, BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator HUTCHISON. Thank you, Senator Cardin. We certainly appreciate your chairing this hearing and having a hearing on our nominee for the Fifth Circuit Court of Appeals. There are three vacancies on that court, and we hope that we can have a confirmation of Jennifer Elrod.

She is an outstanding, accomplished judicial nominee. She has a distinguished State court judge record, and as a practicing attorney. Judge Elrod showed her judicial capability in the 190th District Court in Houston, Texas, where she currently presides. At present, she manages a docket of over 1,000 cases and leads all Harris County Civil District judges in the number of jury cases tried to verdict since 2005.

Prior to serving on the bench, she practiced at Baker Botts, where she worked for 8 years on litigation matters, including antitrust, employment law, commercial litigation, and general civil litigation. She also served as a law clerk to the Honorable Sim Lake in the Southern District of Texas.

Judge Elrod's outstanding intellect is evidenced by her exceptional academic credentials. She graduated magna cum laude from Baylor University in Texas, and cum laude from Harvard Law School.

She has long been dedicated to pro bono service and charitable causes, and she is the former chair of the Gulf Coast Legal Foundation, the largest provider of pro bono legal assistance to indigent people in the Texas Gulf Coast region.

She was recently commended by the Texas Access to Justice Commission for her service in facilitating the advocacy skills of lawyers who represent poor and low- income Texans.

Judge Elrod has also been an active member in the Texas Bar and the Houston Bar, and she is a two-time recipient of the President's Award for Outstanding Service to the Houston Bar Association. And she was named Outstanding Young Lawyer of Houston in 2004 by the Houston Young Lawyers' Association.

I am honored to introduce her. She meets the high standards that we hold for all of our judicial nominees. She has an impressive record of public service, work ethic, integrity, and will bring honor to our Federal bench. She is married, with two children, living in Houston, Texas, and I commend her to the committee.

Senator CARDIN. Thank you, Senator Hutchison.

Senator Cornyn?

PRESENTATION OF JENNIFER ELROD, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT, BY HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Mr. Chairman. I'll try not to duplicate too much of what Senator Hutchison said about Judge Elrod,

but I take a special interest, as you noted, in judicial nominations, considering it a very important part of our responsibilities. But, this is also because I was a member of the Texas State judiciary for 13 years before I became a recovering judge, and moved on into other work as Attorney General of our State, and then to the U.S. Senate.

It is perhaps evidence of my advancing years and Judge Elrod's relative youth that I did not know her until she was selected by the White House for this job. But I have to tell you, I've been overwhelmingly impressed by your qualifications for this job.

Senator Hutchison noted that this is a judicial emergency on the Fifth Circuit, one of our busiest Circuit Courts in the Nation, and we have two vacancies. Just recently, the second nominee has been sent over by the White House. So it's my hope that both of these nominees will be given prompt consideration, and that's why I'm especially grateful to you and to Chairman Leahy for having this prompt hearing on this seat.

As Senator Hutchison noted, Judge Elrod graduated from Harvard Law School. It's interesting, as just sort of a footnote, that when she began her legal education at Harvard Law School, she participated in what was known as a James Barr Ames Moot Court Appellate Advocacy Competition.

Though her team lost in the final round by a vote of 2:1, it did win the vote of one of the panelists, a certain judge from the U.S. Court of Appeals for the Fifth Circuit by the name of Patrick Higgenbotham. It is perhaps ironic that Judge Elrod now stands before the Senate Judiciary Committee, nominated by the President, to fill the vacancy created by Judge Higgenbotham's transition to senior status.

After Judge Elrod served as a law clerk to Judge Sim Lake, a well-respected Federal District judge in the Southern District of Texas, she served in private practice and then was appointed by the Governor of Texas in 2002 to her current seat in Harris County.

As you probably know, in Texas we have a long heritage of elections for judges. It is an artifact, perhaps, of our history. But she has been reelected twice to that position and has presided over more than 200 trials, gaining a reputation as a fair, hardworking, and thoughtful judge, recognized for her low reversal rate.

Senator Hutchison has noted her community service, which is highly significant considering the fact that she's married and has two young children. Judge Elrod commendably balances her career as a lawyer and a judge with her desire to further serve the community. For example, she serves as chairwoman of the Gulf Coast Legal Foundation, now known as Lone Star Legal Aid, which serves more than one million low-income persons, making it the fourth largest legal aid program in the Nation.

She was first general counsel to Communities and Schools in the Houston area, and co-chair of the Houston Volunteer Association's legal hot line, for which she has received an award for her outstanding pro bono work. She's taught at the University of Houston Law Center as an adjunct professor.

I think one of the basic questions we all want to know about on judicial nominees, is what's their judicial temperament like? And,

of course, Judge Elrod has a demonstrated record of excellent judicial temperament.

She understands the difference between being a judge and being an advocate. And it's this fairness and respect for all is why Judge Elrod's nomination is supported across the Houston legal community. She has the personal endorsement of past and current presidents of the Houston Bar Association, the Hispanic Bar Association, and the Mexican-American Bar Association, and those are just a sample.

So, Mr. Chairman, I could go on and on, but I won't so we can get on with the witnesses. Let me just say thank you for allowing me to join Senator Hutchison in commending this outstanding lawyer, judge, and Texan to you. We hope the committee will act promptly on this nomination.

Senator CARDIN. Well, we thank both of you for your testimony. Senator Cornyn, I have the pleasure of hearing from you regularly on our committee, but it's always nice to see you on the other side of the dais here.

Senator CORNYN. You are nice to say it's a pleasure. I appreciate it.

Senator CARDIN. It truly is. Always is.

Without objection, the statement from Chairman Leahy will be made a part of our record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator CARDIN. I've been advised that Senator Cochran is on the floor. He wanted to be here to introduce and support Sharion Aycock for the U.S. District Court for the Northern District of Mississippi. If Senator Cochran is able to be here, we will interrupt in order to give him a chance to be heard.

We will now proceed to the second panel which consists of one witness, Judge Jennifer Walker Elrod, who has been nominated to the United States Circuit Court for the Fifth Circuit.

Judge Elrod currently sits on the 190th District for Harris County, Houston, Texas, a position she'd held since 2002. Before joining the State bench, Judge Elrod spent 8 years in private practice as an associate of Baker Botts, and served as a law clerk for Judge Sim Lake in the United States District Court for the Southern District of Texas.

She is married to Hal Connor Elrod, director of Information Systems at Direct Energy, and has two children.

Judge Elrod, it is the tradition of our committee we swear in our witnesses. If you would, you are standing.

[Whereupon, the witness was duly sworn.]

Senator CARDIN. Thank you.

Judge Elrod, the way that we proceed, first, if members of your family are here, we would welcome your introduction of the members of your family. You are free to proceed as you wish as far as an opening statement is concerned. The committee will then be asking you some questions and it will be supplemented by written questions. We keep the record open after the hearings for your reply to written questions.

But you may proceed as you wish.

STATEMENT OF JENNIFER WALKER ELROD, NOMINEE TO BE CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

Judge ELROD. Mr. Chairman, thank you for having me here before your committee today. I do not have an opening statement, but I would take this opportunity to introduce my family to you.

As you've mentioned, my husband, Hal Elrod, is here, as well as our daughters: Catharine Leigh Elrod and Elizabeth Connor Elrod.

Senator CARDIN. We see them. They're waving. That's good.

[Laughter.]

Judge ELROD. In addition, my parents, Johnny and Jeannie Walker are here. My brother, Lieutenant John David Walker and his wife Melissa; my sister, Jennise Stubbs, and her son, Jackson Stubbs, are here; and my uncle, Van Walker. I think that's all of my family members. And if I've forgotten someone, I apologize. I hope I haven't.

And in addition, I also am privileged to have three of my colleagues from the Harris County judiciary here: Judge Ken Wise, Judge Jeff Brown, and Judge Grant Dorfman who have made the trip, and I am honored that they would make a trip like this to come and be part of this, and also my other friends who are here. So, thank you very much.

[The biographical information of Judge Elrod follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Jennifer Walker Elrod (Jennifer Leigh Walker; Jennifer L. Walker Elrod)

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

   United States Circuit Judge for the Fifth Circuit

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

   190th District Court
   201 Caroline, 12th Floor
   Houston, TX 77002

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

   1966 in Port Arthur, Texas

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Married to Hal Connor Elrod
   Director of Information Systems
   Direct Energy
   12 Greenway Plaza, Suite 600
   Houston, TX 77046

   Two dependent children

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

   Harvard Law School, J.D. 1992 (attended Fall 1989 through Spring 1992)
   Baylor University, B.A. 1988 (attended Fall 1984 through Spring 1988)
   Lee College, Baytown, Texas (attended Summer 1985, no degree)

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

2002-Present	Judge, 190th District Court, 201 Caroline, 12th Floor, Houston, TX 77002
1994-2002	Associate, Baker Botts, L.L.P., 910 Louisiana, Houston, TX 77002
Spring 1995	Adjunct Faculty, University of Houston Law Center, 100 Law Center, Houston, TX 77204
1992-1994	Law Clerk to Hon. Sim Lake, Southern District of Texas, 515 Rusk, Houston, TX 77002
Summer 1992	Summer Associate, Susman Godfrey, L.L.P., 1000 Louisiana, Suite 5100, Houston, TX 77002
1990-1992	Board of Student Advisors, Harvard Law School, 1363 Massachusetts Ave., Cambridge, MA 02138
Summer 1991	Summer Associate, Wilson, Sonsini, Goodrich and Rosati, 650 Page Mill Road, Palo Alto, CA 94304
Summer 1991	Summer Associate, Baker Botts, L.L.P., 910 Louisiana, Houston, TX 77002
Summer 1990-3/91*	Law Clerk, U.S. Attorney's Office, 1 Courthouse Way, Boston, MA 02210
1988-1989	Intern, Texas Research League, Red River, Austin, TX
Summer 1988	LBJ Legislative Intern to Hon. Jack Fields, U.S. Congress, Washington, D.C.
1999*-2002	Board Member/Chair of Board, Gulf Coast Legal Foundation (now Lone Star Legal Aid), 1415 Fannin, Houston, TX 77002
1999*-2002	Pro Bono General Counsel, Communities In Schools Houston, 2150 W. 18th St., #100, Houston, TX 77008

*date is approximate

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

   None.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Outstanding Young Lawyer of Houston (given by Houston Young Lawyers Association); Outstanding Young Alumna of Baylor University; Thomas Gibbs Gee Award for Outstanding Pro Bono Work (given by Baker Botts, L.L.P.); President's Award from the Houston Bar Association for Outstanding Service to the Bar in 2007 and 1998; Extraordinary Mother Award (given by Cystic Fibrosis Foundation of Houston); James Barr Ames Moot Court Finalist (Harvard Law School); Teagle Foundation Scholar; Outstanding Graduating Senior in Honors Program (given by Baylor University); Phi Beta Kappa; Omicron Delta Kappa; Mortar Board; Omicron Delta Epsilon; Gamma Beta Phi.

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

    Member, State Bar of Texas (since 1992); Vice-Chair of CLE at State Bar Annual Meeting; Member, Pattern Jury Committee; Member, College of the State Bar; Member Texas Bar Foundation; Former Member, Pro Bono College of State Bar; Former Member, Texas Young Lawyers Association; Speaker, Teen Court; Former Member, Houston Young Lawyers Association; Co-Chair HYLA Barbara Jordan Project; Member, Houston Young Lawyers Foundation; Member, Houston Bar Association; Co-Chair, Administration of Justice Committee; Former Co-Chair, Law Day Committee; Former Co-Chair CLE Committee; Former Co-Chair, LegalLines Committee; Participant in Night Court; Participant in the "Importance of Jury Service" community project; Participant in "Brown v. Board of Education Anniversary" community project; Former Council Member of Antitrust and Trade Regulation Section (2000-2002); American Bar Association (approx. 1994-approx. 2002); Member of Antitrust Section (assisted with Antitrust Monograph on Business Torts); Member, Mexican-American Bar Association of Houston; Member, Visitors Committee of South Texas College of Law; Member, Harris County Board of Judges; Member of Jury and Administration of Justice Committees; Member, Harris County Civil Board of Judges; Member of Judicial Education and Tax Committees.

11. **Bar and Court Admission**:

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

Admitted to the State Bar of Texas in 1992.
There have been no lapses in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

All state courts in Texas; November 1992.
U.S. District Court for the Southern District of Texas; February 1995.
U.S. District Court for the Eastern District of Texas; February 1998.
Supreme Court of the United States; January 2001.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Memorial Drive Baptist Church (member since 1992, deacon, choir member, Sunday School Teacher); Communities in Schools Houston (former Pro Bono General Counsel until 2002, volunteer); Baylor Alumni Association; Baylor University Women's Association of Houston (member periodically since approx. 1993); Phi Beta Kappa; Phi Beta Kappa Association of Greater Houston; Houston Realty Breakfast Club (approx. 2002-2006); National Association of Women Judges (member approx. 2003-2006, served on conference planning committee for Houston conference, served on CLE panel); various local Republican Women's clubs (approx. 2002-2006); Association of Women Attorneys (approx. 1993-present) (previously served on judicial screening committee); Houston Chapter of the Federalist Society (member since approx. 1994); Zeta Tau Alpha Alumnae Association of Houston (member periodically since 1994), emcee of Think Pink Luncheon); Aspiring Youth (volunteer); Leadership Houston Class XX; Houston Zoo, Houston Children's Museum; SpaceCenter Houston; Harvard Law School Alumni Association; Vice-Chair Reunion Gift Committee in 1997.

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations of which I have been a member practices the invidious discrimination referred to above. If I became aware of such discrimination, I would immediately cease associating with that organization.

I have been involved in several women's organizations, including a sorority in college.

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

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

Committee Member, Texas Pattern Jury Charges (Business, Consumer, Insurance, Employment) (2006 ed.)

"Religious Discrimination Issues in Employment," published in the Texas Labor Letter.

"Improving Your Serve," published in the Houston Trial Lawyers Association newsletter.

Assisted in preparation of damages chapter for ABA Antitrust Section Monograph on Business Torts.

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

None

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

None

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer

sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

April 13, 2007	Moderator, 2007 Civil/Appellate Bench Bar Conference: "Handling Pro Bono Cases"
March 28, 2007	Moderator, University of Houston Law Center, "Law Firms' View of Pro Bono"
March 1, 2007	Texas Bar CLE: "New Dogs, Old Tricks"
Feb. 23, 2007	South Texas College of Law Advanced Civil Trial Conference: "Effective Oral Persuasion in Trial and On Appeal"
Feb. 3, 2007	Bay Area Turning Point: "The Importance of Jury Service"
Feb. 2007	Houston Hispanic Forum: "Careers in the Law"
Aug. 9, 2006	TYLA Teen Court: "We the Jury" and "Effective Public Speaking"
April 24, 2006	J.D. Walker Community Center: "Importance of Jury Service"
Feb. 9, 2006	South Texas College of Law Advanced Civil Trial Conference: "Texas District Courts: Do's and Don'ts and Other Hot Topics"
Feb. 3, 2006	Texas Bar CLE: "New Dogs, Old Tricks"
Feb. 2006	Houston Hispanic Forum: "Careers in the Law"
Nov. 3, 2005	HBA Voir Dire Program for Debakey High School Students
Oct. 28, 2005	HBA: "Direct and Cross of a Financial Expert"
Oct. 21, 2005	National Association of Women Judges Conference: "Accountants, Lawyers, Investment Bankers, and Other Non-Scientific Experts: Applying Daubert to Non-Science Expert Opinions"
Sept. 24, 2005	Houston Court Reporters' Association: "Wild Wild West of Court Reporters"
Sept. 16, 2005	The Cliffwood School: "The Importance of Jury Service"
July 2005	TYLA Teen Court: "How to Present an Informative Speech
Sept. 9, 2005	TTLA Med/Mal Conference: "Mock Charge Conference"
April 9, 2005	Houston Hispanic Forum: "Careers in the Law"
March 4, 2005	HYLA CLE: "Post-Verdict Strategies"
Feb. 9, 2005	Houston Claims Association: "Judicial Panel"
Feb. 2005	Girl Scout Career and Technology Fair: "Careers in the Law"

Nov.12, 2004	Texas Bar CLE: "New Dogs, Old Tricks"
Fall 2004	HBA Voir Dire Program
Oct. 2004	Litigation Section of the State Bar: "Practice in the 190th District Court"
Nov. 12, 2003	Aspiring Youth TASTE Program
Oct. 17, 2003	Mexican-American Bar of Texas: "Practice in the 190th District Court"
May 30, 2003	HYLA: "The State Court Basics"
May 3, 2003	HBA: "Bar Speakout: Questions You Were Afraid To Ask"
March 6, 2003	South Texas College of Law Personal Injury Law Conference: "Top Ten One-Liners: Themes from Personal Injury Trials"
Feb. 2, 2003	South Texas College of Law Advanced Civil Trial Conference: "Ethical Issues in Discovery"
Oct. 3, 2002	Fourth Annual Evening Sidebar: "Business Ethics Meltdown-The Courtroom Clean-up"
Aug. 29, 2002	TTLA: "Practice in the 190th District Court"
June 20, 2002	HTLA: "New on the Block: Remarks from New District Judges"
April 2002	Remarks at my Ceremonial Investiture
Others:	20th Annual Advanced Civil Appellate Practice Course: "How to Make Yourself Indispensable at Trial"
	HBA Employment Law Section: "Whistleblower Cases and Governmental Entities"
	Houston Chapter of the Federalist Society: Introductions of Speakers- Birthright Citizenship Panel
	HYLA Law Day: "The Importance of Pro Bono Service"
	South Texas College of Law Founders' Day: "What They Don't Teach You in Law School"
	TYLA: "Employment Law for Religious Employers" Southwest DBTAC and EEOC: "Termination, Post-Employment Issues, and Exposure to Litigation"
	Mexican-American Bar Association of Houston: "Improving Your Serve"
	HBA School Presentation: "The Importance of Each Branch of Government"

South Texas College of Law: "Issues Regarding Claims of Religious Discrimination in Employment"

Houston Chapter of the Federalist Society: "Practice in the 190th State District Court"

North Harris County Bar Association: "Practice in the 190th State District Court"

South-Asian Bar Association: "Practice in the 190th State District Court"

Cystic Fibrosis Foundation of Houston: "Extraordinary Mothers and the Importance of Volunteerism"

HBA: Moderator, "Aftershocks of Columbine"

University of Houston ALSA, BLSA, HLSA: "How to Succeed in Law School and Beyond"

State Bar of Texas Annual Meeting: Introductions, "Securities Law Panel"

Ross S. Sterling High School Honor Society: "Remarks on Leadership and Character and Success"

Various short speeches about my candidacy for state court judge to the Mexican-American Bar Association, Pasadena Bar Association, and various Republican Women's Clubs and civic groups.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

None

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Judge, 190th District Court- appointed March 2002; elected Fall 2002, re-elected Fall 2006. The court is a state district civil court.

15. **Citations**: If you are or have been a judge, please provide:

    a. citations for all opinions you have written (including concurrences and dissents);

    As judge of a state district court, I do not write opinions, I sign orders. These orders are all publicly available from the Harris County District Clerk's Office.

    b. a list of cases in which certiorari has been requested or granted;

    None, to my knowledge.

    c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

    My decision was reversed on April 27, 2006 in *Seminole Transp. And Gathering, L.P. v. Cedyco Corp.*, 2006 WL 1140346. My decisions were affirmed in part and reversed in part on July 15, 2004, in *Caesar v. Bohacek*, 176 S. W. 3d 282, on October 6, 2005, in *Tri-State Building Specialists, Inc. v. NCI Building Systems*, L.P., 184 S.W. 3d 242, and on September 26, 2006 in *Mays v. Pierce*, 203 S.W. 3d 564. Two of my decisions have been reversed for settlement purposes only.

    d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

    None

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

    As noted above, I do not issue opinions, I sign orders. All orders are available for public review through the Harris County District Clerk's Office.

    f. citations to all cases in which you were a panel member in which you did not issue an opinion.

    None

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general

description of that system.) Please identify each such case, and for each provide the following information:

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

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

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

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

When I became Judge of the 190th Court, I recused in all cases where the parties were represented by attorneys from Baker Botts, L.L.P. for two years. Most of these recusals were handled automatically by the District Clerk's office. Occasionally, a case would be assigned to my docket. In those cases, I *sua sponte* recused. I also *sua sponte* recused in the cases being handled by Baker Botts attorneys that were already on the docket of the court when I arrived. I had practiced at Baker Botts for a number of years and I believed that I should recuse from all Baker Botts cases for a period of time to avoid any appearance of impropriety.

I recused myself *sua sponte* from a case involving CenterPoint Energy, because I thought I might have knowledge of the facts underlying the case through my previous representation of CenterPoint, and because I wanted to avoid any appearance of impropriety.

I recused myself *sua sponte* in at least two cases where lawyers who had contributed to my campaigns were parties, in order to avoid any appearance of impropriety.

I recused myself *sua sponte* in a case in which I had previously deposed one of the individual parties in a pro bono matter while I was in private practice. I had a belief as to the truthfulness of the party from that prior matter and I thought it best to recuse.

I recused myself *sua sponte* in a case where one of my former co-workers at Baker Botts was going to be a witness. I sought to avoid any appearance of impropriety.

I recused myself *sua sponte* in a case involving the small travel office used by Baker Botts, L.L.P. while I was an attorney there. I sought to avoid any appearance of impropriety.

I recused myself *sua sponte* in two cases in which a legal support firm was a party, where that firm had been a major sponsor of a Houston Bar Association program in which I had appeared. I sought to avoid any appearance of impropriety.

I declined to recuse myself in a case brought by a *pro se* party. Under our procedures, once a judge declines to recuse himself or herself, the Regional Administrative Judge either hears the recusal himself or assigns another judge to hear the recusal motion. That procedure was followed and I was not recused.

I declined to recuse myself in a case brought by four *pro se* parties. These *pro se* parties brought several motions to disqualify/recuse me. Each time that they sought to disqualify or recuse me, I referred the matter to the Regional Administrative Judge and I was not disqualified or recused.

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

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

    None

    b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

    When I was in college in the mid-1980's, I worked for my local Congressman Jack Field's re-election efforts. I worked with other students, distributing yard signs and packets of voter information.

18. **Legal Career:** Please answer each part separately.

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

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

        I clerked for the Hon. Sim Lake, United States District Judge for the Southern District of Texas from 1992-94.

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

I have not practiced alone.

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

2002-Present	Judge, 190th District Court, 201 Caroline, 12th Floor, Houston, TX 77002
1994-2002	Associate, Baker Botts, L.L.P., 910 Louisiana, Houston, TX 77002
Spring 1995	Adjunct Faculty, University of Houston Law Center, 100 Law Center, Houston, TX 77204
1992-1994	Law Clerk to Hon. Sim Lake, Southern District of Texas, 515 Rusk, Houston, TX 77002
Summer 1992	Summer Associate, Susman Godfrey, L.L.P., 1000 Louisiana, Suite 5100, Houston, TX 77002

b. Describe:

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

While at Baker Botts, L.L.P., I practiced in the Trial Department and I maintained a varied docket. I worked on antitrust, employment, commercial litigation, toxic tort, and other personal injury cases. I also served pro bono as a General Counsel for a non-profit organization.

ii. your typical clients and the areas, if any, in which you have specialized.

I practiced in a wide variety of litigation areas. I represented, among others, Schlumberger, CenterPoint Energy, the Texas Farm Bureau, PacifiCare, and the Loewen Group. I also represented individuals and groups pro bono.

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

Approximately 95 percent of my practice was in litigation. I appeared in court on a regular basis.

i. Indicate the percentage of your practice in:
   1. federal courts: 20%
   2. state courts of record; 80%
   3. other courts.

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings.

d. 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.

As a lawyer, to the best of my recollection, I participated in at least six trials to judgment. In one, I was part of a team. In several others, I tried them with one other lawyer. As a judge, I have presided over more than 125 jury and non-jury trials.

i. What percentage of these trials were:
   1. jury; 67%
   2. non-jury: 33%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

My former law firm represented the Texas Association of District and County Attorneys, pro bono, as amici before the Supreme Court of the United States in *Texas v. Cobb*. I assisted with the brief.

19. **Litigation**: Describe the ten (10) 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 representation;

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

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

1. I participated as a senior associate in a consent decree matter brought by the Department of Justice against two oil field service companies involved in a joint venture. Along with Rufus W. Oliver, III, J. Bruce McDonald, Harold Murry, Jr. and Mary C. Spearing, I represented Schlumberger, Ltd. The Department of Justice, Antitrust Division was represented by Roger W. Fones and Angela L. Hughes. Co-Defendant Smith International, Inc. was represented by William Bradford Reynolds. The Hon. Stanley Sporkin presided over the trial. The Court's decision is reported at 2000-1 Trade Cas. (CCH) P72,763 (D.D.C. 2000).

   Rufus W. Oliver, III, 910 Louisiana, Houston, TX 77002, (713) 229-1234
   J. Bruce McDonald, 51 Louisiana Ave. N.W., Washington, D.C. 20001-2113, (202) 879-5570
   Harold Murry, Jr., 1299 Pennsylvania Ave. N.W., Washington, D.C. 20004-2400, (202) 639-7722
   Mary C. Spearing, 1299 Pennsylvania Ave. N.W., Washington, D.C. 20004-2400, (202) 639-7760
   Roger W. Fones, 2000 Pennsylvania Ave. N.W., Washington, D.C. 20006-1888, (202) 887-6931
   Angela L. Hughes, 325 7th Street N.W., Washington, D.C. 20530, (202) 307-6410
   William Bradford Reynolds, 1299 Pennsylvania Ave. N.W., Washington, D.C. 20004, (202) 383-6912

2. I participated as an associate in the defense of the attempted takeover of The Loewen Group by Service Corporation International. At the time, both companies were in the funeral services industry. Also representing The Loewen Group were R. Paul Yetter, Thomas R. Ajamie, Joseph P. Knight, Maryanne Lyons and Matthew P. Eastus, all of whom were then at Baker Botts, L.L.P. Representing SCI was the Hon. John L. Hill, Jr. and Jess Hall, Jr., who were then both at Liddell, Sapp, Zivley, Hill &LaBoon. The Loewen group was successful in obtaining dismissal of the Texas action and denial of a preliminary injunction. The case was before the Hon. John D. Rainey, and is reported at 1997-1 Trade Case. (CCH) P71,688 (S.D. Tex. 1996).

   R. Paul Yetter, 909 Fannin, Suite 360, Houston, TX 77010, (713) 632-8000
   Thomas R. Ajamie, 711 Louisiana Street, Suite 2150, Houston, TX 77002, (713) 860-1600
   Joseph P. Knight, 1500 San Jacinto Center, 98 San Jacinto Blvd., Austin, TX 78701, (512) 322-2554
   Maryanne Lyons, 910 Louisiana, Houston, TX 77002, (713) 229-1234
   Matthew P. Eastus, 400 S. Hope St., Los Angeles, CA, 90071, (213) 430-6679
   John L. Hill, Jr., 919 Milam Street, Houston, TX 77002, (713) 650-2752
   Jess Hall, Jr., 31526 Lower Oxbow Trace, Fulshear TX, 77441, (281) 346-0319

3. I participated as an associate in the defense of PacifiCare Health Systems, Inc. in a lawsuit involving antitrust claims brought by a physician. Also representing PacifiCare were Rufus W. Oliver, III, J. Bruce McDonald, and Michael Bennett,

all of whom were then at Baker Botts, L.L.P. Representing the physician was David W. Crowe of Dallas, Texas. The case was before the Hon. A. Joe Fish in the Northern District of Texas, and is reported at 1998 U.S. Dist. LEXIS 5148 (N.D. Tex. 1998). PacifiCare was successful in obtaining a transfer of venue to the Western District of Oklahoma.

Rufus W. Oliver, III, 910 Louisiana, Houston, TX 77002, (713) 229-1234
J. Bruce McDonald, 51 Louisiana Ave., N.W. Washington, D.C. 20001-2113 (202) 879-5570
Michael Bennett, 910 Louisiana, Houston, TX 77002, (713) 229-1234
David W. Crowe, 6550 Bank of America Plaza, 901 Main Street, Dallas, TX 75202 (214) 231-0555

4. I participated pro bono as co-counsel before trial in representing high school students who brought first amendment claims against their school district. Also representing the student plaintiffs was Brent C. Perry. Cobby A. Caputo represented the school district. The students were successful in obtaining injunctive relief. The case was before the Hon. David Hittner in the Southern District of Texas, and is reported at 976 F. Supp. 659 (S.D. Tex. 1997).

Brent C. Perry, 6303 Beverly Hill, Suite 220, Houston, TX 77057, (713) 334-6628
Cobby A. Caputo, 816 Congress Ave., Suite 1700, Austin, TX 78701, (512) 472-8021

5. I participated as co-counsel for Houston Lighting and Power Company (now CenterPoint Energy) in a trial involving alleged property damages resulting from a house fire. The case featured a number of interesting legal issues and theories of causation. The case was litigated before the Hon. Cynthia Crowe, then Judge of Harris County Court at Law. Opposing counsel were Danny Sheena and Bill Portis of Houston, TX. Co-counsel was John Anaipakos of Baker Botts, L.L.P. The client obtained a favorable jury verdict.

John Anaipakos, 910 Louisiana, Houston, TX 77002 (713) 229-1234
Danny Sheena, 1001 Texas Ave., Suite 240, Houston, TX 77002 (713) 224-6508
Bill Portis, 1001 Texas Ave., Suite 230, Houston, TX 77002 (713) 224-6473

6. I represented Reliant Energy HL&P (now CenterPoint Energy) in an alleged electrical contact matter. Opposing counsel was Stavis Gilbreath. Reliant Energy HL&P obtained a summary judgment in the matter, which was before the Hon. Bruce Oakley in the 234th District Court of Harris County Texas.

Stavis Gilbreath, 5412 Irvington Blvd., Houston, TX 77057 (713) 695-2888

7. I participated as co-counsel for CenterPoint Energy in several very large related condemnation matters involving the Harris County Toll Road Authority. The matters were before the Hon. Jack Cagle, the Hon. Lynn Bradshaw-Hull, and the Hon. Gary-Michael Block in the Harris County Courts at Law. The matters were resolved favorably following the Special Commissioners Hearings. Co-Counsel was Charles Dippel. Opposing counsel were Laura Cahill and Cedric Loeb of the Harris County Attorneys Office.

   Charles Dippel, 600 Travis, Suite 4200, Houston, TX 77002, (713) 220-4694
   Laura Cahill, 1310 Prairie, Suite 940, Houston, TX 77002, (713) 755-7158
   Cedric Loeb, 1019 Congress, 15th Floor, Houston, TX 77002, (713) 755-7192

8. I participated as co-counsel for a driver insured by the Texas Farm Bureau in an alleged personal injury auto accident case. My co-counsel was David Poage, then of Baker Botts, L.L.P. Opposing counsel was Albert Hollan of Houston. Co-defendant's counsel was Shannon Robbie Ramirez of Hays McConn Rice & Pickering. The case was tried in front of the Hon. Sharolyn P.Wood of the 127th District Court of Harris County. The client obtained a successful jury verdict. The Court granted a motion for new trial. At the second trial, our client obtained a successful jury verdict again.

   David Poage, (713) 664-9344
   Albert Hollan, 10101 Southwest Freeway, Suite 400, Houston, TX 77074, (713) 526-2650
   Shannon Robbie Ramirez, 400 Two Allen Center, Houston, TX 77002, (713) 752-8356

9. I represented Houston Lighting and Power Company (now CenterPoint Energy) in a tax matter before Tax Master Chris Stacy. Opposing counsel was Leah Stolar, now of Linebarger, Goggan Blair & Sampson, L.L.P. The client was found not to owe the taxes alleged and to be entitled to a tax refund.
   Leah Stolar, 1301 Travis Street, Suite 300, Houston, TX 77002, (713) 844-3437

10. I participated as co-counsel in the defense of Utility Fuels, Inc. in an employment discrimination suit brought by former employees of the company. Co-Counsel were Chapman Smith and Allistar Waldrop, of Baker Botts, L.L.P. Plaintiff's counsel was the Keeling Law Firm in Houston. The client was successful in obtaining summary judgment as to all but one of the plaintiffs and settled with the remaining plaintiff. The case was before the Hon. Ben Hardin in the District Court of Brazoria County.

    Chapman Smith, 910 Louisiana, Houston, TX 77002, (713) 229-1234
    Allistar Waldrop, 910 Louisiana, Houston, TX 77002, (713) 229-1234
    Keeling Law Firm, 901 N. Post Oak Rd., Houston, TX 77024, (713) 680-1447

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

    One of the most significant things that I have been involved in has been my pro bono representation of Communities in Schools Houston, Inc. CISH helps disadvantaged young people reach their educational goals. Because of the work of the CISH employees and volunteers in the schools, students finish high school at far greater rates. In the 1990s, I began mentoring, working in the legal internship program, and assisting with occasional legal projects. The organization experienced tremendous growth and as such, it had increasing legal needs. CISH named me as its first General Counsel in 1999 and I served in that position until being appointed to the bench in 2002.

    In college, I served as a member of the Baylor Ambassadors, a student group, and one of its functions was to visit members of the State Legislature to encourage support of the Texas Tuition Equalization Grant for private university students. Since college, I have not been involved in any lobbying activities.

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

    While a student at Harvard Law School, I was a member of the Board of Student Advisors. As a member of the Board, I taught brief-writing and oral argument skills to first-year law students. I taught brief-writing and oral argument as an adjunct at the University of Houston Law Center in the Spring of 1995.

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

    Other than possible state and county pensions, none.

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

I have no outside plans, commitments or agreements to pursue outside employment during my service with the court.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)

    See attached Financial Disclosure Report

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

    See attached Net Worth Statement

26. **Potential Conflicts of Interest**:

    a. Identify the parties, 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. Explain how you would address any such conflict if it were to arise.

    At this time, the only potential conflicts-of-interest of which I am aware would be cases that involved my husband's employer, Direct Energy.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

    I would carefully review case files for potential conflicts before hearing or ruling on any case. In all cases I will follow the Code of Conduct for United States Judges and all applicable statues, policies and procedures to identify and avoid actual or potential conflicts of interest.

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

I have devoted a great of deal of time to pro bono work during the years that I practiced. As noted above, I served pro bono as the first General Counsel of one of the largest dropout prevention organizations in the country. I also served as the Chair of the Board of the Gulf Coast Legal Foundation (now Lone Star Legal Aid), the largest provider of pro bono legal services in southeast Texas. I also worked on other pro bono matters.

One such memorable case involved a man who lived with his partially disabled son in a house that he believed he was purchasing on a contract for deed. We were able to prevent him from being evicted. I was a member of the Pro Bono College of the State Bar of Texas. I also received awards recognizing my pro bono work including the Outstanding Young Lawyer of Houston Award and the Thomas Gibbs Gee Pro Bono Award.

Since I have been a judge, I have continued to encourage pro bono work. For example, this past month, I moderated two panels encouraging law students and lawyers to become involved in pro bono work.

28. **Selection Process**:

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

In October 2006, I was asked if I wished to be considered for one of the Fifth Circuit positions. In November 2006, I interviewed with the White House Counsel's Office and the Department of Justice. I had several telephone conversations with the White House Counsel's Office in January and February 2007. In February 2007, I was advised that I had been approved to go forward in the process and worked with the Department of Justice in completing nomination paperwork. I was nominated on March 29, 2007.

To my knowledge there is no selection commission in my jurisdiction to recommend candidates for nomination to Circuit Court positions.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

Rev. 1/2006

NOMINATION FILING

in Government Act of 1978
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Elrod, Jennifer W	5th Circuit	03/29/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
Circuit Judge Nominee	☒ Nomination, Date 3/29/2007 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2006 to 3/29/2007
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
201 Caroline, 12th Floor Houston, TX 77002	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Judge	190th Civil District Court, State of Texas/Harris County
2.	
3.	
4.	
5.	

