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NOMINATIONS OF KATHRYN A. OBERLY AND ALFRED S. IRVING JR.

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF KATHRYN A. OBERLY TO BE AN ASSOCIATE JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS, AND ALFRED S. IRVING JR. TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

NOVEMBER 17, 2008

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NOMINATIONS OF KATHRYN A. OBERLY AND ALFRED S. IRVING JR.

MONDAY, NOVEMBER 17, 2008

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

The Committee met, pursuant to notice, at 2:36 p.m., in room SD–342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, presiding.

Present: Senators Akaka and Voinovich.

Senator AKAKA. This hearing will come to order. I want to say good afternoon to everyone and to welcome our nominees along with their family and friends to the Committee today. I am glad to have Senator Clinton here and I am going to ask her to make her statement as we begin.

Senator Clinton, it is an honor to have you here.

STATEMENT OF HON. HILLARY RODHAM CLINTON, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator CLINTON. Thank you very much, Chairman Akaka. I appreciate greatly the opportunity to be here to introduce Kathryn Oberly as you consider her nomination to be an Associate Judge on the District of Columbia Court of Appeals.

I have known Ms. Oberly most of my life and I have come to admire her as a friend and respect her for her many achievements in both the public and the private sectors. We are from the same suburb of Chicago, called Park Ridge, and we attended the same Methodist church, and even then I could see her proclivities for arguing the finer points of the law. After graduating from the University of Wisconsin Law School, she served as a law clerk to the Hon. Donald P. Lay of the U.S. Court of Appeals for the Eighth Circuit.

And at the conclusion of her clerkship, she began 12 years at the U.S. Department of Justice, first as a trial attorney in the Appellate Section of the Land and Resources Division. Then she rose to become Special Assistant to the Attorney General in the same division, handling litigation, advising on matters of policy, and drafting legislative proposals. As an Assistant to the Solicitor General, she briefed and argued more than a dozen cases before the Supreme Court of the United States.

And since leaving the Justice Department, she has broadened her experience in the private sector, first as a partner in a major law firm and then as General Counsel at Ernst and Young. She will bring the perspective of all of those years of experience in both

the public and the private sides of the law, as well as being a mother who raised her son while working and achieving so much in her professional career.

On a personal level, I know she has the calm and level-headed temperament of a judge and she will bring the understanding of the District of Columbia, where she has lived for more than 30 years and has been very much a part of this community. Her nomination is the result of the careful and nonpartisan process of the D.C. Judicial Nominating Commission, which as you know recommends nominees on the merits to the White House to fill key judicial posts.

The D.C. Court of Appeals has all of the jurisdiction of a State Supreme Court, and the cases that come before these justices run the gamut, affecting all aspects of life in the District. Ms. Oberly will bring her varied and rich experiences in the business community, as an appellate lawyer in the public sector, as an active member of the legal community, and as a devoted member of this community in which she lives to consider the cases before her fairly and thoroughly on behalf of all who come before the court.

I am pleased that Senator Voinovich is here, and I really consider it an honor to commend this nominee to this Committee. She is an extraordinarily accomplished lawyer, a very good person with wonderful values who will serve the people of the District of Columbia very well if she is given the honor of being confirmed for this position. Thank you.

Senator AKAKA. Thank you very much. It is an honor to have you here to speak for her and it is good to hear about your relationship. I thank you very much. I know how Senators are always busy, so please feel free to leave when you want to.

Senator CLINTON. Thank you very much.

Senator AKAKA. Thank you.

I would like now to call on Delegate Norton for her statement.

STATEMENT OF HON. ELEANOR HOLMES NORTON, DELEGATE OF THE DISTRICT OF COLUMBIA, U.S. HOUSE OF REPRESENTATIVES

Ms. NORTON. Thank you, Mr. Chairman. I very much appreciate that you and my good friend Senator Voinovich, whom I am pleased to see here, are taking advantage of this session to confirm two more judges for the D.C. Superior Court.

I want to thank the Committee for your work in bringing the number of judges back to the authorized amount. This is a very busy court and we once again have 59 judges for the D.C. Superior Court. While they were funded that way because of an anomaly in the way in which the new Family Court Provision was authorized, the Superior Court, itself, was not fully staffed, and here are the two judges that the Committee has recommended and who are the President's nominees.

I am very pleased to speak for Alfred Irving Jr., and to say that I think he is especially well qualified because he knows the court on which he has been nominated to serve. He has been a magistrate on that court. Magistrate Irving, however, came to that position with extensive trial experience in two national law firms and as a senior litigator at the Justice Department. He is the kind of

magistrate that I am sure, when he applied, the District was very pleased to have for his extensive trial work throughout his career. He graduated from Georgetown Law Center and is more than qualified to serve as a judge on the court that he has appeared before. He has appeared, as well, before, and is a member of the bar, of a number of Federal courts. He is an exceptionally well-qualified nominee and I am pleased to offer him without reservation to you this afternoon.

Senator AKAKA. Thank you very much, Delegate Norton, for your introduction. We are always glad to hear from friends, and it will certainly make a difference in what happens here. I am glad that we had the time to hold this hearing and hopefully we can move these nominations as quickly as we can. Thank you so much for coming.

Ms. NORTON. Thank you, Mr. Chairman.

OPENING STATEMENT OF SENATOR AKAKA[1]

Senator AKAKA. Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Kathryn Oberly to be an Associate Judge on the District of Columbia Court of Appeals, and Alfred Irving Jr. to be an Associate Judge on the District of Columbia Superior Court.

I am pleased to be holding this hearing today to consider, as we have heard, such distinguished and well-qualified candidates. I have been impressed with the caliber of the recent nominees to the District of Columbia bench, and Ms. Oberly and Judge Irving are no exceptions to that pattern.

Normally, we would not move forward with nomination hearings so late in the session. However, these two nominees clearly are well qualified and we have not identified any potential concerns that warrant further investigation. That is why we are working hard to consider these nominations in the final days of the 110th Congress.

Both of the nominees before us have impressive legal backgrounds. Ms. Oberly currently is General Counsel of Ernst and Young. She has served with distinction in the public sector at the Department of Justice as well as the private sector, and she has argued numerous cases before the U.S. Supreme Court.

Judge Irving currently is a magistrate judge on the D.C. Superior Court and he also spent 14 years as an accomplished attorney in the Department of Justice.

I want to now call on Senator Voinovich for his opening statement. Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH[2]

Senator VOINOVICH. Thank you, Mr. Chairman. It is unusual that we are having this hearing today. As you know, we are kind of running out of time and this week we will be here for who knows how long, but not long. I was pleased that Senator Lieberman and Senator Collins asked Senator Akaka and I to hold this hearing as a hearing not of our Subcommittee, but of the full Committee, and

[1] The prepared statement of Senator Akaka appears in the Appendix on page 00.
[2] The prepared statement of Senator Voinovich appears in the Appendix on page 00.

hopefully we will be able to vote these nominees out of here and get this done before everybody tips their hat.

I want to extend a welcome to the nominees. We appreciate your time and your willingness to serve the District of Columbia. It takes a unique individual to be a judge. Judges have significant responsibilities of protecting citizens' rights and liberties, as well as upholding and interpreting the law. I know that, if confirmed, the two of you will do the very best you can to uphold those high standards.

Senator Akaka and I have spent a great deal of time reviewing the Federal Government's efforts to find the best and brightest employees in an era when we are losing highly skilled potential employees to a private sector that in many instances offers higher salaries. I think the District of Columbia faces similar challenges in its efforts to find the best and brightest for its court system.

Mr. Chairman, I have reviewed both of these nominees' biographical questionnaires and believe that the District of Columbia has found two such individuals in these nominees. In fact, you have heard me say on many occasions I wish that we had the same quality of individuals in some of the other jurisdictions throughout this country. I note that both of the nominees have substantial experience in both the public and private sectors in a number of different subjects.

Ms. Oberly has been nominated to the D.C. Court of Appeals. She is currently the General Counsel for Ernst and Young and was previously in private practice and also spent more than 10 years at the Department of Justice. I am not sure if you know this or not, Ms. Oberly, but Ernst and Young started in Cleveland, Ohio, and then they moved out to a lot of other places, but were one of our great corporate citizens. When I was mayor, they were of great help to me.

Judge Irving has been nominated to be an Associate Judge of the D.C. Superior Court. As Eleanor Holmes Norton said, you have been a magistrate, so you know what the bench is about and you have had a tremendous amount of experience in the past.

Since the Chairman has done so, I won't go through all of your qualifications and so forth.

Again, I want to thank both of you for being here today. I know that you have members of your family here who are very proud of you. I thank your families for the sacrifice that they have made so that you can be here, and I will assure them, they will be making more sacrifices because of the fact that you are sitting on the bench.

Thank you, Senator Akaka.

Senator AKAKA. Thank you very much, Senator Voinovich.

Both of the nominees have filed responses to a biographical and financial questionnaire. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which will be kept on file and made available for public inspection in the Committee office.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Therefore, I ask each of you to please stand and raise your right hand to take the oath.

Do you solemnly swear that the testimony you will give before this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. OBERLY. I do.

Mr. IRVING. I do.

Senator AKAKA. Thank you. Please note for the record that the witnesses answered in the affirmative.

Before we proceed with your statements, I understand that the witnesses are joined by family members today and I was glad to be able to shake your hands before we started. I would like to take a moment to welcome them to the Committee. Ms. Oberly, I am told that your husband, Haynes Johnson, your son, Michael, your brother, Jim, and your sister-in-law, Louise, have joined us today. Judge Irving, I understand that your parents, Alfred Irving Sr., and Christine, are here today, as well. I want to welcome them.

Ms. Oberly, if you will take a moment to formally introduce your family and your friends who are here today, will you please go ahead, and I will ask Judge Irving to do the same.

Ms. OBERLY. Thank you, Mr. Chairman. I am very pleased to be here and to have this opportunity. Obviously, I would like to thank Senator Clinton for her very kind and warm introduction. This is a very memorable day for me and made all the more so by her willingness to take time out of her hectic schedule and come here today to introduce me.

Of course, it is also very memorable for me that my family members can be here with me, so I would like to have them be acknowledged. Although you have done that, I would like to do it a second time around. With me are my husband, Haynes Johnson, my son, Michael Goelzer, my brother, Jim Oberly, and my sister-in-law, Louise Miriam. They are here from California and Minnesota today and I very much appreciate their efforts to join me at this important event.

Senator AKAKA. Thank you. Judge Irving.

Mr. IRVING. Thank you, Senator Akaka and Senator Voinovich. It is my great pleasure to introduce to you people who I consider my angels. They have been supportive of me, some of whom for my entire life. They have encouraged me and they have loved me, two ingredients that I think that one needs during one's existence in order to navigate the trials and tribulations of life.

Those angels are Dr. Robert Benedetti, whom I consider one of my staunchest supporters. Two other people, Alfred S. Irving Sr., and Christine Irving, they have known and loved me from day one. They celebrated their 50th wedding anniversary this year, and my dad just celebrated his 75th birthday, so many milestones that we are appreciative for and our blessings.

Also, my sister, Shelley Irving Biglow, and husband, William, and my nephew, Brandon, are here. Also, Sonya Irving Ross, my sister, and her children, Reneka and Rahmon. And I have to say this about Rahmon, who is 13 years old, he is one of the "brainiacs" in our family. He followed all of the recent primary elections, both Democratic and Republican, the conventions, and attended the voting with his family. I am very proud of him.

My cousin, Tamika Irving Robinson, is here. My former colleagues, Peter Flynn, from the Department of Justice, and a very

dear friend; and Judge Carol Dalton, and Judge Odessa Vincent. Presiding Civil Judge, Stephanie Duncan-Peters, whom I am in constant contact virtually throughout each day of the week, and finally, our new Chief Judge of the Superior Court, Lee F. Satterfield is here, offering their support and love. Thank you.

Senator AKAKA. Thank you very much for introducing all of them, and again, I want to say welcome to all of you.

