

**CONFIRMATION HEARINGS ON FEDERAL  
APPOINTMENTS**

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**HEARINGS**

BEFORE THE

**COMMITTEE ON THE JUDICIARY**

**UNITED STATES SENATE**

**ONE HUNDRED TENTH CONGRESS**

SECOND SESSION

—————  
MAY 7, JUNE 11, SEPTEMBER 9, AND SEPTEMBER 23, 2008

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**PART 4**

—————  
**Serial No. J-110-8**

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Printed for the use of the Committee on the Judiciary



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**NOMINATION OF HELENE N. WHITE, OF MICHIGAN, TO BE CIRCUIT JUDGE FOR THE SIXTH CIRCUIT; RAYMOND M. KETHLEDGE, OF MICHIGAN, TO BE CIRCUIT JUDGE FOR THE SIXTH CIRCUIT; AND STEPHEN JOSEPH MURPHY III, OF MICHIGAN, TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN**

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WEDNESDAY, MAY 7, 2008

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

The Committee met, pursuant to notice, at 10:11 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Cardin, Specter, Hatch, Grassley, Kyl, Sessions, Cornyn, Brownback, and Coburn.

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

Chairman LEAHY. Good morning. I have been speaking during the last several weeks about the progress we have made and are making in repairing the terrible damage done to our confirmation process and about our progress in reducing judicial vacancies.

The American people do not want judicial nominations rooted in partisan politics. They want Federal judges who understand the importance of an independent judiciary. Our independent courts are a source of America's strength, endurance and stability. Our judicial system has been the envy of the world. The American people expect the Federal courts to be impartial forums where justice is dispensed without favor to the right or the left or to any political party or faction. They are the only lifetime appointments in our Government, and as a result, these nominations matter a great deal. The Federal judiciary is the one arm of our Government that should never be politicized or made political, regardless of whether we have a Democratic President or a Republican President.

Now, today we see a demonstration of the progress about which I have been speaking and for which I have been working. Today's hearing moves us closer to confirming President Bush's nominations to the last two vacancies on the Sixth Circuit Court of Appeals. This completes the task I began when I became Chairman

in the summer of 2001, when the Sixth Circuit was in turmoil and nominations had been road-blocked for years. At that point there were four vacancies on the Sixth Circuit. I thought I would go through some of this history for those who may be new to all this or may not remember this.

When I scheduled a hearing and a vote for Judge Julia Smith Gibbons, and then for Judge John Marshall Rogers, we were able to break an impasse that had lasted for 5 years. The other party had blocked all of President Clinton's nominees. I quickly moved to President Bush's. And if we confirm Judge White and Mr. Kethledge, that would complete the process by filling the two remaining vacancies on the Sixth Circuit.

I continue in this Congress, and I will continue with a new President in the next Congress, to work with Senators from both sides of the aisle to ensure that the Federal judiciary remains independent and able to provide justice to all Americans, without fear or favor.

The Michigan vacancies on the Sixth Circuit have proven a great challenge. I do want to commend Senator Levin and Senator Stabenow for working to end the impasse. I have urged the President to work with the Michigan Senators and, after 7 years, he has. Last month our extensive efforts culminated in a significant development that can lead to filling the last two vacancies on the Sixth Circuit, both vacant so long that they have now been classified as "judicial emergencies."

This accomplishment stands in sharp contrast to the actions of my friends, the Senate Republicans who refused to consider any—any—of the highly qualified nominations to the Sixth Circuit Court of Appeals during the last 3 years of the Clinton administration. Those nominees included Judge White; also, Kathleen McCree Lewis, an accomplished attorney and the daughter of former Solicitor General of the United States and former Sixth Circuit Judge Wade McCree; and Professor Kent Markus. Professor Kent Markus was supported by his home-State Senators, both Republicans.

So, accordingly, I am delighted to welcome Judge Helene White to the Committee. Judge White has served on the Michigan Court of Appeals during the past 15 years, having been elected by the people of Michigan in 1992. Before that she served for a dozen years on the Wayne County Circuit Court, a court of general trial jurisdiction, the Common Pleas Court for the city of Detroit, and the 36th District Court of Michigan. But here is how she is described by the Bush White House on their website. President Bush's website described her as "an experienced and highly qualified judge, who is known for her intellect, work ethic, and demeanor." I do not want to upset President Bush by saying this, but I totally agree with the President on this issue. In addition, she has been active as a member of the legal community and of community organizations including COTS, the Coalition on Temporary Shelter, something my wife and I support in Burlington, Vermont; JVS, Jewish Vocational Services; and the Metropolitan Detroit Young Women's Christian Association.

Now, she was first nominated by President Clinton to a vacancy on the Sixth Circuit in January 1997, more than 11 years ago, but the Republican-led Senate refused to act on her nomination. She

waited in vain for 1,454 days for a hearing, before her nomination was withdrawn in March of 2001. Hers was one of the scores—actually, about 60—of qualified judicial nominees who were pocket filibustered during that time. But as I said, last month President Bush reconsidered, renominated her, and according to his website has very high praise for her.

Our second Sixth Circuit nominee is Raymond Kethledge. Mr. Kethledge is a young man who has spent 8 years in legal practice in Michigan beginning as an associate in the litigation department of Honigan Miller Schwartz and Cohn, later as a partner at the boutique litigation firm of Feeney Kellett Weinner and Bush and, since the summer of 2003, as a founding member of his own firm, that of Bush Seyferth Kethledge and Paige. He also spent a year as an in-house counsel at Ford Motor Company in their general counsel's office. I am also glad to see that he has performed pro bono legal services, something I have always thought lawyers should do and something that the managing partner in the law firm I was in when I first came out of law school insisted that everybody perform pro bono service, as did he.

Our third nomination for consideration today is the President's recent nomination of Stephen Joseph Murphy III to be a United States District Judge for the Eastern District of Michigan. That vacancy is also classified as a "judicial emergency."

When on April 15 he announced the renomination of Judge White, I commended the President. Since then I have sought to expedite consideration of these Michigan nominees in recognition of the breakthrough represented by the agreement reached between the President and the Michigan Senators. The Michigan Senators have always been interested in a bipartisan solution to judicial vacancies on the Sixth Circuit. I remember, Senator Levin, you had worked, and Senator Stabenow, with former Governor Engler, actually a Republican Governor, and reached an agreement that he was strongly in favor of but was rejected by the White House. And you had previously proposed a bipartisan commission as a way to reach consensus in Michigan. Today, I thank and commend the Senators from Michigan, and again I thank the President for finally working with them and us.

In light of that cooperation, we have taken extraordinary steps to expedite this hearing. I thank all members for their cooperation. I recently received a letter from Senator McConnell and Senator Specter in which they note the importance of our receiving updated ABA peer reviews for these new nominations. I want Senator Specter to know that I agree with him that those are important. The ABA Standing Committee has been working diligently to provide reviews on the recent nomination of Justice Steven Agee to the Fourth Circuit as well as other nominations. They have been helpful, and we appreciate their efforts. Given the ABA ratings we have received in connection with the prior nominations of Judge White and Mr. Murphy, I expect the new ratings will not present a concern about qualifications. As I have assured Senators McConnell and Specter, I will seek to ensure that we proceed in an orderly fashion, that all Senators have a fair opportunity to question the nominees, and that we have all the materials we need in order to fairly consider these nominations.

Now, I am sure there are some who prefer partisan fights designed to energize a political base during an election year. I do not. The Republican Senate majority during the last 5 years of the Clinton administration more than doubled vacancies on our Nation's circuit courts. They went from 12 to 26 to 32 during the transition. We have been able to reverse that trend. We have reduced circuit vacancies by almost two-thirds. Today there are fewer circuit court vacancies than at any time since the 1996 session. In fact, our work has led to a reduction in vacancies in nearly every circuit. We are heading toward reducing circuit court vacancies to single digits for the first time in decades. With these nominations, we are also poised to add the Sixth Circuit to the other five circuits without a single vacancy, thanks to our efforts.

I am determined to prioritize progress, not politics, and focus the Committee on those nominations on which we actually can make progress, those on which the White House has finally begun to work with the Senate. Of course, the alternative is to risk becoming embroiled in contentious debates for months and then foreclose any of the progress we have made. We saw it happen last year when we had a controversial nomination took 5½ months of debate after a hearing before Senate action was possible. We saw what happened during the last several months of the last Congress. There were many hearings on many controversial nominations, and everything slowed up. I like to make progress, and that is what we have tried to do. And during the years that I have been privileged to serve as Chairman of this Committee, we have been able to.

Senator Specter.

**STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM  
THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman.

I think that it bears repeating that we are approaching a hearing for Judge White which does not conform with the practices of the Committee and is an unusual rush to judgment. I begin with the letter sent to the Chairman and me yesterday from the American Bar Association raising concerns and objecting to the hearing in advance of the ABA report.

I look at the sequence with Judge White's nomination on April 15th of this year, 21, 22 days ago; the questionnaire not completed until April 25th; FBI report not completed until April the 25th; and at the time sequence where nominations have been handled in the past with deliberation and not this racetrack approach.

The comments in 2001 were noted in the ABA publication which said, "Several key Democratic Senate leadership, most significantly Patrick J. Leahy of Vermont, say that"—

Chairman LEAHY. Leahy. Not Leehy. Leahy.

Senator SPECTER. Excuse me, but I have the floor.

Chairman LEAHY. I just want to—

Senator SPECTER. Excuse me. I know that is not regarded around here, Mr. Chairman, but I have the floor. If you have a correction, you may have a chance to do it.

"\* \* \* say that they will wait for the ABA's input before moving forward on any nomination."

When a hearing was scheduled for Peter Keisler 33 days after his nomination, all of the Committee Democrats signed a letter to me asking for a postponement. One of the concerns was, "Given how quickly the Keisler hearing was scheduled, the ABA has not even completed its evaluation of this nominee." The letter said, "We should not be scheduling hearings for nominees before the Committee has received the ABA ratings."

Senator Schumer said, "So let me reiterate some of the concerns we expressed about proceeding so hastily on this nomination. First, we have barely had time to consider the nominee's record. Mr. Keisler was named to this seat 33 days ago, so we are having this hearing with astonishing and inexplicable speed." That does not compare with the speed of this hearing.

The situation is even in more stark contrast when we take a look at how long people have been waiting for hearings or action by the Committee. Peter Keisler's nomination has been pending for more than 675 days. Robert Conrad has waited 290 days for a hearing and has been the subject of critical, really defamatory statements in this Committee room about being anti-Catholic without being given a chance to defend himself. Stephen Matthews, to the Fourth Circuit with a judicial emergency, has been waiting over 240 days.

Since the hearing has been scheduled, the Republican members are prepared to proceed. We have accommodated schedules. I met for the better part of an hour yesterday with Judge White. But it would be my hope that the Committee will schedule hearings for others like Conrad and Matthews and others.

It is hard to see the judicial wars being exacerbated and intensified in the U.S. Senate, but I see that coming if, as stated, this is the last of the circuit court nomination hearings. This has been a battle to the detriment of the American people for the last 20 years. In the last 2 years of the Reagan administration, the Democrats controlled and stonewalled. The same in the last 2 years of the Bush I administration. And in the last 6 years of the Clinton administration, Republicans were even worse. Hard to be worse, but Republicans were. And I voted with the Clinton nominations when they were qualified. And the Senate almost came apart in 2005 with the filibusters and the so-called constitutional or nuclear option.

And it had been my hope that Senator Leahy and I would have structured a new era in the Senate. In the Roberts hearing, Senator Leahy took a courageous leadership position supporting Roberts for Chief Justice. Counting the Independent in the Senate, a majority of the Democrats, 23, voted for Roberts. And it had been my hope that we would come to a truce. But the warfare goes on, and the American people are in the firing line.

There are judicial emergencies all over this country, exemplified by the Fourth Circuit where people need a day in court and are not getting it, people who have automobile accidents and are out of work and have medical bills, cannot get redress in the courts. Verdicts cannot be heard on appeal. We do not have to paint a graphic picture of what judicial vacancies mean. And this is all to the detriment of the American people. But I tell you, Mr. Chairman, a longstanding trend of some 40 years that is becoming very, very personal, and if it continues, there is going to be a new Congress,

there may be a President of a different party, and what has happened will look modest in comparison to what the scorched earth may be.

So I would urge you to reconsider. I would urge you to use some of the approach which you and I took to the confirmation of Roberts and Alito. When the White House wanted to have the Roberts hearings begin on August 28th, I consulted with you, and I thought your objections were sound. And the hearings began after Labor Day. Your view prevailed because I thought it was right over the White House view. Similarly, the White House wanted Alito—I know the time, Mr. Chairman. I also know when you arrived. The White House wanted Alito confirmed before Christmas, and you objected, and you were right. And I agreed with you. Later, the President personally told me that the timing was correct. So here you see, Senator Leahy, you and he have agreed more than once—not much more than once, but occasionally more than once.

But I do hope for the sake of the country and for the sake of the Senate that you reconsider this nomination-confirmation process. Thank you.

Chairman LEAHY. Well, thank you. I am glad to hear the President said that about the timing to you. I wish he had said it to me. In fact, he seemed surprised several months after the Roberts nomination—when I told him I had voted for Roberts, he seemed surprised to hear that I had.

I would note on the ABA, we are not going to vote on any of this until the ABA reports are in. As you know, there is a precedent for this. When you were Chairman, we held five hearings under you as Chairman before ABA ratings came in, including one where the rating turned out that the person was not qualified. And I know that people have been waiting. Judge Helene White has been waiting for 11 years. Mr. Kethledge and Mr. Murphy have been pending longer than Conrad and Matthews that you mentioned on their own terms here in Michigan. But let's hear from one of the most senior members of the Senate, Senator Levin—he has been very patiently waiting—and Senator Stabenow.

**PRESENTATION OF HELENE N. WHITE, NOMINEE TO BE CIRCUIT JUDGE FOR THE SIXTH CIRCUIT; RAYMOND M. KETHLEDGE, NOMINEE TO BE CIRCUIT JUDGE FOR THE SIXTH CIRCUIT; AND STEPHEN JOSEPH MURPHY III, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN, BY HON. CARL LEVIN, A U.S. SENATOR FROM THE STATE OF MICHIGAN**

Senator LEVIN. Mr. Chairman, thank you and Senator Specter and members of the Committee for holding the hearing today. We are pleased to be here to introduce three Michigan nominees: Helene White and Raymond Kethledge, whom the President has nominated to the Sixth Circuit Court of Appeals; and Stephen Murphy, whom the President has nominated to the Eastern District of Michigan.

Judge White has been a judge on the Michigan State Court of Appeals for 15 years. Before that, she served as judge on the Wayne County Circuit Court, which is our top trial court, for 10 years. She graduated with honors from Barnard College, Columbia

University, and earned her J.D. at the University of Pennsylvania Law School.

Judge White, as the Chairman mentioned, was previously nominated by President Clinton for a vacancy on the Sixth Circuit starting in 1997. The nominations were returned to the President without a hearing, as was the nomination of Kathleen McCree Lewis. And I want to make reference to Kathleen McCree Lewis here today for two reasons. First, I want to honor her memory in this setting. I also want to make reference to her because there is, in a letter which you have received from the widower of Judge Susan Bieke Neilson, whose vacancy is up for nomination today, a letter to the Chairman and the Ranking Member of this Committee from Judge Neilson's husband. And Judge Neilson served on the Sixth Circuit for a tragically short period of 3 months, and, again, it is her seat on the Sixth Circuit that is the open seat to which Judge White has been nominated. This is a few excerpts from the letter from Jeff Neilson, who is the spouse, the widower of Judge Neilson.

"Senators Leahy and Specter: I thought it appropriate to correspond with you upon my becoming aware of the nomination of Judge White to fill the vacancy on the United States Court of Appeals for the Sixth Circuit occasioned by the death of my wife, Susan Bieke Neilson, and to state without reservation that Susan would be absolutely delighted that Helene would be her successor on the Sixth Circuit." And then he makes reference to their fondness for Kathy McCree Lewis, and he closes by saying, "I believe that Helene will reflect the best qualities of both Susan and Kathleen in the performance of her duties, so that although death has precluded their presence on the Sixth Circuit, they will be there in spirit."

The second nominee is Ray Kethledge. He is currently a partner at Bush Seyferth Kethledge and Paige in Troy, Michigan. Before joining the firm, Mr. Kethledge served as a law clerk to Justice Anthony Kennedy on the U.S. Supreme Court, having earlier clerked for Judge Ralph Guy of the U.S. Court of Appeals for the Sixth Circuit, a very beloved judge. Mr. Kethledge also served as judiciary counsel to Senator Spence Abraham, our former colleague, whom we all know, from 1995 to 1997, and Ray Kethledge graduated magna cum laude from the University of Michigan Law School in 1993.

Finally, Stephen Murphy, who has been nominated to the District Court for the Eastern District of Michigan, currently serves as the U.S. Attorney for the Eastern District. Prior to his service as United States Attorney, Mr. Murphy was an attorney with General Motors' legal staff in Detroit and worked for the U.S. Department of Justice for more than 12 years. He is a 1987 graduate of the St. Louis University School of Law.

Finally, I want to again thank this Committee for your efforts to promote a resolution of this long unresolved matter, and I look forward to working with our colleagues to move these three nominations hopefully through the Senate.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much, Senator Levin.  
Senator Stabenow.

**PRESENTATION OF HELENE N. WHITE, NOMINEE TO BE CIRCUIT JUDGE FOR THE SIXTH CIRCUIT; RAYMOND M. KETHLEDGE, NOMINEE TO BE CIRCUIT JUDGE FOR THE SIXTH CIRCUIT; AND STEPHEN JOSEPH MURPHY III, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN BY HON. DEBBIE STABENOW, A U.S. SENATOR FROM THE STATE OF MICHIGAN**

Senator STABENOW. Well, thank you, Mr. Chairman, for holding this hearing, and while we all recognize the checkered past as it relates to judicial nominations, I would, with all due respect, just indicate that we have here today two Democratic Senators that are here introducing the President's nominations. And it seems to me this is the process that we want to have happen, for people to be coming together. And I hope this is viewed as a positive reflection of the process of working together.

I am very pleased to join Senator Levin in being here to welcome and introduce Judge Helene White and Mr. Raymond Kethledge and also Mr. Stephen Murphy III and their families. It is wonderful to see their families and children, and we know this is a very special day for all of them.

As has been indicated, Judge Helene White brings 30 years of distinguished legal experience to the Federal bench. She has been a State judge since 1981, has served on both the 36th District Court for the city of Detroit and Wayne County Circuit Court. Since 1992, she has served on the Michigan Court of Appeals. She is a graduate of the University of Pennsylvania Law School and the Barnard College at Columbia University. I want to welcome Judge White and her family. It was wonderful to meet her two children today.

Mr. Raymond Kethledge graduated from the University of Michigan and the University of Michigan Law School. I have to say as a Michigan State University graduate, this is a real historic moment here that I am supporting a University of Michigan graduate. Mr. Kethledge has worked for Senator Spence Abraham as his judicial counsel and followed that by clerking for both Justice Kennedy on the Supreme Court and Judge Ralph Guy on the Sixth Circuit of Appeals, and he is currently in private practice. So we want to welcome Mr. Kethledge and his family as well, and I was so pleased to meet his son and daughter today as well. We know it is a special day for them.

And, finally, I would like to introduce Stephen Murphy. He is a graduate of St. Louis University School of Law. Mr. Murphy's practice as both a Federal prosecutor and defense attorney in his practice, business litigation as an attorney for General Motors. Since 2005, he has served as the U.S. Attorney for the Eastern District of Michigan. Mr. Chairman, we welcome Mr. Murphy and his family as well, and very much appreciate your taking the time of the Committee for this hearing.

Thank you.

Chairman LEAHY. Well, thank you very much, and I know both of you, I understand, have other committees you are supposed to be at, so I appreciate your being here. Thank you.

As Senator Levin and Senator Stabenow step down, we will just take a minute so we can set up to have the three nominees come back up to the table. Thank you very, very much.

Chairman LEAHY. Would you please stand and raise your right hand? Do you solemnly swear that the testimony you will give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge White. I do.

Mr. Kethledge. I do.

Mr. Murphy. I do.

Chairman LEAHY. Thank you. Please be seated.

Traditionally what we do at this point is ask for any opening statement from any one of you, and the tradition is I would ask you to be brief. But I would ask you in doing that if you would first—and let's begin with you, Judge White—if you have members of your family or associates or friends who are here, please introduce them, because that actually goes into the record, and someday in the White Library or the Kethledge Library or the Murphy Library, somebody will look back there and say, "I was there at that hearing."

Judge White, go ahead. Do you have family members here?

Judge White. I do.

Chairman LEAHY. Please introduce them. There should be a little red button. If the light comes on, it is on. He is going to show you. Okay. Go ahead.

**STATEMENT OF HELENE N. WHITE, NOMINEE TO BE CIRCUIT  
JUDGE FOR THE SIXTH CIRCUIT**

Judge WHITE. Thank you very much, Chairman Leahy. I will then begin by introducing the friends and family who have joined me today. Over the years, I have been blessed with their love and support, and I am honored that they took the time to come today.

I have some friends from Michigan who are with me: Jane Schelberg, Cathy Radner, and Elaine Fieldman. And I have friends, I have extended family: from Washington State Amy Regan, and from Washington, D.C., Josh Levin and his family. And, of course, I have my immediate family, and that would be my sister and her husband, Nancy and Larry Roth, from New York; and my precious children, Benjamin and Francesca. And I omitted my friends from law school: Nancy Walters from Boston, and Ruth Katz from Washington, D.C.

Chairman LEAHY. When you get a copy of the transcript, you can double-check the spelling of the names, because they will all be interested in. I am delighted to see your children here. I have a granddaughter named Francesca. That is a wonderful name.

Judge WHITE. And I would like to thank you, Chairman Leahy, Ranking Member Specter, members of the Committee, for this opportunity to appear before you. And I would like to take this moment to express my deep gratitude to President Bush for nominating me to this high office. I am both awed and honored and humbled by the trust that he has placed in me by making this nomination.

Chairman LEAHY. Thank you. Is that it?

Judge WHITE. Yes, sir. Thank you.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Helene Nita White

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

United States Circuit Judge for the Sixth Circuit

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

Office: Michigan Court of Appeals  
3020 West Grand Boulevard, Suite 14-300  
Detroit, Michigan 48202

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

1954; Jackson Heights, New York

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

Divorced; 2 dependent children

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

University of Pennsylvania Law School, 1975-1978; J.D., 5/78

Barnard College, Columbia University 1972-1975; A.B. cum laude, 7/78

Harvard University, summer 1971, no degree, (attended between 11th and 12<sup>th</sup> grades, receiving college credit used for accelerated college graduation.)

7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other

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

Employment:

1/93 to present  
Michigan Court of Appeals  
3020 West Grand Blvd. Ste 14-300  
Detroit, Michigan 48202  
Judge

1/83 to 1/93  
Wayne County Circuit Court  
City-County Building, 2 Woodward Avenue  
Detroit, Michigan 48226  
Judge

9/81 to 1/83  
36th District Court (successor court to Common Pleas Court)  
421 Madison Avenue  
Detroit, Michigan 48225  
Judge

1/81 to 9/81  
Common Pleas Court for the City of Detroit  
421 Madison Avenue  
Detroit, Michigan 48225  
Judge

9/78 to 8/80  
Michigan Supreme Court  
Michigan Hall of Justice  
925 Ottawa  
Lansing, Michigan 48909  
Law Clerk to Justice Charles L. Levin

5/77 to 8/77  
Morgan, Lewis & Bockius  
1701 Market Street  
Philadelphia, Pennsylvania  
Summer Associate

## Other Affiliations:

- 5/76 to 8/76; NAACP Legal Defense Fund; Volunteer Intern
- JVS (formerly Jewish Vocational Services)  
Board of Directors, 2002 to present, Vice President, 2005 – present;
- Detroit Institute of Arts  
Board of Directors 2002 to present; Board of Directors, Founders Junior Council, 1991-1997;
- Michigan Legal Services; Board of Directors, 1993 to present
- Jewish Federation of Metropolitan Detroit; Board of Governors, 1995-present
- American Jewish Committee  
Board of Governors, 1995 to present; Detroit chapter board, 1989-95; Detroit chapter vice-president, 1992-95; Board, Belfer Center for American Pluralism, 1996-2002; Board, Blaustein Institute for Human Rights, 1996-2004;
- COTS (Coalition on Temporary Shelter)  
Board of Directors, 1986 to 1995 and 1998 to 2006; President, 1992 to 1994
- YWCA Metropolitan Detroit Board of Directors, 1986 to 1987, 1991-1994
- Urban Caring Institute, Board of Directors, 1996-
- Partner, NJH Associates, NJHA Associates, and RNJA, family investment partnerships;
- Powder 2001 LLC – Limited Liability Corporation holding a condominium unit in Copper Mountain, Colorado;
- MWCM LLC, Real estate development partnership, inactive member
- Director, White-Roth Family Foundation
- Director, Sigmund and Sophie Rohlik Foundation
8. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

I have not served in the military.

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

American Jewish Committee, Detroit Chapter, Centennial Celebration Outstanding Leader; Israel Bonds Attorney Division Eleanor Roosevelt Humanitarian Award; Spirit of Detroit Award; Detroit Human Rights Department Women's Committee Horizon Award; Rated "Outstanding" by Detroit Bar Association in Court of Appeals and Circuit Court elections.

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

Michigan Court of Appeals, Rules Committee, Chair 2002 - present; member, Settlement Committee;

Appellate Bench-Bar Conference, planning committee 1995-96, 1998, 2004;

American Bar Association, Judicial Administration Division, Appellate Judges Conference

American Judicature Society

Women Lawyers Association of Michigan

Detroit Bar Association

Wolverine Bar Association

National Association of Women Judges (Chair, publicity committee, 1984-85; regional membership, 1985-88) International Association of Women Judges

Michigan Judges Association

Circuit Court Docket Review Committee, 1990-92 (responsible for devising improved case management practices and procedures, monitoring the dockets of all judges, and assisting judges who fall behind)

Circuit Court Mediation Committee, 1986-88

Circuit Court Domestic Relations Committee, 1984-88

Circuit Court Executive Committee, 1988-92

**11. Bar and Court Admission:**

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

Michigan; February 14, 1979 – no lapse in membership

Pennsylvania; February 14, 1979 – voluntary inactive status  
(Because I do not practice in Pennsylvania, I periodically assume inactive status under rules of the Pennsylvania Disciplinary Board.)

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

Michigan State Courts; February 14, 1979  
Courts of Commonwealth of Pennsylvania; February 14, 1979

**12. Memberships:**

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

Detroit Institute of Arts - Founders Society member for over 20 years; DIA Board of Directors, 2002 – present; Vice chair, Directors Committee 2005 - present; Founders Junior Council board member 1991-1997; Chair, Nominating Committee 1994-95; Co-chair, Grants Committee, 1995-1996; Advisory board, 1997-present;

American Jewish Committee – member for over 20 years; Board of Governors, 1995-present; Executive Committee, 2002 – present; Chair, Emerging Leadership Counsel, 2003 – present; Task Force on Governance 2005; Board, Belfer Center for American Pluralism, 1996-2002; Board, Jacob Blaustein Institute, 1996 –2004; Detroit chapter board, 1989-95; chapter Vice-President, 1992-95; chapter Advisory Board 1996 – present;

Jewish Federation of Metropolitan Detroit - Board of Governors, 1995-present; Israel and Overseas Committee 2000 – 2006, 2007 – present; Chair, PACT Committee, 2003 – 2006; Planning and Allocations Steering Committee, 1998-2001; Community Services Division, 1995 – 2001, Chair, 1998 – 2001;

Chair, Priorities Setting Committee for Families in Crisis; Community Resources Committee; Community Outreach and Education Committee, 1996-1999; Co-chair, Leadership Continuum II, 1994-1995; Chair, Program Committee Business and Professional Women's division, 1992—1994; Women's Division Board, 1992-1996;

JVS (formerly Jewish Vocational Services) – Board, 2002 – present; Vice President 2005 – present;

Detroit Golf Club – social member, 2000 to 2006; golf member, 2006 to present;

Congregation Shaarey Zedek – member 1993 to present;

Detroit Zoological Society – member for over 20 years;

Detroit Science Center – member 1996 - present

Michigan Supreme Court Historical Society, member, 1992 - present

NAACP Life Member for over 20 years

Hadassah Life Member for over 20 years

University of Pennsylvania Law School Alumni Association

American Arabic & Jewish Friends, long-time member; co-chaired Essay Contest Scholarship Committee

Other membership organizations to which I have belonged over the years:

ACLU

Barnard Alumni Association

Biddle Law Library Associates

Children's Museum Friends

Detroit Interfaith Roundtable, NCCJ

Economic Club of Detroit

Friends of the Detroit Public Library

Goodfellows

Michigan Democratic Party and local Democratic Clubs

Trade Union Leadership Council (TULC)

Women's Economic Club

YWCA of Metropolitan Detroit, Board of Directors 1986-87, 1991-1994;

Detroit Women's Forum – member 1985 – 2002; advisory board 1990-2002

Sojourner Foundation Advisory Board 1985 - 2000

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization

that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of these organizations invidiously discriminate to my knowledge. It is possible that some of the Jewish organizations may have limited membership to members of the Jewish faith and their families. If so, this policy would not have affected the organizations' inclusion of persons of all faiths in activities or provision of services.

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

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

Co-author, "Towards Excellence in Case Flow Management," a monograph on the Wayne Circuit Court published by the National Center for State Courts, 1991.

Co-editor, Torts: Michigan Law and Practice 2d Ed, published by the Institute of Continuing Legal Education, 2000.

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

None

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

None

- d. Please supply four (4) copies; transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer

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

Over the years, I have participated as a member of various panel discussions at bench-bar, or state or local bar association, conferences and meetings. None of these have been recorded or transcribed to my knowledge, and I have not retained any notes or outlines.

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

In 1982, after my election to the Wayne Circuit Court, I was interviewed by a Detroit News reporter and was the subject of a human-interest article. In the late eighties, I was the subject of a similar article.

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

- a. Common Pleas Court for the City of Detroit; elected 11/80, served 1/81 to 9/81  
The common pleas court was a court of limited jurisdiction and is no longer in existence. The civil jurisdiction was co-extensive with that of the 36th District Court (see below); the court had no criminal jurisdiction.
- b. 36th District Court for the City of Detroit; served 9/81 to 1/83  
The 36<sup>th</sup> District Court is the successor court to the Common Pleas Court; the law creating the 36th District Court provided that Common Pleas Court judges would become 36th District Court judges.  
The 36th District Court is a limited jurisdiction trial court. Over the years, the monetary jurisdiction has been increased. During my tenure, the court had jurisdiction over civil cases involving less than \$10,000. The court also had jurisdiction in civil cases transferred ("removed") from the circuit court, regardless of the amount of damages. There was a separate real estate division handling housing violations and landlord/tenant and land contract disputes. The court's criminal jurisdiction includes felony warrants, arraignments and preliminary examinations, and misdemeanor and ordinance violation trials. The court also handles civil infractions and small claims.
- c. Wayne County Circuit Court; elected 11/82, reelected 11/88; served 1/83 to 1/93.  
The circuit court is the trial court of general jurisdiction and has limited appellate jurisdiction. Cases include contract and insurance disputes, products liability, medical

malpractice, employment discrimination, civil rights, general personal injury, divorce and child custody, criminal felony cases including drug conspiracy, homicide, criminal sexual conduct, robbery and theft offenses, appeals from district courts and administrative agencies and some probate appeals.

d. Judge, Michigan Court of Appeals, elected 11/92, re-elected 11/98 and 11/04, serving 1/93 to present

The Michigan Court of Appeals is an intermediate appellate court with general appellate jurisdiction. The Court sits in three-judge panels, except when a seven-member conflict panel is convened. Appeals are of right and by leave from the circuit and probate courts, and the Tax Tribunal, and by leave from the district courts, administrative agencies, and the Worker's Compensation Appellate Commission. The Court has original jurisdiction in special cases.

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

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

See attached list of citations for all opinions I have written.

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

See attached list.

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

1. *People v Blackston*, unpublished opinion of the Court of Appeals issued 11/3/05 (Docket No. 245099).

The judgment was vacated and remanded for consideration whether trial court error was harmless beyond reasonable doubt 474 Mich 915 (2005), *People v Blackston (On Remand)*, unpublished opinion of the Court of Appeals issued 5/24/07 (Docket No. 245099), in lieu of granting leave to appeal, Supreme Court scheduled oral argument on whether to grant application for leave to appeal or take other peremptory action 480 Mich 929 (2007). [Oral argument held 3/4/08.]

2. *Brown v Genesee County Bd of Commissioners (On Remand)*, 233 Mich App 325; 590 NW2d 603 (1998), revd 464 Mich 430 (2001).

The trial judge dismissed the jail-inmate plaintiff's defective public building claim, and a prior panel of the Court of Appeals affirmed. The Supreme Court remanded for reconsideration in light of a recently decided case. On remand, the panel on which I sat concluded that the recently decided case compelled a different result, and reversed and remanded for reinstatement of the case. On

appeal, the Supreme Court, two justices dissenting, and one not participating, reversed, concluding that although the Court of Appeals correctly held that the jail is a public building under the recent case, the plaintiff was not a member of the public and therefore could not maintain the action.

3. *Lee v Macomb County*, 235 Mich App 323; 597 NW2d 545 (1999), revd 464 Mich 726 (2001).

In an opinion I authored, two members of the Court of Appeals panel concluded that the plaintiff veterans had standing to seek to compel the defendant counties to levy taxes to establish veterans' relief funds in accordance with the soldiers' relief fund act, although they had not applied for relief under the act in light of the counties' non-compliance, and that mandamus was a proper remedy. The Supreme Court reversed, concluding that the plaintiffs lacked standing (two justices dissenting, and one concurring on the basis that mandamus was an improper remedy.)

4. *Macomb County Prosecutor v Murphy*, 233 Mich App 372; 592 NW2d 745 (1999), revd 464 Mich 149 (2001).

The Court of Appeals affirmed the circuit court's determination that the defendant violated the incompatible offices act by simultaneously holding positions as the delinquent personal property tax coordinator in the county treasurer's office and as an elected member of a township board of trustees. The Supreme Court reversed, concluding that although the Court of Appeals proper concluded that both offices were subject to the act, because there was only a potential breach of duty arising from the ability of the township to contract with the county for the collection of its delinquent personal property taxes, the offices were not inherently incompatible, and the defendant could properly hold both (three justices concurring in the determination that the offices were subject to the act, but dissenting on the basis that they were incompatible.)

5. *Lopez v GMC*, 219 Mich App 89; 555 NW2d 875 (1996), vacated and different result reached on reconsideration, 224 Mich App 618 (1997), lv den 458 Mich 868 (1998).

The Court of Appeals held that it was bound by a prior published Court of Appeals opinion addressing the admissibility of videotapes of out-of-court experiments. Two panel members disagreed with the prior opinion, viewing it as a departure from prior law, and concurred in the judgment of reversal solely because bound by the prior opinion. I concluded that the prior opinion was not a departure from, but merely applied, prior law, and concluded that the videotape was used improperly at trial.

6. *Kent County v Home Ins Co*, 217 Mich App 259; 551 NW2d 424 (1996), vacated in part, app den in part 568 NW2d 671 (1997).

In this case involving the interpretation and application of pollution exclusion clauses and a personal injury endorsement in insurance policies issued to the plaintiff county regarding a solid waste landfill, the Court of Appeals affirmed in part and reversed in part the trial court's grant of summary disposition to the insurance companies. In an opinion I authored, the Court concluded that one insurance company was properly granted summary disposition because the "sudden and accidental" exception to the pollution exclusion clause was not applicable, and that summary disposition was improperly granted regarding the other insurer because the "initial discharge" that is the focus of the "expected or intended" clause is the discharge into the environment and not the deposit of waste in the landfill, and under this interpretation there were questions of fact. The Court also concluded that the trial court properly granted summary disposition under the personal injury endorsement.

The Supreme Court, by order, denied the application for leave to appeal of the insurance company as to which summary disposition was reversed, and in lieu of granting leave to appeal to the county, vacated the portion of the Court of Appeals' opinion that held that the "sudden and accidental" exclusion did not apply, on the ground that the trial court did not reach the issue, and remanded to the trial court for a determination whether the discharges were sudden and accidental.

7. *Green v Wilson*, 211 Mich App 140; 535 NW2d 233 (1995), affirmed in part, rev'd in part, 455 Mich 342 (1997).

The trial court dismissed the plaintiff's negligence action against the drunk-driver defendant, a Canadian resident who became drunk in a Michigan bar and then collided with plaintiff's car on the Canadian side of the Detroit-Windsor Tunnel, on the basis of lack of in personam jurisdiction, and dismissed plaintiff's dramshop action against the Michigan bar that served him on the basis that plaintiff failed to "name and retain" the "alleged intoxication person." The Court of Appeals held that there was adequate contact with Michigan to support the exercise of long-arm jurisdiction over the Canadian-resident defendant, that there was jurisdiction under Michigan's long-arm statute, and that the "name and retain" provision of the dramshop act did not preclude the continuation of a dramshop action against the bar where the alleged intoxicated person was not retained for jurisdictional reasons.

In three separate opinions, a majority of the Supreme Court concluded that there was no long-arm jurisdiction under Michigan's statute (one justice dissenting), but that the Court of Appeals had correctly determined that the "name and retain" provision did not bar the continuation of the action where the alleged intoxicated person was dismissed for lack of jurisdiction (three justices dissenting).

8. *Weymers v Khera*, 210 Mich App 231; 533 NW2d 334 (1995), revd 454 Mich 639 (1997).

In an opinion authored by another judge, in which I concurred, the Court of Appeals held that the "loss of chance" or "loss of opportunity" doctrine (allowing for a percentage recovery based on the percentage chance of survival lost due to the defendant's negligence), announced and applied by the Supreme Court in a wrongful death case, applies also to injury cases if the plaintiff can establish that the defendant's negligence proximately caused the loss of a substantial opportunity of avoiding a particular harm. The Court also held that the trial court abused its discretion in denying plaintiff's motion to amend the complaint.

A majority of the Supreme Court held that the doctrine should not be extended to the loss of an opportunity to avoid physical harm less than death (two justices dissenting) and that the trial court did not abuse its discretion in denying the plaintiff's motion to amend the complaint (one justice dissenting).

9. *St. Luke's Hospital v Giertz*, unpublished opinion per curiam issued November 5, 1996 (Docket No. 183199), revd 458 Mich 448 (1998).

The Court of Appeals held that the trial court erred in dismissing the hospital's claim against the doctor's estate seeking indemnification for amounts paid by the hospital to settle a malpractice action that alleged both active and passive negligence against the hospital. The majority affirmed the dismissal of the contribution claim concluding that the hospital did not give the doctor's estate a reasonable opportunity to participate in settlement negotiations. The dismissal of an unjust enrichment claim was also affirmed. I concurred in the opinion except that I concluded that there were genuine issues of material fact regarding whether the hospital gave adequate notice of the settlement, and therefore would have reversed regarding the contribution claim as well.

In the doctor's estate's appeal, the Supreme Court concluded that the indemnification claim presented a case of first impression and that the claim could not be maintained because the hospital had not sought summary disposition of the active negligence claims or adequately notified the doctor's estate regarding settlement.

10. *Jackson v Saginaw Cty*, unpublished opinion per curiam issued May 10, 1996 (Docket No. 182564), revd in part 458 Mich 141 (1998).

The Court of Appeals reversed the trial court's grant of summary disposition to the defendant doctor concluding that reasonable minds could differ regarding whether the doctor's conduct was so reckless as to demonstrate a substantial lack of concern whether an injury resulted to the jail-inmate patient. I concluded that there was also a genuine issue regarding the county's alleged deliberate

indifference to the plaintiff's serious medical needs. In the doctor's appeal, the Supreme Court concluded that there was inadequate support for a determination that the doctor acted with gross negligence.

11. *People v Thomas*, unpublished opinion per curiam issued November 1, 1996 (Docket No. 171264), revd sub nom *People v Gearn*s, 457 Mich 170 (1998).

The Court of Appeals reversed the defendant's convictions of second-degree murder, felony-firearm and carrying a concealed weapon and remanded for a new trial, concluding that the defendant was denied a fair trial and his right of confrontation under Michigan case law when the trial court allowed the prosecution to call a witness knowing that the witness would refuse to testify in front of the jury.

In three separate opinions, the Supreme Court reversed, four justices concluding that while evidentiary error did occur, it was harmless because it was highly probable that in light of the strength and weight of the untainted evidence, the tainted evidence did not contribute to the convictions.

12. *Horace v City of Pontiac*, unpublished opinion per curiam issued August 29, 1995 (Docket No. 160572), revd 456 Mich 744 (1997).

The plaintiff fell while approaching the doors of the Pontiac Silverdome. The circuit court granted the city's motion for summary disposition on governmental immunity grounds. The Court of Appeals remanded for reconsideration in light of a prior Court of Appeals opinion that had been reversed by the Supreme Court on other grounds, concluding that remand was necessary because the area of the fall and the area's relationship to the building were insufficiently described in the record.

The Supreme Court reversed, rejecting the holding of the prior Court of Appeals opinion, and also concluding that the opinion was not binding under the "first-out" rule because it had been reversed by the Supreme Court, albeit on different grounds. Two justices would have affirmed the Court of Appeals order of remand for development of the record.

13. *People v Rodgers*, unpublished opinion per curiam issued March 11, 1997 (Docket No. 197802), modified 455 Mich 868 (1997).

The Court of Appeals initially reversed the defendant's convictions concluding that the trial court improperly instructed the jury on attempted murder and erred by failing to provide a requested instruction on the lesser offense of accessory after the fact when there was evidence to support that instruction. The Court of Appeals regarded the latter error not harmless in light of the jury's finding that defendant was guilty of another intermediate charge. The Supreme Court

remanded for reconsideration in light of *People v Mateo*, 453 Mich 203; 551 NW2d 891 (1996), a recently decided case addressing the standards for evaluating reversible error. The Court of Appeals again reversed and vacated defendant's convictions, concluding that under either test set forth in *Mateo* for determining whether error was harmless, it would reverse defendant's convictions.

The Supreme Court reversed in part, concluding that the trial court's refusal to give an instruction on the lesser offense of accessory after the fact was harmless error.

14. *People v Hansford*, order dated October 16, 1995 (Docket No. 188370), reversed 454 Mich 320 (1997).

On initial review, the Court of Appeals determined that the defendant's sentence of 40-60 years as a fourth offender was disproportionate. On remand from the Supreme Court for reconsideration in light of recently decided case, the Court of Appeals (one judge dissenting) determined that the sentence constituted an abuse of discretion. The Supreme Court reversed (two justices dissenting) concluding that because the defendant had demonstrated his inability to conform his conduct to the laws of society, the court's sentence was not an abuse of discretion.

15. *Groncki v Detroit Edison*, unpublished Court of Appeals opinion issued 12/27/94, reversed by Supreme Court, three justices dissenting, 453 Mich 644; 557 NW2d 489 (1996).

Plaintiff, a maintenance worker, was electrocuted when a ladder he was moving touched one of defendant's power lines. The circuit court granted summary disposition to the defendant. The Court of Appeals reversed, concluding that the injuries were foreseeable. A majority of the Supreme Court concluded that defendant owed no duty to plaintiff where the line was not in disrepair and plaintiff was an experienced workman who was aware of the presence of the line and whose conduct was not foreseeable.

16. *People v Suggs (On Remand)*, unpublished Court of Appeals opinion, reversed by Supreme Court, two justices dissenting, 452 Mich 702; 551 NW2d 108 (1996).

The Court of Appeals held that defendant's statement that "It's not that I don't want an attorney to represent me, it's just that [defense counsel] never spoke to me" was equivocal, and did not constitute an adequate waiver of counsel, and remanded for a new trial. A majority of the Supreme Court concluded that the record established an adequate waiver.

17. *People v Ryan*, unpublished Court of Appeals opinion, revd by Supreme Court, three justices dissenting, 451 Mich 30; 545 NW2d 612 (1996).

Defendant was arrested with a kilogram of cocaine by federal agents, but was

charged and convicted in state court after DEA agents turned over their file to state authorities. On appeal, he argued that the decision to pursue a state prosecution was vindictive. A panel of the Court of Appeals, of which I was not a member, concluded that defendant's assertions concerning the DEA agents set forth a prima facie case of vindictiveness and remanded for an evidentiary hearing. After an evidentiary hearing, the trial court found vindictive conduct violating defendant's right to counsel. On appeal, the Court of Appeals panel of which I was a member concluded that the trial court's findings were not clearly erroneous and affirmed.

A majority of the Supreme Court concluded that because the state prosecutor was not involved in the allegedly vindictive conduct, and had independent authority to prosecute, the prosecution was not barred.

18. *People v Watroba*, unpublished Court of Appeals opinion issued 12/27/96 (Docket No. 192072), revd and remanded for consideration of other issues by Supreme Court order, two justices dissenting, 450 Mich 967; 547 NW2d 649 (1996).

The Court of Appeals concluded that one of defendant's claims of error, that the trial judge improperly foreclosed the possibility of the jury having testimony read back to it, was dispositive, and reversed and remanded for new trial. The Court did not view the failure to object at trial as forfeiting the issue because the trial judge denied the jury's request summarily without argument of counsel. A majority of the Supreme Court reversed, concluding that the issue was not preserved, and remanded for consideration of defendant's remaining issues.

19. *Masters v Detroit*, unpublished Court of Appeals opinion (Docket Nos. 154681, 154984), portion of opinion vacated and case remanded by Supreme Court order. 450 Mich 915; 543 NW2d 312 (1995).

In consolidated cases involving a class action on behalf of retired Detroit police and fire fighters seeking a recalculation of their retirement allowances, the Court of Appeals addressed the issues stated in defendants' briefs and concluded that an additional issue, which had not been raised as an issue in the briefs and concerning which relief had not been requested, had not been properly raised and preserved for review. The Supreme Court vacated the portion of the opinion so holding, and remanded the case for consideration of the issue on the merits.

20. *Taxpayers Allied for Constitutional Taxation v Wayne County*, 203 Mich App 537; 513 NW2d 202 (1994), revd 450 Mich 119; 537 NW2d 596 (1995).

The Court of Appeals held that plaintiff's action challenging the constitutionality of an increase in a real estate transfer tax on the basis that it was adopted without voter approval in violation of Michigan's Headlee Amendment was barred by the statute of limitations because the action was brought more than one year after the

tax was imposed. The Supreme Court reversed, concluding that the cause of action did not arise until the tax was paid, and therefore the action was timely.

21. *Weisgerber v Ann Arbor Center*, unpublished Court of Appeals opinion (Docket No. 139321), revd by Supreme Court order, two justices dissenting, 447 Mich 963; 521 NW2d 601 (1994).

The Court of Appeals concluded that the trial court should have held a hearing regarding juror truthfulness during voir dire when two jurors did not respond affirmatively to the question whether any of the prospective jurors would be uncomfortable with the idea of awarding money damages for loss of life, but stated during deliberations that they could never award money for death. A majority of the Supreme Court reversed, concluding that no hearing was required.

#### OPINIONS WHILE A TRIAL JUDGE

1. *Fields v Sinai Hospital*, unpublished Court of Appeals opinion (Docket No. 120557).

As a circuit judge, I presided at a medical malpractice jury trial resulting in a verdict for plaintiffs against defendant hospital based on the hospital's alleged vicarious liability for a doctor's negligence. The Court of Appeals, relying in part on a case that had been while the instant case was pending on appeal, which it found to be factually very similar, reversed on the basis that there was insufficient evidence to establish an agency by estoppel.

2. *In re LeBlanc*, 171 Mich App 405; 430 NW2d 780 (1988).

As a circuit judge, I affirmed a probate judge's decision not to waive jurisdiction of a juvenile, concluding that although the judge asserted that a Michigan Supreme Court decision left him with no discretion under the circumstances, his opinion, discussing the applicable factors, demonstrated that he had, in fact, exercised discretion. The Court of Appeals reversed and remanded to the probate judge to make new findings and render a decision granting or denying waiver.

3. *North Center Properties v Roslyn Murray*, unpublished Court of Appeals opinion.

As a circuit judge, I reversed a district court judgment in favor of plaintiff landlord, concluding that defendant, who possessed the premises under a lease with an option to purchase for an amount corresponding to the total rent under the lease, had not forfeited her right to purchase the property where, although she had failed to properly exercise the option according to its terms, she had virtually paid for the property in rent. I concluded that the terms of the agreement rendered it, in effect, a land contract.

The Court of Appeals disagreed with my analysis, and reversed concluding that defendant had not acted to preserve her rights. A dissenting judge would have affirmed on the basis that defendant was entitled to equitable relief.

4. *Leslie v Henry Ford Hospital*, unpublished Court of Appeals opinion.

As a circuit judge, I granted in part and denied in part defendant hospital's motion for summary disposition in this medical malpractice action, concluding that plaintiff's informed consent claim was time barred, but that there was a genuine issue whether his claim based on the alleged improper administration of a dye was timely where he filed suit shortly after learning, during the course of discovery in his action against the drug manufacturer, that the use of the dye in his treatment was contraindicated.

The Court of Appeals reversed, concluding that the entire action was barred because plaintiff believed that his injury had something to do with the dye more than six months before filing suit, and therefore he either discovered or should have discovered the alleged malpractice more than six months before filing the complaint.

5. *People v Wolak*, unpublished Court of Appeals opinion.

As a circuit judge, I denied defendant's motion to dismiss the charges against him, brought on the basis that the prosecution had failed to comply with a statute requiring that a defendant be brought to trial within 180 days after the prosecution has notice that the defendant is an inmate in a state penal institution. The case had been assigned to me for trial with a procedural history that included several appeals and trial court delays. A prior order of reversal erroneously remanded the case to the wrong court. I ruled that the 180-day period did not begin to run from the date of the Court of Appeals reversal, but from the date the file was received in the proper court. The Court of Appeals reversed, concluding that the delay was not excusable so as to stop the running of the 180-day period.

6. *Ealey v Detroit*, 144 Mich App 324; 375 NW2d 435 (1985).

As a circuit judge, I presided at a civil jury trial, arising from a police shooting, which resulted in a verdict for plaintiffs. The Court of Appeals reversed, concluding that there was insufficient evidence that the police officer did not act in good faith, and that the jury was improperly permitted to assess damages under the civil rights claim for the parents' loss of their adult son.

7. *Vargo v Denison*, 140 Mich App 571; 364 NW2d 376 (1985).

As a circuit judge, I granted plaintiff a new trial in a personal injury automobile negligence case in which the jury found negligence, but no proximate cause. The

Court of Appeals reversed, concluding that it was an abuse of discretion to do so. In the following two cases, my decision as a circuit judge was reversed by the Court of Appeals, but the Court of Appeals was later reversed by the Supreme Court:

8. *Orzel v Scott Drug Company*, unpublished Court of Appeals opinion, revd 449 Mich 550; 537 NW2d 208 (1995).

As a circuit judge, I granted a judgment notwithstanding the verdict to defendant drugstore, setting aside a substantial jury verdict, on the ground that plaintiff's illegal conduct in obtaining the controlled substance barred recovery. The Court of Appeals reversed, concluding that comparative negligence principles controlled, and further that plaintiff was insane. The Supreme Court reversed, holding that the wrongful conduct rule precluded recovery.

9. *Michigan Tax Management v Warren*, 184 Mich App 644; 459 NW2d 83 (1990), revd 437 Mich 506; 473 NW2d 263 (1991).

As a circuit judge, I awarded a successful plaintiff in a Freedom of Information Act case an attorney fee that was substantially lower than the amount requested. The Court of Appeals reversed on the basis that the reasonableness of the fee was not adequately disputed. The Supreme Court reversed, and reinstated the reduced award, concluding that the reduced award was appropriate.

In the following case, my authored Court of Appeals opinion was affirmed but three justices criticized an aspect of the opinion.

1. *People v Siebert, People v Oatman*, 201 Mich App 402; 507 NW2d 211 (1993); affirmed 450 Mich 500; 537 NW2d 891 (1995).

The Court of Appeals held that the trial court erred in not permitting the prosecutor to withdraw from a plea agreement that provided for a charge reduction (from a charge that carried a mandatory life sentence) in exchange for a guilty plea to a lesser charge and an agreed upon sentence, when the judge concluded that he could not agree to the sentence, but, rather, would impose a lesser sentence. The Supreme Court affirmed this holding.

The Court of Appeals also held that because the defendants had performed another part of the agreement, requiring that they assist police in drug investigations, they were entitled to seek specific performance of the original agreement on remand, including the agreed-upon sentence, and would not be forced to face trial on the greater charge. The lead Supreme Court opinion criticized that analysis.

Unpublished orders reversed. Note that the Court of Appeals database cannot be searched by unpublished orders. The lists in this section combine my recollection and information available in the database, and are complete to that extent only.

1. *People v Ertman*, unpublished order issued 5/30/07 denying application for leave to appeal (Docket No. 274630), [White, J., would grant application for leave to appeal], vacated and remanded for reconsideration of the defendant's application for leave to appeal 478 Mich 865 (2007).
2. *People v Butz*, unpublished order issued 3/20/07 denying leave to appeal (Docket No. 275792), vacated and remanded for reconsideration 480 Mich 896 (2007), *People v Butz (On Remand)*, unpublished order issued 10/23/07 (Docket No. 275792), lv den 744 NW2d 151 (2008).
3. *People v Podlaszuk*, unpublished order issued 1/3/07 (Docket No. 273554), in lieu of granting leave to appeal, Supreme Court remanded for consideration of defendant's alternate ground for affirming circuit court order granting his motion to withdraw his plea 480 Mich 866 (2007).
4. *People v Simmons*, unpublished order issued 12/28/06 (Docket No. 274214), remanded 478 Mich 923 (2007), *People v Simmons (On Remand)*, unpublished order denying delayed application for leave, issued 8/21/07, lv den 480 Mich 1008 (2007).
5. *Third Circuit Court v Judicial Attorneys Assn*, unpublished order issued 9/26/05 (Docket Nos. 262586, 263413), Supreme Court remanded as on leave granted 474 Mich 1006 (2006), *Third Circuit Court v Judicial Attorneys Assn (On Remand)*, unpublished opinion per curiam issued 8/2/07 (Docket Nos. 262586, 263413), lv den 480 Mich 994 (2007).
6. *McClendon v Apostolou*, unpublished order issued 6/28/05 peremptorily reversing circuit court's denial of summary disposition, lv denied 474 Mich 1019 (2006), order denying leave vacated on reconsideration 729 NW2d 517 (2007), reversed 480 Mich 977 (2007).
7. *Paige v City of Sterling Heights*, unpublished order denying leave to appeal from WCAC, issued 1/10/05 (Docket No. 256451), reversed WCAC 476 Mich 495 (2006).
8. *Jackson v Wayne County*, unpublished order issued 11/24/99 (Docket No. 221149), rev'd and reinstated decision of Workers' Compensation Appellate Commission 463 Mich 893; 618 NW2d 768 (2000).
9. *People v Williams*, unpublished order denying delayed application for leave issued December 7, 1998 (Docket No. 214333) (White, J., not participating), remanded in part 462 Mich 882; 617 NW2d 330 (2000) (in lieu of granting leave

to appeal, remanded to trial court for sentence to be vacated since prosecution conceded error in that its notice of sentence enhancement was untimely; in all other respects application for leave to appeal denied).