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 2006	Employee Retirement System of Texas (since 2002), no control - not vested
2. 2006	Texas County and District Retirement System (since 2002), no control - not vested
3.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting Elrod, Jennifer W	Date of Report 03/29/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2005	State of Texas - salary	$ 96410
2. 2005	Harris County - salary	$ 21281
3. 2006	State of Texas - salary	$ 120099
4. 2006	Harris County - salary	$ 1656
5. 2007 YTD	State of Texas - salary	$ 20834
6. 2007 YTD	Harris County - salary	$ 1250

B. Spouse's Non-Investment Income - *If you were married during any portion of the reporting year, complete this section.*

(Dollar amount not required except for honoraria.)

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

DATE	SOURCE AND TYPE
1. 2006	Direct Energy - salary
2. 2007 YTD	Direct Energy - salary
3.	
4.	
5.	

IV. REIMBURSEMENTS -- *transportation, lodging, food, entertainment.*

(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1. Exempt	
2.	
3.	
4.	
5.	

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting Elrod, Jennifer W	Date of Report 03/29/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

	SOURCE	DESCRIPTION	VALUE
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☒ NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 4 of 6	Name of Person Reporting Elrod, Jennifer W	Date of Report 03/29/2007

VII. INVESTMENTS and TRUSTS – *income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. AMCENT: BEN GNMA	A	Dividend	J	T	Exempt				
2. DREYFUS INTER TERM INCOME FUND	A	Dividend	K	T					
3. Fidelity U.S. Bond Index Fund (457 Plan)		None	J	T					
4. Schwab MktMgr INTL (IRA)	C	Distribution	K	T					
5. Schwab S&P 500 Index		None	K	T					
6. Schwab Small Cap Index Fund	C	Distribution	K	T					
7. Schwab Total Stk Mkt-INV	A	Dividend	K	T					
8. Schwab Total Stk Mkt-SEL	B	Dividend	M	T					
9. Vanguard Growth Index Fund (457 Plan)		None	L	T					
10. Vanguard Lifestrategy Growth (IRA)	B	Dividend	M	T					
11. Vanguard College Savings Iowa (529)	A	Dividend	J	T					
12. US Savings Bonds	A	Interest	J	T					
13. Texas County and District Retirement System	A	Interest	J	T					
14. Employee Retirement System of Texas	B	Interest	K	T					
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A =$1,000 or less	B =$1,001 - $2,500	C =$2,501 - $5,000	D =$5,001 - $15,000	E =$15,001 - $50,000
	F =$50,001 - $100,000	G =$100,001 - $1,000,000	H1 =$1,000,001 - $5,000,000	H2 =More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J =$15,000 or less	K =$15,001 - $50,000	L =$50,001 - $100,000	M =$100,001 - $250,000	
	N =$250,001 - $500,000	O =$500,001 - $1,000,000	P1 =$1,000,001 - $5,000,000	P2 =$5,000,001 - $25,000,000	

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Reporting Individual Elrod, Jennifer W	Date of Report 03/29/2007

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

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Reporting Individual Elrod, Jennifer W	Date of Report 03/29/2007

IX. CERTIFICATION.

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

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

Signature Jennifer W. Elrod Date March 30, 2007

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		14	911	Notes payable to banks-secured			
U.S. Government securities-add schedule		6	073	Notes payable to banks-unsecured		7	460
Listed securities-add schedule		504	202	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		171	372
Real estate owned-add schedule		316	200	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		32	072				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		178	832
				Net Worth		694	626
Total Assets		873	458	Total liabilities and net worth		873	458
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. Government Securities	
Series EE Bonds	$ 6,073
Listed Securities	
AMCENT: BEN GNMA	$ 10,471
Dreyfus Inter Term Income Fund	19,908
Fidelity Retirement MM Fund	3
Fidelity U.S. Bond Index Fund	11,510
Schwab MKTMGR INTL	45,855
Schwab S&P 500 Index	19,156
Schwab Small Cap Index fund	38,705
Schwab Total STK MKT-INV	33,754
Schwab Total STK MKT-SEL	157,438
Vanguard Growth Index Fund	52,572
Vanguard Lifestrategy Growth	110,307
Schwab Money Market/Sweep Account	4,523
Total Listed Securities	504,202
Real Estate Owned	
Personal residence	$ 316,200
Real Estate Mortgages Payable	
Personal residence	$ 171,372

AFFIDAVIT

I, Jennifer Walker Elrod, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 24, 2007
(DATE)

Jennifer W. Elrod
(NAME)

CATHRINE M. NORTON
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
JUNE 20, 2010

Cathrine M. Norton
(NOTARY)

Senator CARDIN. Well, we appreciate your family and your associates and friends being here. We know this is a particularly important day. As I said in my opening comments, I really want to thank the family particularly because I know it's not easy to serve as a judge and it takes time away from the family, and we very much appreciate the sacrifices that are made by your family.

So I can explain to your family, this is a traditional type of a hearing where we'll ask questions. Some of them could get rather direct at times, but it's a requirement that we try to find out as much information as possible because you're being appointed to a life term position and this is the one opportunity that the public gets to have a full record of your qualifications and your views, and we try to take advantage of this the best that we can..

If I understand correctly, you choose not to make an opening statement. Am I correct?

Judge ELROD. Yes, Mr. Chairman. That's correct.

Senator CARDIN. Let me start off by asking you a few questions, if I might. I believe that you served on a judicial screening committee of the Association of Women Attorneys. So I'm going to start by asking you, what questions did you ask or did you want to know in screening applicants to become a judge?

Judge ELROD. Well, it's been a while, but as I recall I was interested in knowing about the judicial temperament of the candidates. It's very important that people who serve on the bench don't have that "black robe fever" or "robitis" or whatever they call it these days, and that people who are going to serve have an even temperament and are listeners.

Also, I looked at their experience because it's important to have people who have demonstrated experience in the field. And do they have a reputation for integrity in their practice of the law. Those were some of the categories that I looked at when I screened candidates.

Senator CARDIN. First of all, as I told you yesterday when we had a chance to meet, I really do applaud your leadership on legal services and pro bono. I think that's an extremely important responsibility that lawyers have, and you've taken that responsibility very seriously with your leadership in Texas. I congratulate you for that.

Some of the most significant cases that you've been involved with has been on a pro bono basis, and I find that impressive and just really want you to know that I, for one, appreciate that type of commitment to equality within our judicial system.

I do want to talk, though, about one of the criteria which is of concern to the committee, and that is experience. You are nominated to serve on the Appellate Court, a lifetime position.

You have no judicial experience on the Federal bench, although you certainly do at the State level. This is a position that will require a considerable amount of attention to the constitutional details and precedent for affecting a lot of trials in this country.

What can you tell me that can give this committee some comfort that you are qualified and experienced to serve on the Federal Appellate Court?

Judge ELROD. Well, I can go through my specific experiences in the Federal system, and I'm happy to do that, Mr. Chairman, if

you'd like me to do that. But I think the most important thing I can tell you is that I take very seriously something that my mentor, Judge Sim Lake, said to me.

He said the people that come to court and have a problem, that day their problem is the most important thing. That's the most important case that you consider, because it's most important to them.

And, indeed, sometimes it's the very most important things in their very lives and I've tried to treat each of the cases that have come before me in that way and treat them with diligence and careful attention, and I would bring that diligence, careful attention, and work ethic and respect for the Constitution to the Fifth Circuit Court of Appeals, if you were to confirm me.

Senator CARDIN. I know your background. I know your career. We have that information in the record. You have a background on the bench and in private practice which is impressive. We are talking about an appellate Federal position. It's going to take a great deal of commitment on your part to be adequately prepared for the type of cases that are going to come to the Federal bench. Is there any path that you intend to take in order to be properly prepared to meet the challenges of the Appellate Court?

Judge ELROD. The path that I would take would be to listen, to read the briefs, to listen carefully to the arguments, to listen to the positions and discussions of my colleagues, and to work diligently, to read every single record thoroughly and to treat the—to treat that responsibility with the highest regard, as would be called for on the Fifth Circuit Court of Appeals.

Senator CARDIN. I want to move to the issue that has been of concern to this committee on diversity on the bench. You are nominated for a seat on the Fifth Circuit that includes Mississippi, Louisiana, and Texas and presides over the largest percentage of minority residents, 44 percent, of any regional Circuit Court of Appeals in the country outside of Washington, DC.

Mississippi has the highest African American population, 36 percent of any State in the country. Louisiana has the second-largest African American population, 32 percent of any State in the country.

Given these percentages, of the 19 Federal judges that now sit on the Fifth Circuit, only one is African American. So I want to know your views as to how important you believe diversity is for the public to have confidence that the courts are going to be responsive to their needs.

Judge ELROD. Well, I have treated the issue of diversity very importantly in my career. As a matter of fact, on Monday when I get back to Texas, I'll try a case—unless it's settled—but I will also host a program of high school students from disadvantaged backgrounds who come to the Harris County courts every year, and have for the past 5 years that I've sat as a judge, designed especially to tell them about careers in the law. I have taken the personal responsibility to make sure that there are educational opportunities available and that people can learn that people can be successful in careers in the law.

Senator CARDIN. Now, obviously you're just one of the appointments. There's a whole series. You cannot create diversity by one

appointment, but it does have an impact on the diversity within the court. I want to come back to the issue of the balance within that Circuit. It does trouble me about the lack of diversity on the Fifth Circuit.

I just really want to know whether it's of concern to you, whether you believe there should be efforts to have greater diversity on the institutions of government that the people of this Nation are concerned about, giving them a fair shake.

Judge ELROD. With regard to the constitution of the Fifth Circuit, that is, of course, a matter for the President, with the advice and consent of the Senate. So, I can't speak to the Fifth Circuit specifically, or any other court.

However, again, I can turn to you, to my commitment that I have tried to display—that I have displayed, in my public service in the efforts that I've chosen, both in helping not only these high school students, but small children get their dental services so that they can go to school and be educated and not have to be embarrassed in school.

My efforts—for example, I had the privilege of helping a young woman who was graduating from high school, and she was graduating salutatorian of her class, and her parents could not come to the United States to see her high school graduation.

They were—they lived in Mexico and they could not get the visas that they needed to come to her high school graduation. I was able to help her get her parents here to see her graduate, and her parents sat in my office and thanked me and said that that was the proudest day of their lives. That was an important day in my legal career.

Senator CARDIN. Thank you. You've been saved for a few minutes, because the senior Senator from Mississippi, Senator Cochran, has arrived. You can continue to sit there if you will, but I want to call on Senator Cochran and give him a chance to address our committee.

It's always a pleasure to have you before our committee, Senator.

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

Senator COCHRAN. Mr. Chairman, thank you very much. I appreciate your courtesy, and I apologize for being late. We had an Appropriations Committee session on a bill that we are reporting to the full Senate that went a good bit later than we expected.

But I'm very pleased to have the opportunity to introduce today Judge Sharion Aycock and recommend her confirmation as a United States District Judge for the Northern District of Mississippi.

Judge Aycock's husband, Randy, is with her here today. I had an opportunity to visit with him earlier today.

I'm pleased to let you know that Judge Aycock is exceptionally well qualified by reason of her education, her experience, and her temperament to serve as a Federal judge. I am sure she will reflect great credit on the Federal judiciary.

During her distinguished career as a lawyer and as a State court judge in my State, she has earned the respect and admiration of the lawyers and judges who have worked with her and who know her well. She's been selected to serve in many professional and community positions of trust and responsibility. The American Bar Association's Standing Committee on the Federal Judiciary unanimously concluded that she is "Well Qualified" to serve as a Federal District Court judge.

She was born and raised in Northeast Mississippi in the town of Tremont, Itawamba County, where she graduated from high school with honors and was elected president of the student body. She graduated with honors from Mississippi State University in 1977, where she studied economics and political science.

She was a member of Phi Kappa Phi, the Nation's oldest and largest honor society. She was inducted into the Mississippi State University Hall of Fame. She also served as president of her social sorority, Delta Delta Delta.

She received her law degree from the Mississippi College School of Law, where she served as co-editor-in- chief of the Law Review and as treasurer of the student body. She graduated second out of a class of 146, and was admitted to the Mississippi State Bar.

After graduation, she returned to her home county and started her law practice. She practiced as an individual practitioner in her own office since 1984 until she was elected to serve on the District Court State trial court bench.

But during those years she represented her County Board of Supervisors, the Board of Education, the town of Tremont, the city of Fullton, and the Northeast Mississippi Natural Gas District.

She served as the Itawamba County prosecuting attorney for 8 years. She was recognized as the State's "Most Distinguished Juvenile Justice Professional." She was elected Circuit Court judge for the first Circuit Court district in Mississippi in November of 2002 and she was unopposed when she sought reelection in November of 2006.

State court judges, as you know, are elected in Mississippi. Voters have the opportunity to get to know candidates personally and to learn more about their background and their ability. And based on a consensus of the people in her part of the State, she has truly been an outstanding trial judge.

The fact that she was unopposed in 2006 in an area of the State which takes politics seriously, somebody said up there it's a contact sport. Well, it may not be that, but people have recognized, across a broad range of the community, the tremendous job she does and the enthusiasm that she brings to the office and the courtroom every day.

The First Circuit Court District's docket is one of the busiest in the State of Mississippi. It had one of the largest backlogs, too, of any judicial district in the State, and she cleaned it up. Everything is up to date, and not just Cincinnati, or wherever, but everything. Kansas City. Sorry. Kansas City.

During her tenure she's had the opportunity to hear criminal cases and civil cases covering a broad range of subject areas, and she has done it all with a calm, cool, judicial temperament, a sensitivity for the interests of jurors, of litigants, of judges.

She is a very popular choice for this position that has come open in the Federal court system of our State, and I'm looking forward to hearing all the compliments and the words of praise of her as she begins her tenure as a United States District Court judge. I recommend her highly and wish her well, and congratulate her on this nomination.

Senator CARDIN. Thank you very much for your comments before the committee. Without objection, we'll put the resolution of the Mississippi Chapter of the American Board of Trial Advocates in support of the nomination of Sharion Aycock into the record.

Senator Cornyn?

Senator CORNYN. Well, thank you, Mr. Chairman. I was thinking a little bit about your questions about diversity on the bench, and certainly I share your interests in seeing that everyone in our society is represented in all branches of government, including the judiciary.

I was thinking about the fact that Judge Elrod, if confirmed, will replace somebody that looks more like you and me. I understand Judge Aycock will be the first United States Federal District judge who happens to be a woman in Mississippi, Senator Lott said earlier. So, I think maybe we're not making enough progress, but I think we have to note the progress that is being made and I'm grateful for that.

Judge, I'm going to throw you a little bit of a curve ball here, but I know you can take it. I have a daughter in law school, so I happen to note these things. One of the major law firms in the Nation just increased its starting salary to $160,000 a year, which is a little shocking for first-year law students.

How do you feel about judicial salaries and our ability to attract the best and the brightest to the Federal judiciary? Because I know we all are concerned that it not be seen as a job that some people can take if they can afford it, but that others may be prohibited, or perhaps discouraged by much higher salaries in the private sector to what they can earn as a Federal judge.

Judge ELROD. Well, Senator Cornyn, judicial salaries are in the province of Congress. I trust your wise judgment—Congress' wise judgment—on judicial salaries. I personally—as you know, I did not take this job that I have now in order to increase my financial benefit, although I have seen in the State court a situation where some very good judges have left the State court bench in order to provide for their families. But I didn't take the job I have now for the salary, and if I were to confirm—be confirmed to the Fifth Circuit, I would be happy to serve.

Senator CORNYN. Well, when I was Attorney General of our State I used to tell the people that worked at the Attorney General's office that I knew they weren't in it for the money or the glory, and I trust that would also apply to you.

One of the things that I am very profoundly concerned about is the extent to which the cost and the time involved in modern litigation prohibits many people from seeking and obtaining access to justice in our State and Nation. You know, it's got to be an extraordinary case that perhaps a lawyer might take on a contingency fee basis that would justify the kind of investment they would make in the case, and certainly just the delay and the pain that goes

along with being involved in perhaps a multi-year legal process dissuades some who might otherwise deserve access to justice from obtaining it.

So can you tell us a little bit about your thoughts with regard to what can be done, and what has been done, and most particularly what you have done, to address those concerns about delay and costs associated with justice that would prohibit some from seeking it.

Judge ELROD. Well, one thing that I have done, is I tried—I asked the lawyers that come in my courtroom, would they like an expedited trial. And I'll give anybody a trial in 45 days on the merits, if they'll agree to it.

Otherwise, I have a very prompt trial scheduling order that I get into, because I've found if you give months and months and months and years and years for discovery, lawyers will try to find things that they need to discover.

So you need to give adequate time to complex cases, obviously, but if you move things along and give everyone a fair playing field, but don't delay, you save the litigants costs. Other things you can do, is you can allow the use of technology in the courtroom to be of—to be helpful.

I allow anyone to appear on the telephone, for example, if they choose to do so as long as it's not an evidentiary hearing, and other types of things like that. There are always innovations that can be made in order to streamline and to cut costs because litigants, the people whose cases the lawyers are bringing, don't want to wait 12 years to go to trial and spend millions of dollars. They want to get their disputes resolved in a prompt, efficient manner.

Senator CORNYN. And, of course, Senator Cardin has already noticed your service to the Legal Services to folks who are of modest means who might not otherwise have access to justice, so I commend you for that.

You've been a practicing lawyer, and now a District judge, and you are aspiring to enter the, I guess, the hermitage or whatever that is sometimes known as the Federal appellate judiciary.

But it obviously takes a little bit of a different temperament, a little different attitude based upon your role in the legal system, whether as an advocate on behalf of a client, as you were at Baker Botts, or as a trial judge working with juries and establishing the facts so that the law may be applied to enter a judgment.

But can you tell us a little bit about what sort of adjustment you think you'll have to make going from a trial bench to an appellate bench in terms of how you approach your job or whether there's not much change at all.

Judge ELROD. In general, I think the job is very much—it's a similar job in that you apply the law to the facts, you follow the law, you follow the Constitution. And that's your job whether you're sitting hearing a red light swearing match or the most complex patent dispute.

You use the same skill set, however, you may take some more analytical reasoning, some careful study, careful review of precedent. But it's the same basic skill: a commitment to the facts and the law of the case that you're considering that you have at the trial level and at the Court of Appeals.

Senator CORNYN. Well, you are quite accomplished as a lawyer, obviously did very well in law school and have a great record of success. I suspect that you might in many cases be the most accomplished lawyer in the courtroom, including the advocates. Are you going to be tempted to re-try the case, particularly on appeal, for the lawyers who tried it down below or before you in the appellate argument?

Judge ELROD. It's not a judge's role to act as an advocate, as you know, having sat on the Supreme Court of Texas. My job would be to decide and rule on the law based upon the facts that were brought to me. We don't step in and play in the game. And I don't mean to belittle it and call it a "game", but we call the balls and the strikes, and I would be faithful to that role on the Fifth Circuit Court of Appeals, if I was confirmed.

Senator CORNYN. Thank you very much. I'm confident you will.

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

Senator CARDIN. Thank you, Senator.

Let me talk about one of the cases that you were involved with on a pro bono basis that I found as a very interesting case. I think it's Shell Fox, the one dealing with the wearing of the rosary in which the—I think you were a co-counsel in that, if I'm correct, in which there was concern that gang-related activities, that you wear certain apparel and students wanted to wear some religious articles, that you took the position that this is their freedom, their personal right do that, and it was unreasonable to restrict what students could do as far as a rosary, I believe it was.

Which is an interesting type of a conflict that is now occurring throughout not just the United States, but other countries. France, for example, has passed laws restricting what students can wear because of their concern of violent activity against students in schools. And, of course, we have a major concern about gang activity.

So I just wanted to give you a chance to perhaps expand on that a little bit, tell us a little bit about your philosophy and your concerns about protecting the rights under the Constitution, when sometimes there are conflicts under the Constitution where we're trying to protect the peace and safety of a community, but we're also trying to protect individual rights to express their religious beliefs as they see fit. Do you care to try to help me out on that one?

Judge ELROD. Mr. Chairman, as you noted, I was an advocate on behalf of a client in that lawsuit. I think you put very well the conflicts that we have in our society. Public school safety is obviously of paramount concern in our society, as are First Amendment rights.

Courts have to very carefully balance those issues based upon the law and the facts that are presented to them. In the case that I was an advocate on behalf of a client, the judge in that court found that, in fact, my clients had been discriminated against.

Senator CARDIN. Well, perhaps you could give me a little bit more view—your views—as to the constitutional protections for civil liberties, for the right for one to express his or her religious beliefs, the rights under the Constitution for consumers against the arbitrary practices of business, those types of issues that I think the framers of our Constitution envisioned the judicial branch

being effective in protecting individual rights against arbitrary governmental actions or private sector actions. Do you care to help me on that, your views?

Judge ELROD. My views on—can you rephrase, Mr. Chairman? I apologize. I'm—

Senator CARDIN. How you would look at the Constitution, and interpreting the Constitution to protect individuals, as you did in this particular case, against a law that you felt was wrong? But how do you look at judging the rights of an individual, whether it's a right to religious freedom, freedom of speech, the constitutional protections we have. How do you view—how do you weigh that in your making decisions?

Judge ELROD. Well, when a judge is considering these important rights in the Constitution, you basically take the facts of the case as it comes in and you look at the precedent.

Right now I sit on a trial court in Houston, Texas, as you know, and I look to see, what has the first Court of Appeals said? What has the 14th Court of Appeals said? What has the Texas Supreme Court said about this? Has the Supreme Court of the United States opined on this? If none of these courts have opined, have other courts opined that could be helpful and give helpful, persuasive authority rather than precedential authority?

And I would carefully consider that, recognizing that these are important rights that need to be adjudicated based upon the facts presented in the case.

Senator CARDIN. Let me put it this way. As a pro bono attorney in Legal Aid, you used your talents to help people who otherwise would not have gotten the opportunity to get their points brought out in our judicial system. That is what I find admirable about pro bono and about the legal aid work that you did.

As an appellate court judge, how do you see your role in helping someone who is disadvantaged, or someone who has been oppressed, or someone who has not gotten a fair shake in our legal system?

Judge ELROD. Well, my role as a role is obviously different than my role as an advocate. As a judge, my job is just to decide the case based upon the law, and the arguments, and the briefs that are presented. There are things that judges can do that help legal services for the poor.

For example, judges can teach practitioners who serve legal services for the poor, advocacy skills. As was mentioned earlier, I did that this year. Judges can make sure that if people come in and needing legal services, that they have ready access and know of the legal services that are in their communities. The Houston Bar and the Houston Young Lawyers, for example, work hard to provide those types of lists and things, and judges can give out that information.

But judges cannot become advocates for the parties in a case before them. That's—the judge steps out of his or her role if he chooses to say, I'm going to try to advance this party and not that party. That's not a proper role for the judge.

Senator CARDIN. In the confirmation hearings of Chief Justice Roberts and Justice Aleto, there was extensive discussions about the amount of which judges and justices are bound by previous

court decisions, stare decisis. What is your opinion as to how strongly judges should be guided by the doctrine of stare decisis is very, very important.

Stare decisis gives us uniformity in the law. It promotes party-settled expectations. It's a very important legal principle. We would not have a stable system of justice of judges were, every day, changing their minds. And they shouldn't be changing their minds, ever, based upon their personal will or personal whims, or even personal public policy views.

Senator CARDIN. Thank you.

Senator Cornyn?

Senator CORNYN. Thank you, Mr. Chairman. I don't have any further questions of this witness.

Senator CARDIN. Judge, just bear with me for a few more moments. I'm going to make a request from you, and that is, as I think I told you when we were together, you have not been the author of that many published opinions, which is something that our committee normally looks at very carefully on appellate nominations.

What I would request, is that copies of speeches that you gave in public forums, be made available to our committee. If you have copies, we will request that that be made to supplement our record just so that we have an opportunity to hear your thoughts. This will be taken in the right context, but I think it's useful if we can see some more of your writing. So if you could comply with that, I certainly would appreciate it.

There will be other questions that we're going to be submitting for the record and give you a chance to reply to our committee on it, but I don't have any additional questions at this time and I thank you very much.

Again, I thank your family for being here. They're great supporters, I can see that.

Judge ELROD. Thank you, Mr. Chairman. Thank you, Senator Cornyn.

Senator CARDIN. The third panel will consist of two nominees for the District Court. Richard Anthony Jones, who's been a judge on the King County Superior Court since 1994. Previously, Judge Jones served as an Assistant U.S. Attorney in the Western District of Washington and an associate of Bogle & Gates, staff attorney for the Port of Seattle, and Deputy Prosecuting Attorney for King County.

We will also have on this panel Judge Sharion Richardson Aycock. Judge Aycock is a State trial judge on the Fifth Circuit Court District of Tupelo, Mississippi, a position she has served in since 2003. Previously, Judge Aycock worked in private practice as a sole practitioner, a partner in Soper, Russell, Richardson & Dent, an associate of A.T. Cleveland Law Office. She also serves as a county prosecuting attorney.

If you will please stand to be sworn.

[Whereupon, the witnesses were duly sworn.]

Senator CARDIN. Please be seated.

The way that I would request that we begin, each of you will have an opportunity, if you choose, to make an opening statement to the committee. I believe, Judge Jones, your family has already

been introduced, but I don't mind you introducing them again. They deserve as much attention as you can give them for putting up with your public life. The same thing with Judge Aycock.

So, Judge Jones, you may begin.

STATEMENT OF RICHARD A. JONES, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF WASHINGTON

Judge JONES. Thank you, Senator. I will not be giving a formal statement, but I would like to begin by thanking you for taking time out of your busy schedule and for being here today.

I'm very thankful also to the President of the United States, George Bush, for his confidence in nominating me to serve as the next Federal judge, if confirmed, in the State of Washington.

I'm also very much appreciative for the fact that our Senator Murray was able to take time from her busy schedule to be present as well.

At the sake of being redundant, Senator, I would take advantage of being able to introduce my family, because I'm very proud of the fact that they are here today.

Please trust me in knowing that I have a very large family. This is a very small representation of my family. I would like to, once again, introduce my wife, Leslie Jones; my sister, Theresa Frank; her daughter, Dana Frank-Looney; my sister, Mardra Jay; and my brother-in-law, Christopher Jay.

Senator CARDIN. Thank you.

Judge JONES. Thank you, Senator.

[The biographical information of Judge Jones follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Richard Anthony Jones

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

   United States District Judge for the Western District of Washington

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

   Office: King County Superior Court
   Regional Justice Center
   401-Fourth Avenue North, 2D
   Kent, WA 98032-4429

   Residence: Seattle, Washington

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

   1950; Seattle, Washington

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   I am married to Leslie Diane Jones. My wife's maiden name was Graham.

   Leslie Diane Jones
   Diversity Program Manager
   Sound Transit
   401-South Jackson Street
   Seattle, Washington 98104-2826

   There are no dependent children.

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

date each degree was received.

University of Washington School of Law, 1972-1975; Juris Doctor, 1975

Seattle University, 1968-1972; Bachelor of Public Affairs, 1972

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

Employment:

1994-Present
King County Superior Court
516-3rd Avenue
Seattle, WA 98104
King County Superior Court Judge

1988-1994
United States Attorney's Office
U.S. Courthouse
700-Stewart Street
Seattle, WA 98101
Assistant United States Attorney

1983-1988
Bogle & Gates
Associate Attorney
(Firm ceased doing business)

1978-1983
Port of Seattle
2711-Alaskan Way
Seattle, WA 98121
Staff Attorney

1975-1978
King County Prosecuting Attorney
W554-King County Courthouse
Seattle, WA 98104 Deputy Prosecuting Attorney/Community Liaison Officer

1973-1975
United States Attorney
U.S. Courthouse
700-Stewart Street
Seattle, WA 98101
Law Clerk

1969-1974
Project CARITAS
Tutor Coordinator/Records-keeper
(Project ceased doing business)

Non-Profit Organizations:

YMCA of Greater Seattle
Board of Directors
President (2000-2002), Vice-President (1992-1999), Secretary (1991-1992)

Seattle University
1996-2005 Board of Regents

University of Washington School of Law
Alumni Association
1994-1995 President
Board of Directors

Loren Miller Bar Association
1987-1990 President
Board of Directors

University Preparatory Academy
1985-1991, Board of Directors

Central Area Group Homes
1979-1980 President
Board of Directors

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

None

9. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards,**

and any other special recognition for outstanding service or achievement.

2006 Saint Martin's University
Distinguished Alumni Award for Professional Achievement;

2006 Seattle University, Access to Justice Institute
Public Service Award of Distinction;

2004 Asian Bar Association of Washington
Judge of the Year Award;

2004 King County Bar Association
Judge of the Year Award;

2004 Seattle University
Alumnus of the Year Award;

2004 Washington State Bar Association
Outstanding Judge of the Year Award;

2004 Washington State Trial Lawyers Association
Judge of the Year Award;

2003 Seattle University School of Law
Investment in Justice Award;

2003 YMCA of Greater Seattle & King County
Volunteer of the Year Award;

2001 Loren Miller Bar Association
Professional Achievement Award;

2000 Seattle Vocational Institute
Commencement Speaker;

1998 University of Washington School of Law
Commencement Speaker;

1995 University of Washington School of Law
Public Service Recognition Award;

1995 Seattle University Public Service Award;

1993 United States Attorney's
Executive Office Director's Award;

1992-1993 Department of Justice
Special Achievement Awards;

1991 Washington State Bar Association
Special Recognition Award for Furthering Equal Opportunity;

1988 VA Inspector General
Special Recognition for Prosecution of Equity Skimming Cases.

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

Bar Associations:

Washington State Bar Association
- 1977-Present, Member;
- 2004-Present, Leadership Institute Advisor;
- 1991-Present, Minority Justice Commission;
- 1991-1992 Opportunities for Minorities in the Legal Profession Committee co-Chair.

King County Bar Association
- 1991-Present, Member;
- 2003 Board of Trustees Nominating Committee;
- 2002-Present, Rev. Dr. Martin Luther King Luncheon Committee, Co-Chair;
- 1994-1998 Awards Committee;
- 1991-1993 Judicial Screening Task Force;
- 1988-1992 Judicial Screening Committee.

American Bar Association
- 1983-1988, Member.

Loren Miller Bar Association
- 1977-Present, Member;
- 1987-1990, President.

Judicial Committees:

Superior Court Judges Association
- 1996-1997 Equality and Fairness Committee;
- 1996-1999 Judicial Education Committee;
- 1997-1998 Co-Dean, Washington State Judicial College.

King County Superior Court
2002-2003 Jury Committee;
2001-2002 Court and Community Committee;
1999-2000 Assistant Presiding Judge;
1999 Bench/Bar Committee;
1998 Chair, Family Law Commissioner Selection Committee;
1995-1999 Personnel Committee Chair, 1997-1999;
1994-1998 Human Relations Committee;
1994-1998 Family Law Court Committee;
1994-1996 Human Relations Committee.

Legal Committees:

2005-2006 National Judicial College-National Center for Courts and Media Advisory Board Member;
2002-Present, Seattle University Access to Justice Institute Advisory Board Member;
2001-University of Washington School of Law Dean Selection Committee;
1997-Present, University of Washington Law School Advisory Committee on Strategic Planning;
1996-1999 University of Washington School of Law Foundation Board Member;
1991-Present, Washington State Minority Justice Commission, Board Member;
1991-1992 WSBA Opportunities for Minorities in the Legal Profession, Co-Chair;
1991-1996 University of Washington School of Law Alumni Association, President, 1994-1996;
1991-Present, Fairhaven College Law and Diversity Board Member;
1988-1989 Seattle Municipal Court Judicial Screening Committee.

11. **Bar and Court Admission**:

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

1977 Washington State Bar Association.

b. **List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.**

11/77 All Washington State Courts

11/18/77	United States District Court for the Western District of Washington
11/29/77	United States Court of Appeals for the Ninth Circuit
6/19/87	United States District Court for the Eastern District of Washington

There have been no lapses in membership.

12. **Memberships**:

a. **List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.**

2000-Present, National Judicial College, Faculty/Instructor;

1987-Present, Northwest Minority Job Fair Committee, Current Member and past Co-chair (Approximately 1987-1993);

1991-Present, First Year Minority Clerkship, Committee Member

See also, response to Question No. 7, Non-Profit Organizations

b. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.**

I have never belonged to any organization that currently discriminates or formerly discriminated on the basis of race, sex, or religion..

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

a. **List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or**

edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

Washington State Bar Association Criminal Law Manual, Chapter VI, "Federal Plea Bargaining" November, 1989 (No copy available).

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

As Co-chair of the Washington State Bar Association (WSBA) Opportunities for Minorities in the Legal Profession (1991-1992) I assisted in presenting to the Board of Governors for approval the following amendment of the Rules of Professional Conduct for Lawyers, i.e., Rule 8.4(g):

> It is professional misconduct for a lawyer to:
>
> (g) Commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities.

This rule was approved and adopted in 1992. I do not have copies of any reports, memoranda or policy statements that may have been prepared in support of this rule change. Any minutes or record of these proceedings should be with the Washington State Bar Association, 1325-4th Avenue South, Suite 600, Seattle, WA 98101-2539.

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

No information to report.

d. **Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not**

speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

To the best of my recollection and research, the following is a list of speeches I have given:

September 21, 2006, "YMCA Challenges of the Future," presented at The Windermere Symposium in Scottsdale, Arizona;

May 5, 2006, Garfield High School Ku'Onesha Student Awards I was the keynote speaker. The subject matter included challenges and opportunities facing students. This speech was given in Seattle, Washington. No copy of the speech is available;

September 30, 2005, City Corps Volunteers, "Challenges of Today." This presentation was given in Seattle, Washington.

January 20, 2005, Seattle Central Community College, I was the keynote speaker, "Celebrating Dr. King." This speech was given in Seattle, Washington.

February 23, 2005, United States Attorney's Office, I was the Black History Month featured speaker. The subject matter included my experiences as an African American attorney and judge. Speech was given in Seattle, Washington. No copy of the speech is available;

October 27, 2004, King County Bar Association (KCBA) Legal Aid Presentation, "Volunteers Needed." The subject matter of this presentation was access to justice and the encouraging lawyers to provide pro-bono assistance to impoverished litigants, especially in areas of family law, housing and immigration. No copy of the speech is available;

October 7, 2004, I was the keynote speaker at Nordstrom's Celebration of Cultural Diversity;

March 30, 2004, I was the luncheon speaker for the Washington Chapter of Former FBI Agents. The subject matter involved discussing high profile trials over which I have presided and the types of investigative approaches used in each. This speech was given in Seattle, Washington. No copy of the speech is available;

June 25, 2003, YMCA Black Achievers Banquet, "Today's Dreamers Tomorrows Leaders". The subject matter included my journey becoming a judge and challenges facing the students in the future. This speech was given in Seattle, Washington;

June 2, 2003, YMCA Branch Board Leaders Forum, I was the keynote speaker. The subject matter involved my encouragement of the Y participants to commit to the development of youth leadership. This speech was given in Bellevue, Washington. No copy of the speech is available;

January 25, 2003, Snohomish County Minority Career Conference, "Helping Young People Explore Their Dreams." The subject matter was my journey becoming a judge and challenges facing the students in the future. This speech was given in Everett, Washington. No copy of the speech is available;

2002-Present, Seattle University School of Law, Access to Justice Community Justice Project. I presented the concept of this program to various student and lawyer organizations soliciting volunteers. The subject matter was the need for pro-bono volunteers in community based legal service projects. My presentations were given at various law firms in Seattle, Washington. No copies of these presentations are available;

June 20, 2002, Schools Out Washington, "Helping Young People Explore Their Dreams." This speech was given in Seattle, Washington;

2002 Anti-Defamation League/Seattle Human Rights Commission Student RAP Conference: "Reducing Adolescent Prejudice." The subject matter included race issues and challenges facing adolescents. This speech was given in Seattle, Washington. No copy of the speech is available;

September 2001-2005, University of Washington School of Law, Presenter at orientation for first year law students. The theme of these presentations varied year to year, but the message of facing the challenge of law school and leadership remained the same. These speeches were given in Seattle, Washington. No copies of these presentations are available;

January 11, 2001, Seattle University, Rev. Dr. Martin Luther King Celebration, "Using the Past to Shape our Future." The subject matter included historical significance of Dr. King in civil rights movement and using the past to shape the future. (See January 20, 2005 MLK speech. Text is generally the same with minor modifications.)