I will begin with asking each of you these questions that we do before we hear your statements. I would like to ask each of you, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you are about to be nominated?

Ms. OBERLY. No, Mr. Chairman.

Mr. IRVING. No.

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

Ms. OBERLY. No, Mr. Chairman.

Mr. IRVING. No.

Senator AKAKA. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Ms. OBERLY. Yes, sir.

Mr. IRVING. Yes.

Senator AKAKA. Thank you very much for your responses, and now I would like to ask Ms. Oberly for your personal statement.

TESTIMONY OF KATHRYN A. OBERLY TO BE AN ASSOCIATE JUDGE, DISTRICT OF COLUMBIA COURT OF APPEALS

Ms. OBERLY. Thank you, Mr. Chairman and Senator Voinovich. I already introduced my family members, but I also would like to acknowledge my friends and colleagues who are here in the audience today. I would like to thank my dear friends, Lois Schiffer and Mary Frances Pearson, for their supportive ears during this process. I also thank my many colleagues from the D.C. office of the Ernst and Young Legal Department who are here today, as well as my senior deputy from New York, Bob Cohen, and my administrative assistant of the past 17 years, Karen Ballard, who is also here today. I have been very fortunate to work with such talented professionals.

I would also like to thank Chief Judge Washington for coming today. I know already that I am very lucky to have been nominated to work with him and with the other outstanding judges on the D.C. Court of Appeals.

Mr. Chairman, I am very grateful for the opportunity to appear before the Committee today. I am deeply honored to have been recommended by the D.C. Judicial Nomination Commission, which I know considers many qualified candidates, and I am, of course, extremely grateful to the President for having nominated me to serve on the D.C. Court of Appeals.

I also especially thank this Committee for holding the hearing today during such an incredibly busy and important time here in our Nation's capital. I know that the Committee staff has moved

mountains to make this hearing possible at this late stage in the 110th Congress and I do appreciate that.

I also would like to thank Scott Coffina and others at the White House Counsel's Office who have been extremely helpful in guiding me through the nomination and confirmation process, and I do appreciate their assistance.

Mr. Chairman, as someone who has lived in the District of Columbia her entire adult life, I would welcome the opportunity to serve the District as a judge on the D.C. Court of Appeals. If I am fortunate enough to be confirmed, I commit to devoting my legal skills and energy to the work of the court on behalf of the citizens of the District. I also commit to treating all litigants with the respect and fairness necessary to maintain the public's confidence in the court. If confirmed, I will approach all matters that come before me with the highest degree of impartiality and objectivity, and I will do my utmost to ensure that all litigants feel that they have been accorded the full and fair consideration that their matters deserve.

Thank you again for the opportunity to be here today and for your consideration of my nomination, and I welcome any questions the Committee may have.

Senator AKAKA. Thank you. Judge Irving.

TESTIMONY OF ALFRED S. IRVING JR. TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Mr. IRVING. Senator Akaka, thank you. I want to thank the Committee on Homeland Security and Governmental Affairs for the privilege of appearing before you and for your moving so expeditiously with setting this hearing. I also wish to thank the D.C. Judicial Nomination Commission for recommending me to the President. I wish to thank the President for selecting and nominating me to fill this vacancy that was created by the retirement of Judge Mary Terrell. And I would like to thank Congresswoman Norton for her kind introduction.

I would like to thank your staff for their professionalism and for making this process palatable and very easy to navigate. And finally, I, too, wish to thank Associate White House Counsel Scott Coffina for all of his assistance, his guidance, and his professionalism, as well. Thank you.

Senator AKAKA. Thank you very much.

I have some questions, and I will then defer to Senator Voinovich for his. But to both of you, you are very successful attorneys who have handled complex, important cases for the Department of Justice and elsewhere. My question to both of you is, why did you decide to seek nomination to become a judge and what contributions do you hope to make, if confirmed? Ms. Oberly.

Ms. OBERLY. Thank you, Mr. Chairman. As I mentioned in my statement, this is my home, this is my community, and I have enjoyed a very exciting and varied career in both the public sector at the Justice Department and then in the private sector thereafter. But I feel at this stage in my career, the way that I can best use my legal talents is by giving back to the District of Columbia in recognition of all that the District has given me, and that is what I hope to do as a judge on the D.C. Court of Appeals, to assist the

court in its important work for the citizens of the District, and I believe that is perhaps one of the highest callings that a lawyer can, in fact, do as a means of public service to her community. That is exactly what I hope to do.

Senator AKAKA. Thank you. Judge Irving.

Mr. IRVING. Yes. I have been a resident of the District of Columbia for approximately 27 years, so it is my home. It has been my home all of my adult life, and I have always had an interest in serving the people of the District of Columbia. As a member of the D.C. Bar, I participated in the Bar's pro bono programs, offering legal assistance to people who otherwise could not afford that assistance.

In this last year and a little better on the bench, I have concluded that this type of work suits my nature. I enjoy resolving matters. I have learned many lessons from my parents and one primary lesson is to treat others with dignity and respect, and that has always been a practice of mine. I carry those principles with me to the bench and I believe I have made a significant difference in this last year and I would like to continue that type of service.

Senator AKAKA. Thank you.

Judge Irving, you have been a magistrate judge on the D.C. Superior Court since July 2007.

Mr. IRVING. Yes.

Senator AKAKA. How has that position prepared you for being an associate judge, what do you believe would be your biggest challenge in transitioning from being a magistrate judge to an associate judge, and how will you address that challenge?

Mr. IRVING. Since, Senator, my becoming a magistrate judge, I have served on essentially two calendars, the Collections and Subrogation Calendar as well as the Tax Lien Foreclosure Calendar. I also have served or presided over felony presentments and misdemeanor arraignments every 2½ months. So I have experienced quite a bit. I have worked hard. I have been diligent. And I have taken my position very seriously.

With respect to how those situations have prepared me, I have handled motions hearings. I have presided over trials, ex parte proof hearings, and have also contributed to the Civil Rules Committee, where I serve, as well as a subcommittee on rules concerning small claims. So I believe all of those tasks with which I have approached with much zeal and much energy and much industry, all will serve me well as an associate judge.

One of the challenges that I have observed is the fact that the numbers are increasing of pro se litigants. They come to the court with special needs. They do not know how to navigate the legal system, either procedurally or substantively, and what the court has endeavored to do in the past years and what I have endeavored to do on my calendars is to establish resource centers that are managed by very skilled attorneys who provide legal support pro bono to self-represented parties that removes a lot of the mystery of self-representation, educates them as to their rights, the likelihood of prevailing, and whether they should explore settlement offers.

So pro se litigants prove to be a big challenge for the court and will continue to be. As we move forward with landlord-tenant

cases, the numbers of pro se litigants are increasing. As our aging population increases, there will be increasing numbers of pro se litigants in probate and tax. So I would say pro se litigants and their efforts to represent themselves pose one of the greatest challenges for the court.

Senator AKAKA. Thank you.

Ms. Oberly, I would like to ask you to address that issue, as well. What do you anticipate your biggest challenge would be in becoming a judge and how do you plan to overcome that challenge?

Ms. OBERLY. I have been fortunate to have a very diverse career in my more than three decades of practicing law, so I have certainly, in my Justice Department days, spent time handling criminal matters and since then more civil matters. But I recognize that it has been a long time since I have spent as much time on criminal matters, for example, as the docket of the D.C. Court of Appeals is likely to present to the judges deciding those cases, and so I am fully prepared to roll up my sleeves and get to work and learn what it is I need to get back up to speed, changes in the law that have occurred, and I would approach that the same way I have approached any other new facet of my career over the past several decades where I find myself dealing with new issues.

But I have never been afraid of hard work; I think that is the way I've managed to master new areas in the past and it is the way I will intend to do that on a go-forward basis if I am so fortunate as to be confirmed.

Senator AKAKA. Thank you.

Now let me call on Senator Voinovich for his questions.

Senator VOINOVICH. Ms. Oberly, I am sure you have appeared before a number of judges and have observed a variety of judicial temperaments. I would like you to discuss what you believe to be the appropriate temperament and approach of a judge.

Ms. OBERLY. Thank you, Senator Voinovich. I think it is a very important question, and I believe that it is critical that litigants appearing before judges, no matter what the outcome of the case, where almost by definition one side will be happy and one side will be unhappy, should both go away feeling that their matters have been given the full, careful, and fair consideration that they deserve regardless of what the outcome is, that they have been treated with respect, that their arguments have been listened to, and that they have had the opportunity for the judicial system to bring all of its hard work and careful consideration to their matters so that they at least leave the process feeling that the respect the process should command was appropriately placed in the confidence of the courts to do the right job for the citizens of the District.

Senator VOINOVICH. I think that in my experience, on occasion, we have had people that seemed, once they got to the bench, to have lost all humility. [Laughter.]

Ms. OBERLY. I have appeared before some of those people from time to time, but I hope that I can remember those appearances that I have had and make sure that I don't cause litigants appearing before me to go away feeling that way.

Senator VOINOVICH. The other thing is, and you have already mentioned it, you haven't had very much experience in terms of

criminal law and you are going to have to really brush up on that. I think you know that.

Ms. OBERLY. Right.

Senator VOINOVICH. And then on the rules and procedures of the appeals court, you are going to have to also work hard. You are going to have a lot of homework to do, I think, in the beginning.

Ms. OBERLY. That is true, although in my job as General Counsel of Ernst and Young, I have been managing litigation in courts all across the country, and while the rules obviously vary somewhat from one court to another, the general procedures and policies are not all that different. And so I need to be totally current and familiar with D.C. Court of Appeals procedures, and I intend to make sure that I am, but I don't feel that I am approaching an environment in which I don't have an awful lot of background experience with other courts that operate in a similar fashion. So I hope that will help me get up to speed faster.

Senator VOINOVICH. Does working with other appeals courts around the country give you a pretty good idea of what you ought to be doing?

Ms. OBERLY. Yes.

Senator VOINOVICH. Judge Irving, I think it is wonderful that these folks that come up and don't have a lawyer, you try to work with them, but how do you handle that lawyer that comes in and is not prepared to represent their client? How do you deal with somebody like that?

Mr. IRVING. That happens, Senator, more often than you might imagine. Since taking the bench, what I have done is taken a step-by-step approach, rather than hitting attorneys with the shock that the rules do apply, that they are required to follow the Rules of Civil Procedure and of Evidence, and should know their cases much better than the judge, who has spent the weekend preparing for the week's calendar. I have strongly urged them to take the time to learn their cases because the prior chief judge, in particular, with a management team, instituted performance standards. And I take my position very seriously and endeavor zealously to adhere to those standards, one of which is to resolve matters as expeditiously as possible.

I do recognize that there are challenges in attorneys' lives, as well, that may cause them not to be as prepared in one case as they would like to be. So it is a gradual admonishment, if you are not going to be prepared this time, I will give you a couple of weeks to be prepared and you should come back prepared.

Senator VOINOVICH. Well, if that reputation gets around, more of them will be prepared.

In your background, you talked about the backlog of cases, motions, and other things that you dealt with. Tell me about that a little bit, and do you expect that you are going to have the same kind of a challenge as an associate judge?

Mr. IRVING. Well, when I took the bench, there were matters that for some reason or other were not resulted in a timely fashion. There were matters that were several years old. And I believe we have a much better computer tracking system so that when a particular matter is not resulted a few months prior and there is not a next event date set for that particular matter, that matter shows

up on what we call an exceptions report. There are about four or five different case tracking reports that I review on a weekly basis so that I can stay abreast of what is ready to be acted upon and what is not.

The two calendars I manage involve very heavy filers. I believe I have approximately 2,100 active cases. So it requires not only a diligent, hard working judge, but also a team of other folks, and I have had the support of both the chief judge of the court as well as the presiding judge of the Civil Division who have provided me with additional bodies to try to work through the backlog and stay current with all matters that are being filed currently.

So there are controls in place and there are people available to the calendar to assist me in resulting matters sooner than later. I believe we all, at the court, take our duties seriously and do whatever we can with the resources that we have to see to it that decisions are rendered speedily.