10. *People v Potter*, unpublished order denying delayed application for leave issued November 12, 1999 (Docket No. 219157) (Gribbs, J., dissenting), sentence vacated and remanded 461 Mich 1005; 608 NW2d 813 (2000) (for resentencing or withdrawal of plea for reasons stated by dissenting judge).
11. *People v Brown*, unpublished order denying leave to appeal issued May 10, 1998 (Docket No. 213397) (White, J., dissenting), rev'd 459 Mich 951 (1999). In lieu of granting leave to appeal, Supreme Court reversed the circuit court order for the reasons stated in my dissent.
12. *Maiden v Rozwood*, unpublished order of peremptory reversal issued June 26, 1997 (Docket No. 200635), rev'd 461 Mich 109 (1999) (reinstating circuit court's grant of summary disposition). Note: The Supreme Court reporter uses the name Rozwood, while the pleadings in the Court of Appeals bore the name Radwood
13. *Maxwell v Michigan State Industries & Accident Fund of Michigan*, unpublished order denying leave to appeal issued March 25, 1997 (Docket No. 196441), remanded 456 Mich 937 (1998) [remanded to WCAC for reconsideration in light of *Haske v Transport Leasing, Inc, Indiana*, 455 Mich 628 (1997)].
14. *Carley v Henrietta Twp*, peremptory order of remand issued January 10, 1995 (Docket No. 168500), vacated judgment of Court of Appeals and Worker's Compensation Appellate Commission and remanded to Commission for reconsideration in light of *Haske v Transport Leasing, Inc*, 455 Mich 628 (1997), 456 Mich 906 (1997).
15. *McTaggart v Metro Industrial Contractors, Inc*, peremptory order of remand and vacated Worker's Compensation Appellate Commission order issued September 5, 1996 (Docket No. 193209), rev'd and reinstated WCAC opinion 456 Mich 854 (1997).
  - d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
    1. *Hopkins v Graham*, unpublished opinion per curiam issued 4/20/06 (Docket No. 261867), rev'd and remanded to trial court 480 Mich 1048 (2008).
    2. *Long v Goodson*, unpublished opinion per curiam issued 4/18/06 (Docket Nos. 261049, 261051), rev'd and remanded to trial court 480 Mich 1048 (2008).

3. *Allstate Ins Co v Dempsey*, unpublished opinion per curiam issued 11/22/05 (Docket No. 253373), revd and remanded 477 Mich 874 (2006).
4. *People v Jackson*, unpublished opinion per curiam issued 3/18/05 (Docket No. 253115), revd in part and remanded to trial court 474 Mich 996 (2006).
5. *Ford Motor Co v Twp of Bruce*, unpublished opinion per curiam issued 9/14/04 (Docket No. 247186), lv den 477 Mich 865 (2006).
6. *People v Schaefer*, unpublished opinion per curiam issued 3/25/04 (Docket No. 245175), vacated and remanded 473 Mich 418 (2005).
7. *Vinkle v Emmet Co*, unpublished opinion per curiam issued July 9, 1999 (Docket No. 210759), modified and remanded to Workers' Compensation Appellate Commission instead of magistrate 618 NW2d 587 (2000).
8. *Auto-Owners Ins Co v Transamerica Ins Co*, unpublished opinion per curiam issued November 30, 1999 (Docket No. 208568), revd 463 Mich 862 (2000).
9. *Thornton v Farmer Jack/A & P*, unpublished opinion per curiam issued September 7, 1999 (Docket No. 208469) (White, J., concurring in part, dissenting in part), remanded 463 Mich 939 (2000).
10. *Corcoran v Corcoran*, unpublished opinion per curiam issued November 9, 1999 (Docket No. 215484) (Jansen, J., concurring in part, dissenting in part), revd and remanded 462 Mich 851; 611 NW2d 800 (2000) (for reasons stated by dissenting judge).
11. *Nawrocki v Macomb County Road Commission*, unpublished opinion per curiam issued November 12, 1996 (Docket No. 181350) (White, J., concurring), revd 463 Mich 143; 615 NW2d 702 (2000).
12. *People v Fitzgerald*, unpublished memorandum opinion (on remand) issued January 25, 2000 (Docket No. 186969), revd and remanded for new trial 463 Mich 889; 618 NW2d 767 (2000).
13. *People v Osaghae*, unpublished memorandum opinion per curiam issued May 8, 1998 (Docket No. 201947), revd (On Reconsideration) 460 Mich 529 (1999) (conviction reinstated).
14. *Farm Bureau Mutual Ins v Cagle*, unpublished opinion per curiam issued December 30, 1997 (Docket No. 195936), revd and remanded 460 Mich 558 (1999).
15. *People v Newland*, unpublished opinion per curiam issued May 1, 1998 (Docket No. 201171), 459 Mich 979 (1999) (vacating felony-firearm conviction in lieu of

granting leave to appeal, in all other respects denying leave to appeal— COA's affirmance of conviction of 1<sup>st</sup> degree murder affirmed).

16. *St. Luke's Hospital v Giertz*, unpublished opinion per curiam issued November 6, 1996 (Docket No. 183199) (White, J., concurring in part, dissenting in part), revd 458 Mich 448 (1998) (entering judgment for defendant estate). My dissent concluded that the circuit court erred in dismissing plaintiff's contribution claim.
17. *Jackson v Saginaw Cty*, unpublished opinion per curiam issued May 10, 1996 (Docket No. 182564) (White, J., concurring in part, dissenting in part), revd in part 458 Mich 141 (1998) (ruling that trial court did not err in granting Dr. Uy summary disposition and that no testimony supported COA finding that Dr. Uy violated standard of care). The COA majority and I, concurring, found reasonable minds could differ re: whether Dr. Uy's conduct was so reckless as to demonstrate a substantial lack of concern for whether an injury resulted. I also concluded, unlike the COA majority, that genuine issues remained re: deliberate indifference of county; Sup Ct did not address this issue.
18. *People v Thomas*, unpublished opinion per curiam issued November 1, 1996 (Docket No. 171264), revd sub nom *People v Gearns*, 457 Mich 170 (1998).
19. *Nystrom v Craig*, unpublished opinion per curiam issued August 20, 1996 (Docket No. 178673), vacated 456 Mich 919 (1998).
20. *Horace v City of Pontiac*, unpublished opinion per curiam issued August 29, 1995 (Docket No. 160572), revd 456 Mich 744 (1997).
21. *People v Rodgers*, unpublished opinion per curiam issued March 11, 1997 (Docket No. 197802), modified 455 Mich 868 (1997).
22. *People v Herron*, unpublished opinion per curiam issued April 6, 1999 (Docket No. 198353) (White, J., concurring), revd 464 Mich 593 (2001).
23. *Oade v Jackson Nat'l Life Ins Co*, unpublished opinion per curiam issued February 26, 1999 (Docket No. 202501), revd 465 Mich 244 (2001).

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

The Court's database (MAPPIS) cannot search for unpublished opinions that were assigned to a particular judge to write. Nor can it search for published per curiam opinions by authoring judge. The MAPPIS printout showing that I participated in 4,469 cases from 7/1/96 to date (4/18/08), lists opinions more than once if there was a concurrence or dissent, or if the case was a consolidation of several cases,

thus the 4,469 number is somewhat inflated. Because we sit in three-judge panels, I assume I was assigned to write in one third of the cases; however, because I wrote a significant number of concurrences and dissents, I would have written in over one third of the cases. I appear as the authoring judge in 43 published cases from January 1993 (when I began my first term on the Court of Appeals) to date (4/18/08). I authored separate published opinions in another 53 cases during that period. Additionally, I authored a significant number of published cases that were issued per curiam.

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

Three-judge panels hear cases assigned by month, and each judge is assigned authoring responsibility for 1/3 of the cases heard. Thus, if there are 30 cases on a month's call, for example, and all judges agree on every case with the authoring judge, each judge would write/issue 10 opinions. The overwhelming majority of cases issued by this Court are per curiam.

The Michigan Court of Appeals' internal information system (MAPPIS) and programming cannot accommodate this type of search. However, printouts of all cases I participated in show that I participated in 4469 cases from 7/1/96 to date (4/18/08), and that I wrote separate opinions in 360 unpublished cases and 53 published cases.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The court has a computer program that assures that a judge is not assigned to cases involving parties or attorneys as to whom the judge has notified the Clerk that the judge has a conflict. Over the years, I have listed a few attorneys with whom I have close friendships and who had financial interest in the outcome of their cases. Over the years, there have also been cases involving friends, or as to which I had had conversation with the attorneys before knowing that the case would be before the court, and I have listed these as well.

The only request for recusal of which I am aware was in *Rest in the Son v Peter Fletcher*, Docket # 248117, in which the attorney for defendant brought a general motion to disqualify on the basis that Mr. Fletcher was a member of the Judicial Tenure Commission. None of the panel members believed that this was a basis for disqualification. Further discussions with the Clerk revealed that Mr. Fletcher was concerned that I might be prejudiced by criticism he had expressed regarding my now ex-husband's decision in a judicial tenure matter in which my now ex-husband had served as a hearing officer. I communicated to the Clerk that I was unaware of such criticism, and would have no problem deciding the case on the merits. This was communicated by the Clerk, and to the best of my knowledge the issue was thus resolved.

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

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

I have held no public offices other than a judicial office. I have had no unsuccessful candidacies for public office.

In 1997, 1999, and again in 2001 I was nominated by the President to be a United States Circuit Judge for the Sixth Circuit. Those nominations were unsuccessful.

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

None. I have played no role in campaigns other than my own.

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

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

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

I served as a Clerk to Justice Charles L. Levin, Michigan Supreme Court 1978 to 1980.

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

I have not practiced alone.

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

1/93 to present  
Michigan Court of Appeals  
3020 West Grand Blvd. Ste 14-300  
Detroit, Michigan 48202  
Judge

1/83 to 1/93  
Wayne County Circuit Court  
City-County Building, 2 Woodward Avenue  
Detroit, Michigan 48226  
Judge

9/81 to 1/83  
36th District Court (successor court to Common Pleas Court)  
421 Madison Avenue  
Detroit, Michigan 48225  
Judge

1/81 to 9/81  
Common Pleas Court for the City of Detroit  
421 Madison Avenue  
Detroit, Michigan 48225  
Judge

9/78 to 8/80  
 Michigan Supreme Court  
 Michigan Hall of Justice  
 925 Ottawa  
 Lansing, Michigan 48909  
 Law Clerk to Justice Charles L. Levin

b. Describe:

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

After law school, from 1978 to 1980, I served as a law clerk to a Michigan Supreme Court Justice. In this position, I reviewed records, read transcripts, researched legal issues, and wrote memoranda and draft opinions in a broad range of cases.

Shortly thereafter, in 1981, I was elected as a judge of the Common Pleas Court, where I presided over countless landlord-tenant and small claims cases, as well as more complex civil trials.

When the Common Pleas Court became the 36th District Court through court reorganization, I was assigned to take over the warrant, arraignments and misdemeanor division. I next moved to the division handling preliminary examinations, where I heard felony preliminary exams daily for three months. I then moved to the traffic and ordinance division where I presided over ordinance violations - accosting and soliciting, weapons offenses, housing violations; traffic misdemeanors - drunk driving, reckless driving and driving with license suspended; and some traffic ticket appeals. I also obtained considerable administrative experience as I learned that the procedures I instituted in my courtroom had a substantial effect on the quality of justice administered.

In 1983, I became a judge of the Wayne County Circuit Court, a court of general jurisdiction. As a judge of the circuit court for ten years, I presided over hundreds of trials of all kinds, civil and criminal, bench and jury, simple and complex.

For the past fifteen years, I have been a Court of Appeals judge, handling only appeals. The Court of Appeals sits in three-judge panels, rotating monthly. In addition to the many cases set for plenary consideration, a large number of cases are effectively decided by the denial of an application for leave to appeal or the entry of another dispositive order. The subject matter largely mirrors the cases I handled in circuit court, with the addition of probate, worker's compensation, regulatory and tax

matters. A significant number of cases, civil and criminal, involve statutory construction.

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

Because my legal career has been as a law clerk and then a judge, and not a practicing attorney, I have not represented clients. I have not specialized in any particular area of law.

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

I have not practiced law as an attorney. My entire legal career, except for my first years as a clerk, has involved presiding over cases in state courts of record. In the trial courts, I presided in court daily. As a Court of Appeals judge, I preside in court one or two days monthly, and the remainder of my work is in an office.

- i. Indicate the percentage of your practice in:

1. federal courts;
2. state courts of record: 100%
3. other courts.

- ii. Indicate the percentage of your practice in:

1. civil proceedings;
2. criminal proceedings.

As a trial judge, 80% of my work was civil and 20% criminal. As an appellate judge, over 50% of the cases are criminal, but I estimate that 65% of my time is spent on civil matters because of the relative complexity of the cases.

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

Because my legal career has been as a law clerk and then a judge, and not a practicing attorney, I have tried no cases.

- i. What percentage of these trials were:

1. jury;
2. non-jury.

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

I have not practiced before the Supreme Court of the United States.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

Because my legal career has been as a law clerk and then a judge, and not a practicing attorney, I have not personally handled any litigated matters.

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

My most significant legal activities have been in a judicial capacity, as a result of my twenty-seven years of service as a judge. During that time I have had extensive experience with a wide variety of legal matters. My experience with small claims cases, which are handled without attorneys, provided me with an opportunity to deal directly with litigants. To effectively resolve these disputes, I was required to elicit pertinent facts from the litigants, determine their desires and objectives, and explain the law and the realities of litigation. While hearing preliminary examinations, I became familiar with the full range of felony offenses and was exposed to difficult search and seizure, confession, and conspiracy issues. While serving as a trial Judge on the Wayne County Circuit Court, I conducted status and settlement conferences and otherwise administered my individual docket, and presided over numerous trials. During this time, I became more involved in court administration, devising forms and procedures designed to effectively manage cases without unduly burdening attorneys. I assisted other judges and their staffs in making the transition to an individual docket. I also became very

effective in settling cases without employing heavy-handed tactics. Throughout my ten years on the circuit court, I heard motions on a weekly basis, so that I was deeply involved in the pre-trial and discovery practice.

The subject matter of the cases I handled in circuit court included felonies, medical malpractice, products liability, general negligence, civil rights, employment, contract disputes and more. I am, therefore, familiar with the litigation of and the substantive law governing cases that come to the federal courts through diversity jurisdiction. Additionally, the Michigan Rules of Evidence closely track the federal rules. I also handled § 1983, ERISA and labor dispute cases, and cases presenting a variety of preemption issues and constitutional claims. In the criminal area, I presided over conspiracy and drug cases as well as cases involving more common offenses. A significant percentage of the criminal cases involved Fourth, Fifth, and Sixth Amendment issues.

As a Judge on the Michigan Court of Appeals, I have spent the past fifteen years hearing appeals and writing opinions. The subject matter largely mirrors the cases I handled in circuit court, with the addition of probate, worker's compensation, regulatory and tax matters. A significant number of cases, civil and criminal, involve statutory construction.

In addition to my judicial work, I have been involved in efforts to improve the judicial system through my work on court committees. As a circuit judge, I was active in implementing the shift from a central docket to an individual docket, and in devising mechanisms to provide bar input into court administration. On the Court of Appeals, I was an active participant in the work of the Delay Reduction Workgroup, which recommended delay reduction measures that were largely adopted by the court. I also serve as chair of the Rules Committee, and have been actively involved in the Michigan Appellate Bench/Bar Conferences.

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

I have not taught full courses. I have judged numerous arguments for various advocacy and moot court classes and programs at University of Michigan Law School, Wayne State University Law School, and Cooley Law School. I have taught single sessions of criminal appellate advocacy classes at the University of Michigan Law School and University of Detroit Law School.

22. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or

customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have a pension account with the Michigan Judges Retirement System. I also participated in the Wayne County Employees Retirement System and a deferred compensation plan while a circuit court judge.

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

I have no such plans, commitments, or agreements.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

The parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include attorneys with whom I have close friendships, cases involving family or friends, or cases where I may have a financial interest. Should any potential or actual conflicts-of-interest arise, I will abide by the Canons of Judicial Conduct, as I have done throughout my judicial career.

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

In all circumstances, I will follow the Code of Conduct for United States Judges and applicable statutes, policies, and procedures.

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

Over the past two decades, most of my non-work activities have centered on serving the disadvantaged. Presently, I devote an average of five hours per week to community/charitable activity. In the past, when family commitments were fewer, I devoted an average of ten to twelve hours per week.

I have served on the board of Michigan Legal Services since 1993, participating in the oversight of the organization, and was active in a subcommittee charged with exploring and making recommendations regarding the future of the organization.

Over the years, I have held various positions and been involved in numerous activities of the Jewish Federation of Metropolitan Detroit (an umbrella organization raising funds for local, national and international programs to aid Jews and others). I presently serve on the Board of Governors and in a number of other capacities. Previously, I chaired the community service allocations division. This division evaluates and prioritizes the social service and elder care needs of the community, and recommends and advocates for allocations to social service providers. Recently, I have spent a considerable amount of time helping to formulate and oversee programs for the disadvantaged in Israel, including a head start program for Ethiopian children from birth to 6 years old.

I serve on the board and am a vice-president of JVS. Although the acronym JVS stands for Jewish Vocational Services, the agency serves the entire community. JVS primarily provides training, rehabilitation, and placement services to the disadvantaged and handicapped.

I served on the board of COTS (a large homeless shelter and transitional housing and services program in Detroit) for two nine-year (maximum) terms, serving as president for two of those years. I am still involved with the organization.

Previously, I served on the board of the Metropolitan Detroit Young Women's Christian Association. The organization's programs address the financial, educational, and physical and mental health concerns of girls and women in the community, many of whom are disadvantaged.

In past years, I served as a mentor for Alternatives for Girls as part of a program aimed at providing young women at risk with a secure and confidential relationship with a role model. Each year, I participate in a program that provides individualized holiday gifts for the girls.

I also am active in other civic organizations, which, although not focused primarily on serving the disadvantaged, concern themselves with issues or services affecting the disadvantaged. Among these is the American Jewish Committee.

Additionally, I have participated in a number of programs providing new immigrants with necessary information and assistance; I have participated in a number of forums and panels concerning African-American/Jewish relations; I have spoken to a number of school and civic organizations regarding law and the courts, and have participated in Law Day programs; and I regularly participate in moot court programs and mock trials, and occasionally have taught classes on pre-trial practice and appellate advocacy.

28. **Selection Process:**

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

There is no selection commission for this nomination. I was previously nominated to fill a vacancy on this court. I submitted written material to and was interviewed by representatives of the Justice Department, the Office of White House Counsel, and the American Bar Association. Concerning the instant nomination, I was interviewed by the Attorney General and White House counsel, and members of their staffs, on February 21, 2008. I have had conversations with representatives of the Justice Department concerning paperwork since that time. My nomination was submitted to the Senate on April 15, 2008.

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

No.

AO 10  
Rev. 1/2006

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) White, Helene N	2. Court or Organization 6th Circuit	3. Date of Report 04/24/2008
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 04/15/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2007 to 3/31/2008
7. Chambers or Office Address 3020 West Grand Blvd Detroit Michigan 48202	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer: _____ Date: _____	
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Partner	NJH Associates
2. Partner	NJHA Associates
3. Partner	RNJH Associates
4. Member	MWCM LLC
5. Member	Powder Inc. LLC
6. Trustee	Trust # 1
7. Trustee	Trust # 2
8. Trustee	Trust # 3
9. Trustee	Family Foundation
10. Trustee	Trust # 4
11. Custodian	brokerage account # 1 under UGMA
12. Custodian	brokerage account # 2 under UGMA
13. Director	American Jewish Committee
14. Director	Jewish Federation of Metropolitan Detroit
15. Director	Detroit Institute of Arts
16. Director, Vice President	JVS
17. Director	Michigan Legal Services
18. Trustee	Rholick Foundation

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

NONE *(No reportable agreements.)*

	<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. Pension	Wayne County	
2. Pension	State of Michigan	
3.		

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<b>Name of Person Reporting</b> White, Helene N	<b>Date of Report</b> 04/24/2008
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**III. NON-INVESTMENT INCOME** (Reporting individual and spouse; see pp. 17-24 of instructions.)

**A. Filer's Non-Investment Income**

NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2006	Michigan Court of Appeals judicial salary	\$ 151,441
2. 2006	Michigan Court of Appeals value of use of state car	\$ 4232
3. 2007	Michigan Court of Appeals judicial salary	\$ 151,441.
4. 2007	Michigan Court of Appeals value of use of state car	\$ 2168
5. 2008 YTD	Michigan Court of Appeals judicial salary	\$ 40,772
6.		
7.		
8.		

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

NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	
2.	
3.	
4.	
5.	

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

NONE (No reportable reimbursements.)

<u>SOURCE</u>	<u>DESCRIPTION</u>
1. EXEMPT	
2.	
3.	
4.	

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

NONE (No reportable gifts.)

	<b>SOURCE</b>	<b>DESCRIPTION</b>	<b>VALUE</b>
1. EXEMPT			
2.			
3.			
4.			
5.			

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

NONE (No reportable liabilities.)

	<b>CREDITOR</b>	<b>DESCRIPTION</b>	<b>VALUE CODE</b>
1.	Hibernia Bank	mortgage on real estate located in Snowmass, Co.	M
2.	Powder Inc.	Member capital account	L
3.			
4.			
5.			

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<b>Name of Person Reporting</b> White, Helene N	<b>Date of Report</b> 04/24/2008
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**VII. INVESTMENTS and TRUSTS** - Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period.				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., mt., or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Brokerage account #1 USB					EXEMPT				
2. -American Funds Balanced Fund class B	A	Dividend	J	T					
3. -USB money market	A	Interest	J	T					
4. Brokerage account # 2 Baird									
5. -Cisco Systems common stock		None	J	T					
6. -Oracle common stock		None	J	T					
7. -Silicon Storage Tech common stock		None	J	T					
8. -Sun Microsystems		None	J	T					
9. -AIM Select Equity Fund		None	K	T					
10. -AIM Constellation Fund		None	J	T					
11. -Blackrock Preferred & Equity Trust	C	Dividend	K	T					
12. -Franklin Managed Tr Rising Divids Fund	B	Dividend	K	T					
13. -Seligman Communications & Info FD		None	L	T					
14. Brokerage account # 3 Baird									
15. -News Corp Class B shares	A	Dividend	K	T					
16. -AIM Select Equity Fd		None	J	T					
17. -Franklin Rising Dividends Fd	B	Dividend	K	T					

<b>1. Income Gain Codes:</b> (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000	E = \$15,001 - \$50,000
<b>2. Value Codes:</b> (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
<b>3. Value Method Codes:</b> (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	P4 = More than \$50,000,000 S = Assessment W = Estimated	T = Cash Market	

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<b>Name of Person Reporting</b> White, Helene N	<b>Date of Report</b> 04/24/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)  
 NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Putnam Health Sciences Trust	A	Dividend	J	T					
19. Brokerage account # 4 cust UGMA Baird									
20. American Balanced Fund	A	Dividend	J	T					
21. AIM Constellation Fund		None	J	T					
22. John Hancock regional bank fnd	B	Distribution	J	T					
23. AIM Sselect Equity fnd		None	J	T					
24. Brokerage account # 5 cust UGMA Baird									
25. AIM Constellation fnd		None	J	T					
26. John Hancock Regional Bank Fnd	D	Distribution	J						
27. American Balanced Fnd	A	Dividend	K	T					
28. Broadway Bank Bond	A	Interest							
29. Brokerage account # 6 JP Morgan Chase									
30. First Place Financial Corp	A	Dividend	J	T					
31. Genzyme common stock		None	J	T					
32. Microsoft common stock	A	Dividend	J	T					
33. Brokerage account # 7 Smith Barney									
34. Johnson & Johnson common stock	B	Dividend	L	T					

1. Income Gain Codes: (See Column B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 I = \$15,000 - less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal (See Column C2)	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cust (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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**VII. INVESTMENTS and TRUSTS** — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. -Money market funds	A	Interest	J	T					
36. brokerage account # 8 H&R Block									
37. -Money market	A	Interest	J	T					
38. -General Electric common stock	B	Dividend	K	T					
39. -American Science and Engineering common stock	A	Dividend	J	T					
40. -RCM Technologies common stock		None	J	T					
41. Brokerage account # 9 Oppenheimer									
42. -money market	A	Interest	J	T					
43. -American Science and Engineering common stock	A	Dividend	J	T					
44. -Emulex common stock		None	J	T					
45. -QLogic common stock		None	K	T					
46. 401k St of Mich									
47. -SSga S&P 500index			M	T					
48. ---SSga MidCap Index			M	T					
49. ---SSga Russel 2000 index			M	T					
50. ---Amer Funds Euro/Pac Gr			M	T					
51. Wayne County Def Comp									

1. Income Chain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 Q = Appraisal U = Book Value	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. Lord Abbott Mid Cap Fd			J	T					
53. IRA Morgan Stanley Focus Growth Fund			J	T					
54. Israel Bonds ugma 7/07	A	Interest	K	T					
55. Israel Bonds ugma 7/07	A	Interest	K	T					
56. Israel Bonds ugma 4/08	A	Interest	K	T					
57. Israel Bonds ugma 4/08	A	Interest	K	T					
58. Israel Bonds ugma 4/10	B	Interest	K	T					
59. Israel Bonds ugma 4/11	B	Interest	K	T					
60. Israel Bonds ugma 4/11	B	Interest	K	T					
61. Israel Bonds ugma 4/2010	B	Interest	K	T					
62. Roaring Brook Capital Fund		None	O	T					
63. Great Plains Energy stock	A	Dividend	J	T					
64. Marc Pharmaceutical stock		None	J	T					
65. Trust # 1 FWRT, shared beneficial interest, bank acct	A	Interest	J	T					
66. RNJH Assoc ltd. partner	F	Dividend	P1	T					
67. ----TOCQX									
68. - RNJH-Smith Barney acct # 1									

1. Income Gain Codes: (See Column B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less (See Column C1 and D3)	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000 N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value
2. Value Codes (See Column C1 and D3)	N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	F4 = More than \$50,000,000 T = Cash Market	

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**VII. INVESTMENTS and TRUSTS** — Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
69. ---Western Asst Money Market									
70. ---ACN									
71. STX									
72. ---ATT									
73. ---AIG									
74. ---BAX									
75. ---BBY									
76. ---BA									
77. ---CAM									
78. ---CSCO									
79. ---KO									
80. ---CL									
81. ---DELL									
82. ---EMR									
83. ---ESRX									
84. ---FCX									
85. ---GD									

<b>1. Income Gain Codes:</b> (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$115,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$115,001 - \$500,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
<b>2. Value Codes</b> (See Columns C1 and D3)	I = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$115,001 - \$500,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	
<b>3. Value Method Codes</b> (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated		

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<b>Name of Person Reporting</b> White, Helene N	<b>Date of Report</b> 04/24/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rest, or int.)	(1) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (I-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
86. —GILD									
87. —GR									
88. —HAL									
89. —HRS									
90. —HNZ									
91. —HON									
92. —ITW									
93. —INTC									
94. —IBM									
95. —JNJ									
96. —JCR									
97. —KR									
98. —LH									
99. —LRCX									
100. —LLY									
101. —LMT									
102. —WFR									

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

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Name of Person Reporting White, Helene N	Date of Report 04/24/2008
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**VII. INVESTMENTS and TRUSTS** – Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "XY" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rest, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
103. ---MCD									
104. ---MSFT									
105. ---MUR									
106. ---NOV									
107. ---NIKE									
108. ---NUE									
109. ---NVDA									
110. ---OMC									
111. ---ORCL									
112. ---PX									
113. ---PRU									
114. ---SLB									
115. ---SII									
116. ---STT									
117. ---TEX									
118. ---MMM									
119. ---UTX									

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other U = Book Value	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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Name of Person Reporting White, Helene N	Date of Report 04/24/2008
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**VII. INVESTMENTS and TRUSTS** — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
120. —UNH									
121. —WYE									
122. —YUM									
123. —RNJH Smith Barney acct # 2									
124. —Westrn Asset MM									
125. —HYP									
126. —WASCX									
127. —NHMCX									
128. —RMUCX									
129. —ABIYX									
130. —BGRFX									
131. —DNVYX									
132. —AEGFX									
133. —GFAFX									
134. —LZEMX									
135. —RYOTX									
136. —Puerto Rico HSG Rev bond									

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

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**VII. INVESTMENTS and TRUSTS** - Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(7) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
137. RNJH Smith Barney Acct#3									
138. --Wstm asset MM									
139. ---AWH									
140. ---COV									
141. ---NBR									
142. ---STX									
143. ---TYC									
144. ---TEL									
145. ---WFT									
146. ---VRGY									
147. ---ABT									
148. ---AA									
149. ---ALKS									
150. ---AMZN									
151. ---AIG									
152. ---AXP									
153. ---AMGN									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = \$15,001 - \$50,000	E = \$15,001 - \$50,000 J = \$50,001 - \$100,000
2. Value Codes: (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 Q = \$250,001 - \$500,000	R = \$500,001 - \$1,000,000 S = Assessment W = Estimated
3. Value Method Codes: (See Column C2)	P1 = \$25,000.001 - \$50,000.000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

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

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

A. Description of Assets (including trust assets)  Place "XX" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
154. -----APC									
155. -----NLY									
156. -----ANN									
157. -----AMAT									
158. -----ADSK									
159. -----BJS									
160. -----BP									
161. -----BHI									
162. -----BAC									
163. -----BBBY									
164. -----BRKB									
165. -----BBB									
166. -----BRCM									
167. -----CVC									
168. -----CB									
169. -----CSCO									
170. -----KO									

<b>1. Income Gain Codes:</b> (See Columns B1 and D4)	A=\$1,000 or less P=\$50,001 - \$100,000	B=\$1,001 - \$2,500 G=\$100,001 - \$1,000,000	C=\$2,501 - \$5,000 H1=\$1,000,001 - \$5,000,000	D=\$5,001 - \$15,000 H2=More than \$5,000,000	E=\$15,001 - \$50,000
<b>2. Value Codes</b> (See Columns C1 and D3)	J=\$15,000 or less N=\$250,001 - \$500,000	K=\$15,001 - \$50,000 O=\$500,001 - \$1,000,000	L=\$50,001 - \$100,000 P1=\$1,000,001 - \$5,000,000	M=\$100,001 - \$250,000 P2=\$5,000,001 - \$25,000,000	
<b>3. Value Method Codes</b> (See Column C2)	F3=\$25,000,001 - \$50,000,000 Q=Appraisal U=Book Value	R=Cost (Real Estate Only) V=Other	P4=More than \$50,000,000 S=Assessment W=Estimated	T=Cash Market	

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**VII. INVESTMENTS and TRUSTS** - Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "OX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
171. ---CMCSK									
172. ---CREE									
173. ---DELL									
174. ---DISCA									
175. ---DIS									
176. ---DOV									
177. ---DD									
178. ---EBAY									
179. ---EMR									
180. ---EXPE									
181. ---ERTS									
182. ---XOM									
183. ---FRX									
184. ---BEN									
185. ---GPS									
186. ---DNA									
187. ---GE									

<b>1. Income Gain Codes:</b> (See Columns B1 and D4)	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
<b>2. Value Codes</b> (See Columns C1 and D3)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I = \$5,000,001 - \$10,000,000	J = \$10,000,001 - \$25,000,000
<b>3. Value Method Codes</b> (See Column C2)	K = \$15,000 or less	L = \$15,001 - \$50,000	M = \$50,001 - \$100,000	N = \$100,001 - \$250,000	O = \$250,001 - \$500,000
	P = \$500,001 - \$1,000,000	Q = \$1,000,001 - \$50,000,000	R = \$50,000,001 - \$1,000,000,000	S = \$1,000,000,001 - \$5,000,000,000	T = \$5,000,000,001 - \$25,000,000,000
	U = Book Value	V = Appraisal	W = Cost (Real Estate Only)	X = Other	Y = Estimated

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

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

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
188. -----GENZ									
189. -----HD									
190. -----HON									
191. -----IACI									
192. -----GRP									
193. -----JMCL									
194. -----INTC									
195. -----IBM									
196. -----NJ									
197. -----JPM									
198. -----KMB									
199. -----KFT									
200. -----LLL									
201. -----LWSN									
202. -----LEH									
203. -----LBTYA									
204. -----LBTYK									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less (See Columns C1 and D3)	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	R = Cost (Real Estate Only) V = Other	Q = Appraised U = Book Value	S = Assessed T = Cash Market	W = Estimated

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

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

A. Description of Assets (including trust assets)  Place "OX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
205. ——— LLY									
206. ——— MRK									
207. ——— LINTA									
208. ——— LCAPA									
209. ——— LMDIA									
210. ——— MER									
211. ——— MSFT									
212. ——— MLMN									
213. ——— MOT									
214. ——— NWS									
215. ——— NVS									
216. ——— NVLS									
217. ——— PMI									
218. ——— PLL									
219. ——— PEP									
220. — PFE									
221. ——— PG									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less (See Columns C1 and D3)	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000	D = \$5,001 - \$15,000 I = \$5,000,001 - \$25,000,000 M = \$100,001 - \$250,000	E = \$15,001 - \$50,000 N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 (See Column C2)	O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) Y = Other	P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	Q = Cash Market T = Cash Market
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<b>Name of Person Reporting</b> White, Helene N	<b>Date of Report</b> 04/24/2008
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**VII. INVESTMENTS and TRUSTS** -- Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
222. ---RTN									
223. ---SNDK									
224. ---SLB									
225. ---SHLD									
226. ---SSD									
227. ---STT									
228. ---TSM									
229. ---TXN									
230. ---TWX									
231. ---UL									
232. ---UNH									
233. ---VZ									
234. ---VOD									
235. ---WMT									
236. ---WY									
237. ---WWY									
238. ---WYE									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	I = \$15,000 or less N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000	P = \$1,000,001 - \$50,000,000	Q = \$50,000,001 - \$100,000,000	R = \$100,000,001 - \$500,000,000
3. Value Method Codes (See Column C2)	P1 = Appraisal U = Book Value	P2 = Cost (Real Estate Only) V = Other	P3 = Assessment W = Estimated	P4 = Cash Market	P5 = Other

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<b>Name of Person Reporting</b> White, Helene N	<b>Date of Report</b> 04/24/2008
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**VII. INVESTMENTS and TRUSTS** - Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
239. RNJH Smith Barney Act # 4									
240. ---Westrn asset MM									
241. ---COV									
242. ---RIG									
243. ---TYC									
244. ---A									
245. ---MO									
246. ---AXP									
247. ---AIG									
248. ---AMP									
249. ---AOC									
250. ---BK									
251. ---BBBY									
252. ---BRKB									
253. ---HRB									
254. ---CVS									
255. ---CNQ									

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

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**VII. INVESTMENTS and TRUSTS** – Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
256. —CAH									
257. —C									
258. —CMCSK									
259. —COP									
260. —COST									
261. —DELL									
262. —DVN									
263. —DBO									
264. —BOG									
265. —ESRX									
266. —GE									
267. —TV									
268. —HOG									
269. —HPQ									
270. —IRM									
271. —JPM									
272. —LTR									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other U = Book Value	C = \$2,501 - \$5,000 H = \$100,001 - \$1,000,000 L = \$50,001 - \$100,000 Q = \$500,001 - \$1,000,000 S = Accrual W = Estimated	D = \$5,001 - \$15,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	E = \$15,001 - \$50,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market
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**VII. INVESTMENTS and TRUSTS** -- Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "XX" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
273. ---MER									
274. ---MSFT									
275. ---MCO									
276. ---NWSA									
277. ---OXY									
278. ---PM									
279. ---PG									
280. ---PGR									
281. ---SEE									
282. ---S									
283. ---TRH									
284. ---UNH									
285. ---VMC									
286. ---WB									
287. ---WMT									
288. ---WFC									
289. RNJH SMITH BARNEY ACCT # 5									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 Q = \$100,001 - \$1,000,000 R = \$500,001 - \$1,000,000 U = Book Value	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	D = \$5,001 - \$15,000 I1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessed W = Estimated	E = \$15,001 - \$50,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market
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Name of Person Reporting White, Helene N	Date of Report 04/24/2008
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**VII. INVESTMENTS and TRUSTS** – Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (I-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
290. ---Western Assett MM									
291. ---AMCRY									
292. ---BRGY									
293. ---BP									
294. ---BNPQY									
295. ---STD									
296. ---BAYRY									
297. ---CAJ									
298. ---DT									
299. ---FBRWY									
300. ---GSK									
301. ---HBOOY									
302. ---HGKGY									
303. ---ING									
304. ---KCRPY									
305. ---LYG									
306. ---MLEAY									

1. Income Code (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) U = Book Value	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$10,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal W = Estimated	V = Other	S = Assessment		

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**VII. INVESTMENTS and TRUSTS** - Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-F)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-F)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
307. ---NABZY									
308. ---NCG									
309. ---NTT									
310. ---NVS									
311. ---FORSY									
312. ---ENL									
313. ---RWEOY									
314. ---RDSL									
315. ---SSL									
316. ---SEOAY									
317. ---SCGLY									
318. ---TSM									
319. ---NZZ									
320. ---TEF									
321. ---TLYYY									
322. ---TOT									
323. ---TM									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 (See Column C1)	B = \$1,001 - \$2,500 O = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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**VII. INVESTMENTS and TRUSTS** — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rest, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
324. ---UL									
325. ---UOVEY									
326. ---UPMKY									
327. Trust # 2 RWLTIT GST A, trustee	D	Dividend	N	T					
328. ---Jtd partnership interest in RNJH Assoc. Ltp.									
329. ---for assets RNJH Assoc. Ltp see lines 67- 326									
330. Trust # 3 RWLTIT GST B, Trustee	D	Dividend	N	T					
331. ---limited partnership interest inRNJH corp									
332. ---For assets ofRNJH see lines 67 -326									
333. Trust #4 RWLTITNAR, trustee:									
334. -Credit Suisse, US Treasury Money Market Fund	D	Interest	PI	T					
335. Trust # 5 RWLTITHW shared beneficial interest:			M	T					
336. -Credit Suisse US Treasury Money Market Fund	E	Interest	PI	T					
337. ---Smith Barney acct				T					
338. -IVY Asset Strategy Fund	A	Dividend	M	T					
339. - TRAK Advisory Funds	D	Dividend	M	T					
340. ---Nuveen High yield Muni Bond fund	B	Dividend	L	T					

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

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Name of Person Reporting White, Helene N	Date of Report 04/24/2008
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**VII. INVESTMENTS and TRUSTS** - income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div, rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
341. Trust #6 RGWRT: beneficial interest:			N	T					
342. -Columbia Cash Reserves Money Market	A	Interest	K	T					
343. -Blackrock Insured Municipal Income Trust	B	Dividend	K	T					
344. -Easton Vance Insured Municipal Bond Fund	D	Dividend	L	T					
345. -Delcath Systems		None	J	T					
346. -NYSHA Bond	D	Interest	L	T					
347. -Tampa Fla Rev Bond	D	Interest	M	T					
348. -Polk Cty Fla School Brd Bond	B	Interest	K	T					
349. -Franklin Florida Tax Free Income Fund	D	Interest	M	T					
350. -vendee's interest in unimproved Calif real estate	D	Distribution	K	T					
351. MWCM LLC, ltd ptr, RE dvlpmnt Macomb, Mi seeVIII		None	M	R					
352. Powder Inc.LLC, jnt interest in condo in Copper Mt,Co		None	N	W					
353. Condominium, Snowmass Co		None	O	W					
354. NJH Associates, partner limited partnership interests in:	F	Distribution	O	W					
355. -vendee's interest in unimproved California property									
356. -BJW Associates Real Estate NYC									
357. -Lexington Ave AssocReal Estate NYC									

1. Income Gain Codes: (See Column B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000 I2 = More than \$5,000,000 N = \$100,001 - \$250,000 T = Cash Market
2. Value Codes (See Column C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value		S = Assessment W = Estimated		

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

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

A. Description of Assets (including trust assets)  Place "00" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
358. -First Sutton Assoc Real Estate NYC									
359. -Asbury Plaza Venture, Real Estate, Chicago									
360. -Alma Associates, Real Estate Arkansas									
361. -Belmont Madison Associates Real Estate NYC									
362. -Lincoln Terrace Associates, NYC									
363. NJHA Associates, partner		None	K	W					
364. -4400 University Ltd Partnership									
365. 2001 ESBT shared beneficial interest		None							
366. ---Marchon stock			O	U					
367. ---OSS Holdings			M	U					
368. 2006 ESBT: shared beneficial interest		None							
369. -Marchon stock			N	U					
370. ---OSS Holdings			L	U					
371. 2007 ESBT Marchon shared beneficial interest		None							
372. ---Marchon stock			O	U					
373. ---OSS Holdings			M	U					
374. Estate JW: executor and shared beneficial interest:									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

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Name of Person Reporting White, Helene N	Date of Report 04/24/2008
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**VII. INVESTMENTS and TRUSTS** - income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "00" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-F)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-F)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
375. ---BOA acct			P1	T					
376. ---WRB Associates 2 office ---bldgsLong Island 2006			P1	Q					
377. ---NJH			N	W					
378. ---NJHA			K	W					
379. ---RNJA, INC general partner of RNJH lrp 2006			K	Q					
380. for holdings of RNJH, see lines 67 - 326 above									
381. - Marchon stock			P2	U					
382. --OSS HOLDINGS			P1	U					
383. --Marc Pharmaceutical stock			K	T					
384. -Smith Barney brokerage acct			J	T					
385. -entrada networks Inc									
386. --neo-stem Inc.									
387. -zhone technologies									
388. Rholick Foundation, Dir. Wachovia Securities	F	Dividend	P1	T					
389. ---Cash Accumulation Trust									
390. ---ATVI									
391. ---LNT									

1. Income Gain Code: (See Column B1 and D4)	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
2. Value Code (See Columns C1 and D3)	F = \$10,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I = \$5,000,001 - \$10,000,000	J = \$10,000,001 - \$25,000,000
3. Value Method Code (See Column C2)	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$500,000	N = \$500,001 - \$1,000,000	O = \$1,000,001 - \$5,000,000
	P = \$250,001 - \$500,000	Q = \$250,001 - \$500,000	R = \$500,001 - \$1,000,000	S = \$1,000,001 - \$5,000,000	T = \$5,000,001 - \$25,000,000
	P3 = \$25,000,001 - \$50,000,000	P4 = \$25,000,001 - \$50,000,000	P5 = \$50,000,001 - \$100,000,000	P6 = \$100,000,001 - \$500,000,000	P7 = \$500,000,001 - \$1,000,000,000
	Q = Appraisal	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market	U = Book Value
	U = Book Value	V = Other	W = Estimated		

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Name of Person Reporting White, Helene N	Date of Report 04/24/2008
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**VII. INVESTMENTS and TRUSTS** - Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "XX" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
392. ---APG									
393. ---AIG									
394. ---APA									
395. ---T									
396. ---BRL									
397. ---CPKI									
398. ---CSCO									
399. CGW									
400. ---GLW									
401. ---CVS									
402. ---DNR									
403. ---EQT									
404. ---XOM									
405. ---FISV									
406. ---FRX									
407. ---FSP									
408. ---FTO									

<b>1. Income Gain Codes:</b> (See Columns B1 and D4)	A = \$1,000 or less P = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 H2 = More than \$5,000,000	E = \$15,001 - \$50,000
<b>2. Value Codes:</b> (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
<b>3. Value Method Codes:</b> (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cash (Real Estate Only) V = Other	F4 = More than \$50,000,000 S = Assessment W = Estimated	T = Cash Market	

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<b>Name of Person Reporting</b> White, Helene N	<b>Date of Report</b> 04/24/2008
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**VII. INVESTMENTS and TRUSTS** - Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
409. ---XCM									
410. ---GE									
411. ---HCC									
412. ---HPQ									
413. ---HRL									
414. ---INTC									
415. ---IVZ									
416. ---IRM									
417. ---JNJ									
418. ---JPM									
419. ---KSS									
420. ---LDSH									
421. ---MAN									
422. ---MI									
423. ---MDT									
424. ---MSFT									
425. ---MYL									

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

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**VII. INVESTMENTS and TRUSTS** — Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
426. ---NE									
427. ---PFE									
428. ---PPDI									
429. ---PL									
430. ---RSG									
431. ---SSW									
432. ---SRE									
433. ---SFD									
434. ---JAVA									
435. ---TTEK									
436. ---TMO									
437. ---TWX									
438. ---SDS									
439. ---VWO									
440. ---WEC									
441. W-R Fam. Foundation, Dir. Credit Suisse	E	Dividend	O	T					
442. ---US Treas. cas res instl									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 - less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,500 O = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 Q = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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**FINANCIAL DISCLOSURE REPORT**  
Page 32 of 34

Name of Person Reporting White, Helene N	Date of Report 04/24/2008
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**VII. INVESTMENTS and TRUSTS** – Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
443. ---AIG									
444. ---AMGN									
445. ---BRK B									
446. ---XOM									
447. ---GE									
448. ---JAR									
449. ---INTC									
450. ---MHS									
451. ---MRK									
452. ---PFE									
453. ---TXN									
454. ---VZ									
455. ---WFC									
456. ---TLT									
457. ---JEF									
458. ---SHY									

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

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
White, Helene N	04/24/2008

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

Part VII, line 351, interest purchased for \$200,000 in 2007.

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
White, Helene N	04/24/2008

**IX. CERTIFICATION.**

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

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

Signature

*Helene N White* Date 4/24/08

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

**FILING INSTRUCTIONS**

Mail signed original and 3 additional copies to:

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

**FINANCIAL STATEMENT**  
**NET WORTH**

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

ASSETS				LIABILITIES			
Cash on hand and in banks		20	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	020	000	Notes payable to relatives			
Unlisted securities-add schedule		80	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		27	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		615	000
Real estate owned-add schedule	1	500	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		75	000	LLC capital account		54	000
Cash value-life insurance							
Other assets itemize:	8	700	000				
See attached schedule							
				Total liabilities		696	000
				Net Worth	10	699	000
Total Assets	11	395	000	Total liabilities and net worth	11	395	000
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**Listed Securities

See attached AO-10, Financial Disclosure Report \$ 1,020,000

Unlisted Securities

Israel Bonds \$ 80,000

Real Estate Owned

Personal residence \$ 800,000

Colorado condominium 700,000

Total Real Estate Owned \$ 1,500,000

Real Estate Mortgages Payable

Personal residence \$ 415,000

Colorado condominium 200,000

Total Real Estate Mortgages Payable \$ 615,000

Other Assets

Interest in Estate of JJW \$ 6,000,000

Interest in RNJH Assoc. 900,000

Interest under RW GRAT 700,000

401K and pension accounts 600,000

Interest in NJH and NJHA Assoc. 300,000

Interest in MWCM LLC 200,000

Total Other Assets \$ 8,700,000

AFFIDAVIT

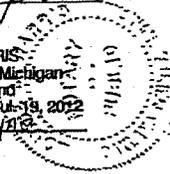
I, Helene Vita White, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/24/08  
(DATE)

Helene Vita White  
(NAME)

Louise M. Harris  
(NOTARY)

LOUISE M. HARRIS  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires Jul-18, 2012  
Acting in the County of Oakland



Chairman LEAHY. Thank you.  
Mr. Kethledge, would you please tell us if you have members here?

**STATEMENT OF RAYMOND M. KETHLEDGE, NOMINEE TO BE  
CIRCUIT JUDGE FOR THE SIXTH CIRCUIT**

Mr. KETHLEDGE. Yes, thank you, Mr. Chairman. I would like to introduce my wife, Jessica; my daughter, Ella; my son, Ray. I am also joined by—I am going to get in trouble if I forget anyone here. I am joined by—

Chairman LEAHY. That is why we keep the record open, Mr. Kethledge.

[Laughter.]

Chairman LEAHY. And at some point, you can say, “See, you did not hear me say your name, but here it is in the record.” Go ahead.

Mr. KETHLEDGE. I am joined by my father, Ray Kethledge; my sister, Laura Strasius; and my mom, Diane Kethledge. I am also honored to have with me today two of my partners who made the trip out from Michigan: Patrick Seyferth, who loves attention, and Rick Paige. And I am joined by a whole bunch of other friends: Jim Neill, Ward Bobitz, Steve Hessler, Karen Lloyd—now I am going to forget somebody. They know who they are, and I am grateful that they are here.

I would like to thank the Chairman, I would like to thank the Committee for having this hearing. I would like to thank the President for nominating me. I am deeply grateful for that. I would very much like to thank Senators Levin and Stabenow for their gracious introduction and for their hard work and openness in getting us to this point. And I would very much like to thank my wife for standing by me through this process.

Chairman LEAHY. Well, thank you, Mr. Kethledge. It has got to be great also to have your parents here. I know how thrilled my parents were when they were able to see me sworn in several times in the U.S. Senate. It was a thrill for me, and I think a thrill for them.

Mr. KETHLEDGE. Thank you.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Raymond Michael Kethledge

Before October 1993, my name was spelled Raymond Michael Ketchledge. The deleted "c" was silent.

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

United States Circuit Judge for the Sixth Circuit.

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

My office address is 3001 West Big Beaver Road, Troy, Michigan, 40084.

My place of residence is Novi, Michigan.

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

1966; Summit, New Jersey.

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

My wife is Jessica Levinson Kethledge. Prior to our marriage, her name was Jessica Davi Levinson. She is home with our two children full-time. Those are my only dependent children.

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

University of Michigan Law School; September 1991 to May 1993; J.D., *magna cum laude*, May 1993.

Wayne State University Law School; September 1990 to May 1991; no degree

University of Texas at Austin; September 1987 to December 1987; no degree.

University of Michigan; September 1985 to May 1987, and from January 1988 to May 1989; B.A., 1989.

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

From July 2003 to the present, I have been a partner in the law firm of Bush Seyferth Kethledge & Paige PLLC, 3001 West Big Beaver Road, Suite 600, Troy, Michigan, 48084.

From June 2002 to June 2003, I was a partner in the law firm of Feeney Kellett Wiener & Bush, 35980 Woodward Avenue, Bloomfield Hills, Michigan, 48304.

From June 2001 to June 2002, I worked in-house for the Ford Motor Company, handling product-liability matters. My title was Counsel. My office address was 3 Parklane Boulevard, Suite 300, Dearborn, Michigan, 48126.

From August 1998 to May 2001, I worked for the law firm of Honigman Miller Schwartz and Cohn, 2290 First National Building, Detroit, Michigan, 48226. I was an associate until early 2001, when I was elected partner. I also worked as a summer associate at Honigman from May 1992 to August 1992.

From July 1997 to July 1998, I served as a law clerk to Justice Anthony Kennedy of the United States Supreme Court.

From January 1995 to June 1997, I worked for United States Senator Spencer Abraham in Washington, D.C. My title was Judiciary Counsel.

From September 1994 to December 1994, I was an associate with Sidley & Austin in Washington, D.C. The firm's current address is 1501 K Street N.W., Washington, D.C., 20005.

From September 1993 to September 1994, I served as a law clerk to Judge Ralph B. Guy, Jr., of the United States Court of Appeals for the Sixth Circuit.

From January 1992 to April 1992, while a student at the University of Michigan Law School, I served as an intern to Judge Gerald Rosen of the United States District Court for the Eastern District of Michigan.

From June 1991 to August 1991, I served as a law clerk to Michigan Governor John Engler.

From November 1989 to June 1990, I was a new-car salesperson at Brown's Arlington Honda, 3920 Lee Highway, Arlington, Virginia, 22207.

From September 1989 to November 1989, I was a waiter at Carnegie's Restaurant (now defunct) in Alexandria, Virginia.

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

In January 1986, I enlisted in the Platoon Leaders Class program of the United States Marine Corps. Under this program, I was to attend Marine Corps Officer Candidate School in Quantico, Virginia during the summers after my freshman and junior years in college. Each session would be six weeks in duration. Accordingly, I attended and successfully completed the first six-week session of OCS after my freshman year in college, from approximately June 1, 1986, to July 10, 1986.

In February 1988, I voluntarily withdrew from the Platoon Leaders Class program after having decided to attend law school after graduation. I was honorably disenrolled as an Officer Candidate, E-5, and transferred to the Marine Corps Reserves. I was on inactive status from February 1988-February 1991 when I was honorably discharged.

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

I was a member of the Order of the Coif at the University of Michigan Law School. I also received Certificates of Merit (awarded to the student with the highest grade in the class) in *Federal Courts* and *Introduction to Constitutional Law*.

I was named Community Legal Service's *Pro Bono* Attorney Of The Year for the Year 2000.

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

American Bar Association  
Michigan State Bar  
District of Columbia Bar

I have served as a member of the Michigan State Bar Civil Procedure and Courts Committee since December 2005. Its chair is Ronald Longhofer, with whom I practiced at Honigman.

**11. Bar and Court Admission:**

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

Michigan State Bar: December 13, 1993 to present;  
District of Columbia Bar: April 4, 1996 to present.

I have not had any lapses of membership with respect to these organizations.

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

Michigan state courts, 1993  
District of Columbia courts, 1996  
United States Court of Appeals for the Sixth Circuit: September 29, 1994;  
Supreme Court of the United States: March 13, 1998;  
United States District Court for the Eastern District of Michigan: October 28, 1998  
United States Court of Appeals for the Fourth Circuit: March 9, 2001;  
United States Court of Appeals for the Eleventh Circuit: September 20, 2004.

I have not had any lapses of membership with respect to these courts.

**12. Memberships:**

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

None, other than those listed in Questions 10 and 11.

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response**

to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

In college, I was a member of the Sigma Chi fraternity, which was all-male. Otherwise, I have not been a member of any organization that discriminates on the described bases.

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

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

I wrote an article entitled "U.S. Supreme Court Review: October 1998 Term" for the November 1999 edition of the *Michigan Bar Journal*. There is not any other published material that I have written or edited.

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

I have not prepared or contributed to any such material.