July 14, 2000, Seattle Vocational Institute, Commencement Speaker. This presentation was given at the Seattle Central Community College in Seattle, Washington. The text of the speech was generally the same given June 13, 1998 (see next entry) with minor modifications;

June 13, 1998, University of Washington School of Law, Commencement Speaker;

1997 (approximately) Yakima Youth Law Conference, "Legal Careers-Making a Difference." I was the keynote speaker. The subject matter was the exploration of careers in law as a motivation to advance the participants' education beyond high school. No copy of the speech is available;

1995 Drug Enforcement Administration (DEA) Black History Month Celebration, "Reflection of Race and Career." I was the keynote speaker. The subject matter the history of my background and experiences as a lawyer and judge. The speech was presented in Seattle, Washington. No copy of the speech is available;

1994, 1995, 1999, and 2003 miscellaneous judicial campaign speeches addressing my personal qualifications for re-election. No copies of these speeches are available;

1987-1997 (annually), Franklin High School, "Law and Society." I was a guest speaker for Instructor Rick Nagel. The subject matter was a general discussion of criminal law and procedures. No copies of these speeches are available;

In addition to the above noted speeches, I have also provided lectures and educational seminars.

December 1, 2006, National Center for Courts and Media, Presenter, "Judges & Journalists Workshop." I served as one of three facilitators for this workshop. Invited participants were Nebraska judges and journalists. The goal of the workshop was to educate judges on First Amendment and media issues that sometimes occur in trials and to help journalists enhance their ability to cover courts. This presentation occurred in Lincoln, Nebraska. No lecture notes were prepared;

September 24, 2006, Superior Court Judges Association Fall Judicial Conference. I was one of four panel members to present on State v. Ridgway. Mr. Ridgway was know as the "Green River Killer" and pled guilty to the murders of 48 women. The subject matter of this lecture addressed judicial challenges in high profile litigation and addressing media coverage. This presentation was in Spokane, Washington. (See February 5, 2005 text below);

June 12, 2006, Kansas Supreme Court Judicial Conference, Presenter, "Top Drawer Judging." I was invited by the Kansas Supreme Court to

lecture on the various topics of trial management, effective jury procedures, contempt and trial disruption. This presentation was in Kansas City, Kansas. (See the notes provided for the National Judicial College courses as the content of the presentations was generally the same);

June 22-24, 2005, Arizona Supreme Court Judicial Conference, Presenter, "Effective Jury Trial Management". I was invited by the Arizona Supreme Court to lecture on various topics of trial management, effective jury procedures, contempt and trial disruption. (See the notes provided for the National Judicial College courses as the content of the presentations was generally the same);

October 14, 2005, National Center for Courts and Media in San Francisco, California, "Judges & Journalists Workshop." This program was identical to the one presented in Lincoln, Nebraska, December 1, 2006 (See above);

September 23, 2005, Washington State Bar Association (WSBA), "Winning Jury Trials-Tips and Strategies." This program was presented in Seattle, Washington. A copy of the outline of the presentation is provided;

May 5, 2005, Washington State Trial Lawyers Association (WSTLA), "Post 9/11 and the Courts." I was one of approximately six panel members to dialogue during a brown bag lunch hour over issues raised by the audience. The topics discussed were quite broad and my participation was limited to responding to procedural questions and court processes. This program was presented in Seattle, Washington. No notes were prepared for my participation in this presentation;

February 5, 2005, King County Superior Court Judges Retreat, "Special Arrangements for Notorious Cases." This presentation was in Seattle, Washington. A copy of the outline of the presentation is provided.

July 17, 2004, Washington Defense Trial Lawyers Association, Panel Member, "Prospective on High Exposure Cases." I was one of three panel judges generally discussing litigation and settlement strategies in trials with high exposure for damages. This program was presented in Seattle, Washington. No copy of this presentation is available;

October 17, 2003, The National Judicial College Seminar in Omsk, Russia, Faculty, "Jury Trial Management." A copy of the basic lecture notes is provided;

September 9, 2003, WSBA 10th Annual Criminal Justice Institute, Presenter, "Use and Effective Cross Examination of Expert Witnesses." This program was presented in Seattle, Washington. A copy of the outline of the lecture is provided;

August 21, 2002, Network of Adjudicatory Agencies Advanced Administrative Law Training, "Cultural Considerations: Stereotypes, Credibility Assessments." This program was presented in Olympia, Washington;

2001-present, Faculty Member, National Judicial College, Reno, NV, lecturing on "Role of the Judge," "Contempt and Trial Disruption" and "Effective Jury Management/Jury Trial Innovations". These lectures are presented in Reno, Nevada;

March 16, 2001, Washington State Trial Lawyers Association (WSTLA), "Nuts and Bolts of General Litigation." This was an entry level practitioner's CLE on the basics of commencing and processing cases in King County Superior Court with emphasis on the nuances of the local rules. This presentation was in Seattle, Washington. (See materials provided for "Bridging the Gap" CLE's);

June 29, 2000, Panelist, Indigent Defense 2000 Symposium, Washington D.C., "The Judicial Role in the Appointment of Counsel and Assuring Quality Representation." I was one of a six person panel discussing the challenges confronting the judiciary when the issue of competent counsel is raised. No text or outline was prepared as the discussion was primarily around hypotheticals and published opinions where the competency of counsel had been raised;

April 25, 2000, Presenter, Superior Court Judge's Spring Conference, "Effective Settlement Conferences." I was one of two judges presenting on the mechanics of mediation and effective approaches to settlement conferences. This presentation was in Wenatchee, Washington. No copy of the text or outline of the presentation is available;

1999-2002, King County Bar Association (KCBA), "Bridging the Gap." These presentations were always in Seattle, Washington.

January, 1998-2001, Co-Presenter with Judge Eileen Kato, "The Role of the Judge", Washington State Judicial College. This presentation used the basic materials used for presenting the same course at the National Judicial College. See above for outline and text materials;

October 22, 1999, KCBA CLE, "Order in the Court." My records reflect that I presented at this CLE, but I have no other information on the general content of the subject matter. This presentation was in Seattle, Washington;

August 12, 1999, Presenter, WSBA seminar, "Surviving Deposition and Discovery – Is There a Better Way?" The subject matter of this CLE was to explore the practical approaches to discovery in civil litigation with in-depth discussion and analysis of court cases and court rules. This presentation was in Seattle, Washington. No copy of the text or outline of this presentation is available;

April 14, 1999, Washington Defense Trial Lawyers Employment Law/ Corporate Counsel Committee, Employment Law CLE. The subject matter included discovery in employment cases, privacy issues involving the records of other employees and the issue of the allocation of attorneys' fees in multiple party litigation. This presentation was in Seattle, Washington. No copy of the text or outline of this presentation is available;

December 29, 1997, University of Washington School of Law CLE, "Elements of Trial: Differences Between State and Federal Practice." This presentation addressed the general procedural and rule differences in litigating cases in state and federal courts. No copy of the outline or text is available as the lecture was primarily based on court rules, procedures and cases;

December 11, 1997, UW Law School CLE, "Ethics, Ambiguity & Economics: Paying the Price for Justice." My records reflect that I presented at this CLE, but I have no other information on the general content of the subject matter. This presentation was in Seattle, Washington;

September 18, 1997, Washington Association of Prosecuting Attorneys, "Drug Trial Practice." ;

August 1, 1997, WSTLA, "Bias Issues in the Attorney-Client Relationship." My records reflect that I presented at this CLE, but I have no other information on the general content of the subject matter. This presentation was in Seattle, Washington;

June 20, 1997, UW Trial Mastery Program CLE, "The View from the Bench: How to Prepare and Try Your Next Case to be a Hero to the Jury and the Court." I was one of three panel member judges identifying our top ten approaches to effective advocacy in preparing and trying cases at

the trial, appellate and federal court levels. No copy of the text or outline of this presentation is available;

May 9, 1997, WSBA CLE, "Preparing for a Judicial Career." The subject matter of this CLE was to explore my journey becoming a judge, including the challenges of the appointment and campaign. No copy of the text or outline of this presentation is available;

September 12, 1996, Washington State Bar Association, "Bias Issues in Court Proceedings." The subject matter of this CLE was the exploration and discussion of the impact of bias in court proceedings. This presentation was in Seattle, Washington. No copy of the text or outline of this presentation is available;

1993, Lecturer, National Association of Law Placement National Conference, Santa Barbara, CA. The subject matter of this presentation was to explain the creation and operation of the Northwest Minority Job Fair. No copy of the text or outline of this presentation is available;

April, 1992, Instructor, Attorney General's Advocacy Institute, Criminal Trial Advocacy Course. This was a multi-day intensive course for new AUSA's seeking to improve their trial skills. I assisted in presenting on a variety of topics but have no specific recollection on the precise topics that I assisted in presenting. This training was in Washington D.C. No copy of the text or outline of this presentation is available;

July, 1991, Instructor, Executive Office for U.S. Attorney's, "EEO Counselor and Investigator Training Workshop." As a former investigator for this program, I presented on the methods and procedures for investigating claims of discrimination within United States Attorneys offices. This presentation was in Washington D.C. No copy of the text or outline of this presentation is available;

1985 - 1988, Instructor, Washington State Criminal Justice Training Center, "Crime Scene Investigation," "Search and Seizure," and "Advanced Narcotics Investigations." The subject matter of this presentation was to provide to law enforcement officers the legal requirements and expectations of prosecutors in criminal trials. This presentation was in Seattle, Washington. No copy of the text or outline of this presentation is available;

e. **Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.**

KING TV, interview broadcast November 4 and 5, 2005, regarding State v. Gary Ridgway;

Washington State Trial Lawyers Association-Trial News, interview published May 2004;

Seattle Times Newspaper, interview published December 23, 2003;

Seattle University News-SUN, interview published Winter 1999;

Washington Journal, interview published January 9, 1997; and

King County Bar Association-Bar Bulletin, interview published December, 1991.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

July 1994-Present
King County Superior Court Judge. I was appointed in 1994 by the Governor to fill the remaining term of a deceased judge. I was subsequently elected in 1996 and reelected in 2000 and 2004. This is a court of general jurisdiction for all civil and felony criminal matters.

August 19-27, 1995 and July-August, 1997
Acting U.S. Magistrate for United States District Court, Western District of Washington. This was a temporary assignment to cover matters while U.S. District Judges and Magistrates attended their conference.

15. Citations: If you are or have been a judge, please provide:

a. citations for all opinions you have written (including concurrences and dissents);

Superior Court Judge opinions are not published, consequently there are no citations.

b. a list of cases in which certiorari has been requested or granted;

None that I recall or that I have been able to locate in research.

c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

State v. Smith, No. 35692-1, May 28, 1996: Exceptional sentence for attempted first degree murder and first degree robbery, rape and kidnapping affirmed. The appellate court criticized the absence of more detailed findings for the basis of finding aggravated factors for each count of conviction.

State v. Dyke, No. 37935-6-I, April 28, 1997: The appellate court reversed and found there was reasonable suspicion to support the police stop of a vehicle.

State v. Murphy, No 37624-1-I, June 9, 1997: The conviction for first degree murder was affirmed, but the appellate court criticized the jury instruction stating the case did not involve the death penalty.

State v. Kaeodala, No. 40049-5-I, June 30, 1997: The conviction was reversed finding it was error in the denial of a motion to suppress a firearm upon which the conviction for unlawful possession of a firearm was based.

State v. Brock, No 42553-6-I, July 19, 1999: Defendant's conviction was affirmed on the suppression issue but reversed on the consecutive firearm enhancement sentencing.

State v. R.G.W., No. 39226-3-I, Sept. 20, 1999: The conviction was reversed because the information alleged felony harassment by means of a threat to kill, but did not specifically allege the threat to kill was to cause harm in the future.

State v. Laico, No 42289-8-I, Nov. 1, 1999: Defendant's conviction was reversed for failure to instruct the jury on the lesser included offense of assault in the fourth degree when there was evidence supporting an inference the defendant committed only the lesser crime.

Roberts v. King County, No. 45767, August 6, 2001: This was an appeal from a dismissal on summary judgment. The case was reversed and remanded to supplement the record on how the County could justify discrepancies in accommodating the current policy regarding equal pay for equal work.

Sesko v. Saberhagen Holdings, Inc., No 47095-7-I, Nov. 26, 2002: The appellate court reversed a summary judgment and concluded plaintiff had presented evidence of a material issue of fact.

State v. Maines, No. 48378-1-I, March 25, 2002: The appellate court reversed the order of restitution concluding there was no authority to impose the same. The Court reasoned that defendant's guilty plea to

criminal trespass did not include an express agreement to pay for items stolen in crimes of which he was not convicted.

State v. Herrera, No. 48984-4-I, June 17, 2002: The defendant was remanded for resentencing due to an error in calculating his Drug Offender Sentencing Alternative sentence.

State v. Jones, No. 47615-7-I, August 19, 2002: The court reversed the sentencing and remanded for resentencing because defendant's juvenile offenses score included offenses committed before he turned 15.

State v. Soto, No. 49416-3-I, October 14, 2002: Defendant's conviction was reversed because the "to convict" instruction omitted the element of wrongful intent, and because a separate instruction erroneously shifted the burden on the second element to the defense.

State v. Alexander, No. 49819-3-I, October 21, 2002: Defendant's conviction for theft by deception was reversed because of the absence of sufficient evidence to support a finding that the defendant knew of the revocation of a power-of-attorney before he withdrew funds which were the basis of the charges.

State v. Leuluaialii, No. 43507-8-I, October 13, 2003: The defendant's convictions for aggravated murder in the first degree were affirmed, however, the appellate court criticized the denial of a request for a Frye hearing on dog DNA evidence.

Casey v. Chapman, No 51263-3-I, October 11, 2004: The appellate court affirmed the declaratory judgment in all respects, but reversed the provision on the extent of relief to be granted to a successful bidder at a foreclosure sale.

State v. Evans, No. 52617-1-I, October 25, 2004: The conviction was reversed because the State did not elect which of the two alternative means of committing criminal trespass it relied upon. As there was only substantial evidence to support one means, it was not clear from the record that the State relied only on that means to convict.

Barbee v. The Luong Firm, No. 53423-8-I, Feb. 28, 2005: Plaintiff had filed suit against her former employer and was represented by her husband attorney. During her deposition she mentioned she had discussed with her husband certain events about the proceedings. The Court concluded it was error to disqualify the husband from representing his wife solely on grounds that he was a necessary witness.

State v. Conshafter, No. 54808-5-I, Nov. 16, 2005: Defendant's conviction was affirmed on appeal, but his sentence was reversed and remanded for recalculation of his offender score.

State v. Fisher, No. 54986-3-I, January 9, 2006: The appellate court determined the defendant's two bail jumping convictions were the same criminal conduct and remanded for resentencing.

State v. Garcia, No. 53731-8-I, Feb. 13, 2006: The defendant's conviction was affirmed, however, the Court reversed the sentencing finding that the defendant was on community placement at the time of the offense as this required a jury determination pursuant to Blakely.

State v. Easterling, No. 76458-I, June 29, 2006: The defendant's conviction was reversed where the courtroom was fully closed to Easterling and to the public during the joint trial without first satisfying the requirements of State v. Bone-Club.

Community Telecable of Seattle, et. al., v. City of Seattle No 5749-4-I, December 11, 2006: This case concerned the legality of the City of Seattle's telephone utility tax as it applied to Comcast's internet transmission activities. The court reversed holding the tax was not barred by Washington's Internet Tax Moratorium, the tax was exempt from the Federal Internet Tax Freedom Act's moratorium under a grandfather clause and the tax was not discriminatory under the Federal Internet Tax Freedom Act.

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

As a Superior Court Judge I do not issue unpublished opinions. All rulings are matters of public record.

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

As a Superior Court Judge I do not issue unpublished opinions. All rulings are matters of public record.

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have never been a panel member.

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

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

    Our procedures allow an attorney to exercise as a matter of right, one challenge of an assigned trial judge. The party making such a motion is not required to state a basis for the challenge. The motion merely states that the party does not believe a fair and impartial hearing can be heard by the assigned judge. A copy of the form motion is provided. I do not retain copies of these motions and the county statistician for our court has confirmed this information is not retained other than in the individual court files.

    Our court procedures also provide on a monthly basis a statement of assigned civil cases. If the name of a litigant or attorney is referenced that I believe presents an inherent conflict of interest, I will immediately recuse myself and have the matter reassigned to a different judge. There are no records of these requests that I can produce and I have no independent recollection of any specific requests for reassignment of cases.

    The only "automatic recusal" in place is my wife's employer, Sound Transit. This recusal is at my request because of appearance of fairness issues.

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

    I do know that during the 12 years I have been a judge, motions for change of judge have been filed in cases that have been assigned to me. I do not have any independent recollection or means of obtaining any information on the reasons for the requests in light of the procedure we utilize in our jurisdiction. Other than motions for change of judge, I have no information of any particularized asserted conflict of interest claimed by a party or litigant.

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

    As I have done for the past 12 plus years, anytime I perceived a potential conflict of interest in a case assigned to me, I followed the procedures consistent with the ABA Guidelines for Disqualification (Rule 2.12), Impartiality and Fairness (Rule 2.06) and External Influences on Judicial Conduct (Rule 2.07). If I believed there

was a potential conflict of interest in my deciding a matter I filed a written disclosure of the basis for the potential conflict and allowed the parties to raise any issues regarding my continued service on the matter. I have always required the parties to state on the record their positions on the issue raised.

If I did not reasonably believe my impartiality might reasonably be questioned, I would still disclose on the record information that I believed the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification. Following this disclosure, I would give the parties the opportunity to consider outside of my and court personnel's presence whether to waive disqualification. If all parties were in agreement that I should not be disqualified, and I agreed, a record of the agreement would be incorporated into the record of proceedings. Under no circumstances would any discussion of my potential conflict or disqualification take place in chambers or in any setting or circumstances where a record of the proceedings could not be made.

I have provided for consideration the sua sponte disclosures that I have been able to locate that demonstrate my compliance with the above described procedure: Port of Seattle v. James T. Cassan and Doris O. Cassan, Naveen Jain and Aduradha Jain v. InfoSpace, Inc., and State of Washington, WA Public Disclosure Commission v. Voters Education Committee. In each of these cases the parties confirmed on the record that they had no objection to my continued handling of the case.

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

To the best of my recollection and records check, I have always granted a party or litigant's motion for change of judge.

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

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

I have not held any public office other than my current judicial position.

b. **List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify**

the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have no information to report and I have not held a position or played a role in a political campaign.

18. <u>Legal Career:</u> Please answer each part separately.

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

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

I did not serve as a clerk to a judge.

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

I have never practiced alone

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

1975 – 1978, Deputy Prosecuting Attorney
King County Prosecuting Attorney's Office
W554-King County Courthouse
516-3rd Avenue
Seattle, Washington 98104

1978-1983, Staff Attorney
Port of Seattle
Legal Department
2711-Alaskan Way
Seattle, Washington 98121

1983-1987, Associate Attorney
Bogle & Gates
Seattle, Washington
(Firm dissolved March 1999)

1988-1994, Assistant United States Attorney
United States Attorney's Office, Western District of Washington
700-Stewart Street
Seattle, Washington 98101

1994-2007, King County Superior Court Judge
King County Superior Court
516-3rd Avenue
Seattle, Washington 98104

b. Describe:

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

I began my legal career in the King County Prosecuting Attorney's Office as a Deputy Prosecuting Attorney. I prosecuted cases as assigned in the Criminal Division. I had daily court appearances in matters ranging from DWI to murder prosecutions. My duties included six (6) months as Community Liaison Officer.

As a Staff attorney with the Port of Seattle Legal Department, I served as one of two in-house counsel providing legal advice and management services to all legal departments with primary responsibility for the Human Resources, Police and Fire Departments. My duties included training, drafting legislation, advising the Port Commission, the Executive Department and serving as Acting General Counsel when necessary.

The bulk of my trial practice during my tenure with the Port of Seattle involved appearances before Administrative Tribunals and occasional appearances before the King County Superior Court. I was solely responsible for the trial of approximately 25 civil administrative hearings.

I next practiced as an associate with one of the oldest and largest firms in Seattle. I managed cases as assigned in the Litigation and Labor Departments. My case assignments involved primarily the representation of clients in corporate commercial litigation. These cases primarily involved defense work in areas of psychiatric malpractice, personal injury, labor arbitration, employment law in general and defense of discrimination claims in varying degrees of complexity.

On occasion I represented clients and provided limited representation on criminal matters. This was primarily done as a convenience to clients as our firm practice was not focused upon criminal defense work.

My court appearances were primarily limited to a motions practice at the Superior Court level. I did not have any trials during my tenure as all matters that were assigned eventually were resolved by settlement or dismissal.

I next served as an Assistant United States Attorney (AUSA) working exclusively in the Criminal Division. The first two (2) years of my work as an AUSA involved the investigation and prosecution of cases in the Major Crimes Division with varied responsibility for cases, including bank robberies, fraud and firearms. The last four years I worked exclusively prosecuting cases in the Drug Prosecution Division. These cases included Organized Crime Drug Enforcement Task Force prosecutions.

I had extensive court appearances in the Federal District Courts in Seattle and Tacoma, Washington. My work also included extensive investigative work before Federal Grand Juries.

I am currently a judge in King County Superior Court which is a court of general jurisdiction. During my tenure, I have tried numerous cases involving a variety of civil, criminal and juvenile matters. Approximately 70% of my trials have been felony criminal matters and the balance civil matters.

ii. your typical clients and the areas, if any, in which you have specialized.

As a King County prosecutor, I represented the People of the State of Washington. My next client was the Port of Seattle. As an AUSA, my client was the United States of America. In private practice, my clients were individuals and entities in corporate commercial litigation. These cases primarily involved defense work in areas of psychiatric malpractice, personal injury, labor arbitration, employment law in general and defense of discrimination claims.

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

I would estimate that 70 % of my practice was in litigation.

As a county prosecutor and AUSA I appeared in court frequently. As a staff attorney with the Port of Seattle, and in private practice, I appeared in court occasionally.

i. Indicate the percentage of your practice in:

1. federal courts:	Approximately 23%
2. state courts of record;	Approximately 70 %
3. other courts.	Approximately 7%

ii. **Indicate the percentage of your practice in:**
   1. **civil proceedings:** Approximately 40%
   2. **criminal proceedings.** Approximately 60%

d. **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 tried approximately 62 felony cases. As Deputy Prosecuting Attorney I tried approximately 35 felony trials. All of these cases were in courts of record and I was sole counsel in all but one murder trial. During my tenure as an AUSA, I tried approximately 27 cases. Only three of these cases were tried with co-counsel. Out of the three cases tried with co-counsel, I was chief counsel on one of these. Otherwise, I was the only attorney assigned to investigate, prosecute and handle the appeals of the cases tried.

In addition, as a King County Prosecutor I tried approximately 1000+ District Court misdemeanors or traffic infractions, approximately 5% of which were jury trials. All of these cases were in courts of record and I was sole counsel. I also tried a significant number of non-jury felony and misdemeanor matters in juvenile court for a period of six months. The juvenile court trials were in courts of record.

i. **What percentage of these trials were:**
   1. **jury;** 95%
   2. **non-jury.** 5%

e. **Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.**

I have never practiced before the Supreme Court of the United States.

19. **<u>Litigation</u>: Describe the ten (10) 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 representation;**

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

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

1. United States v. Barbara Gail Harrison-Philpot, 978 F2d 1520 9th Cir. 1992). As an Assistant United States Attorney (AUSA) I tried this case with Frank Loomis, a Pierce County Deputy Prosecutor on special assignment. Loomis is now retired but can be reached through the Pierce County Prosecutor's Office at 253-798-7400. Opposing counsel was Charles Johnston, 202-E. 34th Street, Tacoma, WA 98404, at 253-473-3090. This case was tried in approximately 1991-1992 before the Honorable Jack Tanner (Deceased), United States District Judge in Tacoma, Washington.

   This was a prosecution of a woman labeled by the news media as the "Drug Queen of Pierce County." The defendant and her associate had engaged in a shootout with the police, burned their home and destroyed most of the evidence of their drug operation. This case was of significance because the convictions represented the elimination of one of the largest cocaine distribution networks in Pierce County. This case was also challenging because the convictions were predicated almost entirely upon circumstantial evidence.

2. FBI Crack Cocaine Gang OCDETF Investigation.

   In 1988 The FBI and local law enforcement organizations coordinated efforts in targeting violent and large scale crack cocaine dealers who were members of identified gangs in the Seattle-Tacoma area. I was assigned by Francis J. Diskin (Deceased) Drug Unit supervisor of the United States Attorney's Office in Seattle to serve as legal advisor to this operation. This case came under the Organized Crime Drug Enforcement Task Force (OCDETF) general operations with the FBI as the lead organization. I worked closely with SA Steven Dean of the FBI on the targets being investigated and prosecuted.

   My work on this matter involved working with a variety of FBI agents as they investigated and developed sufficient facts for the arrest and prosecution of the major targets. The operation was designed to be a simultaneous sweep of all of the targets with multiple law enforcement teams conducting the arrests. My work involved the preparation of numerous search warrants, arrest warrants, complaints, grand jury work and other actions to support the task force operation. Over the course of two days nearly all targets were arrested and charges filed. I was responsible for the continued prosecution of the targets. Most of the arrested persons eventually pled guilty following a variety of motions and other legal proceedings.

3. United States v. Darryl Armstrong, No. CR 92-288Z. As an AUSA I tried this case in approximately 1992/1993 with Douglas Whalley, AUSA, United States Attorneys Office, 700 Stewart Street, Seattle, WA 98101, 206-553-7970 before the Honorable Thomas Zilly, United States District Judge in Seattle. Opposing counsel was Anthony Savage, 615-2nd Avenue, Seattle, Washington, 98104 at 206-682-1882.

   Mr. Armstrong was at the top of the pyramid of the FBI investigation referenced in the above (No.2) noted FBI operation. Mr. Armstrong was convicted and we prevailed in the appeal to the Ninth Circuit.

4. United States v. Bagley, CR 88-67WD. As an AUSA I prosecuted this case in 1988/1989 with former AUSA Harry McCarthy, currently a King County Superior Court Judge in Seattle, Washington, 98104, at 206-296-9205 before the Honorable William Dwyer (Deceased), United States District Judge in Seattle, Washington. Opposing counsel were Fred Leatherman, 1301-5th Avenue, #3500, Seattle, WA 98101 at 206-382-1100 and Allen Bentley, 1111-3rd Avenue, #2220, Seattle, WA 98101 at 206-343-9391.

   Harry McCarthy and I tried this case and were successful in convicting this defendant and the Tinsley's (separate investigation but similar facts). These individuals had been identified by the investigating agency as the two largest real estate equity skimmers in our state's history. The case involved a tremendous amount of investigation, processing of documentary evidence and more than 50 witnesses during a multi-week trial. Harry McCarthy and I received formal recognition for our work from the Veterans Administration.

5. United States v. Jack Townsend, CR92-026(R)M. As an AUSA I prosecuted Mr. Townsend for the manufacture and distribution of a large quantity of methamphetamine in approximately 1992. Opposing counsel was Ken Kanev, 1001-4th Avenue, #2120, Seattle, Washington, 98154 at 206-223-1355. This case was tried before United States District Judge Walter McGovern in Seattle, Washington.

   This case was significant as it involved a defendant who had been identified by DEA and investigated as a significant methamphetamine producer. The matter was significant because of the quantity of evidence and expert testimony necessary to secure the conviction.

6. Wojik v. Mitsubishi Motors. As an associate with Bogle & Gates, I worked on this case with Senior Partner Donald Badgley for approximately two years (1984-1986). He now has his own firm at 1201-3rd Avenue, 51st Floor, Seattle, Washington, at 206-621-6566. I do not recall the name of plaintiff's counsel.

In this matter we represented Mitsubishi Motors, Inc. This case involved an original claim of $15,000,000 in damages by a quadriplegic victim of a single car accident claiming, among other things, defective design in the rooftop of our client's vehicle. After two years of investigation, preparation and host of motions, we settled shortly before trial for the lowest amount Mitsubishi had paid at that time for similar claims. This case involved development of a defense involving a number of expert witnesses from the United States, Canada and Japan. The case was significant because of the complexity of the expertise and techniques that were used.

7. In re Susan Michaelson. As Staff Attorney for the Port of Seattle, I investigated this complaint of sexual harassment in approximately 1979. I believe the matter was handled initially as a complaint filed with the Washington State Human Rights Commission. As a result of my investigation and handling of this matter, Port management terminated a senior supervisor and suspended his subordinate. Opposing counsel for the terminated supervisor was Michael Hunsinger, 315-2nd. S., Seattle, Washington, at 206-622-7050.

This case was the first time in the Port of Seattle's history that an employee was discharged for sexual harassment. The supervisor subsequently filed a wrongful discharge action in King County Superior Court and I represented the Port. Retired King County Superior Court Judge Donald Haley was eventually involved in the dismissal of this case in favor of my client. This case was significant because of the precedent it established for Port management in taking a hard-line position in what was then a developing area of the law.

8-10. United States v Miscellaneous Violators of Federal Drug Laws. During the time period of 1989-1994 I volunteered to work in the Drug Unit of the United States Attorney's Office. I volunteered for this assignment because of the opportunity to try large numbers of complex drug prosecutions. Due to the passage of time (12-17 years ago) I cannot recall and have no way of retrieving the records to identify these cases. It is even more difficult to obtain any information on these cases as my immediate supervisor, Francis J. Diskin, the former Chief of the Drug Unit, is now deceased. Hence, I am at a disadvantage in trying to retrieve information about the specifics of any cases.

I have also contacted the United States Attorney's Offices to see if Performance Evaluations were on file to assist in retrieving information about matters I handled and they advised that those records were destroyed many years back.

I believe I tried approximately 27 cases to resolution as an AUSA including handling most of the appeals before the Ninth Circuit Court of Appeals. I consider most of these cases to have been significant litigated matters because most of these cases involved a significant degree of investigation, grand jury appearances, trial preparation and trials that would not have been prosecuted by our office unless they were deemed significant by the federal (FBI, DEA and ATF) or local law enforcement agencies presenting them for investigation.

While I cannot specifically provide the detail requested in this question, I provide the following additional information of persons who would have substantial information about the quality and nature of my skills as a federal prosecutor and trial lawyer. In lieu of providing detail for three additional cases, please feel free to contact the following individuals before whom I have tried cases or served as opposing counsel:

United States District Judge Carolyn Dimmick
United States District Court
700-Stewart Street
Seattle, WA 98101
206-370-8850
(I tried approximately three trials before her as an AUSA).

Unites States District Judge Barbara Rothstein
United States District Court
700-Stewart Street
Seattle, WA 98101
206-370-8840
(I tried approximately two trials before her as an AUSA).

United States District Judge John Coughenour
United States District Court
700-Stewart Street
Seattle, WA 98101
206-370-8800
(I tried approximately three trials before him as an AUSA).

Senior United States District Judge Walter McGovern
United States District Court
700-Stewart Street
Seattle, WA 98101
206-370-8860
(I tried approximately two trials before him as an AUSA).

Thomas W. Hillier, II
Federal Defender
1601-5th Avenue, #700
Seattle, WA 98101
206-553-1100
(Mr. Hillier is the Federal Defender who would have been responsible for supervising all Federal Defender trial lawyers who were opposing counsel in numerous matters I prosecuted. Many of those lawyers are currently employed with his office and many have moved on, and I do not recall their names. Mr. Hillier was also opposing counsel on several matters).

Terrence Kellogg
720-Third Avenue, #1900
Seattle, WA 98104
206-447-1815
(Mr. Kellogg was opposing counsel in several matters that I prosecuted as an AUSA.) The only case I recall specifically is
United States v. Greg Goller who was prosecuted for distribution of cocaine. This case was tried before United States District Judge Jack Tanner (Deceased) in approximately 1991.

C. Nelson Berry III
600-Stewart Street, #1500
Seattle, WA 98101
206-441-5444
(Mr. Berry was opposing counsel in a matter against my former client Burt Barton in approximately 1986. I initially prevailed on a summary judgment motion involving $11 million dollars in claimed damages. I withdrew from representing Mr. Barton and the summary judgment was reversed after Mr. Barton proceeded Pro se.)

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

Judicial Education:
My record reflects a long standing history of commitment and involvement in judicial education. I began this involvement by building a strong base of skills through faculty development courses both in the State of Washington and the National Judicial College. With these skills, and many long hours of preparation, I have dedicated a significant amount of my personal time providing judicial education to my colleagues on a variety of issue and challenges we face as trial judges.

Specifically, I have four years of service on the Superior Court Judges Association Judicial Education Committee, two years as a co-Dean of the Washington State Judicial College, five years lecturing and facilitating courses for the Washington State Judicial College, six years as a Faculty Instructor for the National Judicial College, and two years as an advisor and facilitator for the National Center for Courts and Media. All of these volunteer activities were completed while carrying a full trial load and providing many additional hours to continuing legal education for lawyers.

Diversity in the Bar:
In response to the need in the legal community for greater diversity in the practice of law in Seattle, I have been committed to creating opportunities for minority law students. I am a co-founder of the two most significant programs in Seattle to address this need, i.e., the Puget Sound Area Minority Clerkship Program and the Northwest Minority Job Fair.

The Puget Sound Area Minority Clerkship Program is designed to provide summer clerkship opportunities for minority law students from the University of Washington and Seattle University Schools of Law. The program is based on the National Minority Clerkship Program, which was designed and endorsed by the American Bar Association Commission on Opportunities for Minorities in the Profession. The summer of 2007 will mark the Seattle program's seventeenth year. I have been an active recruiter and participant in this program since its inception. Scores of students have used the opportunities generated by this program to establish solid credentials for subsequent employment. Many of the past participants of this program are now partners in major law firms, counsel to large corporations and serving as judges at various levels.

The purpose of the Northwest Minority Job Fair is to provide a forum for minority law students and attorneys to interview with a variety of legal employers. Typically more than 150 applicants from 35 law school nationwide interview with approximately 50 employers including law firms from Washington and Oregon, as well as local and national agencies such as the Environmental Protection Agency and the National Labor Relations Board. The Job Fair also funds scholarships awarded by the Asian Bar Association of Washington, the Hispanic Bar Association, the Loren Miller Bar Association and the Northwest Indian Bar Association.

Since co-founding this program in 1987, I have been an active member of the Job Fair's Board.

My work on each of these programs has involved many years of dedication and made a difference in creating significant opportunities for promising minority students to practice law in our community.

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

I have been a Faculty/Instructor with the National Judicial College in Reno, Nevada since 2001. I have taught the following courses, usually twice a year, in the General Jurisdiction Course:

"Role of the Judge"
"Contempt/Trial Disruption"
"Effective Jury Trial Management"

I was an Instructor with the Washington State Criminal Justice Training Center from 1985 to 1988, teaching "Crime Scene Investigation," "Search and Seizure," and "Advanced Narcotics Investigations." The subject matter of this presentation was to provide to law enforcement officers the legal requirements and expectations of prosecutors in criminal trials. This presentation was in Seattle, Washington. No copy of the text or outline of this presentation is available.

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

I am fully vested in the Washington State Department of Retirement Systems Public Employees Retirement System Plan I (PERS 1). I am eligible to retire after age 55 with 25 service credit years, at age 60 with the available service credit years or anytime with 30 service credit years. My total service credit as of March 27, 2007 is 244.25 months or 20.35 years. Upon retirement, I would also be eligible to receive compensation from the Washington State Judges Deferred Compensation plan.

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

No.

24. **Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)**

See attached Financial Disclosure Report

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

See attached Net Worth Statement.