Senator VOINOVICH. Thank you.

Senator AKAKA. Well, thank you very much, Senator Voinovich.

I want to thank our witnesses also very much for your statements. There are no further questions from me at this time. Members of the Committee may submit additional written questions for the record. The hearing record will remain open until the close of business today for Members of this Committee to submit additional statements or questions they may have.

Although time is very short in this Congress, I believe that you both are very well qualified for the positions to which you have been nominated. It would be a shame to leave the D.C. courts with vacancies if we can fill them with nominees of high caliber. It is my hope that the Committee and the Senate will be able to act on your nominations as soon as we can.

I thank you and your families and friends very much for being here today.

Do you have any further comment before we adjourn, Senator Voinovich?

Senator VOINOVICH. No.

Senator AKAKA. With that, this hearing is adjourned.

[Whereupon, at 3:17 p.m., the Committee was adjourned.]

APPENDIX

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

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

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

   Kathryn Anne Oberly

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

   US

3. Current office address and telephone number.

   Ernst & Young LLP
   1101 New York Avenue, NW
   Washington, DC 20005
   202-327-7600

   REDACTED

4. Date and place of birth.

   5/22/50
   Chicago, IL

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

Marital Status:	Married
Spouse:	Haynes Bonner Johnson
Spouse's Occupation:	Author, Lecturer, and Professor
Name and Address of Spouse's Employer:	University of Maryland College of Journalism College Park, MD 20742

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

Michael William Goelzer – age 29
Self-employed technology consultant

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

Institution	Dates Attended	Degree Received	Date Degree Received
Univ. of Wisconsin Law School-Madison	1970-1973	J.D.	May 1973
Univ. of Wisconsin-Madison	1969-1971	B.A.	May 1971
Vassar College	1967-1969	No degree awarded; transferred to Univ. of Wisconsin	
Downers Grove North High School Downers Grove, IL	1964-1967	High School Diploma	June 1967

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

Summer after second year of law school (June-Aug. 1972):
University of Wisconsin Law Review - Articles Editor
(paid staff during summer months)
Madison, WI

Summer after first year of law school (June-Aug. 1971):
Summer Intern
National Labor Relations Board
Washington, DC

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.

Recipient, Legal Momentum's *Aiming High* Award (2007)

Recipient, Rosemarie Meschi Award – Core Business Services (2005) (Ernst & Young firm-wide award honoring commitment to gender equity, diversity, and inclusiveness, selected each year by an outside panel of judges and awarded in memory of the Firm's first gender equity leader)

Named one of Corporate America's Five Most Influential Women General Counsel, *Corporate Legal Times* (November 2003)

Named one of "The Fifty Most Influential Women Lawyers in America," *National Law Journal* (March 1998)

Department of Justice Awards for Meritorious Service (1977); Outstanding Service (1978); Special Achievement (Jan. & Sept. 1985); Outstanding Performance (1979-1985)

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

From 1991 to the present, I have been a partner and later a principal (the current title for a non-CPA partner equivalent) in Ernst & Young LLP. Since 2001, I also have been a member of Ernst & Young's Americas Executive Board.

I was a partner at Mayer, Brown & Platt from 1986-1991.

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

Wisconsin Bar Association
New York Bar
District of Columbia Bar
American Law Institute
Member of the Council: 2003-present
Member of the Audit Committee: 2003-present
American Bar Association
Member, Reading Committee for the ABA Standing Committee on the Federal Judiciary (1989-1995, 2003-2006) (read and analyzed judicial opinions of Supreme Court nominees David Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen G. Breyer, and John G. Roberts, Jr.)
Member, Corporate General Counsel Committee, Section of Business Law: 1995-present
Association of Corporate Counsel
CPR Institute for Conflict Resolution
Member of the Board of Directors: 2003-2004
Member of the Executive Advisory Committee: 1997-present
American Academy of Appellate Lawyers
Chartered Institute of Arbitrators (UK)

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

National Women's Law Center – Board of Directors; Member of the Audit Committee
University of Wisconsin Foundation – Board of Directors; Member of the Audit Committee
University of Wisconsin Law School Board of Visitors
Appleseed Foundation – Board of Directors (2003-2004)
Kappa Kappa Gamma

None of these organizations currently discriminates on the basis of race, sex, or religion. It is possible that Kappa Kappa Gamma, my college sorority, may have discriminated in the past but, if it did so, it was prior to my becoming a member in 1969.

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

State Bar of Wisconsin	6/8/73
District of Columbia Bar (DC Ct. of Appeals)	9/24/81
State Bar of New York	6/19/95
Supreme Court of the United States	6/21/79
U.S. Court of Appeals – First Circuit	9/11/74
U.S. Court of Appeals – Second Circuit	5/13/77
U.S. Court of Appeals – Third Circuit	3/19/93
U.S. Court of Appeals – Fourth Circuit	10/2/74
U.S. Court of Appeals – Fifth Circuit	3/23/87
U.S. Court of Appeals – Sixth Circuit	10/10/74
U.S. Court of Appeals – Seventh Circuit	9/22/75
U.S. Court of Appeals – Eighth Circuit	6/11/74
U.S. Court of Appeals – Ninth Circuit	10/8/75
U.S. Court of Appeals – Tenth Circuit	1/15/93
U.S. Court of Appeals – Eleventh Circuit	1/30/90
U.S. Court of Appeals – District of Columbia Circuit	11/12/74
U.S. District Court for the District of Columbia	9/14/87
U.S. District Court for the Southern District of New York	7/24/07
U.S. District Court for the Eastern District of New York	7/31/07
U.S. District Court for the Western District of Wisconsin	6/10/73

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

Articles Editor, 1973 *Wisconsin Law Review*
"My Journey to Unity," *Chicago Tribune* (Aug. 18, 2008)
"In Memoriam: Judge Donald P. Lay," 92 *Iowa Lew Rev.* (2007)

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

Written Testimony of Kathryn A. Oberly before the Federal Advisory Committee on the Auditing Profession, U.S. Department of the Treasury (Washington, DC - June 3, 2008)

"Supreme Change: The Impact of the Makeover of the U.S. Supreme Court," American Academy in Berlin (Berlin, Germany - March 2006)

16. Legal career.

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

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

Upon graduation from law school, I served as a law clerk to the Honorable Donald P. Lay, United States Court of Appeals for the Eighth Circuit, in Omaha, Nebraska. My clerkship was from June 1973 to June 1974.

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

I have never practiced law alone.

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

After completion of my judicial clerkship, I was employed by the U.S. Department of Justice, from August 1974 through March 1986. I first worked as an appellate lawyer in the Appellate Section of the Land & Natural Resources Division (since renamed the Environment & Natural Resources Division), where I briefed and argued appeals in every federal court of appeals in the country. I also handled several matters in the trial courts, generally in cases of special significance to the Division because they appeared likely to be headed to a court of appeals on an important issue.

In 1982, I accepted a position in the Solicitor General's Office at the Department, and I remained there as an Assistant to the Solicitor General until 1986, when I left the Department for private practice. While I was in the SG's office, I briefed and argued a wide variety of civil and criminal cases, all before the Supreme Court of the United States.

From April 1986 through March 1991, I was a partner in the Washington, DC office of Mayer, Brown & Platt. I was a member of the firm's appellate litigation group, which was formed when I, along with two colleagues from the Solicitor General's Office, Andrew L. Frey and Kenneth S. Geller, all joined Mayer, Brown together. My practice there continued to focus on appellate litigation across a broad array of subject areas, including constitutional law, environmental law, employment law, administrative law, and professional liability and securities law.

In 1991, I became an in-house lawyer for one of my clients, Ernst & Young. Initially, I was hired to form and develop Ernst & Young's appellate litigation and special projects group in Washington, DC. I did that for approximately three years, until I was asked to become Vice Chair and General Counsel of the Firm, which is the position I have held from October 1994 to the present.

Upon becoming General Counsel of Ernst & Young, my only client became Ernst & Young itself. It is one of the so-called "Big 4" professional services firms and, although it is a private organization comprised of partnerships around the world, it would be very nearly the size of a Fortune 100 company if it were public. Global revenues in fiscal 2007 were $21.7 billion, and Americas revenues were over $9 billion. EY has offices in 140 countries and employs over 130,000 people. The firm does far more than audit financial statements and prepare tax returns. Even after the sale of its consulting business in 2000, the firm still offers a vast array of professional services, including risk

management and advisory business services – and is now re-entering a subset of the consulting business it sold in 2000.

My practice at Ernst & Young spans a broad array of subject areas, with a particular emphasis on professional liability and the federal securities laws. Employment law is another specialty, given the number of employees who work for the firm. General business law, including real estate, intellectual property, and contracts, as well as governmental and regulatory affairs and legislative initiatives, also form a regular part of my practice at Ernst & Young.

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

The principal focus of my practice has been appellate litigation, from my judicial clerkship starting in 1973 and continuing through my time at the Justice Department and in private practice at Mayer, Brown. When I became General Counsel of Ernst & Young in 1994, my practice began to focus more on trial litigation as well as appellate matters, and on law department management and administration. I supervise a department of approximately 125 people, including 41 lawyers and 12 auditors working out of 7 cities in the US and Canada. I also hire and supervise counsel at outside law firms located throughout the Americas and in Europe.

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

While in private practice at Mayer, Brown, my clients were typically US corporations and trade associations. I tended to specialize less in particular subject areas than in appellate litigation, including cases involving environmental law, employment law, professional liability, administrative law, and constitutional law.

At the Department of Justice, my client was the United States of America, as well as many of its Cabinet departments and administrative agencies. In the Lands Division, I specialized in environmental and public land law issues, administrative and constitutional law, eminent domain, and Indian affairs. In the Solicitor General's Office, I handled the entire spectrum of cases in which the United States is a party, including both civil and criminal cases arising under the Constitution and federal statutes and regulations.

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

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

During the past 17 years, I have appeared in court very rarely as counsel of record because I typically hire outside law firms to represent Ernst & Young, and counsel from those firms appear as counsel of record. However, I closely supervise their work, and I often go to court with them. Under my direction, Ernst & Young also engages in regular use of alternative dispute resolution procedures, such as mediation and arbitration, and I often attend these proceedings with outside counsel I have hired to represent the firm.

During my five years at Mayer, Brown & Platt, I appeared in court more often, arguing appeals and occasionally trial court motions on behalf of private clients. Typically, I argued 2-3 cases per year during that time.

During my 12 years at the Justice Department, I appeared in court much more frequently, generally arguing appeals in the federal courts of appeals and in the United States Supreme Court, and occasionally in state supreme courts,. I also appeared in federal district courts, although less often than in the courts of appeals and the US Supreme Court. I typically argued three Supreme Court cases per year from 1982-1986 and six to eight appeals in the federal courts of appeals from 1974-1981, and also handled occasional matters in the trial courts each year.

In total, I have personally argued more than 65 appeals in the federal and state courts, and I have briefed more than 150 cases on appeal. For most of these briefs, I was the principal draftsperson, although in some I exercised shared drafting responsibility with co-counsel.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);

60%

(b) State courts of record (excluding D.C. courts);

39%%

(c) D.C. courts (Superior Court and D.C. Court of Appeals only);

1 %

(d) other courts and administrative bodies.

0 %

(3) What percentage of your litigation has been:
(a) civil; 95%
(b) criminal. 5%

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

During the last 17 years I have supervised approximately 25 cases that were tried to judgment.

I have personally tried 5 cases as lead counsel.