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

I have not issued or provided any such material, nor have others presented such material on my behalf.

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

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

I have not delivered any such speeches or talks.

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

On December 13, 2005, I attended a press conference at the National Association of Manufacturers' offices regarding the nomination of Samuel Alito to the Supreme Court of the United States. I did not speak at the press conference, but was briefly questioned afterwards by a reporter for the Investor's Business Daily Newspaper. The reporter then quoted me in a related article dated December 28, 2005. Otherwise, I have not given any such interviews.

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

I have not held a judicial office.

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

- a. citations for all opinions you have written (including concurrences and dissents);
- b. a list of cases in which certiorari has been requested or granted;
- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and
- f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have not been a judge.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not been a judge.

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

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

I have not held any public offices.

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

I have not had any such offices, memberships, or positions.

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

- a. Describe chronologically your law practice and legal experience after

**graduation from law school including:****i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;**

I served as a law clerk to Judge Ralph B. Guy, Jr. of the United States Court of Appeals for the Sixth Circuit from September 1993 to September 1994.

I served as a law clerk to Justice Anthony M. Kennedy of the Supreme Court of the United States from July 1997 to July 1998.

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

I have not practiced alone.

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

From July 2003 to the present, I have been a partner in the law firm of Bush Seyferth Kethledge & Paige PLLC. Cheryl Bush, Patrick Seyferth, and I founded this firm in July 2003. We now have 10 lawyers and 31 employees. Our address is 3001 West Big Beaver Road, Troy, Michigan, 48084.

From June 2002 to June 2003, I was a partner in the law firm of Feeney Kellett Wiener & Bush. The firm is now defunct. Its address was 35980 Woodward Avenue, Bloomfield Hills, Michigan, 48304.

From June 2001 to June 2002, I worked in-house for the Ford Motor Company, handling product-liability matters. My address at Ford was 3 Parklane Boulevard, Suite 300, Dearborn, Michigan, 48126. My title was Counsel.

From August 1998 to May 2001, I worked for the law firm of Honigman Miller Schwartz and Cohn. I was an associate until early 2001, when I was elected partner. I also worked as a summer associate at Honigman from May 1992 to August 1992. The firm's address is 2290 First National Building, Detroit, Michigan, 48226.

From July 1997 to July 1998, I served as a law clerk to Justice Anthony Kennedy of the United States Supreme Court.

From January 1995 to June 1997, I worked for United States Senator Spencer Abraham in Washington, D.C. My title was Judiciary Counsel.

From September 1994 to December 1994, I was an associate with Sidley & Austin in Washington, D.C. The firm's current address is 1501 K Street N.W., Washington, D.C., 20005. I left Sidley after being approached about the possibility of working for Senator Abraham, who was elected in November 1994. I sought and received the firm's permission before leaving the firm.

From September 1993 to September 1994, I served as a law clerk to Judge Ralph B. Guy, Jr., of the United States Court of Appeals for the Sixth Circuit.

**b. Describe:**

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

My practice has taken several forms over the years. After clerking for Judge Guy, I joined the Washington, D.C. office of Sidley & Austin as an associate in their litigation department. While at Sidley, I worked primarily on commercial litigation cases.

I served as Judiciary Counsel to Senator Abraham from 1995-1997. My responsibilities included advising Senator Abraham regarding proposed legislation, as well as drafting and working to advance legislation that Senator Abraham supported. In that capacity I worked closely with staff from other Senate offices, including many Democratic offices. I also had some involvement in reviewing judicial nominations from States other than Michigan.

I left Senator Abraham's office in June 1997 to clerk for Justice Anthony Kennedy during the Supreme Court's October 1997 Term. When my clerkship ended, my family and I moved back to Michigan, where I became an associate in the litigation department of Honigman Miller Schwartz and Cohn in Detroit. I worked primarily on commercial litigation, for a variety of different clients. My responsibilities included briefing and arguing motions, taking depositions, briefing appeals, and, in one case, a one-day bench trial in federal bankruptcy court. I was elected to partnership at Honigman in 2001.

In May 2001, I left Honigman to join the Ford Motor Company's General Counsel office in Dearborn, Michigan. My title was Counsel. My responsibilities included management of cases involving rollover accidents or allegations of restraint-system defects. I did not appear in court during this time.

I later decided I wanted to return to an active court practice. In May 2002, I joined a boutique litigation firm, Feeney Kellett Weiner and Bush, as a partner. I primarily briefed and argued appeals, class actions, and complex motions while at Feeney Kellett. I also handled commercial litigation cases and second-chaired a three-week jury trial in Racine, Wisconsin during this time. My principal clients were DaimlerChrysler Corporation and, to a lesser extent, Ford and General Motors.

In the spring of 2003, Feeney Kellett was approached about the possibility of merging with a larger Detroit firm, Dykema Gossett PLLC. A number of Feeney Kellett's attorneys elected to join Dykema. Cheryl Bush, Patrick Seyferth, and I chose to start our own firm.

Our firm commenced operations on July 1, 2003, and was first known as Bush Seyferth & Kethledge PLLC. My partner Richard Paige joined the firm in July 2004, at which point we changed the firm's name to Bush Seyferth Kethledge & Paige PLLC. We are a litigation-only boutique. We began the firm with five lawyers and approximately 18 employees; we now have 10 lawyers and 31 employees. My practice has focused on briefing and arguing appeals and class actions in cases around the country. My practice also includes commercial litigation at the trial-court level. In April 2005, I second-chaired a one-week jury trial in a criminal case, in which the defendant, Tapendra Sharma, was charged with negligent homicide. Thomas Cranmer, who served as President of the Michigan State Bar in 2005-06, and I represented Mr. Sharma. Mr. Sharma was acquitted.

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

My practice has specialized in appellate and class-action litigation, on the defense side. I have also done a good deal of commercial litigation. My firm does substantial work for DaimlerChrysler Corporation, Ford Motor Company, Guardian Industries, Entertainment Properties Trust, and Genworth Financial, among other clients. I have also represented numerous individual clients. As noted above, these include one criminal defendant, Tapendra Sharma.

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

100% of my practice has been in litigation. Apart from my time as a law clerk and with the Ford Motor Company (during which time I did not appear in court at all), I have appeared in court frequently.

**i. Indicate the percentage of your practice in:**

1. federal courts: 50%
2. state courts of record: 50%
3. other courts.

**ii. Indicate the percentage of your practice in:**

1. civil proceedings: 95%
2. criminal proceedings: 5%

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

I have tried three cases to verdict. In each case I played a second-chair role with substantial responsibility for examining and cross-examining witnesses.

**i. What percentage of these trials were:**

1. jury: 67%
2. non-jury: 33%

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

I have prepared one amicus brief and one brief in opposition to a petition for certiorari with the Supreme Court of the United States.

**19. Litigation: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *FDIC v. First Heights Bank, FSB*, 229 F.3d 528 (6th Cir. 2000). This case involved a dispute between Pulte Corporation and certain of its affiliates, on the one hand, and the FDIC, on the other, as to Pulte's obligations to share with the

FDIC certain tax savings that Pulte obtained as a result of its purchase of certain failed thrifts during the 1980s. The District Court had awarded summary judgment to the FDIC in the amount of \$255 million, and Pulte had appealed. Pulte's lead counsel on appeal was John G. Roberts, Jr., now Chief Justice of the Supreme Court. Pulte's co-counsel included Norman Ankers, Honigman Miller Schwartz & Cohn, 2290 First National Building, Detroit Michigan, 48226, (313) 465-7000, Stephen Wasinger, 26862 Woodward Avenue, 100 Beacon Center, Royal Oak, Michigan, 48067, (248) 414-9942, and myself. Lead counsel for the FDIC was Kirk K. Van Tine, Baker Botts L.L.P., 1299 Pennsylvania Avenue N.W., Washington, D.C. 20004, (202) 639-7700. I assisted in writing and editing Pulte's brief on appeal, and in strategizing about the appeal generally. In doing so I had the privilege of working closely with now-Chief Justice Roberts. In an opinion by Judge Boyce F. Martin, Jr., joined by Judges Merritt and Siler, the Sixth Circuit affirmed in part and reversed in part the judgment below.

2. *United Dominion Industries, Inc. v. United States*, 532 U.S. 822 (2001). The question presented in this case was whether, in the case of an "affiliated group" that files a consolidated tax return, the existence of a "product liability loss" under 26 U.S.C. § 172(b)(1)(I) is determined by comparing (i) the income and expenses of the group as a whole, or (ii) the respective income and expenses of each of its members. Kent Jones, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue N.W., Washington, D.C. 20004, was principal counsel for the United States. Eric R. Fox, Ivins, Phillips & Barker, 1700 Pennsylvania Avenue N.W., Suite 600, Washington D.C. 20006, was counsel for United Dominion Industries, Inc. I wrote an amicus brief on behalf of the National Association of Manufacturers and the Manufacturers' Alliance, in which we argued, based on a close reading of the statutory text, that such losses should be computed by comparing the income and expenses of the affiliated group as a whole. In a unanimous opinion by Justice Souter, the Supreme Court agreed with our position and reversed the contrary decision of the Fourth Circuit.
3. *Gray v. General Motors Corporation*, 312 F.3d 240 (6th Cir. 2002). This was a products-liability case in which the plaintiff alleged the seat belts in his vehicle were defective, which in turn allegedly enhanced his injuries in a rollover crash. I argued (but did not brief) the case for General Motors in the Sixth Circuit. Phyllis Robinson, P.O. Box 130, Manchester, Kentucky 40962 (current phone number unavailable), was lead counsel for the plaintiff. In an opinion by Judge Daughtrey, joined by Judges Gilman and Siler, the Sixth Circuit affirmed the District Court's entry of judgment as a matter of law in favor of General Motors.
4. *Heider v. DaimlerChrysler Corporation*, Racine County (Wisconsin) Circuit Court, 99 CV-1702, February 2003. This case involved a frontal collision between the plaintiffs' vehicle, a 1996 Plymouth minivan, and another vehicle driven by a drunk driver. Tia Heider, then age 8, was rendered a quadriplegic in

the crash. The plaintiffs alleged that the passenger-side airbag in the minivan was too powerful, and that its deployment caused Tia Heider's injuries. Cheryl Bush was lead counsel for DaimlerChrysler and I was her second chair. I examined or cross-examined approximately 40% of the witnesses in the case, including several experts. After a three-week trial, the jury rendered a verdict in favor of DaimlerChrysler. I later briefed and argued DaimlerChrysler's opposition to the plaintiffs' motion for a new trial, which the court denied. The case was tried before Judge Charles Constantine, Racine County Courthouse, 730 Wisconsin Avenue, Racine, Wisconsin, 53403, (262) 636-3131. My co-counsel (and lead counsel for DaimlerChrysler Corporation at trial) was Cheryl Bush, Bush Seyferth Kethledge & Paige PLLC, 3001 West Big Beaver Avenue, Troy, Michigan, 48084, (248) 822-7800. Thomas Devine, Hostak Henzl & Bichler, 840 Lake Avenue, P.O. Box 516, Racine, Wisconsin, 53401, (262) 632-7541, was lead counsel for the plaintiffs. Jay Starrett, Whyte Hirschboeck & Dudek, 555 East Wells Street, Suite 1900, Milwaukee, Wisconsin, 53202, (414) 273-2100, was counsel for co-defendant Hubb Chrysler-Plymouth Jeep, Inc.

5. *Anderson v. Pine Knob Ski Resort*, 469 Mich. 20, 664 N.W.2d 756 (2003). The question presented by this case was whether an immunity provision in the Michigan Ski Area Safety Act, MCL § 408.321 *et seq.*, barred the claims of plaintiff Robert Anderson for injuries he sustained in a skiing accident at the defendant Pine Knob Ski Resort. I briefed and argued the case for the plaintiff, Robert Anderson, in the Michigan Supreme Court. Robert L. Bunting, P.O. Box 7, Oxford, Michigan, 48371, (248) 628-5150, was lead counsel for Pine Knob. By a 4-3 vote, with Justice Taylor writing the majority opinion and Justices Cavanagh, Kelly, and Weaver dissenting, the Court ruled in favor of Pine Knob and held the claims were barred.
6. *Sherr v. DaimlerChrysler Corporation*, 1 CA-CV-03-0566 (Arizona Ct. App., October 2004). This case was an appeal of a jury verdict in favor of DaimlerChrysler Corporation in a products-liability case. The plaintiff alleged the airbag in her 1997 Chrysler minivan was too powerful, and that its deployment caused her injuries. I briefed and argued the case for DaimlerChrysler in the Arizona Court of Appeals. Patrick X. Fowler, Snell & Wilmer, One Arizona Center, Phoenix, Arizona, 85004, (602) 382-6000, was co-counsel for DaimlerChrysler Corporation. G. Lynn Shumway, 6909 E. Greenway, Ste. 200, Scottsdale, Arizona, 85254, (480) 368-0002, was lead counsel for the plaintiffs. In the Court of Appeals, the plaintiffs argued that the trial court had improperly sanctioned them for the subject vehicle's spoliation and committed various other evidentiary errors at trial. In a unanimous opinion by Judge Barker, the Arizona Court of Appeals affirmed the verdict in favor of DaimlerChrysler Corporation.
7. *State v. Sharma*, Oakland County (Michigan) Circuit Court, 04-194301-FH, April 2005. In this case the defendant, Tapendra Sharma, was prosecuted for negligent homicide regarding an accident in which an Oakland County Road

Commission electrician was fatally injured. Thomas Cranmer, Miller Canfield Paddock & Stone PLC, 840 West Long Lake Road, Suite 200, Troy, Michigan, 48098, (248) 267-3381—who now serves as President of the Michigan State Bar—and I defended Mr. Sharma. Mr. Cranmer was lead counsel and I was his second chair. I examined all of our experts in the case (including an accident reconstructionist, biomechanic, and conspicuity expert) and cross-examined the prosecution's accident reconstructionist. After a one-week trial, the jury acquitted Mr. Sharma. The case was tried before Judge Nanci J. Grant, Oakland Circuit Court, 1200 North Telegraph Road, Dept. 404, Pontiac, Michigan, 48341, (248) 858-0358. Michael Goetz, Oakland County Prosecutor's Office, 1200 North Telegraph Road, Pontiac, Michigan, 48341, (248) 858-0656, was lead counsel for the prosecution.

8. *Flury v. DaimlerChrysler Corporation*, 427 F.3d 939 (11th Cir. 2005), cert. denied, \_\_\_ U.S. \_\_\_ (June 26, 2006). This case was an appeal of a jury verdict in favor of the plaintiff. The plaintiff alleged the airbag in his 1996 Dodge Ram truck should have deployed after he fell asleep at the wheel and struck a tree, and that the airbag's non-deployment enhanced his injuries in the crash. I briefed and argued the case for DaimlerChrysler Corporation in the Eleventh Circuit. M. Diane Owens, Swift, Currie, McGee & Hiers, LLP, 1355 Peachtree Street, Suite 300, Atlanta, Georgia, 30309, (404) 874-8800, was co-counsel for DaimlerChrysler. Richard D. Phillips, P.O. Box 69, Ludonici, Georgia, 31316, (912) 545-2191, was lead counsel for the plaintiffs. On appeal, DaimlerChrysler argued that the testimony of Plaintiff's only expert should have been excluded as unreliable under Fed. R. Evid. 702, and that the District Court should have imposed more meaningful sanctions for plaintiff's spoliation of the subject vehicle. In a unanimous opinion by Judge Fay, joined by Judges Birch and Carnes, the Eleventh Circuit held that the District Court abused its discretion by failing to dismiss the case as sanctions for the vehicle's spoliation. The Eleventh Circuit thus ordered judgment to be entered in favor of DaimlerChrysler. Plaintiff later filed a petition for certiorari with the Supreme Court; I wrote DaimlerChrysler's Brief In Opposition. On June 26, 2006, the Supreme Court denied the petition.
9. *Laura v. DaimlerChrysler Corporation*, 269 Mich. App. 446, 711 N.W.2d 792 (2006). This was a putative class action brought on behalf of owners and lessees of Dodge and Plymouth Neon vehicles in Michigan. Plaintiff alleged the head gaskets in the subject vehicles were defective. DaimlerChrysler Corporation had moved for summary disposition on statute-of-limitations grounds, which the trial court denied. I briefed and argued the case at all stages on appeal. Lynn Shecter, Roy Shecter & Vocht P.C., 36700 Woodward Avenue, Suite 205, Bloomfield Hills, Michigan, 48304, (248) 540-7660, was counsel for the Plaintiff. The appeal began with an application for leave to appeal, which the Court of Appeals denied. DaimlerChrysler then filed an emergency application for leave to appeal to the Michigan Supreme Court. That Court ordered the Court of Appeals to hear the appeal. After briefing and oral

argument, the Court of Appeals (per curiam) (Fitzgerald, O'Connell, and Kelly, JJ.) reversed the decision of the trial court and ordered judgment entered for DaimlerChrysler.

10. *Coker v. DaimlerChrysler Corporation*, 617 S.E.2d 306 (N.C. App. 2005), *aff'd*, 627 S.E.2d 306 (N.C. 2006). This was a putative class action brought on behalf of owners and lessees of 1995-2000 Chrysler, Dodge and Plymouth minivans. Plaintiffs alleged the minivans were defective because they lacked a "brake-shift interlock" device. Plaintiffs had not, however, suffered any injury or expense as a result of the alleged defect. The trial court granted summary judgment to DaimlerChrysler Corporation on standing grounds, among other grounds. I briefed and argued the case for DaimlerChrysler Corporation in the North Carolina Court of Appeals and the North Carolina Supreme Court. Sidney S. Eagles, Jr., Smith Moore L.L.P., 2800 Two Hanover Square, Raleigh, North Carolina, 27601, (919) 755-8771, was co-counsel for DaimlerChrysler Corporation. Gary Shipman, Shipman & Associates L.L.P., 11 South Fifth Avenue, Wilmington, North Carolina, 28401, (910) 762-1990, was lead counsel for Plaintiffs. The North Carolina Court of Appeals affirmed the judgment in favor of DaimlerChrysler in an opinion by Judge John Tyson, joined by Judge Richard Elmore, with Judge Robin Hudson dissenting. Plaintiffs appealed by right to the North Carolina Supreme Court. After briefing and oral argument, that Court unanimously affirmed the judgment of the Court of Appeals in a per curiam opinion.

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I had considerable experience reviewing and, to a significant extent, drafting proposed legislation while working in the Senate. On some occasions I prepared drafts of individual provisions for proposed legislation; on at least one occasion, I substantially drafted a proposed bill. To the best of my recollection, none of the provisions that I drafted became law. I do not have any copies of them today.

In addition, as noted above, I currently serve as a member of the Michigan State Bar Civil Procedure and Courts Committee. In that capacity, I review and comment upon proposed revisions to the Michigan Court Rules and legislation affecting the practice of law in Michigan.

I have not been involved in any lobbying activities.

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

I have not taught any courses.

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

If confirmed, I will enter into an agreement with my current partners for a buyout of my interest in Bush Seyferth Kethledge & Paige PLLC. I will ensure that any such agreement conforms to Advisory Opinion No. 24 of the Committee on Codes of Conduct for United States Judges. I do not anticipate any other receipts or arrangements of the kinds described in this question.

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

I have no plans, commitments, or agreements to pursue outside employment during my service with the Sixth Circuit if confirmed.

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

Please see the attached financial disclosure report.

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

Please see the attached financial net worth statement.

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service

**in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.**

Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service, if confirmed, would include cases involving Bush Seyferth Kethledge & Paige PLLC, DaimlerChrysler Corporation, and Ford Motor Corporation, among others. In addressing any such conflict, I would follow both the letter and the spirit of the Code of Conduct for United States Judges, the Ethics Reform Act of 1989, 28 U.S.C. § 455, and any other relevant guidelines if confirmed.

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

I would follow both the letter and the spirit of the Code of Conduct for United States Judges, the Ethics Reform Act of 1989, 28 U.S.C. § 455, and any other relevant guidelines if confirmed.

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

I have been involved in a number of *pro bono* activities. While at Honigman, I worked with Community Legal Services, a provider of legal services to the disadvantaged in Michigan, to clear title on a number of homes in Detroit that had been subject to tax foreclosures. I litigated multiple cases in Wayne County, Michigan Circuit Court to clear title on such properties and to allow new owners to begin to rehabilitate the homes. For this work I was named Community Legal Service's *Pro Bono* Attorney Of The Year for the Year 2000.

More recently, I have worked with New Leaders New Schools, a charitable organization that assists in placing school principals in economically depressed areas. Specifically, I have assisted NLNS in obtaining documents and evidence in Michigan for purposes of defending a lawsuit against NLNS in the District of Columbia.

My partners and I, through our law firm, are active in charitable activities within the Detroit-area legal community. For example, each year our firm hosts the BSKP Annual Golf Classic for the benefit of the Detroit Foundation For Exceptional Children. This event is typically attended by 150 guests each year, most of whom are lawyers and judges. My firm pays for 18 holes of golf, lunch, and dinner at a leading golf facility for all of the attendees. In return, we ask each attendee to make a donation directly to the Foundation for Exceptional Children. Every dollar thus donated goes directly to the

Foundation. In 2006, the event raised more than \$30,000 for the Foundation. The Foundation itself assists children with mental or other developmental handicaps.

Our firm also funds two scholarship programs at area law schools: The Bush Seyferth Kethledge & Paige Appellate Advocacy Scholarship at the University of Michigan Law School, and the Women's Trial Advocacy Scholarship at Wayne State University Law School.

**28. Selection Process:**

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

I am not aware of any selection commission in Michigan for federal judicial appointments.

I sent my resume to the White House unsolicited in February 2006. Approximately two weeks later, I was contacted to arrange interviews at the White House and the Department of Justice. On March 7, 2006, I interviewed at the White House; the following day, I interviewed at the Department of Justice. After completing all nomination paperwork and undergoing a background investigation, I was informed that the President had decided to nominate me to a seat on the Sixth Circuit. My nomination was forwarded to the Senate on June 28, 2006. My nomination was returned to the President on December 9, 2006. I was renominated on March 19, 2007.

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

No one during the selection process has discussed a case, issue, or question with me in a manner that could be interpreted as asking how I might rule on anything.

<b>AO-10</b> Rev. 1/2004		<b>FINANCIAL DISCLOSURE REPORT</b> <b>NOMINATION FILING</b>		Report Required by the Ethics in Government Act of 1978 (5 U.S.C. app. §§ 101-111)
1. Person Reporting (Last name, First name, Middle initial) Kethledge, Raymond M		2. Court or Organization Sixth Circuit		3. Date of Report 3/21/2007
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge Nominee		5. Report Type (check appropriate type) <input checked="" type="radio"/> Nomination, Date 3/19/2007 <input type="radio"/> Initial <input type="radio"/> Annual <input type="radio"/> Final		6. Reporting Period 1/1/2006 to 3/15/2007
7. Chambers or Office Address 3001 West Big Beaver Road, Suite 600 Troy, MI 48064		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____		
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.				

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

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

POSITION	NAME OF ORGANIZATION/ENTITY
1. Shareholder	Bush Seyfarth Kethledge & Paige PLLC
2. Trustee	Trust #1
3.	
4.	

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

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

DATE	PARTIES AND TERMS
1. none yet	Bush Seyfarth Kethledge & Paige PLLC. If confirmed, I will enter into an agreement consistent with Adv. Op. No. 24 for a buyout of my interest in the firm.

**FINANCIAL DISCLOSURE REPORT**

Name of Person Reporting Kethledge, Raymond M	Date of Report 3/21/2007
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**III. NON-INVESTMENT INCOME.** (Reporting individual and spouse; see pp. 17-24 of filing instructions)

**A. Filer's Non-Investment Income**

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

	DATE	SOURCE AND TYPE	GROSS INCOME (Yours, not spouse's)
1.	2007	Bush Seyfarth Kethledge & Paige PLLC wages	\$56,907
2.	2007	Bush Seyfarth Kethledge & Paige PLLC distributions	\$22,080
3.	2006	Bush Seyfarth Kethledge & Paige PLLC wages	\$303,384
4.	2006	Bush Seyfarth Kethledge & Paige PLLC distributions	\$416,440
5.	2005	Bush Seyfarth Kethledge & Paige PLLC wages	\$195,692
6.	2005	Bush Seyfarth Kethledge & Paige PLLC distributions	\$282,344

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

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

	DATE	SOURCE AND TYPE
1.		

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

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

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

	SOURCE	DESCRIPTION
1.		EXEMPT

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Kethledge, Raymond M	3/21/2007

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

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

SOURCE	DESCRIPTION	VALUE
1. EXEMPT		

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

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

CREDITOR	DESCRIPTION	VALUE CODE
1. Comerica Bank	Personal Credit Line	M

**FINANCIAL DISCLOSURE REPORT**  
Page 1 of 2

Name of Person Reporting Kethledge, Raymond M	Date of Report 3/21/2007
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**VII. INVESTMENTS and TRUSTS** — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merge, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (I-P)	(4) Gain Code 1 (A- H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1. Brokerage Account #1					EXEMPT				
2. --Investment Co America Com	A	Dividend	J	T					
3. IRA #1	C	Dividend	L	T					
4. --EuroPacific Growth Fund									
5. --Investment Co America Com									
6. --Short Term Inc Fund Money Market									
7. Bush Seyfarth Kethledge & Paige 401(K) plan	C	Dividend	L	T					
8. --Alliance Bernstein LP LgCap Value									
9. --Neuberger Berman MidCap Value									
10. --American Century LgCap Growth II									
11. --JP Morgan/Mellon Equity Sm-Cap Value 1									
12. --Principal Global Real Estate Secs									
13. --Principal Global Int'l Small Co									
14. Trust #1	A	Dividend	J	T					
15. --Short Term Inc Fund Money Market									
16. --Euro Pac Growth FD SH Ben Int'l									
17. IRA #2	A	Dividend	J	T					
18. --Euro Pac Growth Fund									

1. Income/Gain Codes:	A = \$1,000 or less (See Columns B1 and D4)	F = \$30,001-\$100,000	G = \$100,001-\$1,000,000	H = \$1,000,001-\$5,000,000	I = \$5,000,001-\$25,000,000	J = \$25,000,001-\$50,000,000	K = \$50,000,001-\$100,000,000	L = \$100,000,001-\$250,000,000	M = \$250,000,001-\$500,000,000	N = \$500,000,001-\$1,000,000,000	O = \$1,000,000,001-\$5,000,000,000	P = \$5,000,000,001-\$25,000,000,000	Q = \$25,000,000,001-\$50,000,000,000
2. Value Codes:	J = \$15,000 or less (See Columns C1 and D3)	N = \$250,000-\$500,000	O = \$500,001-\$1,000,000	P1 = \$1,000,001-\$5,000,000	P2 = \$5,000,001-\$25,000,000	P3 = \$25,000,001-\$50,000,000	P4 = \$50,000,001-\$100,000,000	P5 = \$100,000,001-\$250,000,000	P6 = \$250,000,001-\$500,000,000	P7 = \$500,000,001-\$1,000,000,000	P8 = \$1,000,000,001-\$5,000,000,000	P9 = \$5,000,000,001-\$25,000,000,000	P10 = \$25,000,000,001-\$50,000,000,000
3. Value Method Codes:	Q = Appraisal (See Column C2)	U = Book Value	R = Cost (Real Estate Only)	V = Other	S = Assessment	W = Estimated	T = Cash/Market						

<b>FINANCIAL DISCLOSURE REPORT</b>	Name of Person Reporting	Date of Report
	Kethledge, Raymond M	3/21/2007

**IX. CERTIFICATION.**

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

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

Signature Raymond M. Kethledge Date 3/21/07

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

**FILING INSTRUCTIONS**

Mail signed original and 3 additional copies to:

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

**FINANCIAL DISCLOSURE REPORT**  
**Page 2 of 2**

Name of Person Reporting Kethledge, Raymond M	Date of Report 3/21/2007
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div. rent. or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merge, redemption)	If not exempt from disclosure			
						(2) Date: Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
19. --Fundamental Investors									
20. Michigan Educations Savings Program #1	A	Dividend			Sold	10/9	J		
21. VCSP/CollegeAmerica 529A Education Savings Account	A		J	T	Buy	10/9	J		
22. --New Perspective Fund-529A									
23. --Investment Company of America-529A									
24. Bond Fund of America-529A									

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

**FINANCIAL STATEMENT**  
**NET WORTH**

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

ASSETS				LIABILITIES			
Cash on hand and in banks		4	500	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		125	600	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	1	091	000
Real estate owned-add schedule	1	250	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000	Personal Credit Line--Comerica Bank		126	000
Cash value-life insurance							
Other assets itemize:							
BSKP membership interest		400	000				
				Total liabilities	1	217	000
				Net Worth		713	100
Total Assets	1	930	100	Total liabilities and net worth	1	930	100
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT**  
**NET WORTH SCHEDULES**

Listed Securities

Alliance Bernstein LP LargeCap Sep Account	\$ 7,400
Neuberger Berman Management MidCap Sep Account	7,300
American Century Investment Mngmt. LargeCap Growth II Sep Account	6,700
JP Morgan/Mellon Equity Sm-Cap Value I Sep Account	7,300
Principal Global Investors Real Estate Securities Sep Account	8,500
UBS/Emerald Advisors Small Cap Growth II Sep Account	4,600
Principal Global Investors International Small Co. Sep Account	8,800
Bond Fund of America—529A	1,900
New Perspective Fund—529A	1,900
Investment Company of America—529A	1,900
EuroPacific Growth Fund Account #1	3,400
EuroPacific Growth Fund Account #2	2,400
Fundamental Investors Account	2,700
EuroPacific Growth Fund Account #3	3,400
Investment Co America Com Account #1	56,000
Investment Co America Com Account #2	1,400
Total Listed Securities	<u>\$ 125,600</u>

Real Estate Owned

Personal Residence #1	\$ 450,000
Personal Residence #2	800,000
Total Real Estate Owned	<u>\$ 1,250,000</u>

Real Estate Mortgages Payable

Personal Residence #1	\$ 225,000
Personal Residence #2	716,000
Home-Equity Line	150,000
Total Real Estate Mortgages Payable	<u>\$ 1,091,000</u>

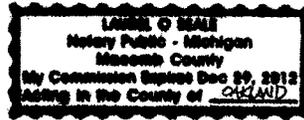
AFFIDAVIT

I, Raymond M. Kethledge, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 4, 2007

Raymond M. Kethledge  
Raymond M. Kethledge

Laurie D. Seale  
(NOTARY)



Chairman LEAHY. Mr. Murphy.

**STATEMENT OF STEPHEN JOSEPH MURPHY III, NOMINEE TO  
BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF  
MICHIGAN**

Mr. MURPHY. Thank you very much, Chairman Leahy.

First, I would ask my wife, Amy, and my two precious children, Stevie and Natalie, to stand up. There is Natalie and Stevie. Can we see you? Come out here so everybody can see you. That is Stevie Murphy.

My mother and father join us from St. Louis. Mom and Dad. And my sister, Tina, and her husband John Godar, who is a very close friend and lawyer in St. Louis, join us as well.

Two of my colleagues from the Justice Department, Rita Foley and Myra Stith, are here as well. And I think that is it.

I would like to give thanks, Chairman Leahy, to the members of the Committee, to the Ranking Member, and, Senator Leahy, I would really like to thank you for scheduling this hearing and for treating us fairly, as you have. I am extremely grateful to Senators Levin and Stabenow for introducing us and for working to get us here today. My great thanks goes to the President of the United States for this incredible gift and humbling bestowing of a nomination on me. And, of course, my family I am terrifically grateful for. So thank you for everything.

Chairman LEAHY. Well, thank you very much, and let me ask this question of Mr. Kethledge and Judge White. The courts are really the only undemocratic branch of our Government, and in the Constitution, the Founders set it up that way. So they have a special responsibility to be open to those Americans who have the least power. They cannot vote for them or against them. They have—and with those Americans who have the least power, they also have the need for the greatest protection. I think the nominees have to show sensitivity to people of different backgrounds and show they have a commitment to equal justice under the law.

Can you describe any situations where, as either the lawyer or as the judge, you have taken difficult positions on behalf of comparatively poor or powerless individuals or members of racial minorities?

Judge White.

Judge WHITE. Senator, thank you for asking that question. I began my judicial career as a judge on the Common Pleas Court and the 36th District Court for the city of Detroit. In that capacity, most of the cases that came before me were with pro per litigants, and I quickly learned how difficult it might be for someone who is uncounseled to appear before the court, how intimidating it might be. And in that service, I took great pains to both make people comfortable and to help them state what was on their minds, to help bring out what brought them before the court.

In fact, when I was on the traffic court, I saw that the system was not responsive to pro per litigants in the sense that they would come to court with a number of problems that were just lurking in the file room, and they would leave thinking that they had taken care of them. And I instituted procedures in my courtroom that meant that when they came to court, all of the legal problems that

they had relating to the matter but not necessarily brought before the court because of the problems were addressed.

I mention it because it was unpopular to those who thought that the system should just bring people in and out. But I have to say that at the end of my tenure, all the other courtrooms were using the same procedures, and I knew when I went home at the end of the day that the people that came before me received the justice that they were entitled to.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Stephen Joseph Murphy, III

Steve Murphy

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

United States District Judge for the Eastern District of Michigan

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

Office: 211 West Fort Street, Suite # 2001, Detroit, MI 48226-3211

Residence: Grosse Pointe, Michigan

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

1962, St. Louis, Missouri

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

Married to Amy E. Murphy (formerly Uhl), who works in the home as a full time mother. We have two dependent children.

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

St. Louis University, 1984-87, J.D. granted May 1987.

Marquette University, 1980-84, B.S. granted May 1984.

7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms,

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

March 2005 to present – United States Attorney for the Eastern District of Michigan  
211 West Fort Street, Suite 2001, Detroit, Michigan, 48230-1216

- Chairman, Eastern Michigan Federal Law Enforcement Council ("FLEC").
- Chairman, Anti-Terrorism Task Force ("ATAC").
- Co-Chair, Building Respect in Diverse Groups Enhancing Sensitivity ("BRIDGES").
- Co-Chair, Michigan Association Against Hate Crimes ("MIAAHC").
- Executive Board, Michigan High Intensity Drug Trafficking Area ("HIDTA").

May 2000 to March 2005 – General Motors Legal Staff, Global Headquarters; Counsel  
400 Renaissance Center, 2<sup>nd</sup> Floor, Detroit, Michigan, 48265

January 1992 to May 2000 – United States Attorney's Office, Eastern District of Michigan; Assistant United States Attorney  
211 West Fort Street, Suite 2001, Detroit, Michigan, 48230-1216

January 1990 to January 1992 – United States Department of Justice, Tax Division, Western Criminal Enforcement Section; Trial attorney  
10<sup>th</sup> and Pennsylvania Avenue, N.W., 6<sup>th</sup> floor, Washington, D.C., 20530

October 1987 to January 1990 – United States Department of Justice, Civil Division, Federal Programs Branch; Trial attorney  
10<sup>th</sup> and Pennsylvania Avenue, N.W., 3<sup>rd</sup> floor, Washington, D.C., 20530

October 1986 to September 1987 – Coburn Croft and Putzell; law clerk  
One Mercantile Tower, 29<sup>th</sup> floor, St. Louis, Missouri, 63101

May 1986 to August 1986 – Ralston Purina Corp. Legal Department; law clerk  
Checkerboard Square, St. Louis, Missouri, 63144

May 1985 to August 1985 – Adams County Circuit Court; law clerk  
500 Vermont Avenue, Quincy, Illinois, 60633

May 1984 to August 1984 – National Courier Systems; courier  
9000 Page Boulevard, Overland, Missouri, 63114

December 2002 to March 2005 – National Association of Securities Dealers Dispute Resolution; Public Arbitrator (Part Time)  
55 West Monroe Street, Suite 2600, Chicago, Il, 60603

January 1995 to May 2003 – University of Detroit Mercy School of Law; Adjunct Professor of Law  
651 East Jefferson Avenue, Detroit, Michigan, 48226

Fall term 2002 – Ave Maria School of Law, Ann Arbor, Michigan; Adjunct Professor of Law  
3475 Plymouth Road, Ann Arbor, Michigan, 48105

Ave Maria School of Law, Member Board of Visitors, 1999-2003  
3475 Plymouth Road, Ann Arbor, Michigan, 48105

The Northwest Center, Inc., Chairman of the Board, 1991-1992  
1314 14<sup>th</sup> Street, N.W., Washington, D.C 20004

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

None.

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

White Family Fellowship in Public Law, St. Louis University School of Law, 1986-87.

U.S. Department of Justice Special Achievement Award for Sustained Superior Performance, July 1997.

Motion Picture Association of America, appreciation for achievement in prosecution of film and video piracy, January, 1999.

Marquis Who's Who In American Law.

U.S. Department of Justice, Employee Volunteer Service Award, April 23, 1999.

Michigan Association of CPAs, *Premier Partner Award*, bestowed at Annual Dinner, September 8, 2003 (awarded for sustained service in organizing and moderating educational panels sponsored by MACPA for lawyers and CPAs on business issues of current interest).

Detroit Police Department, in appreciation for achievement in Super Bowl XL preparedness, February 5, 2006.

Drug Education for Youth ("DEFY"), in recognition for outstanding service to DEFY Camp, 2006, 2007.

United States Postal Service, in appreciation for efforts and achievement on Hurricane Katrina Response Team, 2005.

Bureau of Alcohol, Tobacco, Firearms, and Explosives, Detroit Division, in appreciation for partnership and efforts to combat gun violence in the Eastern District of Michigan, 2005.

United States District Court, Eastern District of Michigan, appreciation and recognition for Pro Bono work, 2003.

Greater Grace Temple, Detroit, Michigan, special recognition at Law Enforcement Appreciation and Prayer Day, April 2, 2006.

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

State Bar of Michigan, 1998-present.  
Board of Commissioners, 2002-2005.  
Committee to Revise State Rules of Criminal Procedure, appointed by Michigan Supreme Court, 2002-2004.

The Missouri Bar, 1987-present.

American Bar Association

Republican National Lawyers Association.

Federal Bar Association, Eastern District of Michigan Chapter  
Member, Board of Directors, 2003-2005.

Detroit Metropolitan Bar Association.

Catholic Lawyers Society of Detroit, Michigan.

Incorporated Society of Irish American Lawyers.

Prosecuting Attorneys Association of Michigan  
Education and Training Committee, 1998-1999.

American Inn of Court, University of Detroit Mercy Chapter  
Master of the Bench, 1996-1999.

**11. Bar and Court Admission:**

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

Supreme Court of Missouri, 1987

Michigan State Bar, 1998

No lapses in membership.

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

United States District Court, Eastern District of Michigan, January 1992.

United States District Court, Northern District of Ohio, August 2004.

United States Court of Appeals for the Sixth Circuit, April 1992.

The following courts granted temporary admission while I was a government lawyer representing federal agencies and instrumentalities:

United States Court of Appeals for the Ninth Circuit, September 1990.

United States District Court, Central District of California, September 1990.

United States District Court, District of Nevada, March 1990.

United States District Court, District of Utah, March 1990.

United States District Court, District of North Dakota, February 1989.

United States District Court, District of Columbia, July 1988.

United States District Court, Northern District of California, January 1988.

United States District Court, Southern District of Florida, November 1987.

**12. Memberships:**

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

Federalist Society.

Washington, D.C. Lawyers Chapter, 1988-1992.  
Michigan Lawyers Chapter, President 2002-2003; officer, 1999-2004.  
Executive Committee, Criminal Law and Procedure Practice Group; co-chair, Subcommittee on Corporate Criminal Law, 2003-2005.

Marquette University Alumni Association, Detroit, Michigan.

Detroit Athletic Club.

Member, Enrichment Fund Committee, 2002-2005.

Center for Faith and Action at University of Detroit Jesuit High School and Academy, 1992-93.

St. Paul Catholic Church, Christian Service Committee, Grosse Pointe Farms, Michigan, 1994-1997 (chair, 1995-96).

Big Brothers and Big Sisters of Metro Detroit, 1993-1996.

John Carroll Society of Washington, D.C.

Citizens for a Common Defence

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

I have been told that the Detroit Athletic Club formerly, as late as the 1970s, discriminated on the basis of race and sex. This discrimination occurred long before I joined the club in 2001 and I was unaware of it when I joined. Nevertheless, I have worked to sponsor women members of the club and I have discussed with the directors and employees of the club strategies for community outreach and promoting a more diverse membership. I have solicited members of minority groups to see if they might be interested in club membership.

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

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or**

edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

Note, Wallace v. Jaffree: Which Statutes Authorizing Moments of Silence in Public Schools Are Constitutional?, 30 St. Louis U.L.J. 1243 (1986)(article one of four nominated for Best Student Article submitted to the Journal during 1985-86) (noted as "Worth Reading", N'l L.J., March 9, 1987, at 18).

Murphy, An Update on Violations of 18 U.S.C. '922(a)(1)(A): Are More Licensed Firearms Dealers Selling Guns Away From Their Licensed Premises Since *United States v. Caldwell* Legalized Such Conduct?, 75 U. Det. Mercy L. Rev. 651 (1998).

Murphy, Demystifying the Complex Criminal Case at Trial: Lessons for the Courtroom Advocate, 81 U. Det. Mercy L. Rev. 291 (2004).

"Rule Change Doesn't Undermine Right to Attorney," Detroit News, April 19, 2005, at 10A.

"Local Comment: PATRIOT ACT – Law Must Keep Up With Advancements," Detroit Free Press, June 20, 2005, at 11A.

"Where the MCA Money Went," Crain's Detroit Business, March 20, 2006, at 8.

"Letter to the Editor," D.C. Circuit nomination, Detroit News, February 25, 2003, at 10A.

"Letter to the Editor," Safety During Super Bowl Week, Detroit Free Press, February 12, 2006, at 3C.

"Letter to the Editor," Estrada nomination, America Magazine, February 2, 2004, at 45.

Verdict in the Second Simpson Trial No Surprise, Detroit News, February 12, 1997, at 9A.

Reciprocal Club: The Balboa Bay Club, The DAC News, April 2003, at 24.

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

None

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

None

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

Moderator, Child Protection/Safety Panel ("Hidden Dangers on the Internet"), Panel discussion with law enforcement and community leaders, Wyandotte, MI, March 23, 2008.

"The Role of the United States Attorney in a Post 9/11 Environment," University of Detroit High School Alumni Lawyers' Dinner, Detroit, MI, January 24, 2008.

"Fraud Awareness in Corporate Cases," Michigan Ass'n of CPAs Fraud Conference, Troy, MI, November 28, 2007.

Remarks, Board meeting of Jewish Community Council, Bloomfield Hills, MI, October 11, 2007.

"The Role of the United States Attorney in a Post 9/11 Environment," Jewish Federation of Detroit Forum, Bloomfield Hills, MI, May 24, 2007.

Address, Postal Inspectors Training Class Graduation, Postal Service Training Academy, Potomac, Md., May 11, 2007.

Moderator, Child Protection/Safety Panel ("Hidden Dangers on the Internet"), Panel discussion with law enforcement and community leaders, Saginaw, MI, March 23, 2007.

Moderator, Child Protection/Safety Panel ("Hidden Dangers on the Internet"), Panel discussion with law enforcement and community leaders, Pontiac, MI, June 6, 2006.

"Reasonable Sentencing Post Booker," Panel discussion, Conference of the United States Court of Appeals for the Sixth Circuit, Detroit, Michigan, May 18, 2006.

"Crime and Punishment" in the Corporate World: An Examination of Federal Sentencing Issues in Corporate Fraud Cases, Michigan Ass'n of CPAs Fraud Conference, Troy, MI, May 24, 2006.

"Attorney-Client Privilege Waiver Requests in Corporate Fraud Investigations," Panel discussion, State Bar of Michigan Task Force on the Attorney-Client Privilege, Livonia, Michigan, May 10, 2006.

"Ask the Regulators," Panel discussion, Ethics and Compliance Officers Association Sponsoring Partner Forum, Santa Ana Pueblo, New Mexico, April 5, 2006.

"The Role of the United States Attorney in a Post 9/11 Environment," Grosse Pointe Rotary Club, January 8, 2007; Incorporated Society of Irish American Lawyers monthly meeting, September 18, 2006; Detroit Athletic Club Executives Group, February 11, 2006; Grosse Pointe Senior Men's Club, January 10, 2006; Oakland County Bar Association First Tuesday Breakfast, November 1, 2006; Council of Arab-American Organizations, Iftar Dinner, October 13, 2005; Arab American Anti-Discrimination Committee, "Judges Night," November 3, 2005; The Hundred Club of Detroit, October 12, 2005.

"Suspicious Activity Reports," Comerica Bank Senior Leadership Meeting, Detroit, MI, October 24, 2006.

Project Sentry: spoke to middle school children in Detroit and Highland Park, MI, on two or three occasions in 2005-06 on preventing gun violence.

Face to Face: met with recent parolees on 5-6 occasions in 2005-06 on avoiding criminal activity and turning life around to make positive societal contributions.

"Remarks," Investiture as United States Attorney, United States District Court, Eastern District of Michigan, September 15, 2006.

Moderator, "Sarbanes-Oxley: Where Have We Been, Where Are We Going?" Panel Discussion featuring U.S. Senator Debbie Stabenow and others, sponsored jointly by Federalist Society and Michigan Ass'n CPAs, Livonia, Michigan, September 17, 2002.

Panelist, "Extending Ethics Programs to Suppliers," 9<sup>th</sup> Annual Meeting, Ethics Officers Association, Nashville, Tennessee, October 26, 2001.

"Prosecution of Criminal Intellectual Property Cases," FBI Intellectual Property Seminar for Experienced Agents, FBI Academy, Quantico, VA, December 15, 1999.

"Drug/Alcohol Rehab Patient Records in the Criminal Investigation," U.S. Attorney's Health Care Fraud Symposium, Detroit, Michigan, October 27, 1998.

"United States v. Weinstock: Evidentiary and Sentencing Issues in a Criminal Health Care Fraud Case," Health Care Fraud Working Group, U.S. Department of Justice, Washington, D.C., October 7, 1998.

"Pretrial Issues in the Criminal Tax Case," Criminal Tax Seminar, Department of Justice Office of Legal Education, Columbia, South Carolina, July 30, 1998.

"Fraud Cases: Tips on How Auditors Can Better Detect Their Clients' Criminal Schemes," Missouri Society of Certified Public Accountants -- Educational Foundation, Nonprofit Seminar, Saint Louis, Missouri, 10/24/96; Kansas City, Missouri, 10/25/96.

"Implementing the New Fraud Standard: When Auditors Don't Detect Their Clients' Criminal Schemes," Michigan Assn. of Certified Public Accountants, Traverse City, Michigan, June 24, 1996; Troy, Michigan, June 25, 1996.

"Direct Methods of Proof," and "Investigating the Criminal Tax Case -- Preindictment," Criminal Tax Seminar, Department of Justice Office of Legal Education, Annapolis, Maryland, November 6 and 7, 1995.

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

David Ashenfelter, *GM Lawyer May Be Next U.S. Attorney*, Detroit Free Press, Feb. 18, 2005.

David Shepardson, *One-Time Terror Suspect Gets Apology from Judge*, Detroit News, Mar. 23, 2005, at 1A.

Sarah Karush, *New U. S. Attorney Relishes a Challenge*, AP, Mar. 25, 2005, State and Regional.

Lisa Martino, *U. S. Attorney Faces Challenges: Kmart Case and Super Bowl are on Plate of Grosse Pointe Resident Nominated by President*, Detroit News, Apr. 6, 2005, Neighborhood, at 2L.

David Shepardson, *2 Charged in Michigan Drug Ring; Authorities Say Duo Sold Dope, Laundered Money in Cleveland and Metro Detroit*, Detroit News, May 13, 2005, Metro, at 1B.

David Shepardson, *Former Metro Security Screener Guilty of Lying; Jury Convicts the Dearborn Ex-Airman Over False Statements on Job Application*, Detroit News, May 20, 2005, Metro, at 1B.

Tony Manolatos, David Shepardson, *Detroit Drug Ills Haunt W. Va.; Police Blame City's Drug Connection in Shootings that Killed Four Teenagers*, Detroit News, May 25, 2005, at 3A.

David Shepardson, *Corruption Charges in Doubt*, Detroit News, Jun. 3, 2005, Metro.

*U. S. Senate Confirms Stephen Murphy as Detroit U. S. Attorney*, AP, Jun. 10, 2005, State and Regional.

David Shepardson, *Murphy OK'd as U.S. Attorney*, Detroit News, Jun. 10, 2005, Metro, at 6D.

Susan Whitall, *WJR News Radio Loses Three Veteran Staffers*, Detroit News, Jul. 1, 2005, Features, at 1D.

*Detroit Prosecutor Alters Rules After Terrorism-Case Breakdown*, Bloomberg, Jul. 13, 2006, Top Worldwide News & Commentary.

David Ashenfelter, *Marijuana Ring Stopped, U.S. Says; 33 People Face Charges; Crackdown is One of Largest in Area*, Detroit Free Press, Jul. 19, 2005.

*Thirty Arrested in Bust of Arizona-Michigan Dope Ring*, AP, Jul. 19, 2005, State and Regional.

David Shepardson, Mike Martindale, Ronald J. Hansen, *32 Charged in Metro Drug Ring; Federal Prosecutors Say Suspects Netted \$178 Million. Making it the Largest Drug Case in State History*, Detroit News, Jul. 19, 2005, Metro, at 1B.

David Shepardson, *Smuggler Suspect Nabbed at Border*, Detroit News, Aug. 19, 2005, Metro, at 1B.

David Shepardson, *Man Admits Smuggling Women; The Lithuanian Immigrant Pleads Guilty to Forcing European Women to Work as Strippers to Repay Debts*, Detroit News, Sep. 9, 2005, Metro, at 1B.

David Shepardson, *Feds Target Stash Seized from Gang*, Detroit News, Sep. 12, 2005, Metro at 1B.

David Shepardson, *U.S. Attorney Faces a Lot of Challenges; Murphy is Formally Sworn In; Michigan Politicians Praise Top Law Enforcement Officer*, Detroit News, Sep. 16, 2005, Metro, at 8B.

David Ashenfelter, *Disability Suit Over Apartment Access is Settled*, Detroit Free Press, Oct. 4, 2005.

David Ashenfelter, *Overhaul to Offer Access to Disabled*, Chicago Tribune, Oct. 16, 2005, Real Estate, at 54.

David Shepardson, *Detroit Crime Declines in '04*, Detroit News, Oct. 18, 2006, Metro, at 1B.

Tom Krishner, *Federal Charges Brought Against 20 in Mortgage Fraud Cases*, AP, Oct. 18, 2005, State and Regional.

Joel Kurth, David Shepardson, *FBI Probes Sheriff Deputies' Ties to Drug Ring; During Raid of County Jail Worker's Home, Agents Seize Evidence They Believe Will Link Officers, Two Inmates*, Detroit News, Oct. 19, 2005, Metro, at 2B.  
David Shepardson, *20 Face Mortgage Fraud Charge*, Detroit News, Oct. 19, 2005, Metro, at 1B.

Christy Arboscello, *20 are Charged in Fraud Scheme*, Detroit Free Press, Oct. 19, 2005.

David Shepardson, *Local FBI's No. 1 Job; Terror War; More Than 100 Agents Juggle 300 Investigations; Detroit Bureau Creates Full Time Al-Qaida Squad*, Detroit News, Oct. 23, 2005, at 1A.

*6 Atlantans Charged in Drug Ring; 'Black Mafia' Had Ties to Rap Music, Officials Say*, Atlanta Journal-Constitution, Oct. 30, 2005, Metro, at 4E.

David Shepardson, *Feds to Monitor City's Busing*, Detroit Free Press, Nov. 4, 2005, Metro at 1B.

Monica Link, *Detroit Market Prone to Loan Fraud*, National Mortgage News, Nov. 7, 2005, Vol. 30, No. 7, at 26.

Betty DeRamus, *Program for Kids Pulls No Punches About Gun Violence*, Detroit News, Nov. 9, 2005, Metro, at 1B.

Niraj Warikoo, *Murphy to Host Meeting on Bias*, Detroit Free Press, Nov. 15, 2005, at 1.

Niraj Warikoo, *Metro Arabs Don't Feel France's Alienation, Discrimination Here*, Detroit Free Press, Nov. 28, 2005, at 1.

Ben Schmitt, *State Ranks No. 3 in Hate Crimes; Most Centered on Race, the FBI Says*, Detroit Free Press, Dec. 7, 2005, at 6.

Ron Hansen, *Hate Crimes in Michigan Intensify; High-Profile Cases This Year Highlight Growing Problem; State Ranked Third in Nation in 2004*, Detroit News, Dec. 12, 2005, Metro, at 1B.

David Shepardson, *U.S. Indicts 4 in Prostitution Operation*, Detroit News, Dec. 15, 2005, Metro, at 1B.

Mark Sherman, *Feds Bust Child Prostitution in Michigan, Other States*, AP, Dec. 16, 2005, State and Regional.

David Shepardson, *Doctor Faces Charges in Insurance Fraud Case; Detroit Accused of Billing Blue Cross Blue Shield \$1 Million for Work That was Never Performed*, Detroit News, Dec. 20, 2005, Metro, at 6B.

*ABN AMRO Agrees to \$41 Million Settlement*, AP, Jan. 4, 2006, Business News.

*Ending Violent Crime Must Be Higher Priority; Detroit Makes Progress, But Crime Still Hurts Comeback*, Detroit News, Jan. 5, 2006, Editorials, at 12A.

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David Shepardson, *Loan Provider Owns Up to Fraud*, Detroit News, Jan. 5, 2006, Business, at 1C.

David Ashenfelter, *ABN AMRO Averts Lawsuit; Mortgagor to Settle with \$41 Million*, Detroit Free Press, Jan. 5, 2006, Business, at 1.

Niraj Warikoo, *2 Accused of Hate-Crime Fire; Arson Target Taylor Family, U.S. Says*, Detroit Free Press, Jan. 12, 2006, at 1.

*Courts*, Washington Internet Daily, Jan. 19, 2006, Vol. 7, No. 12.

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Sarah Karush, *U.S. and Canada Arrest 17 in Alleged Human Smuggling Ring*, AP, Feb. 15, 2006, State and Regional.

Doug Schmidt, *Cops Shut Down Smuggling Ring*, Windsor Star, Feb. 15, 2006, at A1.

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Andrew Dietderich, *Billion-Dollar Message; 'Staggeringly High' Restitution Unlikely Ever to Be Paid in MCA Case*, Crain's Detroit Business, Feb. 27, 2006, at 3.