26. **Potential Conflicts of Interest:**

    a. **Identify the parties, 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. Explain how you would address any such conflict if it were to arise.**

    I am unaware of any parties, categories of litigation or financial arrangements that are likely to present a conflict other than my wife's employer. My wife is the Diversity Program Manager for Sound Transit. At this time, I am unaware of any pending litigation in federal court involving her employer.

    b. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.**

    In any situation involving an actual or potential conflict of interest I will follow the applicable policies, procedures and statutes, including the Code of Conduct for United States Judges.

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

Access to Justice Institute Community Justice Project:
In 2002 I volunteered to serve as Co-chair of the Seattle University School of Law Access to Justice Institute Community Justice Project. This Project created community justice centers in various locations in the Puget Sound area. The purpose of the Centers is to facilitate access to legal services by offering free topic-based education and advice to low income and under-served community members. Pro bono lawyers from law offices and Seattle University Faculty are assisted by law students in providing the services.

Since 2002, I have been an active recruiter and advisor to the Access to Justice Institute. As a sitting judge, I am prohibited from providing legal advice; however, I have been vigorously involved in the recruitment of lawyers and strategy development to assist in the success of this program.

My hours of dedication to this project are not recorded, however, in 2003, due to the extraordinary amount of time I dedicated, I received the Seattle University School of Law, "Investment in Justice Award" and in 2006 I received the Seattle University School of Law Access to Justice "Public Service Award of Distinction."

YMCA of Greater Seattle:
I have been a Board member of the Y for the past 18 years. During this time I served as Vice President and President of the Board. As a Y Board member, I have been actively involved in a host of projects and committees that served many disadvantaged communities in the Greater Seattle area. I would average my time at least 10 hours or more per month.

Youth Law Forums:
I have been an active volunteer, recruiter and participant in Youth Law Forums in the Seattle for at least the past 15 years. These programs are weekend, day-long forums designed to expose middle and high school age inner-city and disadvantaged youth to careers in law. The adult participants are typically lawyers, law enforcement officers and court personnel. The goal is to expose and inspire the students to seek careers in law when their family and social circumstances might not otherwise present such an opportunity. I do not keep record of the hours spent on these programs but they involve an extensive amount of work in planning and recruitment. I am also involved in the presentation of programs for the youths.

Guardian ad litem Attorney:
King County Superior Court had in place a guardian ad litem (GAL) program where volunteers served as "friends of the court" to investigate the placement of abused and neglected children in family law matters. While employed with Bogle & Gates, I volunteered to represent GAL volunteers during the years 1985-1987.

As previously noted, Bogle & Gates ceased doing business as a law firm and I have no way of retrieving any information about clients or cases. To the best of my recollection, I believe I represented GAL volunteers in approximately six cases. The amount of time of my representation would vary from month to month depending on the volume of activity with a given case. I would estimate that my time averaged approximately 6-8 hours per month meeting with the GAL, preparing for hearings and court appearances.

28. **Selection Process**:

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

any contacts with Federal Bureau of Investigation personnel concerning your nomination.

The U.S. District Court Judge Screening Committee is a bi-partisan committee responsible in our jurisdiction for recommending candidates for nomination to the federal courts.

On June 21, 2006, I submitted a letter of application to the Committee that reflected my education, employment history, references (attorneys, professional and personal) and a general statement of qualifications for the position.

On July 11, 2006, I received a letter from a Committee co-Chair scheduling my committee interview for August 3, 2006. I appeared before the six (6) person Screening Committee and responded to questions for approximately 45 minutes.

On August 4, 2006, I received a telephone call from a Committee co-Chair advising that I was selected as a candidate for recommendation to White House Counsel for further consideration.

In September 2006, I interviewed with staff from the White House Counsel's Office and the Department of Justice. In December 2006 I was contacted by the White House Counsel's Office and advised that I was the prospective nominee for further consideration. Thereafter, I had contact with White House Staff and Justice Department personnel regarding the completion of nomination paperwork. My nomination was submitted to the Senate on March 19, 2007.

b. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.**

No.

AO 10
Rev. 1/2006

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial)	2. Court or Organization	3. Date of Report
Jones, Richard A	W. D. Washington	03/22/2007
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5a. Report Type (check appropriate type)**	**6. Reporting Period**
U.S. District Judge-Nominee	☒ Nomination, Date 03/19/2007 ☐ Initial ☐ Annual ☐ Final 5b. ☐ Amended Report	1/1/2006 to 02/28/2007
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.**	
Regional Justice Center 401-4th Avenue North Kent, Washington 98032-4429	Reviewing Officer_____ Date_____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.*

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

☐ NONE *(No reportable positions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
1. Trustee	YMCA
2. Advisory Board Member	National Center for Courts and Media, National Judicial College
3. Advisory Board Member	Seattle University Access to Justice Institute
4. Board Member	Washington State Minority Justice Commission
5. Faculty/Instructor	National Judicial College

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

☐ NONE *(No reportable agreements.)*

DATE	PARTIES AND TERMS
1. 1994	Washington State Deferred Compensation Plan; pension upon retirement
2. 1994	Washington State Judicial Retirement Account; pension upon retirement
3.	

FINANCIAL DISCLOSURE REPORT
Page 2 of 7

Name of Person Reporting	Date of Report
Jones, Richard A	03/22/2007

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2006	State of Washington Administrator for the Courts (salary)	$ 128,808.00
2. 06/11/2006	Kansas Supreme Court (honorarium)	$ 1500.00
3. 2006	Wedding income	$ 1100.00
4. 2007	State of Washington Administrator for the Courts (salary)	$ 29, 595
5. 2005	State of Washington Administrator for the Courts (salary)	$ 124,588

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

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

DATE	SOURCE AND TYPE
1. 2006	Sound Transit (salary)
2. 2006	Personal hobby/costume jewelry sales
3. 2007	Sound Transit (salary)
4.	
5.	

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

☐ NONE *(No reportable reimbursements.)*

SOURCE	DESCRIPTION
1. Exempt	
2.	
3.	
4.	
5.	
6.	

FINANCIAL DISCLOSURE REPORT
Page 3 of 7

Name of Person Reporting	Date of Report
Jones, Richard A	03/22/2007

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

☐ NONE *(No reportable gifts.)*

SOURCE	DESCRIPTION	VALUE
1. Exempt		
2.		
3.		
4.		
5.		

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-34 of instructions.)*

☐ NONE *(No reportable liabilities.)*

CREDITOR	DESCRIPTION	VALUE CODE
1. American Express	credit card	K
2. Bank of America	credit card	K
3.		
4.		
5.		

FINANCIAL DISCLOSURE REPORT
Page 4 of 7

Name of Person Reporting	Date of Report
Jones, Richard A	03/22/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Tullys Stock (common)		None	J	W	Exempt				
2. Tully's Stock (preferred)		None	K	W					
3. FBR Direct	B	Interest	J	U					
4. American Funds: American Balanced	A	Interest	M	T					
5. American Funds: American Mutual	A	Interest	M	T					
6. American Funds: Bond Fund of America	B	Interest	M	T					
7. American Funds: Capital Income Builder	A	Interest	M	T					
8. American Funds: Capital World Bond	A	Interest	M	T					
9. American Funds: Capital World Growth & Income	A	Interest	M	T					
10. American Funds: Fundamental Investors	A	Interest	M	T					
11. American Funds: Income Fund of America	A	Interest	M	T					
12. American Funds: Investment Co. of America	A	Interest	M	T					
13. American Funds: Washington Mutual Investors	A	Interest	M	T					
14. American Funds: Cash Mgmt. Trust of America	D	Interest	J	T					
15. American Funds: SMALLCAP World	A	Interest	L	T					
16. Fidelity Funds: U.S. Value Stock	D	Interest	M	T					
17. Fidelity Funds: U.S. Core Stock	D	Interest	M	T					

1. Income Gain Codes: (See Columns B1 and D4)	A –$1,000 or less	B –$1,001 - $2,500	C –$2,501 - $5,000	D –$5,001 - $15,000	E –$15,001 - $50,000
	F –$50,001 - $100,000	G –$100,001 - $1,000,000	H1 –$1,000,001 - $5,000,000	H2 –More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J –$15,000 or less	K –$15,001 - $50,000	L –$50,001 - $100,000	M –$100,001 - $250,000	
	N –$250,001 - $500,000	O –$500,001 - $1,000,000	P1 –$1,000,001 - $5,000,000	P2 –$5,000,001 - $25,000,000	
	P3 –$25,000,001 - $50,000,000	P4 –More than $50,000,000			
3. Value Method Codes (See Column C2)	Q –Appraisal	R –Cost (Real Estate Only)	S –Assessment	T –Cash Market	
	U –Book Value	V –Other	W –Estimated		

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting	Date of Report
Jones, Richard A	03/22/2007

VII. INVESTMENTS and TRUSTS – *Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)*

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

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
Place "(X)" after each asset exempt from prior disclosure	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Lehman ABS		None	J	W					
19. Principal Financial Group		None	K	W					

1. Income Gain Codes: (See Columns B1 and D4)	A –$1,000 or less	B –$1,001 - $2,500	C –$2,501 - $5,000	D –$5,001 - $15,000	E –$15,001 - $50,000
	F –$50,001 - $100,000	G –$100,001 - $1,000,000	H1 –$1,000,001 - $5,000,000	H2 –More than $5,000,000	
2. Value Codes (See Columns C1 and D3)	J –$15,000 or less	K –$15,001 - $50,000	L –$50,001 - $100,000	M –$100,001 - $250,000	
	N –$250,001 - $500,000	O –$500,001 - $1,000,000	P1 –$1,000,001 - $5,000,000	P2 –$5,000,001 - $25,000,000	
	P3 –$25,000,001 - $50,000,000	P4 –More than $50,000,000			
3. Value Method Codes (See Column C2)	Q –Appraisal	R –Cost (Real Estate Only)	S –Assessment	T –Cash Market	
	U –Book Value	V –Other	W –Estimated		

FINANCIAL DISCLOSURE REPORT Page 6 of 7	Name of Person Reporting Jones, Richard A	Date of Report 03/22/2007

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

Part I:

Advisory Board Member	Northwest Minority Job Fair Committee;
Advisory Board Member	First Year Minority Clerkship Program;
Advisory Board Member	University of Washington School of Law Advisory Committee
Advisory Board Member	Fairhaven College Law and Diversity Advisory Board
Advisory Board Member	Washington State Bar Association Leadership Institute

FINANCIAL DISCLOSURE REPORT Page 7 of 7	Name of Person Reporting Jones, Richard A	Date of Report 03/22/2007

IX. CERTIFICATION.

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

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

Signature Richard A Jones Date 3/22/07

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		18	933	Notes payable to banks-secured		56	000
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		23	771	Notes payable to relatives			
Unlisted securities--add schedule		24	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		10	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		776	000
Real estate owned-add schedule	1	300	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		120	000				
Cash value-life insurance		15	470				
Other assets itemize:							
Washington State retirement accounts		269	284				
401(k) account		3	080				
IRA accounts	1	596	159	Total liabilities		842	000
				Net Worth	2	528	697
Total Assets	3	370	697	Total liabilities and net worth			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	Yes		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
XVF	$ 38
PFG	9,096
PFG	14,636
Total Listed Securities	$ 23,771
Unlisted Securities	
FBR Direct Jer Inv.	$ 24,000
Real Estate Owned	
Personal residence	$ 1,300,000
Real Estate Mortgages Payable	
Personal residence	$ 776,000

Other:
Secured Notes – Home Equity Loan ($56,000)
Defendant in suits – Named in official capacity (State judge) only

AFFIDAVIT

I, Richard A. Jones, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3/26/07
(DATE)

(NAME)

SANDRA OATMAN
COMM. EXP
NOTARY
PUBLIC
MARCH 19, 2010
STATE OF WASHINGTON

Sandra Oatman
(NOTARY)

Senator CARDIN. Judge Aycock?

STATEMENT OF SHARION AYCOCK, NOMINEE TO BE DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF MISSISSIPPI

Judge AYCOCK. Thank you. I will decline making an opening statement today in the interest of your time, and others' there are here, but I do want to take this opportunity to thank President Bush for the nomination that I received for the District judge for the Northern District of Mississippi.

I am very appreciative, Chairman Cardin, for you convening and conducting this meeting. This is something that we have been waiting for for some time, and very anxious to have the opportunity to be questioned regarding this position.

I also want to express how pleased I was that my home State Senators, Senator Cochran and Senator Lott, took time out of their very busy schedules to come here today and introduce me.

I do have my husband here with me today. And Chairman Cardin, I have a large family in Mississippi, but it was our choice to travel and to make this hearing accompanied by my husband. I have a loving family at home in support of me. Thank you.

[The biographical information of Judge Aycock follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

   Sharion Aycock
   Sharion Richardson Aycock
   Sharion H. Richardson
   Sharion Harp Richardson
   Sharion Marie Harp

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

   United States District Judge for the Northern District of Mississippi

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

   First Circuit Court District of Mississippi
   Lee County Justice Center
   200 West Jefferson Street, 2nd Floor
   Tupelo, MS 38804

   Residence: Fulton, MS

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

   1955; Tupelo, Mississippi

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   William Randolph "Randy" Aycock
   Claims Adjuster
   Travelers Insurance Company
   305 Beene Street, P. O. Box 1472
   Fulton, MS 38843

   One dependent child

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

   National Judicial College, University of Nevada at Reno, October 2004, General Jurisdiction Certificate

   Mississippi College School of Law, 1977-1980, Juris Doctorate, 1980

   Mississippi State University, 1974-1977, Bachelor of Arts, 1977

   Mississippi State College for Women, 1973-1974, no degree

   Itawamba Community College, Summer 1973, no degree

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

   Primary Employment

   January 2003 – Present
   Circuit Court Judge
   First Circuit Court District of Mississippi
   State of Mississippi, Trial Judges
   Supreme Court of Mississippi
   P. O. Box 117
   Jackson, MS 39201

   1989 – 2003
   Sharion H. Richardson, P. A.
   Attorney at Law
   212 West Main Street
   Fulton, MS 38843

   1987 – 1989
   Soper, Russell, Richardson & Dent, P. A.
   Attorneys at Law
   209 North Green Street
   Tupelo, MS 38804
   Partner, General Practice

1984 – 1987
Sharion H. Richardson, P. A.
Attorney at Law
212 West Main Street
Fulton, MS 38843

1980 – 1983
A. T. Cleveland Law Office
111 South Gaiter Street
Fulton, MS 38843
Associate Attorney

1978
Mississippi College School of Law
Library Assistant

Other Employment
1998 – 2002
City of Fulton, Mississippi
213 West Wiygul Street
Fulton, MS 38843
Board Attorney

1986 -2002
Mantachie Natural Gas District, now known as Northeast MS Natural Gas District
P. O. Box 190
Mantachie, MS 38855
Attorney for Board of Commissioners

1984 – 1991, 1993 – 2002
Itawamba County, Mississippi
201 West Main Street
Fulton, MS 38843
Attorney for Board of Supervisors (1993 – 2002); Prosecuting Attorney (1984 – 1991)

1984 – 1999
Itawamba County School District
605 South Cummings Street
Fulton, MS 38843
Board Attorney

1980 – 2002
Town of Tremont, Mississippi
12761 Highway 23 North
Tremont, MS 38876
Board Attorney

Other Affiliations

Richardson Development Company, Inc.
305 Beene Street
P. O. Box 1472
Fulton, MS 38843
Proprietor, President and Director (1992 – present)

Tremont Development Company, Inc.
C/O Darrell Harp, Jr., President
51 Dow Drive
Tremont, MS 38876
Shareholder and Director (1991 – present)

Darrell Harp Enterprises, Inc.
819 4th Avenue NW
P. O. Box 140
Red Bay, AL 35582
Shareholder (1972 – present) and Director (1980 – present)

Homan Industries
P. O. Box 39
Fulton, MS 38843
Advisory Board Member (2006 – present)

Itawamba Opportunities, Inc.
212 West Main Street
Fulton, MS 38843
Director; Secretary/Treasurer (1991 – 1995)

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

   None.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

   Fellow, Mississippi Bar Foundation, 1990
   Itawamba County Good Citizen Award, 2000
   Most Distinguished Juvenile Justice Professional, 1988
   Recipient of Top 40 Under 40 in Mississippi, 1994
   Pacesetter, Southern Women in Public Service, 2003

Co-Editor in Chief of Mississippi College Law Review, 1978-1980
Omicron Delta Kappa honorary fraternity, Mississippi State University
Phi Kappa Phi honorary fraternity, Mississippi State University
Hall of Fame, Mississippi State University
Who's Who in American Colleges and Universities
Balfour Award for Leadership, Tremont High School
Phi Alpha Delta honorary fraternity, Mississippi College School of Law
Itawamba Historical Society, Award of Merit, 1989

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

American Bar Association
National Conference of Bar Foundations, attended as President-elect of the Mississippi Bar Foundation, 1999

The Mississippi Bar
1992-2003 Member, Government Law Section
1992-1993 Member, Nominating Committee
1992-1993 Member, Local Bar Liaison Committee
1992-1995 Member, Executive Committee, Government Law Section
1993-1994 Member, Long Range Planning Committee
1994-1995 Co-Chair, Long Range Planning Committee
1994-1995 President's Forum Participant,
1995-1996 Secretary-Treasurer, Government Law Section
1996-1997 Vice Chair, Government Law Section
1997-1998 Chair, Government Law Section
1999-2000 Member, Unauthorized Practice of Law Committee
2002-2003 Law School Professionalism Orientation Participant

Mississippi Bar Foundation
1991-1994 Member, Board of Trustees
1999-2001 Member, Executive Committee
1999-2000 President-Elect, Board of Trustees
1999-2000 Chair, Iolta Grants Committee
2000-2001 President, Board of Trustees
2000-2001 Chair, Nominating Committee

First Judicial District Bar Association
President 1986-1987
Secretary 1982-1983

Itawamba County Bar Association
President 1986-1987

11. **Bar and Court Admission**:

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

I was admitted to Mississippi Bar Association in October 1980. There have been no known lapses in membership to the best of my knowledge.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

State Courts in Mississippi, 1980

United States District Court for the Northern District of Mississippi, 1980

There have been no known lapses in membership to the best of my knowledge.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Itawamba Agricultural High School Booster Club (last eight years)
Fulton Country Club (since 1987)
Delta Delta Delta, President 1976-77 (1974 to present)
Fulton United Methodist Church (1980 to present)
Tremont Methodist Church (1955-1980)
Mississippi College School of Law Alumni Association,
(1980 to present) Northern District Director (1989-1990)
Restoration of Historical Fulton Grammar School Committee (2001 to present)
Itawamba County Development Council (1982 to present)
President (1990-1991)
City of Fulton Common Grounds Committee (2007 to present)
IAHS Committee for Excellence in Education (2002 to present)
Gender Fairness Advisory Committee, appointed by Mississippi
Supreme Court (2006)
Mississippi Prosecutors Association (1984-1992)
Leadership Itawamba (1988-1989)
McLean Leadership Institute (1990-1991)

Mississippi State Alumni Association (approximately 1992-1994)
President, Itawamba County Chapter
Itawamba County March of Dimes
Co-Chairman, (approximately 1993-1994)
Prairie Girl Scout Council, Director (early 1990's)
County Wide Glad Bag-A-Thon Chairman (1993-1997)
RRR Committee (1990-1995) – citizen Renovations, Revitalization and Restoration Committee working on revitalization of downtown Fulton, MS.

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I am a member of Delta Delta Delta, a national collegiate female sorority. I served as president of Delta Delta Delta in 1976-1977. I was initiated in February 1974 at Mississippi State University.

I am a member of the Fulton Country Club. This club is open to the public for golfing activities and rental of the clubhouse for activities in our community. I am unaware of the makeup of the membership.

I have not taken any action to change any policies or practices.

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

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

Published article - Note: Gulf Guaranty Life Insurance Company vs. Mrs. Erin Lewis Middleton, Mississippi College Law Review, Vol 1, No. 2, January 1979.

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

I served on various committees and boards with the Mississippi Bar Association and the Mississippi Bar Foundation from 1988 – 2001.

I would have signed reports, policies and/or memoranda in various capacities while serving on the Board of Bar Commissioners of the Mississippi Bar Association and as President of the Mississippi Bar Foundation.

I have not retained copies of such documents nor a record of documents I may have contributed to or signed. The Mississippi Bar Association can be reached at Post Office Box 2168; Jackson, Mississippi 39225-2168.

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

As board attorney for Itawamba County Board of Supervisors, I assisted in passage of legislation to convert our local abandoned hospital to a county-owned nursing home. I testified at hearings before the Mississippi Legislature. I do not have copies of the testimony.

As Board attorney for Mantachie Natural Gas District, I assisted in passage of certain amendments to the state and local bill which created the Mantachie Natural Gas District. The amendment to this law increased the bonding authority of Mantachie Natural Gas District. I testified at hearings before the Mississippi Legislature. I do not have copies of the testimony.

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

Speeches:

Financial Women International, May 2003, Tupelo, MS.
State of the Courts in the First Circuit Court District

Amory Kiwanis Club, November 2004, Amory, MS.
State of the Courts in the First Circuit Court District and questions and answers regarding drug offenders, etc.

Northeast MS Mayors Association, Fall 2004, Tupelo MS.
State of the Courts, Drug Offenders, Caseload, etc.

Itawamba County Veterans, May 2005, Fulton, MS.
Spoke on Veteran's Day regarding freedoms and liberties and our Constitution

Mississippi College School of Law, December 2005, Jackson, MS.
New Law Campus Unveiling Ceremony and Judicial Forum
I spoke on motions practice, particularly motions for summary judgment.

Tupelo Middle School, September 2006, Tupelo, MS.
Spoke at Constitution Day Celebration

Itawamba County Crime Stoppers, Spring 2004, Fulton, MS.
Drug offenders, requiring defendants to get GED as part of probation, Diversion Program offered through District Attorney's office, etc.

Small Forest Landowner Workshop, October 2003, Iuka, MS.
I spoke on laws affecting landowners in Mississippi.

Dare Graduation Ceremony, May 2003, Booneville, MS., Prentiss County, Mississippi, Consequences of wrongdoing; peer pressure; drugs

Carver Elementary School, Challenge Program, November 2004, Tupelo, MS.
Respecting the rights of others and leadership skills

Lee County Bar Association, Spring 2003, Tupelo, MS.
Comments on proceedings & decorum in my courtroom

Mississippi College Law Review Dinner, April 2006, Jackson, MS.
Memories of serving on the Law Review

Monroe County Beautification Committee, June 2006, Aberdeen, MS.
Congratulating all the Monroe County citizens on their beautification and anti-litter efforts

Saltillo Lions Club, October 2006, Saltillo, MS.
State of the Courts, caseload, etc. I did not speak from text or notes.

Investiture of Michael Malski as Chancery Court Judge of the First Chancery Court District, December 2006, Tupelo, MS.

Judicial Symposium on Class Action, Fall 2004, Jackson, MS.
Mississippi College School of Law
I served as a panelist. I did not speak from a prepared text.

Corp. of Engineers Retirement Seminar, May 2002, Fulton, MS
Preparation of Deeds, Wills & other estate issues

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Interview with the DAILY CORINTHIAN, June 25, 2006

Letter to Editor, AMORY ADVERTISER, August 2, 2006

CROSSROADS WOMAN, Summer Edition 2006
(Same article as June 25, 2006 DAILY CORINTHIAN)

AMORY ADVERTISER, May 31, 2006, regarding beautification efforts in Monroe County

BOONEVILLE BANNER, INDEPENDENT, July 27, 2006, article regarding sentencing of sexual offender. I did not interview with the paper.

Letter to the Editor, by Rita McCarter, BOONEVILLE BANNER, INDEPENDENT; I did not interview with the paper.

"Officials Reminded to Remember Electorate"; Jan. 2004, NORTH MS DAILY JOURNAL

"Fulton Elected Officials Sworn In"; July 2005, ITAWAMBA COUNTY TIMES

"Scholarship Foundation Awards Presented"; Feb. 2004, ITAWAMBA COUNTY TIMES

"Deputies Sworn In"; Feb. 2004, ITAWAMBA COUNTY TIMES

"Mantachie Elected Officials Sworn In"; Jan. 2005, ITAWAMBA COUNTY TIMES

"Lee Grand Jury Convenes"; March 2004, NORTH MS DAILY JOURNAL

"Officials Take Oath of Office"; Feb. 2004, ITAWAMBA COUNTY TIMES

"1st Annual Lady Landowners Conference", Oct. 2003, THE TISHOMINGO COUNTY NEWS

14. **Judicial Office**: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was elected as Circuit Court Judge in 2002. In 2006 I ran unopposed and was re-elected to that position. My term ends December 31, 2010.

Circuit Court jurisdiction includes all civil cases involving a monetary amount in excess of $200.00, all felony criminal cases (including death penalty cases), and appeals from municipal, justice and county courts. The First Circuit Court District consists of seven counties: Alcorn, Itawamba, Lee, Monroe, Pontotoc, Prentiss and Tishomingo.

15. **Citations**: If you are or have been a judge, please provide:

    a. citations for all opinions you have written (including concurrences and dissents);

    Trial court opinions are not published.

    b. a list of cases in which certiorari has been requested or granted;

    Adams v. Greenpoint Credit, 933 So.2d 982 (Miss. Ct. App. 2006)
    Billy E. Burnett, Inc. v. Pontotoc County Board of Supervisors, 939 So.2d 805 (Miss. 2006)
    Enlow v. State, 888 So.2d 1177 (Miss 2004)
    Black v. State, 901 So.2d 1273 (Miss. 2005)
    Arbuckle v. State, 904 So.2d 184 (Miss. 2005)
    McBride v. State, 921 So.2d 344 (Miss. 2005)
    Bush v. State, 922 So.2d 802 (Miss. 2005)
    Dendy v. State, 933 So.2d 303 (Miss. 2006)
    Townsend v. State, 933 So.2d 982 (Miss. 2006)

    c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

    Adams v. Greenpoint Credit, 943 So.2d 703 (Miss. 2006).
    Greenpoint Credit sought to compel arbitration. Plaintiffs alleged the arbitration clause was not enforceable. I ruled both the father, who had executed the contract and the daughter, a non-signatory, was bound as a beneficiary of the contract since she resided in the mobile home and claimed rights in the mobile home. The Court of Appeals affirmed in part and the Supreme Court of Mississippi, on certiorari, affirmed the Court of Appeals in part and vacated in part; and affirmed in part the Circuit Court and reversed and remanded in part.

Hill v. State, 929 So.2d 338 (Miss. Ct. App. 2005).
I instructed the jury on burglary instead of the lesser-included offense of trespass. During the trial, there was testimony that the Defendant did not "break" into the building since it was an open three-sided garage. The Court reversed on the burglary instruction. The Defendant has been sentenced on the lesser-included offense of trespass.

Bullard v. Guardian Life Ins. Co. of Am., 941 So.2d 812 (Miss. 2006).
I granted Defendant's Motion for Summary Judgment based on the claim being barred by the three year Statute of Limitations. The policyholders sued their insurance company and its agent, Bullard. Bullard filed a cross-claim against Guardian. Guardian settled with the policyholders. Guardian filed a Motion for Summary Judgment to dismiss Bullard's cross-claim since more than three years had passes since the sale of the policy in 1990. The lawsuit was filed in 2000 and the policy was sold in 1990.

The Supreme Court of Mississippi reversed and remanded against a long-line of cases that had held that the cause of action for fraud or misrepresentation was barred three years from the date of the sale of the policy. The Supreme Court found that Bullard, the agent, could not have known about his claim against the company for alleged false misrepresentation, until the policyholder sued Guardian. There was a strong dissent.

Lenoir v. State, 943 So.2d 113 (Miss. Ct. App. 2006).
Ray Charles Lenoir filed a Motion for Post Conviction Relief. The trial court denied relief. The Supreme Court of Mississippi reversed and remanded with directions to the trial court to conduct an evidentiary hearing and make additional findings regarding the status of Lenoir's Federal Post Release Supervision at the time the trial Court revoked him and imposed his suspended state sentence.

Sandefer v. State, 2005-KA-01333-COA (Miss. Ct. App. February 27, 2007)
Sandefer was convicted of burglary and larceny of a dwelling. He appealed his conviction and sentence, assigning seven separate errors. The Court of Appeals found no error, except for the trial court's failure to allow a new witness to testify, (the witness was not disclosed in discovery and brought forth on the second day of trial). The Court of Appeals determined the trial court should have allowed the State an opportunity to interview the new witness and if the State thereafter claimed "unfair surprise or undue prejudice" then the State should have sought and the court granted a continuance or mistrial. Further, the Court of Appeals determined the witness' testimony was not a willful discovery violation and the denied testimony was important to Sandefer's case. A dissent expressed belief the court also committed error by not granting Sandefer's request for directed verdict based on the State improperly indicting Sandefer under MCA Section 97-17-23 instead of 97-17-29.

d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

The four cases listed in 15. c. are the only cases in which I have been reversed.

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

An unpublished opinion is rendered in approximately 3% (estimated) of all civil cases.

All opinions are filed in the Circuit Clerk's office of each of the seven counties in the First Circuit Court District: Alcorn, Itawamba, Lee, Monroe, Pontotoc, Prentiss and Tishomingo.

f. citations to all cases in which you were a panel member in which you did not issue an opinion.

Not applicable.

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

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

Joy A. Jennings Smith, et al vs Estate of Scott Delano Collins, deceased; CV96-109(F)L, Lee County Circuit Court; sua sponte (actually was a reassignment in order for another judge to hear the case on an earlier date that I could hear the case)

The Estate of Edith M. Hadaway by and through Joniel Hadaway, Executor, et al vs Right Care, Inc.; CV02-166(B)I, Itawamba County Circuit Court; sua sponte (former client)

Joel Farrar & Betty Farrar vs Ford New Holland, Inc., & Tupelo Ford Tractors, Inc.; CV03-155(A)I, Itawamba County Circuit Court; sua sponte (former client)

William M. Beasley, et al vs Ed Neelly, et al; CV03-86(A)L, Lee County Circuit Court; sua sponte (William Beasley is an attorney that regularly practices before the Court)

Sharon Holmes vs Tupelo Furniture Market, Inc., CV01-335(B)L, Lee County Circuit Court; sua sponte (attorney for Sharon Holmes requested my recusal after I disclosed that a close friend was the accountant for Tupelo Furniture Market, Inc.)

BancorpSouth Bank d/b/a Credit Card Center vs Wood Sales, Inc., a Mississippi Corporation, CV00-0158(B)T, Tishomingo County Circuit Court; sua sponte (former client)

Charlotte Wiygul, individually, et al vs JESCO, Inc., et al, CV04-122(P)I, Itawamba County Circuit Court; sua sponte (the decedent was an Alderman at the time I was serving as Board Attorney for the City of Fulton)

Riley Building Supply, Inc. vs Daniel E. Nash d/b/a Dan Nash Construction, CV03-099(A)I, Itawamba County Circuit Court; sua sponte (former client)

Jason L. Digby, D.M.D., P. A. vs Johnny M. Roberts, CV04-213(A)I, Itawamba County Circuit Court; sua sponte (former client)

Cleveland Brown vs Luke Montgomery d/b/a Cash Title Exchange, CV05-278(A)M, Monroe County Circuit Court; sua sponte (former client and close friend's son)

Riley Building Supply, Inc. vs Jason Harold Stevens, d/b/a Stevens Construction, CV05-00412(A)I, Itawamba County Circuit Court; sua sponte (former client)

Gregory D. Keenum, P. A. vs Gregory D. Keenum, et al, CV05-983(A)PR, Prentiss County Circuit Court; sua sponte (Gregory D. Keenum is an attorney that regularly practices before the Court)

Linda Stegall-Floyd vs James L. Weir & James L. Weir, P.C., CV05-000167(A)L, Lee County Circuit Court; sua sponte (James L. Weir is an attorney that regularly practices before the Court)

Hilda Bishop vs City of Fulton, Mississippi, CR05-076, Itawamba County Circuit Court; sua sponte (wife of attorney that regularly practices before the Court)

Billy Joe Tate vs Eutaw Construction Company, Inc., CV02-243(B)M, Monroe County Circuit Court; requested by suggestion; (at the suggestion of Travelers Insurance Company who wrote the coverage for Eutaw Construction

Company, Inc. after I disclosed that my husband is employed by Travelers Insurance Company)

Jan Lee Martin & Peter T. Martin vs Jeremie H. Bray & Bellsouth Communications, Inc., CV03-353(A)M, Monroe County Circuit Court; sua sponte (Peter T. Martin is an attorney that regularly practices before the Court)

Progressive Gulf Insurance Company vs Midway Marina Inc. & Tenn-Tom Watersports, Inc., CV03-04(A)I, Itawamba County Circuit Court; sua sponte (former client)

Barbara Sharp, individually, et al vs CLC of Fulton, LLC d/b/a Courtyards Community Living Centers, LLC, CV04-139(A)I, Itawamba County Circuit Court; sua sponte (former client)

James Perkins & Mary Perkins vs Roy Rock d/b/a Rocks Carpet One, et al, CV05-305(A)M, Monroe County Circuit Court; sua sponte (former client)

Arvie L. Causey-Patrick vs Jimmy D. Shelton & Jimmy D. Shelton & Associates, P. A., CV05-134(A)L, Lee County Circuit Court; sua sponte (all the attorneys in the Jimmy D. Shelton & Associates law firm regularly practice before the Court)

Warren Rich, et al vs Bobby Canup, as Administrator of the Estate of Nancy Canup, et al, CV05-090(A)L, Lee County Circuit Court; sua sponte (former client)

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

It is the practice in our District to recuse in any case involving an attorney that regularly practices before your Court.

I practiced for 22 years in Itawamba County and many of my clients reside in Itawamba County. I have recused myself sua sponte on all cases involving former clients. To my recollection, I only recall two cases where it was suggested I recuse myself. (Billy Joe Tate v. Eutaw Construction Company, Inc., CV02-243(B)M and Sharon Holmes v. Tupelo Furniture Market, Inc., CV01-335(B)L).

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

I always make disclosures to the attorneys as soon as I am made aware of a possible conflict of interest. I generally disclose the matter on the record. Sometimes I initiate a telephone conference with all attorneys and make the disclosures in order to avoid any delay. I have on numerous occasions requested

the attorneys make the disclosure to their client and afterwards contact the Court in writing of the client's decision.

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

With a few exceptions, as described above, all of the recusals for the cases named in subsection a above were because one of the parties to the litigation was a former client of mine.

The cases following are ones in which one or all of the Circuit Court Judges in our District have recused because one or more of the parties to the litigation are attorneys who regularly practice before our Court: William M. Beasley, et al vs Ed Neelly, et al; CV03-86(A)L, Lee County Circuit Court; Gregory D. Keenum, P. A. vs Gregory D. Keenum, et al, CV05-983(A)PR, Prentiss County Circuit Court; Linda Stegall-Floyd vs James L. Weir & James L. Weir, P.C., CV05-000167(A)L, Lee County Circuit Court; Jan Lee Martin & Peter T. Martin vs Jeremie H. Bray & Bellsouth Communications, Inc., CV03-353(A)M, Monroe County Circuit Court; and Arvie L. Causey-Patrick vs Jimmy D. Shelton & Jimmy D. Shelton & Associates, P. A., CV05-134(A)L, Lee County Circuit Court.

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

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

Itawamba County Prosecuting Attorney (1984-1992). I was appointed county attorney in April 1984 after the elected county attorney was appointed by the governor to the circuit court bench. I was appointed by the Itawamba County Board of Supervisors. I served until December 1988. I was elected by the citizens of Itawamba County for a second term from 1988-1992

I was appointed by Governor Bill Allain to the Mississippi State Personnel Board in July 1984. I was re-appointed by Governor Ray Mabus and served until June 30, 1990. I served as Chairman of the Board in 1989-1990.

I was appointed by Governor Ronnie Musgrove to the Mississippi Home Corporation Board in 2000 and served until my election to the bench in 2002.

I have had no unsuccessful candidacies or any unsuccessful nominations for appointed office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

18. **Legal Career:** Please answer each part separately.

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

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

I did not serve as a clerk.