(5) What percentage of these trials was to

(a) a jury;
85 %
(b) the court (include cases decided on motion but tabulate them separately).
15% (50% decided on motion; 50% decided after trial)

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

(1) Inupiat Community of the Arctic Slope v. United States, 548 F.Supp. 182 (D. Alaska 1982) (Fitzgerald, J.), aff'd, 746 F.2d 570 (9th Cir. 1984), cert. denied, 474 U.S. 820 (1985)

The Inupiat people of Alaska's north slope brought suit against the United States to quiet title in large portions of the Beaufort and Chukchi Seas. The Inupiat, a federally recognized Indian tribe, claimed sovereign rights and unextinguished aboriginal title to the area lying from three to sixty-five miles offshore in the Arctic Ocean. They based their claim on exclusive use and occupancy of the sea ice from time immemorial. The district court granted the government's motion for summary judgment, holding, inter alia, that federal supremacy over the adjacent seas is an essential element of national sovereignty and that dependent Indian tribes are no more able to override national sovereignty than the states that had, in prior Supreme Court cases, unsuccessfully asserted right and title to mineral resources in the seas off their coasts. The district court also rejected the Inupiat's claims of a breach of the trust relationship between the United States and Indian tribes and a breach of their religious freedoms under the Constitution.

I was lead counsel for the United States in this case, and in that role I briefed and argued the government's successful motion for summary judgment in the district court, and I also successfully defended the judgment on appeal to the Ninth Circuit and opposed certiorari in the Supreme Court.

The case was important because the Inupiat's claim, if upheld, would have interfered with the federal government's ability to control the development of offshore mineral resources and, more fundamentally, to exercise sovereign power over "the problems of commerce, national defense, relations with other powers, war and peace" that are implicated by the marginal sea. 548 F.Supp. at 186 (quoting United States v. Louisiana, 339 U.S. 699, 704 (1950)). The district court was unequivocal in refusing to allow interference with those

sovereign federal responsibilities.

Opposing Counsel: Thomas E. Meacham
Formerly with the State of Alaska
Department of Law
Anchorage, Alaska
Currently 9500 Prospect Drive
Anchorage, Alaska 99516
(907) 346-1077

(2) United States v. Riverside Bayview Homes, 474 U.S. 121 (1985). I represented the United States in this challenge to the authority of the Army Corps of Engineers to require landowners to obtain permits under the Clean Water Act before discharging fill material into wetlands adjacent to navigable bodies of water and their tributaries. The Court was called upon to consider the extent of the Corps' jurisdiction to regulate "waters of the United States" that did not satisfy traditional standards of "navigability." In upholding the Corps' regulation, the Court adopted a broad reading of the Corps' power under the statute given Congress' evident concern for water quality and aquatic ecosystems.

The case was significant because it was one of the first environmental cases in which the Supreme Court considered the question whether governmental regulation of land use might go so far as to constitute a "taking" under the Fifth Amendment. The Court's decision was seen as strong support for a national commitment to protection of the environment. I wrote the brief for the United States and argued the government's case in the Supreme Court.

Opposing Counsel: Edgar B. Washburn
Senior Partner
Morrison & Foerster
San Francisco, CA
(415) 268-7860

(3) Alaska v. Carter, 462 F. Supp. 1155 (D. Alaska 1978) (von der Heydt, C.J.)

In 1978, the State of Alaska sued the President of the United States and the Secretary of the Interior seeking to enjoin the closing of the comment period on a draft supplemental environmental impact statement that considered several alternatives to

classifications of Alaska's "National Interest Lands" and to enjoin the President and the Secretary from taking any final administrative action on the Alaska National Interest Lands until at least 90 days after the date on which the State contended the comment period should end. While ostensibly a suit about deadlines for the filing of comments on environmental impact statements, in reality the suit challenged the Administration's plans to preserve the Alaska National Interest Lands from development until the next Congress had a chance to pass protective legislation. The district court denied Alaska's motion for a preliminary injunction to enjoin presidential and administrative action, paving the way for the President and the Secretary to set aside nearly 100 million acres of federal lands in Alaska until Congress could act to protect them, which it did in 1980.

The case was particularly important not only for the environmental values at stake, but because it also established the legal proposition that the President is not an "agency" under the National Environmental Policy Act (NEPA) and therefore could not be enjoined from acting in the national interest under other statutory and executive authorities available to him. In addition, the court accepted the Administration's argument that the President, acting under the Opinions Clause of the Constitution, could not be blocked from seeking the opinions of his cabinet officers, such as the Secretary of the Interior, until those officers had themselves complied with NEPA.

Together with the Assistant Attorney General of the Land and Natural Resources Division of the Department of Justice, I led the team that developed the Administration's strategy for handling the emergency presented by Congress' initial failure to act,. and then successfully briefed and argued the case defending the Administration's action when the State of Alaska challenged it in court. My co-counsel at the Department of Justice was to have argued the preliminary injunction motion but collapsed about one sentence into his argument. After calling a brief recess to have him transported to the hospital (where, upon examination, he was pronounced fit and suffering only from exhaustion), the court resumed the hearing and called upon me to present the government's argument because time was of the essence. I did so, and, as noted above, succeeded in sustaining the Administration's actions.

Co-Counsel: Steven A. Herman
Formerly with the U.S. Department of Justice
Currently Principal, Beveridge & Diamond
1350 I Street, NW
Washington, DC 20005
(202) 789-6060

Opposing Counsel: Thomas E. Meacham

Formerly with the State of Alaska
Department of Law
Anchorage, Alaska
Currently 9500 Prospect Drive
Anchorage, Alaska 99516
(907) 346-1077\

(4) FDIC v. Ernst & Young, 967 F.2d 166 (5th Cir. 1992).

The Federal Deposit Insurance Corporation sued Ernst & Young for more than half a billion dollars arising out of the failure of Western Savings Association during the S&L crisis of the 1980's. The FDIC claimed that Ernst & Young, as Western's outside auditor, should have stopped the institution's sole shareholder from committing the frauds that ultimately led to its demise and takeover by the FDIC as receiver. The district court granted Ernst & Young's motion for summary judgment and the court of appeals affirmed. The case was significant as a practical matter because, had it gone the other way, Ernst & Young and other accounting firms that audited S&Ls likely would have been driven out of business. The case was significant as a legal matter because the courts recognized that the essential elements of reliance and causation could not be established where a failed institution, or its sole shareholder, was guilty of failing to save itself from its own wrongdoing. Moreover, the courts reaffirmed that the claims of the institution did not improve when asserted by a successor standing in the shoes of the institution itself.

I represented Ernst & Young in the district court and the court of appeals. I wrote the briefs in both courts and argued the case in the Fifth Circuit before a panel of Chief Judge Politz and Circuit Judges Williams and Duhé.

Opposing counsel: Dorothy L. Nichols
Formerly Associate General Counsel
Federal Deposit Insurance Corp.
and
John L. Conlon
Formerly Hopkins & Sutter
Chicago, Illinois

(5) Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

I represented Price Waterhouse in the Supreme Court when it sought review of the court of appeals' decision holding that Price Waterhouse had discriminated against Ms. Hopkins on the basis of sex in denying her admission to the partnership. The Supreme

Court reversed and remanded for further proceedings, accepting Ms. Hopkins' position that sex stereotyping was an impermissible form of sex discrimination but holding that the lower courts had placed an inappropriate burden on Price Waterhouse by requiring it to prove by clear and convincing evidence that it had legitimate, non-pretextual reasons for its decision to decline to promote Hopkins to partnership. The Court held that even if sex stereotyping played a role in the decision, Price Waterhouse was entitled to prove – by a preponderance of the evidence, rather than the clear and convincing standard employed by the court of appeals – that it would have made the same decision for nondiscriminatory reasons. The decision was a landmark case in the field of employment discrimination both because of its treatment of sex stereotyping as a prohibited form of discriminatory treatment and because of its further elucidation of the burden-shifting rules in so-called mixed motive cases arising under Title VII of the Civil Rights Act.

I jointly wrote the petition for certiorari and the briefs on the merits for Price Waterhouse with the late Professor Paul M. Bator of Harvard Law School and later the University of Chicago Law School. Professor Bator became ill with cancer shortly before the argument in the Supreme Court, and thus I also presented Price Waterhouse's oral argument in the Supreme Court.

Opposing Counsel: James H. Heller (deceased)
Formerly of Heller, Huron, Chertkof, Lerner, Simon and Salzman PLLC
1730 M Street, NW
Washington, DC

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

During my time at the Department of Justice and at Mayer, Brown & Platt, most of my work was litigation-related and has been largely described above. Accordingly, I describe here two significant non-litigation matters for which I was responsible during my tenure as Ernst & Young's General Counsel.

The most significant non-litigation legal matter I have handled undoubtedly was the sale of Ernst & Young's consulting business in 2000 to a French company, Cap Gemini, S.A.,

in a transaction that at the time was thought to be an $11 billion deal. This was a very complicated transaction because it had no precedent in corporate templates; it was a world-wide transaction involving the sale of the consulting businesses owned separately by each member firm of Ernst & Young International around the globe, all with a coordinated closing date; it required compliance with French securities laws as well as consultation with the US Securities and Exchange Commission; and it required devising a fair and equitable plan for allocating the proceeds among the various Ernst & Young firms, their continuing partners, and their partners who left Ernst & Young to join Cap Gemini. I employed outside corporate and tax counsel to assist in the negotiation of this transaction, but I was the lead lawyer for Ernst & Young, and the lawyer responsible for keeping the firm's leadership apprised of the legal and business issues as they developed during the negotiations. The transaction was successfully consummated in May 2000, and was later followed by KPMG's and PwC's decisions to sell their consulting businesses.

Another significant non-litigation matter I handled was the proposed merger in late 1997 of Ernst & Young and KPMG. Although the two firms called off the proposed merger in early 1998, virtually all of the legal work necessary for the merger had been performed. I had lead responsibility for the legal aspects of the merger planning, including supervision of compliance with the antitrust laws, revision of the two firms' partnership agreements, harmonization of the two firms' pension and other benefit plans, due diligence on each firm's legal liabilities, and preparation of information documents to explain the proposed transaction to the partners of Ernst & Young.

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

No.

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

N/A

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

No.

21. Political activities and affiliations.

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

  None.

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

  None. I have worked only as a volunteer, without any official status, in both Hillary Clinton's and Barack Obama's 2008 presidential campaigns.

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

  Obama Victory Fund - $20,800 (Sept. 2008)
  Obama Victory Fund - $10,000 (Sept. 2008)
  Barack Obama via Obama for America - $2,300 (July 2008)
  WomenCount PAC - $1,000 (May 2008)
  Ernst & Young PAC - $500 (April 2008)
  Democratic Senatorial Campaign Committee - $2,500 (Nov. 2007)
  Jeanne Shaheen via Jeanne Shaheen for Senate - $500 (Nov. 2007)
  Christopher J. Dodd via Chris Dodd for President, Inc. - $1,000 (March 2007)
  Hillary Rodham Clinton via Hillary Clinton for President - $400 (Feb. 2007)
  Ernst & Young PAC - $500 (Feb. 2007)
  Hillary Rodham Clinton via Hillary Clinton for President- $1,900 (Jan. 2007)
  Hillary Rodham Clinton via Hillary Clinton for President - $2,300 (Jan. 2007)
  Hillary Rodham Clinton via Friends of Hillary - $225 (Oct. 2006)
  Jamie Wall via Wall for Congress - $250 (July 2006)
  Democratic Senatorial Campaign Committee - $1,000 (Feb. 2006)
  Ernst & Young PAC - $500 (Feb. 2006)
  Hillary Rodham Clinton via Friends of Hillary - $250 (Jan. 2006)
  Hillary Rodham Clinton via Friends of Hillary - $950 (March 2005)

Hillary Rodham Clinton via Friends of Hillary - $900 (March 2005)
Ernst & Young PAC - $500 (Jan. 2005
Kerry Victory via DNC Services Corp. - $1,000 (Sept. 2004)
DNC Services Corp. - $1,000 (Aug. 2004)
Hillary Rodham Clinton via Friends of Hillary - $1,000 (July 2004)
Charles E. Schumer via Friends of Schumer - $1,000 (June 2004)
John Kerry via John Kerry for President, Inc. - $1,000 (May 2004)
Ernst & Young PAC - $500 (May 2004)
John Kerry via John Kerry for President, Inc. - $1,000 (Feb. 2004)
Hillary Rodham Clinton via Friends of Hillary - $1,000 (Dec. 2003)
Ernst & Young PAC - $500 (May 2003)

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

No.