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Joe Swickard, Jim Schaefer, *Gambling Raids Cap an 8-Year U.S. Probe; Suspects' Lawyers: It's Small-Time*, Detroit Free Press, Mar. 4, 2006, at 1.

Sarah Karush, *Flint Man Charged with Producing Child Pornography*, AP, Mar. 23, 2006, State and Regional.

Paul Egan, *U.S. Beefs Up Child Porn Fight; U.S. Attorney's Office Will Seek Maximum Penalties, Including Against a Clio Man Charged With Abuse*, Detroit News, Mar. 24, 2006, Metro, at 1B.

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Jeff Gerritt, *A Model for Making a New Life*, Detroit Free Press, Mar. 27, 2006, Editorial, at 8.

*Singaporean Arrested in U.S. Over \$4.8m Arms Deal*, Channel NewsAsia, Apr. 13, 2006. Singapore News.

Elliott Almond, *Bonds' Trainer Anderson is Subpoenaed to Testify; BALCO Vice President Valente is Scheduled to Appear Before the Federal Grand Jury Next Month*, Contra Costa Times (California), Apr. 26, 2006, Sports, at F4.

Niraj Warikoo, *La Shish Boss Coming Home: From Lebanon, He Says Unfair Charges Hurt Many*, Detroit Free Press, May 28, 2006, State and Regional.

Niraj Warikoo, *Group Counters Anti-Arab Ignorance; Businessman Aims to Educate Area About Culture*, Detroit Free Press, Jun. 2, 2006, at 3.

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Paul Egan, George Hunter, Christine Ferretti, *Detroit Murders Fall; Violence Up in 2 Suburbs*, Detroit News, Jun. 13, 2006, at 1A.

*Bling Sting: Hip-Hop's 'Jacob the Jeweler' Popped on Money-Laundering Charge*, Time Inc., Jul. 3, 2006, Vol. 66, No. 1, Crime Watch, at 100.

Sarah Karush, *3<sup>rd</sup> Former Metaldyne Employee Charged in Trade Secrets Case*, AP, Jul. 5, 2006, Business News.

Niraj Warikoo, *Probes of Links to Hizballah Grow: Focus on Group Concerns Some Local Muslims*, Detroit Free Press, Jul. 5, 2006, State and Regional News.

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Paul Egan, *3 Accused of Selling Trade Secrets to China*, Detroit News, Jul. 6, 2006, at 1A.

Cecil Angel, *Crime-Fighters Team Up in Detroit; Federal State and Local Agencies Pool Resources to Rid City of Violent Felons*, Detroit Free Press, Jul. 19, 2006, at 3.

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Paul Egan, *Bates Guilty; Faces Prison*, Detroit News, Sep. 1, 2006, at 1A.

David Ashenfelter, Marisol Bello, *Bates Found Guilty of Fraud: Former Councilman Faces Up to 3 Years*, Detroit Free Press, Sep. 1, 2006.

Paul Egan, *Marlinga Cleared*, Detroit News, Sep. 28, 2006, at 1A.

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Paul Egan, *World Series Security in Works; Area Authorities Begin Planning Crowd Control, Traffic in Light of Tigers' 2-0 Lead Over Oakland*, Detroit News, Oct. 13, 2006, Metro, at 2B.

Korie Wilkins, et al., *Wayne Briefs*, Detroit Free Press, Oct. 15, 2006, at 3.

David N. Goodman, *Detroit World Series Safety Plans Eye Threats Big and Small*, AP, Oct. 17, 2006, Sports News.

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Nancy Jo Sales, *Is Hip-Hop's Jeweler on the Rocks? . . . Accused of Laundering Drug Money for Detroit's Black Mafia Family*, Vanity Fair, Nov. 2006, No. 555, at 204.

David Shepardson, *Detroit FBI Chief Earns a Promotion*, Detroit News, Nov. 7, 2006, Metro, at 1B.

Interview with Stephen J. Murphy, United States Attorney for the Eastern District of Michigan, *Protecting Integrity of 2006 Elections*, WJR Radio 760, Paul W. Smith Show (Nov. 7, 2006).

Paul Egan, *Judge Restrains Democratic Poll-Watchers Following Complaint*, Detroit News, Nov. 8, 2006, Politics, at 1.

Interview with Stephen J. Murphy, United States Attorney for the Eastern District of Michigan, *Dangers of Methamphetamine Use*, WJR Radio 760, Paul W. Smith Show (Nov. 30, 2006).

Cecil Angel, *State Claims Inroads in Meth Battle*, Detroit Free Press, Dec. 1, 2006, State and Regional.

Paul Egan, *Drug Kingpin Gets 18 Years; Police Get Millions*, Detroit News, Dec. 12, 2006, Metro.

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David Ashenfelter, *Lending Executive Accused of Fraud*, Detroit Free Press, Jan. 10, 2007, Business and Financial News.

Interview with Stephen J. Murphy, United States Attorney for the Eastern District of Michigan, *Feds Charge 19 for Loan Fraud*, WXYZ-TV, Channel 7 in Detroit, Mich. (Jan. 10, 2007).

Paul Egan, *Feds Charge 19 in \$76 Million Small Business Loan Fraud Scheme*, Detroit News, Jan. 10, 2007, Business.

Paul Egan, *Feds End Probe of McNamara Staffers*, Detroit News, Jan. 11, 2007, Metro, at 1B.

Zachary Gorchow, *McNamara's Widow Calls Clearance Late*, Detroit Free Press, Jan. 12, 2007, State and Regional.

David Ashenfelter, *Lending Executive Accused of Fraud; U. S. Loss May Hit \$76.8 Million*, Detroit Free Press, Jan. 10, 2007, Metro Final, at 2.

*Feds End Probe of Michigan Gov. Granholm Mentor Ed McNamara*, AP, Jan. 11, 2007, State and Regional.

Paul Egan, *'Snitch Evidence' Under Fire; More Cases Involving Informants Overturned*, Detroit News, Feb. 20, 2007, at 1A.

Paul Egan, *Detroit FBI Chief Comes Home; Metro Area Native Andrew Arena Says Job is "Dream Come True."* Detroit News, Apr. 9, 2007, at 1B.

David Aguilar, *U. S. Prosecutors: 4-Year Probe Led to Espionage-Related Charges*, AP, Apr. 18, 2007, International News.

Eric Lipton, *Some Ask if U.S. Attorney Dismissals Point to Pattern of Investigating Democrats*, New York Times, May 1, 2007.

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Dan Wetzel, *Tractor Trailer Derailed*, Yahoo Sports, May 2, 2007.

Paul Egan, *Marlinga: Was Case Political?; He Wonders Now If Politics Played a Part in His Prosecution; Current U. S. Attorney Denies It*, Detroit News, May 2, 2007, at 1B.

Paul Egan, Gregg Krupa, *Arabs Aren't Singled Out, Gonzales Says; Metro Leaders Frustrated With Slow Citizenship Process*, Detroit News, May 9, 2007, at 1B.

Paul Egan, *Court Orders Cost Detroit Cops \$24 Million; Assistant Chief Cites Spending in Asking Judge to Ease Federal Oversight, Reforms*, Detroit News, May 18, 2007, at 1B.

*Briefly*, Crain's Detroit Business, May 28, 2007, Briefs, at 17.

Interview with Stephen J. Murphy, United States Attorney for the Eastern District of Michigan, *Jack Lessenberry's Essay and Interviews*, Michigan Radio, Ann Arbor, Mich. (June 20, 2007).

David Ashenfelter, *This Is Not Your Dad's Marijuana, Officials Say of Canada-U. S. Drug Ring Bust*, Detroit Free Press, Jul. 10, 2007, State and Regional News.

Paul Egan, *U. S. Canada Arrest 37, Cut Off Rowboat Drug Route*, Detroit News, Jul. 11, 2007.

*Operation Proves How Teamwork Beats Crime*, Detroit Free Press, Aug. 10, 2007, Editorial, at 10.

Paul Egan, *Detroit Crime Falls After Gang Crackdown; In One Year of Agencies' Joint Program, Homicides, Shootings, Drop Notably on City's Northwest Side*, Detroit News, Aug. 11, 2007, at 3A.

Paul Egan, *Cops Claim Strides in Gang Crackdown*, Detroit News, Aug. 11, 2007, at 1.

*Man Admits to Cross Burning; Sumpter Twp. Family Terrorized by Fire, Explosion Last Summer*, Ann Arbor News (Michigan), Aug. 17, 2007.

Interview with Stephen J. Murphy, United States Attorney for the Eastern District of Michigan, *Spotlight on the News*, WXYZ-TV, Channel 7 in Detroit, Mich. (August 17, 2007).

Ben Schmitt, *Doctor, Cop Charged in prescription Drug Ring; Authorities Estimate 1 Million Pills Circulated Annually in Metro Area*, Detroit Free Press, Aug. 30, 2007.

Paul Egan, *Feds Explain Charity Giving; Terrorism Officials Meet With Area Muslims to Clarify Donation Policy*, Detroit News, Sep. 5, 2007, at 1B.

Interview with Stephen J. Murphy, United States Attorney for the Eastern District of Michigan, *Stephen Murphy tells Paul W. Smith he is working hard to make sure the Detroit area is well protected against terrorism*, WJR, Radio 760 in Detroit, Mich. (September 12, 2007).

*U. S. Department of Justice Provides \$1M Multi-Year Grant to Combat Gang and Gun Violence in Three Target Cities*, PR Newswire, Sep. 17, 2007.

Natalie Lombardo, *Rental Discrimination Settlement Makes Michigan Fair Housing History*, Michigan Lawyers Weekly, Sep. 17, 2007.

Paul Egan, *Group Honors Detroit ATF Chief; Crime Stoppers Salutes Goddard's Leadership in Reducing Gun Crime in City*, Detroit News, Oct. 5, 2007, at 3B.

Lara Jakes, Jordan, *Low-Key Keister Delayed Resignation to Fill Gap at Justice Department*, AP, Oct. 15, 2007.

Paul Egan, *Should They Die?; Feds Push for Capital Punishment in Mich. Cases*, Detroit News, Oct. 18, 2007, at 1A.

Interview with Stephen J. Murphy, United States for the Eastern District of Michigan, *Tipped Off About Tests?; How Was She Hired?*; CNN, (November 14, 2007).

Interview with Stephen J. Murphy, United States Attorney for the Eastern District of Michigan, *Former FBI and CIA Agent Guilty of Fraud, Stealing Secrets*, Fox News Channel (November 15, 2007).

Paul Egan, *Law School Gets Green; Through New Clinic, University of Detroit Mercy Students to Handle U. S. Environmental Cases*, Detroit News, Dec. 26, 2007, at 2B.

Paul Egan, *NAACP, Feds Must Toughen Noose Law*, Detroit News, Nov. 20, 2007, at 1A.

David Ashenfelter, *Busted; Federal Crackdown on Kiddie Porn and Predators Nabs Slew of Suspects in Michigan, But Some Fear Fairness Gets Lost in the Process*, Detroit Free Press, Metro Final, Jan. 7, 2008, at 1.

Paul Egan, *Senior Official to Depart U. S. Attorney's Office in Detroit*, Detroit News, Feb. 20, 2008.

Paul Egan, *5 Charged in \$10 Million Medicare Fraud Case; Livonia Clinic 1 of 6 in Detroit Area that FBI Ties to Billing Scheme*, Detroit News, Feb. 23, 2008, at 1A.

*3 Deputies Indicted in Beatings*, Ann Arbor News (Michigan), Mar. 18, 2008.

*Illegal Dietary Supplements Seized from Brighton Site*, Ann Arbor News, Apr. 5, 2008.

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

I have never held judicial office.

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

- a. citations for all opinions you have written (including concurrences and dissents);
- b. a list of cases in which certiorari has been requested or granted;
- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and
- f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have not served as a judge.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

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

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

2005 – Present, United States Attorney for the Eastern District of Michigan; appointed by President George W. Bush.

Republican Precinct delegate, three times duly elected from 15th Michigan Congressional District, 2000, 2002, 2004.

2001 – sought to be nominated as United States Attorney for the Eastern District of Michigan, but was unsuccessful.

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

Re-Elect Judge Chris Murray, Michigan Court of Appeals, fall 2002, Volunteer (yard sign, mailings).

Co-Chair, Host committee, Stephen Markman for MI Supreme Court Justice, fundraiser, May 2004.

Chair, Host committee, Mike Rogers for U.S. Congress, MI 8<sup>th</sup> District, fundraiser, February 2004.

Chair, Host committee, Robert Young for MI Supreme Court Justice, fundraiser, June 2002.

Chair, Host committee, Stephen Markman for Michigan Supreme Court, fundraiser, June 2000.

Campaign volunteer for Jack Stelzer, State Representative candidate, 72<sup>nd</sup> district, Missouri State House of Representatives

Campaign volunteer for my father, Stephen J. Murphy, Democratic candidate for State Representative, 98<sup>th</sup> district, Missouri State House of Representatives, 1978 and 1982.

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

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

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

I have not served as a clerk to a judge.

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

I did not practice alone.

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

March 2005 to present  
United States Attorney for the Eastern District of Michigan  
211 West Fort Street, Suite 2001, Detroit, Michigan, 48230-1216

May 2000 to March 2005  
General Motors Legal Staff, Global Headquarters  
400 Renaissance Center, 2<sup>nd</sup> Floor, Detroit, Michigan, 48265  
Counsel

January 1992 to May 2000  
United States Attorney's Office,  
Eastern District of Michigan  
211 West Fort Street, Suite 2001, Detroit, Michigan, 48230-1216  
Assistant United States Attorney

January 1990 to January 1992  
 United States Department of Justice  
 Tax Division, Western Criminal Enforcement Section  
 10<sup>th</sup> and Pennsylvania Avenue, N.W., 6<sup>th</sup> floor, Washington, D.C., 20530  
 Trial attorney

October 1987 to January 1990  
 United States Department of Justice  
 Civil Division, Federal Programs Branch  
 10<sup>th</sup> and Pennsylvania Avenue, N.W., 3rd floor, Washington, D.C., 20530  
 Trial attorney

December 2002 to March 2005  
 National Association of Securities Dealers Dispute Resolution  
 55 West Monroe Street, Suite 2600, Chicago, Il, 60603  
 Public Arbitrator (Part Time)

January 1995 to May 2003  
 University of Detroit Mercy School of Law  
 651 East Jefferson Avenue, Detroit, Michigan, 48226  
 Adjunct Professor of Law

Fall term 2002  
 Ave Maria School of Law, Ann Arbor, Michigan;  
 3475 Plymouth Road, Ann Arbor, Michigan, 48105  
 Adjunct Professor of Law

**b. Describe:**

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

As United States Attorney, I oversee an office of almost 100 Assistants and a similar number of support staff. I am responsible to serve as the final authority on all budget, human resource, litigation, policy and public relations matters. I also frequently engage the community both through public outreach work and communication through the media.

As an in-house lawyer at General Motors, my position was dedicated to handling all worldwide "white collar" criminal and civil matters that impacted GM. My responsibilities included responding to state and federal investigative matters, corporate crisis and compliance issues, conducting internal investigations, overseeing active civil and criminal litigation matters, and handling pro bono matters. In fulfilling my responsibilities, I managed teams of people from various disciplines within the company, including the Audit Staff and Global Security, as well

as retained outside counsel (which are often some of the most well reputed firms in the world).

As a federal prosecutor, 1990-2000, I engaged in a similar and related practice in which I prosecuted almost all federal offenses, with emphasis on criminal tax and other white collar frauds, including securities, banking, health care, insurance, foreign currency trading, high-tech computer crimes and intellectual property. I tried numerous complex felony cases before juries and I have spearheaded large trial and investigative teams in various bank/bankruptcy fraud, tax fraud, securities fraud, and health care fraud trials. I also served as sole federal government counsel at countless hearings and bench trials.

As a federal civil defense lawyer, 1987-1990, I defended various federal agencies and their programs against civil suits in federal court. I wrote briefs, argued motions, took and defended depositions and answered complaints

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

As a government lawyer, my client is and was the people of the United States. Another former client is the General Motors Corporation, the world's largest manufacturer of automobiles and related products. Throughout my career, my specialties have included federal trial practice, criminal tax, and white collar crime

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

Almost 100 percent of my practice over the years has been in litigation

As United States Attorney and as a corporate attorney, I rarely appeared in court.

As an Assistant United States Attorney, 1992-2000, I appeared in court several times a week and sometimes on a daily basis.

As a Department of Justice Attorney located in Washington, D.C., 1987-1992, I appeared in court several times per month.

**i. Indicate the percentage of your practice in:**

- 1. federal courts; 99%
- 2. state courts of record; 1%
- 3. other courts.

ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings;    | 15% |
| 2. criminal proceedings. | 85% |

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

I tried approximately 20 cases to verdict or judgment - one trial as chief counsel; 17 trials as sole counsel, and two trials as associate counsel.

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury;     | 95% |
| 2. non-jury. | 5%  |

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

I have never practiced before the Supreme Court.

Citizens for a Common Defence filed two amicus briefs in the Supreme Court during the 2003 term when I was a member of the association. Other than having my name listed in an appendix to the briefs as a member of the association, I had no input or contribution into the preparation and filing of the briefs.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

1. United States v. Dean C. Turner, No. 96-80603, November 6, 1997.  
After a colleague investigated and indicted the case and then left the federal government, I conducted a six-week conspiracy and securities fraud trial against a

former stockbroker at Dean Witter Reynolds. Defendant was a former professional hockey player and his mother was a Detroit television personality. Accordingly, the case was covered closely by various media. I presented 35 witnesses and more than 140 documentary exhibits. Defendant was sentenced to 24 months in jail. Defendant was convicted and sentenced to prison, unsuccessful appeal.

I represented the United States.

I was sole counsel responsible for every aspect of the case.

1999-2000.

U.S. District Court, E.D. Mi., Judge Avern Cohn.

John R. Minock, Cramer & Minock, 339 East Liberty Street, Suite 200, Ann Arbor, MI, 48104, (734) 668-2200, counsel for defendant.

2. United States v. Sanford Weinstock.

153 F.3d 272 (6th Cir. 1998)

Appeal of a criminal health care fraud conviction, after a week-long trial, in a case involving a Michigan podiatrist. The Sixth Circuit's opinion established important precedent favorable to the United States on evidentiary issues surrounding the use of summary statistical charts against medical provider. I handled all aspects of the case from indictment to final appeal, including trial, briefing, and oral argument before the Sixth Circuit.

Defendant convicted and sentenced to prison, unsuccessful appeal.

I represented the United States.

I was sole counsel responsible for every aspect of the case.

1995-1998.

U.S. District Court, E.D. Mi., Judge Anna Diggs Taylor.

Richard M. Lustig, 240 Daines Street, Birmingham, MI 48009, Phone: (248) 258-1600, counsel for defendant.

3. United States v. Steven Higley, et al.

No. 97-90019, June 26, 1997.

Six-week conspiracy, money laundering and securities fraud trial against five men who ran an illicit advance fee scheme that took \$11 million from various high income individuals who were led to believe that they were investing in safe foreign currency trades. I assisted a colleague in presenting approximately 60 witnesses and nearly 500 pieces of documentary evidence. Sentences ranged from 24 to 87 months.

All defendants convicted and sentenced to prison.

I represented the United States.

I was "second chair" trial counsel responsible for half the witnesses, an expert, closing argument and some motion practice.

1998.

U.S. District Court, E.D. Mi., Judge Barbara Hackett.

Co-counsel:

Stephen L. Hiyama, Assistant United States Attorney, 211 West Fort Street, Suite 2001, Detroit, MI 48226, 313/226-9674, co-counsel.

David C. Tholen, Federal Defender's Office, 645 Griswold Street, Suite 2255, Detroit, MI 48226, (313) 961-4150, counsel for defendant.

James C. Thomas, 535 Griswold Street, Suite 2632, Detroit, MI 48226, (313) 963-2420, counsel for defendant.

G. Gregory Schuetz, DaimlerChrysler Corp., 1000 Chrysler Drive, CIMS 485-13-62, Auburn Hills, MI 48326, (248) 512-4153, counsel for defendant.

Tom Wilhelm, 2636 Dixie Highway, Waterford, MI 48328, (248) 618-7280, counsel for defendant.

Timothy P. Murphy, 20816 East 11 Mile Road, Suite 111, Saint Clair Shores, MI 48081, (586) 779-8416, counsel for defendant.

4. United States v. Jasubhai Desai

No. 94-80617, November 25, 1997.

Complex mail and health care fraud trial against physician who ran medical clinics for industrial workers in Detroit's "Downriver" suburbs. The Wayne County Prosecutor also prosecuted the defendant for murder, but he was not convicted on those charges. The defendant pled guilty on the third day of trial after I presented two witnesses and about forty pieces of documentary evidence against him. Defendant sentenced to 18 months in jail after a hotly contested two-day sentencing hearing.

Defendant convicted and sentenced to prison.

I represented the United States.

I was sole trial counsel responsible for all aspects of the case.

1996-99.

U.S. District Court, E.D. Mi., Judge Paul D. Borman.

Martin E. Crandall, Clark Hill, PLC, 500 Woodward Avenue, Suite 3500, Detroit, MI 48226, (313) 965-8413; counsel for defendant.

Thomas G. Plunkett, Williams, Williams, Ruby & Plunkett, PC, 380 North Old Woodward Avenue, Suite 300, Birmingham, MI 48009, (248) 642-0333, counsel for defendant.

5. United States v. Jack Webb

No. 95-80771, August 17, 1995.

Complex criminal tax fraud mail trial against auto dealer from Ypsilanti, Michigan, in which the defendant presented expert medical testimony in favor of an "alcoholism" defense. The trial lasted one week and I presented fifteen witnesses and more than one hundred pieces of documentary evidence to the jury. Defendant was convicted on all counts, was sentenced to probation, and did not appeal.

Defendant convicted and sentenced.

I represented the United States.

I was sole trial counsel responsible for all aspects of the case.

1995-97.

U.S. District Court, E.D. Mi., Judge Avern Cohn.

Robert E. Forrest, Kerr Russell and Weber, Detroit Center, 500 Woodward Avenue, Detroit, Michigan, 48226, 313-961-0200.

6. United States v. Patricia E. Boyle

No. 94-80250, March 15, 1994.

Bank and bankruptcy fraud case against the former owner of a Chevrolet dealership in

Belleville, Michigan, that went to trial. Defendant stole more than three million dollars from a federally-insured financial institution in order to finance a flamboyant lifestyle. I presented 31 witnesses and about 125 documentary exhibits. After the defendant was sentenced to 30 months in jail, she failed to show up for her sentence. I also prosecuted her for the failure to appear, which resulted in an additional nine-month sentence. Defendant convicted and sentenced to prison, unsuccessful appeal.

I represented the United States.

I was sole counsel responsible for every aspect of the case.

1994-1997.

U.S. District Court, E.D. Mi., Judge Gerald E. Rosen.

Neil H. Fink, 185 Oakland Avenue, Suite 250, Birmingham, MI 48009, 248/258-3181, counsel for defendant.

7. United States v. Ward  
37 F.3d 243 (6<sup>th</sup> Cir. 1994), cert. denied, 115 S.Ct. 1388 (1995), aff'd on remand, 68 F.3d 146 (6<sup>th</sup> Cir. 1995), cert. denied, 116 S.Ct. 1028 (1996).  
Complex drug conspiracy, firearms and continuing criminal enterprise scheme tried against local Detroit drug dealer. The trial lasted three weeks and we presented more than thirty witnesses and almost one hundred pieces of tangible and documentary evidence. Defendant was convicted on all counts, was sentenced to probation, and brought several appeals, all of which I handled. Co-counsel at the time, AUSA Jennifer Granholm, has subsequently been elected governor of Michigan.  
Defendant convicted and sentenced.  
I represented the United States.  
I was lead and first chair trial counsel responsible for all aspects of the case.  
1992-96.  
U.S. District Court, E.D. Mi., Judge Paul V. Gadola.  
Co-counsel:  
Hon. Jennifer M. Granholm, Governor of Michigan, Executive Office, 111 South Capitol Avenue, George W. Romney Building, Lansing, MI 48933, (517) 373-3400  
Opposing counsel:  
Sheldon Halpern, 916 South Main Street, # 300, Royal Oak, MI 48067, (248) 545-2900  
Margaret Raben, Gurewitz & Raben, PLC, 333 West Fort Street, 11<sup>th</sup> Floor, Detroit, MI 48226, (313) 628-4740.
8. United States v. Darryl S. Buchman  
No. CR-N-91-74 HDM, August 13, 1991.  
Six day criminal trial against a former IRS agent accused of violating the Privacy Act and gaining unauthorized access to official IRS taxpayer information in an effort to "spy" on his neighbors. Along with a colleague, I presented approximately 15 witnesses and nearly 100 pieces of documentary evidence. The defendant was acquitted on all counts.  
Defendant acquitted, no appeal.  
I represented the United States.  
I was lead or "first chair" trial counsel responsible for half the witnesses, closing argument, plea negotiations and a great deal of motion practice.  
November-December, 1991.

U.S. District Court, D. Nevada, Judge Howard D. McKibben.

Co-counsel:

Douglas Metcalf, Lewis and Roca, LLP, One South Church Avenue, Suite 700, Tuscon, AZ 85701-1611, 520/622-2090.

Defense Counsel:

Donald Cavin Hill, 485 West Fifth Street, Reno, NV 89503, (775) 323-7758

9. Williams v. Federal Land Bank of Jackson

729 F. Supp. 1387 (D.D.C. 1990), *aff'd*, 954 F.2d 774 (D.C. Cir. 1992).

Civil action against federal land bank, its parent association, and other federally chartered institutions in which borrowers alleged wrongful refusal to release security in farmland serving as collateral for indebtedness to land bank and that the refusal caused borrowers to suffer injury. We moved to dismiss the suit. The district court found that no implied right of action existed under the Farm Credit Act, that the borrowers failed to state a cause of action for breach of contract or breach of covenant of good faith, and the court granted the motion.

Suit dismissed.

I represented all of the United States government agencies.

I was sole counsel responsible for all aspects of the case.

1989-92.

U.S. District Court, District of Columbia, Sr. Judge Barrington D. Parker, Sr. (deceased).

Co-counsel:

Richard Dagen, Sidley and Austin. (No longer practices law, I cannot locate him).

Opposing counsel:

Preston Davis Rideout, 305 West Market Street, Greenwood, Mississippi 38935-8407, 662/453-3000.

10. DeCuellar v. Baker

686 F. Supp. 890 (S.D. Fla. 1988), *rev'd sub nom.*, 881 F.2d 1561 (11th Cir. 1989)

A Cuban refugee who was the sole remaining beneficiary of a personal trust, the corpus of which consisted of Republic of Cuba bearer bonds issued prior to 1960 under an indenture contract between Cuba and Manufacturer Hanover Trust, sought review of a decision by the Treasury Department's Office of Foreign Assets Control denying her petition for a specific license authorizing liquidation and distribution of the trust assets. The district court held that a provision of federal Cuban Assets Control Regulations creating a general license extended to the trust and was not limited to only private trusts, and that the plaintiff was "legally entitled" to her distributive share of the fund within the meaning of the regulations. The decision was later reviewed and overturned by the United States Court of Appeals for the 11<sup>th</sup> Circuit, which found that the district court had erred and that no license extended to this particular trust.

Suit dismissed.

I represented all of the federal defendants.

I was sole counsel responsible for all aspects of the case.

1987-90.

U.S. District Court, Southern District of Florida, Sr. Judge Clyde Atkins.

Co-counsel:

Julian Kreeger, 1428 Brickell Avenue – Penthouse, Miami, Florida 33131, 305-373-3101.

Opposing counsel:

Alexander Arandia, 52 East End Avenue, New York, New York 10028, 718-263-2100.

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have not performed any lobbying activities.

As United States Attorney, I revised the office's plea policy during the first year of my term in office to account for changes mandated by the Supreme Court's pronouncements in the *Booker/Fanfan* line of decisions. I convened a committee of AUSAs to look into the issue, oversaw meetings with the criminal defense bar in my district, met personally and individually with the entire district court, and oversaw meetings with my office's Criminal Division. As a result of the consultative approach and a thoughtful process, we implemented the entire new policy with a minimum of opposition from defense attorneys and district judges.

Working with senior level managers in the office and with chiefs of the criminal litigating units, as United States Attorney I implemented a policy for review of all indictments to be presented by Assistant United States Attorneys to grand juries sitting in the Eastern District of Michigan.

I issued a formal new media policy for the district to comply with legal, Justice Department, and ethical requirements and I personally participated in training the entire office on the new policy.

I launched important new district initiatives in terms of prosecuting and preventing crimes of terrorism, child exploitation and the distribution of methamphetamine.

I worked to improve the external affairs capabilities of the office, enhancing our public outreach programs – especially in the inner city and Arab American communities – and promoting state, local, federal and regional law enforcement cooperation under the Project Safe Neighborhoods program.

I reorganized the United States Attorney's office in Detroit and created an innovative cross functional civil rights task force to manage the most pressing civil and criminal civil rights matters in eastern Michigan; I merged the district's organized crime strike force with the office's Special Prosecution Unit to better streamline prosecution of

organized criminal acts; and I reordered the office's management structure, paying special attention to promote women and minority lawyers to positions of responsibility.

I conducted and oversaw an internal investigation at General Motors during 2002-03 involving suspected kickbacks that were allegedly paid from a supplier to General Motors' employees. I personally interviewed numerous witnesses, examined a great deal of documentary evidence and wrote a detailed report, which is protected by the attorney-client privilege.

I conducted and oversaw an internal investigation at General Motors during 2004 involving suspected gifts and gratuities that were allegedly paid from various suppliers to a General Motors' executive. I personally interviewed numerous witnesses, examined a great deal of documentary evidence and made a report to management, which is protected by the attorney-client privilege. The executive was fired.

In 2001-02, I personally handled a sensitive negotiation with a group of suppliers that had defrauded General Motors of a significant sum of money by operating a bid-rigging scheme. The settlement documents are confidential but required significant restitution payments to be made to General Motors.

In 2004-05, I participated with outside counsel in representing General Motors against state Attorney General investigations in at least three different matters involving potential civil or criminal charges against General Motors for alleged improprieties. I personally met with and presented argument to various assistant attorneys general involved in the cases. All three matters have been resolved (so far) agreeably and confidentially without litigation.

Since 1995, I have taught more than ten law courses at two metropolitan Detroit law schools.

Since 2002, I committed a significant amount of time to working on a Committee appointed by the Michigan Supreme Court to revise the State Rules of Criminal Procedure.

As a part time public arbitrator with the National Association of Securities Dealers, I have participated as a panelist in resolving approximately ten securities arbitrations in the past two years.

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

Trial Practice, University of Detroit Mercy School of Law, 1995-2001.  
This course sought to teach students the rudiments of trying a civil or criminal case before a jury and required students to participate in actual courtroom exercises as well as

the completion of an entire mock trial at the end of the term. Major topics included direct and cross examination, opening statements and closing arguments, admission of evidence and jury selection.

Business Crimes, University of Detroit Mercy School of Law, 1998-2003.

This course sought to teach students the rudiments of substantive economic or "white collar crime" topics through reading and discussion of leading cases in the area. Major topics included mail and wire fraud, RICO, federal grand jury practice, criminal tax prosecutions, conspiracy, financial institution and corporate fraud.

Evidence, Ave Maria School of Law, 2002.

This course sought to teach students the rudiments of the law of evidence. Major topics included authentication of evidence, relevance, the probative and prejudicial nature of relevant evidence, the rules on impeachment, and the hearsay rule.

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

I have no such arrangements, except for my participation in the Thrift Savings Plan ("TSP") which is the government's 401k plan for the position I now hold. I maintain approximately \$37,000 in that account.

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

I have no plans of this sort.

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

See attached Financial Disclosure Report

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

See attached Net Worth Statement

26. **Potential Conflicts of Interest:**

- a. **Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.**

Conflicts during my initial service, should I be confirmed, will likely arise in cases handled by the office of the United States Attorney, Eastern District of Michigan, the office I now lead. Additionally, conflicts might arise if companies in which I own stock appear as a party. I would address all conflicts or potential conflicts-of-interest in accordance with the Code of Conduct for United States Judges, the Ethics Reform Act of 1989, 28 U.S.C. § 455, and other guidelines that might help to determine these areas of concern.

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

In the event of any potential conflict of interest should I be confirmed, I intend to consult with ethics officials within the federal judiciary and on the court for which I am being nominated. In addition, if confirmed, I would rely on the Code of Conduct for United States Judges, the Ethics Reform Act of 1989, 28 U.S.C. § 455, and other guidelines that might help to determine these areas of concern.

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

I have donated significant amounts of time and money to represent the poor and indigent.

In 2002, along with a colleague of mine from General Motors, I represented an indigent paraplegic man confined to a wheelchair who had been convicted of sexual assault and incarcerated in a maximum security prison in Michigan to gain habeas corpus relief in Detroit's federal court. At issue was whether the prisoner should be moved to a lower security facility that would better accommodate his paraplegia and provide better facilities for showering, toileting and eating. I ended up serving as lead counsel on this matter and my duties included meeting with the litigant in his prison, writing and filing an extensive motion for summary judgment on the man's behalf, arguing the motion at a special session that the district court held within the walls of the prison, and corresponding at length with the prisoner's parents. Our client asked that new counsel be appointed after the district court declined to rule on the motion and urged us to enter into settlement negotiations with the State, which later proved to be unsuccessful. Hahn v. Martin, et al., 01-cv-74656-AJT-DAS, Eastern District of Michigan. During 2002-03, I

worked in excess of 80 hours on this file.

In 2003, I represented Leroy Corbeil, an indigent convicted marijuana dealer serving a twenty-year prison term, on the appeal of his conviction in the United States Court of Appeals for the Sixth Circuit. Because my analysis of the case revealed that a successful appeal could have opened Mr. Corbeil to the possibility of re prosecution and a life term in prison, I advised Mr. Corbeil to drop his appeal and drafted appropriate papers with the Sixth Circuit to do so. I also corresponded with Mr. Corbeil at length throughout the pendency of the appeal. United States v. Corbeil, 03-1388, USCA, 6<sup>th</sup> Cir., 2003. I worked in excess of twenty hours on this file.

In 2004, I represented Timothy Soto, a 19 year-old indigent convicted of assaulting a postal officer with a firearm, on the appeal of his conviction in the United States Court of Appeal for the Sixth Circuit. After thoroughly reviewing the record, I wrote and filed opening and reply briefs and a joint appendix. I argued the case before a panel of the court and lost. I also corresponded with Mr. Soto at length throughout the appeal. United States v. Soto, 03-2295, USCA, 6<sup>th</sup> Cir., 2003-04. I worked in excess of seventy hours on this file.

28. **Selection Process:**

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

There was not a selection commission in my state.

In April, 2006, I was contacted by the White House Counsel's office regarding my interest in being considered to be appointed as a United States District Judge for the Eastern District of Michigan, and to arrange for an interview. Later that month, on April 20, 2006, I interviewed with staff from the White House Counsel's Office and Department of Justice. During the interview, I was asked about my interest in consideration for a position on the United States Court of Appeals for the Sixth Circuit. I had a follow-up interview with members of the White House Counsel's Office on April 21, 2006. I had a telephone interview with the Justice Department's Office of Legal Policy on April 24, 2006.

On April 27, 2006, I was advised that the President had provisionally decided to nominate me as a judge of the United States Court of Appeals for the Sixth

Circuit, pending a complete background check. After completing the background investigation and nomination paperwork, my nomination was submitted to the Senate on June 28, 2006. My nomination was returned to the President on December 9, 2006. I was renominated on March 19, 2007.

In March, 2008, I was contacted by the White House Counsel's office and advised that my nomination would be withdrawn. My nomination was withdrawn on April 15, 2008 and my nomination to be United States District Judge for the Eastern District of Michigan was simultaneously submitted to the Senate on that date.

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

No one had any such discussion with me.

AO-10 (WP)  
Rev. 1/2004

**FINANCIAL DISCLOSURE REPORT  
NOMINATION REPORT**

*Report Required by the Ethics  
in Government Act of 1978,  
(3 U.S.C. App. §§101-111)*

1. Person Reporting (Last name, first, middle initial) Murphy III, Stephen J.		2. Court or Organization Michigan, Eastern District	3. Date of Report April 18, 2008
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee.		5. Report Type (check appropriate type) XX Nomination, Date 4/15/2008 ____ Initial ____ Annual ____ Final	6. Reporting Period 1/1/2007 to 3/31/2008
7. Chambers or Office Address 211 West Fort Street Suite 2001 Detroit, MI 48226		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	

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

POSITION	NAME OF ORGANIZATION/ENTITY
<input checked="" type="checkbox"/> NONE (No reportable positions.)	
1	
2	
3	

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

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	
2	

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

DATE	SOURCE AND TYPE	GROSS INCOME
<b>A. Filer's Non-Investment Income</b>		
<input checked="" type="checkbox"/> NONE (No reportable non-investment income.)		
1		\$
2		\$
3		\$
<b>B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)</b>		
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1		
2		

**FINANCIAL DISCLOSURE REPORT**

Name of Person Reporting Stephen J. Murphy, III	Date of Report April 18, 2008
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**IV. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

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

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1	Exempt.		\$
2			\$
3			\$
4			\$

**VI. LIABILITIES.** (Includes those of spouse and dependent children See pp. 32-33 of Instructions.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE*</u>
<input checked="" type="checkbox"/>	NONE (No reportable liabilities.)		
1			
2			
3			
4			

*Value Codes: J=\$15,000 or less	K=\$15,001-\$50,000	L=\$50,001-\$100,000	M=\$100,001-\$250,000
N=\$250,001-\$500,000	O=\$500,001-\$1,000,000	P1=\$1,000,001-\$5,000,000	P4=\$50,000,001 or more
P2=\$5,000,001-\$25,000,000	P3=25,000,001-50,000,000		

**FINANCIAL DISCLOSURE REPORT**

Name of Person Reporting Stephen J. Murphy, III	Date of Report April 18, 2008
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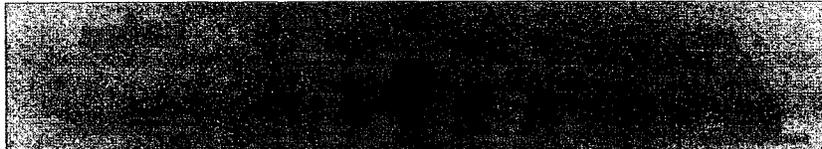
**VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions** (Includes those of spouse and dependent children. See pp. 34-57 of Instructions.)

A Description of Assets (including trust assets) <small>Place "X" after each asset exempt from prior disclosure.</small>	B Income during		C Gross value at end of		D Transactions during reporting period				
	1 Amt.	2 Type	1 Value	2 Value	If not exempt from disclosure				
	Code1	(e.g. div. or int.)	Code2	Method	1 Type	2 Date	3 Value	4 Gain	5 Identity of buyer/seller
	(A-1)		(J-P)	(Q-W)	buy, sell, merger, redemption	Month/Day	Code2	Code1	(A-1) if private transaction
<input type="checkbox"/> NONE (No reportable income, value, or transactions)									
1 Fifth Third Bank Savings Account	A	Interest	K	T	Exempt				
2 AIG Common Stock		None	J	T					
3 Anheuser Busch Common Stock		None	J	T					
4 Cincinnati Financial Common	B	Dividend	M	T					
5 Comcast Common Stock		None	J	T					
6 Disney Common Stock		None	J	T					
7 Dow Chemical Common Stock		None	J	T					
8 Exxon Mobil Common Stock		None	J	T					
9 Fidelity Inv. Grade Bond Fund		None	J	T					
10 Fifth Third Bank Common Stock		None	K	T					
11 Harley Davidson Common Stock		None	J	T					
12 Janus Flexible Income Fund	A	Dividend	J	T					

**FINANCIAL DISCLOSURE REPORT**

Name of Person Reporting Stephen J. Murphy, III	Date of Report April 18, 2008
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**VII. Page 2 INVESTMENTS and TRUSTS – income, value, transactions** *(Includes those of spouse and dependent children. See pp. 34-57 of instructions.)*



	NONE (No reportable income, assets, or transactions)									
13	Janus Fund	None	J	T						
14	JNJ Common Stock	None	J	T						
15	JP Morgan Chase	None	J	T						
16	Merck Common Stock	None	J	T						
17	Microsoft Common Stock	None	J	T						
18	SEI Mutual Funds	B	Dividend	M	T					
19	T. Rowe Price New Asia Fund	A	Dividend	J	T					
20	U.S. Treasury Bonds - Stripped	None	J	T						
21	Vanguard Equity Income Fund	A	Dividend	K	T					
22	Vanguard U.S. Growth Fund	None	J	T						
23	Cincinnati Insurance Life Policy	None	J	T						
24	American Funds 529 Account	None	L	T						
25	American Funds IRA	B	Dividend	M	T					
26	Uhl Family Partners	E	Dist.	M	T					
27	Bank America Money Market	None	0	T						
28	Accenture	None	J	T						





FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Stephen J. Murphy, III	April 18, 2008

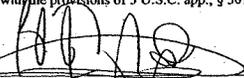
**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)**

Part III.A. - Income was received during the reporting period as compensation for current employment by the United States.

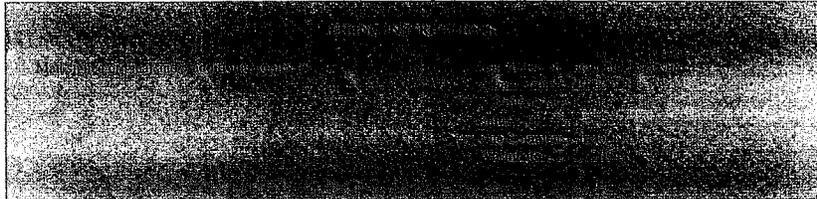
**IX. CERTIFICATION.**

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

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

Signature  Date 4/21/08

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



**FINANCIAL STATEMENT**  
**NET WORTH**

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

ASSETS				LIABILITIES			
Cash on hand and in banks		73	522	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		842	342	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		100	222
Real estate owned-add schedule		250	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		34	000				
Cash value-life insurance		16	832				
Other assets itemize:							
				Total liabilities		100	222
				Net Worth	1	116	474
Total Assets	1	216	696	Total liabilities and net worth	1	216	696
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES****Listed Securities**

AIG	\$ 7,698
Accenture	10,551
American Funds – IRA and 529	268,836
Anheuser Busch (BUD)	2,135
Cincinnati Financial (CINF)	213,074
Cisco Systems	9,636
ConocoPhillips	11,431
Disney Co. (DIS)	1,725
Dow Chemical (DOW)	1,326
EMC	8,604
Exxon Mobil (XOM)	5,920
Intel (INTC)	190
Johnson and Johnson (JNJ)	2,075
JP Morgan Chase (JPM)	1,632
Oracle Corp.	11,736
Schlumberger	11,745
SEI Funds 401K rollover	198,479
U S TREASURY STRIP	4,417
U S TREASURY STRIP	1,509
US Department of Justice TSP	63,887
Wellpoint	5,736
<b>Total Listed Securities</b>	<b>\$ 842,342</b>

**Real Estate Owned**

Personal residence \$ 250,000

**Real Estate Mortgages Payable**

Personal residence \$ 100,222

AFFIDAVIT

I, STEPHEN J. MURPHY do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/27/08  
(DATE)

[Signature]  
(NAME)

[Signature]  
(NOTARY)

CHENE BEZ BRADFORD  
Notary Public - Michigan  
Wayne County  
My Commission Expires Sep 20, 2011  
Acting in the County of

Chairman LEAHY. Thank you.

Mr. Kethledge.

Mr. KETHLEDGE. Thank you, Mr. Chairman. I would point to a couple of experiences that I have had. The first is while I was at Honigan Miller, I worked with people in Detroit who were trying to take ownership of homes that had been subject to tax foreclosures by prior owners. And it was actually a difficult process to clear those prior tax liens from the titles of these folks who were trying to renovate their homes. I worked with a number of those people to get them clear title so that they could renovate their homes. For that work, I was named Pro Bono Lawyer of the Year for Community Legal Services in Detroit, and I am very proud of that.

Chairman LEAHY. And as I said, I feel very strongly that lawyers should do pro bono. Let me ask you one question, though, Mr. Kethledge. The overwhelming majority of your practice focused on civil litigation and commercial litigation, civil class action and so on. I went through your Senate questionnaire. About 5 percent of the cases were criminal. Of course, the Federal criminal docket has grown very substantially, and a lot of the appeals that are going to the circuit courts are from our criminal appeals.

What will you draw on, what kind of experience, knowing that you are going to be hit with a whole lot of criminal cases when they come up on appeal?

Mr. KETHLEDGE. Well, Mr. Chairman, one experience I will draw on is also partly in answer to your earlier question. I did represent a man who was charged with negligent homicide. His name was Takendra Sharma. He was a man without many resources. He was involved in a fatal accident while he was driving a semi truck. I represented him, and that gave me a perspective on how important criminal litigation obviously is to the person who is the subject of the State's power and the prosecution, and an appreciation for the difficulty that an individual finds himself in when they are prosecuted. It humanized that side of criminal law for me. I would draw on that personal experience regarding what Mr. Sharma went through. He was acquitted.

The other thing I would draw on, Mr. Chairman, is that when I was clerking, I did have very extensive exposure to criminal law doctrines. As the Chair mentioned, that is a big part of what Federal courts do. While I was clerking for Judge Guy and Justice Kennedy, I did become, I hope, reasonably well versed in the criminal doctrines themselves so that I would be able to draw on that legal experience.

Chairman LEAHY. Thank you.

Mr. Murphy, I have not ignored you, but my time is up, and I have some questions for you on my next round.

Senator Specter.

Senator SPECTER. Judge White, in a case captioned *People v. Santiago*, the court of appeals in a panel on which you were a member upheld a jury conviction of a defendant for first degree felony murder and armed robbery and his life sentence without parole. You dissented, saying, "While the evidence supports the conclusion that defendant dropped the two perpetrators who clearly committed the robbery and murder off near the house knowing that

they intended to rob and possibly kill the victim, it is also clear”—referring to the defendant—“did so without any intent or desire to assist them in committing the offenses.”

The majority say, “To convict the defendant on an aiding and abetting theory, the prosecution must show that the defendant performed acts or gave encouragement that aided or assisted in the commission of the crime, and that he either intended to commit the crimes or knew the principal intended to commit the crime at the time he gave the aid or assistance.” The Michigan Supreme Court denied the leave for appeal.

Judge White, isn't it really pretty much standard, clear-cut law that when somebody drives a co-defendant to a place where there is a robbery and a murder, that that kind of assistance constitutes guilt on the part of the co-conspirator, accessory before the fact?

Judge WHITE. Senator, I don't have the specific case in mind other than what you have just related to me. I can tell you that—

Senator SPECTER. It is your case, isn't it?

Judge WHITE. Yes, sir. I have been on the court of appeals for 15 years and have sat in over 4,300 cases. So I don't have each one of them directly in mind, but I—

Senator SPECTER. I understand that, but I have given you the facts. You have a co-conspirator who drives a co-defendant who robs and kills. What is your rationale for saying that that does not constitute complicity in the principal offenses?

Judge WHITE. Senator Specter, I went to law school in Pennsylvania, and the law in Michigan—let me say I approached that case by applying the law as enunciated by the Michigan Supreme Court regarding guilt for the principal offense. It is very, very true that many, many defendants who in that position where some of the facts were driving the person to the scene, dropping them off, would be—would constitute enough evidence. I don't have the exact evidence in mind, but in Michigan, to be responsible for the principal offense, one has to either share the intent to commit the principal offense or provide aid and support with knowledge that the principal offense was going to be committed.

Senator SPECTER. Judge White, the problem with your explanation is that the Michigan Supreme Court disagrees with it. They denied leave for appeal, and the two judges who were sitting with you disagreed with it. So what I am looking for is some plausible explanation, if you have one, as to how you came to that conclusion.

Judge WHITE. I will again state that the requirement of Michigan law is that the defendant either has the intent to commit the principal offense, which here was the murder, or that there is evidence to show that he aided with the knowledge that that was the intent of the perpetrator.

Senator SPECTER. That is what the court found, that he aided with the knowledge that the gunman intended to rob and murder.

Judge WHITE. Yes, and—

Senator SPECTER. Let me ask you this, Judge White, because we have got quite a bit to cover. Are you standing by this decision? Do you think the two judges who formed the majority disagreed with your dissent and the Supreme Court which denied appeal were wrong?

Judge WHITE. Sir, I can only assume that if I read the briefs again and read the record from cover to cover, as I do, that I would have come to the same conclusion, that I had a reasonable legal basis for doing so and that based on my best assessment of applying the law to the facts that I read in that transcript, that there was a problem with the conviction. Yes, sir.

Senator SPECTER. Well, my time expired in the middle of your answer, so I am going to yield. I thank so many of my colleagues for being here, and I think it is important to observe the 5-minute rule to give others a chance to question, although there are—we will return for a later round.

Chairman LEAHY. Senator Cardin?

Senator CARDIN. Thank you very much, Mr. Chairman. And let me thank all three of our nominees for their public service and thank their families, and we very much appreciate your willingness to continue to serve in the public life. It is not easy to serve as a Federal judge, and we thank all three of you for being willing to do that.

I want to ask about an area that is a particular concern today, and that is, the relationship between the judicial branch of Government and the President, the executive branch, and the legislative branch. It is very likely that particularly at the appellate levels you are going to have to deal with Article II powers of the President. And as a result of the attack on our country on September the 11th, the administration has sought to use Article II powers in order, as they see it, to protect the safety of the people of this country. At times they have said that the urgency of the matter required extraordinary powers of the President. And I just want to get at least some indication from you as to how you will go about evaluating the requests that come in on Executive power under Article II and the restraints that are imposed either by statute passed by Congress or the Constitution. Mr. Kethledge, I would be glad to let you start.

Mr. KETHLEDGE. I would be happy to, Senator. Thank you.

Clearly, there are limits on the Executive power. There are limits on the Commander-in-Chief power. *Youngstown Sheet and Tube* tells us that. That was a case where the President issued an Executive Order to seize steel mills, cited exigent circumstances related to the Korean War. The Supreme Court stepped forward and said no, you can't do that. That is a clear example of courts doing, I think, what the Senator described.

How does a court go about that? I think that certainly as a court of appeals judge, you start with the Constitution itself. You go to Supreme Court precedent, which is obviously binding on any court of appeals. You look to the prior precedents of one's own circuit, which would be binding as well. The decisionmaking can also be informed by precedents from other circuits.

I think you look at those things, and you try to reach a lawful result, which is precisely that and which is not a result which is driven by passion or considerations of the moment. That is why judges have life tenure.

Senator CARDIN. Thank you, Mr. Kethledge. Let me just point out that the circumstances of 9/11 were unprecedented in America, and the war against terror is not a traditional war, as we have

known it over the history of this Nation. And there were really some challenging moments, I think, between the judicial branch and the executive branch. And obviously we now have court decisions that will help us guide future determinations.

But we are in unprecedented times, and you may not have a clear case and precedent to rely on. And I would like you to expand a little bit more as to the respect between the three branches of Government. At times there have been some heated moments in this Committee between the executive and legislative branches as to whether the Congress can limit Article II powers. Ultimately, that is going to be determined by the courts. This is an area that really does require the independence of the judiciary, but in giving a fair ruling as to what our Constitution requires, mindful of the responsibilities of each branch of Government.

Mr. KETHLEDGE. Thank you, Senator. The branches are co-equal, and I think what an Article II judge has to do if presented with the kind of question that you described is go through the process and the materials that I described. An answer may or may not emerge from those materials. There may be answers that are implicit in those which haven't been explicitly rendered in a court decision. But, clearly, Senator, I would say that no one is above the law, and that goes in wartime as well as in peacetime.

Senator CARDIN. Judge White.

Judge WHITE. I would join in many of the answers of my colleague, and I would just add that obviously the separation of powers is at the bedrock of our constitutional system. And from time to time we do have these conflicts. I think it is one of the most precious trusts of the Federal judiciary to rule in those cases, to address the delicate balance between the executive and legislative branch. The answers are of importance not just to members of those branches, but to the American citizens. And if I were confirmed and such a case would come before me, I would very carefully consider the very reasoned, legitimate arguments on both sides, the compelling arguments, apply the precedents, and with due regard for the seriousness of the question, come to the decision that seems to be appropriate under the applicable rules.

Senator CARDIN. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Cardin.

I have a list from Senator Specter of the order of appearance on his side. Normally in the order I would follow, I would call first on Senator Brownback. But apparently he is not here. Senator Grassley is apparently not here. Senator Coburn had to step out. So, Senator Kyl, you are up.

Senator KYL. Thank you, Mr. Chairman.

Mr. Chairman, let me just first briefly associate myself with the remarks of Senator Specter regarding the need for the Committee to apply a consistent standard for consideration of nominees, the time that we consider the questionnaires, the timing of the hearings, the ABA investigation and so on. And as part of the leadership, we would just note that the leadership agreement to use the best efforts to confirm three nominations by Memorial Day would not have required a violation of that standard if other pending nominees whose nominations have been pending for a lot longer had been moved forward rather than trying to move someone just

nominated. Senator Specter mentioned who these other nominees were, the fact that they could be moved forward, and I would just say that there is no reason not to move those nominees forward. They are qualified. The ABA has deemed them qualified, and we have a constitutional obligation to do so. And I would note that from my perspective, anyway, it would be unacceptable for the Committee to not have any additional hearings, especially, I would note, since there is at least one nominee from Arizona pending and ready to be considered by the Committee.

I generally ask questions that are general in nature about respect for the law, precedent, and so on, so let me ask each of the witnesses—and there are basically five questions here, and hopefully we can get through them fairly quickly. They deal with the concept that respect for the law is critical for any judge, somebody who is going to be judging others, and judgment with respect to judging others. So let me just ask each of you in turn, and we can start, Judge White, with you and then Mr. Kethledge and then Mr. Murphy.

First of all, is there anything in your background that you believe might disqualify you from serving in the position to which you have been nominated?

Judge WHITE. No, sir, there isn't.

Mr. KETHLEDGE. No, sir.

Mr. MURPHY. No, Senator.

Senator KYL. Second, is there any public litigation that you have been involved in personally that might bear upon your responsibilities to serve as a judge?

Judge WHITE. No, Senator, there isn't.

Mr. KETHLEDGE. No, Senator.

Mr. MURPHY. No, Senator.

Senator KYL. Have you had any bad debts, late payments, for example, credit cards, student loans, taxes, tickets, that kind of thing?