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

I opened my own practice in Fulton, Mississippi. My first office was located at 113 South Gaither Street, Fulton, Mississippi. Later in 1984, I moved to a newly renovated office at 212 West Main Street, Fulton, Mississippi and practiced there for 18 years. I enjoyed a successful practice and represented a wide and varied clientele, including some of the most successful and largest industries and businesses in the county.

During the years of 1987 to 1989 I practiced under the firm name of Soper, Russell, Richardson & Dent, P. A., but I remained at my same location in Fulton. We formed a partnership to aid and assist with work and to increase our exposure in the legal community. In 1990, we dissolved the partnership and resumed our former practices.

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

A.T. Cleveland Law Office, 111 South Gaither Street, Fulton, MS 38843; (1980-1983); associate attorney

Sharion H. Richardson, P. A., 212 West Main Street, Fulton, MS 38843; (1984-1987 and 1989-2003); attorney/sole-practitioner

Soper, Russell, Richardson & Dent, P. A., 209 North Green Street, Tupelo, MS 38804; (1987-1989), attorney/partner

Itawamba County, Mississippi, 201 West Main Street, Fulton, MS 38843; board attorney (1993 – 2002); Prosecuting Attorney (1984 – 1991)

Itawamba County School District, 605 South Cummings Street, Fulton, MS 38843; (1984-1999); board attorney

City of Fulton, Mississippi, 213 West Wiygul Street, Fulton, MS 38843; (1998-2002); board attorney

Mantachie Natural Gas District, now known as Northeast MS Natural Gas District, P. O. Box 190, Mantachie, MS 38855; (1986-2002); board attorney

Town of Tremont, Mississippi, 12761 Highway 23 North, Tremont, MS 38876; (1980-2002); board attorney

b. Describe:

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

My practice consisted of criminal prosecutions, insurance defense, administrative proceedings, worker's compensation, social security disability, personal injury, Chancery Court matters including divorces, land line disputes and custody matters. I spent much time representing public bodies, attending public board meetings, drafting ordinances, resolutions and minutes of meetings. I represented several large corporations in negotiating and drafting contracts. I had an extensive real estate practice including title searches, document preparation and loan closings. I have handled numerous estates.

The more time I spent in board rooms, the less time I spent in the courtroom. About 1995, I decided to do less Chancery Court work. Thereafter, my practice consisted of primarily business and corporate clients, representation of public bodies and entities and real estate transactions.

ii. your typical clients and the areas, if any, in which you have specialized.

I had a varied practice. I represented all ages, whites and African Americans; wealthy and the very poor. Our county is basically poor and rural; however, I had the opportunity to represent our largest and most prosperous businesses. I have represented many public entities and

governmental agencies. While I claim no specialties, a vast amount of my practice involved business and corporate clients, governmental entities, real estate, and probate.

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

During the years 1984 to approximately 1995 I appeared frequently in Court. I prosecuted hundreds of cases in Justice Court and Youth Court and assisted the District Attorney in presentation of felony cases to the Grand Jury. I have tried hundreds of cases in Chancery Court and appeared regularly in Itawamba, Lee, Monroe and Tishomingo Counties.

i. Indicate the percentage of your practice in:
   1. federal courts: 1%
   2. state courts of record: 79%
   3. other courts. (municipal, justice court, etc.) 20%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 75%
   2. criminal proceedings. 25%

d. 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 tried hundreds of Chancery Court cases (non-jury). I have probably tried 20-25 jury trials. Generally, I was sole counsel. However, I have tried both Chancery and Circuit Court cases with co-counsel and have associated counsel on appeal cases.

i. What percentage of these trials were:
   1. jury; approximately 10%
   2. non-jury. approximately 90%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

19. **Litigation**: Describe the ten (10) 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 representation;

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

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

1. Cayson Electronics, Inc., a Mississippi Corporation vs. Aileen Cowart, and Stockholders of Lark Mfg. Co., Inc., Itawamba County Chancery Court, 11,029; U. S. District Court, Northern District of Mississippi No. EC85-382-NB-D. I represented Aileen Cowart from November 1984 to October 1986. Chancellors Fred P. Wright and George Adams executed orders in Itawamba County Chancery Court. Judge Neal Biggers executed orders in District Court. I did not associate co-counsel. Principal counsel for Cayson Electronics, Inc. was Carolyn Benson, P. O. Box 785, Main Street, Fulton, Mississippi. The case originated in Chancery Court by Cayson Electronics to quiet and confirm title. All predecessors in title were named as Defendants. I represented Aileen Cowart, a predecessor in title. We joined the Chancery Court action to confirm and quiet title. However, a question arose regarding a federal tax lien. The United States Attorney's office, Honorable Glen Davidson, filed a Notice of Removal and the case was removed to Federal Court. After several months, it was determined that the federal tax lien had been satisfied and the case was remanded back to Chancery Court. My client was paid a nominal sum to remove any right, title or interest she might have in the property. Thereafter, Judge Wright heard proof and confirmed title.

2. State Highway Commission of Mississippi vs. T. L. Burch, et al, Special Court of Eminent Domain, Itawamba County, Mississippi, No. 20.487. I represented the Burches in 1984-1985. There were several eminent domain cases filed in Itawamba County during the mid 1980(s) due to the construction of four-lane Highway No. 78. I represented several landowners. The Burch tract was the largest tract condemned in Itawamba County, Mississippi. The jury awarded the landowners' appraiser's figure of $79,000.00. I did not have co-counsel. Counsel opposite was Honorable Patrick Caldwell, P. O. Box 1836, Tupelo, Mississippi 38802 (662) 842-8945. The case was tried before Circuit Court Judge Fred Wicker.

3. State Highway Commission of Mississippi vs. Ralph C. Spencer, et al, Special Court of Eminent Domain, Itawamba County, Mississippi, No. 20,454. I represented Ralph and Mary Spencer in an eminent domain case involving the taking of 14.55 acres. The case was tried before Judge Thomas J. Gardner, III. I represented the Spencers from 1985-1987. The case was tried before an

Itawamba County jury and the Spencers were awarded approximately $22,000.00 to the best of my recollection. Counsel opposite was Honorable Patrick Caldwell, P. O. Box 1836, Tupelo, Mississippi 38802. (662) 842-8945. I did not have co-counsel.

4. In the matter of the Guardianship of James Michael Wilemon and Jon Madison Wilemon, Minors, Itawamba County Chancery Court, No. 2001-0349. Also: In Re: Estate of Donna Wilemon, deceased, No. 2001-0348, Itawamba County Chancery Court. I represented Randy Wilemon, widower of Donna Wilemon and his two minor children resulting from an automobile accident caused by a rollover of a Ford Explorer. I filed the estate proceedings and thereafter commenced negotiations with Ford Motor Company. I associated Ronald Michael as co-counsel. His address is 1700 North Second Street, Booneville, Mississippi 38829 (662) 728-6276. We associated Rick Alvis of Alvis & Willingham, 1400 Urban Center Drive, Suite 475, Birmingham, Alabama (205) 298-1011. The case settled without the necessity of filing a lawsuit for $475,000.00. Judge John C. Ross, approved the settlement on behalf of the minors. The case was open from January 2001 to February 2003.

5. In Re: Estate of James Monroe Brown, Doris Credille, Petitioner, Itawamba County Chancery Court, No. 2000-0176. I represented the heirs at law of James Monroe Brown in the estate proceedings. Mr. Brown died as a result of a motor vehicle accident involving a log truck owned and operated by Tidwell & Tidwell Logging. The estate matter was extremely complicated because of the uncertainty of the identity of heirs and beneficiaries. A lawsuit was filed in the Circuit Court of Itawamba County, Mississippi styled: Doris Credille, Administrator of the Estate of James Monroe Brown, deceased; and Ellis Cromeans and Ethel Cromeans, as next friends and natural guardians of Ellis Eugene "Bo" Cromeans vs Tidwell & Tidwell Logging and John Tidwell and Newton A. Cagle, Jr., No. 00-0541. Ronald L. Roberts of Mitchell, McNutt, Threadgill & Sams at 215 Fifth Street North, Columbus, Mississippi 39703 (662) 328-2316 was counsel opposite. Ronald Michael at 1700 North Second Street, Booneville, Mississippi 38829 (662) 728-6276 was my co-counsel. The case was removed from Itawamba County Circuit Court to United States District Court in Oxford, Mississippi. Eventually, a settlement was negotiated in the sum of $105,000.00. Heirs were confirmed in Chancery Court and distributions made pursuant to an order signed by Judge Jacqueline Mask on January 25, 2002. I represented the Estate from May 1998 until February 2002.

6. In Re: Complaint to Confirm and Quiet Title and to Remove and Cancel Clouds on Plaintiff's Land, Itawamba County Chancery Court, No. 2002-0415. I represented Jack Ozbirn, the petitioner. The case involved clearing and confirming title against forty (40) adverse heirs. I represented Jack Ozbirn beginning in January 1985. This litigation was filed in December

2002 and was finalized on June 28, 2003 with absolute title confirmed in Jack Ozbirn. I did not have any co-counsel. Judge Jacqueline Estes Mask signed the Final Decree June 20, 2003. No attorney entered an appearance for any of the Defendants even though several attorneys made general inquiry on behalf of potential clients.

7. In the Matter of the Conservatorship of Allie Wayne Barnes, Itawamba County Chancery Court, No. 2000-0020. I represented Cindy Barnes, Betsy Quince and Melissa Doyle, the wife and children of Allie Wayne Barnes. Mr. Barnes sustained massive head injuries as a result of a rollover of a Ford Explorer. I opened the Conservatorship to enable his wife and children to handle his affairs and pursue litigation against Ford Motor Company. I associated Ronald Michael and Rick Alvis. Ronald Michael's address is 1700 North Second Street, Booneville, Mississippi 38829 (662) 728-6276. Rick Alvis' address is Alvis and Willingham, LLP, 1400 Urban Center Drive, Suite 475, Birmingham, Alabama (205) 298-1011. The case settled without the necessity of filing a lawsuit in the amount of $1,250,000.00. I represented Mrs. Barnes and the children from December 1999 through May 2001. Judge John C. Ross approved the final settlements and distributions to the Conservatorship. I filed the required annual accountings until I went on the Circuit Court bench January 2, 2003. Judge Jacqueline Mask and Judge John C. Ross approved the annual accountings.

8. In the Assessment of Ad Valorem Taxes on Leasehold Interest Held by Reed Mfg. Inc. by the Itawamba County Board of Supervisors, 854 So.2d 1066 (Miss. 2003). I represented Itawamba County Board of Supervisors at the time the Itawamba County Tax Assessor assessed back taxes and current taxes of the leasehold interest held by Reed Mfg. Inc. Itawamba County, Mississippi leased a county-owned building to Reed and thereafter assessed taxes on the leasehold interest. The leaseholder strongly contended the leasehold interest was not subject to taxation pursuant to Mississippi law. The law was very vague. However, this case became the test case for all counties in Mississippi. I did all the research and preparation for the case. I argued the matter at the trial court level. However, I took the bench in January 2003 before the case was decided by the Mississippi Supreme Court in September 2003. The Mississippi Supreme Court reversed the assessment on back taxes for any years the assessment was not listed on the tax rolls. However, the Mississippi Supreme Court affirmed the placement of the leasehold interest on the tax rolls and agreed the county could assess taxes in the future. The case resulted in significant recovery of tax dollars for Itawamba County and other Mississippi counties. I did not have co-counsel. Bo Russell and Thomas E. Childs, Jr. represented the Board of Supervisors after I left in January 2003. Their address is 212 West Main Street, Fulton, Mississippi 38843 (662) 862-4656. Counsel opposite was Thad J. Mueller from Sumners and Carter, Union Planters Bank, Second Floor, 112 East Bankhead Street, Suite A, New Albany, Mississippi 38652. The initial assessment was made in January 2000

and finalized after decision by the Mississippi Supreme Court in September 2003. Judge Richard Bowen heard the case in Itawamba County Circuit Court. Justice George Carlson wrote the opinion for the Mississippi Supreme Court.

9. Mantachie Natural Gas District vs. Mississippi Valley Gas Company, 594 So.2d 1170 (Miss. 1992). Mantachie Natural Gas District and Mississippi Valley Gas Company petitioned the Mississippi Public Service Commission (PSC) to obtain certificates of public convenience and to serve the "Skyline" area in Lee County, Mississippi. The area was part of Mantachie Natural Gas District's legislative designated area. Mississippi Valley Gas contended Mantachie Natural Gas District had not served or had underserved the area. Unfortunately, PSC issued both entities a certificate of need and it created an overlap in service area. Judge Timothy E. Ervin, Lee County Chancery Court Judge, granted Mississippi Valley Gas' request for summary judgment. I appealed the case on behalf of Mantachie Natural Gas District. The Mississippi Supreme Court reversed and remanded for a full trial; a decision in our favor. Prior to the trial, Mississippi Valley Gas (a large corporate "well-funded" private gas company) conceded the area to Mantachie Natural Gas District. I did not have co-counsel at the trial level. At the appellate level, Ben Logan, an associate attorney with Soper & Dent, whose address is 209 North Green Street, Tupelo, Mississippi 38804 assisted me. I represented Mantachie Natural Gas District from 1986 until January 2003. This issue and subsequent litigation endured from 1987 until 1993. Chief Justice Roy Noble Lee wrote the opinion for the Mississippi Supreme Court.

10. Deloris Davis vs. Rodney Engle and Sunshine Homes, Inc., Cause No. 91-068, Circuit Court of Itawamba County, Mississippi. I represented Deloris Davis as a result of a motor vehicle accident in October, 1989. A lawsuit was filed. R. H. Burress with Upshaw, Williams, Biggers, Page & Kruger, Greenwood, Mississippi defended the case. Mr. Burress is now a partner with The Langston Law Firm, 100 South Main Street, Booneville, Mississippi 38829. My co-counsel was George Dent, Soper & Dent, 209 North Green Street, Tupelo, Mississippi 38804. Mr. Dent is now a partner with Greer, Pipkin, Russell, Dent & Leathers, 117 North Broadway, Tupelo, Mississippi 38804. The case was aggressively litigated resulting in the taking of numerous depositions. The case was fully prepared for trial and was settled the morning of trial after empanelling the jury. Judge Frank A. Russell was the sitting judge. The case was settled in 1993. Thereafter, I undertook to settle and compromise the outstanding subrogation claim and numerous medical expenses.

20. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities

and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

a) Contract negotiation and drafting of documents for American Cellulose Corporation. Larry Homan, owner of Homan Industries, Inc., hired me to assist with the negotiations and drafting of a ten year contract with Packaging Corporation of America. It was a multimillion dollar contract for production of wood chips for paper production. I traveled to Packaging Corporation of America's corporate offices and worked closely over a six to seven month period with the Packaging Corporation of America's corporate counsel and eventually drafted and/or edited "several inches" of documents. The contract was never breached or contested. After the expiration of the initial ten year contract, I again worked with Mr. Homan and International Paper, Packaging Corporation of America's successor, to negotiate a new ten year contract. I handled all legal proceedings and prepared all legal documents for American Cellulose Corporation from its inception until I went on the bench.

b) Representation of the Mantachie Natural Gas District. Legislation had been passed by the Mississippi Legislature that established a mechanism for a natural gas district in rural Itawamba County to aid economic development. We literally started from scratch to form a board, elect commissioners, draft construction plans, let contracts for public bid and build a natural gas system. It was the most hands-on project I have ever handled. I represented the Gas District for sixteen years through some extremely difficult financial years necessitating renegotiation and refinancing of public bonds. We initially served sixteen customers and now the system has over sixteen hundred customers and is very financially sound. The employees, staff, board members and I were like family. The rural area served by Mantachie Natural Gas District has grown tremendously, aided in large part by the relatively inexpensive supply of natural gas.

c) While I was serving as board attorney for Itawamba County Board of Supervisors, our local hospital closed. For months the hospital was vacant. The Board of Supervisors discussed utilization of the building. Finally, it was agreed Itawamba County would seek legislative approval to convert the hospital to a nursing home. At the time, the Mississippi Board of Health had placed a moratorium on new nursing home beds. I assisted in drafting legislation and assisted the Board in lobbying the Mississippi Legislature for a bill allowing this conversion of a public building. I testified on several occasions before the Legislature and we were successful in passing the bill. Thereafter, I was very active in negotiations with potential lessees of the building. Itawamba County made application for a Certificate of Need and won approval from the Mississippi Department of Health. I oversaw the renovations and the letting of all public contracts. Itawamba County has generated millions of dollars as a result of its lease of the county-owned nursing home and assignment of the Certificate of Need.

21. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe

briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

I have not taught any courses.

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

    As a settlement of professional services in a case in 1988, I received an annuity for my fees. This annuity has been listed on the Financial Disclosure Report and matures in 2008. Except for this annuity, I do not anticipate receipt of any uncompleted contracts, fees or income from previous professional services.

    As a state employee, I have contributed to a Deferred Compensation Plan. It is my understanding that I am eligible to receive payment(s) from the Plan when I retire from or leave state employment.

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

    My husband and I own Richardson Development Company, Inc., a real estate business that presently leases four houses, primarily to college students. If appointed, I shall continue to own and operate Richardson Development Company, Inc., subject to the limitations of the Ethics Reform Act of 1989, the Code of Conduct for United States Judges, and Judicial Conference regulations.

24. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, 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.)

    See attached Financial Disclosure Report.

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

    See attached Financial Net Worth Statement.

26. **Potential Conflicts of Interest**:

    a. Identify the parties, 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. Explain how you would address any such conflict if it were to arise.

    Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated include former clients, instances in which I have heard a case in state court involving the same parties or subject matter as in a case set before me in Federal Court, and cases involving banks in which I own stock.

    In addition, my husband is an insurance adjuster for Travelers Insurance Company. When I was elected in 2002 as Circuit Court Judge, his company agreed to move his territory to avoid any potential conflicts. He currently works only property claims which results in very little litigation.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

    As a Mississippi state court judge, I am very careful to disclose potential conflicts of interest and I shall continue to make the necessary disclosures on the record. I have never insisted on hearing a case in which my recusal has been suggested.

    In all circumstances where there may be an actual or potential conflict of interest, I will abide by the Code of Conduct for United States judges and all applicable statutes, policies and procedures established by the Judicial Conference.

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

    I was appointed as a member of the Pro Bono Project of the Mississippi Bar around 1984. As a member of the Mississippi Bar Foundation, I know the importance of serving all litigants in need of legal services, regardless of their ability to pay. The Mississippi Bar Foundation annually funds the Rural Legal Services of Mississippi. As President of the Mississippi Bar Foundation, I met with lawyers to encourage their benevolent giving to aid the poor in securing access to legal services.

    As a practicing attorney, I always accepted cases referred by the bar pro bono. For example, the North Mississippi Rural Legal Services solicits attorneys to assist low income persons in need of legal services in our area. I have on several occasions assisted

women in divorce and child custody cases. I have also accepted pro bono cases referred by the Mississippi Bar Association. Upon graduation from law school, I began representing my hometown of Tremont, Mississippi for a monthly retainer of $50.00 per month never increasing my fee as a contribution to my community. I have also provided legal counsel for countless non-profit and charitable organizations in my area.

28. **Selection Process**:

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

    There is no selection commission in my jurisdiction to recommend candidates for nomination to the best of my knowledge.

    In mid-October 2006 I expressed my interest to staff in Senator Cochran's office. I met with Senator Cochran on Wednesday, November 22, 2006. About mid-December 2006, Senator Lott and Senator Cochran called and advised my name was going to be submitted to White House Counsel for possible consideration to this position. On December 21, 2006 I interviewed with staff from the Office of White House Counsel and from the Department of Justice.

    On January 24, 2007, I was notified by the White House that I was a candidate for nomination. After completing all nomination paperwork, my nomination was submitted to the United States Senate on March 19, 2007.

    b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

    No.

AO-10 (WP)
Rev. 1/2004

FINANCIAL DISCLOSURE REPORT

Nomination Report

Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App. §§101-111)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
AYCOCK, SHARION H.	NORTHERN DISTRICT OF MISSISSIPPI	3/20/07
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	5. Report Type (check appropriate type)	6. Reporting Period
DISTRICT JUDGE - NOMINEE	X NOMINATION; NOMINATION DATE (3/19/07)	1/1/06 TO 3/1/07
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
P. O. DRAWER 1100 TUPELO, MS 38802	Initial ___ Annual ___ Final ___ Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	NONE (No reportable positions.)	
1.	CO-TRUSTEE	TRUST # 1
2.	CO-TRUSTEE	TRUST # 2
3.	CO-TRUSTEE	TRUST # 3

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

	DATE	PARTIES AND TERMS
☐	NONE (No reportable agreements.)	
1	1984	MS. PERS RETIREMENT ACCOUNT; PENSION UPON RETIREMENT
2	1988	AETNA ANNUITY; MATURES IN 2008

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

A. Filer's Non-Investment Income

	DATE	SOURCE AND TYPE	GROSS
☐	NONE (No reportable non-investment income.)		
1	2005	SALARY AS TRIAL JUDGE	$ 105,000.00
2.	2006	SALARY AS TRIAL JUDGE	$ 105,000.00
3			$

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

☐	NONE (No reportable non-investment income.)	
1	2006	SALARY FROM TRAVELERS INS. CO.

2 2007 SALARY FROM TRAVELERS INS. CO. (TO-DATE)

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
AYCOCK, SHARION H.	3/20/07

IV. REIMBURSEMENTS – transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children. See pp. 28-31 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	EXEMPT		$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children See pp. 32-33 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
1	FEDERAL LAND BANK	NOTE ON PROPERTY 1	L
2	BANCORPSOUTH BANK	UNSECURED NOTES	J
3	FEDERAL LAND BANK	NOTE ON PROPERTY 2	L
4	THREE RIVERS PLANNING AND DEV. DISTRICT	NOTE ON PROPERTY 3	K
5	BANCORPSOUTH BANK	NOTE ON PROPERTY 4	L

*Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000
N=$250,001-$500,000 O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
AYCOCK, SHARION H.	3/20/2007

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code3 (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐	NONE (No reportable income,									
1	BANCORPSOUTH COMMON STOCK	A	DIV	J	T	EXEMPT				
2	TRUSTMARK COMMON STOCK-RA	A	DIV	J	T	EXEMPT				
3	TRAVELERS COM. STOCK	A	DIV	K	T	EXEMPT				
4	DARRELL HARP ENT., INC.	B	DIV	N	U	EXEMPT				
5	4A INVESTMENT CO.	B	INT	L	T	EXEMPT				
6	PROPERTY 1	A	INT	K	W	EXEMPT				
7	MS DEFERRED COMP.	B	INT	L	T	EXEMPT				
8	MS PERS RETIREMENT FUND		NONE	L	T	EXEMPT				
9	DRUG STORE RENTAL -A/C	D	RENT	K	W	EXEMPT				
10	PERFORMANCE FUNDS	A	DIV	J	T	EXEMPT				
11	MET-LIFE COMMON STOCK	A	DIV	K	U	EXEMPT				
12	G. PUTMAN FUND OF BOSTON-SA	C	DIV	J	T	EXEMPT				
13	PUTMAN GROWTH AND INCOME-SA	A	DIV	J	T	EXEMPT				
14	PUTMAN HEALTH SCIENCES-SA	B	DIV	J	T	EXEMPT				
15	AETNA ANNUITY		NONE	J	T	EXEMPT				
16	WASHINGTON MUTUAL BANK-RA/CD	A	INT	J	T	EXEMPT				

1	Income/Gain Codes: (See Col. B1, D4)	A=$1,000 or less F=$50,001- $100,000	B=$1,001-$2,500 G=$100,001-$1,000,000	C=$2,501-$5,000 H1=$1,000,001-$5,000,000	D=$5,001-$15,000 H2=More than $5,000,000	E=$15,001-$50,000
2	Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P3=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001- $100,000 P1=$1,000,001-$5,000,000 P4=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3	Value Method Codes: (See Col. C2)	Q=Appraisal U=Book value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
AYCOCK, SHARION H.	3/20/07

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE . (No reportable income, assets, or transactions)									
17 CAPITAL INC. BUILDER FUND-RA	A	DIV	J	T	EXEMPT				
18 CAPITAL WORLD GROWTH AND INC.	A	DIV	J	T	EXEMPT				
19 FUNDAMENTAL INVESTORS FUND-RA	A	DIV	J	T	EXEMPT				
20 GROWTH FUND OF AMERICA-RA	A	DIV	J	T	EXEMPT				
21 HOME FEDERAL SAVINGS BANK-RA/CD	A	INT	J	T	EXEMPT				
22 BANCORPSOUTH CD-MR	A	INT	J	T	EXEMPT				
23 BANK OF WALKER CO-MR-3M	A	INT	J	T	EXEMPT				
24 BANCORPSOUTH -MR 3M	A	INT	J	T	EXEMPT				
25 TRUSTMARK RENTAL-MR 3M	B	RENT	K	T	EXEMPT				
26 TIMBERLAND-ITAWAMBA CO-MR 3M		NONE	L	W	EXEMPT				
27 TRUSTMARK MONEY MARKET-SA	A	INT	J	T	EXEMPT				
28 MORGAN KEEGAN MONEY MARKET-SA	B	INT	K	T	EXEMPT				
29 MORGAN KEEGAN MONEY MARKET MR	A	INT	J	T	EXEMPT				
30 BANCORPSOUTH CHECKING AC		NONE	J	T	EXEMPT				
31 SOUTHERN FARM BUREAU	A	INT	J	T	EXEMPT				
32 JANUS-MR	A	DIV							
33 ST. PAUL COMMON STOCK FUND	C	DIV	N	T	EXEMPT				

1	Income/Gain Codes: (See Col. B1, D4)	A=$1,000 or less F=$50,001-$100,000	B=$1,001-$2,500 G=$100,001-$1,000,000	C=$2,501-$5,000 H1=$1,000,001-$5,000,000	D=$5,001-$15,000 H2=More than $5,000,000	E=$15,001-$50,000
2	Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P3=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001-$100,000 P1=$1,000,001-$5,000,000 P4=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3	Value Method Codes: (See Col. C2)	Q=Appraisal U=Book value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
AYCOCK, SHARION H.	3/20/07

VII. Page 3 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	Place "(X)" after each asset exempt from prior disclosure.									
☐	NONE (No reportable income, assets, or transactions)									
34	ST. PAUL TRAVELERS PREFERRED FUND	A	DIV	K	T	EXEMPT				
35	NEUBERGER BERMAN GENESIS FUND	C	DIV	L	T	EXEMPT				
36	COMMUNITY SPIRIT-DRUG STORE RENTALS-CD	B	INT	K	T	EXEMPT				
37	MS.DEV. BK SPL OBLG.SOUTHHAVEN WTR SWR SYS PROJECT AMBAC	A	INT	L	T	EXEMPT				
38	RICHARSON DEV. CO. ACCOUNT RECEIVABLE	A	INT	K	T	EXEMPT				
39	TRUSTMARK COMMON STOCK-SA	B	DIV	K	T	EXEMPT				
40	COMDISCO HOLDING CO	A	DIV	J	T	EXEMPT				
41	FEDERAL LAND BANK	A	INT	J	T	EXEMPT				
42	COMMUNITY SPIRIT MONEY MARKET	A	INT							
43	TREMONT DEV. CO.	A	INT	J	T	EXEMPT				
44	GEORGE PUTMAN OF BOSTON-MR	A	DIV	J	T	EXEMPT				
45	PUTMAN GROWTH AND INCOME-MR	A	DIV	J	T	EXEMPT				
46	PUTMAN HEALTH SCIENCES-MR	A	DIV	J	T	EXEMPT				
47	WORLD COM COMMON STOCK-MR		NONE	J	T	EXEMPT				
48	GEORGE PUTMAN OF BOSTON-MR	A	DIV	J	T	EXEMPT				
49	PUTMAN GROWTH AND INCOME-MR	A	DIV	J	T	EXEMPT				
50	MCKEE HOUSE, FULTON, MS-RDC	D	RENT	L	W	EXEMPT				

1	Income/Gain Codes: (See Col. B1, D4)	A=$1,000 or less F=$50,001- $100,000	B=$1,001-$2,500 G=$100,001-$1,000,000	C=$2,501-$5,000 H1=$1,000,001-$5,000,000	D=$5,001-$15,000 H2=More than $5,000,000	E=$15,001-$50,000
2	Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P3=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001- $100,000 P1=$1,000,001-$5,000,000 P4=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3	Value Method Codes: (See Col. C2)	Q=Appraisal U=Book value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
AYCOCK, SHARION H.	3/20/07

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)*

	A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
		(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Place "(X)" after each asset exempt from prior disclosure.	Amt. Code1 (A-H)	Type (e.g., div., rent or int.)	Value Code2 (J-P)	Value Method Code (Q-W)	Type (e.g., buy, sell, merger, redemption)	(2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	☐ NONE (No reportable income, assets, or transactions)									
51	PROPERTY 3	E	RENT	M	W	EXEMPT				
52	PROPERTY 4	C	RENT	K	W	EXEMPT				
53	ST. PAUL TRAVELERS PENSION FUND		NONE	M	T	EXEMPT				
54	PROPERTY 2	B	RENT	M	W	EXEMPT				
55	KENT PLACE FARM, TREMONT, MS.	B	RENT	M	W	EXEMPT				
56	WHITE OAKS LOT IN TUPELO, MS.		NONE	K	W	EXEMPT				
57	FINN STONE PROPERTY, TREMONT, MS.		NONE	J	W	EXEMPT				
58	ORAHMAN LOT, FULTON, MS		NONE	J	W	EXEMPT				
59	BRICE'S CROSSROADS FARM, BALDWYN, MS	B	RENT	K	W	EXEMPT				
60	TRUST # 1-OUIDE ONE/KANSAS LIFE INS.	B	INT	M	T	EXEMPT				
61	TRUST # 1 -FEDERATED LIFE	B	INT	M	T	EXEMPT				
62	WINDSOR II -MR	A	DIV	K	T	EXEMPT				
63	TRUST #'S 2 & 3 - JEFFERSON PILOT		NONE	N	T	EXEMPT				
64	BANK OF WALKER COUNTY STOCK-SA	A	DIV	J	T	EXEMPT				
65	TRUSTMARK SAVINGS A/C-DHJ/SA	A	DIV	J	T	EXEMPT				
66	SHOP/OFFICE BUILDING		NONE	L	T	EXEMPT				

1	Income/Gain Codes: (See Col. B1, D4)	A=$1,000 or less F=$50,001- $100,000	B=$1,001-$2,500 G=$100,001-$1,000,000	C=$2,501-$5,000 H1=$1,000,001-$5,000,000	D=$5,001-$15,000 H2=More than $5,000,000	E=$15,001-$50,000
2	Value Codes: (See Col. C1, D3)	J=$15,000 or less N=$250,001-$500,000 P3=$25,000,001-$50,000,000	K=$15,001-$50,000 O=$500,001-$1,000,000	L=$50,001- $100,000 P1=$1,000,001-$5,000,000 P4=More than $50,000,000	M=$100,001-$250,000 P2=$5,000,001-$25,000,000	
3	Value Method Codes: (See Col. C2)	Q=Appraisal U=Book value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market	

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	AYCOCK, SHARION H.	3/20/07

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

1. POSITION	NAME OF ORGANIZATION/ENTITY
PRESIDENT	RICHARDSON DEVELOPMENT CO., INC.
DIRECTOR	RICHARDSON DEVELOPMENT CO., INC.
DIRECTOR	DARRELL HARP ENTERPRISES, INC.
DIRECTOR	TREMONT DEVELOPMENT CO., INC.
CUSTODIAN	MORGAN KEEGAN ROTH IRA, MR
CUSTODIAN	VANGUARD, MR
PROPRIETOR	DARRELL HARP ENTERPRISES, INC.
PROPRIETOR	RICHARDSON DEVELOPMENT CO., INC.
PROPRIETOR	TREMONT DEVELOPMENT CO., INC.
CONSULTANT	HOMAN INDUSTRIES ADVISORY BOARD

2. NON-INVESTMENT INCOME

2006	DARRELL HARP ENTERPRISES, INC. DIRECTOR'S FEE	$ 3600.00
2006	HOMAN INDUSTRIES ADVISORY BOARD FEE	1500.00
2007	SALARY AS TRIAL JUDGE (TO-DATE)	8750.00
2006	COLLECTION OF OLD ATTORNEY'S FEE	7000.00

IX. CERTIFICATION.

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

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

Signature Sharion H. Aycock Date March 22, 2007

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

FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		96	150	Notes payable to banks-secured		53	000
U.S. Government securities-add schedule				Notes payable to banks-unsecured		11	500
Listed securities-add schedule		473	700	Notes payable to relatives			
Unlisted securities--add schedule		385	500	Notes payable to others			
Accounts and notes receivable:		38	000	Accounts and bills due		4	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		85	000
Real estate owned-add schedule		723	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		122	000	Loan against 401(k)		3	000
Cash value-life insurance		6	000				
Other assets itemize:		448	600				
				Total liabilities		156	500
				Net Worth	2	136	450
Total Assets	2	292	950	Total liabilities and net worth	2	292	950
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		3	800	Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities	
BancorpSouth stock	$ 1,700
Trustmark stock	39,000
Morgan Keegan-IRA-Mutual Funds	34,200
Edward Jones-Mutual Funds	20,600
Travelers Ins.Co. Stock	16,400
St. Paul Common Stock Plan Fund (401K)	253,600
St. Paul Travelers Preferred Stock Fund	29,200
Newberger Berman Genesis Trust CL	51,700
Bank of Walker County stock	10,000
Metlife Common stock	17,300
Total Listed Securities	$ 473,700
Unlisted Securities	
Darrell Harp Ent. Inc (12%)	$ 300,000
Richardson Dev. Co.	5,000
Tremont Dev. Co.	7,500
4A Investment Co. (1/4)	54,200
ABA Timber Management (1/3)	18,800
Total Unlisted Securities	$ 385,500
Real Estate Owned	
Personal residence	$ 225,000
Acreage 1	217,000
Acreage 2	111,000
Acreage 3 (1/4 interest)	32,500
Lot 1	15,000
Lot 2 (1/3 interest)	10,000
Finn Stone Property (1/2 interest)	12,500
Commercial Property	100,000
Total Real Estate Owned	723,000
Other Assets	
Mississippi state retirement funds	$ 141,800
Martin Richardson-Mutual Funds	105,000
Morgan Keegan Municip. Bond	50,400
Aetna Annuity	8,000
St. Pauls Travelers Pension Plan	138,200
Performance Funds	5,200
Total Other Assets:	$ 448,600
Real Estate Mortgages Payable	
Personal residence	$ 85,000

AFFIDAVIT

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

March 16, 2007
(DATE)

Sharion Aycock
(NAME)

Carol Gates Aicatchel
(NOTARY)
By [illegible], D.C.

Senator CARDIN. Well, again, we appreciate both your public service, plus also the commitment of your families. It's not easy at times, and we certainly appreciate that very much.

I want to thank both of you for the information that you've made available to the committee. That information has been reviewed. I must tell you, I was impressed by both of your backgrounds, your commitment to the judicial branch, and your knowledge and your backgrounds. So, I applaud both of you for a very distinguished career.

Your appointments are to the District Court, so let me, if I might, just tell you some of the advice my father gave me a long time ago when I used to go to his court and watch him. He was a Circuit Court judge, trial judge in Baltimore City.

He was not reversed very often, but he felt a real obligation to try to make people feel comfortable in the court and to try to have a commitment to help particularly those people who were disadvantaged. Our system is tough enough. But at the Circuit Court level, you can apply some practical solutions sometimes to problems.

I'm just really trying to get, if I might, your thoughts about your responsibility as a District Court judge as it relates to the Constitution, as it relates to the protections that are in the Constitution, as it relates to individuals who have been put at a disadvantage in our society, and sometimes the only way that they can get relief is through the courts.

How do you view your position—the potential position—as a Federal District Court judge in carrying out I think what the framers of our Constitution intended, the judicial branch to protect the rights of individuals against abuses of either the private sector or government?

Judge Jones, you can start if you'd like.