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

Ernst & Young LLP, to which I serve as General Counsel, has been the subject of a grand jury investigation being conducted by the United States Attorney's Office for the Southern District of New York involving tax shelters marketed during the period from 1999-2001. I am counsel to the firm and am not myself a subject of the investigation. Based on Ernst & Young's own assessment of the relevant facts and circumstances, Ernst & Young does not expect to be indicted.

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

No.

II. POTENTIAL CONFLICTS OF INTEREST

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

   Yes, except that I will receive a pension upon my retirement (withdrawal) from Ernst & Young. See answers to Question 2, below, and Question III.6.

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

   I am vested in Ernst & Young's Top-Hat Plan and I will receive a pension under that plan upon my retirement (withdrawal) from the firm. All other financial interests I have in the firm will be cashed out upon my withdrawal from the firm.

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

   All of my investments are shown on my personal financial net worth statement attached to this questionnaire in response to Question III.1. Should any of them ever be involved in litigation in the District of Columbia Court of Appeals, I would recuse myself from the particular case.

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

   None.

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

   None.

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

   No.

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

   With the exception of receipt of my pension from Ernst & Young, I do not foresee any potential conflicts of interest. Were Ernst & Young to be a party in a case pending in the District of Columbia Court of Appeals, I would recuse myself from that case. (I think it unlikely that this eventuality would occur. In my 17 years with Ernst & Young, I do not believe it has ever been a party to a case in the District of Columbia Court of Appeals.)

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

   Yes.

III. FINANCIAL DATA

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

REDACTED

Kathryn A, Oberly
October 13, 2008

IV. DISTRICT OF COLUMBIA REQUIREMENTS

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

1. Are you a citizen of the United States?

   Yes.

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

   Yes.

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

   Yes.

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

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

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

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

   D. Upon what grounds is that eligibility based?

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

   Yes.

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

   Yes.

REDACTED

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

   No.

Kathryn A, Oberly
October 13, 2008

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

No.

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

Copies are attached hereto.

AFFIDAVIT

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

Kathryn Anne Oberly

SUBSCRIBED and SWORN TO before me this 13th day of October, 2008.

Laura L. Montgomery
Notary Public

LAURA L. MONTGOMERY
Notary Public, District of Columbia
My Commission Expires Nov. 30, 2010

Senator Tom Coburn
Additional Questions for the Record
Nomination Hearing of Kathryn Oberly
November 17, 2008

1. In your questionnaire to the Committee on question 21 regarding your "Political activities and affiliations," you said that you served "only as a volunteer, without any official status" in both the presidential campaigns of Senators Clinton and Obama. On December 8, 2007, the *Wall Street Journal* reported that you had raised "more than $100,000 for Sen. Clinton."

Please explain whether the *Wall Street Journal* report is accurate and if so, provide an explanation for omitting such information from your questionnaire.

Thank you, Dr. Coburn, for the opportunity to clarify the record regarding my nomination. The *Wall Street Journal* report is accurate. I did not intend that anyone interpret the omission of the fundraising information from my questionnaire as inappropriate or misleading. As you correctly note, I answered the questionnaire by noting that I had served Senator Clinton's campaign as a volunteer, without any official status. I believe this answer to have been accurate and offered in good faith to the Committee and can only state that I considered my fundraising activities for Senator Clinton's campaign to have been encompassed within the rubric of a whole host of volunteer activities in which I engaged in support of her campaign. In addition to fundraising, those activities included (1) "outreach" activities in the form of talks to small groups of women professionals who might be, or be persuaded to be, supporters of Senator Clinton's candidacy; (2) phone-banking from Senator Clinton's campaign headquarters in Arlington, VA or from my home in Washington, DC; (3) collecting signatures for Senator Clinton's name to be placed on the ballot for the primary election in Virginia; (4) traveling to Iowa, New Hampshire, and South Carolina as a volunteer assigned during the caucuses and primaries to activities such as phone-banking, door-to-door canvassing, driving voters who needed assistance with transportation (particularly the elderly) to caucus sites and polling places, and training as a voter protection volunteer to be called in case I observed voters who were encountering difficulties in participating in the caucuses or primary elections; (5) organizing groups of women who might not have had the financial resources to contribute to Senator Clinton's campaign but nonetheless wanted to support her to engage in activities such as phone-banking, traveling within their own states or to near-by states in groups to minimize costs, registering voters, and volunteering for

GOTV and voter protection activities; and (6) allowing my name to be used, along with the names of hundreds of other women from the business and legal communities as someone who could be publicly identified as a supporter of Senator Clinton's candidacy.

Please also explain the extent of your fundraising efforts for Senator Obama.

After it became clear that Senator Clinton would not secure the Democratic Party's nomination for the Presidency, I was asked to contact some of the same people who had contributed to Senator Clinton's campaign at my request to encourage them to contribute to Senator Obama's campaign. I did in fact make such calls, although not as many as I had made on behalf of Senator Clinton's campaign. I made fewer calls in part because I knew that many of the lawyers and women professionals I had contacted during Senator Clinton's candidacy were already switching their support to Senator Obama and would do so of their own volition or because they had already been called by others. I also made fewer calls on behalf of Senator Obama than I had made on behalf of Senator Clinton because, as the summer and fall wore on, the seeds of the credit crunch and ultimate economic turmoil that has engulfed the country were beginning to be felt. These factors required more of my time as General Counsel of Ernst & Young, a professional services organization many of whose clients were directly impacted by the challenging economic environment, than had been the case during the primary season, and I simply had less time to engage in volunteer activities during the general election. I did, however, feel it was important to make some calls on behalf of Senator Obama's campaign, in part in response to Senator Clinton's urging of her supporters to switch their allegiance to Senator Obama. It was because of my deep and abiding admiration for Senator Clinton, born of a natural affinity with her based on our common Midwestern roots and membership in the same Methodist church in Park Ridge, Illinois, going to college and law school in the late '60s and early '70s, and working in jobs where there were few women while raising a child, that I became actively involved in the 2008 presidential election process. Those common bonds caused me to want to follow her lead in supporting Senator Obama's campaign when it became clear that she would not be the Democratic Party's nominee.

2. Please explain your commitment to the rule of law.

I am fully committed to the rule of law. I believe it is a bedrock constitutional principle, and it is the responsibility of every judge (and every lawyer) to do his or her utmost to uphold the rule of law and foster public respect for adherence to it. I believe it is particularly critical that judges guide their actions by, first and foremost, striving to uphold the rule of law, regardless of their personal beliefs on any particular issue that comes before them. Adherence to the rule of law is essential to inspire confidence in our institutions of government.

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

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

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

   Alfred Sherwood Irving, Jr.

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

   United States Citizen

3. Current office address and telephone number.

   Superior Court of the District of Columbia
   500 Indiana Avenue, NW
   Chambers 4450
   Washington, DC 20001
   (202) 879-4853

   REDACTED

4. Date and place of birth.

   August 7, 1959
   University of Virginia Hospital
   Charlottesville, VA

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

   Single

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

   No Children

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

   Georgetown University Law Center
   Washington, DC
   1983-1987
   JD - May 1987

Wake Forest University
Winston-Salem, NC
1977-1981
BA, History - May 1981

Nelson County High School
Lovingston, VA
1973-1977
High School Diploma - June 1977

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

MCI Telecommunications
Ultimately rising to the level of Supervisor
Washington, DC and Pentagon City, VA
1981-1987

From 1981 through 1987, including during law school, I was a full-time employee at the now defunct MCI Telecommunications. I held positions in several departments, including, Cost Accounting, Government Contracts, and Network Engineering. Final Position's duties included supervising group responsible for planning and scheduling installation of telecommunications services. Also provided training regarding coordination of service connection. Prepared staffing and budget reports.

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.

U.S. Department of Justice Outstanding Performance Rating (2006)

Elected to Fill Vacancy on D.C. Bar Litigation Steering Committee (2006)

Department of Justice Special Commendation for Outstanding Service (2005)

U.S. Environmental Protection Agency Bronze Medal for Commendable Service (2005)

D.C. Bar Voluntary Bar Leadership Group (2006-07)

Special Recognition Award for a Motion for Summary Judgment in *U.S. v. Timmons Corp., et al., 2006 WL 314457* (2005)

U.S. Department of Justice Association of Black Attorneys, Vice Chair (2005-2007)

Department of Justice Outstanding Performance Rating (2004)

Department of Justice Special Commendation for Outstanding Service (2002)

U.S. Environmental Protection Agency Gold Medal for Commendable Service (2002)

Department of Justice Special Commendation for Outstanding Service (2001)

Department of Justice Special Achievement Award (2000)

Letter of Appreciation, Instructor, Asset Forfeiture for Criminal Prosecutors Seminar, May 10-12, 2000

U.S. District Court for the District of Columbia Rules Advisory Committee (1998-2001)

Letter of Appreciation, from the U.S. Office of Personnel Management for obtaining a precedential decision in *Jesus N. Lagman v. OPM*, No. 95-3760 (Fed. Cir. 1996) (1996)

Department of Justice Special Act or Service Award (1995)

Department of Justice Special Achievement Award (1994)

Certificate of Appreciation, Frederick Douglass Junior High School, Career Day (1991)

Georgetown University Law Center: Law Review: The Tax Lawyer

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

None.

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

1. Bar Association Memberships

Member, District of Columbia Bar Association, 1989-Present

Inactive Member, Pennsylvania Bar Association, 1987-Present

DC Bar Litigation Steering Committee - June 2006
(Community Outreach Committee)

DC Bar Litigation Steering Committee – Summer 2007 Co-Chair (until appointment to be Magistrate Judge)

Department of Justice Association of Black Attorneys – Vice Chair and Acting Chair 2005-07

DC Bar Voluntary Bar Association

2. D. C. Superior Court Committees:

Member, DC Superior Court Civil Rules Advisory Committee, 2007 - Present
Member, DC Superior Court Civil Rules Advisory Subcommittee – Small Claims, 2007-Present
Member, 2008 Judicial Conference Committee, 2007-8
Member, Youth Law Fair Planning Committee, 2007 - Present

Other Memberships

U.S. District Court for the District of Columbia Rules Advisory Committee (1998 – 2001)
Member, Judicial Council of the Washington Bar Association, 2007 - Present

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

While at Wake Forest University, during my sophomore year (1978), I became a member of Theta Chi Fraternity, a social fraternity.

During high school, I held the offices of treasurer (1974-1975) and president (1976-1977) of the Nelson County Youth Association, a religious organization.

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

District of Columbia Court of Appeals – March 13, 1989

U.S. District Court of Appeals for the Eighth Circuit – May 13, 1991

U.S. Court of Appeals for the Federal Circuit – 1993

U.S. Court of Appeals for the Fourth Circuit – February 4, 2005

U.S. Court of Appeals for the Ninth Circuit – January 18, 2007

U.S. Court of Federal Claims – October 21, 1993

U.S. District Court for the Northern District of New York – July 12, 2004

U.S. District Court for the District of Puerto Rico – February 3, 2004

U.S. District Court for the District of Rhode Island
Allowed to appear and practice as of 2001.as a Department of Justice attorney

U.S. District Court for the District of New Jersey
Allowed to appear and practice as a Department of Justice attorney

U.S. District Court for the District of Massachusetts
Allowed to appear and practice as of October 2004, as a Department of Justice attorney

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

None

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

None

16. Legal career.

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

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

I have never served as a law clerk to a judge.

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

I have never been a solo practitioner.