Judge WHITE. I take my obligations very seriously. There have been no bad debts in the sense of judgments or bankruptcy, anything like that, no liens. I have on occasion gotten notices regarding that the amount of tax that was paid was insufficient. I paid those. All my taxes are paid. The same thing with any debts. I may have—from time to time there may have been a payment that was after a date, but immediately I satisfied that. I have no bad debts. I have no liens. I have none of the things that you have asked—oh, and you also, I think, said—what was the last one? Tickets?

Senator KYL. Well, I just said bad debts, late payments, for example, credit cards, student loans, taxes, tickets, and I said any similar—

Chairman LEAHY. If the Senator would yield just for a moment, and I obviously will give him more time to respond to this. Any of the financial backgrounds of all three of the nominees have been thoroughly vetted in the background checks by the White House, which is available to every Senator.

Senator KYL. I appreciate that.

Chairman LEAHY. Under the Memorandum of Understanding that we have between the White House and the Senate—and Senators do not, of course, go into anything that is in the FBI back-

ground. Not only is it a violation of our rules, but that memorandum—and I am not suggesting the Senator from Arizona has, but I would hope that if we are going into things that are in the backgrounds of any of these three nominees' financial backgrounds or anything else, if it is in the background reports given by the White House, that we maintain ourselves to that. The Republican and Democratic counsel have been available to all Senators to go through any part that—

Senator KYL. I assure the Chairman I have not read the FBI report. I haven't talked to the White House about anything. I am not interested in financial records. I am mostly interested in, again, matters that would demonstrate a lack of respect for the law by not complying with the law oneself. And that is all I am getting at here.

Judge WHITE. I just want to—

Senator KYL. Anything else that you wanted to say?

Judge WHITE. [continuing.]—finish the answer. And, yes, sir, I also take my obligations as a member of the motoring public seriously, and I try to abide by the rules of the road at all times, and at times I have had lapses and have received tickets, yes. I am not proud of them, but I have.

Senator KYL. Okay.

Mr. KETHLEDGE. Senator, I am not aware of any issues except I did have a few speeding tickets a long time ago. I can't remember the last one, though.

Senator KYL. For the record, I will say I have two. Okay?

[Laughter.]

Senator KYL. Mr. Murphy.

Mr. MURPHY. I will, too, Senator. I have definitely sped and paid my tickets. And once the IRS told me after April 15th I owed more money, and I paid it immediately. So other than that, I have done nothing to show disrespect for the law.

Senator KYL. Okay. Finally, in this regard, respect for the law is also illustrated by past conduct, and this question goes to things of a public record, whether there has been any matter of public record that others may learn that would cast doubt on your respect for the law, either State or Federal law.

Judge White.

Judge WHITE. No, Senator.

Senator KYL. Mr. Kethledge.

Mr. KETHLEDGE. I am not aware of anything, Senator.

Senator KYL. Mr. Murphy.

Mr. MURPHY. No, sir.

Senator KYL. Might I, with the Chairman's indulgence, since we had our little conversation, just ask one-and-a-half other question. Could you just in a quick percentage, each of you tell me what your extent of experience with the Federal as opposed to State law has been in your career, since you are nominated to a Federal law position here?

Judge WHITE. I have had—as a State judge for 27 years, we do have issues that come before us that are issues that might come before the Federal courts, first of all, with respect to the—well, the diversity jurisdiction would be not Federal issues, but I have dealt with preemption issues since 1983.

Senator KYL. If I could just—I am just trying to do this real quickly, just sort of a general percentage—

Chairman LEAHY. I am indulging the Senator from Arizona.

Senator KYL. And I indulged the Chairman with his intercession a moment ago in my time, too. Just all I am looking for is a general percentage.

Judge WHITE. Oh, a percentage?

Senator KYL. Yes.

Judge WHITE. I would say maybe—Okay. I would say probably maybe about—including issues of general Federal constitutional law, I would say maybe about 10 to 15 percent of the cases that have come before me have raised Federal issues in that sense.

Senator KYL. All right. Thank you.

Mr. Kethledge.

Mr. KETHLEDGE. Senator, I would say about 70 percent of my private practice has been State law. I would say, obviously, the 2 years I was clerking was all Federal, almost all.

Senator KYL. And Mr. Murphy.

Mr. MURPHY. Ninety-five to 99 percent of my work has been Federal, Senator Kyl.

Senator KYL. Okay. And, Judge White, you did not practice law, right? You have been on the bench your entire judicial career. Is that right?

Judge WHITE. That is correct. I spent 27 years on the bench.

Chairman LEAHY. Senator Kyl, I would note—

Senator KYL. Thank you, Mr. Chairman.

Chairman LEAHY. [CONTINUING.]—Two things for the record. One, we had the hearing on your Arizona judge, I think last week. I think Senator Cardin—

Senator KYL. I am appreciative of that.

Chairman LEAHY. I did not want the impression to be that somehow he was not getting the hearing.

Senator KYL. No, no.

Chairman LEAHY. He did.

Senator KYL. The hearing was held. I appreciate it.

Chairman LEAHY. And, second, also for the record, I never had a speeding ticket. Had a couple of overtime parking tickets. Some overtime parking tickets, but never had a speeding ticket.

Senator SESSIONS, and I am not asking members to say whether they have had speeding tickets or not. Senator Sessions, you are next.

Senator SESSIONS. Thank you, Mr. Chairman.

Chairman LEAHY. According to the list I received from Senator Specter.

Senator SESSIONS. I did arrive after Senator Hatch, but—

Chairman LEAHY. I am sorry. I just realized that there is a crossout. It is Senator Hatch who is next. I apologize.

Senator SESSIONS. I think that is correct, Mr. Chairman.

Senator HATCH. I had no problem with that, but, Mr. Chairman, I see for the first time we have two appeals court nominees in the hearing. This is a step that I took at least ten times when I chaired the Committee during President Clinton's tenure. I would also say that for the first time one of these appeals court nominees is before us before the American Bar Association has completed its review.

As my colleagues know, I have not been the ABA's biggest fan over the years, so I do not mention this because I think the ABA's evaluation and rating are necessarily the gold standard for judicial nominees. And I am pleased with the way the ABA has done its job over the last number of years. But others have said that it is the gold standard, and you have indicated that before this comes to the floor, you will certainly have the ABA report.

I also see the ABA has expressed its own serious concern about setting this precedent, and I recall this is inconsistent with what many of my Democratic colleagues have said it is the way they want to handle judicial nominees, at least when I was Chairman.

Now, other appeals court nominees have completed all the normal procedural steps, and their consideration would set an unusual or inconsistent precedent. But here we are, so let me just ask a few questions of these nominees.

Mr. Kethledge, I want to welcome you back to the Judiciary Committee. You served on this side of the dais as counsel to Senator Spence Abraham when I chaired the Committee, so you are no stranger to this room. And I am pleased with what you have done since leaving the Judiciary Committee, including your clerking for Justice Anthony Kennedy on the Supreme Court. That is a singular experience that deserves a lot of credit.

And I see Judge Ralph Guy, whom you served as a law clerk, remains on the Sixth Circuit as a senior judge. It must be exciting to consider serving with him. I note, however, that he took his senior status at the end of your clerkship for him in 1994. I am not sure what caused that.

Mr. KETHLEDGE. I tried to talk him out of it, Senator.

Senator HATCH. Okay. Now, let me ask you to comment on what you believe to be the role of the Federal appellate courts in our overall system of Government within the judicial branch, and how carefully should the U.S. Court of Appeals tread giving deference to the trial courts below and respecting the rulings of the Supreme Court above?

Mr. KETHLEDGE. Well, Senator, obviously courts of appeals are bound by the decisions of the Supreme Court. They are for the most part bound by prior decisions of their own circuit court.

I think that the best judges are the ones that seek to apply precedent in good faith. I think most judges do that. But that is something that has to be done in good faith without skewing the precedent one way or the other. At the same time, there has to be a respect for the work of the district courts and not take an ivory tower approach to the review of what happens there. Those judges are the ones that see the people before them. They see the witnesses. The court of appeals just has a cold paper record. I think there has to be a reasonable level of deference given to the judgments of the Article III judge who has the trial before him.

And with respect to all of one's colleagues in the judicial system, I think it is very important for a judge to have almost an irrebuttable presumption that every other judge who has looked at a particular issue was doing his or her best to discharge his or her oath just as well as I might be if I am fortunate enough to be confirmed.

Senator HATCH. Thank you, sir.

Judge White, you have served on the State appeals court for more than a dozen years, and I am sure that with all of that experience, you already have a perspective or at least a view about how a collegial body such as the appeals court should operate.

Now, in reviewing your opinions, I see that you have written numerous separate opinions, both dissents and concurrences, and these include dissents in quite a few criminal cases, criminal law cases, and dissents taking positions that the Michigan Supreme Court has rejected.

Now, would you please describe for us your view of whether an appellate court should strive for unanimity in its opinions and the purpose and effects of your frequent separate opinions?

Judge WHITE. Thank you, Senator Hatch. I want to preface my answer by saying again that in the 15 years that I have been on the Michigan Court of Appeals, I believe there were over 4,000 cases in which I participated with my colleagues, and I would venture to say that probably in 95 percent of those, there was unanimity, and that is the context for this. And in the vast majority of those, the trial judge was affirmed.

Collegiality is very important. One can disagree without being disagreeable. In the cases where I have written separately, I tried to decide cases narrowly. And there are times when I feel that a colleague says too much, and that may be a reason why I concur.

Regarding dissents, there are sometimes differences of opinion, but as I said, in 95 percent of those cases, there was unanimity. I have been on the intermediate court for 15 years. It is a role with which I am very comfortable. I understand that the trial court is accorded deference, and I understand that it is the Supreme Court that makes the law. And that has been my job, and that would be—if I were to be confirmed, it would be a similar role in terms of deference to the trial judge and taking direction from the Supreme Court and, of course, from the legislative body.

Senator HATCH. Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator Brownback.

Senator BROWNBACK. Thank you, Mr. Chairman.

Chairman LEAHY. And, again, to go through the list on my time, to go through the list I have Senators Brownback, Grassley, Senator Coburn, Senator Cornyn, and Senator Sessions.

Senator Brownback.

Senator BROWNBACK. Thank you, Mr. Chairman. Thank you, nominees, for being in front of us. I appreciate that very much.

Judge White, I want to really, if I could, focus in on your nomination. I hope you can understand some of the grave concerns that many of us have on the rush nature of your nomination here and lack of information that we have. On looking at this, I would like to have had the information and hold the hearing and being able to question in depth about it. We don't have the ABA rating, but I understand you have been rated by the ABA when you were nominated by President Clinton. Is that correct?

Judge WHITE. Yes, sir.

Senator BROWNBACK. Do you recall what that rating was?

Judge WHITE. My understanding is that it was a substantial majority qualified and a minority not qualified.

Senator BROWNBACk. You have not conducted a private law practice. Is that correct?

Judge WHITE. That is correct.

Senator BROWNBACk. But you have worked in the judiciary all of your professional career.

Judge WHITE. That is correct.

Senator BROWNBACk. You started out clerking not at the Federal but you clerked at the State court. Is that correct?

Judge WHITE. That is correct.

Senator BROWNBACk. Who did you clerk for?

Judge WHITE. Justice Charles Levin.

Senator BROWNBACk. How long did you clerk for Judge Levin?

Judge WHITE. Almost 2 years.

Senator BROWNBACk. And then you went from that to the bench.

Judge WHITE. Yes, sir.

Senator BROWNBACk. Is that correct?

Judge WHITE. Yes.

Senator BROWNBACk. And you were appointed to the bench or elected to the bench?

Judge WHITE. I was elected.

Senator BROWNBACk. To which bench were you elected?

Judge WHITE. It was the Common Pleas Court for the city of Detroit. It no longer exists. There was court reorganization, and it became the 36th District Court.

Senator BROWNBACk. Okay. What did you do after that position?

Judge WHITE. I was elected to the Wayne Circuit Court, which is the general trial jurisdiction court.

Senator BROWNBACk. And how long did you serve in that position?

Judge WHITE. For 10 years, Senator.

Senator BROWNBACk. And what have you done after that position?

Judge WHITE. Then I was elected to the Michigan Court of Appeals.

Senator BROWNBACk. And that is where you serve today?

Judge WHITE. Yes, sir.

Senator BROWNBACk. And how long have you served on that court of appeals?

Judge WHITE. For 15 years.

Senator BROWNBACk. You were nominated by President Clinton. When were you nominated by President Clinton?

Judge WHITE. I believe it was January of 1997.

Senator BROWNBACk. Okay. And so you have just recently been nominated by President Bush. Is that correct?

Judge WHITE. Yes, sir.

Senator BROWNBACk. I think you answered with Senator Kyl your experience in handling Federal cases. You have not handled direct Federal cases in any private practice?

Judge WHITE. No, sir.

Senator BROWNBACk. You have not handled any Federal cases as a judge?

Judge WHITE. No, sir.

Senator BROWNBACk. I am curious then. I should give you this as open because we haven't had a chance to meet privately, either,

which normally would be the process. But what do you believe makes you qualified for this position? This is the Sixth Circuit. The circuit court of appeals is next to the Supreme Court. It is a phenomenal position of importance. I would like to hear your thoughts on your qualifications as you look having not handled Federal cases before for this position.

Judge WHITE. Let me start by saying that I agree with you, it is a position of enormous importance. My professional path has been in the judiciary, and this is what I would bring to the position. I was in a limited jurisdiction court for 2 years. After that, I moved to the general jurisdiction court. I brought with me the experience of that position. What I brought to the court of appeals was the experience of being a trial judge for 10 years.

There is something in the process of judging that—judges are generalists. It has been a long time since I have been in law school. It has been a long time since most judges were in law school. We learn skills on the bench. We learn how to approach the task of judging, which is to decide individual cases. I brought that experience of being a trial court judge, which I think is very valuable for an appellate judge, to the appellate court.

If I am confirmed, what I would bring to this is 27 years of judicial experience in terms of the process. I bring the experience of reading briefs, reading briefs in an area of law with which I may not yet be familiar, because that is the nature of litigation. The lawyers are far more expert at the time that the case begins than the judge. The experience of studying those briefs, the experience and the ability to understand difficult legal issues, to thoughtfully consider them, to understand the arguments of both sides, to respect the importance of the position, to distill the legal arguments, address the issue in written manner, to carefully decide the case, going through the process of deference to the precedents, understanding how to treat legislation, and basically how one comes to a decision in a particular case that is presented to the judge.

Senator BROWNBACK. Thank you.

Chairman LEAHY. Senator Sessions.

Senator SESSIONS. Mr. Chairman, I would offer for the record a letter of May 6th from the Standing Committee on the Federal Judiciary, Mr. Timothy Hopkins, Chair, to you and Senator Specter, although it is pretty clear Senator Specter agrees with it. Mr. Hopkins says, "On behalf of the American Bar Association's Standing Committee on the Federal Judiciary, I write to express our concern that you have decided to proceed with the confirmation hearings of Helene White to be United States Circuit Judge for the Sixth Circuit and Stephen Joseph Murphy III before completion of the evaluations. Under our normal timetable, it would be reasonable for you to expect to receive our evaluations by the close of this month. It is unfortunate that during confirmation hearings your Committee members will not have the benefit of the answers."

Chairman LEAHY. Without objection, that letter will be included in the record. Also without objection, my response would be included in the record. And without objection, the similar letter written by the ABA to then-Chairman Specter objecting to the five hearings without the ABA being completed will be included in the record so that we can have it all before us. And I thank the Senator

for raising the issue. It gave me a chance to put the other letters in.

Senator SESSIONS. I would just observe that that letter is indicative of the fact that this is an extraordinarily fast-moving nomination. Of that I think there is little doubt. And there are questions that we have, and I for one do not believe this hearing, with just a day or two notice, basically, to me, allows us to be properly prepared to ask the kind of questions that ought to be asked of a position one step below the U.S. Supreme Court.

I would note that we could have had hearings on Judge Conrad of North Carolina who has been unanimously rated well qualified by the ABA, the chief judge of the Western District of North Carolina, a Federal prosecutor under both Republican and Democratic administrations, and it is a judicial emergency circuit. And Mr. Steve Matthews of South Carolina, nomination to the Fourth Circuit, graduate of Yale, distinguished private practice career, managing director of a South Carolina law firm, strongly supported by both his State Senators and rated highly qualified by the ABA also. So this is troubling to me, I have just got to tell you.

No. 2, Judge White, I presume you misspoke, but let me ask you. You said a moment ago the Supreme Court makes the laws. What would you say about that?

Judge WHITE. The Congress makes the laws in the Federal system, and the legislature passes the laws. If I said that, I misspoke, and I was referring to the common law. And if I said "laws," I would have misspoke and would not have meant to refer to legislative laws.

Senator SESSIONS. Well, I think that is very important because one of the things that is causing the delays and tension in the confirmation process at its most fundamental level is more than politics and more than numbers. It is really about what kind of judges we want on the courts.

President Bush has a philosophy of judging that I share. I think it was ably articulated by Chief Justice John Roberts in his confirmation hearings. And there are others in this Congress that have different views. They prefer to have judges in rulings that affect their political agenda that cannot be won at the ballot box, in my view. So I just want to tell you that is a concern to me.

Judge White, your entire legal career of almost 30 years has been in the Michigan State system. I think I am correct that you have never spent a single day of your legal career in private practice, except maybe a summer internship. And you have never represented a client, never litigated a case, and never appeared in Federal court at all. Is that correct?

Judge WHITE. That is correct.

Senator SESSIONS. Now, I believe that that is not an automatically disqualifying thing, but I think it is a lack that is worthy of concern on the confirming body to analyze what other strengths you have to justify the appointment without the kind of experience we would normally expect in this high appointment, which is, as I said, one step below the U.S. Supreme Court.

Mr. Chairman, my time has expired. I would share with you, Ms. White, my concern about this aiding and abetting case that Senator Specter asked you about in the sense that to me that is funda-

mental law that if you drive the car to assist the people in a crime, you are chargeable for that offense. And in your own opinion, you concluded that the defendant knew what was about to occur and aided in the action by delivering them to the scene of the crime.

Chairman LEAHY. Thank you, Senator Sessions.

Judge White—

Senator SESSIONS. She was prepared to answer, but that is Okay. She has answered it previously.

Chairman LEAHY. Earlier—

Senator SESSIONS. It is a concern to me as a prosecutor.

Chairman LEAHY. Earlier you had said something about the percentage of cases, the rough percentage of cases where you have been in concurrence with the rest of the court. Approximately what percentage are you in concurrence with them?

Judge WHITE. Well, I would say that probably 95 percent of the cases are decided unanimously, would be my guess.

Chairman LEAHY. And, Mr. Kethledge, you don't have any experience—I mean, we speak about experience. You have no experience managing a docket as a judge. You have not worked in a prosecutor's office or a defender's office where you would have had to manage a very high volume of cases. What do you say about being able to successfully manage the docket of a United States circuit judge? You have not had judicial experience like Judge White has in managing dockets, but what would you say about that?

Mr. KETHLEDGE. That is true, Mr. Chairman. What I would say in response to that is two things:

First, hard work. A court of appeals judge from my observation and clerking has some latitude as far as when things are due. You do not have briefing deadlines the way you do in private practice. And it is the conscientiousness of the judge, I believe first and foremost, which is responsible for moving the cases along and clearing the docket at the court of appeals.

The other thing I would say is just the example I have had of the judge that I worked for, and I was part of his system. I got a sense of how things work, and I think I could make use of that experience as well.

Chairman LEAHY. Thank you.

The question I was going to ask you before, Mr. Murphy, I served on this Committee for decades with former Senator Strom Thurmond. And there is a question I heard him ask, whether it was nominees of Democratic administrations or Republican administrations, that was always the same about judicial temperament. And it was basically something like this: When you go into a Federal court, a Federal judge is very powerful. It is a lifetime position. The only way he is going to be out of there is if he is impeached or resigns. And very few are ever impeached. And if he shows bias one way or the other toward plaintiffs or defendants or based on the nature of the case, it is devastating to the person who may—this may be the only time in their life they will be before the Federal court. We all have a responsibility to keep the Federal courts independent, but also to have the respect of them. Courts do not command armies. They do not command great forces. They exist and command respect only if they show respect.

How do you feel about that? There are times when you have some people who attack Federal courts as being out of touch for whatever political purpose. You have people running for office and so on. What would you do so people would look and say, you know, "One thing about Judge Murphy, I may agree or disagree with his opinions, but, boy, I sure agree that he is a good judge"?

Mr. MURPHY. I would first of all thank the Senator for that comment, endorse the sentiments of both the Chair and Senator Thurmond. I would hope that however many years from now, should I be confirmed, that that sort of evaluation was made, that that would be exactly what they would say about me. I have striven to have that reputation as a Federal prosecutor, and I think that neutrality, detachment, fairness, and moderation are the hallmarks of a Federal judge. And should I be confirmed by this Committee, those are the traits that I would demonstrate in my daily work.

Chairman LEAHY. Thank you. Let me ask this question of both Judge White and Mr. Kethledge. We are at the sort of pivotal moment in American history of trying to keep that careful balance between the branches of Government. The President has made unprecedented claims of nearly unchecked Executive powers. Congress and the courts have traditionally acted as curbs on any President who might do that, whether it is cases like Iran-contra or warrantless spying on American citizens. But we should also have a self-check on abuse of the congressional power, looking at ethical violations or corruption, for example, Jack Abramoff's influence of a Member of Congress.

Do you believe that congressional oversight, not just judicial but congressional oversight, is an important means of creating accountability in all branches of Government? We will start with you, Mr. Kethledge. You have been here. You understand the question.

Mr. KETHLEDGE. I do understand the question, Senator. I don't think I am knowledgeable to answer it, frankly, in a specific way. What I would say is that each branch is co-equal. Congress clearly has powers of oversight. Those powers are important ones, just like other powers that Congress has. Some of those oversight powers are derived from the power of the purse that Congress has ultimately.

Certainly, Senator, I would agree that those are important powers, safeguards on Congress' other core powers.

Chairman LEAHY. Judge White.

Judge WHITE. I would agree. The powers of each branch of Government are important and must be respected by the other branches.

Chairman LEAHY. I would agree, I think all of us would agree, there have to be these checks and balances. Our Nation is powerful. It is awesome in its power and its potential as the United States.

Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Judge White, I now turn to a case captioned *People v. Hansford*, decided in 1997. You served on a three-judge panel which decided that a 40- to 60-year term was inappropriate and remanded for resentencing. And my question goes to your judgment in disagreeing

with that sentence for the defendant who has a record that I am about to specify.

On October 11, 1976, he was convicted of attempted larceny from a building and sentenced to 2 years' probation.

June 14, 1977, convicted of attempted receiving and concealing \$100 and sentenced to 1 to 5, did 2½ years in prison.

Two months later, August 22, 1977, convicted of attempted larceny from a motor vehicle, sentenced 1½ to 2½.

September 4, 1980, convicted of fleeing and eluding, sentenced to a fine of \$185 or 19 days.

Convicted of receiving and concealing stolen property and sentenced to 6 months, March 26, 1981.

August 3, 1982, convicted of two counts of receiving and concealing stolen property, over \$100, sentenced to 3 years' probation on April 15, 1985.

November 5, 1985, convicted of a violation of probation, sentenced to 90 days in jail.

July 17, 1988, convicted of larceny, 3 to 7 years.

Escaped from correction center, July 1990, returned February 1991. Paroled on March 31, 1992, listed as an absconder on July 9, 1992. Still on parole when he committed the instant offense.

Now, the procedural history of this case is that on initial review, the court of appeals determined that the sentence of 40 to 60 years for a fourth offender was disproportionate. On remand, the Supreme Court ordered reconsideration in light of a recently decided case. The court of appeals on which you sat, another judge determined the sentence constituted an abuse of discretion. The Supreme Court reversed saying there was not an abuse of discretion, two Justices dissenting, concluding that because the defendant had demonstrated his inability to conform his conduct to the laws of society, the court's sentence was not an abuse of discretion.

Now, the first opinion, which was unanimous, by your court that it was an abuse of discretion was unpublished. I am advised by staff that there was an opinion. What are the standards for publishing an opinion? It seems to me pretty important for the public to know why that sentence was vacated, and the public only knows it if there is a published opinion. What are the standards of that court for not publishing an opinion so the public knows what is happening?

Judge WHITE. Senator Specter, we are an intermediate appellate court with a very, very heavy volume. The vast majority, more than the majority of our cases are unpublished. The criteria for publication is that it—

Senator SPECTER. The vast majority unpublished, even a matter of this severity, this kind of a record, to send somebody back for resentencing?

Judge WHITE. Senator, every single case is important. I don't intend to minimize any type of case, but—

Senator SPECTER. Well, Judge White, some cases are—

Chairman LEAHY. I think you should at least let her answer the question.

Senator SPECTER. Well, I think you should let me question.

Chairman LEAHY. Let her answer the question.

Senator SPECTER. We have considerable latitude, at least when I was Chairman—

Chairman LEAHY. And you always used to remind us to let the witness answer the question.

Judge WHITE. Given the volume of the cases—

Senator SPECTER. If you are going to answer, try to be responsive.

Judge WHITE. I am sorry, sir. I have been trying—

Senator SPECTER. My question to you was: Aren't some cases more important than others?

Judge WHITE. Yes, some cases are more significant jurisprudentially than others, and our directive is that those are the cases that should be published. We have many, many, many sentence appeals. We have judicial—we have guidelines. At one point they were legislative—they were judicial sentencing guidelines. Now there are legislative guidelines. We have many sentence appeals, and it would be the most, most rare circumstance that a case, even one reversed, would ever be published under these circumstances. That is not the practice of the court.

Senator SPECTER. Okay, Judge White. Now down to the merits. I read you this record in detail. The habitual offender statutes are designed, as I am sure you know, to take habitual offenders off the streets for life. There are customarily three offenses. Seventy percent of the crimes are committed by habitual offenders.

What was your reasoning and thinking that a man with the record I just enumerated did not deserve to be off the streets for life?

Judge WHITE. Senator Specter, crime is a terrible problem in this society, and everybody should recognize that. And sentencing is a solemn obligation.

I don't have the facts specifically in front of me. I don't even know what year it is. But I can tell you that the case was either decided under the judicial guidelines or the legislative guidelines. And there is a guideline within which a judge must sentence. If the judge doesn't sentence within that guideline, then that sentence is subject to review.

Chairman LEAHY. Thank you.

Senator Cardin.

Senator SPECTER. One more. One more minute, Mr. Chairman.

Chairman LEAHY. I will give you as a matter of courtesy one more minute. You are now over your time.

Senator SPECTER. I told you what the year was. It was 1997. And I told you what the facts were. Two-part question. Are you saying that it was outside—you weren't saying it was outside the sentencing guidelines because the State Supreme Court said 40 to 60 was fine.

Now, as you listened to the recitation of these facts, which come from the Supreme Court's opinion, are you standing by the judgment you made twice that a 40- to 60-year sentence was inappropriate for this career criminal?

Judge WHITE. I want to say first that I don't know from the facts that you gave me whether it was within the guidelines or not. It may have been outside of the guidelines and, nevertheless, affirmed. I accept the Supreme Court's decision, and that is the final

decision in the matter. And I accept that the sentence was appropriate, and it was appropriate because the Supreme Court has said it is appropriate. And I said that.

Senator SPECTER. The pending question is whether you today say that you were right, listening to this record, in saying the sentence was inappropriate.

Judge WHITE. What I would say is that I read the case, applied the law as I understood it, and the sentence was appropriate. The Supreme Court said it was appropriate, and the panel and I were wrong.

Senator SPECTER. Let me ask you one more time if you think sitting here today, listening to this record, that you were right in saying that 40 to 60 years was an inappropriate sentence.

Judge WHITE. At the time I decided the case, the—I have to have been wrong, sir. The Supreme Court reversed. I was wrong. The Supreme Court reversed. There are times when an appellate judge is reversed. There are times when a circuit judge is reversed. And once you are reversed, there is no question whether you were right or wrong. The higher court said you were wrong.

Senator SPECTER. I think the record is clear you have not answered the question.

Chairman LEAHY. Well, I disagree, and I gave the Senator a great deal of extra time so she could. Any one of us who practice law or who have been prosecutors have been reversed. We know what that is like.

Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman, and let me first make an observation. I am a new member of this Committee, and I was looking forward to getting involved particularly in one of the most important responsibilities of the U.S. Senate, and that is the confirmation of judges to lifetime appointments. And I take the confirmation hearings very seriously, which is part of a total process on confirmation, including your records that we have and the reports that have been made available to us. And my observation is that I want to compliment all three of you for the manner in which you have responded to our Committee's questions. I am impressed by all of your—the way that you have answered the questions.

Judge White, I just can't imagine what is going through your mind as you hear us talk about rushing your nomination through when you waited 4 years since your last appointment. You have shown tremendous restraint, which I think bodes well for your judicial temperament.

Mr. Kethledge, I want to follow up on Senator Brownback's point on qualifications, because I think it is a very important point, and I think he raises a very valid point about Federal experience. I don't disagree. I think that is a very important point for us to evaluate.

The difficulty I have had with some of the more recent appointments from President Bush is that he has selected individuals who don't have a judicial background, so, therefore, you don't have the traditional cases in which we can question as to how you ruled on a particular case, which is very interesting to see how you went about making decisions. Or we don't have a lot of writings in which

we can look at the way that you evaluated a particular legal issue because of your background. Instead, you come to this appointment with a relatively short background in law, and if I have read your background correctly, it has been mostly as a private attorney handling product liability issues for companies such as auto manufacturers, drug manufacturers, and in at least one case a tobacco company.

And I guess my question to you is, you know, we all come to this with life experiences to whatever we do in our future in life. And I want to give you a chance to express your views as to how you would rule on these types of matters that may come before you, including product liability and consumer rights. You have represented the company point of view. There is obviously another point of view, the consumer point of view, as represented in some of these cases. And I just want the record to be clear as to how you will approach matters that may be brought by individuals looking at rights for non-smokers, looking for rights for consumers, recognizing that product liability issues are important ways of defending those types of interests.

Mr. KETHLEDGE. Thank you, Senator. I understand really two questions to be part of what you are asking, the first being what kind of approach would I take, because I agree, you don't have the kind of written record to review that Judge White has provided. I don't have that kind of judicial experience, and I admit that. So the question of what approach would you take is an important one.

First and foremost, Senator, I think the approach I would take recognizes the fact that, in my opinion, the fact that judges are unelected I think is really the defining characteristic of Article III judges and the characteristic that circumscribes their power. We are a democracy. Nobody elects Article III judges. I think that means that Article III judges don't get to impose their policy views, their opinions on the people of this country because that is not democracy. The folks in this body do, and it is the job of Article III judges to enforce your will, not the will of the judges themselves. I feel very passionate about that, and I tell you that, to the extent of my ability, that is what I would do if I were a judge.

Regarding experience, I have been out of school 15 years, and I recognize that is a relatively brief time. I am over 40 now, and I actually celebrated that birthday anticipating this question perhaps. I would hope that I have tried to pack an awful lot of relevant experience into my 15 years:

Clerking for Judge Guy on the court to which I am nominated. He is someone whom I revere, whose example I think would be of indescribable benefit to me if I were to be a judge.

Clerking for Anthony Kennedy, a man who comes to his job with extraordinary dedication and conscientiousness, and who is also a kind and decent man. Those examples would be very helpful to me.

I had the privilege of working in this institution, oftentimes in this room—

Senator CARDIN. That worries us a little bit.

[Laughter.]

Mr. KETHLEDGE. I really better not say anything about that, Senator.

But I think that that experience gives me the perspective of the legislative branch and being inside the legislative branch. A number of the Senators today have talked about separation of powers issues. I think that experience, that perspective, would be extremely valuable.

And then I have been a lawyer in private practice. I have seen the impact that these cases can have on the parties and individuals that are involved. Yes, I have had corporate clients, but not all of my clients have been corporate clients. I understand that these are not abstractions that are behind these cases. These are people. And I respect that, and I would have a sensitivity to that.

The other thing I would point out is that I have had the experience of starting my own law firm with two partners and, shortly thereafter, three. There were 15 people that chose to come with us. We were responsible in a large sense for their economic well-being. That was a responsibility I took very seriously, and, frankly, I think that was an experience that makes one grow up.

So I would hope that those things that I would draw on would allow me to be a judge that would do the job in the way the Committee would hope.

Senator CARDIN. Thank you.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you very much.

Senator Brownback, did you have any other questions?

Senator BROWNBACK. Yes, I do, Mr. Chairman. Thank you. And thank you for allowing us to go another round. There are individuals here who get a chance to question the first time.

Ms. White, I want to go back—Judge White—and ask you a few other things, if I could, and this is, I think, uncomfortable for everybody, just the way this has come forward, so I apologize for that. But they are things we really need to know.

Just without the Federal work, I would just like to know your view of the Constitution, just to—I know you cannot tell us how you decide individual cases, but do you see generally the Constitution as a more organic document, or do you see it more as a strict constructionist, or do you put yourself somewhere in between?

Judge WHITE. Senator Brownback, I have never placed labels on my judicial philosophy. I have never thought of it in those terms. I decide individual cases, and when the Constitution is implicated, I look to the precedent, and I find my way within the precedent that has been given. And I don't take a particular role. My role as a judge—my role is to be a judge in that case, and that is the way I approach it.

Senator BROWNBACK. Then what do you understand this current state of the law to be on Establishment Clause cases?

Judge WHITE. Senator Brownback, in my 27 years I have not had Establishment Clause cases—well, I must have had some. I haven't had it recently.

Senator BROWNBACK. I understand that, but you are going onto the Sixth Circuit Court of Appeals. This is a big area of the law. I am just asking you your understanding of the current status of the law in Establishment Clause cases.

Judge WHITE. I am—I haven't read the cases recently enough to be comfortable giving you an answer, and if a case came before me,

then I—if I were confirmed and a case came before me, then I would be an expert in all of the Supreme Court decisions to date.

Senator BROWNBACK. Judge White, the Chairman brought up—and I thought this was appropriate to ask about—case management, saying that another nominee had not been a judge so does not know about case management. But you have been on the bench, and you have dealt with case management. The Sixth Circuit is one of the busiest per judges' cases, caseloads, so this will be very important. Have you ever thought you have had problems managing your cases or issuing your opinions in a timely fashion?

Judge WHITE. When I first became a court of appeals judge, I had a period of adjustment in the sense that it is an extremely heavy docket, and I had to learn that although I gave each case careful consideration, I couldn't write the way one would normally want to write in each case. And that was a process where I came to understand that. It took a while, and the 15 years have been very valuable.

I think that if one thinks about the important traits in an appellate court judge, timeliness is certainly one of them, and I try to balance timeliness with considered judgment, with scholarship, giving each case attention. I try to put all of that together, and that is the way that I manage my docket.

Senator BROWNBACK. So I take it from what you are telling me, you have had a problem in this, but you feel like you have grown over the years in this area?

Judge WHITE. Yes, I would say when I first went on the bench, I did have a problem with that. It is something that one learns in the 15 years.

Senator BROWNBACK. Mr. Kethledge, just in a short period of time, I would be curious about your view of the Constitution, whether you see it as—just as your overall view, as a living document or as a strict constructionist. Do you have a view on that?

Mr. KETHLEDGE. Senator, I don't really have a label that I can put on myself. What I would say is that, obviously, first and foremost I would follow Supreme Court precedent.

The other thing I would say is that, again, I would make sure that the values that I would be enforcing if I were a judge are not just my values, that I am not striking something down simply because I don't like it. That is a countermajoritarian aspect of our system of Government. I would start with the text. I would say that, sir.

Senator BROWNBACK. And I would just, with that answer, because we are apparently not going to be able to understand further—although clerking for the people that you did gives us some opinion on your idea. But what do you understand the current state of the law to be on Establishment Clause cases?

Mr. KETHLEDGE. Senator, I would have to give pretty much the answer Judge White did. That is not an area that I have recent experience in in my practice. If I were presented with an issue along those lines, obviously I would carefully study Supreme Court and other applicable precedent. I believe that is where the *Lemon v. Kurtzman* case comes in, but I could be getting the wrong clause, and that is why I shy away from being too definitive in this regard.

Senator BROWNBACk. Have you handled any Establishment Clause cases? If I could on this, Mr. Chairman.

Chairman LEAHY. Yes, take one more minute. The reason is we were going to end this round, but Senator Specter has asked to be able to go until about 12:20, 12:25. And I want to make an exception to the time so that he can. He is a highly respected, knowledgeable person here. We will do it. But if you could finish with whatever this question is, Senator Brownback.

Senator BROWNBACk. Have you handled any Establishment Clause cases in any of your clerkships or any of the work that you have done?

Mr. KETHLEDGE. Senator, I cannot remember offhand whether the courts that I worked on had any Establishment Clause cases while I was there. There isn't one that comes to mind. I have not handled that issue in my private practice. It is simply not possible to handle every issue that might arise under the Constitution in one's practice.

I will say that that is obviously a very important issue where some of the most deeply held views of our citizens come into play, and I would take that very seriously.

Chairman LEAHY. Thank you very much. And, of course, the record will be kept open for followup questions.

Senator BROWNBACk. I appreciate that. I am going to, as the appropriate time, move that we go into closed session, Mr. Chairman. I would like us to be able to do that.

Chairman LEAHY. If you move that, then we will have to come back later today to do that so we can accommodate Senator Specter now.

Senator BROWNBACk. I just wanted to put you on notice of that, Chairman.

Senator SPECTER. Judge White, we have a very limited time. I am trying to accommodate to the Chairman's schedule. So if you could answer my questions briefly and directly, I would appreciate it.

In a case captioned *People v. Ryan*, which there is a Supreme Court opinion in 1996, you were one of a three- person panel where you affirmed the dismissal of a drug dealer's conviction. The Supreme Court reversed you. Your description of the case is as follows:

Defendant was arrested with a kilogram of cocaine by Federal agents, but was charged and convicted in State court after DEA agents turned over their file to the State. Defendant argued the decision to pursue a State prosecution was vindictive. A panel of the court of appeals where you were not a member concluded that the case was vindictive and remanded for an evidentiary hearing. In an evidentiary hearing, the trial court found vindictive conduct. On appeal, you were a member, finding that the trial court's findings were not clearly erroneous and affirmed.

The State Supreme Court said that, "The mere threat to refer the case for State prosecution does not amount to objective evidence of hostile motive."

Do you think that you were correct in deciding that the evidence was sufficient for a finding of vindictiveness when all that happened was for the Federal DEA authorities to do was to turn the

matter over to State prosecutors, which is a very commonplace practice?

Judge WHITE. Again, Senator, my familiarity, my recollection is refreshed by what you have said, by only by what you have said. I cannot say that those were the only facts involved. I can say that the prior panel found that there might be vindictiveness, that there was, sent it back. We had a hearing. I applied the law in terms of review, deference to be made to a trial court, concluded that it wasn't an abuse of discretion for the trial court to so find, and that was the extent of my participation.

Again, the Supreme Court reversed, and because the Supreme Court reversed, it meant that I, among others, got it wrong.

Senator SPECTER. Do you stand by your judgment today that you rendered at the time? That is my question, again.

Judge WHITE. The Supreme Court said I was wrong. I stand by the Supreme Court.

Senator SPECTER. Well, let the record show again you haven't answered the question.

In a 1996 case captioned *People v. Thomas*, the panel issued the decision—you were a member the panel—reversing a conviction of a gang member who was charged with second-degree murder and found guilty by a jury of voluntary manslaughter, carrying a concealed weapon, and felony firearm. The panel opinion reversed the conviction saying that the gang member's assertion was correct, being denied a fair trial because the prosecution called a witness knowing the witness would refuse to testify. Your panel based its opinion on the violation of the defendant's confrontation right. But, of course, when the witness didn't testify, there was no opportunity for confrontation.

The Supreme Court of the State reversed your panel's opinion saying that there was no constitutional error, found evidentiary error but harmless error.

Judge WHITE. Can you repeat that? I am sorry. I didn't hear the last sentence.

Senator SPECTER. The Supreme Court found there was evidentiary error, but the error was harmless because the State had "proved that it was highly probable that the errors did not contribute to the verdict."

Question: Do you stand by the judgment you made at that time?

Judge WHITE. Well, apparently the decision on the evidentiary and constitutional issue was determined to be correct, but the harmless error analysis was determined to be erroneous. So, again, I would stand with the Supreme Court and conclude that my analysis on the constitutional and evidentiary issue was correct, and the panel, of which I was one, our conclusion regarding the harmless error was erroneous.

Senator SPECTER. The Supreme Court concluded your panel was wrong. They reversed you, for the reason I stated, on harmless error. Now, my question to you is: Do you stand by the judgment that you made at that time?

Judge WHITE. No, sir. Again, I stand by the judgment of the Supreme Court.

Senator SPECTER. You think the Supreme Court was right? I am still trying to get an answer.

Judge WHITE. The issue—

Senator SPECTER. I know the Supreme Court has the final word.

Judge WHITE. They do, sir.

Senator SPECTER. They are not necessary correct. I am just asking you for your judgment. I am trying to evaluate your judgment. Do you think you were right in the judgment—you were part of the panel—or that the Supreme Court was right in reversing for the reasons I have gone into?

Judge WHITE. Sir, I thought I was right at the time I made the decision, and I accept the conclusion of the Supreme Court.

Senator SPECTER. Okay. Same answer, same conclusion. The question hasn't been answered.

Judge White, would you care to amplify in any way your record in handling criminal appeals? Because on the basis of the cases that I have cited—and we are under very tight time constraints—I would like to go into a lot more of your cases, very frankly. But I haven't had time to read all your cases, and I am a fast reader, but there have only been a few days. So I want to give you an opportunity to comment or explain your attitude toward appellate work on criminal cases. Are these cases that I cited characteristic of your work on the bench?

Judge WHITE. Thank you for the opportunity to address my record on criminal cases. As I said, there are over 4,300 cases. I would say that over—probably about 60 percent of them are criminal. I would have affirmed in maybe 98 percent of the cases.

There is an appellate system applying both to criminal and civil cases. When a case comes before me, I apply the law as stated by the Supreme Court. In each of those cases, I endeavor to do so.

I am also confident in saying that both prosecutors and defense lawyers regard me as being fair and impartial. I think that lawyers on both sides are pleased to come into the courtroom when I am on the panel, and that in each of these cases, even the prosecutor would have thought that there was a reasonable basis. And as in some of these cases, my colleagues shared my opinion.

The bottom line is in most cases, 98 percent of the cases, convictions are affirmed. Part of my duty as an intermediate appellate judge is to be open to the possibility that there was error below. And I take criminal cases very seriously. I take the rights of citizens to be free of crime very seriously. I also take the rights of defendants seriously, and I have decided each one of those cases to the best of my ability.

Senator SPECTER. Now, Judge White, Senator Brownback asked you about the Establishment Clause, and you said you hadn't had any experience with it. Have you had any experience with the Free Exercise Clause of the First Amendment, freedom of religion?

Judge WHITE. Let me say I recognize that the Establishment Clause and the Free Exercise Clause are parts of the First Amendment. I understand that in many respects they are two sides of the same coin and that from time to time cases come to the court—

Senator SPECTER. Have you had any cases on these issues or any experience as a lawyer?

Judge WHITE. Okay. I don't recall specific cases on either of those clauses. That doesn't mean I haven't had them. I just don't recall them.

Senator SPECTER. Have you had any experience on the issues of freedom of speech, assembly, freedom of the press?

Judge WHITE. I have had some cases implicating the press, mostly under our State FOIA statute, Freedom of Information statute. Maybe in terms of the press in the courtroom, it has come up in that context.

Senator SPECTER. Have you had any experience on holding reporters in contempt, a contentious issue?

Judge WHITE. I have not had them directly, no.

Senator SPECTER. Have you had any experience on the attorney-client privilege, now a contentious issue, where the Federal Government is extracting waivers or tougher sentences and tougher charges?

Judge WHITE. We—

Senator SPECTER. Have you had experience in that field?

Judge WHITE. I am sorry to interrupt. I have had cases dealing with the attorney-client privilege, not in that context, but certainly attorney-client privilege issues have come before me.

Senator SPECTER. Have you had any experience in the issue of Executive power? The Sixth Circuit had the appeal coming out of the Detroit United States District Court for the Terrorist Surveillance Program which constituted an analysis of the Foreign Intelligence Surveillance Act. Are you familiar with the Foreign Intelligence Surveillance Act?

Judge WHITE. Only to the extent that any citizen would be. I haven't had any Federal Executive power cases. I have had State Executive power cases. I understand the importance of these issues and would address them accordingly.

Senator SPECTER. Have you had any experience with the cases now pending in the Federal court seeking to grant retroactive immunity to the telephone companies? Any experience with issues like that?

Judge WHITE. I don't recall cases that would be directly on point with immunity for telephone companies. No, sir.

Senator SPECTER. Have you had any experience with the state secrets doctrine?

Judge WHITE. It wouldn't be something that would come to the State court system, no.

Senator SPECTER. Well, let me ask you—let me give you an opportunity to respond, pretty much the same question Senator Brownback asked. With no experience in these areas, on these front-line issues—the Sixth Circuit just had the Terrorist Surveillance Program—what are your qualifications to sit on the court of appeals for the Sixth Circuit, finality of decision short of the Supreme Court?

Judge WHITE. At the risk of being redundant, there are elements that go into being a judge. One is knowledge of the subject matter. The other is the process of deciding cases. I venture to say—and I could be wrong—that there are judges on the Sixth Circuit now who have not had cases dealing with some of the issues that—

Senator SPECTER. Do you think that ought to be considered by the Senate in whether to confirm you or not? These other judges you allude—these other unnamed, unspecified judges you allude to,

do you think we ought to consider that in evaluating your qualifications?

Judge WHITE. I didn't mean to be speaking—I would say that they are qualified in the same way that I am qualified because you are in the job of addressing these issues every day as Members of the Congress. As judges, whether it is in the State or the Federal system, judges decide cases, individual cases, and they become expert in the subject matter through the case. As one has been on a particular court for a length of time, one becomes more familiar with certain types of cases. But there is always a first time with any subject matter, and the question is how the judge approaches it and whether the judge thoroughly familiarizes him- or herself with the law and whether the judge is familiar with the general principles of judging.

Senator SPECTER. Judge White, I am going to finish up with you in the next 2 minutes, by 12:25, as the Chairman has requested. And I am going to reserve some questions for the closed sessions, which Senator Brownback has already mentioned, which I think we do need. But I want to pick up on two things you testified to.

You said in your earlier testimony, I quoted you, that sometimes your taxes were "insufficient." Could you amplify that, please?

Judge WHITE. When I pay my taxes, which is something that I am proud to do, I do not compute my taxes. I give all of my information to an accountant. That happened—

Senator SPECTER. Did you ever get a bill that you didn't pay for a protracted period of time, a tax bill?

Judge WHITE. Senator, I think I know what you are referring to. This past year, I got a notice that the amount that I had sent in apparently wasn't sufficient. I sought advice on whether it was, and when I was told that it wasn't, I sent it in. I paid what I believed to be my taxes at the time, and if it turns out it is not correct, then I pay whatever I am supposed to pay.

Senator SPECTER. Judge White, you testified that you "abide by the rules of the road, but sometimes you have not." Could you expand upon whether you—when and under what circumstances you have not?

Judge WHITE. I have tried to abide by the speed limit. There are times when I—

Senator SPECTER. Have you on occasion not abided by the speed limit? You mentioned that.

Judge WHITE. Yes, sir, there are times when I have exceeded the speed limit.

Senator SPECTER. Anything else related to the rules of the road?

Chairman LEAHY. You know, if you want to ask further questions, we can wait until that closed session. I hope we do not set a standard that nobody can be a Federal judge if they have ever driven over the speed limit or that nobody can be a United States Senator if they have ever driven over the speed limit, because it is going to be a pretty darn empty chamber around here if that is a standard.

Mr. Kethledge, we were talking about—have you had any experience with the Terrorist Surveillance Act?

Mr. KETHLEDGE. No, sir, I have not.

Chairman LEAHY. Or with the Federal Rules on attorney-client privilege that is under debate now, the—

Mr. KETHLEDGE. Not the Federal. I have only experienced that to the extent I have been subject to it.

Chairman LEAHY. And how about the reporter's shield law? Have you done a lot in that regard?

Mr. KETHLEDGE. No, sir.

Chairman LEAHY. So you are so like Judge White in that regard.

Mr. KETHLEDGE. That would be correct, Chairman.

Chairman LEAHY. I know that I agree with what President Bush has on his website, Judge White, that you are experienced and highly qualified. I was thinking that you—about 98 percent of these district attorneys see their sentences upheld. Anybody who has ever been a district attorney would be delighted to have 98 percent of their cases upheld. And I also, even though you have been an appellate judge longer than Mr. Kethledge has been a lawyer, I think you are both highly qualified.

We will—

Senator BROWNBACK. Mr. Chairman, I do want to move that we go into closed session.

Chairman LEAHY. We will set a time so we can have other members here at a time when that can be done. The record will stay open in the meantime, and I can assure the Senator from Kansas he will have his opportunity to make that request.

Senator BROWNBACK. Thank you.

Chairman LEAHY. We stand in recess.

[Whereupon, at 12:27 p.m., the Committee recessed, to reconvene at 5 p.m., and went into closed session.]

[Questions and answers and submissions follow.]

QUESTIONS AND ANSWERS



**Raymond M. Kethledge**

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May 19, 2008

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Specter and Senator Grassley.

Sincerely,

A handwritten signature in black ink that reads "Ray Kethledge". The signature is written in a cursive, flowing style.

Raymond M. Kethledge

RMK/los  
Encls.

cc: The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

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**Responses of Raymond M. Kethledge  
Nominee to the U.S. Court of Appeals for the Sixth Circuit  
to the Written Questions of Senator Arlen Specter**

- 1. In your response to question 17(c)(2) of the Committee questionnaire, you state that 50 percent of your practice has been in federal courts and 50 percent has been in state courts. Please describe the types of federal issues on which you have worked, including issues that you handled during your clerkship on the Court of Appeals for the Sixth Circuit and your clerkship with Justice Kennedy on the U.S. Supreme Court.**

The proportion and composition of federal issues in my practice has fluctuated over time. The federal issues on which I have worked as a practicing attorney include the scope of various federal jurisdictional statutes, the constitutional "case or controversy" requirement, the elements of standing, the scope of "[t]he judicial power" under Article III, federal constitutional limitations on punitive damages, various other limitations and guarantees arising from the federal Due Process Clauses, the admissibility of expert testimony under Federal Rule of Evidence 702, the admissibility of hearsay under Federal Rules of Evidence 803 and 804, a wide range of issues under the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure, the interpretation of Treasury Regulations and federal tax statutes, the scope of federal preemption of state-law claims, various aspects of patent law, and the prerequisites for class certification in federal courts, among other issues.

I worked on many of these same issues as a law clerk. I also worked extensively on issues of federal criminal law, including the constitutional guarantees afforded criminal defendants, the elements of various statutory crimes and the proof required to establish them, the application of the Federal Sentencing Guidelines, and issues related to the writ of habeas corpus, among other issues.

- 2. If confirmed as a judge on the Sixth Circuit, you will frequently be called upon to construe statutes. Can you please describe your views on statutory construction and to what would look to for guidance in interpreting statutes?**

I would follow Supreme Court precedent regarding the manner in which statutes should be interpreted. To that end, I would begin with the text of the statute. If the meaning of the statute is clear from its text, the inquiry would end there. I would also consider the structure of the statute as necessary to determine the meaning or scope of its text. In most cases, I believe, a court can determine the meaning of a statute by close and careful examination of its text and structure.

**Responses of Raymond M. Kethledge  
Nominee to the U.S. Court of Appeals for the Sixth Circuit  
to the Written Questions of Senator Charles E. Grassley**

1. **Can you please tell us your views on statutory construction? What do you look to for guidance in interpreting statutes?**

I would follow Supreme Court precedent regarding the manner in which statutes should be interpreted. To that end, I would begin with the text of the statute. If the meaning of the statute is clear from its text, the inquiry would end there. I would also consider the structure of the statute as necessary to determine the meaning or scope of its text. In most cases, I believe, a court can determine the meaning of a statute by close and careful examination of its text and structure.

2. **In the confirmation hearings for Chief Justice Roberts and Justice Alito, there was extensive discussion about the amount to which judges are bound by *stare decisis*. What is your opinion as to how strongly judges should be guided by the doctrine of *stare decisis*?**

*Stare decisis* is a foundational principle of the law. Legal reasoning simply could not go on if all of a court's prior precedents could be freely revisited in each case. Moreover, citizens may act in reliance, and Congress and state legislatures may make decisions, based in part on the extant law as declared by the courts. In addition, the courts themselves may have derived other doctrines from the precedent under consideration. Any decision whether to overrule precedent, therefore, must take into account not only the extent to which the court believes the precedent is wrong, but also the disruption that would result in the law and in society generally. Finally, a court of appeals cannot overrule Supreme Court precedent in any event, and the prior published decisions of one panel are binding on future panels in the Sixth Circuit. Thus, a decision to overrule prior precedent should very much be the exception rather than the rule.

3. **Judges in both federal and state courts have come under criticism for engaging in "judicial activism." How would you define "judicial activism?" What assurances can you give the Committee that, if confirmed, you will not engage in judicial activism?**

I believe that judicial activism is the act of a judge imposing his own policy views on society for no better reason than that he holds them. In my view, a judge must always be mindful that he is an unelected official among a self-governing people. It may be tempting for a judge to construe a statute to mean what she wants it to mean, or to reach a result she prefers in a particular case. A judge must be ever vigilant against these temptations. The judge who succeeds in this task—and who subordinates her own will to that reflected in a democratically adopted text—thereby acts in the highest tradition of the judiciary. The judge who fails, and who imposes his own will on society, detracts to that extent from the reality of self-government in our Nation. If confirmed, I would not decide cases on the basis of my own policy views.

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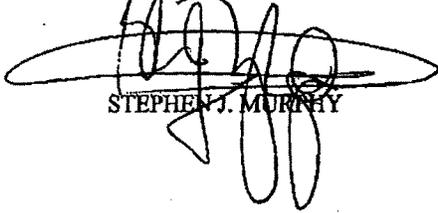
May 20, 2008

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Grassley.

Sincerely,



STEPHEN J. MURPHY

cc:  
The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**Responses of Stephen Joseph Murphy III  
Nominee to the U.S. District Court for the Eastern District of Michigan  
to the Written Questions of Senator Charles E. Grassley**

- 1. Can you please tell us your views on statutory construction? What do you look to for guidance in interpreting statutes?**

Response: As a judge, if confirmed, I would look to the words of a statute to determine its meaning. I would be hesitant to find lack of clarity in a statute passed by Congress unless some actually and logically existed. Then, and only then, would I go outside the words and language of the statute to other references in an effort to resolve the lack of clarity and to construe Congress' meaning in the statute it passed.