Judge JONES. Thank you, Senator. Senator, I think, first, I'd ask you to look at my history and my background in terms of things that I have done. My father taught me as a young boy, it's not so much in what you say as opposed to the things that you do. I have been very actively involved in different programs to assist others in their access to justice.

As you can see from the materials I've submitted to this committee, I serve as the advisor to the Access to Justice program in our local jurisdiction. I work with lawyers and law students to encourage them to assist individuals who can't obtain assistance by any other means; but for their assistance, there would be no representation.

In addition to that, Senator, the commitment that I have as a judge and as a public servant for many years has been one geared to fairness and to ensure that the Constitution applies to all persons equally at all times in every respect, regardless of background or personal circumstances.

Senator CARDIN. Thank you.

Judge Aycock?

Judge AYCOCK. Chairman Cardin, I think it's important. As you have noted, you know something about our background and our history, but that's very important to me, where I came from. The fact that I have had the privilege of practicing 22 years in a very rural community where I had the privilege of representing all

kinds of people, I think that has prepared me for going on the bench, where I respect every single person that walks in that courtroom. It is the most important day of their lives when they have something before the court, oftentimes having waited months, perhaps years, to get there.

So once they're there, that litigant deserves my attention. They deserve all the listening power I can put behind listening to the testimony, hearing what they have to say, knowing what the law is, because I need to get it right at that stage, and just being fair to that litigant, making them feel that they are welcomed in that courtroom, that I have not pre-judged their case, that I am there to listen and to make a fair decision based upon the law.

Senator CARDIN. We had a little conversation with the last panel on stare decisis, and I expect I'll hear in your response how important that is for consistency on the courts, and that of course you are bound by stare decisis. If you would like to comment on that, fine.

But what do you do when you have litigants before you where it is clear that, following what appears to be the legal precedent, the decision is not going to be one that is in the interest of justice? What do you do then? Do you follow stare decisis or are there other courses that you can take? Judge Jones? Let's reverse it. We'll go to Judge Aycock this time.

Judge AYCOCK. Thank you. Certainly there are times that I have made unpopular decisions in the courtroom, and perhaps that best speaks to just the acknowledgement that you don't always know the perfect answer. You can't always fix the situation. But people expect fairness and they expect evenhandedness, and they expect a level playing field.

If they get those things, then when they walk out of the courtroom and they know they've been treated fairly, even though the decision may be something different that they had hoped for, then they can't be critical of the system itself. And that's my job, is to make sure that that happens in my courtroom.

I know that there are times that making that decision following that rule of law that is there that has been established, sometimes you look at that and question it, perhaps. But my job as a trial judge is to know what the law is, and then to apply that law, but understanding that my judicial temperament requires me to remind myself of the components of compassion and understanding, and to be fair, above all.

Senator CARDIN. Thank you.

Judge Jones?

Judge JONES. Senator, I can't tell you how many times lawyers have approached me in the courtroom, prefacing their remarks with, this is a novel approach to the law, your Honor, and respecting that, indeed, it is a novel approach to the law. If confirmed, I would fully expect to take an oath upholding the Constitution of the United States, and with that comes the very serious commitment and responsibility to uphold the Constitution and to follow the law as it has been applied and interpreted by justices before me, and past precedent.

Senator CARDIN. I remember with fondness my trial days. I remember appearing before different types of judges. I remember ap-

pearing before a judge who had a really wonderful reputation, but he always tried my case for me. I wanted to make sure he didn't lose it when he tried it for me.

I've also been in the courtroom where I could have easily won a case because of the way the other attorney was conducting the case, but then the judge interceded and corrected the record and a different outcome occurred.

My point to you is, how aggressive should a judge be in making sure that the case is presented in a way that the record is balanced or the record is clear to make a decision? I think we'll have Judge Jones to go first this time.

Judge JONES. Senator, one of the adages that I've heard from reading in the past, and specifically Judge Leonard Hand, is he made a statement at one point in time that justice does not depend so much upon legal dialectics as upon the atmosphere created in the courtroom.

In the end, that depends primarily upon the judge, and I believe the judge has the responsibility of setting the proper tone and atmosphere at all times in the proceedings before the judge. And if confirmed, you have my solemn commitment that I would ensure that justice would be done. It's not my responsibility to be an advocate or to try a case, in any regard. I certainly wouldn't take a case from a lawyer and give them the opportunity to try the case, as they believe it appropriate.

Judge AYCOCK. Mr. Chairman, as Judge Jones has indicated, it is totally inappropriate to become an advocate, even when we want to retreat into that position of having practiced law for those 22 years. And you think about what you might do in that situation, but that's inappropriate and that's not my job.

My job is to be there to rule on the objections, rule on the motions, to keep the trial proceeding in an orderly manner, and to remember my role. There are times that I am of the opinion that you can be available, whether it is during the trial or after the trial where young attorneys can seek you out and ask, given the situation, you heard me try the case, do you have any suggestions. And I think they can learn from those of us that have practiced for years, and in that capacity, help. But in that courtroom, you're there to try the case. To hear the case. Excuse me.

Senator CARDIN. I'm sure you've heard, and your Senator was very complimentary of your judicial temperament, about really nice people who become judges, and then you start to wonder. What do you think is the right balance between maintaining the discipline and dignity of a court and not forgetting that this is a place that people should feel comfortable that they're getting judgment by someone who is mindful of what it is to live in a community.

Judge AYCOCK. Chairman, we're all human. We all make mistakes. I have to remind myself that I'm going to make my share of mistakes, but to just go in every day and do the very best job that day under those circumstances that I can do. And I think I will always have a place in my community. I will do those things under the Code of Ethics that permit me to remain active where I can.

But I do understand that I have isolated myself, by choice, by asking the voters of North Mississippi to put me in this elected po-

sition, and asking you, Senator, and your committee to confirm me in this new position, that I am asking for some sense of isolation because I realize that I have to maintain the role of a judge.

Judge JONES. Senator, I have held my position as a Superior Court judge for 13 years and I've been able to demonstrate during that time period to the members of our community, and to the bar, and to the bench of my capacity to maintain the proper demeanor and decorum in the courtroom.

I place great emphasis on the pride of the position I presently hold as a Superior Court judge to ensure that every person coming into that courtroom walks out of the door feeling that justice has been done. They may not prevail, but they know that they had the opportunity to be heard and that justice has been served.

Senator CARDIN. One moment, please.

Let me again point out that the record will be open for written questions. That's what they're telling me, that the record will be open for 1 week for written questions—I guess I was going to say the right thing after all—that the committee may very well want to propound.

But I just want to make a personal observation. I was very impressed when I read your backgrounds and your material before today's hearing. It's only been reinforced by your appearance here today. I again thank you all for your willingness to serve in what I think is one of the most important positions in our country, and that is as a judge, as a Circuit Court judge, where I think justice really is the front lines for carrying out justice in our community. It is not easy. There are tremendous sacrifices, and I thank you very much for being willing to put yourself forward.

With that, this committee will stand adjourned. Thank you.

[Whereupon, at 3:55 p.m. the committee was adjourned.]

[Questions and answers and a submission for the record follow.]

QUESTIONS AND ANSWERS

SHARION AYCOCK
P.O. BOX 1472
FULTON, MS 38843
(662) 862-9650

July 30, 2007

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

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Cardin.

Sincerely,

Sharion Aycock

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

Responses of Sharion Aycock
Nominee to the U.S. District Court for the Northern District of Mississippi
to the Written Questions of Senator Benjamin L. Cardin

1. Do you believe the Constitution protects a general right of privacy? If so, as a judge how do you define the contours of that right?

Response: While the Constitution does not explicitly address each and every specific right bestowed upon individuals, various amendments have been interpreted by our Courts as granting certain individual rights, including the right of privacy. The Fourteenth Amendment has been interpreted by our Courts as granting a general right of privacy. The First, Fourth, and Fifth Amendments have been utilized as well.

The First Amendment provides Congress shall not enact laws to establish or prohibit religion; guarantees freedom of press, speech, peaceful assembly and the right to petition the government for redress of grievances.

The Fourth Amendment protects persons against unreasonable search and seizures among other freedoms.

The Fifth Amendment protects individuals from being held accountable for a crime unless an indictment is returned by a grand jury; against double jeopardy; against self-incrimination; deprivation of life, liberty or property without due process of law; and against property being taken without just compensation.

The Courts have used the Fourteenth Amendment's Due Process Clause and Equal Protection Clause to protect against the limitations of the right of privacy. The Fourteenth Amendment makes the Amendment applicable to the states.

Courts have been asked to review varying circumstances including access to personal information and freedoms involving choice of conduct. Generally, judicial review involves the Court carefully balancing the government's infringement of one's right to privacy against the asserted state interest.

If confirmed, I would uphold the Constitution of the United States as interpreted by the United States Supreme Court and apply my best efforts to listen to the litigants' cases; read and understand the law; and apply the law.

2. Do you believe that classifications based on sex should be subject to "intermediate" or "heightened" scrutiny?

Response: The Courts have applied three levels of scrutiny to laws that attempt to protect or discriminate against persons by classification. "Intermediate" or "heightened" scrutiny is the middle tier. Courts have traditionally applied

"intermediate" scrutiny to classifications based upon sex. As the Court noted in Craig v. Boren, 429 U.S.190 (1976), "classifications based upon gender must serve important governmental objectives and must be substantially related to the achievement of those objectives". The United States Supreme Court in United States v. Virginia, 515 U.S. 515 (1996), recognized the justification of the sex classification "must not rely on the overbroad generalization about the different talents, capacities, or preferences of males and females".

If confirmed, I shall follow the law as decided by our appellate Courts. As a trial judge, it is my job to read and understand the case before me and to carefully apply the law. If the law at the time applies "intermediate" scrutiny, then I shall apply that standard.

3. To what extent does a judge play a role in acting as a check and balance on the other branches of government?

Response: The framers of the Constitution envisioned that each branch of Government would act as a "check and balance" on the other branches. Each Governmental branch is vested with distinct and separate duties. As a trial judge, it would be rare to declare unconstitutional the laws enacted by a legislative body as those enactments are accompanied by the presumption of constitutionality. As a trial judge, I would not assume an executive decision-making role. However, the Court would be obligated to fulfill its duty of "check and balance" of the other branches of Government just as the Legislative and Executive Branches are obligated to fulfill their own distinct duties and responsibilities.

If confirmed, I would carefully review the existing body of case law for guidance and instruction regarding our Court's historical role in applying the checks and balances to the other two branches of Government.

4. What is your view on the proper balance of power and separation of powers in our federal system under the Constitution?

Response: A proper separation of powers between the three branches of Government insures balance and a strong democracy. Each branch of the Government has important duties and responsibilities. The authors of the Constitution envisioned each branch acting as a check and balance on the other branches of Government. Each branch owes respect to the other branch's duties and responsibilities as set forth in the Constitution. Further, each branch of Government has its own role to fulfill pursuant to the United States Constitution and the laws of the United States.

Responses of Jennifer Walker Elrod
Nominee to the U.S. Court of Appeals for the Fifth Circuit
to the Written Questions of Senator Benjamin L. Cardin

1. **During your oral testimony, I asked you: "How would you look at the Constitution, and interpreting the Constitution (...) [when] judging the rights of an individual, whether it's a right to religious freedom, freedom of speech (...) how do you weigh that in your making decisions?"**

   You answered that you "basically look at the facts of the case as it comes in and you look at the precedent" and that, as a trial judge for the 190th District Civil Court in Harris County, Texas that you: "look to see, what has the first Court of Appeals said? What has the 14th Court of Appeals said? What has the Texas Supreme Court said about this? Has the Supreme Court of the United States opined on this?" You concluded your answer by stating that you would "carefully consider [the holdings of those aforementioned courts], recognizing that these are important rights that need to be adjudicated based upon the facts presented in the case."

   In your current position sitting as a judge for the 190th judicial district of Harris County, Texas, you signed a Temporary Restraining Order in 2005 that prohibited KTRK Television, Inc from exercising its constitutional right of free speech to broadcast a story on televangelist Benny Hinn.

   In the order, you wrote: "the Court has weighed the right of free speech and the public's right to be informed of the matters contained within the Draft with the Law Firm's right to preserve its attorney client privilege and work product and the right of the Law Firm and its client to have confidential communications with the IRS, and has determined that the Law Firm's right to maintain its confidential attorney-client privilege and work product and confidential communications to the IRS outweighs the right or need of the Defendants to publish or make use of the Draft."

   This order was subsequently lifted by another judge.

   a. **Could you please explain the facts of the case and your decision?**

   b. **What "precedental authority" or "persuasive authority" did you rely upon in making your decision?**

   c. **Did you cite to that authority in your decision?**

   d. **How do you reconcile your decision with:**

i. **the Supreme Court of the United States' holding in *The New York Times Co. v. United States* that "Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." 403 U.S. 714, 714 (1971) quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963); and**

ii. **the Texas Supreme Court's holding in *Davenport v. Garcia* that: "Under our broader guarantee [to the right of Free Speech in the Texas Constitution], it has been and remains the preference of this court to sanction a speaker after, rather than before, the speech occurs. This comports with article one, section eight of the Texas Constitution, which both grants an affirmative right to speak . . . on any subject, but also holds the speaker responsible for the abuse of that privilege. The presumption in all cases under [the Texas Constitution] is that pre-speech sanctions or prior restraints are unconstitutional." 834 S.W.2d 4, 9 (Tex. 1992) (emphasis added; internal quotations omitted)?**

e. **Do you continue to believe that your ruling issuing a prior restraint was correct?**

f. **Do you believe that a judicially created privilege, such as attorney-client privilege, should be balanced against a constitutional right?**

Response: A, B, C, D

On February 24, 2005, I was sitting as ancillary court judge in Harris County, when attorneys appeared before me for a hearing on a temporary restraining order in this case, which had just been filed. In Harris County, the civil district judges rotate the ancillary judge assignment, each of us hearing emergency matters for all of the civil courts for two weeks of the year. During the ancillary assignment, the ancillary judge wears a pager twenty-four hours a day to be available for hearings on applications for temporary restraining orders (TROs) and other emergency matters. In general, and where possible and appropriate under the law, the ancillary judge tries to preserve the status quo until the judge who has been assigned the case can hear the issues on their merits.

The Texas Rules of Civil Procedure specifically provide that TROs may be issued *ex parte* and that the party against whom the TRO is issued has an immediate right to have a hearing on a motion to dissolve a TRO once issued. TEX. R. CIV. P. 680. TROs are generally issued for fourteen days and the orders reflect a date and time certain for a hearing on a temporary injunction that is selected by the judge of the court who will hear the case after the ancillary hearing has taken place. If the parties do not appear for a hearing on

the temporary injunction, the TRO expires on its own no later than fourteen days after it is issued unless it is extended pursuant to the Rules.

In the *Brewer* case, the plaintiffs, who were an attorney and a law firm, presented an application for a TRO and attached affidavits in support of the relief sought. The plaintiffs argued that the document at issue had been stolen from the attorney's safe and concerned an ongoing criminal investigation of the attorney's client. The matter was presented as an issue of first impression for a Texas court, and it was alleged that it involved not only the First Amendment rights of the television station that sought to air the document, but also the Fifth and Sixth Amendment rights of the attorney's client. In addition, the plaintiffs invoked the attorney-client privilege.

The plaintiffs sought to prevent airing of the contents of the allegedly stolen document until such time as a hearing could be held on the merits, so that the court could weigh the rights and privileges at issue. The plaintiffs argued that if the airing of the document was not delayed until after a proper hearing, then their client's rights in the on-going criminal investigation would be violated. However, what the plaintiffs sought was a prior restraint of speech, even if it was just temporary. As a matter of law, the presumption is against any prior restraint on speech, and this presumption must be overcome in order to justify even a temporary restraint. The presumption against prior restraints is an important one, and it reflects the significance of the First Amendment and the rights of a free press in a free society.

After reviewing the evidence and the relevant authority, I signed an order on February 24, 2005, granting a TRO, in order to preserve the status quo and to permit the district court judge who had been assigned the case to conduct a full evidentiary hearing in which he would balance these important issues of first impression in Texas. Thereafter, I did not receive any calls on my pager or motions to immediately dissolve the TRO pursuant to the Rules. On March 1, 2005, the defendant news station filed a motion to vacate the TRO or to immediately convene the temporary injunction. Judge Sullivan, the judge to whose court the case had been randomly assigned, consolidated the hearing on the motion to vacate the TRO with the temporary injunction hearing. On March 3, 2005, following a full evidentiary hearing, Judge Sullivan signed an order dissolving the TRO and denying the temporary injunction.

At the hearing on the motion for the TRO, I considered authority in support of the application. In one case from the South Carolina Supreme Court, a television station sought to broadcast a privileged, attorney client communication between a criminal defendant and his attorney. *Ex Parte: The State Record Co., Inc. v. In Re: State of South Carolina v. Quattlebaum*, 332 S.C. 346 (1998). In that case the Supreme Court upheld the lower court's issuance of the prior restraint after considering the Sixth Amendment rights and the attorney-client privilege. The lower court in that case granted an *ex*

parte TRO preventing the dissemination of the communication until a hearing could take place. *Id.* at 348. Later, a hearing took place and the trial court extended the TRO until the jury could be empanelled and sequestered. *Id.*

As the Supreme Court of South Carolina observed, the Court was:

> faced with a profound dilemma: whether to uphold a prior restraint upon the media's First Amendment right of free speech, a task which carries with it an extremely heavy burden upon the party seeking to limit the speech, or whether to invalidate the prior restraint placing in jeopardy the fundamental right of a defendant to a fair trial pursuant to the Sixth Amendment. We are faced with the added quandary that the information sought to be disseminated by the media is a privileged communication between a criminal defendant and his attorney.

Id. at 350 (citations omitted).

The Supreme Court of South Carolina also observed that "a number of lower courts have held that a defendant's Sixth Amendment right to a fair trial is superior to the right of free speech and that, where the two rights collided, the latter must give way to the former." *Id.* at 351 n.12.

In another case cited at the hearing on the TRO, the Eleventh Circuit Court of Appeals affirmed a TRO issued by the United States District Court for the Southern District of Florida that had enjoined a cable news network from broadcasting tapes of privileged communications between an accused and his lawyers until they could be reviewed by a federal magistrate. *United States v. Noriega*, 917 F.2d 1543 (11th Cir. 1990). The Eleventh Circuit then remanded the case to the district court to "conduct the difficult balancing of constitutional rights required under these circumstances...." *Id.* at 1552.

Although the situation at issue at the hearing at the TRO was apparently a matter of first impression in Texas, I also consulted authority in Texas. *E.g.*, *Garth v. Staktek*, 876 S.W.2d 545 (Tex. App. –Austin, 1994, writ dism'd w.o.j.) (affirming the district court's granting of a temporary injunction in a trade secret matter). In *Garth*, Judge Bea Ann Smith, writing for the Austin Court of Appeals, observed that pursuant to *Davenport*,

> Texas law begins with the presumption that prior restraints on free speech are unconstitutional. However, prior restraints may be permitted to prevent an imminent and irreparable harm, so long as no less restrictive alternative form of protection is available. In *Davenport*, the Supreme Court held that a gag order would be permitted if imminent and irreparable harm to the judicial process will deprive litigants of a just resolution of their dispute.

Id. at 549-50.

The Texas Supreme Court standard articulated in *Davenport* and relied on in *Garth*, is entirely consistent with the Supreme Court of the United States' holding in *The New York Times Co. v. United States*, 403 U.S. 713 (1971).

E. With regard to the correctness of my ruling, I ruled on an emergency matter and relied upon evidence, argument, precedential authority, and persuasive authority in my decision to preserve the status quo to permit a full evidentiary hearing regarding important claims of competing constitutional rights and the attorney-client privilege.

F. As to the issue of balancing the privilege against the constitutional right, that was not squarely presented by this case, as this case as presented to me involved not only the privilege but also competing constitutional rights of an individual in an on-going criminal investigation. Weighing competing constitutional claims is a very important function of a court.

2. **You stated in your testimony before the committee that you would be happy to "go through your specific experiences in the Federal system." Could you please recount these specific experiences for the committee, with appropriate citations where necessary?**

Response:

Throughout my career, I have had a wide range of experience in federal court and in dealing with federal statutory and constitutional law. This experience is discussed below.

While still in law school, I enrolled in a criminal justice clinical program, which enabled me to represent indigent criminal defendants in criminal proceedings in Roxbury, Massachusetts. In representing these clients, I relied upon federal constitutional protections for the accused such as the Fourth, Fifth, and Fourteenth Amendments, as well as state criminal laws.

I also worked in the U.S. Attorney's Office in Boston, assisting in both criminal and civil matters. I relied upon federal criminal and civil statutes and constitutional law in this position.

During my two-year federal clerkship for the Honorable Sim Lake in the United States District Court for the Southern District of Texas, I worked on numerous cases both criminal and civil. This work involved federal statutes such as federal criminal statutes, Title VII, federal environmental laws, and federal habeas. This work also involved constitutional law, such as the Fourth and Fifth Amendments. I assisted Judge Lake in researching both evidentiary and procedural issues in both the criminal and civil cases that he tried. During this time period, he tried numerous criminal cases, including a federal murder

case. I also reviewed pre-sentence data sheets for every hearing on a plea and became familiar with the federal sentencing guidelines in effect at the time.

In addition, when Judge Lake sat by designation on the Fifth Circuit, I assisted him with his appellate cases in criminal and civil matters involving federal statutory and constitutional laws.

At Baker Botts, I worked on two habeas cases. In each of these, I dealt with criminal law and federal statutory and constitutional protections such as the Sixth Amendment. In one of these cases, the law firm represented a woman on death row in Texas. Her conviction was ultimately reversed by the United States District Court for the Southern District of Texas and this decision was affirmed by the Fifth Circuit. I also worked on an amicus brief to the Supreme Court on a habeas matter involving constitutional claims.

My practice included complex federal antitrust matters, which in some circumstances may involve both criminal and civil penalties. For example, I worked on *United States v. Smith Int'l, Inc. and Schlumberger LTD.*, 2000-1 Trade Cas. (CCH) P72,763 (D.D.C. 2000); *Le Baud v. Pacificare Health Systems, Inc.*, 1998 U.S. Dist. LEXIS 5148 (N.D. Tex. 1998); and *Service Corp., Int'l v. The Loewen Group Inc.*, 1997-1 Trade Cas. (CCH) P71, 688 (S.D. Tex. 1996).

My practice also involved federal and state employment law, including Title VII and ERISA work. I represented an employer in an employment discrimination suit in Brazoria County, Texas, and I served as lead counsel in one ERISA case in the Eastern District of Texas where I represented the employer. In another ERISA case in the Southern District of Texas, I served *pro bono* as *guardian ad litem* for two minor children.

In addition, I served *pro bono* as General Counsel to Communities in Schools Houston, one of the largest dropout prevention groups in the nation. As part of my duties, I was called upon to analyze a variety of employment law issues, such as Title VII, and to advise the client on a variety of federal and state laws.

My experience also includes teaching appellate brief-writing and oral argument skills, both at Harvard Law School while I was a member of the Board of Student Advisors and as an Adjunct at the University of Houston Law Center.

During my five years on the Harris County bench, I have presided over cases involving both state and federal laws. My docket includes over 1400 cases and I have tried over 200 cases to a verdict. In a number of areas, I have applied federal law, such as employment laws and laws governing workers' rights. For example, in the area of workers' rights, I presided over a Jones Act

(admiralty) case tried to a jury, which involved claims that a deck coordinator on an offshore rig was injured when a crane operator, attempting to move pipe in a cargo basket, struck the deck coordinator with the pipe. The worker brought seaworthiness and negligence claims. Following a jury trial in favor of the injured worker, I signed a judgment. The judgment was affirmed by the Court of Appeals. *Diamond Offshore Mgt. Co., v. Horton* 193 S.W.3d 76 (Tex. App.-- Houston [1st] 2006). These Jones Act cases are common in the Fifth Circuit, which hears a number of admiralty disputes.

In *Banks v. Union Pacific Railroad Co.* (Case No. 2002-01778), I presided over the trial of a case brought pursuant to FELA, the federal statute that protects railroad workers. The jury found for the worker. I signed a judgment in favor of the worker. As FELA cases involve federal rights, these cases are also not uncommon in the federal courts.

I frequently preside over employment law matters, which are common to both federal and state courts. For example, I presided over a matter involving the wages paid to an employee at a club. *Duncan v. GiGi's Cabaret* (Case No. 2003-39344). Following a jury trial, the employee prevailed on her wage claim and I signed a final judgment which was not appealed.

I presided over a case where a former employee alleged that she had been discriminated against because of her religion. *Foster v. Exxon Mobil Corporation* (Case No. 2004-11981). The case was tried to a jury and the jury ruled for the defendant. I signed a final judgment to that effect which was not appealed. I have also presided over a sexual harassment trial that was resolved by the parties before a verdict was rendered. *Simagne v. Arnold* (Case No. 2005-26595).

I presided over a case where a former employee alleged that he had been terminated for being a whistleblower pursuant to health and safety laws. *Aldelstein v. Methodist Health Care System* (Case No. 2002- 51376). The jury verdict was returned for the employer and I signed a judgment to that effect. The case was not appealed.

I presided over two trials on Sabine Pilot claims, which are claims that an employee was terminated for refusal to perform an illegal act. In *Studer v. Technip Offshore, Inc.* (Case No. 2005-25696), the jury returned a verdict in favor of the defendant and I signed a judgment to that effect. In *Jordan v. York Fondren Properties, L.L.C.* (Case No. 2005-50728), the jury returned a verdict in favor of the plaintiff and I signed a judgment to that effect.

In addition, I have presided over numerous workers' compensation appeals. In these cases, the trial courts sit in appellate review over decisions made by the Workers' Compensation Commission. In one such case, I signed a judgment in favor of an injured worker who had argued her position *pro se*. In another

case, another injured worker, also appearing *pro se*, tried her case unsuccessfully to a jury.

I have also presided over expunctions of criminal convictions, cases ancillary to criminal proceedings, and cases where witnesses have invoked their Fifth Amendment rights.

3. As you may recall, many members on the Senate Judiciary Committee are concerned about diversity on the Federal Appellate bench. The Fifth Circuit is of particular interest to the committee, as it has the largest percentage of minority residents of any regional Circuit Court of Appeals, except for the Circuit Court for the District of Columbia.

a. Is diversity of the judges on the Federal courts an important issue to you?

b. In your opinion as a sitting judge, does diversity of the judges on the Federal courts have any impact with respect to whether litigants have confidence in the Federal court system?

c. What types of personal benefits, if any, do you find in having diversity among your judicial colleagues on the 190th District Court in Houston, Texas?

Response: As a state trial judge, I have seen firsthand the benefits of working with other judges who have different backgrounds and experiences. This diversity assists the judges when we are considering local rules and administrative matters and when we are assisting the public in the administration of justice. In addition, when I host students from disadvantaged backgrounds at the courts, I always try to select judges who have similar backgrounds to the students to assist with the program. The students benefit from seeing how people who come from similar backgrounds have been successful in their legal careers. Diversity on the federal courts in the sense of selecting and confirming particular nominees, however, is a matter within the province of the President with advice and consent from the Senate.

4. What significant pieces of legal writing have you composed that may assist you in your role as a federal judge, if you are confirmed?

Response: I believe the Committee has been furnished with my legal writings, which include an ABA antitrust/tort monograph chapter and the work that I have done to help edit the Pattern Jury Charge book used in courts throughout Texas. However, my most significant work product is represented by the literally thousands of orders that I have signed in hundreds of cases. The orders may be short but they are the product of many hours of motion hearings

and trials, and they serve to resolve issues of extreme import to the parties. Moreover, having been a trial court judge would be an invaluable asset to my work on the Fifth Circuit, if I am confirmed. I have a familiarity with how trial courts apply precedent on federal and state issues and it would be my intent to craft opinions that could be used by other trial judges.

5. At the conclusion of the hearing, I asked you to provide the Committee with copies of speeches you made to groups and organizations.

Please provide the committee with speeches you made to the following groups, as indicated in question 13(d) of your questionnaire:

a. the Mexican-American Bar Association
b. the Pasadena Bar Association
c. various women's clubs and civic groups during your judicial campaign.
d. a speech to the Houston Chapter of the Federalist Society on "Practice in 190th State District Court."
e. Panel of the Houston Chapter of the Federalist Society on a "Birthright Citizenship Panel."

6. If you do not have copies of these speeches, please give the Committee an overview of the content of the speeches, and the specific public policy issues discussed in these speeches.

a. What was the nature of the discussion in these speeches?
b. Did you make any public statements in your judicial campaign on public policy issues, including but not limited to abortion, the separation of church and state, civil rights, tort reform, or standing?

Response: 5 and 6. I believe the Committee has been furnished with copies of my speeches that exist. With regard to the specific speeches referenced, I spoke to the Mexican-American Bar Association about service of process issues, and I used written materials on "Improving your Serve" and discussed relevant case law. I spoke to the Pasadena Bar Association as part of a candidate forum for election and answered questions about the proper administration of justice. I do not have any notes from that event. I have spoken to women's clubs and civic groups about my desire to be a good judge, my qualifications to serve, and about how the court system works. I have also spoken about the importance of jury duty and other matters related to the administration of justice. I do not have notes from these events.

I spoke to the Federalist Society about practice in state court and in my court specifically, such as what is the motion docket and how does a party get on the motion docket. Other than the materials on Practice in the State Court that the Committee has been provided with, I do not have notes from this event.

With regard to the Panel on Birthright Citizenship, I introduced the speakers and told a short anecdote about working on a public school project to encourage knowledge of the Constitution. I believe that I was asked to introduce the speakers at that event because a law school classmate of mine who lives in Alaska had come to Houston to speak at the event. I do not have any notes from this event.

The Judicial Conduct Code in Texas regulates the public statements and actions of judges. Among other things, judges should not make statements that could cause their impartiality to be questioned or that lend the prestige of their office to others for private gain. I did not make any public statements in my judicial campaign on public policy issues, such as abortion, the separation of church and state, civil rights, tort reform, or standing.

7. As an attorney did you handle any cases on behalf of or in affiliation with the Rutherford Institute? If so, what were the cases and what was the nature of your work?

Response: As a founding member of Baker Botts' *pro bono* committee, it was not unusual for me to be asked to work on *pro bono* matters. I worked on a wide range of *pro bono* matters referred to me by a variety of organizations and individuals. As I recall, the *Chalifoux* case was referred to my co-counsel or me by someone at the Rutherford Institute. Once the matter was referred, my co-counsel who served as lead and I made the decisions in the case and the representation was not directed by any organization. The nature of my work was to represent students *pro bono* regarding their First Amendment rights. Two students were barred from wearing rosary beads to school, allegedly based on a gang-related policy. The students were wearing their beads as part of a religious commitment they had made for their upcoming confirmations. It was undisputed that the students were not in a gang and other jewelry was permitted. The United States District Court for the Southern District of Texas ruled in favor of the students.

8. Did you have any relationship with the President, the Vice President, or the Deputy White House Chief of Staff for Strategic Planning and Senior Advisor to the President as a result of your husband's work at Enron and other Texas energy companies? If so, please describe the nature of the relationships.

Response: No.

9. To what extent was your political affiliation and beliefs discussed in your interviewing and selection process for this position? Were you asked about your ties to the Republican party?

Response: My political affiliation and beliefs were not discussed in my interviews. I was not asked about my ties to the Republican party.

10. Your questionnaire states, in response to Question 12.a., that you were a member of "various local Republican Women's clubs" from approximately 2002-2006.

a. What are the names of the clubs of which you were a member?
b. In which clubs were you most actively involved?
c. Were you an officer of these clubs, and if so, which ones?

Response: I have been a member of the Houston Professional Republican Women's Club, Magic Circle Republican Women's Club and the Texas Federation of Republican Women, which is an umbrella group for all of the Republican women's clubs in the state. The extent of my involvement consisted of attending meetings. I have never been an officer of these clubs.

11. One club you were involved in was the Texas Tea Party, formally known as the Texas Tea Party Republican Women.

a. Were you a member of this group, and during what years were you a member?

b. You attended a July 14, 2005 luncheon of this group. Please provide the subject matter of this luncheon, as well as public policy issues discussed at the luncheon.

The Texas Tea Party's April 2007 newsletter contained what it described as "answers to incorrect thoughts about abortion," excerpted from Randy Alcorn's *Pro-Life Answers to Pro-Choice Arguments*. The "pro-choice argument" listed in the April 2007 newsletter was "Every woman should have control over her own body. Reproductive freedom is a basic right." The "pro-life answer" stated, in part, "Control over the body can be exercised to prevent pregnancy in the first place. The mother's two matters of control – sex and birth control – were personal and private. The issue of abortion is not personal and private."

c. Do you agree with this statement as a legal matter? If so, how do you reconcile it with Supreme Court precedent? Does the right of privacy apply to these decisions?

The Club's "Vision" is to promote "Judeo-Christian values in government through political and charitable activities".

d. What does this statement mean to you?

Response: A. and B. To my knowledge, I was not a member of the Texas Tea Party. I have no specific recollection of attending a July 14, 2005, luncheon of the organization, and I do not know what was discussed at the meeting. In 2005, the election cycle was commencing for 2006, and judicial candidates and

judges may have been invited to the meeting as an opportunity for the club members to meet them.

As I have noted previously, I am very active in the community and attend lunches and events almost every week for organizations as diverse as Girls Inc., the Hispanic Bar Association of Houston, Leadership Houston, Aspiring Youth, the Houston Bar Association, the Association of Women Attorneys, the Mexican-American Bar Association, the Asian-American Bar Association of Houston, the South-Asian Bar Association, Communities in Schools of Houston Inc., the Girl Scouts of America, the Barbara Jordan Project, and the State Bar of Texas.

C. To my knowledge, I did not receive the Texas Tea Party's April 2007 Newsletter, and I am not familiar with Randy Alcorn. The right to privacy has been reaffirmed repeatedly by the Supreme Court. In *Griswold v. Connecticut*, 381 U. S. 479 (1965), the Supreme Court held that a married woman had a constitutionally protected liberty interest in the right to contraception. In *Eisenstadt v. Baird*, 405 U.S. 438 (1972), the Supreme Court, relying on the Equal Protection Clause of the Fourteenth Amendment, extended this right to unmarried women. In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court held that the right to privacy applies to a woman's right to choose whether to terminate her pregnancy. In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court upheld *Roe* and applied an "undue burden" standard to uphold certain restrictions on abortion rights and to strike down other restrictions. These are just some of the cases upholding a right to privacy. In addition, the right to privacy also applies in other contexts, such as the Fourth Amendment's rights preventing unreasonable searches and seizures. If confirmed, I would faithfully apply Supreme Court precedent in regard to the right of privacy.

D. I am unfamiliar with the club's vision except to support women and Republican candidates. The Judicial Conduct Code in Texas prevents judges from conduct or statements that might call into question their impartiality or which lend the prestige of their office to others. As a sitting judge, I did not and would not promote any club's vision but would fairly and impartially rule on the matters that come before me.

12. Did you participate in any way in working on the contested Florida election and the *Bush v. Gore* Supreme Court case in 2000? If so, what was your level of involvement, and in what capacity did you work on this case?

Response: In November 2000, I had just come back from maternity leave after the birth of my second daughter. I was asked to complete one short research project one afternoon and I did so. I believe I spent in total less than three hours working on the project.

13. Last week the President nominated Catharina Haynes to the other vacant Texas seat on the U.S. Court of Appeals for the Fifth Circuit.

The Fifth Circuit consists of the three million citizens of Mississippi, the four million citizens of Louisiana, and the twenty-three millions citizens of Texas. Circuit Courts of Appeal are the final interpretation of the law of the law for many issues governing these 30 million citizens.

Ms. Haynes bears some similarities to you. She is an associate at Baker Botts. She was a judge of the 191st District Court in Dallas, while you were a judge of the 190th District Court in Houston.

a. Did you work with Mr. Haynes either at Baker Botts or as a judge?
b. Did you discuss or coordinate your campaign strategy or issues for judicial election with Ms. Haynes?
c. Did you have any campaign staff in common to both campaigns? If so, who?
d. Did either of you discuss your potential nomination to this position with each other, or with members of Baker Botts? If so, what was the nature of those discussions?