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

LeBoeuf, Lamb, Leiby & MacRae, later, LeBoeuf, Lamb, Greene, & MacRae, currently, Dewey & LeBoeuf LLC, Washington, D.C.
September 1987 – May 1989, Associate Attorney

Newman & Holtzinger, PC (Defunct)
Washington, D.C.
May 1989 – May 1993, Associate Attorney

District of Columbia Armory Board, Washington, DC
May 1993 – October 1993, Legal Consultant

U.S. Department of Justice, Washington, DC
October 1993 – July 2007, Trial Attorney

Commercial Litigation Branch, Civil Division,
October 1993 – December 1998

Asset Forfeiture and Money Laundering Section, Criminal Division, December 1998 – February 2001

Environmental Enforcement Section, Environment and Natural Resources Division, February 2001 – July 2007

Superior Court of the District of Columbia
July 2007-Present
Magistrate Judge
500 Indiana Avenue, NW
Chambers 4450
Washington, DC 20001

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

Since July 2007, I hold the position of Magistrate Judge on the Superior Court of the District of Columbia, a trial court of general jurisdiction for local legal matters. I am assigned to the Civil Division, and I preside over collections and subrogation matters and tax lien foreclosure matters, comprising Calendar 18. I conduct scheduling conferences,

status and motions hearings, make findings and enter final orders or judgments, review and receive for filing stipulations of settlement, and preside over ex parte proofs and trials. Unlike Small Claims, there is no monetary limit on the substantive claims litigated on Calendar 18. The mission of the Calendar is to adjudicate substantive non-jury demand claims in an expeditious and efficient manner, without the necessity for several court dates, lost time from work, complex litigation procedures, numerous written motions, and other submissions such as pre-trial statements. I am currently handling approximately 1,213 active collections and subrogation cases, and 1,317 active tax lien foreclosure matters. Notwithstanding the number of active cases, both practice areas pose certain other challenges.

First, I inherited many collections and subrogation cases that likely could have been resulted/resolved many, many months prior to the commencement of my tenure. I have nevertheless worked tirelessly, including expending long hours after the conclusion of the business day, on weekends, and over holidays to research, issue orders and decisions, and schedule hearings, where appropriate, concerning motions that were one- to four-years-old. Through my diligence and industry, I have addressed and/or resolved all of the outstanding motions filed between 2001 and 2006, and most, if not all, of the motions filed during the first half of 2007, while simultaneously remaining fairly current with motions filed and trials scheduled since my tenure. I take seriously my mission of resolving matters as soon as possible, recognizing that the Chief Judge recently instituted performance standards which all Civil Judges are to meet.

My Calendar involves many *pro se* litigants who pose a challenge. With respect to those litigants on the tax lien foreclosure calendar, there is a Resource Center in the witness room outside of my courtroom administered by very skilled pro bono attorneys who provide legal assistance to *pro se* litigants. The attorneys' assistance has been invaluable, particularly given the complexities of the subject matter and the potential for permanent loss of property. I refer each such litigant to the Center either before or after they have appeared before me. And, I make every effort to ensure that they have sufficient opportunity to explore their options and redeem their property if it is their wish.

Realizing early on that *pro se* litigants on the collections and subrogation side of the Calendar also could benefit from legal assistance, I sought to establish a Resource Center for those litigants. Through then Presiding Civil Judge Joan Zeldon, I received authorization to direct those litigants to the Resource Center that serves litigants on the Small Claims Calendar. While this service may not eliminate the challenge to *pro se* parties attempting to represent themselves, the service presents litigants with information and guidance that they may not have otherwise had. If nothing else, they typically are presented with options that may assist them in reaching a reasonable and fair settlement of the case brought against them.

Practitioners on my Calendar are themselves experiencing some challenges: I am now requiring strict adherence to and compliance with a General Order that I issued several months ago, as well as the Court's Rules of Procedure. Standards were relaxed on this

Calendar, which resulted in inefficiencies and wanting professionalism that, in part, led to the enormous backlog, as well as to a significant delay in the resolution of matters on the Calendar. I am no longer allowing cases to languish on the Calendar until plaintiffs decide to prosecute their cases.

The Tax Lien Foreclosure calendar has experienced other significant challenges stemming from the recently exposed tax embezzlement scandal in the D.C. Office of Tax and Revenue. The City, through the Office of Tax and Revenue, is a Defendant in all of the tax lien foreclosure cases and, because of the staffing problems resulting from the scandal, resolution of cases on the Calendar moved at a snail's pace. In an effort to address this problem, and with the support and encouragement of former Presiding Civil Judge Joan Zeldon, and current Presiding Judge Stephanie Duncan-Peters, and Deputy Presiding Judge Melvin Wright, I have facilitated and presided over meetings in Judge Zeldon's courtroom involving the Office of Tax and Revenue, the D.C. Office of the Attorney General, and the practitioners on the Calendar, to address concerns about the District of Columbia's failure to issue timely refunds and deeds so that cases can be resulted with a dismissal. Typically, once redemption has occurred or foreclosure of the right of redemption has been effected against all parties with an ownership interest in the subject property, all such defendants except for the City are dismissed. The case remains open, however, until the City, as the remaining defendant, issues appropriate refunds and deeds. The staffing issues, the reorganization of the office and the continuing investigations have resulted in the parties' inability to reach full resolution of their cases. The litigants have expressed appreciation for the Court's facilitation in this area, as there has been significant improvement in the resolution of the oldest cases on the Court's calendar.

I also preside over felony presentments and misdemeanor arraignments on a rotational basis and serve as a back-up judge in the Small Claims and Conciliation Branch of the Court.

Prior to my tenure on the bench, I served from February 2001 until July 2007, as a Lead Trial Attorney in the Environmental Enforcement Section of the Environment and Natural Resources Division of the U.S. Department of Justice. In that capacity, I prosecuted on behalf of the United States in federal district courts complex civil environmental enforcement actions against corporate and individual defendants for violations of the environmental laws of the United States, including the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Air Act, and the Clean Water Act.

My enforcement cases involved multiple claims and unique and varied legal issues, against multiple defendants. I was responsible for and managed all phases of litigation, including filing complaints, conducting discovery, preparing briefs, arguing motions, negotiating settlements, and serving as counsel in trials. More specifically, I managed, reviewed, compiled, used, and produced voluminous documents during both discovery and trial phases of cases, as well as during intense settlement negotiations. I conducted

and defended the depositions of both fact and expert witnesses. I filed motions for summary judgment in federal district courts, viz., the U.S. District Court for the Northern District of New York, the U.S. District Court for the District of Puerto Rico, and the U.S. District Court for the District of Rhode Island. I also filed in the U.S. District Court for the District of Massachusetts briefs in support of a motion for access to address certain contaminants at a site. In relation to that motion for site access, I prepared and successfully presented oral argument in support of that motion. For my success in obtaining access, the United States Environmental Protection Agency awarded me its Bronze Medal for Commendable Service.

As discussed further below, I have participated significantly and extensively in two complex civil trials before the U.S. District Court for the District of Puerto Rico.

My legal practice has also involved appearances in the United States Bankruptcy Court for the Districts of Massachusetts, Rhode Island, and Puerto Rico. In those environmental bankruptcy matters, I filed either an adversarial complaint objecting to the discharge of the debtor, a Proof of Claim, or an Administrative Expense Application, on behalf of the U.S. Environmental Protection Agency.

Finally, in my capacity as a civil Trial Attorney, I handled an appeal to the United States Court of Appeals for the Fourth Circuit of an asylum case:. Bako v. Alberto R. Gonzales, 133 Fed. Appx. 83 (4th Cir. 2005). The Court ruled in favor of the United States. I also prepared and filed a brief in Davaanyam, et al. v. Gonzales, No. 06-73286 (9th Cir.), on March 22, 2007. That case has not been resolved, but I understand oral argument has been scheduled. As a U.S. Department of Justice trial attorney, my client was the United States. As Lead Trial Attorney in the Environmental Enforcement Section of the Environment and Natural Resources Division, my primary client agency was the U.S. Environmental Protection Agency ("EPA"). I provided counsel on a daily basis to EPA on myriad issues and during various stages of a case. I represented EPA during settlement negotiations, during the pre- and post-complaint filing stages of a case. My cases typically involved several private parties that EPA determined to be potentially responsible for the cost of removal of contaminants or remediation of a site contaminated with hazardous substances or wastes, or the performance of such work. My cases also would involve federal agencies liable for funding the removal of contaminants from a site. And, finally, my cases likely involved the participation of state agencies, viz., the environmental protection department and the attorney general's office. Because of the multitude of parties and the various competing interests in a case, I was required to balance those interests with enormous care and diplomacy in order to achieve a fair, equitable, and cost effective resolution. In so doing, I was able to achieve the Department's mission of ensuring the protection of human health and the environment. I also represented EPA at trial.

In addition to EPA, I provided legal counsel and representation to other federal agencies. Of note, I was engaged in advising the United States Department of Interior, Fish and Wildlife Service, on matters related to a possible Natural Resources Damage Assessment

and claim that may be brought concerning a lake in New York, contaminated with hazardous substances, including mercury. One significant interested party is the Onondaga Nation, and I had the honor of attending a meeting at its Longhouse to discuss ways in which the United States and the Nation may be able to work more effectively together (Nation-to-Nation) in addressing the damages to natural resources in and about the lake. The Nation contends it is a Natural Resource Trustee, with an historical, cultural, spiritual, and archeological connection to the lake. The cost of cleanup of the lake may exceed $1 billion and the resource damages are considered to be significant.

In another very complex environmental enforcement matter involving affirmative claims on behalf of EPA and defensive contribution claims against the Department of the Army and the Department of Energy as potentially responsible parties, I led an extensive effort at forging a very significant settlement addressing radioactive and non-radioactive wastes at the Nuclear Metals Superfund Site in Concord, Massachusetts. That settlement requires the performance of a $10 million remedial investigation and feasibility study by the de minimis responsible parties for the site and resolves the liability of the federal agencies (Army and Energy), which indicated they were responsible for 98 percent of the cleanup costs. This continuing matter has delicate and difficult client coordination issues involving EPA and the federal responsible parties (the Department of the Army and the Department of Energy). The effort required significant analysis of the basis for the liability of all parties, including the private corporations performing the work, and their respective shares of site costs. In addition, because the site is located in close proximity to a very wealthy community, the federal response activities and negotiations sparked the involvement of both a U.S. Representative and a U.S. Senator. During the negotiations, the federal liable parties were represented by the Environmental Defense Section of DOJ.

I subsequently led and facilitated the effort in obtaining a second settlement concerning the same site between the Department of the Army and the Massachusetts Department of the Environment for the removal and disposal of over 3,400 drums of depleted uranium and radioactive wastes at a cost in excess of $8 million. This negotiation was triggered by federal, state, and local concerns about the presence of radioactive wastes in close proximity to the adjacent community and the effect a release of the wastes into the environment would have on human health and the environment.

Finally, with respect to a third possible settlement related to the site, I was entrusted by both the Environmental Enforcement Section and the Environmental Defense Section with the responsibility to lead the charge as counsel for both EPA and the Federal liable parties (Army and Energy) to negotiate recovery from the private and federal liable parties of $5.3 million that EPA incurred in cleanup costs at the same site. I was designated as Lead Attorney in that effort because of my historical perspective, my proven ability to smooth fractious inter- and intra-governmental relations to obtain equitable settlements related to this contaminated site, the posture of the overall case, and the policy of the Department to limit expenditure of legal resources wherever possible in matters where the United States is on both sides of a potential litigation.

Prior to my service in the Environment and Natural Resources Division, I served for approximately two years in the Criminal Division of the Department of Justice from December 1998 until February 2001, in the Asset Forfeiture and Money Laundering Section. There, I primarily served on behalf of the United States as a decisionmaker. I drafted legal opinions and decisions, after careful consideration of the law, facts, and ethical standards, in response to the most complex and politically sensitive Petitions for Remission of Forfeited Property, Requests by Local and State Law Enforcement Agencies for Equitable Sharing of Federally Forfeited Property, and Requests for Transfer of Real Property. I performed studies on the nationwide use of asset forfeiture as a law enforcement tool and made recommendations to the Attorney General through my management on ways to promote the appropriate use of forfeiture. I also supervised contract attorneys.