- 2. In the confirmation hearings for Chief Justice Roberts and Justice Alito, there was extensive discussion about the amount to which judges are bound by *stare decisis*. What is your opinion as to how strongly judges should be guided by the doctrine of *stare decisis*?**

Response: I note my respect for the role of precedent and *stare decisis* in the development of American law. Judges on the lower federal courts must abide by and are not able to overrule the decisions of the United States Supreme Court. Federal judges should respect the precedents of the courts on which they sit and not be quick to overturn the decisions of their fellow judges who have previously ruled on certain matters.

- 3. Judges in both federal and state courts have come under criticism for engaging in "judicial activism." How would you define "judicial activism?" What assurances can you give the Committee that, if confirmed, you will not engage in judicial activism?**

Response: The U.S. Constitution vests executive authority in the President and legislative Authority in the Congress.

Article III of the Constitution provides the source of the federal courts' powers, and it also mandates a limited role for the judicial branch. Specifically, Article III restricts the jurisdiction of the federal courts to "cases and controversies." Accordingly, federal courts are not to exert executive power and those courts are likewise not to act in any legislative capacity.

My core belief is that a judge has an unwavering obligation to act fairly at all times and in conformance with the requirements of the Constitution – nothing less. A judge may not, through his or her issuance of orders and delivery of opinions, enact new law or exercise powers reserved for the various agencies of the executive branch. But I also believe that a federal judge has a grave and momentous obligation to decide cases independently and with firm decisiveness. Just as a judge may not cross over into the authority of the other branches of government, a judge also may never evade his or her obligation to assess what is in controversy, to say what the law is that applies to it and to use the dictates of law to decide the issues at hand.

**Responses of Helene N. White**  
**Nominee to the U.S. Court of Appeals for the Sixth Circuit**  
**to the Written Questions of Senator Sam Brownback**

- 1. Do you believe there is a right to privacy in the U.S. Constitution? Where is it located? From what does it derive?**

Response: Although not explicitly mention in the United States Constitution, various cases of the Supreme Court of the United States have recognized a right to privacy in the U.S. Constitution. Opinions have pointed to the Ninth, First, Third, Fourth and Fifth Amendments, and the Due Process Clause of the Fourteenth Amendment as foundations for this right. If confirmed, I would follow the decisions of the Supreme Court of the United States in any case involving the assertion of a constitutional right to privacy.

- 2. What philosophical approach would you bring to bear on a case of first impression – in which there are no relevant precedents?**

Response: If presented with a case of first impression, in which there are no relevant precedents, I would look to precedent that might be informative, although not directly on point. I would also look to see whether courts in other jurisdictions have considered the issue. If the issue concerns a statute, I would look to the plain language of the statute to determine the Legislature's intent. If no legislation is involved, and there are different possible resolutions to the case, I would seek to determine which resolution is most consistent with existing case law.

- 3. Please name the current Supreme Court Justice whose approach to judging you believe is most similar to your own, and explain in detail the reasons for your answer.**

Response: Two years ago, I would have found this question an easy one and identified Justice Sandra Day O'Connor as the justice whose approach to judging appeared most similar to my own, given her fact-specific and narrow approach to decision-making. I am certain that were a law professor to describe each current Supreme Court Justice and his or her approach to judging, I would say that aspects of each Justice's approach are most similar to my own, and that aspects of each Justice's approach differ from my own. With this caveat, I would say that Justice Kennedy's approach is most similar to mine in that he places great importance on stare decisis. Further, he often sees the merits of both sides of an issue, and has described himself as engaging in extensive study, reflection and deliberation before actually deciding a case.

- 4. Judges in both federal and state courts have come under increasing criticism in recent years for overstepping their role as interpreters of the law, and for instead engaging in judicial activism. How would you define "judicial activism"? What assurances can you give the Committee that, if confirmed, you will not engage in improper "activist" judging?**

Response: Judicial activism can take a number of forms. The gravamen of the criticism is that the practice usurps the powers of other branches of government. The role of the judiciary is to decide individual cases representing concrete disputes between litigants. Judges should not view individual cases as opportunities or vehicles for solving perceived societal problems, for making sweeping declarations regarding a body of law, for imposing new duties or declaring new rights, for fixing perceived deficiencies in other branches of government, or for expanding the scope of statutes beyond their terms. Each of the foregoing activities is an example of judicial activism.

I have always been most comfortable deciding cases narrowly, focusing on the dispute presented by the case before me. If confirmed, I would continue to approach my role as a judge in this manner. I would be mindful of the separation of powers and the proper authority of the states and state courts. Because the judiciary is essentially self-regulating in the exercise of judicial power and the enforcement of constitutional limitations on that power, the Supreme Court has developed justiciability doctrines to safeguard the separation of powers and assure that the judiciary exercises, appropriately, only the jurisdiction granted to it. Federal judges at every level have an obligation to apply and enforce these doctrines. Similarly, the Constitution contemplates a division of power and authority between the federal government and the states. Furthermore, the states have a role in honoring and enforcing the Constitution. Thus, abstention doctrines play a crucial role in the decision of cases involving state issues or proceedings.

When a federal court does entertain the merits of a case involving another branch of government, the court must be mindful that it has no authority to substitute its own notion of good policy. If confirmed, I would steadfastly observe all doctrines intended to curb judicial activism, and be ever mindful of my proper role as judge.

**Responses of Helene N. White  
Nominee to the U.S. Court of Appeals for the Sixth Circuit  
to the Written Questions of Senator Tom Coburn**

1. You were nominated by President Clinton on January 7, 1997. While your nomination was pending, you gave \$2,000 to Senator Levin's brother, Sander Levin, for his congressional campaign (\$1000 on 5/5/98 and \$1000 on 8/27/98). You also gave \$1000 to Al Gore for his presidential campaign on June 30, 1999. Your then-husband, Charles Levin, gave \$300 to Senator Levin on 7/9/99 and \$500 to Senator Levin on 6/8/00. You were renominated on January 3, 2001, by President Clinton, but the Senate failed to act on your nomination.

Canon 7 of the Code of Conduct for United States Judges states "A judge should not: "make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions." And, Canon 2A of the Code of Conduct for United States Judges states: "Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny."

As a state appellate court judge, these federal rules did not apply to you; however, do you feel these contributions by you and your husband were appropriate once your nomination was pending before the Senate?

a) Why or why not?

Response: Michigan's Code of Judicial Conduct does not prohibit these contributions. Because of the restrictions on a judge's public political activities, I have availed myself, over the years, of this permissible, private avenue of participation in our country's election process, as has my ex-husband. Congressman Sander Levin faced a particularly difficult race in 1998, hence the size of my contribution to his campaign. I did not believe that my contributions to Congressman Levin's or Al Gore's campaigns, or my then-husband's contributions to Senator Levin's campaign, would have any impact on my nomination. Because the Michigan Code of Judicial Conduct does not prohibit these contributions, and the contributions were consistent with our past practices, I did not think they were inappropriate.

b) Do you believe there was at least an appearance of impropriety?

Response: Respectfully, I do not. However, if confirmed, I will steadfastly adhere to all provisions the Code of Conduct for United States Judges.

- c) On June 26, 2007, you contributed \$2,300 – the maximum amount an individual may give to a candidate – to Senator Hillary Clinton. Four days later, on June 30, 2007, you gave the same amount to Barak Obama. Has anyone discussed with you the possibility of you being nominated to a federal

**Judicial position under a subsequent administration, if your nomination is not confirmed during the 110<sup>th</sup> Congress?**

Response: No one has discussed with me the possibility of my being nominated to a federal judicial position under a subsequent administration.

**Responses of Helene N. White  
Nominee to the U.S. Court of Appeals for the Sixth Circuit  
to the Written Questions of Senator Charles E. Grassley**

- 1. As a judge on a state court, you are often called on to construe statutes. Can you please tell us your views on statutory construction? What do you look to for guidance in interpreting statutes?**

Response: I first look to the plain language of the statute, giving the words their plain and ordinary meanings. If the language of the specific statutory provision is not clear, I look to the statute as a whole to see if the Legislature's intent is manifested in the remainder of the statute. If it is still not clear, I look to statutes *in para materia*. I apply established rules of statutory construction, such as the presumption that every word has some meaning, and avoid any construction that would render a part of the statute surplusage or nugatory. The paramount task in construing statutes is to discern the Legislature's intent. The rules of statutory construction are simply aids to determine that intent. If necessary, I look to legislative history, but I am mindful of the limits of legislative history as a tool to discern legislative intent.

- 2. In the confirmation hearings for Chief Justice Roberts and Justice Alito, there was extensive discussion about the amount to which judges are bound by stare decisis. What is your opinion as to how strongly judges should be guided by the doctrine of stare decisis?**

Response: Stare decisis, the rule that prior court decisions are recognized as precedent to be followed and not disturbed, is at the bedrock of our judicial system. When applied to decisions of a higher court, the rule is absolute. When applied to decisions of the same court, the doctrine, while not absolute, is presumptive. Where the doctrine is presumptive, courts should follow the doctrine, except where the analysis set forth by the Supreme Court of the United States in *Agostini v Felton*, 521 US 203 (1997), and other cases, leads to the conclusion that the prior decision should be overruled.

- 3. Judges in both federal and state courts have come under criticism for engaging in "judicial activism." How would you define "judicial activism?" What assurances can you give the Committee that, if confirmed, you will not engage in judicial activism?**

Response: Judicial activism can take a number of forms. The gravamen of the criticism is that the practice usurps the powers of other branches of government. The role of the judiciary is to decide individual cases representing concrete disputes between litigants. Judges should not view individual cases as opportunities or vehicles for solving perceived societal problems, for making sweeping declarations regarding a body of law, for imposing new duties or declaring new rights, for fixing perceived deficiencies in other branches of government, or for expanding the scope of statutes beyond their terms. Each of the foregoing activities is an example of judicial activism.

I have always been most comfortable deciding cases narrowly, focusing on the dispute presented by the case before me. If confirmed, I would continue to approach my role as a judge in this manner. I would be mindful of the separation of powers and the proper authority of the states and state courts. Because the judiciary is essentially self-regulating in the exercise of judicial power and the enforcement of constitutional limitations on that power, the Supreme Court has developed justiciability doctrines to safeguard the separation of powers and assure that the judiciary exercises, appropriately, only the jurisdiction granted to it. Federal judges at every level have an obligation to apply and enforce these doctrines. Similarly, the Constitution contemplates a division of power and authority between the federal government and the states. Furthermore, the states have a role in honoring and enforcing the Constitution. Thus, abstention doctrines play a crucial role in the decision of cases involving state issues or proceedings.

When a federal court does entertain the merits of a case involving another branch of government, the court must be mindful that it has no authority to substitute its own notion of good policy. If confirmed, I would steadfastly observe all doctrines intended to curb judicial activism, and be ever mindful of my proper role as judge.

4. **Given your service on the bench, you no doubt have some insights about the role judges play in society. Will you please share your thoughts with us about the role of the judiciary?**

Response: The Legislature makes the laws and the Executive branch enforces the laws. When individuals or entities, or individuals and entities and the government, have disagreements concerning the application of the laws, they turn to the Judiciary. The primacy of the rule of law as a system of rules governing society, and the willingness of citizens to be bound by the rule of law, rests on the Judiciary's ability to fairly, promptly and transparently adjudicate these disputes. Citizens expect members of the other branches of government to have particular views and take particular positions, and they vote for them accordingly. However, they expect, rightly, that judges will be blind to all considerations other than those legally relevant to the issues before the court, will treat every litigant the same, and will decide each individual case on the facts presented, without regard to generalities. They also expect that judges will confine themselves to deciding individual cases, and will not usurp the role of other branches of government. Over the years, I have observed that the Michigan judiciary has been its strongest, and has been held in the highest esteem by citizens, during those periods in which it has been most removed from political considerations and controversies.

**Responses of Helene N. White**  
**Nominee to the U.S. Court of Appeals for the Sixth Circuit**  
**to the Written Questions of Senator Orrin G. Hatch**

1. **In your answer to question 15e on your Senate questionnaire you state that you “wrote a significant number of concurrences and dissents,” yet at your hearing you stated that in 95% of your cases, there was unanimity. Can you explain this apparent inconsistency?**

Response: I do believe that there is unanimity in 95% of our cases. The number of separate opinions I have written over the years is significant in numbers, as reflecting additional work, but not in percentages, as compared to the total number of cases in which I have sat (upwards of 4500).

- a. **Do you believe that courts should strive to achieve unanimity in their opinions?**

Response: I believe unanimity is desirable, and I am always willing to make and accept suggestions toward that end. I tend to write narrowly in part to achieve consensus. When I concur it is generally because I find the lead opinion too broad, or because I cannot agree with the reasoning.

- b. **Isn't it true that divided opinions, especially concurrences, fail to promote clarity in the law?**

Response: I believe this is especially true of opinions of the state supreme courts and the Supreme Court of the United States, or en banc opinions of the courts of appeal, where multiple opinions can lead to no majority opinion and an inability to discern a clear rule of law. It is less true in cases where there is a three-judge panel and a majority decision. As a trial judge, I often lamented the lack of clarity resulting from divided opinions, but I also lamented the breadth of other decisions, in which the panel clearly had not contemplated the implications of their broad statements. There is tension between the need for clarity in the law and the need to apply the law on a case-by-case basis, with the benefit of advocacy. I have tried to be mindful of both.

2. **What is your view on the proper balance of power and separation of powers in our federal system under the Constitution?**

Response: The concepts of separation and balance of powers are at the bedrock of our federal system under the Constitution. Each of the three branches of government, Congress, the Executive and the Judiciary, must recognize the limits of its own power, and respect the authority of the other co-equal branches. At the same time, however, each must recognize its constitutional responsibility to check abuse of power by another branch. Similarly, in our federal system under the Constitution, certain matters are left to the states. These limits must be observed as well.

3. **Judge White, today you are bound as a state appeals court judge to follow the precedents of the Michigan Supreme Court. If confirmed to the Sixth Circuit, you will similarly be bound by the precedents of the United States Supreme Court. You have been active in organizations that take public and strong positions on political and legal issues which regularly come before the federal courts. You have been, for example, a life member of the NAACP for many years. The NAACP recently condemned in very strong language the Supreme Court's 6-3 decision upholding Indiana's voter identification requirement. The NAACP called the Supreme Court's decision "akin to voter suppression." Do you agree with this characterization of the Supreme Court's decision in *Crawford v. Marion County Election Board*? How will you maintain your impartiality and fairly apply precedents such as this one with such strong positions taken on these issues and decisions coming from organizations to which you are also sincerely committed?**

Response: I became a life member of the NAACP long ago because the organization represents a commitment to racial justice. Over the years, various organizations to which I have belonged or have contributed have taken positions on individual issues with which I may not agree, or regarding which I have no opinion. I have never regarded their positions on legal issues, if any, as being at all relevant to my decision-making process. If confirmed to the Sixth Circuit, I would adhere to the Code of Conduct for United States Judges regarding membership in organizations that take positions on issues that might come before the court. I have not read the full text of the *Crawford* opinions, but, if confirmed to the Sixth Circuit, I would apply the *Crawford* decision. I believe that my record demonstrates my ability to fairly and impartially apply precedent on any issue.

4. **Judge White, you served as a trial court judge before joining the Michigan Court of Appeals. The role of a trial court is very different than the role of an appellate court. Could you please describe what you see as the difference in their respective roles and how what we call the standard of review limits what appellate judges do?**

Response: Trial judges sit on the front lines and may make hundreds of decisions in a single case. Some of these are discretionary calls, and some involve issues of fact or law. Appellate judges have the luxury of being presented with clearly defined legal issues and having the time for reflection. The Michigan Court of Appeals affirms discretionary decisions of the trial court unless the decision amounts to an abuse of discretion. Legal decisions are reviewed de novo, but even if there is error, the court will not reverse unless the error was outcome determinative and substantial rights were affected. Lastly, all findings of fact are affirmed unless clearly erroneous. For these reasons, most cases before the court result in affirmance of the trial court's ultimate orders, and rightly so.

5. **Judge White, it is critical to the credibility and legitimacy of our judicial system that the American people believe judges make decisions based on the law. And by the law, I mean the law as enacted by the people and their elected representatives. If the rule of law means anything, it means that judges must follow the law even if they personally disagree with it, the result the law requires in individual cases, or the**

**political cause or agenda furthered by a particular outcome. Otherwise, it is the rule of judges. Do you agree with that? Please explain your agreement or disagreement.**

Response: I agree with these statements wholeheartedly. Judges must apply the law as the Legislature enacts it, without tailoring it to the judge's personal views of good policy and without regard to whether the judge likes the result. Judges should be prepared to have no constituency except the law. I have always put my personal views and reactions aside and focused only on the law as it is. I have also been prepared to be criticized by either side of any issue.

**a. Do you believe that judges, especially appellate judges, may decide cases based on their personal views, their personal sense of justice, their personal empathy, or their personal experience?**

Response: No, I do not. I believe that judges, especially appellate judges, must decide cases based on the law.

**6. In my years in the Senate and on this committee, I have seen many state court judges nominated and appointed to the federal bench. These are sometimes judges who come from a common law system, in which judges develop the law, and they therefore have a common law perspective. In your hearing, you acknowledged that in a common law system such as where you currently serve, the Michigan supreme court "makes the law." But you have been nominated to be a judge in a written law system in which the people make or amend the Constitution or their elected representatives enact statutes. In this system, judges must have a different kind of focus and be more restrained. I think it is inappropriate for judges to approach interpretation and application of written law from a common law perspective. What do you think of this difference and how will you make the transition in perspective and approach should you move from the state appellate bench to the federal appellate bench?**

Response: I agree that it is inappropriate for federal judges to approach interpretation and application of written law from the perspective of making the law, rather than interpreting it. If confirmed to the Sixth Circuit, I would be bound not only by precedent concerning substantive law, but also by precedent guiding lower courts as to their proper role in deciding cases.

**7. In *Marbury v. Madison*, the Supreme Court acknowledged that the Constitution is "a rule for the government of courts, as well as of the legislature." The judicial branch is as much a part of the government subject to the Constitution as is the legislative or the executive branch. The Constitution, however, cannot control government, including the judiciary, if government controls the Constitution. Since the operative substance of the Constitution – what the Constitution actually is – lies in the meaning of its words, the Constitution cannot control judges if judges can change its meaning. If they can change the Constitution by changing its meaning, their oath to support and defend the Constitution becomes an oath to support and**

**defend themselves. The nature of the Constitution as a written document that belongs to the people and its function as a limitation on government necessarily means that judges must be bound not only by the Constitution's words but, more importantly, the meaning of those words as established by the people. Please explain your agreement or disagreement with these principles and how you believe they relate to the proper role of a federal appellate judge in our system of government.**

Response: The Constitution both grants, and sets limits on, the powers of government. The legitimacy of our institutions of government rests on their adherence to the rules set forth in the Constitution. Although it is bound by the Constitution, the federal judiciary has the power to declare the meaning of that document. Because of the possibility of abuse by altering the meaning of the Constitution to remove or dilute the inherent limits on the power of the federal courts, federal appellate judges must be ever-mindful of their obligation to be true to the Constitution.

**Responses of Helene N. White  
Nominee to the U.S. Court of Appeals for the Sixth Circuit  
to the Written Questions of Senator John Kyl**

- 1. You are a member of the NAACP. In fact, you have been a life member for over 20 years. The NAACP recently released a press statement calling the Supreme Court's decision on voter ID in *Crawford v. Marion County Election Board* "akin to voter suppression." Do you agree with that statement?**

Response: I became a life member of the NAACP long ago because the organization represents a commitment to racial justice. Over the years, various organizations to which I have belonged or have contributed have taken positions on individual issues with which I may not agree, or regarding which I have no opinion. I have never regarded their positions on legal issues, if any, as being at all relevant to my decision-making process. I have not read the full text of the *Crawford* opinions, but, if confirmed to the Sixth Circuit, I would apply the *Crawford* decision.

- a. If you are confirmed, you will be required to apply that precedent to cases that come before you. What assurances can you give us that you will fairly apply the *Crawford* decision?**

Response: If confirmed, my oath of office, my life-long commitment to the judiciary, and my understanding of the role of a Sixth Circuit judge, would assure that I will apply the *Crawford* decision, and all decisions of the Supreme Court of the United States, fully and without reservation.

- 2. The NAACP has filed amicus briefs supporting school districts that use race as a factor in admissions. Last term, the U.S. Supreme Court heard two cases involving the use of race as a factor in assigning students to public schools. The NAACP filed amicus briefs in these cases, supporting the use of race in school assignments. The Supreme Court, however, in a joint opinion *Parents Involved in Community Schools v. Seattle School District No. 1*, ruled that these programs violated the Fourteenth Amendment. Following these decisions, the NAACP called the opinions disappointing. Do you agree with the Supreme Court's holding in this case?**

Response: I do not follow the NAACP's amicus participation, nor do I follow its comments on the Supreme Court's decisions. I have not carefully studied the Supreme Court's opinion, but it appears to be based on the application of precedent to the specific facts of the case. Moreover, if confirmed to the Sixth Circuit, I would apply the Supreme Court's decision.

- a. Do you believe a racial classification is always and intrinsically bad, or is a racial classification only harmful when used to subordinate or stigmatize a group?**

Response: Under the precedents of the Supreme Court of the United States on racial classification, racial classifications, regardless of the motivation in employing them, are subject to "strict scrutiny." They must be directed toward a "compelling government interest" and must be "narrowly tailored" to that interest.

- b. If you were confirmed, would you be able to fairly apply the Supreme Court's rulings on affirmative action, including its opinion in *Gratz v. Bollinger*, despite your membership in the NAACP?**

Response: If confirmed, I would fairly apply all of the Supreme Court's rulings on affirmative action, including its opinion in *Gratz v. Bollinger*, in any case presenting an affirmative action issue.

- 3. Last year, the NAACP actively opposed the nomination of Judge Leslie Southwick to the Fifth Circuit Court of Appeals. In an "action alert" the NAACP called Judge Southwick an "extremist judicial nominee" and called his record as a judge "abysmal" on civil rights. This characterization, however, was based on just one case, a case that Judge Southwick did not even author.**

- a. Do you agree with this characterization of Judge Southwick?**

Response: I am unfamiliar with Judge Southwick's record, but tend to be skeptical of any group's characterization of a judge.

- 4. The NAACP also opposed the nomination of Judge Michael Mukasey as attorney general. Did you agree with the NAACP's opposition to Judge Mukasey's confirmation?**

Response: I did not follow the NAACP's position on Judge Mukasey, was unaware that it opposed his confirmation, and have no knowledge regarding why it took that position.

**Responses of Helene N. White**  
**Nominee to the U.S. Court of Appeals for the Sixth Circuit**  
**to the Written Questions of Senator Jeff Sessions**

- 1. The Sixth Circuit has one of the highest adjusted weighted filings per judgeship – 665. If confirmed, what would you do to lower this number?**

Response: The high number of filings per judgeship is determined by factors that are not within the control of the court or the judges. Nevertheless, because it is a reality that affects the court, the judges, and the litigants, judges must be prepared to deal with it. I presently sit on a court with a high number of filings per judgeship. We strive to achieve a clearance rate (the ratio of total dispositions to new cases filed during a given time period) of 100% or greater, so that a backlog of pending cases does not accumulate. We also strive to achieve high disposition rates (the percentage of the cases decided that were decided within a set period of time), so that cases are decided within an acceptable period of time. If confirmed, I would work with the other members of the Sixth Circuit to achieve high clearance and disposition rates.

- a. How you would manage your cases if confirmed?**

Response: If confirmed, I would expect to bring to the Sixth Circuit many of the docket management skills and approaches I have developed over the last fifteen years on the Michigan Court of Appeals. These include an immediate evaluation of all cases assigned to me upon receipt of the docket sheet for the month. Through this initial evaluation, I am able to determine which cases will require a substantial amount of legal research, which will require a painstaking review of a voluminous lower court record, which may involve both, which are appropriate for assignment to a law clerk, and which may require no law clerk involvement. After this “triage,” I generally spend several days attacking the cases that appear more straightforward. In this way, I am able to do 90% of the work that will be required on these cases before the cases are argued. These cases can then be decided promptly after argument. While I would anticipate that the percentage of cases falling into this category would be lower on the Sixth Circuit than in the Michigan Court of Appeals, I would expect to manage these cases in a similar fashion. I would also conduct a preliminary review of the more difficult cases and assign them to law clerks, with a view to my being completely familiar with the difficult legal issues at argument so that I can clarify issues with counsel, and discuss the cases with my colleagues on the panel. I would constantly be balancing the need to complete work on cases that have already been submitted with the need to be ready to hear, and promptly decide, new cases.

- b. How will you handle the transition from the state to the federal system?**

Response: If confirmed, I would expect to first identify the differences between docket management in the Michigan Court of Appeals and the Sixth Circuit. I would also speak with sitting Sixth Circuit judges to determine the various approaches employed by the different judges. I would synthesize this information, and also draw on my own

experience, and develop procedures and approaches that fit with the Sixth Circuit's practices and objectives.

**c. If confirmed, what do you believe would be your biggest challenge in transitioning to the federal bench?**

Response: If confirmed, I anticipate that the biggest challenges in making the transition would be in getting adjusted to the unique culture of the Sixth Circuit, which I expect exists just as it is present in any institution, and in becoming familiar with subject matter I have not previously encountered.

**d. How will you address the challenge?**

Response: I would ask colleagues who recently made the transition what they found particularly helpful. I would ask questions regarding internal practices, and be attentive to the need to adjust my practices as a judge to the new environment of the Sixth Circuit. I would work especially hard in cases presenting new subject matter.

**2. Judge White, you have been a state court judge since 1981, serving on both the trial and appellate bench.**

**a. Can you please tell us about your case management system?**

Response: As a Common Pleas/36th District Court judge, I received a daily assignment of cases depending upon what division I was sitting in. I handled those cases promptly, and if a case had to return for further proceedings, I worked it into a future day's docket, while still handling a full day's docket on the return date.

In the Wayne Circuit Court, I helped manage the court's transition from a central docket system to an individual docket system, and assisted other judges in making the transition and managing their dockets. I developed forms that made it easier to keep track of my cases, and made it possible for attorneys to obtain a scheduling order without having to wait in court for long periods of time. I reviewed the monthly printout of my cases to confirm that an event was scheduled in each case, and that no case lingered. I scheduled cases for trial and conferences with an eye to always having enough cases to provide for a full day's work, but without unduly imposing on lawyers and litigants by excessive overscheduling.

In the Michigan Court of Appeals, I review each month's cases as soon as I receive them to determine how much and what type of work they will require. I then take a few days to do the bulk of the work in whatever cases appear to be straightforward. I then return to my work on the more difficult cases from prior months, giving priority to my review of, and any responses to, opinions circulated by colleagues. I use MAPPIS (Michigan Appellate Information System) to keep track of the undecided cases assigned to me, and the cases assigned to others in which an opinion has been circulated.

**b. Have you ever thought that you had problems managing your cases or issuing your opinions in a timely fashion?**

Response: In my early years on the Michigan Court of Appeals, I came to realize that I needed to review my pending cases regularly, (this was before we had MAPPIS), respond to colleagues' opinions more quickly, and spend less time writing and editing my opinions in routine, fact-specific cases.

**c. Has anyone ever told you that you had problems managing your cases or issuing your opinions in a timely fashion?**

Response: In my early years on the Michigan Court of Appeals, the chief judge told me that it was the court's practice to respond to colleagues' opinions within a short time period, and that I needed to spend less time on each case.

**d. Can you provide the Committee with your caseload statistics as compared to other judges with whom you have served (for example median time intervals between case filing and date of disposition, etc)?**

Response: I am not aware that the Michigan Court of Appeals keeps statistics regarding the median time intervals between case filing and date of disposition for individual judges. The opinion status summary sheet for May 12, 2008 shows that I have 4 cases pending before me that were circulated by other judges. The status summary sheet shows that the other judges on the court have between 0 and 13 cases in this category. The report also shows that I have 5 pending cases assigned to me to author in which I have not yet circulated an opinion. The other judges on the court have between 0 and 19 cases in this category.

**3. What is the proper role, in your view, of foreign law in U.S. Supreme Court and Circuit Court decisions, and when, if ever, is citation to or reliance on these foreign laws appropriate?**

Response: Foreign law is appropriately considered in interpreting international law or treaties.

**Responses of Helene N. White  
Nominee to the U.S. Court of Appeals for the Sixth Circuit  
to the Written Questions of Senator Arlen Specter**

1. **Question 13a of the Senate Questionnaire asked you to “supply four (4) copies of all published materials to the Committee.” You list two published pieces; however, you did not provide the Committee with either. Please explain why these materials were not provided.**

Response: The first piece, “Towards Excellence in Case Flow Management,” is out of print and I do not have any more copies. The second piece, Torts, Michigan Law and Practice, is a two-volume treatise on tort law in Michigan, published by the Michigan Institute for Continuing Legal Education. It was my understanding that because of my role as an editor, rather than an author, and because of the size of the work and the cost of purchasing the volumes, I could list that work rather than provide multiple copies with my responses to the Senate Questionnaire.

2. **Question 13d of the Senate questionnaire asked you to “supply four (4) copies, transcripts, or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. ... If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter.” In response to this question on your questionnaire, you state that “[o]ver the years, I have participated as a member of various panel discussions at bench-bar, or state or local bar associations, conferences and meetings. None of these have been recorded or transcribed to my knowledge, and I have not retained any notes or outlines.”**

- a. **Please submit for the record a list of the names and addresses of the groups involved in these panel discussions, conferences, and meetings, the dates of these events, and a summary of the subject matters.**

Response: While a circuit court judge, I participated in a program of the Detroit Metropolitan Bar Association, 645 Griswold St., Ste 1356, Detroit, Michigan 48226, on the Michigan Court Rules. I do not remember the year. To the best of my recollection, the focus was on the rules regarding pre-trial practice.

I recall participating in a panel regarding effective criminal advocacy. I do not recall the year, or the sponsoring organization. It was held in the Veterans Building in Detroit, Michigan.

Several years ago, I participated in a panel at the Michigan State University College of Law, 368 Law College Building, East Lansing, Michigan 48824-1300, regarding judicial clerkships.

I have participated in panel discussions at meetings of the State Bar of Michigan, 306 Townsend St., Lansing, Michigan, 48933. I recall one was at the invitation of the Labor and Employment Law section. To the best of my recollection, the subject matter concerned handling employment cases on appeal, and it took place in the fall of 2006. I do not recall the subject matter of the other panels, or the years involved.

I have participated in panels at the various Michigan Appellate Bench/Bar conferences. In 2004, I participated in plenary panels on "Delay Reduction," and "Advocacy: A View From the Bench – What Works and What Doesn't," and in several smaller panels on motion practice, internal operating procedures of the court, civil practice, criminal practice, and family law. I participated in similar panels in other years in which the conference was held.

**b. Also, please explain why these materials were not provided previously in response to this question.**

Response: My answer to the question reflected my good-faith effort to provide the Committee with accurate information. I was concerned about providing information to the Committee that I could not verify through records where my recollection of the particulars is limited.

- 3. Question 15d on the Senate Questionnaire asks for "a list of *and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings.*" In response to question 15d, you provided copies of 23 opinions. However, in response to 15c, you list 9 opinions that were unpublished and reversed, but you did not provide copies of these opinions. Why did you not provide copies of these cases to the Committee? Please provide copies of these and any other unpublished opinions in which you participated that were reversed.**

Response: I did not include copies of the cases listed in response to question 15c because, unlike question 15d, the question did not ask for copies of the opinions referenced therein. However, the unpublished cases listed in the answer to question 15c should have been listed again in the answer to 15d. Five of these cases were included, and copies were provided. In reviewing my answers to questions 15c and 15d in order to prepare my responses to these supplemental questions, I discovered that eight of the unpublished opinions included in my response to 15c were not listed again in 15d. This was an oversight. I believe this occurred because the answers to question 15c and 15d were compiled separately. In answering 15c, I began with my answers to a prior Judiciary Committee Questionnaire that included the same question, and, with my law clerk's assistance, updated the list with cases decided after 1998, the last time the questionnaire was updated. In preparing the answer to question 15d, which did not have a parallel question in a prior questionnaire, I started from scratch, again with my law clerk's assistance, assembling a list of cases from the MAPPIS system, which does not include cases before July 1, 1996, and older cases in which we had retained hard copies

of the decisions. I should also have referred to my answer to question 15c and included all unpublished cases listed in that answer.

I have now been able to secure copies of the opinions in these additional cases by asking the Court Clerks office to obtain the files from the central archive and make copies of the opinions.

In response to this supplemental question, I have also attempted to compile a list, and provide copies, of cases in which I participated, but did not write the opinion, that were reversed. However, this effort is hampered by the same limitations described elsewhere. The MAPPIS system does not include cases decided before July 1, 1996, and, more significantly, cannot list cases according to the assigned judge or whether subsequent action was taken by the Supreme Court. Hence, I cannot obtain a list of cases in which I participated that were reversed by the Supreme Court.

Even without the ability to use the case management software, my law clerk has compiled a partial list of cases in which I participated, but did not write the opinion, which were reversed. Copies of these opinions are attached. These are:

1. *Hartman v Port Huron Hospital*, unpublished opinion per curiam issued 9/6/07 (Docket No. 257536), reversed 480 Mich 1031 (2008).
2. *People v Goodman*, unpublished opinion per curiam issued 8/28/07 (Docket No. 269620), remanded to trial court for resentencing, in all other respects lv den 480 Mich 1052 (2008).
3. *Taylor v Yalamanchi*, unpublished opinion per curiam issued 1/18/07 (Docket No. 262763), reversed 480 Mich 980 (2007).
4. *People v Rosenberg*, unpublished opinion per curiam issued 11/21/06 (Docket No. 262673), reversed and remanded 477 Mich 1129 (2007).
5. *People v Greene*, unpublished opinion per curiam issued 11/12/06 (Docket No. 263126), reversed and remanded 477 Mich 1129 (2007).
6. *Helfner v Center Line Public Schools*, unpublished opinion per curiam issued 6/20/06 (Docket No. 265757), reversed and remanded 477 Mich 931 (2006).
7. *Ells v Eaton Cty Road Comm'n*, unpublished opinion per curiam issued 2/7/06 (Docket No. 264635), reversed 480 Mich 902 (2007).
8. *Price v Dep't of Transportation*, unpublished opinion per curiam issued 1/31/06 (Docket No. 257577), vacated and remanded 477 Mich 879 (2006), *Price v Dep't of Transportation (On Remand)*, unpublished opinion per curiam issued 12/05/06 (Docket No. 257577, lv den 478 Mich 928 (2007).
9. *Morgan v Laroy*, unpublished opinion per curiam issued 4/14/05 (Docket No. 253789), reversed 474 Mich 917 (2005).

10. *Jackson v State Farm Mutual Auto Ins Co*, unpublished opinion per curiam issued 10/5/04 (Docket No. 246388), vacated 472 Mich 942 (2005).

11. *Griffith v State Farm Mutual Auto Ins Co*, unpublished opinion per curiam issued 8/16/02 (Docket No. 232517), reversed 472 Mich 521 (2005).

I have not included in this list cases in which I dissented and in which the Supreme Court reversed the Court of Appeals decision for the reasons stated in my dissent.

- a. **At your hearing, you said that the Michigan Court of Appeals rarely publishes opinions. Given that publication is rare, why did you not think it was important to provide the Committee with all of your unpublished opinions cases that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings?**

Response: I made my best efforts to provide the committee with the information it requested. To respond to the questions, my staff printed cases off the court's computer system. Because older cases were not available on this system, my staff and I also searched our files for copies of the older cases, and located several, which were included with my answers to the Senate Questionnaire. In responding to these supplemental questions, I determined that additional opinions could be obtained through the Court's central archive. I requested that this be done and include additional opinions we have located that are responsive.

4. **Question 15e of the Senate questionnaire asks for "a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored." Your answer on your questionnaire was nonresponsive. How many unpublished decisions have you participated in as a panel member and what percentage of the cases in which you have participated are unpublished.**

Response: Because of the limitations of MAPPIS, I do not have the information necessary to answer this question precisely. I estimate that I have participated in upwards of 4500 cases, and that approximately 94% of the decisions in these cases are unpublished.

5. **At you hearing you said that you were not familiar with and did not recall the factual scenario and your reasoning in the four cases I asked you about, *People v. Santiago*, *People v. Ryan*, *People v. Thomas*, and *People v. Hansford*. All of these cases were listed by you in your Senate Questionnaire, and a short summary of *People v. Ryan*, *People v. Thomas*, and *People v. Hansford*, written by you, appears in your answer to question 15(c) on the Senate Questionnaire. The Committee received your questionnaire less than two weeks before your hearing on April 25. Can you explain why you were not familiar with these cases when you provided summaries of them and apparently reviewed them so recently?**

Response: Because of the age of these cases, their fact-specific nature, and the fact that I have decided thousands of cases over the years, I was hesitant to opine on my reasoning in deciding these specific cases without having the cases in front of me.

**6. During your hearing, in response to the question of how much experience you have with federal as opposed to state law, you stated that you have dealt with preemption issues since 1983.**

**a. How much of your federal experience consists of preemption issues as opposed to other matters?**

Response: Over the years, I have had cases dealing with ERISA preemption, Labor Management Relations Act preemption, National Labor Relations Act preemption, Federal Railway Safety Act preemption, Single State Registration System preemption, Federal Aviation Act preemption, Fair Credit Reporting Act preemption, Copyright Act preemption, Hazardous Materials Transportation Act preemption and other issues of federal preemption. However, because of the volume of cases I handle, and the fact that so many criminal cases present constitutional issues, I estimate that preemption issues have constituted only about 15% of my federal experience.

**b. What percentage of the total number of cases you have handled over your career would you estimate have dealt with issues of preemption?**

Response: Because of the large volume of cases I have handled over the years, I estimate that about 1% of my caseload over my career involved preemption issues.

**7. What philosophical approach would you bring to bear on a case of first impression – in which there are no relevant precedents?**

Response: If presented with a case of first impression, in which there are no relevant precedents, I would look to precedent that might be informative, although not directly on point. I would also look to see whether courts in other jurisdictions have considered the issue. If the issue concerns a statute, I would look to the plain language of the statute to determine the Legislature's intent. If no legislation is involved, and there are different possible resolutions to the case, I would seek to determine which resolution is most consistent with existing case law.

**a. If two different lines of precedent appear equally applicable to the case before you, but would lead to different results, how would you choose which line of precedent to follow?**

Response: While two lines of reasoning may appear equally applicable to the case, usually application of one line, rather than the other, will appear more consistent with existing precedent or the direction of existing precedent.

**8. What do you understand to be the proper role of a judge in a democratic society?**

**a. What do you think about judges allowing their own political and philosophical views to impact on any jurisprudence?**

Response: Judges should not allow their own political and philosophical view to impact on any jurisprudence.

**b. Do you believe that there is any room for a judge's own values or personal beliefs when he or she interprets the Constitution?**

Response: I do not believe a judge's own values or personal beliefs should be considered in interpreting the Constitution.

**c. Do you believe that judges should consider political dimensions of controversial cases?**

Response: I believe that judges should not be influenced by the political dimensions of controversial cases.

**d. What is the proper role of a court in deciding highly-charged or politically charged cases?**

Response: The role of a court is to decide the case presented. If a highly-charged or politically charged case comes before the court, the court should decide the case on the facts and the law. However, to the extent the court explains its decision in a clear and reasoned fashion that recognizes the issues and addresses them thoroughly and fairly, the court can help to defuse the situation.

**e. If a judge was so inclined, he or she could expand on the interpretation, use, and effect of many provisions of the Constitution and the Bill of Rights. Do you agree with the school of thought that, when Congress and the executive branch are slow or do not act in a particular manner, then federal judges would have a license to create solutions based on some of the broad wording contained in the Constitution?**

Response: Federal courts are granted the power and authority to decide individual cases; they are not granted the power or authority to act in place of Congress or the executive branch simply because neither has taken the action the judge may deem appropriate.

**i. Do you think that this is a proper role for federal judges?**

Response: Federal judges should be most reluctant to assume the roles of problem-solver and solution-crafter. Federal judges should be deciding individual cases.

9. In your response to the Committee questionnaire you state that 100 percent of your practice has been in state courts, but at your hearing you mentioned that some of your cases involve questions of federal law. Please explain in detail whether and to what extent you have handled cases during your legal career involving each of the following issues:

**a. Interpretation of the Equal Protection Clause of the Fourteenth Amendment;**

Response: I have handled cases involving interpretation of the Equal Protection Clause of the Fourteenth Amendment as necessary to evaluate challenges to state statutes as being violative of the Clause.

**b. Interpretation of the Due Process Clauses of the Fifth and Fourteenth Amendments;**

Response: Many state criminal cases raise constitutional issues under the Fifth Amendment, through the Fourteenth Amendment. I have handled many cases, on the trial and appellate levels, dealing with Miranda warnings, voluntariness of confessions, constitutionality of line-ups, and double jeopardy issues, ineffective assistance of counsel claims and others. Additionally, I have handled many cases involving Fourth Amendment claims as applicable through the Fourteenth Amendment. I have also handled civil cases involving procedural due process claims and Fifth Amendment takings claims.

**c. Interpretation of the Eighth Amendment prohibition of cruel and unusual punishment;**

Response: Often a criminal defendant will couch a sentencing issue in constitutional terms, purporting to rely on the Eighth Amendment. I have handled many such cases.

**d. Interpretation of federal criminal statutes;**

Response: I do not recall handling any cases dealing with the interpretation of federal criminal statutes.

**e. Interpretation of federal civil rights or antidiscrimination statutes, including Title VI, Title VII, and Title IX;**

Response: I do not recall ever having cases involving Title VI or Title IX issues. Regarding Title VII, the Michigan state courts have often looked to Title VII cases for guidance in interpreting our own civil rights acts.

**f. Interpretation of federal environmental laws such as the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act;**

Response: I have not handled cases involving the interpretation of the Clean Water Act or the Comprehensive Environmental Response, Compensation and Liability Act. I have, however, handled cases involving the interpretation of the Michigan Natural Resources and Environmental Protection Act, which is patterned after the CERCLA, and the Michigan Wetland Protection Act, which is Michigan's counterpart to the Clean Water Act.

**g. Interpretation of the First Amendment freedom of speech;**

Response: I have handled zoning cases involving challenges to local ordinances as unconstitutionally impinging on the First Amendment freedom of speech. I have also handled labor and employment cases involving public employees claiming the protection of the First Amendment in response to adverse employment decisions of their employers.

**h. Interpretation of the First Amendment freedom of press; and**

Response: I have handled defamation cases involving interpretation of the First Amendment as it applies to the press.

**i. Interpretation of the First Amendment freedom of religion or free exercise clause.**

Response: I have handled cases involving interpretation of the free exercise clause as relevant to the issue whether the court could properly exercise subject matter jurisdiction in disputes between church factions or a church and its members. I have also handled cases that required interpretation of the free exercise clause as tangentially involved in divorce disputes where religious observance is an issue.

STATE OF MICHIGAN  
COURT OF APPEALS

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ALLEN M. HARTMAN, Personal Representative  
of the Estate of MARY LOU HARTMAN,

UNPUBLISHED  
September 6, 2007

Plaintiff-Appellant,

v

No. 257536  
St. Clair Circuit Court  
LC No. 02-000445-NH

PORT HURON HOSPITAL, FORREST BRYAN  
FERNANDEZ, M.D., and JALAL UD-DIN  
AKBAR, M.D.,

Defendants-Appellees.

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Before: Bandstra, P.J., and White and Fort Hood, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff Allen M. Hartman,<sup>1</sup> acting as personal representative of the estate of his wife Mary Lou Hartman, appeals as of right the trial court order granting summary disposition in favor of defendants under MCR 2.116(C)(7). We affirm.

Plaintiff brought this action on February 19, 2002, alleging that defendants breached the required standard of care in treating his wife following her admission to Port Huron Hospital on January 25, 1999. Specifically, plaintiff asserts that if the defendant physicians had properly interpreted certain diagnostic tests performed at defendant hospital and taken other appropriate diagnostic measures in light of his wife's prior history, a proper diagnosis would have been made at an earlier date and his wife would not have suffered a subsequent stroke that lead to her death.

Generally, malpractice actions must be brought within two years of the date of accrual to be timely. MCL 600.5805(6);<sup>2</sup> *Omelenchuk v Warren*, 461 Mich 567, 569; 609 NW2d 177

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<sup>1</sup> Allen Hartman died during the pendency of this action in the trial court. As will be discussed further herein, a substitution of plaintiffs was sought, but the trial court denied that motion.

<sup>2</sup> MCL 600.5805 was amended by 2002 PA 715, which redesignated subsection (5) as subsection (6).

(2000), overruled on other grounds by *Waltz v Wyse*, 469 Mich 642, 655; 677 NW2d 813 (2004). Notwithstanding that limitation, for wrongful death actions such as this one, MCL 600.5852 allows a personal representative two years from the issuance of letters of authority to file a medical malpractice claim, so long as the claim is not filed more than three years after the statute of limitations has run. Further, the running of the controlling statute of limitations or repose will be tolled for 182 days if the plaintiff serves a notice of intent to file suit on the prospective defendants within 182 days of the time that the statute of limitations or repose would otherwise expire. MCL 600.2912b(1); MCL 600.5856(c); *Omelenchuk, supra* at 575.

In this case, plaintiff's claim accrued no later than February 16, 1999, when his wife was transferred from defendant hospital to Henry Ford Hospital. See MCL 600.5838a(1). Accordingly, under the basic statute of limitations, plaintiff's claim had to be filed by February 16, 2001. MCL 600.5805(6). However, because the decedent died on July 13, 1999, before the basic period of limitations had run, her personal representative had two years from the date letters of authority were issued to him on August 31, 1999 to file suit on behalf of the estate. MCL 600.5852. While plaintiff served defendants with a notice of intent within two years, on August 21, 2001, plaintiff did not file a complaint until February 19, 2002.

Defendants moved for summary disposition asserting that plaintiff's claims were time-barred under our Supreme Court's holding in *Waltz* that because the notice tolling provision "tolls only the applicable 'statute of limitations or repose,'" it did not serve to toll the running of the wrongful death saving provision. *Waltz, supra* at 650-651, quoting MCL 600.5856(d) (now subsection [c]).<sup>3</sup> The trial court agreed that the claim was time-barred under *Waltz* and accordingly granted summary disposition in favor of defendants under MCR 2.116(C)(7).

On appeal, plaintiff first contends that the trial court erred by applying *Waltz* retroactively. Our Court has squarely rejected this argument. *Mullins v St Joseph Mercy Hosp.* 271 Mich App 503, 507-510; 722 NW2d 666 (2006). *Waltz* applies here and the notice tolling provision did not toll the running of the wrongful death saving provision.

Plaintiff also attempts to distinguish *Waltz* on the basis that, in *Waltz*, more than five years had elapsed from the accrual of the plaintiffs' claims before suit was filed. Plaintiff's argument is predicated on a misconception of how the two- and three-year periods mentioned in the wrongful death saving provision operate.

If a person dies before the period of limitations has run or within 30 days after the period of limitations has run, an action which survives by law may be commenced by the personal representative of the deceased person at any time within 2 years after letters of authority are issued although the period of limitations has run. But an action shall not be brought under this provision unless the personal representative commences it within 3 years after the period of limitations has run. [MCL 600.5852.]

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<sup>3</sup> MCL 600.5856 was amended by 2004 PA 87, which redesignated subsection (d) as subsection (c).

Contrary to plaintiff's assertion, the periods referred to in this statute are not aggregated to create a five-year period. As this Court has explained, the wrongful death saving provision

does not establish an independent period during which a personal representative may bring suit. Specifically, it does not authorize a personal representative to file suit at any time within three years after the period of limitations has run. Rather, the three-year ceiling limits the two-year saving period to those cases brought within three years of when the malpractice limitations period expired. As a result, while the three-year ceiling can shorten the two-year window during which a personal representative may file suit, it cannot lengthen it. [*Farley v Advanced Cardiovascular Health Specialists, PC*, 266 Mich App 566, 573 n 16; 703 NW2d 115 (2005).]

Here, plaintiff's claim accrued no later than February 16, 1999. The decedent's husband was appointed personal representative on August 31, 1999. The two-year saving period of the wrongful death saving provision expired on August 31, 2001. The three-year ceiling does not change that result. Accordingly, because the complaint was filed on February 19, 2002, it was time-barred.

Plaintiff also cites *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004) for the proposition that this Court should consider the equities of this case and use its power under MCR 7.216(A)(7) to allow this case to proceed. Again, we disagree; this argument has been squarely rejected in *Ward v Siano*, 272 Mich App 715, 719-720; 730 NW2d 1 (2006), lv pending (2007).

Plaintiff next asserts that the trial court erred by denying his motion for substitution of plaintiffs following Allen Hartman's death on February 15, 2004, about two years after the untimely complaint was filed. He asserts that had the trial court properly granted this motion and appointed a successor personal representative, the complaint would have been timely under *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29; 658 NW2d 139 (2003).<sup>4</sup>

However, at the time the motion was made, the previously filed complaint was properly subject to summary disposition, as discussed above. Even had the trial court allowed plaintiff to substitute into the untimely action, such substitution could not transform the previous personal representative's untimely complaint into a timely one. *Mullins v St Joseph Hosp*, 269 Mich App 586, 591; 711 NW2d 448, aff'd in part 271 Mich App 503 (2006); *McMiddleton v Bolling*, 267 Mich App 667, 671-674; 705 NW2d 720 (2005). The trial court's order granting defendants summary disposition constitutes an adjudication on the merits of plaintiff's claims, and res judicata bars any further action on behalf of the estate against defendants. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412; 733 NW2d 755 (2007). Thus, plaintiff would have received no benefit from any substitution of a successor personal representative into the case and suffered no prejudice from the trial court's denial of the motion.

We affirm.

<sup>4</sup> To the extent that this argument is predicated on the asserted five-year window in which to file, plaintiff's argument fails for the reasons set out in *Farley, supra* at 273 n 16.

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
August 28, 2007

v.

CURTIS ANTHONY GOODMAN,  
  
Defendant-Appellant

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No. 269620  
Wayne Circuit Court  
LC No. 05-010643-01

Before: Owens, P.J., and White and Murray, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of four counts of first-degree criminal sexual conduct ("CSC"), MCL 750.520b(1)(a) (sexual penetration of a person under 13 years of age), and one count of second-degree CSC, MCL 750.520c(1)(a) (sexual contact with a person under 13 years of age). Defendant received concurrent sentences of 225 to 600 months' imprisonment for each first-degree CSC conviction and 84 to 180 months' imprisonment for the second-degree CSC conviction. We affirm.

I. Facts

In May 2005, the victim, a 10-year-old boy, reported to his school's social worker that defendant, a close friend of the victim's mother, had been "bothering" him. The victim told the social worker that he had been living with defendant since January 2005 and reported that defendant frequently forced him to engage in oral and anal sex. School officials called the Detroit Police Department. Soon thereafter, an officer with the department took the victim to the Sixth Precinct in Detroit for further questioning, and the victim again described the instances of sexual abuse committed by defendant.

At trial, the victim described the most recent instance of sexual abuse that had occurred. According to the victim, defendant picked him up from his father's house but did not take him to school. Instead, defendant and the victim went to the victim's mother's house. The victim's mother was not home. Defendant and the victim were watching television and started wrestling. Then, defendant began touching the victim's genital area. Although the victim told him to stop, defendant put his genitals near the victim's mouth and "talk[ed] about sucking it." The victim declined. Soon thereafter, defendant came up behind the victim and "started humping on [him]." Defendant pulled down the victim's shorts. The victim felt something "inside [his] butt" that was painful. Defendant ejaculated.

The victim testified that defendant had performed similar actions approximately 14 or 15 times before, admitted that “sometimes” defendant inserted his penis inside the victim’s anus and described another instance in which anal sex occurred. The victim also testified that defendant had forced him to perform oral sex at least three times.

## II. Ineffective Assistance of Counsel

Defendant argues that he received ineffective assistance of counsel because his trial counsel failed to challenge opinion testimony by two witnesses concerning the victim’s veracity and several instances of inadmissible hearsay. We disagree.

“Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law. A judge first must find the facts, and then must decide whether those facts constitute a violation of the defendant’s constitutional right to effective assistance of counsel.” *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). In general, we review a trial court’s findings of fact for clear error and review questions of constitutional law de novo. *Id.* Because defendant “failed to move for a new trial or an evidentiary hearing with regard to his claim, review is limited to mistakes apparent on the record.” *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002).

The right to effective assistance of counsel is substantive and focuses on the actual assistance received. *People v Pubrat*, 451 Mich 589, 596; 548 NW2d 595 (1996). To establish a claim of ineffective assistance of counsel, defendant “must show that his attorney’s representation fell below an objective standard of reasonableness and that this was so prejudicial to him that he was denied a fair trial.” *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). To establish prejudice, “a defendant must demonstrate ‘a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different . . . .’” *Id.* at 302-303, quoting *People v Mitchell*, 454 Mich 145, 167; 560 NW2d 600 (1997). Defendant must also overcome the presumption that the challenged action constitutes sound trial strategy. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995). “Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise.” *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004).

Where, however, the defendant is denied counsel during a critical stage of the proceedings, the proceedings are presumed to have been unfair. *United States v Cronin*, 466 US 648, 662; 104 S Ct 2039; 80 L Ed 2d 657 (1984). In that case, the conviction is constitutional error and no showing of prejudice is required. *Id.* at 659 n 25.

As an initial matter, counsel’s performance in this case does not rise to the level of denial of counsel as contemplated by the *Cronin* Court. Counsel was neither “totally absent” during a critical stage of the proceeding, nor did she “entirely fail[] to subject the prosecution’s case to meaningful adversarial testing.” *Id.* at 659 & n 25. Counsel cross-examined each prosecutorial witness during the trial and presented two defense witnesses in addition to defendant. She presented a competent opening statement, closing argument, and theory of the case. Therefore, defendant was required to show both that counsel’s performance was unreasonable and that he was prejudiced by her deficient performance.

With respect to defendant's argument that his trial counsel was ineffective for failing to challenge the opinion testimony of two witnesses concerning the victim's veracity, we note that "[i]t is generally improper for a witness to comment or provide an opinion on the credibility of another witness because credibility matters are to be determined by the jury." *People v Dobek*, 274 Mich App 58, 71; 732 NW2d 546 (2007). However, defendant fails to identify the witnesses and statements to which he refers. We speculate that he is referring to a statement by the school social worker, who testified that when the victim told her about the alleged abuse, she "looked in his eyes" and saw "sincerity." In this instance, however, defense counsel objected. The trial court overruled the objection, reasoning that the social worker could "testify as to what she did and what she perceived. It's personal knowledge." Counsel's performance in that instance was not deficient because she raised an objection. It is not clear to what other instance of opinion testimony defendant refers.