Response: To the best of my recollection, I never worked with Judge Haynes while at Baker Botts. I have met her, but I do not know her well. Baker Botts is a large multi-office law firm. I was always in the Houston office, and I believe she was always in the Dallas office. I do not believe that we had any cases that overlapped with one another.

I have never worked with her as a judge. I have always sat in Houston and, to my knowledge, she has always sat in Dallas. I did not discuss or coordinate my campaign strategy or issues for judicial election with Judge Haynes. I have no idea who worked on Judge Haynes' campaign. I did not even have a campaign as such in 2006 as I ran unopposed. I did not discuss my nomination with her, and she did not discuss her nomination with me. I did mention to a few very close friends who are still at Baker Botts that I had interviewed for a position on the Fifth Circuit.

14. Do you believe that classifications based on sex should be subject to "intermediate" or "heightened" scrutiny?

Response: The Supreme Court has held that sex-based classifications are subject to "intermediate scrutiny." *E.g.*, *United States v. Virginia*, 518 U.S. 515, 533 (1996) (striking down VMI's policy of not admitting women). This intermediate scrutiny may be contrasted with "rational basis" and "strict scrutiny," which apply to other types of Equal Protection challenges. I would faithfully apply precedent in this area if confirmed.

15. Do you believe that the Constitution protects a general right of privacy? If so, as a judge how do you define the contours of that right?

Response: As discussed in more detail in the answer to Question 11C, the Supreme Court has held that the Constitution protects a right to privacy. This right is guaranteed by the Fourth, Fifth, and Fourteenth Amendments. As a judge, I would look to the text of the Constitution, Supreme Court precedent and other precedent to construe this right on the specific facts of each case.

16. To what extent does a judge play a role in acting as a check and balance on the other branches of government?

17. What is your view on the proper balance of power and separation of powers in our federal system under the Constitution?

Response: The framers were very wise in setting up a system in which each branch of government has separate powers and functions. The judicial branch's function is to interpret the laws, the executive branch executes the laws, and the legislative branch makes the laws. All three branches are equal, and the judicial branch should be modest and should not undertake to legislate or execute the laws. This is true both as a constitutional matter and as a practical matter. For example, courts lack institutional competence to engage in the legislative function. The legislature can bring in all of the best public policy experts and hear from the people in order to craft legislation. Courts cannot do this and should not sit to impose their public policy beliefs under the guise of interpreting the law.

However, the judicial branch does have an important function. Since *Marbury v. Madison,* 5 U.S. 137 (1803), the judicial branch has served as a check and balance to the other two branches of government, just as those branches serve as check and balance to the judicial branch. For example, in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), Justice Jackson articulated a framework for the courts to use in evaluating conflicts between the executive and legislative branches. Under the framework, the President's power is at its highest where the President is acting with the expressed or implied assent of Congress, and its lowest when the President is defying Congress. The middle position, where Congress is silent, is also addressed in the framework. Likewise, in *United States v. Nixon*, 418 U.S. 683 (1974), the Supreme Court held that the executive privilege does not provide a blanket exemption in criminal cases.

Responses of Jennifer Walker Elrod
Nominee to the U.S. Court of Appeals for the Fifth Circuit
to the Written Questions of Senator Dick Durbin

1. You have served as a state district court judge in Harris County, Texas for five years. In your Senate questionnaire, you stated that you sign orders but do not write opinions.

Please list all cases that have come before you involving civil rights (e.g. discrimination), workers' rights, or consumers' rights claims and provide a brief explanation of the case and the nature of your order. Please also provide any letters or other documents you authored in which you explained your reasoning in cases involving civil rights, workers' rights, or consumers' rights claims.

Response: During my five years on the Harris County bench, I have handled numerous cases involving civil rights (e.g., discrimination), workers' rights, and consumers' rights.

In the area of workers' rights, I presided over a Jones Act (admiralty) case tried to a jury, which involved claims that a deck coordinator on an offshore rig was injured when a crane operator, attempting to move pipe in a cargo basket, struck the deck coordinator with the pipe. The worker brought seaworthiness and negligence claims. Following a jury trial in favor of the injured worker, I signed a judgment. The judgment was affirmed by the Court of Appeals. *Diamond Offshore Mgt. Co. v. Horton*, 193 S.W.3d 76 (Tex. App.-- Houston [1st] 2006). These Jones Act cases are common in the Fifth Circuit, which hears a number of admiralty disputes.

In *Banks v. Union Pacific Railroad Co.* (Case No. 2002-01778), I presided over the trial of a case brought pursuant to FELA, the federal statute that protects railroad workers. The jury found for the worker. I signed a judgment in favor of the worker. As FELA cases involve federal rights, these cases are also not uncommon in the federal courts.

I frequently preside over employment law matters which are common to both federal and state courts. For example, I presided over a matter involving the wages paid to an employee at a club. *Duncan v. GiGi's Cabaret* (Case No. 2003-39344). Following a jury trial, the employee prevailed on her wage claim and I signed a final judgment, which was not appealed.

I presided over a case where a former employee alleged that she had been discriminated against because of her religion. *Foster v. Exxon Mobil*

Corporation (Case No. 2004-11981). The case was tried to a jury and the jury ruled alleged for the defendant. I signed a final judgment to that effect, which was not appealed. I have also presided over a sexual harassment trial that was resolved by the parties before a verdict was rendered. *Simagne v. Arnold* (Case No. 2005-26595).

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In addition, I have presided over numerous workers' compensation appeals. In these cases, the trial courts sit in appellate review over decisions made by the Workers' Compensation Commission. In one such case, I signed a judgment in favor of an injured worker who had argued her position *pro se.* In another case, another injured worker, also appearing *pro se*, tried her case unsuccessfully to a jury. She made a point to tell me that she had been treated fairly by the court regardless of the outcome.

In the area of consumer rights, I conducted a bench trial in 2002, involving numerous consumers who had taken their cars to two car repair establishments. Many of those consumers had their vehicles damaged in Tropical Storm Allison and sought repairs. Among the claims raised were that consumers did not get their cars repaired, were charged exorbitant fees for no work, or that their cars were illegally confiscated pursuant to unlawful mechanic's liens. The establishments' owner denied the claims. Following the trial, I signed a judgment ordering the owner to pay damages and awarding statutory penalties for victims of consumer fraud, and the judgment was affirmed on appeal. *Miller v. State of Texas,* 2003 WL 22707135 (Tex. App.—[14th] 2003).

Other consumer cases that I have presided over, include, but are not limited to claims brought pursuant to the Texas Deceptive Trade Protection Act. *See e.g., Lazenby v. Lexus of Clear Lake*, 2005 WL 462134 (Tex. App.—[14th] 2006) (affirming 190th Court summary judgment in case involving allegations that car repair establishment falsely

claimed that car could hold 14 quarts of transmission fluid and improperly reclaimed a loaner car).

I believe that the Committee has already been provided copies of dispositive orders in the cases in which I presided.

2. At your nomination hearing, you testified that as a judge, "we call the balls and the strikes, and I would be faithful to that role on the Fifth Circuit Court of Appeals." At his own nomination hearing to be Chief Justice of the United States, John Roberts made a similar pledge. But as my colleague Senator Kennedy wrote in a June 2007 op-ed in the *Washington Post*: "[John Roberts] memorably claimed during the confirmation process that he wanted only to be a diligent umpire, calling balls and strikes without regard to what team was at bat. But it turns out that our new umpires have a keen interest in who wins and who loses."

Indeed in every decision during the 2006-07 Supreme Court term in which there was a 5-4 ideological split, Chief Justice Roberts ruled in favor of the conservative position.

You testified that you will "call the balls and the strikes," but what evidence can you point to that would indicate you would not have a bigger strike zone for conservative positions in cases involving ideological splits?

Response: I have presided over a very busy trial court, in a large, metropolitan area. I have ruled on motions in hundreds of case and presided over the trials of over 200 cases to verdict. During that time, I have received honors for my professionalism and attention to the administration of justice. I have also been ranked well-qualified by the members of the Houston Bar Association, a diverse group of lawyers, in each of its polls. In 2006, I ran unopposed for re-election. In addition, the American Bar Association has determined that I meet its high standards for service on the Fifth Circuit.

As set forth in the answer to Question 1, and as demonstrated by the orders provided to the Committee, all parties have been treated fairly and equally in the court that I have presided over. Moreover, in addition to my track record as a judge, I have devoted my time to efforts to improve justice and opportunities for all, including work on behalf of the Texas Access to Justice Commission, the Barbara Jordan Project, Communities in Schools Houston, Lone Star Legal Aid, the Houston Volunteer Lawyers Program, the Mexican-American Bar Association, the Houston Hispanic Forum, and many others.

Since taking the bench, I have taught trial advocacy skills to legal aid lawyers and I have been given a commendation from the Texas Access to Justice Commission for this work. I frequently meet with community

groups in order to help people in ways that are consistent with my duties as a judge. The first group that I spoke to when I became a judge was the South-Asian Bar Association. I have also participated in events with the Asian-American Bar Association, the Mexican-American Bar Association of Texas, the Hispanic Bar Association of Houston, the Mexican-American Bar Association of Houston, the Association of Women Attorneys, as well as others.

I was also privileged to co-chair the Barbara Jordan Project on behalf of the Houston Young Lawyers Association. The Barbara Jordan Project is a tribute to the great civil rights leader and Congresswoman, Barbara Jordan. As part of this project, middle school students study the speeches and life of Barbara Jordan and then compose their own speeches and present them at a downtown theatre. The Houston Young Lawyers Association awarded me its Woodrow Seals Award, named for the now-deceased judge who presided over the United District Court for the Southern District of Texas, for my community service and professionalism.

Moreover, each year that I have been on the bench, I have also sponsored a legal internship program designed for students from inner city schools to come to the courthouse to learn about their legal rights and careers in the law.

Before taking the bench, I had a long history of *pro bono* work that demonstrated my commitment to fairness and justice for all. I was recognized for this work by my peers and presented with the Thomas Gibbs Gee Award, named for the now-deceased Fifth Circuit Judge.

As part of my *pro bono* efforts, I chaired the board of Lone Star Legal Aid (formerly the Gulf Coast Legal Foundation), one of the largest legal aid providers in Southeast Texas. I heard first-hand the struggles that the legal aid lawyers faced. As I mentioned in my hearing, I helped a high school student's parents come from Mexico to see her graduate with honors. I also represented *pro bono* an African-American man and his partially-disabled son, in a case brought on a contract for deed. They came very close to losing their home, but we were able to get a temporary injunction to prevent their eviction.

In another matter, I represented a historic African-American church that provided services to the poor in the Fourth Ward, in a lawsuit involving property tax issues. I represented an organization that restores homes in a historically African-American neighborhood and provides services to the community as well. In addition, I served *pro bono* as the first General Counsel of Communities in Schools Houston, one of the largest dropout

prevention groups in the nation, which serves children from disadvantaged backgrounds.

In summary, I believe my record overwhelmingly demonstrates that I am committed to fairness and justice for all.

3. In your Senate questionnaire, you indicated that you were a member of "various local Republican Women's clubs."

Please identify the names of these clubs, length of your membership, and the mission of each club.

Response: I have been a member of the Houston Professional Republican Women's Club (approx. 2000-2002) and Magic Circle Republican Women (approx. 2004-2005). As a member of these organizations, I was automatically a member of the Texas Federation of Republican Women, which is an umbrella organization of all Republican women's clubs. I do not know the mission of these clubs except that they support women and Republicans. The extent of my involvement consisted of attending meetings.

As I have noted previously, I am very active in the community and I have been involved with organizations as diverse as Girls Inc., the Hispanic Bar Association of Houston, Leadership Houston, Aspiring Youth, the Houston Bar Association, the Association of Women Attorneys, the Mexican-American Bar Association, the Asian-American Bar Association of Houston, the South-Asian Bar Association, the North Harris County Bar, Communities in Schools Houston, Girl Scout of America, and the State Bar of Texas.

The Code of Judicial Conduct governs the conduct of judges in Texas. Consistent with the Code, as part of my involvement in the various clubs and groups discussed above, I did not take positions on or further political missions of the groups.

4. On page 8 of your July 15, 2005 Campaign Finance Report, you indicated that you gave a financial contribution to the "Texas Tea Party." Presumably, this refers to an organization known as Texas Tea Party Republican Women, whose stated mission is "to promote Judeo-Christian values in government through political and charitable activities." The March 2007 newsletter of this organization states: "TTPRW is a Republican club which promotes pro-life, Judeo-Christian values and our goals represent Biblical values – with no apologies." That newsletter also urges its members to support state legislation that would require public schools to offer courses in which the Bible is taught as history, and to support state legislation that

would trigger a ban on abortion rights if *Roe v. Wade* were reversed by the Supreme Court.

A. Are you a member of Texas Tea Party Republican Women? If not, what affiliation have you had with this organization?

Response: I am not a member of the Texas Tea Party Republican Women. I believe I may have attended a few events hosted by this organization. To my knowledge, there are over forty Republican women's clubs in our area, and I do not have a clear recollection of this club's events. I am not familiar with the mission statement that you describe and, to my knowledge, did not receive the club's March 2007 newsletter.

B. Do you believe Biblical values should be promoted in government? If so, which ones?

C. Do you believe public schools should be required to offer courses in which the Bible is taught as history?

D. Do you believe that abortion rights should be banned in Texas if *Roe v. Wade* were reversed by the Supreme Court?

Response: B., C., and D. As a sitting judge, I do not make public policy pronouncements. The Code of Judicial Conduct governs the speech and conduct of judges. Pursuant to the Code, judges should refrain from speech or other conduct that might give them the appearance of impartiality. Moreover, judges are to avoid pre-judging matters that might come before them.

As demonstrated by my record, when I do rule on a case, I do not seek to impose my will or public policy preferences.

E. Do you believe the right to privacy is a type of "liberty" protected by the Due Process Clause of the 14th Amendment?

Response: The right to privacy has been repeatedly reaffirmed by the Supreme Court. In *Griswold v. Connecticut*, 381 U. S. 479 (1965), the Supreme Court held that a married woman had a constitutionally protected liberty interest in the right to contraception. In *Eisenstadt v. Baird,* 405 U.S. 438 (1972), the Supreme Court, relying on the Equal Protection Clause of the Fourteenth Amendment, extended this right to unmarried women. In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court held that the right to privacy applies to a woman's right to choose whether to terminate her pregnancy. In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court upheld *Roe* and applied an "undue burden" standard to uphold certain restrictions on abortion rights and to strike down other restrictions. These

are just some of the cases upholding a right to privacy. In addition, the right to privacy also applies in other contexts, such as the Fourth Amendment's rights preventing unreasonable searches and seizures. If confirmed, I would faithfully apply Supreme Court precedent regarding the right of privacy.

F. In the Supreme Court case *Planned Parenthood v. Casey*, Justice Scalia authored a dissent in which he maintained that the Supreme Court's decision in *Roe v. Wade* was as much of a mistake as its decision in *Dred Scott*, which affirmed the existence of slavery in America. Do you agree with that analysis? Do you believe there are parallels between *Roe v. Wade* and *Dred Scott*? Please explain your answer.

Response: *Dred Scott* was superseded by constitutional amendment in 1865. Prior to its being superseded it was not reaffirmed. In contrast, *Roe v. Wade* is the law of the land. Moreover, it has been reaffirmed several times, including in *Casey*. I will faithfully follow precedent if confirmed.

5. You have been a member of the Federalist Society for 13 years and have given speeches to the Houston chapter of the Federalist Society.

A. Please explain why you joined this organization and what you think it represents.

Response: I joined the Federalist Society back in law school. As I recall, the *Harvard Journal of Law and Public Policy*, which traditionally has published pieces from the student symposiums sponsored by the Federalist Society, allowed first-year law students to help subcite the journal's issues. I was interested in working on a journal and I was impressed with the diverse speakers who appeared in the symposiums that were included in the journal. For example, in 1992, the journal included a symposium on the Bill of Rights after 200 Years and included pieces by, among others, Nadine Strossen and Richard Epstein. In my experience, the Federalist Society encourages rigorous discussion and debate of the leading legal issues and sponsors speeches by leading scholars of all viewpoints.

B. The Federalist Society mission statement says: "Law schools and the legal profession are currently strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society." Do you agree with that statement? Please explain.

Response: I am not familiar with the mission statement that is mentioned in the question. However, my law school experience was intellectually diverse. I took classes with Professors Tribe, Sullivan, and Duncan Kennedy and also with Professors Areeda and Fried. The law students with whom I

speak today also reference a diverse experience. Likewise, the law students from Texas law schools that I meet do not reference an "orthodox liberal ideology which advocates a centralized and uniform society." My experience in the legal profession for over 14 years as both a lawyer and judge in Texas has been the same as that of the students.

C. Former Judge Robert Bork has said: "The Federalist Society has done more for the health of the law than any organization I have witnessed in my career." Do you agree with that statement? Please explain.

Response: I am not familiar with the comments by Judge Bork. In my own experience, the Federalist Society is just one of a number of organizations that play a role in improving the legal profession. Others that I am personally familiar with include the Texas Access to Justice Commission, the State Bar of Texas, the Houston Bar Association, the Texas Young Lawyers Association, the Houston Young Lawyers Association, the Mexican-American Bar Association of Texas, the Houston Lawyers Association, the Hispanic Bar Association of Houston, the Asian-American Bar Association, the Association of Women Attorneys, Texas Lawyers Care, and many others.

6. When he ran for president, President Bush pledged he would appoint "strict constructionists" to the federal judiciary, in the mold of Supreme Court Justices Clarence Thomas and Antonin Scalia.

A. How would you describe your own judicial philosophy, and how do you believe it is different from or similar to Justices Scalia and Thomas?

B. Do you consider yourself to be a strict constructionist? Why or why not?

Response: A. and B. My judicial philosophy is one of modesty, respect for the other branches of government, respect for the litigants and their counsel, and respect for the other judges. Central to good judging is the idea that a judge should never substitute her will for her judgment. Moreover, a good judge must remember that she does not sit as a public policy-maker or to execute the laws, those are the provinces of the other branches of government.

The term "strict constructionist" means different things to different people. To some, it means a judge who interprets the law as it is, without adding to or subtracting things in order to serve some private agenda of the judge. To others, it means a judge who narrowly construes statutes or

constitutional provisions that are meant to be interpreted broadly. The first approach is consistent with my view of judicial modesty.

C. **Do you believe that *Roe v. Wade, Brown v. Board of Education,* and *Miranda v. Arizona* are consistent with strict constructionism? Why or why not?**

Response: *Brown v. Board of Education* reversed *Plessy v. Ferguson,* which the Court held was inconsistent with the framers' intent in the Fourteenth Amendment to address discrimination through broad protections such as equal protection and due process. As such, it was not inconsistent with the principles of judicial modesty discussed above.

As the Supreme Court observed in *Dickerson v. United States*, 530 U.S. 428 (2000), which reaffirmed *Miranda*, the Supreme Court has authority to prescribe rules of evidence and procedure that are binding on federal tribunals. The Supreme Court has held that it also has authority to impose judicially-created guidelines to prevent violations of constitutional rights.

With regard to *Roe v. Wade*, the Supreme Court has recognized that certain liberty interests are entitled to constitutional protection. The right to privacy has been repeatedly reaffirmed by the Supreme Court. In *Griswold v. Connecticut*, 381 U. S. 479 (1965), the Supreme Court held that a married woman had a constitutionally protected liberty interest in the right to contraception. In *Eisenstadt v. Baird,* 405 U.S. 438 (1972), the Supreme Court, relying on the Equal Protection Clause of the Fourteenth Amendment, extended this right to unmarried women. In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court held that the right to privacy applies to a woman's right to choose whether to terminate her pregnancy. In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), the Supreme Court reaffirmed *Roe* and applied an "undue burden" standard to uphold certain restrictions on abortion rights and to strike down other restrictions.

Responses of Jennifer Walker Elrod
Nominee to the U.S. Court of Appeals for the Fifth Circuit
to the Written Questions of Senator Dianne Feinstein

1. In your response to the Committee questionnaire you state that 100 percent of your practice has been in civil proceedings, and that only 20 percent of your practice has been in federal courts. You also have never served as an appellate judge and appear to have limited experience in appellate courts (for example, the listing of ten most significant cases in your response to the Committee questionnaire does not include any appellate litigation).

- ***Please explain in detail whether and to what extent you have handled cases during your legal career involving each of the following issues:***
    - ***Interpretation of the Equal Protection Clause of the Fourteenth Amendment;***
    - ***Interpretation of the Due Process Clauses of the Fifth and Fourteenth Amendments;***
    - ***Interpretation of the Fourth Amendment protection against unreasonable searches and seizures;***
    - ***Interpretation of the Eighth Amendment prohibition of cruel and unusual punishment;***
    - ***Interpretation of federal criminal statutes;***
    - ***Interpretation of federal civil rights or antidiscrimination statutes, including Title VI, Title VII, and Title IX; and***
    - ***Interpretation of federal environmental laws such as the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act.***

Response:

Throughout my career, I have had a wide range of experience in federal court and in dealing with federal statutory and constitutional law. This experience is discussed below.

While still in law school, I enrolled in a criminal justice clinical program, which enabled me to represent indigent criminal defendants in criminal proceedings in Roxbury, Massachusetts. In representing these clients, I relied

upon federal constitutional protections for the accused such as the Fourth, Fifth, and Fourteenth Amendments, as well as state criminal laws.

I also worked in the U.S. Attorney's Office in Boston, assisting in both criminal and civil matters. I relied upon federal criminal and civil statutes and constitutional law in this position.

During my two-year federal clerkship for the Honorable Sim Lake in the United States District Court for the Southern District of Texas, I worked on numerous cases, both criminal and civil. This work involved federal statutes such as federal criminal statutes, Title VII, federal environmental laws, and federal habeas. This work also involved constitutional law, such as the Fourth and Fifth Amendments, and the Equal Protection Clause. I assisted Judge Lake in researching both evidentiary and procedural issues in both the criminal and civil cases that he tried. During this time period, he tried numerous criminal cases, including a federal murder case. I also reviewed pre-sentence data sheets for every hearing on a plea in cases on which I worked and became familiar with the federal sentencing guidelines in effect at the time.

In addition, when Judge Lake sat by designation on the Fifth Circuit, I assisted him with his appellate cases in criminal and civil matters involving federal statutory and constitutional laws.

At Baker Botts, I worked on two habeas cases. In each of these cases, I dealt with criminal law and federal statutory and constitutional protections such as the Sixth Amendment. In one of these cases, the law firm represented a woman on death row in Texas. Her conviction was ultimately reversed by the United States District Court for the Southern District of Texas and this decision was affirmed by the Fifth Circuit. In the second case, I worked on an amicus brief to the Supreme Court on a habeas matter involving constitutional claims.

My practice included complex federal antitrust matters, which in some circumstances may involve both criminal and civil penalties. For example, I worked on *United States v. Smith Int'l, Inc. and Schlumberger LTD.*, 2000-1 Trade Cas. (CCH) P72,763 (D.D.C. 2000); *Le Baud v. Pacificare Health Systems, Inc.*, 1998 U.S. Dist. LEXIS 5148 (N.D. Tex. 1998); and *Service Corp., Int'l v. The Loewen Group Inc.*, 1997-1 Trade Cas. (CCH) P71, 688 (S.D. Tex. 1996).

My practice also involved federal and state employment law, including Title VII and ERISA work. I represented an employer in an employment discrimination suit in Brazoria County, Texas, and I served as lead counsel in one ERISA case in the Eastern District of Texas where I represented the

employer. In another ERISA case in the Southern District of Texas, I served *pro bono* as *guardian ad litem* for two minor children.

In addition, I served *pro bono* as general counsel to Communities in Schools Houston, one of the largest dropout prevention groups in the nation. As part of my duties, I was called upon to analyze a variety of employment law issues, such as Title VII, and to advise the client on a variety of federal and state laws.

My experience also includes teaching appellate brief-writing and oral argument skills, both at Harvard Law School as a member of the Board of Student Advisors and as an Adjunct at the University of Houston Law Center.

During my five years on the Harris County bench, I have presided over cases involving both state and federal laws. My docket includes over 1400 active cases and I have tried over 200 cases to a verdict. In a number of areas, I have applied federal law, such as employment laws and laws governing workers' rights. For example, in the area of workers' rights, I presided over a Jones Act (admiralty) case tried to a jury, which involved claims that a deck coordinator on an offshore rig was injured when a crane operator, attempting to move pipe in a cargo basket, struck the deck coordinator with the pipe. The worker brought seaworthiness and negligence claims. Following a jury trial in favor of the injured worker, I signed a judgment. The judgment was affirmed by the Court of Appeals. *Diamond Offshore Mgt. Co., v. Horton*, 193 S.W.3d 76 (Tex. App.-- Houston [1st] 2006). These Jones Act cases are common in the Fifth Circuit, which hears a number of admiralty disputes.

In *Banks v. Union Pacific Railroad Co*. (Case No. 2002-01778), I presided over the trial of a case brought pursuant to FELA, the federal statute that protects railroad workers. The jury found for the worker. I signed a judgment in favor of the worker. To my knowledge, the case was not appealed. As FELA cases involve federal rights, these cases are also not uncommon in the federal courts.

I frequently preside over employment law matters, which are common to both federal and state courts. For example, I presided over a matter involving the wages paid to an employee at a club. *Duncan v. GiGi's Cabaret* (Case No. 2003-39344). Following a jury trial, the employee prevailed on her wage claim, and I signed a final judgment. The case was not appealed.

I presided over a case where a former employee alleged that she had been discriminated against because of her religion. *Foster v. Exxon Mobil Corp.* (Case No. 2004-11981). The case was tried to a jury and the jury ruled alleged for the defendant. I signed a final judgment to that effect, and the case was not appealed. I have also presided over a sexual harassment trial that was resolved

by the parties before a verdict was rendered. *Simagne v. Arnold* (Case No. 2005-26595).

I presided over a case where a former employee alleged that he had been terminated for being a whistleblower pursuant to health and safety laws. *Aldelstein v. Methodist Health Care System* (Case No. 2002- 51376). The jury verdict was returned for the employer, and I signed a judgment to that effect.

I presided over two trials on Sabine Pilot claims, which are claims that an employee was terminated for refusal to perform an illegal act. In *Studer v. Technip Offshore, Inc.* (Case No. 2005-25696),the jury returned a verdict in favor of the defendant, and I signed a judgment to that effect. In *Jordan v. York Fondren Properties, L.L.C.* (Case No. 2005-50728), the jury returned a verdict in favor of the plaintiff and I signed a judgment to that effect.

In addition, I have presided over numerous workers' compensation appeals. In these cases, the trial courts sit in appellate review over decisions made by the Workers' Compensation Commission. In one such case, I signed a judgment in favor of an injured worker who had argued her position *pro se.* In another case, another injured worker, also appearing *pro se*, tried her case unsuccessfully to a jury.

I have also presided over expunctions of criminal convictions, cases ancillary to criminal proceedings, and cases where witnesses have invoked their Fifth Amendment rights.

2. When you were asked at your confirmation hearing to describe how you would approach judging the rights of an individual, you said that you would look at the facts and at relevant precedent. If confirmed as a circuit judge, however, you are likely to hear some cases in which the available precedents are not squarely on point.

- ***What philosophical approach would you bring to bear on a case of first impression – in which there are no relevant precedents?***
- ***If two different lines of precedent appear equally applicable to the case before you, but would lead to different results, how would you choose which line of precedent to follow?***

Response: In a case of first impression, I would look to the briefs and arguments of the parties and work with other members of the court, considering precedent in other related areas, the text of the statute at issue, and rules of statutory construction in light of the applicable standard of review. If two different lines of precedent appeared equally applicable, I would try to determine if they

could be harmonized. If that was not possible, I would follow the one that was most closely analogous to the facts and to the law at issue, using all of the proper tools of analysis.

3. Please name the current Supreme Court Justice whose approach to judging you believe is most similar to your own, and explain in detail the reasons for your answer.

Response: I admire all of the Supreme Court Justices. The Supreme Court Justice with whom I have spent the most time is Justice Breyer. He was my professor in law school. I found him to be brilliant, tough, fair, very personable, and possessing an amazing grasp of Administrative Law. In law school, I also had the opportunity to spend a day with Justice Brennan, assisting him on a visit to the campus. I was most impressed by his kind and patient manner with everyone who approached him. He even took the time to personally encourage me in my legal career that day. In addition, I admire Justice O'Connor, who was born in Texas, both for her work as the first female Supreme Court Justice and for her work to educate the public about the proper role of judges in our society that continues to this day.

My judicial philosophy is one of modesty, respect for the other branches of government, respect for the litigants and their counsel, and respect for the other judges. Central to good judging is the idea that a judge should never substitute her will for her judgment. Moreover, a good judge must remember that she does not sit as a public policy-maker or to execute the laws, those are the provinces of the other branches of government. It is my hope that my approach to judging follows this philosophy.

4. Judges in both federal and state courts have come under increasing criticism in recent years, and the term "judicial activism" is frequently used by those who disagree with a judge's decision.

- ***How would you define "judicial activism"?***
- ***What assurances can you give the Committee that, if confirmed, you will not engage in improper "activist" judging?***

Response: "Judicial activism" means different things to different people. It can mean substituting one's will or public policy preferences to strike down legislation. I spoke against that type of judicial activism during my Investiture in 2002, and my record over the past five years in hundreds of cases demonstrates that I will not engage in improper "activist" judging if confirmed to the Fifth Circuit.

5. In your response to the Committee questionnaire you state that you have been a member of "various local Republican Women's clubs."

- ***Please identify specifically each of the clubs of which you have been a member or with which you have been affiliated; describe in detail the nature of your membership or affiliation with the club; and identify any area(s) in which your views differ from the views of the club.***

Response:

I have been a member of the Houston Professional Republican Women's Club and the Magic Circle Republican Women's Club. As a member of these clubs, I was automatically a member of the Texas Federation of Republican Women, which is an umbrella organization of all Republican women's clubs in Texas. Other than their support of women and Republicans, I do not know the clubs' specific views. The extent of my involvement consisted of attending meetings.

Some of the other clubs and organizations that I have been involved with include, but are not limited to Girls Inc., the Hispanic Bar Association of Houston, Leadership Houston, Aspiring Youth, the Houston Bar Association, the Association of Women Attorneys, the Mexican-American Bar Association of Houston, the Asian-American Bar Association of Houston, the South-Asian Bar Association, the Barbara Jordan Project, Communities in Schools Houston Inc., the Girl Scouts of America, the North Harris County Bar, and the State Bar of Texas.

The Code of Judicial Conduct governs the conduct of judges in Texas. Consistent with the Code, as part of my involvement in the various clubs and groups discussed above, I did not discuss personal views or positions on issues that might come before me.

Responses of Jennifer Walker Elrod
Nominee to the U.S. Court of Appeals for the Fifth Circuit
to the Written Questions of Senator Patrick Leahy

1. **Your only appellate experience was before the U.S. Supreme Court where, in *Texas v. Cobb*, 532 U.S. 162 (2001), a case involving a criminal defendant's Sixth Amendment right to counsel, you filed an amicus brief on behalf of the Texas Association of District and County Attorneys. You argued that the criminal defendant's confession was properly admissible at trial. The Texas Court of Criminal Appeals upheld the defendant's Sixth Amendment right to counsel during custodial interrogations. Your Supreme Court amicus brief argued that the ruling of the Texas Court of Criminal Appeals "frustrates effective law enforcement."**

   In a divided 5-4 opinion, the U.S. Supreme Court reversed the lower court ruling and ruled in favor of the state. The majority held that the Sixth Amendment right to counsel attaches only to charged offenses. Accordingly, the Sixth Amendment did not bar police from interrogating the defendant about a subsequent offense, and his confession was therefore admissible. Writing for four Justices in dissent, Justice Breyer noted that as a result of the Court's ruling in *Cobb*, "the importance of counsel [would be] severely diminished" and the Court's precedent establishing that police are barred from initiating contact with the accused after the invocation of counsel would be "drastically eroded." Justice Breyer's dissent also expressed concern that the *Cobb* ruling might increase the risk of circumvention of the right to counsel by prosecutors "charging several offenses, all stemming from the same criminal incident."

   A. **As an advocate, you took positions in *Cobb* that would weaken the fundamental Sixth Amendment right to counsel. How can we be assured that as a judge you will decide cases fairly and in manner that respects the rights of criminal defendants?**

   B. **Given that you advocated for a restrictive view of the Sixth Amendment in the only criminal case in which you have participated, what assurances can you give that as a judge you will vigorously guard and protect the fundamental right to counsel?**

   C. **As a judge on the Fifth Circuit, you will have ample opportunities to decide death penalty cases in which an individual's most precious right – his or her life – will hang in the balance. Yet, in the only capital case you have worked on, you took a restrictive view of the Sixth Amendment that four Justices on the Supreme Court labeled as ripe for prosecutorial abuse. What assurances can you give us that as a judge you will ensure that no individual is executed based on a conviction obtained through a**

violation of a defendant's constitutional rights, particularly the right to counsel?

Response: During my years in private practice, I vigorously advocated for the rights of my clients, whether plaintiffs and defendants; however, the role of an advocate is fundamentally different from that of a judge. Importantly, the *Cobb* case is not the only case involving the rights of a criminal defendant in which I have participated as an advocate. As a third-year law student, I volunteered to represent indigent criminal defendants in their proceedings in Roxbury, Massachusetts. I handled all aspects of their cases, and I vigorously protected my clients' constitutional rights.

At Baker Botts, I volunteered to work on a habeas matter involving a woman on death row in Texas. Her conviction was ultimately reversed by the United States District Court for the Southern District of Texas, and that decision was affirmed by the Fifth Circuit. *Perillo v. Johnson,* 205 F.3d 775 (5th Cir. 2000). That case also dealt specifically with Sixth Amendment rights. The Fifth Circuit upheld the reversal of the conviction, holding that the woman's right to counsel had been compromised due to her counsel's relationship with a co-defendant. *Id.* at 808. I also worked on complex federal antitrust matters, which may present both civil and criminal issues.

In addition, as a law clerk to the Honorable Sim Lake in the United States District Court for the Southern District of Texas, I had the opportunity to work on habeas cases, criminal cases, and other cases involving the rights of incarcerated persons, such as Section 1983 cases. During my clerkship, I traveled with Judge Lake to the state prisons for *Spears* hearings, which are designed to enable inmates to have an oral hearing to state their claims. I also assisted Judge Lake in a federal murder trial and on numerous other criminal matters, providing research on evidentiary and procedural issues. In every case that I worked on where a guilty plea was being considered, I reviewed the sentencing data information and the applicable guidelines in effect at the time. When Judge Lake sat by designation with the Fifth Circuit, I assisted him on appellate matters as his law clerk.

As a judge for the past five years, my function has been to decide cases fairly in a manner that respects the rights of all litigants and preserves the integrity of the judicial process. As Bar-sponsored polls of counsel who have appeared before me have consistently shown since I became a judge, I have a track record of treating litigants fairly and respectfully. As a trial judge, I fully understand how trials proceed and the important role that counsel plays. As Texas law provides, criminal defendants need to have trained counsel, resources for experts and investigators, and a fair trial from the judge and jury.

Moreover, I sometimes hear cases that involve incarcerated persons, many of them who are appearing *pro se*. I strive, within the confines of my role as a

judge, to make sure that they have an opportunity to bé heard. For example, I schedule conference call oral hearings in which they can participate so that I can make sure that I understand the points they are trying to raise in their motions. My record of community service in the areas of access to justice and administration of justice also has benefited those in the criminal justice system.

Appellate judges have an obligation to be careful and diligent in reviewing claims of those who allege that their rights of life and liberty have been abridged. My legal career demonstrates that I respect the rights of criminal defendants. If confirmed, I would be committed to the rule of law and the rights that the law provides to criminal defendants and all other litigants.