From October 1993 until December 1998, I was a Senior Trial Attorney in the Commercial Litigation Branch of the Civil Division of the Department of Justice. There, I defended the United States, with the highest degree of independence and initiative, in all phases of complex commercial litigation, including trials, in the U.S. Court of Federal Claims and the Board of Contract Appeals for the U.S. Department of Transportation. I argued before the U.S. Court of Appeals for the Federal Circuit appeals from the Court of Federal Claims, petitions for review of Merit Systems Protection Board decisions, and appeals from the Court of Veterans Appeals.

During my federal employment, I had the distinction and honor of serving both as defense (Commercial Litigation Branch) and plaintiff's (Environmental Enforcement) counsel, thereby developing an appreciation for and sensitivity to the challenges and responsibilities each role presents for an attorney.

Prior to my federal government service, from May 1993 to October 1993, I served as a legal consultant to the General Counsel of the District of Columbia Armory Board. I provided advice on questions of law, policy, and legislation and assisted in drafting legislation for the creation of the D.C. Sports and Entertainment Commission. I reviewed, redrafted, and monitored various contract forms for strict adherence to the law. I also acted as liaison to governmental agencies, civic and community groups, and the then-named Office of Corporation Counsel in coordinating and providing services upon behalf of the Armory Board.

After law school, I was associated with two law firms: LeBoeuf, Lamb, Leiby, & MacRae, now Dewey & LeBoeuf LLC, from September 1987 until May 1989), and next with now-defunct Newman & Holtzinger, PC from May 1989 until May 1993. The focus of my practice did not change much during this period. I primarily represented electric utility companies before the Federal Energy Regulatory Commission ("FERC") regarding rate changes, contract disputes, and utility mergers. I appeared in several state and federal administrative proceedings. I participated in litigation of two separate mergers of electric utility companies, preparing extensive pleadings and conducting discovery. I researched and prepared rate change applications; assisted in preparation of written testimony;

negotiated and prepared interconnection and coordination agreements; and prepared pleadings, briefs, and settlement agreements. As part of Newman & Holtzinger's Pro Bono Program, I acted as Lead Attorney in a child custody case in the Superior Court of the District of Columbia. I was responsible for all aspects of the custody case, including the preparation of pleadings, conduct of discovery, and conduct of trial to successful conclusion.

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

See response to B, above.

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

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

Since July 2007, I have been serving as a Magistrate Judge in the Civil Division, and I am typically in court on a daily basis. I preside over Collections and Subrogation and Tax Lien Foreclosure cases, comprising Calendar 18. I currently handle approximately 2,400 active cases. I conduct scheduling conferences, status and motion hearings, make findings and enter final orders or judgments in both contested and non-contested proceedings. I also review and receive for filing stipulations of settlement, and preside over ex parte proof hearings and trials. In addition, on a rotating basis, I preside over felony presentments and misdemeanor arraignments.

During my approximately six-year tenure, from February 2001 through July 2007, in the Environment and Natural Resources Division, of the Department of Justice, my court appearances were occasional. I appeared in Court for status hearings, two motions hearings, and two trials.

During my tenure as a trial attorney in the Asset Forfeiture and Money Laundering Section of the Criminal Division, Department of Justice, I did not appear in court, as that was not the nature of the assignment.

From October 1993 until December 1998, I was a Senior Trial Attorney in the Commercial Litigation Branch of the Civil Division of the Department of Justice. There, I was in court much more regularly than in any other position that I held as a trial attorney. I was in court for status and motions hearings, as well as trials, in the U.S. Court of Federal Claims and the Board of Contract Appeals for the U.S. Department of Transportation. I

argued before the U.S. Court of Appeals for the Federal Circuit appeals from the Court of Federal Claims, petitions for review of Merit Systems Protection Board decisions, and appeals from the Court of Veterans Appeals. I was in court on average one day every two to three months from October 1993 to December 1998.

During my tenure with the Armory Board of the District of Columbia, I was never in Court, and in private practice, I was rarely in Court, and only in support of the partner handling a particular matter.

(2) What percentage of these appearances was in:

(a) Federal courts (including Federal courts in D.C.);

98 Percent

(b) State courts of record (excluding D.C. courts);

0 Percent

(c) D.C. courts (Superior Court and D.C. Court of Appeals only);
.05 percent: I handled a child custody case, *pro bono*, in my capacity as an associate attorney with Newman & Holtzinger.

(d) other courts and administrative bodies.
I handled one trial before the Board of Contract Appeals for the U.S. Department of Transportation, as sole counsel.

What percentage of your litigation has been:

(a) Civil; 100 Percent

(b) Criminal; While none of my litigation practice as a trial attorney concerned criminal matters, as a Magistrate Judge, I am required to rotate every 2.5 months for week-long stints and one weekend each year in felony presentments and misdemeanor arraignments (C-10). I have presided over such matters at least four full weeks, and two weekends, since my tenure as a Magistrate Judge.

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

I have tried two cases as associate counsel and two cases as sole counsel.

(4) What percentage of these trials was to

(a) a jury; 0 Percent
(b) the court (include cases decided on motion but tabulate them separately); 100 Percent

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

United States v. J&G-24, Inc., et al., 331 F. Supp. 2d 14 (D. P.R. 2004) Judge Raymond L. Acosta

This lawsuit involved two facilities in Puerto Rico that engaged in the manufacture of fiberglass products, resulting in a release of contaminants into the environment in violation of certain environmental laws of the United States. The United States instituted a legal action to recover costs that EPA expended in cleaning up the contaminants, penalties, and certain injunctive relief. Specifically, the case involved liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and cost recovery claims, CERCLA penalty claims, penalty claims under the Resource Conservation and Recovery Act ("RCRA"), and complex corporate piercing issues.

In March and April 2004, the United States engaged in a three-week trial seeking response costs and civil penalties under CERCLA and RCRA against the company and the individual proprietor. Judge Acosta rendered a 62-page decision granting the United States 100 percent of its requested costs in the amount of $3,149,652.77 (less $4,400), $750,000 in civil penalties, and $102,000 for Defendants' failure to comply with an EPA administrative order. The Court also awarded the United States $263,200 in civil penalties for Defendants' failure to respond to a RCRA information request. The Court pierced the corporation and found the individual proprietor liable for the civil penalties and response costs.

I participated in every phase of this litigation. I drafted and filed a partial motion for summary judgment. I participated extensively in the labor-intensive discovery, that involved the management, use, and production of voluminous documents, preparing and filing motions to compel production of documents, and motions for sanctions, and the taking and defending the depositions of fact witnesses and technical experts. I assisted in

the labor-intensive pre-trial preparations and court-submittals. And, I participated in the trial that spanned three weeks, where I was responsible for, among other duties, the direct examination of the United States' direct and indirect cost witnesses. I successfully qualified the Indirect Cost Witness as an expert. That witness demonstrated in a convincing, credible, and clear manner EPA's Indirect Cost Methodology and Annual Allocation Process, as well as explained how EPA's CERCLA Cost Accounting System tracks costs EPA incurs at sites. I also assisted in the preparation of the detailed post-trial filings.

The result was a complete victory for the United States. The decision provides useful precedent for other cases. The court's opinion contains very favorable language on the "arbitrary and capricious" standard in CERCLA cases, the burden defendants have in trying to show consistency of EPA's response actions with the National Contingency Plan (regulations governing how cleanup or response activities are to be conducted), piercing of the corporate veil and the "alter ego" theory, the validity of EPA's indirect cost methodology and other matters. The decision supports EPA's mission in safeguarding human health and protecting the environment of Puerto Rico.

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United States v. Tropical Fruit, et al., Civil Docket No. 3:97-cv-01442 (D. P.R. July 2001) Judge Daniel R. Dominguez

This case involved allegations concerning the way the 2,300-acre Tropical Fruit farm located in Guayanilla, Puerto Rico, applied pesticides in violation of federal law. Indeed, the method of application resulted in the pesticides drifting into the neighboring community and unnecessarily exposing the members of the community to those pesticides and their harmful health effects.

The case began in 1996, with EPA's issuance of an order requiring the farm to cease the spraying of pesticides in a way that caused them to drift into the neighboring community. When the farm did not comply, the Department of Justice upon behalf of EPA filed a complaint in the United States District Court for the District of Puerto Rico. The complaint alleged that the farm's application of the pesticides violated the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRE"), the federal pesticides law. The complaint also sought an order requiring the farm to comply with EPA's original order. The trial commenced on July 9, 2001, and was settled before its completion.

I joined the case during the last phase of discovery and a few months before the scheduled trial. I was responsible for ascertaining the financial impact of the case. In that vein, I was required to prepare for and take the depositions of the Defendants' cost witnesses, as well as prepare for their cross examination at trial. I took the deposition of the Defendants' accountant and defended the depositions of the United States' accountant and supervisory engineer. I assisted in the preparation of extensive and complicated pre-trial filings.

During the trial, I conducted, with the assistance of an interpreter the direct examinations of certain fact witnesses, viz., residents who lived near the farm and who complained of health effects resulting from the spraying of pesticides. Prior to trial, with an interpreter and agency counsel, I visited those residents at their homes and developed a rapport with them that resulted in very moving, credible, and effective testimony during the trial. Before any cost witnesses were called to testify, the United States and the Defendants reached a complete settlement of the case.

The case was extremely complex with many and varied legal, technical, and policy issues that required extraordinary coordination among many EPA offices. This case was significant in that the farm agreed to make meaningful changes in the way it applied pesticides to ensure that residents living nearby are protected from pesticide drift. The farm was also required to pay a penalty for its violation of the law. As a result of the settlement, the residents finally could expect to be protected to the fullest extent from unnecessary exposure to pesticides. The agreement also demonstrates that changes can be made to farming operations that will protect the public from exposures to pesticides.

The entire team was lauded for its tireless efforts and the capable manner in which the trial was conducted, as well as the collegiality exhibited. At the conclusion of the case, our client, the U.S. EPA, awarded the entire trial team its prestigious Gold Medal For Commendable Service.

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United States v. Timmons Corp., et al., 2006 WL 314457 (N.D.N.Y.)
Magistrate Judge Randolph F. Treece

In this case, the United States sought to recover against Timmons Corporation, in personam, and, in rem, against the real property at issue EPA's costs expended in cleaning up hazardous substances disposed of on the Adirondack Steel Superfund Site, located in Colonie, New York. The complaint also sought penalties against the company and its sole individual proprietor for their failure to respond to requests for information submitted by EPA pursuant to statute. After many months of discovery and attempts by the United States to settle this matter, the United States filed a motion for summary judgment.

On February 9, 2006, the United States District Court for the Northern District of New York issued a decision and order granting in its entirety the United States' motion for summary judgment, and striking all 19 affirmative defenses, as either factually unsupported or legally insufficient. The Court ordered Defendants to pay costs and interest totaling $1,246,399.99, ordered the filing of any financial information in the possession of the United States and the Defendants to assist the Court in determining Defendants' ability to pay a civil penalty for Defendants' failure to respond to EPA's information requests, and ordered that a judgment in rem be entered against the Site Property, and that the Property be sold.

I participated in every phase of this complex litigation from the filing of the complaint through discovery. I prepared and filed the 40-page brief in support of the motion for summary judgment.

This ruling provides useful precedent for other cases. It highlights the effectiveness of the rarely used in rem action, as another very effective tool in recovering Superfund monies, particularly where the Defendants may have an alleged inability to reimburse the United States for its cleanup and enforcement costs.

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While cases filed on Calendar 18 are typically resolved short of trial, during my tenure, I have presided over several trials, and have had to resolve a couple of zealously contested motions for judgment. I discuss briefly one of the trials, and one of the motions, below.