We agree that the failure of defendant's trial counsel to challenge the admission of inadmissible hearsay was unreasonable and constituted deficient performance. Three of the prosecution's witnesses testified regarding the victim's statements concerning the alleged sexual abuse. The school social worker testified:

And so then I asked him to clarify what he was—what he meant by hurting him and he said, 'Well, he does sexual things to me, um, in the home at night.' There are other people that live in the home but he would wait until these people were in bed and then he would come into the room where he was and he said that, um, he did oral sex and that he does it—quote, 'He does it to me in my butt.'

The victim's mother testified:

He looked me in my face and he said, 'Ma, I never ever would try to destroy your friendship with your brother but your brother touched me and I need for you to believe me.' With tears running down his eyes he said, 'I'm your child and I need you to believe that your brother has been hurting me.'

In addition, a police officer testified, "[the victim] said that his uncle had been sexually abusing him."

These and other statements made during trial constituted hearsay not falling within any exception. In particular, the statements do not fall within the exception in MRE 803A.<sup>1</sup> This hearsay exception only applies when the declarant was under 10 years of age when the statement was made. MRE 803A(1). The victim in this case was 10 years old when he first reported the alleged abuse.

<sup>1</sup> MRE 803A allows, under certain circumstances, the admission of a child-declarant's statement regarding sexual abuse to the extent it corroborates the declarant's testimony during the same proceeding.

The statements may fall under the rationale of the “catch-all” hearsay exception, MRE 803(24), and the prosecution properly notes our Supreme Court’s observation in *People v Katt*, 468 Mich 272, 295-296; 662 NW2d 12 (2003), that a child’s earlier statement is more probative than one repeated at trial. However, MRE 803(24) also provides:

[A] statement may not be admitted under this exception unless the proponent of the statement makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent’s intention to offer the statement and the particulars of it, including the name and address of the declarant. [MRE 803(24).]

Under this circumstance, admission of hearsay testimony under MRE 803(24) is not allowed. There is no indication that the prosecution provided any notice to defense counsel.

Finally, the statements do not fall under the hearsay exception for excited utterances. MRE 803(2). There was no indication that when the victim reported the alleged abuse he was “under the ‘sway of excitement precipitated by an external startling event’” and did not “‘have the reflective capacity essential for fabrication . . . .’” *People v Smith*, 456 Mich 543, 550; 581 NW2d 654 (1998), quoting 5 Weinstein, *Evidence* (2d ed), § 803.04(1), p 803-819. The social worker’s testimony did not suggest that the victim lacked the capacity for fabrication at the time he spoke with her. She did not, for example, testify that he was scared, crying or shaking. See *People v McLaughlin*, 258 Mich App 635, 660; 672 NW2d 860 (2003) (finding an excited utterance where the declarant was “frantic” and having trouble breathing and speaking when she made the statement); *People v Kowalak (On Remand)*, 215 Mich App 554, 557-560; 546 NW2d 681 (1996) (finding an excited utterance where the statement was made 30 to 45 minutes after the startling event and where the declarant was “petrified” and “scared to death” at the time she made the statement). Therefore, defense counsel should have challenged the hearsay statements made by the social worker, the victim’s mother, and a police officer. Also, she should not have stipulated that, had a second police officer testified, he would have testified that the victim told him he had been sexually abused by defendant. There was no conceivable trial strategy for allowing the jury to hear these damaging allegations against defendant repeated by multiple witnesses.

However, defendant has not established that counsel’s failure to raise these objections was prejudicial in that, absent the admission of this hearsay evidence, the result of the trial would likely have been different. Even if the trial court ruled the evidence inadmissible, the social worker, the victim’s mother, and a police officer would likely have testified that they took certain actions as a result of what they learned from the victim. This would tend to show that the victim told them about the alleged sexual abuse and that they believed him. Moreover, the victim testified at trial and there is reason to believe that the jury was persuaded by his testimony. The victim was 10 years old when he reported the abuse and 11 years old when he testified at trial. He was old enough to have had a clear understanding of what was happening to him and his testimony was competent and consistent. Accordingly, there is no indication that the absence of the hearsay statements in question would have tipped the scales in defendant’s favor.

## III. Sentencing

## A. Constitutionality

Defendant argues that the trial court violated his constitutional right to trial by jury, as articulated in *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), when it considered facts not admitted by defendant or established by a jury beyond a reasonable doubt when determining his minimum sentence. We disagree. In *People v Drohan*, 475 Mich 140, 143; 715 NW2d 778 (2006), cert den *Drohan v Michigan*, \_\_\_ US \_\_; 127 S Ct 592; 166 L Ed 2d 440 (2006), our Supreme Court concluded that the United States Supreme Court's holding in *Blakely* does not apply to Michigan's indeterminate sentencing scheme. Accordingly, defendant's constitutional right was not violated.<sup>2</sup>

## B. OV 11

Defendant also argues that the trial court erred in scoring him 50 points for offense variable ("OV") 11, because none of the alleged sexual penetrations used to score OV 11 arose from the sentencing offense. We disagree. We review a trial court's scoring decision for an abuse of discretion. *People v Cox*, 268 Mich App 440, 453-454; 709 NW2d 152 (2005). "A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). "Scoring decisions for which there is any evidence in support will be upheld." *Id.*

The sentencing court may score 50 points under OV 11 where two or more criminal sexual penetrations occurred. MCL 777.41(1)(a). OV 11 directs the sentencing court to "[s]core all sexual penetrations of the victim by the offender arising out of the sentencing offense." MCL 777.41(2)(a). However, "the 1 penetration that forms the basis of a first- or third- degree criminal sexual conduct offense" cannot be scored. MCL 777.41(2)(c). A criminal sexual penetration that forms the basis of an additional criminal sexual conduct conviction may be scored under OV 11. *Cox, supra* at 455-456; *People v Mutchie*, 251 Mich App 273, 280-281; 650 NW2d 733 (2002), aff'd 468 Mich 50 (2003). In this case, defendant was convicted of four counts of first-degree criminal sexual conduct. Therefore, the statute operates to exclude the use of one of these sexual penetrations as the sentencing offense, *Mutchie, supra* at 280-281, but the remaining three criminal sexual penetrations for which defendant was convicted may be used to score OV 11, as long as these penetrations "arise out of" the sentencing offense.

<sup>2</sup> In addition, a sentencing court may consider all record evidence before it when calculating the guidelines, including admissions by the defendant, trial evidence or testimony, and the contents of the presentence investigation report. *People v Dewald*, 267 Mich App 365, 380; 705 NW2d 167 (2005); *People v Ratkov (After Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993), remanded 447 Mich 984 (1994).

The trial court in this case noted the “arising out of” requirement, but did not articulate its reasoning with respect to that requirement. We uphold scoring decisions for which there is any evidence in support, *Endres, supra* at 417, and there is some support for the proposition that the subsequent penetrations “arose out of” the first. Defendant’s sexual penetrations of the victim could be considered part of a pattern of defendant’s abuse of his close relationship with the victim’s mother. There is causal connection between the first penetration and subsequent penetrations; the subsequent penetrations occurred because defendant influenced the victim to not tell his mother by convincing him that she would not believe his allegations. Therefore, the trial court did not abuse its discretion in scoring defendant 50 points for OV 11.

#### C. OV 13

Finally, defendant argues that the trial court erred in scoring him 50 points for OV 13 because it scored points for the same conduct under OV 11 and OV 13. We disagree.

The sentencing court may score 50 points under OV 13 where “[t]he offense was part of a pattern of felonious criminal activity involving 3 or more sexual penetrations against a person or persons less than 13 years of age.” MCL 777.43(1)(a). Conduct scored in OV 11 or OV 12 may not be scored under OV 13. MCL 777.43(2)(c). The trial court scored defendant 50 points for OV 13. This was not an abuse of discretion because there was evidence of at least three instances beyond those scored in OV 11 in which defendant penetrated the victim.

Again, judicially ascertained facts may be used to increase a defendant’s sentence within the range authorized by the jury’s verdict. *Drohan, supra* at 163. Even where a factfinder declines to find a fact proven beyond a reasonable doubt for purposes of conviction, the same fact may be found by a preponderance of the evidence for purposes of sentencing. *People v Perez*, 255 Mich App 703, 713; 622 NW2d 446 (2003), vacated in part on other grounds 469 Mich 415 (2003). At trial, the victim testified that defendant performed anal sex on him 14 or 15 times. The trial court’s finding that the victim’s testimony was credible in that additional uncharged sexual penetrations occurred is sufficient to sustain its scoring of OV 13 at 50 points. See *id.* (“[T]he victim testified that there were multiple penetrations. The trial court obviously found the victim’s testimony to be credible. Therefore, there existed evidence to support the score and we shall affirm the scoring.”)

Affirmed.

/s/ Donald S. Owens  
/s/ Helene N. White  
/s/ Christopher M. Murray

STATE OF MICHIGAN  
COURT OF APPEALS

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JAMES TAYLOR, Personal Representative of the  
Estate of AFRADITA TAYLOR, Deceased,

Plaintiff-Appellee,

v

RAMALINGESWARA YALAMANCHI, M.D.,  
R.R. YALAMANCHI, M.D., P.C., and PANKAJ  
K. VIJ, M.D.,

Defendants,

and

GRAHAM W. LONG, M.D., WILLIAM  
BEAUMONT HOSPITAL, DAVID M.  
MONTGOMERY, M.D., and MITUL K. PATEL,  
M.D.,

Defendants-Appellants.

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JAMES TAYLOR, Personal Representative of the  
Estate of AFRADITA TAYLOR, Deceased,

Plaintiff-Appellee,

v

RAMALINGESWARA YALAMANCHI, M.D.,  
and R.R. YALAMANCHI, M.D., P.C.,

Defendants-Appellants,

and

UNPUBLISHED  
January 18, 2007

No. 262763  
Oakland Circuit Court  
LC No. 03-053470-NH

No. 262771  
Oakland Circuit Court  
LC No. 03-053470-NH

GRAHAM W. LONG, M.D., WILLIAM  
BEAUMONT HOSPITAL, DAVID M.  
MONTGOMERY, M.D., MITUL K. PATEL,  
M.D., and PANKAJ VIJ, M.D.,

Defendants.

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JAMES TAYLOR, Personal Representative of the  
Estate of AFRADITA TAYLOR, Deceased,

Plaintiff-Appellee,

v

No. 262777  
Oakland Circuit Court  
LC No. 03-053470-NH

RAMALINGESWARA YALAMANCHI, M.D.,  
R.R. YALAMANCHI, M.D., P.C., GRAHAM W.  
LONG, M.D., WILLIAM BEAUMONT  
HOSPITAL, DAVID M. MONTGOMERY, M.D.,  
and MITUL K. PATEL, M.D.,

Defendants,

and

PANKAJ VIJ, M.D.,

Defendant-Appellant.

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Before: White, P.J., Whitbeck, C.J. and Davis, J.

PER CURIAM.

In this consolidated appeal, defendants appeal by leave granted an opinion and order denying their respective motions for summary disposition based on the statute of limitations. This is a medical malpractice case, and the relevant facts are undisputed. We reverse.

Plaintiff's decedent, Afradita Taylor (decedent), received treatment from defendants in April and May 2000. She died on May 24, 2000. On April 18, 2001, plaintiff obtained letters of authority as personal representative of decedent's estate. Two years later on April 18, 2003, plaintiff mailed a notice of intent to file a claim. On October 17, 2003, plaintiff filed the complaint.

Appellate courts review de novo rulings on summary disposition motions. *Waltz v Wyse*, 469 Mich 642, 647; 677 NW2d 813 (2004). This Court also reviews de novo whether a statute

of limitations bars a claim. *Farley v Advanced Cardiovascular*, 266 Mich App 566, 570-571; 703 NW2d 115 (2005). Questions of law and interpretations of statutes are also reviewed de novo. *Office Planning Group, Inc, v Baraga-Houghton-Keweenaw Child Dev Bd*, 472 Mich 479, 488; 697 NW2d 871 (2005). MCL 600.5805 provides a two-year limitations period for a medical malpractice claim or action. A medical malpractice claimant must give defendants notice of his intent to sue at least 182 days before filing a complaint. MCL 600.2912b(1). Doing so tolls the statute of limitations. MCL 600.5856(d)<sup>1</sup>; *Waltz, supra*, p 644 n 1. The two-year limitations period is tolled only if that period would expire during the 182-day notice period. MCL 600.5856(d).

The wrongful death savings statute provides an independent two-year period within which a wrongful death claimant may commence an action: "If a person dies before the period of limitations has run . . . an action . . . may be commenced . . . at any time within 2 years after letters of authority are issued although the period of limitations has run." MCL 600.5852. "Thus, § 5852 provides an exception to the otherwise-applicable limitation periods by permitting the personal representative of a decedent's estate to file a wrongful death action up to two years after letters of authority are issued, subject to a three-year ceiling." *Waltz, supra*, p 645 n 5. However, our Supreme Court has held that the saving period is not tolled by filing of a notice of intent, and this Court has held that our Supreme Court's decision in that regard applies retroactively. *Mullins v St Joseph Hosp*, 271 Mich App 503, 509; 722 NW2d 666 (2006). This Court has further held that "plaintiffs who filed before *Waltz*, but incorrectly and detrimentally relied on their affidavit of merit to toll the running of the saving statute" may not use equitable tolling to avoid the inequitable results of that retroactive application. *Ward v Siano*, Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2006). Therefore, we are bound to conclude that plaintiff's notice of intent, sent on April 18, 2003, could not have prevented the expiration, on that same date, of the two-year wrongful death savings provision.

Reversed.

/s/ Helene N. White  
/s/ William C. Whitbeck  
/s/ Alton T. Davis

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<sup>1</sup> This section is now designated MCL 600.5856(c), pursuant to 2004 PA 87; see also *Mullins v St Joseph Hosp*, 271 Mich App 503, 509; 722 NW2d 666 (2006). The designation used in this opinion is the designation in place at the dates relevant to the actions below.

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED  
November 21, 2006

Plaintiff-Appellee,

v

No. 262673  
Barry Circuit Court  
LC No. 02-100200-FH

TIMMY ALLEN ROSENBERG,

Defendant-Appellant.

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Before: O'Connell, P.J., and White and Markey, JJ.

PER CURIAM.

On remand, defendant was sentenced as a fourth habitual offender, MCL 769.12, to 92 to 240 months' imprisonment for delivery of a controlled substance less than 50 grams, MCL 333.7401(2)(a)(iv). Defendant appeals by right. We affirm in part and vacate in part.

After a jury convicted defendant, the trial court, relying on defendant's 31 prior misdemeanor convictions, his two acquittals and a pending charge for criminal sexual conduct, and the threat his continuous criminal behavior posed to the community, sentenced defendant to 180 to 360 months' imprisonment. Defendant's sentence was a departure of more than double the recommended minimum sentence range under the legislative guidelines. On appeal, a panel of this Court affirmed defendant's conviction but vacated his sentence of 180 to 360 months' imprisonment and remanded for resentencing. *People v Rosenburg*, unpublished opinion per curiam of the Court of Appeals, issued January 25, 2005 (Docket No. 251930). In addition to finding that the trial court incorrectly scored two offense variables, the panel concluded that while the factors the trial court relied on to depart from the minimum recommended sentence range were objective and verifiable, the factors did not justify the extent of the trial court's departure from the minimum sentence range. *Id.* On remand, the trial court sentenced defendant to 92 to 240 months' imprisonment, a departure double the recommended minimum sentence range of 10 to 46 months under the recalculated legislative guidelines.

Defendant first claims that his sentence was disproportionate to the seriousness of his conduct and his criminal record. Defendant asserts that because he delivered less than five percent of the amount punishable by MCL 333.7401(2)(a)(iv), and because he already faced a significant guidelines augmentation due to his status as an habitual offender, a more proportionate sentence would have fallen within or just over the maximum of the recommended minimum sentence range. We review a departure from the recommended sentence range under the legislative guidelines to determine if the sentence imposed is proportionate to the seriousness

of the crime and the defendant's criminal history. *People v Babcock*, 469 Mich 247, 262, 264; 666 NW2d 231 (2003). A trial court abuses its discretion when it imposes a sentence that falls outside the principled range of outcomes. *Id.* at 269.

The principle of proportionality requires that the sentence the trial court imposes be proportional to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). For almost 20 years, from 1983 until his arrest in 2002, defendant continuously engaged in assaultive, violent, intimidating, and destructive behavior. He was convicted of 31 misdemeanors, and he was charged three times with criminal sexual conduct. In addition, there was evidence in the record of at least thirteen other instances where defendant engaged in criminal behavior. Defendant's behavior during those 20 years indicates that he harbored no respect for the law or any willingness to follow the law. The trial court recognized that defendant's unwillingness to alter his behavior reflected on his ability to be rehabilitated and that he posed an ongoing danger to his community. Even though the sentence the trial court imposed was double the recommended maximum/minimum under the legislative guidelines, it was proportionate to the seriousness of the offense and offender and was within the principled range of outcomes. *Babcock, supra* at 269. Thus, the trial court did not abuse its discretion.

Defendant next claims on appeal that the \$25,000 fine imposed by the trial court was excessive and violated the principle of proportionality. Specifically, defendant asserts that the fine was excessive and disproportionate because he was fined the maximum amount allowed by MCL 333.7401(2)(a)(iv) for delivering one of the least amounts necessary to violate the statute. Defendant did not appeal the amount of this fine in his prior appeal and reconsideration of the amount of the fine was outside the scope of remand. Thus, defendant has waived this issue. *People v Jones*, 394 Mich 434, 435-436; 231 NW2d 649 (1975). Accordingly, there is no error for us to review. If we were to reach the issue we would find no error. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). We affirm the \$25,000 fine.

Defendant also claims that the trial court erred in ordering him to pay \$500 in court costs. Defendant failed to object to the imposition of court costs. Appellee agrees. Accordingly, we vacate the trial court's order requiring defendant to pay \$500 in court costs.

Defendant finally claims on appeal that, pursuant to *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), Michigan's sentencing scheme violates his Sixth Amendment right to have a jury make factual findings. Our Supreme Court has definitively ruled to the contrary, holding that *Blakely* does not affect Michigan's indeterminate sentencing scheme. *People v Drohan*, 475 Mich 140, 164; 715 NW2d 778 (2006); *People v Claypool*, 470 Mich 715, 730-731 n 14; 684 NW2d 278 (2004).

We affirm in part and vacate in part.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Jane E. Markey

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH GREENE,

Defendant-Appellant.

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UNPUBLISHED

November 21, 2006

No. 263126

Kalamazoo Circuit Court

LC No. 04-002140-FC

Before: O'Connell, P.J., and White and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, and resisting or obstructing a police officer, MCL 750.81d(1). He was sentenced as an habitual offender, second offense, MCL 769.10, to a prison term of 126 months to 25 years for the armed robbery conviction, and 198 days served for the resisting or obstructing conviction. He appeals as of right. We affirm.

On October 30, 2004, the victim was working as an adult entertainer for a group of males in an apartment. As she danced, the men gave her tips ranging from \$1 to \$20. At one point, defendant entered the apartment with two other males. This small group looked around for a few minutes and then left after the victim indicated she did not know where the weed was. Defendant later confronted the victim in the parking lot as she was entering a car that had three other individuals in it. Defendant pointed what appeared to be a handgun at the victim's side and repeatedly demanded the money the victim had just earned. When the victim did not immediately comply, defendant got into the car, rummaged through the victim's purse, and reached under the victim's leg where she had hidden some of her earnings. At one point, defendant's gun discharged, and it sounded like a cap pistol. Defendant ran, and the police were called. When police arrived, they encountered defendant near the scene. A police officer repeatedly ordered defendant to stop, but defendant continued to run. Eventually, the police captured defendant and retrieved \$30, consisting of one ten-dollar bill, and 20 one-dollar bills. They did not recover a gun or the other \$270 the victim estimated had been stolen. At trial, defendant explained that he ran from the police because he "had warrants out on him and did not want to go to jail."

Defendant first argues that defense counsel was ineffective for failing to investigate and argue an insanity defense and for failing to produce several alibi witnesses. We disagree. Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving

otherwise. *Id.* at 659. At trial, defendant consistently maintained his innocence, and there is no evidence that he made a good-faith effort to avail himself of the right to present an insanity defense. See *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). Likewise, defendant has not provided any affidavits of qualified medical personnel or other documentation indicating that he had any medical or psychological condition at the time of the offenses to support that exploration of insanity might have been reasonable. Therefore, defendant fails to demonstrate that the insanity defense could have made a difference at trial, and we will not reverse his conviction solely on the basis of his speculation. *Id.*

Defendant relies on references in the presentence investigation report and the Michigan Department of Corrections reception center psychological report to support his contention that he “suffers from a number of mental health issues” and substance abuse problems, but there is nothing in either report that provides a basis for a diagnosis of criminal insanity. In fact, the MDOC psychological report concluded that “[t]here was no behavioral evidence of a major mood disorder or formal disorder of thought. At this time, [defendant] appears stable and not in the need of further mental health treatment.” Although defendant may have certain mental health issues, mental illness alone does not constitute a defense of legal insanity, and there was no evidence that defendant lacked the capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the law. MCL 768.21a(1). With regard to substance abuse, voluntary intoxication cannot form the basis for an insanity defense, MCL 768.21a(2), and although defendant mentions involuntary intoxication, he has not proffered any evidence that he suffered from involuntary intoxication at the time of the offenses. “Defendant may not leave it to this Court to search for a factual basis to sustain or reject his position.” *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990). Because there is no basis for concluding that an insanity defense was a substantial defense and no basis for concluding that defendant tried to assert it, defendant cannot establish a claim of ineffective assistance of counsel. *Kelly, supra*.

Likewise, defendant has not provided any witness affidavits or identified any evidence in the record establishing that the proposed witnesses’ testimony would have yielded valuable evidence that would have affected the outcome of trial. Moreover, defendant’s argument relies on information that, according to his trial counsel, came to light on the first morning of trial. The information arrived too late to file a notice of alibi, which defendant admits was the only relevant purpose of the evidence, so we reject defendant’s argument that he made good-faith efforts to assert the defense. *Kelly, supra*.

Defendant next argues that he is entitled to resentencing because the trial court improperly scored 20 points for offense variable (OV) 1 (aggravated use of a weapon) and ten points for OV 9 (number of victims). We decline to review defendant’s challenge to the scoring of OV 1 and OV 9 because the record reflects defense counsel’s on-the-record expression of satisfaction with those scores. See *People v Carter*, 462 Mich 206, 214-215; 612 NW2d 144 (2000).

Next, defendant argues that he must be resentenced because the trial court’s factual findings supporting his sentence were not determined by a jury, contrary to *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). However, *Blakely* does not apply to Michigan’s indeterminate sentencing scheme. *People v Drohan*, 475 Mich 140, 164; 715 NW2d 778 (2006).

We also reject defendant's claim that he is entitled to resentencing because his sentence for armed robbery is disproportionate and constitutes cruel and unusual punishment. Defendant's sentence of 126 months to 25 years is at the lowest end of the sentencing guidelines range of 126 to 262 months. Under the circumstances, we find nothing disproportionate or cruel about defendant's punishment. Moreover, we generally affirm a sentence within the guidelines' range unless there was an error in the guidelines' scoring or the court relied on inaccurate information. MCL 769.34(10). Here, defendant has not demonstrated either type of error, so we defer to the Legislature's determination of sentence proportionality as delineated by the guidelines. See *id.*; *People v Babcock*, 469 Mich 247, 261-262; 666 NW2d 231 (2003).

In a supplemental brief filed in propria persona, defendant argues that there was insufficient evidence to convict him of armed robbery because the witnesses' identification of him was tainted by a suggestive lineup. We disagree. "[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Under this deferential standard, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Two witnesses, the victim and a passenger in the car, identified defendant as the perpetrator at pretrial lineups and in court. The victim testified that, during the robbery, she got "a good look at [defendant's] face," that his face was "not even a foot away from [hers]," and that defendant "was in [her] face." She also noted that defendant was the same person whom she had seen earlier in the "well-lit" apartment. The victim indicated that, when identifying defendant in a pretrial lineup, she "pretty much knew off the bat who it was." She explained that she had indicated that she was 90 percent certain that defendant was the person who robbed her, "because there's still that little chance that it could have been somebody that looked identical to him." The passenger testified that he got a "good look" at defendant's face, and was 100 percent certain that defendant was the person who committed the robbery. Levin explained that he could clearly see defendant's face under the car's dome light, that defendant was "approximately two feet" from him, and that the majority of defendant's body was inside the car. Police testimony was presented that the parking lot "was fairly well-lit." Viewing this evidence in a light most favorable to the prosecution, a rational trier of fact could reasonably conclude, beyond a reasonable doubt, that defendant was the robber. The credibility of the identification testimony was for the trier of fact. *Id.*

Defendant also claims that he was denied his right to due process because the pretrial lineup procedure was unduly suggestive. Defendant argues that the other lineup participants had a darker complexion, so he was the only individual fitting the description that the victim provided to police. "An identification procedure that is unnecessarily suggestive and conducive to irreparable misidentification constitutes a denial of due process." *People v Williams*, 244 Mich App 533, 542; 624 NW2d 575 (2001). However, "to sustain a due process challenge, a defendant must show that the pretrial identification procedure was so suggestive in light of the totality of the circumstances that it led to a substantial likelihood of misidentification." *People v Kurylczyk*, 443 Mich 289, 302; 505 NW2d 528 (1993). In this case, the only evidence of suggestion was that defendant was the only "light-skinned" African-American in the lineup, which matched the victim's original description. However, the victim also indicated to police

that defendant was “not real light-skinned,” so without more, we are not persuaded that defendant’s complexion invalidated the lineup. See *People v Gunter*, 76 Mich App 483, 490; 257 NW2d 133 (1977). Police are not required to exert extraordinary effort to arrange a lineup of participants whose physical characteristics exactly match those of the defendant. See *People v Davis*, 146 Mich App 537, 547; 381 NW2d 759 (1985). Even if it were possible to present a lineup in which the participants looked identical, the purpose of the lineup would be thwarted and misidentification would be almost unavoidable. Likewise, a lineup in which the defendant represents the median of all physical features is likely as suspect as one in which some of the defendant’s features set him apart. “Physical differences between defendant and the other lineup participants goes to the weight of the identification and not its admissibility.” *People v Sawyer*, 222 Mich App 1, 3; 564 NW2d 62 (1997). Defendant fails to persuade us that the lineup fostered irreparable misidentification. *Kurylczyk, supra*. Accordingly, we also reject defendant’s alternative argument that he was denied the effective assistance of counsel because defense counsel failed to move to suppress the identification testimony. *Sabin, supra* at 660.

Affirmed.

/s/ Peter D. O’Connell  
/s/ Helene N. White  
/s/ Jane E. Markey

STATE OF MICHIGAN  
COURT OF APPEALS

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STACEY HELFNER, Next Friend of AMBER  
SEILICKI, Minor,

UNPUBLISHED  
June 20, 2006

Plaintiff-Appellee,

v

No. 265757  
Macomb Circuit Court  
LC No. 2004-003161-NI

CENTER LINE PUBLIC SCHOOLS and  
DEANNA LYNN MULRENIN,

Defendants/Third-Party Plaintiffs-  
Appellants,

and

MICHELLE SLOAT,

Defendant/Third-Party Defendant.<sup>1</sup>

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Before: White, P.J., Whitbeck, C.J., and Davis, J.

PER CURIAM.

Defendants appeal as of right an order that, in relevant part, denied their motion for summary disposition pursuant to MCR 2.116(C)(7) and (10) on the grounds that there existed genuine issues of material fact whether the motor vehicle and governmental employee exceptions to governmental immunity existed. We affirm.

This case arose when defendant Deanna Lynn Mulrenin, the driver of a school bus for defendant Center Line Public Schools, ordered eighth-grader Amber Seilicki to disembark from the bus. Mulrenin was Amber's regular bus driver. To reach the bus, Amber was required to cross the street. On the day of the accident, Mulrenin apparently understood Amber to be suspended from school, although there is some debate whether Amber had actually received permission to ride the bus that day notwithstanding her suspension. Amber boarded the bus as

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<sup>1</sup> Michelle Sloat is not a party to this appeal. We use the term "defendants" in this opinion only in reference to Center Line Public Schools and DeAnna Lynn Mulrenin.

usual, whereupon Mulrenin ordered Amber to get off. The two of them debated the matter for some unspecified period of time, during which Amber became upset, embarrassed, and emotional. She eventually disembarked, and Mulrenin ordered her to cross the street and go home. Apparently, Amber did not do so immediately. At some point, Mulrenin deactivated the school bus' red flashing warning lights. Michelle Sloat had been stopped in her car alongside the school bus, and when the lights were deactivated, Sloat attempted to pass the bus. At the same time, Amber attempted to cross the street in front of the bus, where she collided with Sloat's vehicle.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, all evidence submitted by the parties must be considered in the light most favorable to the non-moving party, and summary disposition is granted only where the evidence fails to establish a genuine issue regarding any material fact. *Id.*, 120. Under MCR 2.116(C)(7), where the claim is allegedly barred, the trial court must accept as true the contents of the complaint, unless they are contradicted by documentary evidence submitted by the moving party. *Id.*, 119.

As a general matter, "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." MCL 691.1407(1). A public school district's operation of a school bus system constitutes a generally immune governmental function. *Cobb v Fox*, 113 Mich App 249, 257; 317 NW2d 583 (1982). Exceptions to this broad grant of immunity should be construed narrowly. *Robinson v Detroit*, 462 Mich 439, 455; 613 NW2d 307 (2000). However, interpretation of statutory language obligates us "to ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute." *Chandler v Muskegon Co*, 467 Mich 315, 319; 652 NW2d 224 (2002).

The motor vehicle exception to governmental immunity, MCL 691.1405, excepts injuries "resulting from the negligent operation . . . of a motor vehicle." Our Supreme Court has explained that "operation," in this context, is limited to "the ordinary use of the vehicle as a motor vehicle, namely, driving the vehicle." *Chandler, supra* at 321-322 (emphasis in original). Therefore, a vehicle that is undergoing cleaning while parked inside a maintenance facility is not in "operation." *Id.*, 316, 322. Similarly, a city-owned water truck that was parked at the side of the road, with its warning lights activated, while the driver exited the vehicle to inspect a fire hydrant was no longer in "operation." *Poppen v Tovey*, 256 Mich App 351, 355-356; 664 NW2d 269 (2003). As this Court noted, "[o]nce stopped for this purpose, [the truck's] presence on the road was no longer 'directly associated with the driving' of that vehicle." *Id.*, quoting *Chandler, supra* at 321.

However, *Chandler* and *Poppen* are significantly distinguishable. Simple, everyday experience demonstrates that the act of driving does not entail *constant* movement. A vehicle does not cease to be "driven" while temporarily halted for a stop sign or a traffic light. Under some circumstances, temporary cessation of movement is "directly associated with the driving" of a vehicle. Temporary stops are an integral part of the driving of a school bus, whether coming to a halt before proceeding over railroad tracks or stopping to take on or discharge passengers. The fact that a school bus is temporarily at rest does not take it outside the motor vehicle

exception under these circumstances. Although halted, the school bus is still being driven, and is therefore still being operated as a motor vehicle within the definition provided by *Chandler*.

Our Supreme Court has also explained that “resulting from” cannot be satisfied by a proximate cause analysis. Instead it requires, in the context of a police pursuit of a fleeing vehicle, that the government vehicle “hit the fleeing car or otherwise physically force[d] it off the road or into another vehicle or object.” *Robinson, supra* at 456-457, 457 n 14. This Court then held that the motor vehicle exception requires the government-owned vehicle to physically and directly cause the incident that results in injury. *Curtis v City of Flint*, 253 Mich App 555, 561-562; 655 NW2d 791 (2002). Again, however, *Robinson* and *Curtis* are not directly applicable to the facts here.

Both of those cases involved purely vehicular collisions where the plaintiff was inside a vehicle, and the government-owned vehicle had no physical involvement in the injury-causing collisions. In *Robinson*, the police made arguably questionable decisions to pursue fleeing criminals, who crashed the vehicles they were driving. In *Curtis*, a driver, Kells, pulled over to permit passage of an emergency vehicle that may not have been following proper emergency protocol, whereupon the plaintiff crashed into the rear of Kells' vehicle. The plaintiff then sued the driver and owner of the emergency vehicle. In both cases, the plaintiffs were dismissed because the government-owned vehicle must “be physically involved in the collision that caused [the] plaintiff's injuries, either by hitting [the] plaintiff's vehicle or by physically forcing that vehicle off the road or into another vehicle or object.” *Curtis, supra* at 562 (emphasis added). This rule is not directly applicable where the plaintiff is not, in fact, in a vehicle at all. Instead, the entirely consistent and more general rule is that the government vehicle must directly compel the injury-causing accident.

There is no dispute that there was no physical contact between Amber and the school bus here. However, even under *Robinson* and *Curtis*, there would not necessarily be physical contact between the government vehicle and a plaintiff. For example, in *Robinson*, our Supreme Court suggested that the motor vehicle exception would apply if, for example, a police vehicle had rammed a car off the road and into an innocent pedestrian. See *Robinson, supra* at 445 n 2. In other words, it is sufficient for the government vehicle to cause an injury by placing some object in motion, and that object then injures the plaintiff. This Court has found the motor vehicle exception applicable where a government-owned vehicle drove over a piece of tire tread on the road, thereby flinging the tire tread into the plaintiff's windshield. *Regan v Washtenaw Co Bd of Co Rd Comm'rs*, 249 Mich App 153, 161; 641 NW2d 285 (2002).

The dissent notes that these cases still involve the government vehicle physically contacting and physically forcing into motion the injury-causing object. Under the circumstances of this case, where the driver prematurely turned off safety devices and violated protocols mandated by law and unique to a school bus, the dissent's observation is a distinction without a difference. Because this case involves a school bus, it is viewed in light of the strong public policy mandated by our Legislature's enactment of the Pupil Transportation Act, MCL 257.1801 *et seq.*, among other statutory provisions. See *Nolan v Bronson*, 185 Mich App 163, 171-173; 460 NW2d 284 (1990), abrogated on other grounds by *Chandler, supra* (mostly discussing predecessor statutes). Among other purposes, a school bus is designed to control the motion of other vehicles on the highway, to promote one of the most important public policies imaginable – the safety of our children. Our Supreme Court has explained how special school

busses are, noting in the context of no-fault insurance that the “use” of a school bus – as distinguished from any other ordinary public transit – includes both transporting students *and* properly disembarking them. *Pacific Employers Ins Co v Michigan Mut Ins Co*, 452 Mich 218, 225-227; 549 NW2d 872 (1996). By operation of statute, the deactivation of a school bus’ warning lights “is the signal for stopped traffic to proceed.” MCL 257.1855(2)(b). That is precisely what occurred here.

A significant fact here, then, is that the defendant driver *did* physically place an object in motion – by prematurely deactivating the warning lights on the bus, which constituted an affirmative signal to waiting vehicles on the road to proceed. Defendant’s operation of the school bus may be found to have directly caused the accident because it exercised control over the physical movement of another vehicle. The motor vehicle exception could be found to apply even though the bus was temporarily paused and did not itself physically strike Amber or physically contact the car that struck Amber. Under the unique circumstances of a school bus deactivating its warning lights, there is no principled reason to take this issue from the trier of fact simply because there was no physical contact between the bus and the vehicle that struck Amber.

The governmental employee exception to governmental immunity provides that the employee of an agency exercising a governmental function “may be liable for grossly negligent conduct” performed while acting within the scope of her authority “if that conduct is ‘the proximate cause of the injury or damage.’” *Curtis, supra* at 562-563, quoting MCL 691.1407(2). There is no dispute that this school bus did not have its flashing red warning lights activated at the time of the accident, contrary to MCL 257.1855. At the time of the accident, MCL 257.1855 provided in relevant part as follows:

(1) A school bus driver shall actuate alternately flashing lights only when the school bus is stopped or stopping on a highway or private road for the purpose of receiving or discharging pupils in the manner provided in this act. . . .

(2) The driver of a school bus while operating upon the public highways or private roadways open to the public shall receive or discharge pupils from the bus in the following manner:

\* \* \*

(b) If the pupils are required to cross the roadway, the driver of a school bus equipped with red and amber alternately flashing overhead lights in accordance with section 19<sup>2</sup> shall activate the alternately flashing overhead amber lights not less than 200 feet before the stop, stop the bus as far to the right side of the roadway or private road as is possible to provide for the safety of the pupils being boarded or discharged, deactivate the alternately flashing overhead amber lights, and activate the alternately flashing overhead red lights while receiving or discharging pupils. Before resuming motion, the driver shall deactivate these

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<sup>2</sup> This bus’ compliance with MCL 257.1819 is not disputed.

lights and allow congested traffic to disperse where practicable. The deactivation of these lights is the signal for stopped traffic to proceed.

Amber always crossed the street after exiting the bus. The driver was Amber's regular driver, so she knew that Amber would need to cross the street immediately after exiting the bus and that she would need to activate the red flashing lights while Amber did so.

On the day of the accident, the driver understood Amber to be suspended from school and therefore not permitted to ride the bus. There is some dispute whether Amber had nevertheless been granted permission to ride the bus. The driver ordered Amber to leave the bus and debated the issue with Amber to the point where Amber was crying and pleading to remain. The driver nevertheless told Amber to leave, knowing that Amber was angry, embarrassed, and upset. The driver then directed Amber to cross the street and deactivated the warning lights. Given the summary disposition posture of this case, there is no doubt that plaintiff has at least presented a genuine issue of material fact whether the school bus driver's conduct was "so reckless as to demonstrate a substantial lack of concern for whether" Amber would be injured. See MCL 691.1407(7)(a), defining "gross negligence" as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."

In the context of the governmental employee exception to governmental immunity, the dissent correctly notes that "the proximate cause" means that the driver's conduct must be "the one most immediate, efficient, and direct cause preceding an injury." *Curtis, supra* at 563, quoting *Robinson, supra* at 458-459. The dissent then goes on to conclude that it was not the driver's conduct, but rather plaintiff's inattentiveness to traffic that meets that requirement. It seems to us that this is a question properly determined by the trier of fact. We do not now hold that the driver's conduct was that sole cause. This case is before us on summary disposition. Our inquiry is into the existence of a genuine factual question whether the driver's conduct was the "one most immediate, efficient, and direct cause." We agree with the dissent that there is no reason why the voluntary act of a child *cannot* be the proximate cause. We merely decline to hold, on the basis of the record and procedural posture of the case before us, that it necessarily was. Again, the driver ordered Amber to disembark, leaving Amber with no options other than crossing the street. There is no dispute that the only reason the other vehicle drove forward and was in a position to strike Amber was the driver's deactivation of the warning lights on the bus. There is testimony that the driver ordered Amber to cross the street, although Amber apparently did not do so immediately. The driver was aware of Amber's upset emotional state.

Affording every legitimate inference to the plaintiff, the driver had discharged an upset 13-year-old child by the side of the road. To go home, she would need to cross the road. Students are required to cross *in front* of the bus, MCL 257.1855(3), where oncoming traffic is difficult to see. Finally, the driver had deactivated the warning lights, directing traffic to proceed. MCL 257.1855(2)(b). There is at least a genuine question of material fact whether anything other than the bus driver's conduct caused Amber and the other vehicle to come to be in the same place at the same time. The trial court therefore appropriately denied summary disposition on the issue of the governmental employee exception to governmental immunity.

Affirmed.

/s/ Helene N. White  
/s/ Alton T. Davis

STATE OF MICHIGAN  
COURT OF APPEALS

STACEY HELFER, Next Friend of AMBER  
SEILICKI, Minor,

UNPUBLISHED  
June 20, 2006

Plaintiff-Appellee,

v

No. 265757  
Macomb Circuit Court  
LC No. 2004-003161-NI

CENTER LINE PUBLIC SCHOOLS, and  
DEANNA LYNN MULRENIN,

Defendants/Third-Party Plaintiffs-  
Appellants,

and

MICHELLE SLOAT,

Defendant/Third-Party Defendant.

Before: White, P.J., Whitbeck, C.J., and Davis, J.

WHITBECK, C.J. (*dissenting*).

I respectfully dissent. Because I conclude that the government vehicle in this case did not directly place the injury-causing object into motion and that none of Mulrenin's actions, albeit arguably grossly negligent, were *the proximate cause* of Amber Seilicki's injury, I would reverse.

I. The Motor Vehicle Exception

The majority interprets the language, "resulting from the negligent operation . . . of a motor vehicle"<sup>1</sup> to hold that "the government vehicle must directly compel the injury-causing accident."<sup>2</sup> According to the majority, "it is sufficient for the government vehicle to cause an

<sup>1</sup> MCL 691.1405.

<sup>2</sup> *Ante* at \_\_\_\_.

injury by placing some object in motion, and that object then injures the plaintiff.”<sup>3</sup> The majority then provides, for example, the situation where a police car rams another vehicle off the road and into a pedestrian, or the situation where a government vehicle drives over debris, causing the debris to fling into the air and strike another vehicle. According to the majority, Mulrenin therefore placed into motion the vehicle that hit Seilicki by deactivating the bus’s warning lights. However, in my opinion, this conclusion contradicts the majority’s own examples. In both situations the majority cites, the government vehicle came into direct physical contact with the injury-causing object and, in each example, that direct physical contact forced the injury-causing object into motion. In this case, however, there was *no* direct physical contact between the bus and the vehicle that hit Seilicki, nor was there direct contact between Seilicki and the bus. Therefore, I would conclude that Seilicki’s injury did not result from the negligent operation of the bus.

## II. Governmental Employee Immunity

MCL 691.1407(2) provides in relevant part that a government employee is immune from tort liability for injuries to a person caused by the employee while in the course of employment if the following are met:

- (a) The . . . employee . . . is acting or reasonably believes he or she is acting within the scope of his or her authority.
- (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
- (c) The . . . employee’s . . . conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

Thus, if (a) and (b) have been met, as they plainly are in this case, “a governmental employee may be liable for grossly negligent conduct if that conduct is ‘the proximate cause of the injury or damage.’”<sup>4</sup>

“‘Gross negligence’ means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.”<sup>5</sup> “[E]vidence of ordinary negligence does not create a material question of fact concerning gross negligence. . . . To hold otherwise would create a jury question premised on something less than the statutory standard.”<sup>6</sup>

[T]he phrase “the proximate cause,” as used in MCL 691.1407(2)(c), is not synonymous with “a proximate cause,” and . . . to impose liability on a

<sup>3</sup> *Id.*

<sup>4</sup> *Curtis v Flint*, 253 Mich App 555, 562-563; 655 NW2d 791 (2002).

<sup>5</sup> MCL 691.1407(7)(a).

<sup>6</sup> *Maiden v Rozwood*, 461 Mich 109, 122-123; 597 NW2d 817 (1999).

governmental employee for gross negligence, the employee's conduct must be "the one most immediate, efficient, and direct cause preceding an injury."<sup>7</sup>

While plaintiff arguably presented evidence that Mulrenin was grossly negligent, this was plainly not the proximate cause of Seilicki's injuries.

I agree with that majority that, pursuant to MCL 257.1855(b), Mulrenin was required to activate the red flashing lights while Seilicki exited and crossed the street. Here, there is disputed evidence whether Mulrenin had activated any of the bus's flashing lights at the time of the accident. Nevertheless, Mulrenin admitted that the red flashing lights were not activated when Seilicki exited the bus. In addition, there was testimony that (1) Seilicki was crying and pleading with Mulrenin to let her ride the bus and became angry and embarrassed after being told to exit the bus and that (2) Mulrenin was Seilicki's everyday bus driver at the time of the incident and was therefore likely aware that Seilicki was about to cross the street because Seilicki stated that she did every time she exited the bus. Viewing the testimony in a light most favorable to plaintiff, she has arguably presented evidence that Mulrenin was grossly negligent, that is, that Mulrenin's conduct was reckless and demonstrated a substantial lack of concern for whether an injury to Seilicki would result.

However, it is manifest that none of Mulrenin's actions or inactions were "the one most immediate, efficient, and direct cause preceding"<sup>8</sup> Seilicki's injury. As Seilicki acknowledged, she attempted to run across the street without looking for cars. Seilicki's crossing of the street in this manner was plainly a more immediate, efficient, and direct cause of her injury than Mulrenin having instructed her to leave the bus. Further, although there was deposition testimony indicating that Mulrenin may have also told Seilicki to cross the street, that same testimony indicates that Seilicki failed to immediately heed this instruction. Thus, again, Seilicki's decision to cross the street at the moment when she did was *the* immediate, efficient, and direct cause of her injury. While plaintiff invokes the potential for children to act impulsively, nothing in the language of MCL 691.1407(2) or the controlling case law suggests that the voluntary act of a child cannot constitute "the proximate cause" of injury. Therefore, the trial court erred in failing to grant summary disposition in favor of Mulrenin with regard to governmental employee immunity.

I would reverse and remand for entry of judgment in favor of defendants.

/s/ William C. Whitbeck

<sup>7</sup> *Curtis, supra* at 563, quoting *Robinson v Detroit*, 462 Mich 439, 458-459, 462; 613 NW2d 307 (2000).

<sup>8</sup> *Curtis, supra* at 563.

STATE OF MICHIGAN  
COURT OF APPEALS

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STEVEN M. ELLS, Personal Representative of the  
ESTATE of MAYNARD B. ELLS,

UNPUBLISHED  
February 7, 2006

Plaintiff-Appellee,

V

No. 264635  
Eaton Circuit Court  
LC No. 05-000128-NI

EATON COUNTY ROAD COMMISSION,

Defendant-Appellant.

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Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court's denial of its motion for summary disposition under MCR 2.116(C)(7) in this negligence action. We affirm.

We review de novo a trial court's decision on a motion for summary disposition. *Wilson v Alpena Co Rd Comm*, 263 Mich App 141, 144; 687 NW2d 380 (2004). MCR 2.116(C)(7) tests whether a claim is barred because of governmental immunity, and requires consideration of all documentary evidence filed or submitted by the parties. *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). In determining whether a party is entitled to judgment as a matter of law under MCR 2.116(C)(7), a court must accept as true the plaintiff's well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in the plaintiff's favor. *Wilson, supra* at 145. Additionally, we review de novo issues of statutory interpretation. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548; 685 NW2d 275 (2004).

To establish a prima facie case of negligence, a plaintiff must be able to prove that the defendant owed the plaintiff a duty, the defendant breached that duty, causation and damages. *Haliw v Sterling Hts*, 464 Mich 297, 309-310; 627 NW2d 581 (2001). Further, where the defendant is a governmental agency, the plaintiff must plead a cause of action in avoidance of governmental immunity. *Id.* at 302-304.

Plaintiff's complaint alleged that plaintiff's decedent died in a motor vehicle accident that was proximately caused by defendant's negligence when it "permitted, authorized or consented to the placement of a Type-3 barricade with various other signage" at the intersection where the accident occurred. Specifically, plaintiff alleged that defendant "owed a statutory duty to [p]laintiff's decedent, outside government immunity, to keep their highway in reasonable repair and to insure [sic] that it was reasonably safe and convenient for public travel." Plaintiff alleged

that the barricade “was placed on the traveled portion of the highway,” and that it “created an obstruction and defect in the traveled portion of the highway in that it obscured vision of vehicular traffic . . . including the decedent . . .” Stated another way, the decedent’s “view of oncoming traffic . . . was obscured . . . so that he could not readily observe traffic approaching the intersection,” and “[t]hat as a proximate result of [d]efendant[’s] negligence and breach of duty, the decedent was struck at the intersection and died of his injuries.”

Defendant moved for summary disposition under MCR 2.116(C)(7), on the basis that plaintiff’s cause of action did not fall within the highway exception to governmental immunity, MCL 691.1402(1). Defendant also argued that it was entitled to summary disposition because plaintiff failed to provide proper notice as required by MCL 691.1404, and because it could not be held liable for failing to anticipate plaintiff’s decedent’s negligence in entering an intersection before making reasonable and proper observations of cross traffic.

The governmental immunity act, MCL 691.1401 *et seq.*, provides that a governmental agency is immune from tort liability while engaging in a governmental function unless a specific exception applies. The highway exception to governmental immunity requires a “governmental agency having jurisdiction over a highway”<sup>1</sup> to “maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel.” MCL 691.1402(1). “The duty of the . . . county road commission to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel. . . .” *Id.* *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 162; 615 NW2d 702 (2000).

The circuit court denied defendant’s motion, finding that the highway exception to governmental immunity was applicable because the “barricade was located in the roadbed,” therefore constituting a “defect . . . in the active roadbed designed for vehicular travel.”<sup>2</sup> We agree.

Here, two large signs had been placed on the actual roadbed, the taller of the two signs was placed immediately behind the shorter one. The taller one stated “Road closed to thru traffic,” and the shorter one was an arrow stating “Detour” super imposed on a barricade, to alert passersby that the road was closed to thru traffic and that a detour existed, but that the road was open to a local golf course. The barricade was placed on the actual roadbed designed for vehicular travel. Under *Nawrocki*, *supra*, plaintiff thus pleaded in avoidance of governmental immunity. Although the *Nawrocki* Court’s holding included that “the state or county road

<sup>1</sup> Defendant does not dispute that it had jurisdiction over the roadway where the accident occurred.

<sup>2</sup> The circuit court relied on *Page v Bidwell*, unpublished opinion per curiam of the Court of Appeals, issued January 4, 2005 (Docket No. 249224), which affirmed a trial court’s decision that “[a] tree limb lying in the roadway and blocking a lane of traffic” fell within the highway exception to governmental immunity because it was “akin to any other type of debris that causes a dangerous condition in the improved portion of a highway designed for vehicular travel,” and therefore “clearly [constituted] a defect in the actual roadbed.” We are not bound by unpublished decisions of this Court, MCR 7.215(C)(1).

commissions have no duty, under the highway exception, to install, maintain, repair, or improve traffic control devices, including traffic signs," *id.*, at 184, its holding is clearly limited to signage *not* located in the improved portion of the highway designed for vehicular travel. *Id.* at 183 ("A plaintiff making a claim of inadequate signage, like a plaintiff making a claim of inadequate street lighting or vegetation obstruction, fails to plead in avoidance of governmental immunity because *signs are not within the paved or unpaved portion of the roadbed designed for vehicular travel.* Traffic device claims, such as inadequacy of traffic signs, simply do not involve a dangerous or defective condition in the improved portion of the highway designed for vehicular travel.") In contrast, the signage involved here was located within the actual roadbed designed for vehicular traffic.

Defendant alternatively argues that the circuit court erred in failing to address its claims that plaintiff failed to provide it proper notice under MCL 691.1404. We disagree.

Plaintiff's complaint alleged that and the record supports that the Road Commission had actual notice of the incident. A manager (civil engineer) for the Eaton County Road Commission testified on deposition that he went to the scene of the crash on the afternoon of the incident and took extensive photographs of the crash scene. He testified that two other personnel from the Road Commission were present in the vicinity of the crash scene as well. On appeal, defendant asserts that it was prejudiced by the lack of notice because it was unable to "quickly preserve evidence necessary for its defense." The documentary evidence submitted below, including photographs of the crash scene and the Road Commission manager's deposition testimony, belie this contention. Defendant has not shown actual prejudice, thus its claim fails under *Brown v Manistee Co Rd Comm'n*, 452 Mich 354, 366-368; 550 NW2d 215 (1996).

Defendant's final argument is that the circuit court erred in ignoring defendant's argument below that the road commission did not have a duty to anticipate decedent's negligence in failing to properly stop at the intersection as required by Michigan law. We disagree. First, we observe that defendant moved for summary disposition while discovery remained open. Further, defendant's duty is defined by statute and plaintiff establish a genuine issue regarding whether that duty was violated.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Helene N. White

STATE OF MICHIGAN  
COURT OF APPEALS

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STEVEN M. ELLS, Personal Representative of the  
ESTATE of MAYNARD B. ELLS,

UNPUBLISHED  
February 7, 2006

Plaintiff-Appellee,

v

No. 264635  
Eaton Circuit Court  
LC No. 05-000128-NI

EATON COUNTY ROAD COMMISSION,

Defendant-Appellant.

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Before: Bandstra, P.J., and Fitzgerald and White, JJ.

BANDSTRA, P.J. (*dissenting*).

To successfully plead a negligence claim, a plaintiff must prove that the defendant owed the plaintiff a duty, the defendant breached that duty, the plaintiff suffered harm, and the plaintiff's harm was caused by the defendant's negligence. *Haliw v Sterling Hts*, 464 Mich 297, 309-310; 627 NW2d 581 (2001). Further, where the defendant is a governmental entity, the plaintiff must allege facts that place the claim within an exception to governmental immunity. *Id.* at 302-304.

The highway exception, upon which plaintiff relies, requires a "governmental agency having jurisdiction over a highway"<sup>1</sup> to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1). "The duty of the . . . county road commission to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel. . . ." *Id.* Stated another way, "if the [dangerous or defective] condition is not located in the actual roadbed designed for vehicular travel, the narrowly drawn highway exception is inapplicable and liability does not attach." *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 162; 615 NW2d 702 (2000).

Here, the signs and barricade had been placed on the roadbed to alert passersby that the road was closed to thru traffic and that a detour existed, but that the road was open to a local golf

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<sup>1</sup> Defendant does not dispute that it had jurisdiction over the roadway where the accident occurred.

course. Our Supreme Court has noted that, under the highway exception, the government's duty is only implicated upon its failure to repair or maintain "the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel, which in turn proximately causes injury or damage," and that "[t]his does not include signage." *Id.* at 185. Thus, while the signs and barricade were placed on the actual roadbed (i.e., *between* the two edges of the roadbed), I conclude that the accident here was not caused by defendant's failure to repair or maintain the actual physical structure of the roadbed surface. Stated another way, the barricade and signs did not constitute a "dangerous or defective condition[] in the actual roadbed itself." *Id.* at 177 (i.e., *a part of* the actual physical structure of the roadbed surface).

Additionally, this Court has held that liability for the failure to maintain a highway exists only if the defect complained of is "actually and specifically included" in the statutory definition of the term "highway." *Ridley v Detroit (On Second Remand)*, 258 Mich App 511, 516; 673 NW2d 448 (2003). Because barricades and signs are not part of the definition of "highway" as set out in MCL 691.1401(e), they do "not represent a defect in the highway itself because [they are] not part of the highway." *Ridley, supra* at 515.