2. **Given your lack of criminal and appellate experience aside from one matter, what experiences will you draw upon and what steps will you take to prepare yourself to handle the complex criminal appeals that will come before you as a federal appellate court judge?**

Response: As noted above in answer to Question 1, I have had significant criminal experience in my legal career. In addition, as a judge, I have dealt with matters that relate to criminal issues. I regularly hear expunctions of criminal convictions, and I have dealt with Fifth Amendment rights in the context of testimony. I have also tried civil matters ancillary to criminal proceedings.

As to appellate advocacy experience, I have taught appellate brief-writing and oral advocacy both through the Board of Student Advisors at Harvard Law School and through my service as an Adjunct faculty member at the University of Houston Law Center.

With regard to the complexity of the criminal cases heard by the Fifth Circuit, I believe my experience working on complex antitrust matters as a lawyer and trying complex civil cases as a judge has equipped me to handle the complex criminal appeals that would come before me if I am confirmed.

3. **In *Gideon v. Wainwright*, 372 U.S. 335 (1963), a unanimous U.S. Supreme Court held that a state court's failure to appoint counsel for an indigent criminal defendant violated his Sixth Amendment right to counsel and the Due Process Clause of the Fourteenth Amendment. In an opinion by Justice Hugo Black, the Court held that the Sixth Amendment's right to counsel in a criminal case was a fundamental right essential to a fair trial.**

Unfortunately, those who cannot afford competent counsel too often find their liberty and lives placed in the hands of underpaid and inadequate court-appointed lawyers.

A. Do you believe that *Gideon* stands for the principle that such a fundamental right as the right to counsel must be applied in a way that it can be meaningfully exercised?

Response: *Gideon v. Wainwright,* 372 U.S. 335 (1963), is a seminal case in American jurisprudence. The Supreme Court held that a defendant had the right to appointed counsel and that failure to have an appointed counsel deprived Clarence Earl Gideon of a fair trial under both the Sixth and the Fourteenth Amendments. *Id.* at 342. *Gideon* and its progeny lay out the parameters for the exercise of this right.

B. In 1984, the U.S. Supreme Court held in *Strickland v. Washington*, 466 U.S. 668 (1984), that a criminal defendant's Sixth Amendment right to counsel is the right to the effective assistance of counsel. Do you believe our Constitution allows even truly guilty defendants to have access to an ineffective assistance of counsel claim, or only those for whom the outcome of a trial was truly prejudiced?

C. In your personal view, does *Strickland* allow courts to defer to strategic judgments of counsels who were aware of mitigating evidence? What about cases where a defendant's counsel failed to investigate mitigating evidence?

Response: B. and C. The Supreme Court has held that every criminal defendant has the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). How *Strickland* should be applied in cases involving counsel's knowledge or use of mitigating evidence is a matter that might come before me as a judge, and it would be inappropriate for me to opine on it except to state that I would faithfully apply precedent in this area. Rights guaranteed to the accused under the Constitution do not vary depending on the person's guilt or innocence.

3. Last term, the U.S. Supreme Court heard two cases involving the use of race as a factor in student assignments to public schools. In the consolidated opinion of *Parents Involved in Community Schools v. Seattle School District No 1, et al.*, 127 S. Ct. 2738 (2007), a 5-4 decision, the Court struck down school assignment plans from school districts in Seattle, Washington and Louisville, Kentucky that used race to achieve diversity in public education.

A. Although Justice Kennedy provided the crucial fifth vote to strike down the school plans at issue, he wrote a concurring opinion accepting that achieving diversity and overcoming racial isolation in public schools are compelling interests. Do you consider Justice Kennedy's concurring opinion in the school race cases the controlling opinion in that case?

Response: In *Marks v. United States.*, 430 U.S. 188, 193 (1977), the Supreme Court held that "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as the position taken by those Members who concurred in the judgment on the narrowest grounds.'" (citations omitted). I would apply this analysis to Justice Kennedy's concurring opinion in *Parents Involved in Community Schools v. Seattle School District No. 1,* 127 S.Ct. 2738, 2788-97 (2007).

B. In the school integration cases, Chief Justice Roberts stated that "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race." Do you agree? Why or Why not?

C. Justices have long debated whether our Constitution is color-blind or color-conscious. In *Brown v. Board of Education*, 347 U.S. 483 (1954), the landmark ruling that "separate-but-equal" schools are unconstitutional, a unanimous Supreme Court announced that the U.S. Constitution "prevents states from according differential treatment to American children on the basis of their color or race." Yet, in the recent school integration cases, a ruling that struck down schools plans designed to integrate students, Chief Justice Roberts suggested that *Brown* stands for the principle that "no State has any authority under the equal protection clause . . . to use race as a factor in affording educational opportunities among its citizens." Where do you stand on this issue? In your view, does *Brown* stand for the principle of an affirmative duty to integrate public schools or the principle that race cannot be a factor under the Equal Protection Clause?

Response: B. and C. Racial discrimination has a long history in this country and continues to be a serious issue. School boards, principals, legislators, and others grapple daily with the challenges posed by schools in many areas that are becoming increasingly racially imbalanced some fifty years after *Brown v. Board of Education*, 347 U.S. 483 (1954). Having served *pro bono* as General Counsel of Communities in Schools Houston, a dropout prevention organization with a large presence in inner city schools, I know firsthand some of the challenges faced. Moreover, I have been personally involved in the Houston Bar Association's efforts to commemorate the Fiftieth Anniversary of *Brown*. I went to elementary schools in different parts of the county and read the stories of Linda Brown and Ruby Bridges to students so that they could understand the impact that the decision had and the struggles that these children faced.

In *Parents Involved in Community Schools v. Seattle School District No. 1,* 127 S.Ct. 2738 (2007), the Supreme Court held that race cannot be used as the sole factor to determine admission to public schools. *Id.* at 2753-53. Justice

Kennedy's concurrence does leave open other means to achieve diversity in public schools under certain circumstances. *Id.* at 2797.

Chief Justice Roberts' observation in dicta that "the way to stop discrimination on the basis of race is to stop discriminating on the basis of race" is part of his plurality opinion, not the majority opinion, and as such is not binding precedent. *Id.* at 2768.

If confirmed to the Fifth Circuit, I would faithfully apply precedent in this area.

D. Do you believe a racial classification is always and intrinsically bad, or is a racial classification only harmful when used to subordinate or stigmatize a group?

Response: As a judge, my duty is to faithfully follow precedent, not to shape the law to fit my own public policy preferences. I will follow Supreme Court precedent in this area as in all others.

4. You issued a prior restraint enjoining Houston news stations KTRK from broadcasting a story on a local television evangelist Benny Hinn. According to a March 2, 2005 story in the *Houston Chronicle*, in granting the TRO request, you ruled that the attorney-client privilege outweighs KTRK's right to broadcast information. The next day, State District Judge Kent Sullivan overturned your order and allowed KTRK to air the information contained in the law firm's document.

A. In *Nebraska Press Assn v. Stuart*, 427 U.S. 539 (1976), the Supreme Court made it clear that "prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights." Yet, in the Hinn case you found that an evidentiary privilege outweighed the fundamental right to free speech and free press. Given that the Supreme Court has ruled for over 75 years, since *Near v. Minnesota*, 283 U.S. 697 (1931), that attempts to censure the media carry a presumption of unconstitutionality, how do you explain your ruling granting the TRO?

Response: On February 24, 2005, I was sitting as ancillary court judge in Harris County, when attorneys appeared before me for a hearing on a temporary restraining order. This case had just been filed. In Harris County, the civil district judges rotate the ancillary judge assignment, each of us hearing emergency matters for all of the civil courts for two weeks of the year. During the ancillary assignment, the ancillary judge wears a pager twenty-four hours a day to be available for hearings on applications for temporary restraining orders (TROs) and other emergency matters. In general and where possible and legally

appropriate, the ancillary judge tries to preserve the status quo until the judge who has been assigned the case can hear the issues on their merits.

The Texas Rules of Civil Procedure specifically provide that TROs may be issued *ex parte* and that the party against whom the TRO is issued has an immediate right to have a hearing on a motion to dissolve a TRO once issued. TEX. R. CIV. P. 680. TROs are generally issued for fourteen days and the orders reflect a date and time certain for a hearing on a temporary injunction that is selected by the judge of the court who will hear the case after the ancillary hearing has taken place. If the parties do not appear for a hearing on the temporary injunction, the TRO expires on its own no later than fourteen days after it is issued unless it is extended pursuant to the Rules.

In the *Brewer* case, the plaintiffs presented an application for a TRO and attached affidavits in support of the relief sought. The plaintiffs were an attorney and a law firm, who represented a client. The plaintiffs argued that the document had been stolen from the attorney's safe and concerned an on-going criminal investigation of the attorney's client. The matter was presented as an issue of first impression for a Texas court, and was alleged to involve not only the First Amendment rights of the television station that sought to air the document, but also the Fifth and Sixth Amendment rights of the client. In addition, the plaintiffs invoked the attorney-client privilege.

The plaintiffs sought to prevent airing of the contents of the allegedly stolen document until such time as a hearing could be held on the merits, so that the court could weigh the rights and privileges at issue. The plaintiffs argued that if the airing of the document was not delayed until after a proper hearing, then the client's rights in the on-going criminal investigation would be violated. However, what the plaintiffs sought was a prior restraint of speech, even if it was just temporary. As a matter of law, the presumption is against any prior restraint on speech, and this presumption must be overcome in order to justify even a temporary restraint. The presumption against prior restraints is an important one, and it reflects the significance of the First Amendment and the rights of a free press in a free society.

After reviewing the evidence and the relevant authority, I signed an order on February 24, 2005, granting a TRO, in order to preserve the status quo and to permit the district court judge who had been assigned the case to conduct a full evidentiary hearing in which he would balance these important issues of first impression in Texas. Thereafter, I did not receive any calls on my pager or motions to immediately dissolve the TRO pursuant to the Rules. On March 1, 2005, approximately five days later, the defendant news station filed a motion to vacate the TRO or to immediately convene the temporary injunction. Judge Sullivan, the judge to whose court the case had been randomly assigned, consolidated the hearing on the motion to vacate the TRO with the temporary injunction hearing. On March 3, 2005, following a full

evidentiary hearing, Judge Sullivan signed an order dissolving the TRO and denying the temporary injunction.

At the February 24, 2005 hearing on the motion for the TRO, I considered authority in support of the application. In one case from the South Carolina Supreme Court, a television station sought to broadcast a privileged, attorney client communication between a criminal defendant and his attorney. *Ex Parte: The State Record Co., Inc. v. In Re: State of South Carolina v. Quattlebaum*, 332 S.C. 346 (1998). In that case, the South Carolina Supreme Court upheld the lower court's issuance of the prior restraint. The lower court in that case had granted an *ex parte* TRO preventing the dissemination of the communication until a hearing could take place. *Id.* at 348. Later, a hearing took place and the lower court extended the TRO until the jury could be empanelled and sequestered. *Id.*

As the Supreme Court of South Carolina observed, the Court was

> faced with a profound dilemma: whether to uphold a prior restraint upon the media's First Amendment right of free speech, a task which carries with it an extremely heavy burden upon the party seeking to limit the speech, or whether to invalidate the prior restraint placing in jeopardy the fundamental right of a defendant to a fair trial pursuant to the Sixth Amendment. We are faced with the added quandary that the information sought to be disseminated by the media is a privileged communication between a criminal defendant and his attorney.

Id. at 350 (citations omitted).

The Supreme Court of South Carolina also observed that "a number of lower courts have held that a defendant's Sixth Amendment right to a fair trial is superior to the right of free speech and that, where the two rights collided, the latter must give way to the former." *Id.* at 351 n.12.

In another case cited at the hearing on the TRO, the Eleventh Circuit Court of Appeals affirmed a TRO issued by the United States District Court for the Southern District of Florida that had enjoined a cable news network from broadcasting tapes of privileged communications between an accused and his lawyers until they could be reviewed by a federal magistrate. *United States v. Noriega*, 917 F.2d 1543 (11th Cir. 1990). The Eleventh Circuit then remanded the case to the district court to "conduct the difficult balancing of constitutional rights required under these circumstances...." *Id.* at 1552.

Although the situation at issue at the hearing at the TRO was apparently a matter of first impression in Texas, I also consulted authority in Texas. *E.g.*, *Garth v. Staktek*, 876 S.W.2d 545 (Tex. App. --Austin, 1994 writ dism'd w.o.j.) (affirming the district court's granting of a temporary injunction in a

trade secret matter). In *Garth*, Judge Bea Ann Smith, writing for the Austin Court of Appeals observed that

> Texas law begins with the presumption that prior restraints on free speech are unconstitutional. However, prior restraints may be permitted to prevent an imminent and irreparable harm, so long as no less restrictive alternative form of protection is available. In *Davenport*, the Supreme Court held that a gag order would be permitted if imminent and irreparable harm to the judicial process will deprive litigants of a just resolution of their dispute.

Id. at 549-50. (citations omitted).

B. Why did you not include Judge Sullivan's reversal of your TRO ruling in your Senate questionnaire, as the questionnaire specifically asks that you list "orders where your decisions were reversed"?

Response: As noted above, Judge Sullivan, who presided over the 80th District Court, did not reverse my decision. He held an evidentiary hearing after consolidating the motion to vacate the TRO with the motion to deny the temporary injunction. This is exactly what my ruling preserving the status quo was designed to permit. Following that hearing, he dissolved the TRO and denied the temporary injunction. Moreover, as a judge of a sister court, Judge Sullivan could not reverse my decision as an appellate court could. As I understood it, the questionnaire sought out information about appellate reversals, which I have provided.

5. At your hearing, you compared the role of a federal judge to an umpire, saying umpires don't make the rules; they simply call "balls and strikes." However, unlike trial judges, federal appellate judges don't just decide the cases that come before them. Appellate judges also create binding precedent and ensure that the body of law for a circuit is clear and consistent. Since the Supreme Court only hears around 80 cases a year, the precedents created by appellate courts are most often the binding authority trial judges follow.

As in baseball where different umpires may see different strike zones, a panel of judges may have a multitude of views on the meaning of constitutional provisions and federal statutes. Given your limited appellate experience, how will you approach working on an appellate panel where different judges view precedent and law differently?

Response: As a law clerk assisting a judge assigned to hear cases on the Fifth Circuit, I have seen firsthand how judges on the Fifth Circuit work together on appellate panels. Importantly, judges have to read the briefs and the records carefully, research the case law, and listen to their colleagues. I have worked with other judges on numerous administrative procedures matters and in other contexts,

such as serving on Texas' Pattern Jury Committee, which edits and revises jury instructions for use throughout the state. My colleagues on the civil bench in Harris County have shown confidence in my abilities to work with others and my diligence by asking me to chair their Judicial Education Conference for the past two years. Therefore, I believe that I would bring the proper level of respect for the views of others to the Fifth Circuit if confirmed.

6. **The Fifth Circuit Court of Appeals has historically been on the vanguard in protecting the civil rights of Americans. In the wake of the *Brown* decision, Fifth Circuit judges took a prime role in tearing down the fabric of a Jim Crow society and extended *Brown*'s promise of equality from education to other areas like voting rights, transportation, and other accommodations.**

   A. **You are a member of the Federalist Society, a conservative organization that has traditionally believed that judges should be strict constructionists who "interpret the law, not make the law." Judge John Minor Wisdom, a legal giant of the Fifth Circuit, believed an appellate judge should also have a social consciousness. In a February 2002 speech to Loyola Law School, entitled *Four Louisiana Giants of the Law*, Justice Ruth Bader Ginsburg remarked that "Judge Wisdom never disregarded legal rules he found unaccommodating or tried to chisel his own view of right and wrong into an unyielding body of law. Instead, he used his unrivaled mastery of traditional legal analysis to achieve just, yet law-bound, results." In your personal view, are notions of basic fairness and justice incompatible with achieving law-bound results?**

Response: Notions of basic fairness and justice are compatible with achieving law-bound results. In my background, I have had a number of opportunities to represent minorities and to advocate for the poor and powerless. For example, I have chaired the board of Lone Star Legal Aid (formerly the Gulf Coast Legal Foundation), one of the largest legal aid providers in Southeast Texas. I heard firsthand the struggles that the legal aid lawyers faced. Since taking the bench, I have taught trial advocacy skills to legal aid lawyers and have been given a commendation from the Texas Access to Justice Commission for this work.

As I mentioned in my hearing, I helped a high school student's parents come from Mexico to see her graduate with honors. I also represented *pro bono* an African-American man and his partially-disabled son, in a case brought on a contract for deed. They came very close to losing their home, but we were able to get a temporary injunction to prevent their eviction.

I represented a historic African-American church that provided services to the poor in the Fourth Ward, in a lawsuit involving property tax issues. I also represented an organization that restores homes in a historically African-American neighborhood and provides services to the community. In addition, I served *pro bono* as the General Counsel of Communities in Schools

Houston, one of the largest dropout prevention groups in the nation, a group servicing children from disadvantaged backgrounds. In recognition of my *pro bono* work, I was honored to receive the Thomas Gibbs Gee Award, named for the deceased Fifth Circuit Judge.

As a judge, I have presided over numerous cases involving issues important to a diverse, large community. I have received excellent ratings for my legal rulings and for my judicial temperament. In addition, I continue to meet with a variety of community groups in order to help people in a way that is consistent with my duties as a judge. The first group that I spoke to when I became a judge was the South-Asian Bar Association. I have also participated in events with the Asian-American Bar Association of Houston, the Mexican-American Bar Association of Texas, the Hispanic Bar Association of Houston, the Mexican-American Bar Association of Houston, the Association of Women Attorneys and others.

I was also privileged to co-chair the Barbara Jordan Project on behalf of the Houston Young Lawyers Association. The Barbara Jordan Project is a tribute to the great civil rights leader and Congresswoman, Barbara Jordan. As part of this project, middle school students study the speeches and life of Barbara Jordan and then compose their own speeches and present them at a downtown theatre. For my work in the community and professionalism, the Houston Young Lawyers presented me with the Woodrow Seals Award, named for the deceased judge who served on the Southern District of Texas.

Moreover, each year that I have been on the bench, I have sponsored a legal internship program designed for students from inner city schools to come to the courthouse to learn about their legal rights and careers in the law. I believe my record overwhelmingly demonstrates that I have a social consciousness committed to fairness and justice for all.

B. In the post-*Brown* era, a time when the Fifth Circuit was the principle judicial protector of civil rights, some Americans criticized that court for judicial activism. Similarly, when the Supreme Court issued the *Brown* decision in 1954, some Americans protested with "impeach Earl Warren" signs on their front lawns. Even in recent times, conservative scholars like Thomas Sowell have commented that the *Brown* decision had "flimsy and cavalier reasoning . . . that would hardly sustain a conviction for jay-walking, set a pattern of judicial activism that has put American law in disarray on all sorts of issues that extend far beyond racial cases." Do you agree that the Supreme Court's decision in *Brown*, which overturned almost fifty years of the "separate-but-equal" precedent, was an act of judicial activism?

Response: *Brown v. Board of Education* is one of the most important decisions of the Twentieth Century. The term "judicial activism" means different things to

different people. To some people, it means overturning legislation for any reason at all. Others understand it to mean that reversing a law because it conflicts with a constitutional protection is the duty of a judge. When *Brown* overruled *Plessy, Plessy* had already been undermined in part by the *Sweatt* decision. The Court in *Brown* ruled that *Plessy* did not reflect the framers' intent in crafting the Fourteenth Amendment, which granted broad protections based upon race. Thus, under the Court's analysis, *Brown* was not a departure from the law, but a return to the faithful application of the Fourteenth Amendment.

C. Judge J. Skelly Wright, the former Chief Judge of the D.C. Circuit and a district court judge in the Eastern District of Louisiana, displayed heroism in the 1950s by signing orders desegregating public schools in New Orleans – a feat which he accomplished at great risk to his own personal safety. Judge Wright was often labeled as a "judicial activist." In *Hobson v. Hansen*, 269 F.Supp. 401 (D.D.C. 1967), Judge Wright noted that courts should not be called upon to resolve "great social and political problems" that ideally should be resolved "in the political arena by other branches of government." Yet he also stated that "[i]f the legislature simply cannot or does not act to correct an unconstitutional status quo, the Court, despite all its incapacities, must finally act to do so." Do you agree? In your personal view, is it proper for courts to apply a higher level of scrutiny for legislation that discriminates against minorities or others who lack the power to seek redress through the political process?

Response: The Supreme Court has the power to decide cases and controversies. If a case presents an issue of unconstitutional conduct, even if it is tolerated by the status quo of society, the Court has a duty to rule against the unconstitutional conduct. The Supreme Court has specifically held that strict scrutiny is the appropriate analytical tool to use in cases involving discrimination based upon race.

D. Today, civil rights continue to be important in the Fifth Circuit. Although the Fifth Circuit currently has 19 judicial seats, it currently has only 1 African American judge and 3 Latino judges. Yet, the Fifth Circuit contains the states with the two largest percentages of Afriean Americans (Mississippi and Louisiana, respectively) and a state with one of our nation's largest Latino populations (Texas). How can you assure us that as a circuit judge you will have an open mind in cases involving the rights of African Americans, Latinos, and other racial minorities?

Response: As explained in detail in response to Question 6A, I have had a number of opportunities to represent minorities and to advocate for the poor and powerless.

7. **Please describe any times when, as an advocate, you have taken an unpopular viewpoint on behalf of a client. Please describe any *pro bono* case in which you defended the rights of poor individuals or members of racial minorities.**

Response: As described in answer to Question 6A, I have had a number of opportunities to defend the rights of poor individuals and members of racial minorities. As noted above, I also served as the Chair of the Board of the largest legal aid provider in Southeast Texas and helped shepherd the organization through a complex merger that was required by changes in the law.

In addition, my representation of high school students in a First Amendment case was one that was unpopular in some circles. The school wanted to be able to ban the students wearing of the rosary beads. Moreover, some religious persons did not believe that people should wear rosary beads at all. Thus, the students and their counsel were criticized.

8. **You have given at least one speech on "The Importance of Each Branch of Government," but the text of that speech was not furnished to this Committee. What is your view on the proper balance of power in the federal system?**

Response: I have provided the Committee with my notes regarding the importance of each branch of government. The speech was given to students as part of an ABA/HBA educational project, and I also used materials provided by the ABA and the HBA.

The framers were very wise in setting up a system in which each branch of government has separate powers and functions. The judicial branch's function is to interpret the laws, the executive branch executes the laws, and the legislative branch makes the laws. All three branches are equal, and the judicial branch should be modest and should not undertake to legislate or execute the laws.

However, the judicial branch does have an important function. Since *Marbury v. Madison*, 5 U.S. 137 (1803), the judicial branch has served as a check and balance to the other two branches of government, just as the other branches serve as a check and balance to the judicial branch. For example, in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), Justice Jackson articulated a framework for the courts to use in evaluating conflicts between the executive and legislative branches. Under the framework, the President's power is at its highest where the President is acting with the express or implied assent of Congress, and its lowest when the President is defying Congress. The middle position, where Congress is silent is also addressed in the framework. Likewise, in *United States v. Nixon*, 418 U.S. 683

(1974), the Supreme Court held that the executive privilege does not provide a blanket exemption in criminal cases.

9. **This Administration has repeatedly expressed its view that the "unitary executive" doctrine licenses the White House to overrule and bypass Congress and the courts based on the President's interpretation of the Constitution – even where that interpretation violates the law. For example, Congress passed a law containing Senator McCain's amendment restricting the use of torture when interrogating detainees, which the President signed. Later, the President issued a signing statement asserting that his power as Commander-in-Chief allows him the authority to bypass the very law that he signed. Also, from 2002 to January 31, 2007, the President unilaterally authorized the National Security Agency to conduct warrantless surveillance without following the law requiring court approval for these wiretaps.**

   A. **What are your views on the unitary executive theory? Do you believe our Government can embrace the unitary executive theory while remaining true to our system of checks and balances?**

Response: The Supreme Court has articulated the scope of presidential power over the executive branch and its limitations in a series of cases including *Myers v. United States*, 272 U.S. 52 (1926), *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), and *Morrison v. Olson*, 487 U.S. 654 (1988). If presented with a case involving presidential power within the executive branch, I would faithfully follow precedent in this area just as in any other area.

   B. **In *Marbury v. Madison*, 5 U.S. 137 (1803), then-Chief Justice John Marshall announced that the U.S. Supreme Court is the final arbiter of our laws. In that case, Chief Justice Marshall announced that "It is emphatically the province and duty of the judicial department to say what the law is." Yet, in Congress's recent inquiry into who made the decision to fire eight U.S. Attorneys, the White House asserted that its blanket claim of executive privilege is the final word that neither Congress nor a court may review, arguing that a U.S. Attorney may not present a certified contempt claim to a grand jury where the President has asserted executive privilege. Do you share the White House's view that a claim of privilege is un-reviewable by a federal court? What role, if any, do judges have in preventing abuses of power by other branches of government?**

Response: Since *Marbury v. Madison*, 5 U.S. 137 (1803), the federal courts have played a very important role in articulating the constitutional limits of executive and legislative powers. In considering these types of issues, I would look to Supreme Court precedent such as *United States v. Nixon*, 418 U.S. 683 (1974)

(holding that the executive privilege does not provide a blanket exemption in criminal cases and that the privilege was reviewable by the court).

10. **The U.S. Court of Appeals for the Fifth Circuit rules frequently on death penalty cases and has often been reversed on such cases by the U.S. Supreme Court. In 2005, in *Miller-El v. Dretke*, 545 U.S. 231 (2005), a case in which prosecutors used peremptory challenges to strike 10 of 11 African-American jurors in a capital case, the Court stated in a 6-3 reversal that the Fifth Circuit's decision to uphold the death sentence "blinks reality." One year earlier, in *Tennard v. Dretke* 542 U.S. 274 (2004), which involved the execution of a man with an I.Q. of 67, the Court stated that "[t]he Fifth Circuit's test has no foundation in the decisions of this Court." Earlier in 2004, in *Banks v. Dretke*, 540 U.S. 668 (2004), which involved a prosecutor's failure to turn over exculpatory evidence, the Court reversed the Fifth Circuit 7-2, stating that "one can hardly be confident that Banks received a fair trial."**

This past term, the Fifth Circuit was overruled by the Supreme Court in four capital punishment cases. Most recently, in *Panetti v. Quarterman*, 127 S. Ct. 2842 (2007), the Court criticized the Fifth Circuit's use of a narrow standard for determining incompetence in a case involving a schizophrenic criminal defendant. In that case, the Court found that "[i]n our view the Court of Appeals' standard is too restrictive to afford a prisoner the protections granted by the Eighth Amendment."

In light of so many instances of the Supreme Court overruling the Fifth Circuit's death penalty jurisprudence, what assurances can you give this committee that as a Fifth Circuit judge you would not seek to narrow the rights of capital defendants?

Response: If confirmed, it would be my duty to carefully apply the Supreme Court precedent in the area of the death penalty such as that in *Miller-El*,*Tennar d*, *Banks,* and *Panetti*. It would also be my duty to carefully study the briefs and the trial court record in the death penalty cases that I would hear and to listen to the arguments and the discussions with my colleagues.

As noted above, I had the opportunity to work on a death penalty case in which the conviction was reversed by the Southern District of Texas, and that decision was affirmed by the Fifth Circuit. I understand the importance of a careful review of these cases. Also, as a trial judge, I understand how important it is to pay attention to the details of what goes on at trial. *Miller-El*, for example, involved a *Batson*–type situation that trial judges confront even on the civil side.

I believe that my record demonstrates that I would faithfully apply precedent in this area as in every other area.

July 30, 2007

Richard A. Jones
c/o Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

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

Re: Richard A. Jones, Nominee to the U.S. District Court for the Western District of Washington

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Cardin.

Sincerely,

Richard A. Jones

cc: The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Responses of Richard A. Jones
Nominee to the U.S. District Court for the Western District of Washington
to the Written Questions of Senator Benjamin L. Cardin

1. Do you believe the Constitution protects a general right of privacy? If so, as a judge how do you define the contours of that right?

The United States Constitution contains no express right to privacy, but it does reflect the concern of the framers for protecting specific aspects of privacy such as the privacy of beliefs (1st Amendment anonymous speech and membership), privacy of the person and possessions against unreasonable searches (4th Amendment) and the privilege against self incrimination which provides protection for the privacy of personal information (5th Amendment). There is also a strong body of judicial precedent by the United States Supreme Court analyzing these rights and other privacy rights in the context of the "liberty" guarantee of the 14th Amendment. In this regard I believe the Constitution protects a general right of privacy.

As a judge, I would define the contours of the right of privacy in the context of the facts of the case or controversy before me considering the law as proscribed by Congress and analyze the case applying judicial precedent.

2. Do you believe that classifications based on sex should be subject to "intermediate" or "heightened" scrutiny?

Our Supreme Court has wrestled for several years with a variety of cases addressing the specific question of whether an "intermediate" or "heightened" scrutiny standard of review is to be applied to sex-based classifications, but has clearly held that sex-based classifications must be subject to heightened scrutiny. If confirmed as an Article III judge, I would follow this jurisprudence which includes the laws of Congress as interpreted by our Supreme Court.

3. To what extent does a judge play a role in acting as a check and balance on the other branches of government?

As a trial judge for the past 13 years, I have a deep respect for the role a judge plays in acting as a check and balance on the other branches of government. The Founders of our Constitution created a system that separated powers with each branch having very important individual responsibilities with expectations that we perform them responsibly. Our job as judges is to interpret and enforce the statutes enacted by Congress which includes the responsibility to review the constitutionality of legislation if it is challenged in court. Judges also have the power to review the constitutionality of executive actions when those actions are challenged in court.

As judges, however, we must always recognize that in fulfilling our role we must always exercise judicial restraint and not overstep the boundaries of our Constitutional mandate. In this regard judges are not policy makers or legislators. We are to limit ourselves to applying the law relying upon precedent and proper statutory interpretation. This point was best made by Chief Justice John Marshall in *Marbury v. Madison*: "It is emphatically the province and duty of the judicial department to say what the law is."

4. What is your view on the proper balance of power and separation of powers in our federal system under the Constitution?

The first three articles of the Constitution define the powers given to the three branches in our federal system. These basic principles of our democracy define boundaries that should not be violated or encroached by the other as they provide a structure that protects the fundamental rights of all. Each of these branches of government is to be independent and not infringe upon each other's duties. As explained in response to Question No. 3, the Judiciary does play a role in the check and balance of power of our federal system under the Constitution.

SUBMISSION FOR THE RECORD

Statement
United States Senate Committee on the Judiciary
ROOM CHANGE: Judicial Nominations
July 19, 2007

The Honorable Patrick Leahy
United States Senator , Vermont

Opening Statement of Senator Patrick Leahy
Chairman, Judiciary Committee
Hearing on Judicial Nominations
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Today the Committee holds another hearing with another circuit court nominee, another district court nominee from Mississippi and one from Washington State.

Before the 4th of July recess, the Senate had this year already confirmed THREE circuit court nominees. That is three more that were confirmed by that time in 1999 with a Republican-led Senate and three more than the Republican-led Senate confirmed in the entire 1996 session.

The Senate has confirmed 20 Circuit Court nominations and 125 total federal judicial nominees while I have presided as Judiciary Chairman, in less than two full years. It is a little known fact that during the Bush Presidency, more circuit judges, more district judges and more total judges have been confirmed, in less time, while I served as Judiciary Chairman than during the longer tenures of either of the two Republican Chairmen working with Republican Senate majorities.

This week the President sent us four new circuit court nominations. Like last year, the President has been slow to send us new nominations, sending these just before the August recess. Before this week, of the 15 circuit court vacancies, the President had sent us nominations for only five of them. I also wish that the President sought the advice and not merely the after-the-fact consent of home state senators in making these nominations. It appears the Senators from New Jersey were not consulted about the new nomination to the Third Circuit for their state. This is a break from the practice that has worked in the past of cooperation and consultation that has led to success and a sign that the White House is returning to its tired playbook of picking unnecessary fights over nominations rather than filling vacancies.

Congressional Republicans also seem to be following that playbook. They seem to love to shut down the Government and seem intent on manufacturing excuses to do so. In 1995 it was Newt Gingrich, who did not like his treatment on Air Force One. When they were in the Senate majority a few years ago -- and while surreptitiously stealing our computer files-- it was Senate Republicans who insisted on a 40-hour debate on this President's court packing schemes. Now, despite our progress and our efforts to work to fill judicial vacancies, some in the Senate Republican leadership seem to be at it, again.

It is Republicans who held up this President's nomination of Judge Neff since last year and stalled Senate action on a dozen judicial nominations. Indeed, it was Republicans who were the ones who voted against confirming President Bush's judicial nominees last week. Already this year we have proceeded to confirm more judges than were confirmed in all of 2005 when Republicans ran the Senate. We have also already surpassed the confirmation total for the entire 1996 session when a Republican-led Senate confirmed 17 district court nominees and not a single circuit nominee.

The Administrative Office of the U.S. Courts lists 48 judicial vacancies. The President has sent us only 26 nominations for these 48 remaining vacancies. Twenty-two of these remaining vacancies – almost half – have no nominee. Of the 14 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for seven of them, exactly half. Of the 15 circuit court vacancies, almost half are without a nominee. If the President had worked with the Senators from Michigan, Rhode Island, Maryland, California and New Jersey, we could be in position to make even more progress. And of the 22 vacancies without any nominee, the President has violated the timeline he set for himself at least 12 times—12 have been vacant without so much as a nominee for more than 180 days. The number of violations may in fact be much higher since the President said he would nominate within 180 days of receiving notice that there would be a vacancy or intended retirement rather than from the vacancy itself. We conservatively estimate that he also violated his own rule 12 times in connection with the nominations he has made. That would mean that with respect to the 48 vacancies, the President is out of compliance with his own rule at least 24 times.

As it is, we have helped cut the circuit vacancies from a high mark of 32 in the early days of this Administration, to as few as 13. Contrast that with the Republican-led Senate's lack of action on President Clinton's moderate and qualified nominees that resulted in increasing circuit vacancies during the Clinton years from 17 to 26. During those years, the Republican-led Senate engaged in strenuous and successful efforts under the radar to keep circuit judgeships vacant in anticipation of a Republican President. More than 60 percent of current circuit court judges were appointed by Republican Presidents, with the current President having appointed more than 30 percent of the active circuit judges already.

Senate Republicans know the difficulties with four of the President's current circuit nominees. If they were candid they would concede that they are having difficulties themselves trying to work with this White House on filling judicial vacancies with acceptable nominees.

I continue to try to work with this White House and to make progress. Next year the Thurmond rule will kick in until after a new president is inaugurated. That is why I have urged the White House to work with Senators of both parties and to fill the 5th Circuit vacancy from Mississippi with the nomination of the Honorable Henry Wingate. Judge Wingate would be the first African American from Mississippi to serve on the 5th Circuit. He is the Chief Judge of the District Court for the Southern District of Mississippi. He was appointed to the federal bench in Mississippi by President Ronald Reagan. He has served with honor and distinction for more than 20 years, since we

helped confirm him in 1985. He has served as the Chief Judge of the District Court since 2003. He was a naval officer and is a member of the Naval Reserve. He was an assistant attorney general, an assistant district attorney, an assistant U.S. attorney, a professor and a trial lawyer.

I cannot imagine why an experienced judge appointed by Ronald Reagan would be unacceptable to this White House. But if for some reason he is, I will work with the White House, the Senators from Mississippi, the Senate's Majority and Republican leader and our Ranking Member, the senior Senator from Pennsylvania to identify another worthy candidate. For all our efforts, for my efforts to treat Judge Southwick fairly, all we hear from the other side is complaining. And we read that some are itching to pick a fight over the nomination. Last week the press was full of stories of meetings with right-wing groups and the partisan benefits to be gained by Republicans picking such a fight. This is not a partisan fight that needs to be waged. We can work together to fill this 5th Circuit vacancy. I hope the President and Senate Republicans will work with us.

There are five more judicial nominations on the agenda for Judiciary Committee consideration this week. They will increase to 30 the number of judicial nominees the Committee has reported this year and when confirmed will bring the confirmations while I served as chairman to 130.

I look forward to hearing from the nominees being considered today, as well. I thank Senator Cardin for agreeing to chair today's hearing.

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