Long Fence Co., Inc., v. River Park Mutual Homes, Inc., No. 06 CA 005975 C
Magistrate Judge Alfred S. Irving, Jr. (Oral Decision)

This matter came before the Court upon Plaintiff Long Fence Company, Inc.'s breach of contract claims against Defendant River Park Mutual Homes, Inc. Long Fence contracted to perform certain perimeter fence construction work for River Park, which required a fair amount of concrete work, that proved to be defective. River Park paid approximately $443,441 to Long Fence for the work, but withheld approximately $83,527, which was at issue. After unsuccessful mediation, the trial was held on September 9, 2007. The question for the Court was whether Plaintiff had met its burden of proving that the amount Defendant withheld was due and payable under the terms of the contract, and particularly within the context of Defendant's affirmative defenses that an amount in question was withheld because Plaintiff's workmanship failed to conform to industry standards and because Plaintiff's work performance was the proximate cause of injury to Defendant's property for which Defendant incurred costs. After a full day of testimony, both from fact and expert witnesses, I found that Plaintiff did not meet its burden of proof that it was entitled to the entire amount withheld. I found that evidence showed that much of Long Fence's workmanship did not conform to industry standards, and that, of the $83,527 sought, Long Fence was only entitled to $4,824. I denied the parties' request for attorney's fees. The case was significant in that it was my first trial, as a Magistrate Judge. Both parties were represented by counsel, who were prepared, and were able to successfully move documents into evidence, a skill surprisingly lacking on my calendar. In addition, one of defendant's witnesses was qualified as an expert and proffered such testimony which I credited over plaintiff's witness' testimony. This was a case that should have been resolved during mediation.

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Yellow Book USA/Mid-Atlantic v. Liston Baylor, Individually & T/A American Spirit Movers, No 05 CA 007430 C (Oral Decision)
Magistrate Judge Alfred S. Irving, Jr.

Plaintiff filed this case to recover $10,385.00 in fees for advertising services. The parties reached settlement of this case on two separate occasions, with the second stipulation/settlement having been filed with this Court on September 21, 2006. The Agreement contained a "time is of the essence" provision. After several tardy payments, and a missed payment owing to a bank's mistake, which the Defendant immediately rectified, Plaintiff moved for judgment, seeking the entire amount set forth in the settlement, without accounting for the significant amounts Defendant had already paid. My predecessor granted the motion and entered judgment for the full amount sought. Defendant did not file a response to the motion, arguing, in a motion to alter or amend judgment, that she never received electronic service of the filing, and thus was unaware that a motion had been filed. I vacated the judgment, as I was persuaded by Defendant's argument that she never received Plaintiff's filing, as the Court and parties were experiencing computer glitches at the time, owing to the newly-minted electronic filing system instituted for all Civil Division matters. In order to assist me in determining whether and what amount was due an owing, I requested additional briefing to include an accounting of what had been paid, up to and including the filing of the various motions since the judgment entry date. Defendant argued that it had made all payments as required by the Settlement. The Settlement provided for certain additional payments, in the event of a breach. Upon additional briefing and oral argument, I found that Defendant had breached the time is of the essence provision, and that, rather than owing $18,016.19, as previously held, Defendant owed Plaintiff $4,727.14.

There was so much longstanding animus between the parties, a settlement would never have been achieved. The case tested my ability to reign in parties, who clearly "hated" each other, so that I could untangle the convoluted facts contained in the multiple filings to ascertain whether an amount was due and owing, and, if so, what that amount should be based upon the facts and the law. My ruling highlights the unforgiving effect of a time is of the essence clause in a contract.

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

First, I inherited many collections and subrogation cases that likely could have been resulted/resolved many, many months prior to the commencement of my tenure. I have nevertheless worked tirelessly, including expending long hours after the conclusion of the business day, on weekends, and over holidays to research, issue orders and decisions, and schedule hearings, where appropriate, concerning motions that were one- to four-years-old. Through my diligence and industry, I have addressed and/or resolved all of the outstanding motions filed between 2001 and 2006, and most, if not all, of the motions filed during the first half of 2007, while simultaneously remaining fairly current with motions filed and trials scheduled since my tenure. I take seriously my mission of resolving matters as soon as possible, recognizing that the Chief Judge recently instituted performance standards which all Civil Judges are to meet.

My Calendar involves many *pro se* litigants who pose a challenge. With respect to those litigants on the tax lien foreclosure calendar, there is a Resource Center in the witness room outside of my courtroom administered by very skilled pro bono attorneys who provide legal assistance to *pro se* litigants. The attorneys' assistance has been invaluable, particularly given the complexities of the subject matter and the potential for permanent loss of property. I refer each such litigant to the Center either before or after they have appeared before me. And, I make every effort to ensure that they have sufficient opportunity to explore their options and redeem their property if it is their wish.

Realizing early on that *pro se* litigants on the collections and subrogation side of the Calendar also could benefit from legal assistance, I sought to establish a Resource Center for those litigants. Through then Presiding Civil Judge Joan Zeldon, I received authorization to direct those litigants to the Resource Center that serves litigants on the Small Claims Calendar. While this service may not eliminate the challenge to *pro se* parties attempting to represent themselves, they are presented with information and guidance that they may not have otherwise had. If nothing else, they typically are presented with options that may assist them in reaching a reasonable settlement of the case brought against them.

Practitioners on my Calendar are themselves experiencing some challenges: I am now requiring strict adherence to and compliance with a General Order that I issued several

months ago, as well as the Court's Rules of Procedure. Standards were relaxed on this Calendar, which resulted in inefficiencies and wanting professionalism that, I believe, led, in part, to the enormous backlog, as well as to a significant delay in the resolution of matters on the Calendar. I am no longer allowing cases to languish on the Calendar until plaintiffs decide to litigate.

The Tax Lien Foreclosure calendar has experienced other significant challenges, stemming from the recently exposed tax embezzlement scandal in the D.C. Office of Tax and Revenue. The City, through the Office of Tax and Revenue, is a Defendant in all of the tax lien foreclosure cases and, because of the staffing problems resulting from the scandal, resolution of cases on the Calendar moved at a snail's pace. In an effort to address this problem, and with the support and encouragement of former Presiding Civil Judge Joan Zeldon, and current Presiding Judge Stephanie Duncan-Peters, and Deputy Presiding Judge Melvin Wright, I have facilitated and presided over two meetings in Judge Zeldon's courtroom involving the Office of Tax and Revenue, the D.C. Office of the Attorney General, and the practitioners on the Calendar, to address concerns about the District of Columbia's failure to issue timely refunds and deeds so that cases can be resulted with a dismissal. Once redemption has occurred or foreclosure of the right of redemption has been effected against all parties with an ownership interest in the subject property, all such defendants except for the City are dismissed. The case remains open, however, until the City, as the remaining defendant, issues appropriate refunds and deeds. The staffing issues, the reorganization of the office and the continuing investigations have resulted in the parties' inability to reach full resolution of their cases. The litigants have expressed appreciation for the Court's facilitation in this area, as there has been significant improvement in the resolution of the oldest cases on the Court's calendar.

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

I currently hold judicial office as a D.C. Superior Court Magistrate Judge. I was appointed to this position effective July 23, 2007, to serve a four-year term. Superior Court is a trial court of general jurisdiction for local matters. I was appointed as a non-family magistrate judge and, as such, can be assigned to handle non-jury civil matters, as well as conduct preliminary hearings in criminal cases.

Attached are four copies of orders addressing contested factual or legal issues that I have written during my service (Attachment B). I have not issued any published opinions.

In virtually all of my cases, after each hearing or trial, I issue detailed, oral orders. In other matters, the orders typically adhere to a pre-approved form. I have not attached these orders because of the sheer number of them.

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

I have not had a decision reversed or criticized on appeal.

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

No

21. Political activities and affiliations.

- List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant. None

- List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years. None

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

I have not made any political contributions during the last five years.

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

No

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

No

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

No

II. POTENTIAL CONFLICTS OF INTEREST

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

I am currently serving as a D.C. Superior Court magistrate judge and, if confirmed, will serve on the Court as an associate judge. My current position on the Court does not pose any conflict if I should be confirmed.

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

None

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

None

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

None

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

None

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

None

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

   I do not foresee any conflicts of interest that I am aware of. My financial affairs are arranged in order to minimize any potential conflicts of interests. This was my practice as a former Department of Justice attorney, as well. If a potential conflict of interest arises, I will carefully consult the Code of Judicial Conduct, related opinions and Court cases and our judicial ethics committee and take all requisite and appropriate action to resolve such conflict.

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

   Yes

III. FINANCIAL DATA

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

REDACTED

IV. DISTRICT OF COLUMBIA REQUIREMENTS

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

1. Are you a citizen of the United States?

   Yes

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

   Yes

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

   Yes. I was admitted to practice law in the District of Columbia on March 13, 1989.

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

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

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

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

D. Upon what grounds is that eligibility based?

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

Yes

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

Yes. REDACTED

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

No

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

No

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

AFFIDAVIT

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

Alfred Sherwood Irving, Jr.

SUBSCRIBED and SWORN TO before me this 23rd day of Sept 20 08.

Notary Public

The District of Columbia SS
subscribed and sworn to before me
this 23 day of Sept 2008

Lisa Renee Johnson
Notary Public, DC
My commission expires 10/14/2011

PREPARED STATEMENT OF SENATOR DANIEL K. AKAKA

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE
NOVEMBER 17, 2008

This hearing will come to order.

Good afternoon. I want to welcome our nominees, along with their family and friends, to the Committee today.

Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Kathryn Oberly to be an Associate Judge on the District of Columbia Court of Appeals and Alfred Irving, Jr., to be an Associate Judge on the District of Columbia Superior Court.

I am pleased to be holding a hearing today to consider such distinguished and well-qualified candidates. I have been impressed with the caliber of the recent nominees to the District of Columbia bench, and Ms. Oberly and Judge Irving are no exceptions to that pattern.

Normally, we would not move forward with nomination hearings so late in the session. However, these two nominees clearly are well qualified, and we have not identified any potential concerns that warrant further investigation. That is why we are working hard to consider these nominations in the final few days of the 110th Congress.

Both of the nominees before us have an impressive legal backgrounds. Ms. Oberly currently is General Counsel of Ernst & Young. She has served with distinction in the public sector at the Department of Justice as well as the private sector, and she has argued numerous cases before the United States Supreme Court. Judge Irving currently is a magistrate judge on the D.C. Superior Court, and he also spent fourteen years as an accomplished attorney with the Department of Justice.

I look forward to this opportunity to hear from both nominees. Thank you.

PREPARED STATEMENT OF SENATOR GEORGE V. VOINOVICH

HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE
MONDAY, NOVEMBER 17, 2008

Thank you, Senator Akaka. I want to extend a welcome to the nominees appearing before us today - we appreciate your time and your willingness to serve the District of Columbia.

It takes a unique individual to be a judge because judges have the significant responsibilities of protecting citizens' rights and liberties as well as upholding and interpreting the law. I trust that if confirmed, both of you will fulfill these responsibilities with honor, courage, and character befitting the court.

This subcommittee spends a great deal of time reviewing the federal government's efforts to find the best and brightest employees in an era when we are losing highly skilled potential employees to a private sector that in many instances offers higher salaries. I think the District of Columbia faces similar challenges in its efforts to find the best and the brightest for its court system.

Mr. Chairman, I have reviewed both of these nominees' biographical questionnaires and believe that the District of Columbia has found two such individuals in these nominees.

I note that both of the nominees have substantial experience in both the private and public sectors in a number of different subject areas.

Ms. Oberly has been nominated to the D.C. Court of Appeals. She is currently the General Counsel for Ernst and Young and was previously in private practice and also spent more than ten years at the Department of Justice.

Judge Irving has been nominated to be an Associate Judge of the D.C. Superior Court. He is currently a Magistrate Judge on that court and was previously in private practice and spent almost fifteen years at the Department of Justice.

Since the Chairman has done so, I won't go through any more of these nominees' qualifications or experiences, but look forward to hearing from them directly about their education, experience, and why they have sought their respective judgeships.

Again, I want to thank both of you for your time today and your willingness to serve the District of Columbia.

Mr. Chairman, I hope that the Committee will vote on both of these nominations in the very near future.

Thank you.