Consistent with our Supreme Court's mandate to narrowly construe the statutory exceptions to the broad grant of governmental immunity, *Nawrocki, supra* at 158, I conclude that plaintiff failed to plead in avoidance of governmental immunity, and the trial court erred in denying defendant's motion for summary disposition. Given that conclusion, I would not consider defendant's alternative arguments that the trial court erred in failing to address its claims that plaintiff failed to provide it proper notice under MCL 691.1404, and that it could not be held liable for failing to anticipate the negligence of plaintiff's decedent.

I would reverse and remand for entry of an order granting summary disposition in favor of defendant.

/s/ Richard A. Bandstra

STATE OF MICHIGAN  
COURT OF APPEALS

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STEVEN PRICE,

Plaintiff-Appellee,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant.

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UNPUBLISHED  
January 31, 2006

No. 257577  
Court of Claims  
LC No. 01-018063-MT

Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

Defendant appeals as of right an order denying its motion for summary disposition on the ground of governmental immunity. We affirm.

Plaintiff sustained injuries while riding his bicycle on a bridge on M-68. Plaintiff alleged that he was struck by an automobile when he had to swerve into its path to avoid a 1 3/8 to 3 inch deep drain hole on the bridge in an area between the fog line and the curb.

We review de novo a trial court's decision on a motion for summary disposition. *Wilson v Alpena Co Rd Comm*, 263 Mich App 141, 144; 687 NW2d 380 (2004). MCR 2.116(C)(7) tests whether a claim is barred because of governmental immunity, and requires consideration of all documentary evidence filed or submitted by the parties. *Wade v Dep't of Corrections*, 439 Mich 158, 162; 483 NW2d 26 (1992). In determining whether a party is entitled to judgment as a matter of law under MCR 2.116(C)(7), a court must accept as true the plaintiff's well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in plaintiff's favor. *Wilson, supra* at 145. Additionally, we review de novo as a question of law the trial court's decision regarding the applicability of the highway exception to governmental immunity. *Stevenson v Detroit*, 264 Mich App 37, 40-41; 689 NW2d 239 (2004).

Under the highway exception to governmental immunity, "[t]he duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel. . . ." MCL 691.1402(1). Stated another way, the duty "is limited exclusively to dangerous or defective conditions within the actual roadway, paved or unpaved, designed for vehicular travel." *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 184; 615 NW2d 702 (2000).

Defendant first argues that the area where the drain hole was located was the shoulder of the road and that the shoulder is not "designed for vehicular travel." MCL 691.1402(1).

However, even assuming that the area where the drain hole was located was considered the shoulder area of the road, our Supreme Court in *Gregg v State Hwy Dep't*, 435 Mich 307, 315-316; 458 NW2d 619 (1990), held that the shoulder was included in the improved portion of the highway designed for vehicular travel. See also *Meek v Dep't of Transportation*, 240 Mich App 105, 114; 610 NW2d 250 (2000) and *Soule v Macomb Co Bd of Rd Comm'rs*, 196 Mich App 235, 237; 492 NW2d 783 (1992). Defendant argues that *Gregg* was wrongly decided and is no longer valid in light of *Nawrocki*. However, *Nawrocki* did not overrule *Gregg* and we are bound by *Gregg*. See *Boyd v WG Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993) (“[I]t is the Supreme Court’s obligation to overrule or modify case law if it becomes obsolete, and until [the] Court takes such action, the Court of Appeals and all lower courts are bound by that authority.”).<sup>1</sup>

Defendant next argues that although plaintiff’s complaint used the words “repair and maintain,” plaintiff was actually alleging a claim based on a design defect. We disagree. The plain language of the statute makes it clear that there is “no duty, under the highway exception to governmental immunity, to correct [] design defects.” *McIntosh v Dep't of Transportation (On Remand)*, 244 Mich App 705, 710; 625 NW2d 123 (2001). “Nowhere in the statutory language is there a duty to install, to construct or to correct what may be perceived as a dangerous or defective ‘design.’” *Hanson v Mecosta Co Rd Comm'rs*, 465 Mich 492, 501; 638 NW2d 396 (2002).

However, we conclude that plaintiff did not allege a design defect in his complaint. Plaintiff alleged that defendant failed to repair and maintain the bridge surface when it repaved the surface. The drain grates were originally designed to be flush with the roadway but, as a result of defendant repaving the bridge, the grates were not flush with the surface and allegedly caused plaintiff to swerve into danger. It was the act of improperly resurfacing the bridge that allegedly led to plaintiff’s injuries. Because plaintiff alleged that defendant’s failure to properly repair and maintain the bridge caused the dangerous or defective condition in the roadway, *Nawrocki, supra* at 184, the highway exception to governmental immunity applies to plaintiff’s claim.

We affirm.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Helene N. White

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<sup>1</sup> We note that this Court has previously rejected defendant’s argument in *Grimes v Dep't of Transportation*, unpublished opinion per curiam of the Court of Appeals, issued December 16, 2004 (Docket No. 249558) and *Powell v Dep't of Transportation*, unpublished opinion per curiam of the Court of Appeals, issued June 16, 2005 (Docket No. 261541), that application for leave to appeal has been granted by our Supreme Court in *Grimes* (order of the Supreme Court, issued October 6, 2005 (Docket No. 127901)), and that application for leave to appeal is pending before our Supreme Court in *Powell* (Docket No. 129043).

STATE OF MICHIGAN  
COURT OF APPEALS

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EDWARD MORGAN,  
Plaintiff-Appellant,

UNPUBLISHED  
April 14, 2005

v

JAMES LAROY and LUANN LAROY,  
Defendants-Appellees.

No. 253789  
Kalamazoo Circuit Court  
LC No. D03-000201 NO

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Before: Judges Neff, P.J., and White and Talbot, JJ.

PER CURIAM.

Plaintiff appeals the court's grant of summary disposition dismissing his premises liability action brought as a result of the injuries he sustained when he slipped and fell on snow-covered ice on defendants' walkway. The court found that defendants owed plaintiff no duty because the hazard was open and obvious and not effectively unavoidable. We find that the condition was not open and obvious and, therefore, do not reach the question of avoidability. We reverse the court's order.

Summary disposition of all or part of a claim or defense may be granted when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). A motion for summary disposition under MCR 2.1116(C)(10) challenges the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). This Court must consider all pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Id.*

Plaintiff visited defendants' home for an appointment for the purpose of selling insurance. When he arrived, he parked in the driveway, entered the open garage, and knocked on the interior door. He did not encounter any snow or ice during the few steps from his car to the garage. Defendants welcomed him and he entered through the interior door.

Defendants' home had two other entry points. There was a front door that guests rarely used. There was a side door in close proximity to the interior garage door and both were connected to opposite ends of a breezeway. Guests typically used the side door, which opened to an outdoor walkway paved with patio blocks.

After the meeting, plaintiff exited through the side door. He stated that Mrs. LaRoy indicated to him that he could exit through the side door and directed him that way. Her husband in his deposition stated that she was upset that plaintiff entered through the interior garage door, where there is no doorbell. At no point were her feelings communicated to plaintiff, however.

The weather was cold and during the preceding week there had been significant snow accumulation. The snow outside the side door was fresh in the sense that one could leave a footprint in it or scrape a snowball out of it. Plaintiff took eight to ten steps through the snow and past the one or two steps down onto the walkway and then slipped and fell. His right foot twisted behind him. Plaintiff described his speed as a normal walking gait. He did not see any ice, but he felt with his hands cold, hard ice that was not wet when he was getting up. Plaintiff did not see the ice. He only saw snow. He walked very cautiously without incident over more snow-covered ice to his car. He noticed swelling when he returned home and sought medical attention, which revealed two bone fractures in his foot.

Principles of invitee law determine whether defendants owed plaintiff a duty of care. Plaintiff was an invitee because he was on defendants' premises for the commercial purpose of selling insurance. See e.g., *Kosmalski v St. John's Lutheran Church*, 261 Mich App 56, 60; 680 NW2d 50 (2004). Generally, a premises possessor owes invitees a duty to exercise reasonable care to protect invitees from unreasonable risks of harm caused by dangerous conditions on the land. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). This duty does not extend to dangers that are open and obvious, unless there exist special aspects of an open and obvious condition that create an unreasonable risk of harm, in which case the premises possessor has a duty to take reasonable steps to protect invitees from the risk. *Id.* at 516-517. "[W]here the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee" unless the risk of harm is unreasonable despite being obvious or known to the invitee. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 613; 537 NW2d 185 (1995) (quoting *Riddle v McLouth Steel Prods Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992)). "The test to determine if a danger is open and obvious is whether 'an average user with ordinary intelligence [would] have been able to discover the danger and the risk presented upon casual inspection.'" *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002) (quoting *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993)).

The role of judge and jury with respect to the open and obvious analysis in cases involving ice and snow has been developed in a long line of case law. According to the Supreme Court in *Quinlivan v The Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244; 235 NW2d 732(1975):

[W]e reject the prominently cited notion that ice and snow hazards are obvious to all and therefore may not give rise to liability. While the invitor is not an absolute insurer of the safety of the invitee, the invitor has a duty to exercise reasonable care to diminish the hazards of ice and snow accumulation. . . . As such duty pertains to ice and snow accumulations, it will require that reasonable measures be taken within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury to the invitee. [*Quinlivan, supra* at 261.]

The Court recently by implication affirmed that accumulation of snow and ice is not open and obvious as a matter of law. In *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 332; 683 NW2d 573 (2004), the Court stated the following:

[I]n the context of an accumulation of snow and ice, *Lugo* means that, *when such an accumulation is 'open and obvious,'* a premises possessor must 'take reasonable measures within a reasonable period of time after the accumulation of snow and ice to diminish the hazard of injury to [plaintiff]' only if there is some 'special aspect' that makes such accumulation 'unreasonably dangerous.' [Emphasis added.]

The emphasized language indicates that not all accumulation of snow and ice is open and obvious. See also *Kenny v Kaatz Funeral Home, Inc*, 264 Mich App 99, 106, 108; 689 NW2d 737 (2004) (holding that summary disposition was improper because reasonable minds could disagree as to whether black ice under a coating of snow was open and obvious). Indeed, in *Mann* the Court refrained from deeming open and obvious the "icy and snow-covered parking lot" upon which the intoxicated plaintiff fell and remanded the case to the trial court. *Mann, supra* at 327, 334. The Court explicitly acknowledged the role of the jury. "[I]n determining whether defendant breached its duty, the fact-finder must decide only whether a reasonably prudent person would have slipped and fallen on the ice and snow in defendant's parking lot, or whether that reasonably prudent person should have been warned by defendant of the dangerous condition" *Id.* at 330. The Court also held that liability hinges on the condition of the premises, not the particular plaintiff. *Id.* at 329. It relied on the objective standard of care of the reasonably prudent person and rejected as irrelevant the intoxication of the plaintiff and the dramshop's knowledge of the intoxication. *Id.* at 329-330.

This Court must therefore ask if a reasonably prudent person in plaintiff's position would have, upon casual inspection, discovered the danger and the risk that defendants' snow-covered walkway presented. We answer this question in the negative. All plaintiff saw was snow. He did not see ice and had no reason to believe that slippery ice was underneath the snow. The trial court's pronouncements on temperature fluctuations and a general knowledge in Michigan that "where there is snow, there is ice" typify the general conclusion rejected in *Quinlivan* and *Mann*. Were it otherwise, then all accumulations of snow and ice would be open and obvious per se, which is not the law in Michigan. Furthermore, one walks more cautiously on visible or otherwise known ice than on snow alone. See *Kenny, supra*, 264 Mich App at 108-109. This phenomenon is apparent in the fact that, after falling, plaintiff gained an awareness of the ice and walked cautiously without incident over the remaining snow-covered ice.

The trial court also erred when it emphasized in its ruling that plaintiff felt the ice as he got back to his feet. The relevant point of time is before falling, not after. This distinction is crucial because it also sets apart other cases in which this Court held that accumulations of snow and ice were open and obvious. In each case, the plaintiff had or should have had advance knowledge of the slippery condition, unlike plaintiff in the present case. In *Perkoviq v Delcor Homes-Lakeshore Pointe, Ltd*, 466 Mich 11, 16; 643 NW2d 212 (2002), there "was nothing hidden about the frost or ice on the roof" off of which the plaintiff slipped and fell. In *Corey v Davenport College of Business*, 251 Mich App 1, 5; 649 NW2d 392 (2002), this Court found that the plaintiff was "a reasonable person who recognized the snowy and icy condition of the [dormitory] steps and the danger the condition presented." Finally, in *Joyce, supra* at 239, the

plaintiff was aware of the slippery sidewalk, repeatedly told the defendant about it, and had slipped on it twice prior to falling.

Defendants cite several unpublished opinions in support of their position. These cases have no precedential effect and, therefore, do not merit comment. MCR 7.215(C)(1). To the extent that they are persuasive authority, many, like the cases distinguished above, relied heavily on the fact that the plaintiff had or should have had advance knowledge of the hazard.

Accordingly, snow-covered ice is not open and obvious as a matter of law. Reasonable minds can disagree on the nature of the hazard that a reasonable person in plaintiff's position would encounter and, concomitantly, on the extent of defendants' duty to that person. A fact-finder and not a court of law must decide those questions. We reverse the trial court's grant of summary disposition.

Because consideration of special aspects of the hazard, such as whether it was effectively unavoidable, is conditioned on a finding that the hazard is open and obvious, we need not reach the question. See *Lugo, supra* at 516-517.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff  
/s/ Helene N. White  
/s/ Michael J. Talbot

STATE OF MICHIGAN  
COURT OF APPEALS

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CHARLOTTE JACKSON, Personal  
Representative of the Estate of Alvin Cook,

UNPUBLISHED  
October 5, 2004

Plaintiff-Appellant,

v

No. 246388  
Wayne Circuit Court  
LC No. 01-116994-NF

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellee.

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Before: Murphy, P.J., and Griffin and White, JJ.

GRIFFIN, J. (*dissenting*).

Plaintiff sues defendant for breach of contract over defendant's refusal to pay uninsured motorist benefits arising out of a hit-and-run accident in which plaintiff's decedent was killed. The issue on appeal is whether the provision in the parties' insurance contract requiring the person making a claim to report a hit-and-run accident to defendant within 30 days is enforceable. I would hold that the contractual notice provision is enforceable and, therefore, affirm the lower court's grant of summary disposition in favor of defendant. MCR 2.116(C)(10).

I

Plaintiff frames her first issue as follows: "Whether under Michigan law State Farm's insurance contract's 30 day notice provision is ambiguous as to the estate, impossible to perform by the estate, and/or unenforceable as unconscionable?"

In regard to the alleged ambiguity of the notice provision, plaintiff argues that because plaintiff's decedent was killed instantly at the scene, "Mr. Cook did not live 30 days so as to live long enough to notify the defendant of his uninsured motorist claim." Further, plaintiff asserts "Certainly, if the defendant wanted the 'estate' or 'personal representative' to notify the defendant within 30 days, it would have used the proper language." In essence, plaintiff argues that the notice provision contained in the policy does not contemplate the death of an insured in a hit-and-run accident. I disagree and would hold that the notice provision is not ambiguous. *Morley v Auto Club of Michigan*, 458 Mich 459; 581 NW2d 237 (1998); *Hellebuyck v Farm Bureau General Ins Co of Michigan*, 262 Mich App 250, 254; \_\_\_ NW2d \_\_\_ (2004).

In dispute is the following section of the parties' insurance contract:

"REPORTING A CLAIM – INSURED'S DUTIES." "The *person* making claim . . . under the uninsured motor vehicle coverage" [shall] "report a 'hit-and-run' accident . . . to us within 30 days."

The insurance contract at issue specifically defines "person" as: "person – means a human being." Plaintiff's argument that, until a personal representative is appointed, a "person" cannot give notice of the claim, was rejected by our Court in an analogous context in *Halton v Fawcett*, 259 Mich App 699, 704; 675 NW2d 880 (2003). In construing the substantially similar medical malpractice statutory notice provision, we held in *Halton* as follows:

In sum, the word "person" refers to a human being, whether in their individual or representative capacity. Plaintiff is the same human being who is responsible for the notice of intent and the filing of the lawsuit. Therefore, the statutory requirement that the person who files the suit must have previously given notice of intent is satisfied. To impose a requirement that the appointment to the position of personal representative be made before the serving of the notice of intent would create a statutory requirement that simply does not exist and for which the courts have no authority to impose."

Although *Halton, supra*, involved the notice requirement by a "person" for medical malpractice, its reasoning is applicable to the present case involving a contractual notice provision.

Unlike the majority, I view the 30-day notice provision as plain and unambiguous. As a condition precedent, "*the person making claim*" under the insurance policy must report the hit-and-run accident to defendant within thirty days. Here, it is undisputed that plaintiff is "the person making claim," and that she failed to comply with the notice provision. The majority finds ambiguity in the notice provision on the basis that the class of allowable claimants is unclear: "The policy is thus ambiguous regarding who may be the 'person making claim' and therefore who has the obligation to provide notice." Contrary to the majority's position, the questions of (1) notice, and (2) the universe of allowable claimants, are two separate issues. Irrespective of whether "the person making claim" under the policy is a proper claimant, that person must give notice of the accident to defendant for that person's claim to proceed. The notice provision, itself, as a condition precedent, is not ambiguous.

Next, plaintiff raises the related argument that it was impossible for the estate to comply with the 30-day notice requirement because the personal representative was not appointed within the 30-day period. Again, for the reason stated in *Halton, supra*, plaintiff, Charlotte Jackson, is a "person" (irrespective of her appointment as personal representative), and the same human being who ultimately filed a claim under the contract. Therefore, she was required to give notice pursuant to the contractual notice provisions.

Last, plaintiff argues that the contractual notice provision is unenforceable because it is unconscionable. In this regard, plaintiff argues a disparity in relative bargaining power of the parties, and contends that the notice provision is substantially unreasonable. As to the relative bargaining strength of the parties, I note that because uninsured motorist benefits are not required by statute, *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 525; 502 NW2d 310 (1993), the

parties are free to contract for the terms, if any, of uninsured motorist benefits. Plaintiff has not alleged that the numerous auto insurance companies that do business in the state of Michigan fail to offer a choice of the terms of uninsured motorist benefits. Similarly, plaintiff has not cited authority for her argument that the 30-day notice provision for hit-and-run accidents is unreasonable.<sup>1</sup> On the contrary, in *Reynolds v Allstate Ins Co*, 123 Mich App 488; 332 NW2d 583 (1983), we held that a 60-day notice provision contained in a statute for claims made under the standard homeowners insurance policy was reasonable. Plaintiff has failed to bring to our attention any authority from Michigan or other jurisdictions in support of her position. In this regard, it is well settled that issues which are insufficiently briefed are deemed abandoned on appeal. *People v Van Tubbergen*, 249 Mich App 354, 365; 642 NW2d 368 (2002). “A party may not leave it to this Court to search for authority to sustain or reject its position.” *Consumers Power Co v Public Service Com’n*, 181 Mich App 261, 268; 448 NW2d 806 (1989).

## II

Plaintiff’s second issue is “Whether the notice provision of State Farm’s policy which in effect acted as limitations period was tolled until the estate was formed?”

On this issue, plaintiff confuses the contractual notice provision (which is a condition precedent for bringing suit) with statutory tolling provisions for the bringing of a wrongful death action. In the present case, defendant did not argue, and the lower court did not rule, that the statute of limitations had run. Compare *Rory v Continental Ins Co*, \_\_\_\_ Mich App \_\_\_\_; \_\_\_\_ NW2d \_\_\_\_ (2004) (Docket No. 242847, released July 6, 2004), with *Aldalali v Underwriters at Lloyd’s, London*, 174 Mich App 395; 435 NW2d 498 (1989). Rather, summary disposition was granted on the basis that a condition precedent to bringing suit – the 30-day notice provision following a hit-and-run accident – was not satisfied by plaintiff. See *Continental Studios v American Auto Ins Co*, 340 Mich 6; 64 NW2d 615 (1954). For this reason, the authorities cited by plaintiff are not applicable.

## III

Finally, plaintiff argues that the 30-day notice provision contained in the policy can be enforced only if defendant can prove actual prejudice. Plaintiff cites *Wendel v Swanberg*, 384 Mich 468; 185 NW2d 348 (1971), for her argument that “prejudice to [the] liability insurer is a material element in determining whether notice of accident or suit is reasonably given, and [the] burden is on insurer to demonstrate such prejudice.” However, *Wendel, supra*, involved a statutory homeowners insurance policy which provided that, following the filing of a lawsuit, the summons and complaint shall be “immediately forwarded” to the insurer. The Supreme Court interpreted this unspecific provision to require the insured to deliver the summons and complaint within a “reasonable” time to his insurance carrier and that prejudice to the insurer is a material element in determining whether notice was given within a reasonable time.

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<sup>1</sup> At oral argument, defense counsel argued that the 30-day notice provision was reasonable for hit-and-run accidents in view of the inherent difficulties of investigating such accidents after the fact.

*Wendel* is distinguishable on the basis that it does not involve a condition precedent to the filing of an action against an insurer, but, rather, when reasonable notice of a pending lawsuit is given to the insurance carrier. Furthermore, the present case does not involve any statutory obligations; instead, it entails a matter of contractual interpretation. In this regard, we stated the following in *Mate v Wolverine Mutual Ins Co*, 233 Mich App 14, 19-20; 592 NW2d 379 (1998):

Underinsurance automobile insurance protection is not required by law and therefore is optional insurance offered by some, but not all, Michigan automobile insurance companies. Because such insurance is not mandated by statute, the scope, coverage, and limitations of underinsurance protection are governed by the insurance contract and the law pertaining to contracts. *Auto-Owners Ins Co v Leefers*, 203 Mich App 5, 10-11; 512 NW2d 324 (1993). As the Supreme Court stated in *Rohlman v Hawkeye-Security Ins Co*, 442 Mich 520, 524-525; 502 NW2d 310 (1993), regarding substantially similar uninsured motorists benefits:

PIP [personal protection insurance] benefits are mandated by statute under the no-fault act, MCL 500.3105; MSA 24.13105, and, therefore, the statute is the "rule book" for deciding the issues involved in questions regarding awarding those benefits. On the other hand, the insurance policy itself, which is the contract between the insurer and the insured, controls the interpretation of its own provisions providing benefits not required by statute. Therefore, *because uninsured motorist benefits are not required by statute, interpretation of the policy dictates under what circumstances those benefits will be awarded.* [Emphasis added.]

Because we are dealing solely with an issue of contractual interpretation, we construe and enforce the plain and unambiguous terms of the contract. Because a condition precedent of the contract was not satisfied, the optional contractual coverage of uninsured motorist benefits is not available to the plaintiff, and her remedies are limited to statutory no-fault personal protection insurance (PIP) benefits. See, generally, *Bradley v Mid-Century Ins Co*, 409 Mich 1, 53; 294 NW2d 141 (1980), overruled on other grounds by *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 56-63; 664 NW2d 776 (2003).

For these reasons, I respectfully dissent and would affirm.

/s/ Richard Allen Griffin

STATE OF MICHIGAN  
COURT OF APPEALS

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PHYLLIS L. GRIFFITH, Legal Guardian for  
DOUGLAS W. GRIFFITH, a Legally  
Incapacitated Adult,

UNPUBLISHED  
August 16, 2002

Plaintiff-Appellee,

v

No. 232517  
Ingham Circuit Court  
LC No. 97-087437-NF

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant-Appellant.

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Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order ruling that room and board expenses for Douglas W. Griffith (hereinafter "Griffith"), a legally incapacitated adult, are an allowable expense under the no-fault act. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On April 28, 1994, Griffith sustained a severe brain injury in a motor vehicle accident. The accident left him totally disabled. He requires constant monitoring, care and assistance with every aspect of life. For fifteen months after the accident Griffith received in-patient treatment in hospitals and rehabilitation facilities. From August 1995 through August 1997 Griffith resided in a modified apartment and received continuous care. On August 6, 1997, Griffith returned to his home. Plaintiff, his wife, and other attendants provide the care that he requires.

At the time of the accident Griffith was covered under a no-fault automobile insurance policy issued by defendant. During the period that Griffith was hospitalized and while he resided in the apartment, defendant paid his expenses, including those incurred for food. After Griffith returned home a dispute arose regarding defendant's obligation to pay for various modifications to his home and for certain other expenses, including his food. Plaintiff filed suit seeking reimbursement of certain expenses, including those incurred for Griffith's food. The trial court ruled that the cost of Griffith's food was an allowable expense under MCL 500.3107(1)(a). That ruling is the only aspect of the trial court's decision challenged on appeal.

Defendant argues the trial court erred by holding that the cost of Griffith's food was an allowable expense under MCL 500.3107(1)(a), and asserts that a causal link must exist between

injuries sustained in a motor vehicle accident and an incurred expense. Defendant reasons that a person must consume food regardless of whether he is disabled and regardless of where he resides, and maintains that once Griffith returned home, his food expenses were no longer incurred as a result of his injuries. We affirm the trial court's decision.

Under the no-fault insurance act, an insurer must pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle. Payable benefits include allowable expenses. Allowable expenses consist of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation. MCL 500.3105(1); MCL 500.3107(1)(a). To be entitled to reimbursement for an allowable expense under MCL 500.3107(1)(a), a plaintiff must prove that: (1) the expense was reasonable; (2) the expense was reasonably necessary; and (3) the expense was incurred. *Spect Imaging, Inc v Allstate Ins Co*, 246 Mich App 568, 574; 633 NW2d 461 (2001).

The issue raised in this appeal is controlled by *Reed v Citizens Ins Co*, 198 Mich App 443, 453; 499 NW2d 22 (1993). In *Reed*, this Court held that where a person injured in a motor vehicle accident is unable to care for himself or herself and would be institutionalized if a family member were unwilling to provide home care, a no-fault carrier liable for the cost of maintenance in an institution is liable for the cost of maintenance, including room and board, in the home. The *Reed* Court expressed agreement with Justice Boyle's statement in *Manley v DAIIE*, 425 Mich 140, 152-153; 388 NW2d 216 (1986), that if a person who would require institutionalized care can be cared for at home due to the devotion of family members, the test for allowable expenses should not differ from that set out in MCL 500.3107(1)(a). *Manley, supra*, 169 (Boyle, J., concurring in part and dissenting in part).<sup>1</sup>

Defendant's assertion that the no-fault act requires that an expense, to be allowable, must have been incurred only as a result of an injured insured being cared for in an institutionalized setting was rejected in *Reed, supra* at 453. Defendant does not dispute that if Griffith's wife were unwilling or unable to care for him at home, he would require institutionalized care. Under the rule announced in *Reed, supra*, the cost of Griffith's food is an allowable expense under MCL 500.3107(1)(a).

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<sup>1</sup> In *Manley v DAIIE*, 127 Mich App 444; 339 NW2d 205 (1983), a jury found the defendant insurer liable for payment of food expenses for the injured insured, who was cared for at home by family members. On appeal, this Court stated that food obtained at an institution is an allowable expense because an institutionalized person must obtain food from the institution, and the expense represented an extraordinary cost not analogous to an expense incurred at home. This Court reversed the award of room and board on the ground that it did not distinguish between food expenses and the other services provided by an institution. *Id.*, 454. In *Manley v DAIIE*, 425 Mich 140, 152-153; 388 NW2d 216 (1986), our Supreme Court declared that portion of this Court's opinion to be without precedential effect on the ground that the issue whether food and other maintenance expenses are allowable expenses under MCL 500.3107(1)(a) was not presented in the trial court or argued in this Court.

Defendant's efforts to distinguish *Reed* are unavailing where the *Reed* Court held that if an injured insured would otherwise require institutionalized care were a family member not willing to provide home care, room and board in the home constitutes an allowable expense under MCL 500.3107(1)(a). *Reed, supra*.

Affirmed.

/s/ Helene N. White  
/s/ Janet T. Neff  
/s/ Kathleen Jansen

## Opinions listed in 15c, but not 15d

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
January 18, 2005

v

No. 245099  
Van Buren Circuit Court  
LC No. 00-011976-FC

JUNIOR FRED BLACKSTON,

Defendant-Appellant.

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Before: White, P.J., and Markey and Owens, JJ.

PER CURIAM.

Defendant was convicted of first-degree murder, MCL 750.316, and was sentenced to life imprisonment. He appeals as of right, and we reverse and remand for new trial.

This case stems from a homicide that occurred more than fifteen years ago. On the evening of September 12, 1988, Charles Miller disappeared after visiting defendant's Bangor home. On July 10, 2000, Charles Dean Lamp, a co-defendant, led police to a site one-half mile from his home, where the buried remains of a body matching Miller's description were found. Defendant was subsequently arrested and charged in connection with Miller's death.

A jury trial was held in April 2001, and defendant was found guilty of first-degree murder. However, the trial court granted defendant's motion for new trial based on the trial court's misinforming the jury regarding the prosecution's grant of immunity to prosecution witness Guy Carl Simpson in exchange for his testimony. A second jury trial took place in October 2002.

At this second trial, Simpson appeared in court, but resisted giving testimony. He was found to be unavailable, and the court admitted his testimony from the first trial together with an instruction clarifying the prosecutor's grant of immunity. A written statement Simpson had given after the first trial, in which he recanted his testimony, explained why he had testified as he had, and stated that only he and Lamp were with Miller when he was killed, was not admitted.

According to Simpson's testimony at the first trial, which was read to the jury at the second trial, on the evening of September 12, 1988 Simpson was dropped off at the home of defendant and defendant's then girlfriend, Darlene (Rhodes) Zantello, for an unannounced visit sometime between 10:00 and 10:30 p.m. When Simpson arrived, defendant and his one-year-old

daughter were at home, and Zantello may have been there at that time as well. Miller also was at defendant's house when Simpson arrived. Between one-half hour and one hour after Simpson arrived, Lamp, who was also a friend of defendant's, and whom Simpson did not like, arrived at defendant's home. Lamp announced that he wanted to steal some marijuana from a field he knew about. Miller was known to have a knack for finding marijuana plants, and Simpson assumed that it had been planned in advance that Miller would go with Lamp and defendant to get the marijuana. Defendant originally stated that he could not go because he had to stay with his daughter, since Zantello had left by then, and suggested that Simpson accompany Lamp and Miller in his stead. Eventually, however, all four men, together with defendant's daughter, left the home to go steal the marijuana.

Lamp drove into the woods, driving around for approximately forty-five minutes before turning off onto an unpaved "two-track" road and stopping. All four men got out, while the child was left sleeping in the car, and Lamp took a rifle out of the trunk of his car and handed it to defendant. Lamp walked off some distance ahead of the others, allegedly to look for the field, while defendant, Miller, and Simpson followed behind. Shortly thereafter, Lamp called out that he had found the field, and at that point defendant turned and shot Miller one time, and Miller fell to the ground, apparently dead. Lamp then rejoined Simpson and defendant, and Simpson and Lamp moved Miller's body to a nearby, pre-dug grave and placed Miller in the grave. Defendant then jumped down into the grave and returned a moment later with something in his hand, which Simpson believed to be one of Miller's ears. Lamp then filled in and disguised the grave, and the three men returned in Lamp's car, along with defendant's daughter, to defendant's home. Approximately one half-hour later Lamp left to go home, while Simpson remained at defendant's home for the remainder of the night.

Simpson testified that several days after the murder Lamp told him that they had killed Miller because Miller had "gotten in over his head with the wrong people." Simpson testified that defendant told him that he needed to show Miller's ear to Benny Williams. Several days after the murder, Simpson was with defendant when he took a bag, which Simpson believed contained Miller's ear, and threw it in a nearby river.

Simpson admitted that in the past he had told several different versions of the events surrounding Miller's disappearance, including that only he (Simpson) and Lamp, and not defendant, were involved in Miller's death; that an entirely different person, Charles Pippin, committed the crime; and that Miller was not really dead, but rather was simply working in another state. Simpson admitted that he had made his statements with an eye to his own personal gain, and further admitted that if he testified to a different set of events at defendant's trial, he would probably lose his grant of immunity and would risk perjury charges. Simpson also confirmed that Lamp had, in the past, threatened to kill him if he gave any information regarding Miller's murder to the police or if he endangered Lamp's own plea-agreement in any way.

Simpson's testimony as to the events surrounding Miller's death was largely corroborated by Lamp. Lamp, who was testifying pursuant to a plea-bargain under which he was permitted to plead guilty of manslaughter and receive a ten to fifteen year sentence in exchange for his testimony, testified that defendant was angry with Miller because he believed Miller was planning to rob Benny Williams, a local drug dealer who supplied defendant with cocaine. As a result, Lamp and defendant had discussed killing Miller three or four times, and ultimately they decided to take Miller out to a pre-selected, isolated area on the pretext of stealing marijuana,

and to shoot him and bury his body in a pre-dug grave. The two men located an appropriate area not far from where Lamp then lived, off an unpaved two-track road, and several nights before Miller's murder they prepared a grave at this location, with both Lamp and defendant taking turns digging.

Lamp testified that on the night of Miller's murder, he drove to defendant's house, and when he arrived he found that not only was defendant there, but Simpson was present as well. Lamp was not happy that Simpson was there, because they did not like each other, but defendant took him aside and informed him that Simpson was going to assist in the murder. Approximately a half-hour after Lamp arrived, Miller was dropped off at defendant's house, and then the four men, together with defendant's daughter, got into Lamp's car and drove to the pre-selected site. As previously planned by Lamp and defendant, when they arrived at the site, Lamp handed defendant a rifle, which he took from the trunk of the car, and then Lamp walked alone ahead of the others to find the pre-dug grave. When he found the grave, he shouted back to the others and then he heard a single gunshot. He then went back to the others, where he found Miller lying on the ground with blood seeping from the back of his head and defendant holding the rifle in his hands. Lamp, Simpson, and defendant carried Miller's body to the awaiting grave, defendant jumped in and cut off Miller's ear, and then the three men filled in the grave and disguised it so that it would not be discovered. Lamp stated that he subsequently sold the rifle.

Lamp confirmed that he had once threatened to kill Simpson when he found out Simpson was wearing a hidden wire in an attempt to incriminate Lamp and defendant, but insisted it was merely an idle threat and that he had no intention of ever following through on it.

Rebecca (Krause) Mock, Miller's girlfriend at the time of his death, and her sister Roxanne (Krause) Barr, who lived with Miller and Mock at the time Miller was killed, both testified that defendant admitted being present at Miller's murder, although their testimony differed with regard to whether defendant admitted shooting Miller.

Darlene Zantello, formerly Darlene Rhodes, who was defendant's girlfriend at the time of Miller's death, was called to the stand by the prosecution, but denied having any memory of the events of the night Miller died, her prior statements to police, her prior testimony, or an affidavit she signed after the first trial. The court established through questioning that Zantello had been an alcoholic for many years, and had suffered head injuries. The court found Zantello to be unavailable as a witness, pursuant to MRE 804, and permitted the prosecution to read Zantello's testimony from defendant's first trial into the record.

At the first trial, Zantello testified that she lived with defendant in September 1988, that she was pregnant at that time, that on the night of Miller's death she had experienced severe stomach pains and had gone to the hospital. Zantello testified that she spent three or four hours at the hospital before returning home to find the house empty. After unsuccessfully trying to locate her daughter at a friend's, she laid down and fell asleep. She was awakened some time later when defendant and Simpson returned to the house. Zantello testified that she heard Simpson say something to defendant like "that was like a movie with all that blood," and that she very vaguely recalled someone saying something regarding someone's ear being cut off. She also had a vague recollection of Simpson saying something about almost blowing someone's whole head off and about a pre-dug hole. Zantello testified that when Miller's girlfriend, Mock,

came to the house looking for him, defendant denied any knowledge of his whereabouts. A year or two later, however, after Zantello and defendant had broken up, defendant came over to Zantello's house where Mock was then living. He became weepy and said he was sorry that "they did what they did," but he did not say that he himself had done anything.

Following the reading of her testimony into the record, Zantello was recalled to the stand. On cross-examination she denied any recollection of telling police in 1988 and 1990 that defendant was at home when she returned from the hospital. When defense counsel began to question her regarding the affidavit executed after the first trial in which she stated that her first statement to the police was true and her testimony at trial was not, the trial court stopped the questioning on the basis that the affidavit was executed after the first trial, and therefore was not a *prior* inconsistent statement.

Three of defendant's sisters, Shirley Gargus, Sheila Blackston, and Linda Johnson, each testified as to defendant's whereabouts on the night of Miller's murder and confirmed Zantello's assertion that she went to the hospital that night. Gargus testified that on September 12, 1988 around 11:00 p.m. Sheila Blackston stopped by to leave her children for Gargus to baby-sit. Blackston had Zantello with her, and told Gargus that she was taking Zantello to the hospital for stomach pain. Around midnight, Blackston called her from the hospital and asked her to go check on defendant, since he had been left alone with his and Zantello's one-year-old baby. When she arrived at defendant's house a few minutes later defendant and the baby were at home.

Blackston confirmed Gargus' testimony, stating that on September 12, 1988 she took Zantello to the hospital around 11:00 p.m. for stomach pain, and dropped her own children off with Gargus on the way to the hospital. When she returned Zantello to Zantello's and defendant's home after leaving the hospital, defendant was at home.

Johnson testified that on September 12, 1988 she got into a fight with her husband and went over to defendant's house around 11:30 p.m. to calm down. She stated that when she arrived, defendant and the baby were at the house alone, asserted that the only visitor during the time she was at defendant's house was defendant's friend Lonnie Johnson, who visited for approximately twenty minutes around midnight, and told the court that when she left defendant's home at around 12:45 a.m. defendant was still at home.

Defendant also called Benny Williams. Williams asserted that he had not known Miller, that he had never asked anyone to kill Miller, that he did not know anything about Miller's death, and that no one had ever brought him a human ear. Williams did admit, however, that in 1988 he was a cocaine dealer in Bangor. A police officer had earlier testified that the police concluded that Williams was not involved in the murder.

The prosecution's experts expressed the opinion that Miller died from a gunshot wound to the neck. Defendant's experts expressed the opinion that Miller's injuries were caused by blunt force trauma.

## II

Defendant first argues that the trial court abused its discretion when it denied his motion for a new trial, which was based on the claim that the court had erred in barring defendant from

impeaching the prior recorded testimony of two witnesses with inconsistent statements made after the two had testified in defendant's first trial but before defendant's second trial. The court agreed that the statements were, in fact, admissible under MRE 806, but determined that they were nonetheless properly excluded because the statements were more prejudicial than probative and, thus, were inadmissible under 403. We agree with defendant that the court erred in denying him the right to impeach the witnesses with these statements.

Whether to grant a new trial is in the trial court's discretion, and its decision will not be reversed absent a clear abuse of that discretion. *People v Jones*, 236 Mich App 396, 404; 600 NW2d 652 (1999). The decision whether to admit evidence also is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of that discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made, *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000), or the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias, *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). Furthermore, an evidentiary error does not merit reversal in a criminal case unless, after an examination of the entire cause, it affirmatively appears that it is more probable than not that the error was outcome determinative. *People v Smith*, 243 Mich App 657, 680; 625 NW2d 46 (2000), remanded on other grounds 465 Mich 931 (2001).

First, as the trial court recognized, and the prosecution does not contest, MRE 806, rather than MRE 613, governs the use of Simpson's and Zantello's statements for impeachment purposes. MRE 806 provides:

#### ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT

When a hearsay statement, or a statement defined in Rule 801(d)(2)(C),(D) or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Defendant should have been permitted to impeach the witnesses with their statements under MRE 806, which permits the credibility of a declarant of an admitted hearsay statement to be attacked with any inconsistent statement made at any time, and without regard to whether the witness is afforded an opportunity to deny or explain.

MRE 403 provides that evidence that is otherwise relevant may nonetheless be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. "Unfair prejudice" means more than merely that the evidence is damaging to the challenging party. *People v Mills*, 450 Mich 61, 75; 537 NW2d 909, mod on other grounds 450 Mich 1212 (1995).

Rather, what is meant by the phrase “unfair prejudice” in MRE 403, is “an undue tendency to move the tribunal to decide on an improper basis, commonly, though not always, an emotional one.” *People v Vasher*, 449 Mich 494, 501; 537 NW2d 168 (1995).

In other words, evidence is said to be “ ‘unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury.’ ” *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001), quoting *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998).

Federal courts have held that Rule 403<sup>1</sup> is an extraordinary remedy, the major function of which is to exclude matters “of scant or cumulative probative force, dragged in by the heels for the sake of their prejudicial effect,” and have stated that FRE 403 carries a strong presumption in favor of admissibility. *United States v Grant*, 256 F3d 1146, 1155 (CA 11, 2001), quoting *United States v Utter*, 97 F3d 509, 514-515 (CA 11, 1996), *United States v Cross*, 928 F2d 1030, 1048 (CA 11, 1991), and *United States v Church*, 955 F2d 688, 703 (CA 11, 1992). At the same time, however, federal courts have also noted that a reviewing court must remember that the trial court, and not the appellate court, is in the best position to assess the extent of the prejudice caused to a party by a piece of evidence, and have further stated that when a trial court has given careful attention to a balancing of prejudice and probative value, appellate courts should be particularly mindful of their duty not to reverse absent a clear abuse of discretion. *Vaughn v Willis*, 853 F2d 1372, 1380 (CA 7, 1988), quoting *United States v Long*, 574 F2d 761, 767 (CA 3 1978), and *United States v Garner*, 837 F2d 1404, 1416 (CA 7, 1987).

The general principle that witness credibility is for the jury to determine is not disturbed by FRE 403. Therefore, evidence should not be excluded under FRE 403 because the trial court considers a witness unworthy of belief. Instead, “balancing probative worth against unfair prejudice involves the trial court giving full credit to the [evidence] and then considering probative worth against unfair prejudice.” 1 Mueller & Kirkpatrick, *Federal Evidence* (2d ed), § 94. See *United States v Thompson*, 615 F2d 329, 332 (CA 5, 1980) (reversing trial court because FRE 403 does not authorize judge to “protect” jury from contradictory testimony, nor exclude evidence because judge “does not find it credible”); *Bowden v McKenna*, 600 F2d 282, 284 (CA 1, 1979) (weighing probative value against unfair prejudice under FRE 403 means probative value “if the evidence is believed, not the degree the court finds it believable”).

Defendant and the prosecution both discuss *Vaughn, supra*, and *Grant, supra*, as the relevant cases. The trial court relied on *Vaughn, supra*, in concluding that it would have properly barred use of the statements for impeachment under MRE 403. We find *Vaughn* distinguishable and *Grant* on point.

*Vaughn* involved a civil suit by a prisoner against a guard, alleging that the guard had deliberately or recklessly exposed him to sexual assaults. Another prisoner had given a pretrial

<sup>1</sup> Where a Michigan Rule of Evidence is modeled after its Federal Evidentiary Rule counterpart, this Court can look to federal precedent for guidance. *People v Barrera*, 451 Mich 261, 267; 547 NW2d 280 (1996).

deposition in which he corroborated that the plaintiff had been sexually assaulted, and testified that the defendant guard had told him to keep silent about the assaults and to say that he saw nothing. Before trial, the prisoner witness wrote defense counsel a letter stating that he would not testify at trial and that he would not attest to the accuracy of his deposition. At trial, the witness refused to testify, stating that he feared for his life and the lives of his family members. The court admitted the deposition transcript but did not allow the use of the letter for impeachment. On appeal, the Seventh Circuit upheld the admission of the deposition transcript and the trial court's rulings, concluding that the use of the letter for impeachment would have been more prejudicial than probative.

The court agreed with the trial court's conclusion that the letter "could mean anything. . . . It would not enlighten the jury at all to read this letter," and found the letter "very ambiguous."<sup>2</sup> The court stated that read in isolation, it could not determine the letter's significance. The court also observed that parts of the letter apparently dealt with mistakes the witness had made in his deposition and had been permitted to correct after mailing the letter, so that the comments in the letter could be interpreted by the jury in a manner highly prejudicial to the plaintiff. Further, the court noted the trial court's dilemma arising from the fact that the witness refused to testify because "he was scared to death of the people he is going to testify about." The court observed that if the trial court had permitted the jury to consider the letter, it also would have had to permit disclosure that the letter and the refusal to testify were a product of the witness' fear for his safety and that of his family, and that the defendant had made it clear that he did not want such disclosure made. None of these factors were present in the instant case. The statements here were not ambiguous, there was no danger of misinterpreting their meaning, and there was no impediment to full disclosure of the circumstances of their being made.

In contrast, the facts of *Grant, supra*, are analogous. In *Grant*, the prosecution used as evidence against Grant statements made by a co-conspirator in the course of the conspiracy. These statements were admitted under FRE 801(d)(2)(E). Grant attempted to impeach the co-conspirator's statements with an affidavit that his attorney had obtained from the co-conspirator after the co-conspirator was deported to Jamaica. The court did not allow the impeachment, finding that the statements were not inconsistent. The Court of Appeals reversed, finding that the affidavit's statements were admissible for impeachment purposes under FRE 806. The court then addressed the prosecution's argument that the affidavit was inadmissible under FRE 403 because if believed, it would provide a complete defense rather than merely impeaching the co-conspirator's hearsay statements. The court rejected that argument, observing that rule 403 is an "extraordinary remedy" that carries "a strong presumption in favor of admissibility," and that the affidavit could do no more than impeach and could not provide a complete defense if the

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<sup>2</sup> The letter read:

I am not going assign this transcript against V. Willis and V. Terry. Two wrong don't make a right.

I am not going to testify in this case I made a lots of mistakes

I would like to see you person. Let me say this V. Terry don't have anything coming by law.

prosecution requested the limiting instruction to which it would have been entitled. *Grant, supra* at 1155. The court also rejected the prosecution's argument that the affidavit statements were properly excluded because they were unreliable:

Rule 806 made the statements admissible for impeachment purposes, and the point of admitting inconsistent statements to impeach is not to show that they are true, but to aid the jury in deciding whether the witness is credible; the usual argument of the party doing the impeaching is that the inconsistent statements show the witness is too unreliable to be believed on important matters. See *United States v. Graham*, 858 F2d 986, 990 n 5 ([CA5,] 1988) [stating the same proposition]. [*Grant, supra* at 1156.]

In the instant case, recognizing the appropriate standard of review, we nevertheless are persuaded that the trial court abused its discretion in denying the motion for new trial on the basis that barring the use of the statements to impeach the witnesses was supported by MRE 403. The court concluded that use of the statements would have been unfairly prejudicial because the statements went beyond mere statements and were arguments for acquittal, and the court believed that the witnesses had deliberately made themselves unavailable and given the statements "to have [their] cake and it too." However, the statements were not offered to prove the truth of what was in them, but to attack the witnesses' credibility. As in *Grant*, the very reason the court excluded the statements, because it questioned the veracity and credibility of the witnesses, made the statements all the more probative on the credibility issue. Defendant should have been free to show the jury that the witnesses were unworthy of belief. Credibility is always a question for the jury, and the court erred in concluding that it would have been proper to insulate the jury from the witnesses' contradictory statements. Further, the court was free to redact any portions of the statements that did not amount to a statement inconsistent with the witness' hearsay statement.

In a supplemental brief filed in propria persona, defendant raises a similar argument with respect to other witnesses who would have testified to prior inconsistent statements of Simpson in which he stated that only he and Lamp were involved in Miller's murder. Anticipating defendant's calling such witnesses, as was done in the first trial, the prosecutor asked the court to exclude the testimony of any witness who would testify to a prior statement that was not brought to the witness' attention under MRE 613(b). Defense counsel agreed that she intended to call a number of such witnesses, and had affidavits from such witnesses, including some who were not known at the time of the first trial. The court ruled the testimony inadmissible. For the reasons discussed above, this testimony was admissible under MRE 806, and the court erred in excluding it.

We reject the argument that the court's error was harmless because Simpson and Zantello had already been effectively impeached with inconsistent statements at the first trial. The jury heard evidence that Zantello's first statements to police were that defendant was home when she returned from the hospital, and that she knew nothing about Miller's disappearance except that defendant was not involved. However, these statements were given shortly after Miller's disappearance, and when Zantello was living with defendant. The jury could have easily decided that the earlier inconsistent statements did not undermine the trial testimony, reasoning that Zantello had given a statement in March, 1990 that incriminated defendant, and that at the time of trial, Zantello was no longer involved with defendant, and was therefore no longer willing to

lie in his behalf. The fact that Zantello reaffirmed her earlier position shortly before the second trial would have undermined her trial testimony in a way that the earlier statements could not.

Regarding Simpson, although he was impeached with having given prior inconsistent versions of what happened to Miller, as set forth above, and he admitted at the first trial that he had told Jody Harrington shortly after the shooting that only he and Lamp were involved, he also admitted telling police that he never made such a statement to Harrington. Further, Detective Sergeant Averill testified that Simpson had remained consistent in the version of events he claimed to have witnessed, and stated that Simpson's testimony at defendant's first trial had been consistent with this version of events. Had Simpson's inconsistent written statement and the testimony of other witnesses regarding other inconsistent statements been admitted under MRE 806, the jury would have had a very different view of Simpson's credibility. We conclude that defendant has shown the requisite prejudice -- that upon a review of the entire record, it is more probable than not that the error in denying the admission of substantial impeachment evidence was outcome determinative.<sup>3</sup>

In light of this conclusion, we do not reach defendant's additional claims of error, except to note that if Simpson is again declared to be unavailable, his refusal to testify should be clearly developed on the record.

Reversed and remanded for new trial. We do not retain jurisdiction.

/s/ Helene N. White  
/s/ Jane E. Markey  
/s/ Donald S. Owens

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<sup>3</sup> Defendant asserts that the error denied him his constitutional right to confront witnesses against him. The prosecution concedes

In reviewing the parallel federal rule of evidence, FRE 806, the federal courts have found that the improper exclusion of impeachment evidence implicates a defendant's right of confrontation where the trial court admitted the testimony of an unavailable hearsay declarant. See *United States v Burton*, 937 F2d 324, 328 (CA 7, 1991); *United States v Moody*, 903 F2d 321, 329 (CA 5, 1990); and *Smith v Fairman*, 862 F2d 630, 638 (CA 7, 1988).

Under standard of review, the prosecution states, "As a preserved claim of constitutional error, this Court must determine whether the people have established beyond a reasonable doubt that any error was harmless. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999)." The prosecution argues that there was no error because the impeachment evidence was more prejudicial than probative, and that even if there was error, the error is harmless in light of the other impeachment evidence. We have rejected these arguments above. Although conceded by the prosecution, we do not decide whether the error is of constitutional magnitude, and instead have analyzed the case under the more stringent standard applied to non-constitutional error.

Court of Appeals, State of Michigan

ORDER

People of the State of Michigan v Clarence C. Hansford, Jr.  
Docket # 188370  
L.C. # 92 012590

Helene N. White  
Presiding Judge

Roman S. Gibbs  
David H. Sawyer

Judges

As directed by the Supreme Court, this Court has reconsidered the matter in light of People v Cervantes, 448 Mich 620 (1995). The Court concludes that the 40 to 60 year sentence constitutes an abuse of discretion and ORDERS that the case be remanded for resentencing.

Remanded. We do not retain jurisdiction.



Sawyer, J., would dissent for the reason that he does not feel that the sentence imposed by the trial court constitutes an abuse of discretion.



A true copy entered and certified by Ella Williams, Chief Clerk, on

October 16, 1995  
Date

Ella Williams  
Chief Clerk

STATE OF MICHIGAN  
COURT OF APPEALS

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GERALD GRONCKI and CHERYL GRONCKI,

Plaintiffs-Appellants,

v

DETROIT EDISON COMPANY,

Defendant-Appellee.

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UNPUBLISHED

December 27, 1994

No. 153538

LC No. 91-415015-NO

Before: Jansen, P.J., and White and M.J. Talbot,\* JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order of the Oakland Circuit Court granting defendant's motion for summary disposition. We affirm in part, reverse in part, and remand for further proceedings.

Plaintiff (hereafter plaintiff will refer solely to plaintiff Charles Groncki), a maintenance worker, was working on a condominium unit near the outer perimeter of a condominium complex on April 24, 1989, in Novi. Plaintiff was moving a fully extended twenty-four foot aluminum ladder when he lost control of the ladder and it touched one of defendant's power lines. Plaintiff was electrocuted and he suffered cardiac arrest and burns to his left foot. Fortunately, he was not killed, but his small left toe had to be amputated as a result of the accident.

Plaintiffs filed suit against defendant Detroit Edison Company, alleging that defendant was negligent in locating the power lines too close to the ground and too near the building. Plaintiffs also alleged that defendant was negligent in failing to warn plaintiff and others of the locations and dangerousness of the power lines. Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). The trial court granted the motion, ruling that defendant did not owe a duty to plaintiff as a matter of law.

Whether a duty exists is a question of law for the court to determine. Trager v Thor, 445 Mich 95, 105; 516 NW2d 69 (1994). Questions of law are reviewed de novo on appeal. Cardinal Mooney High School v Michigan High School Athletic Ass'n, 437 Mich 75, 80; 467 NW2d 21 (1991). In Schultz v Consumers Power Co, 443 Mich 445, 452; 506 NW2d 175 (1993), our Supreme Court held that in cases involving electrical wires, the "test to determine whether a duty was owed is not whether the company should have anticipated the particular act from which the injury resulted, but whether it should have foreseen the probability that injury might result from any foreseeable activity done on the premises for business, work, or pleasure." Further, electric companies are bound to anticipate ordinary use of the area surrounding the lines and to appropriately safeguard the attendant risks. Id.

The facts, taken in a light most favorable to plaintiff, Radtke v Everett, 442 Mich 368, 374; 501 NW2d 155 (1993), show that the power lines were installed in 1972. The condominium complex was completed in 1978. Plaintiff worked for the construction company that built the complex. It is

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\* Circuit judge sitting on the Court of Appeals by assignment.

undisputed that plaintiff knew of the location of the power lines and the dangers of those lines. The power lines were twenty-one feet high and were located 14.5 feet away from the building. The Michigan Public Safety Commission regulations require power lines to be fifteen feet high and eight feet away from buildings of this type.

Plaintiff was the maintenance supervisor for the condominium complex. On the day of the accident, plaintiff and another worker were fixing the flashing and shingles of a roof. Plaintiff moved a twenty-four foot aluminum extension ladder which came into contact with electrical wires running parallel to the building. Plaintiff suffered the injuries as described.

We believe that the trial court erred in holding that defendant did not owe a duty to plaintiff with regard to the claim that the wires were too close to the ground and too near the building. To the extent that plaintiff alleges that defendant was negligent in failing to properly insulate the lines, failed to erect barriers to prevent contact with the lines, failed to continuously make proper and reasonable inspection of the lines, and was negligent in the selection of the route of the lines, we believe those allegations are part of plaintiff's general negligence claim that the lines were too close to the ground and too near the building. Therefore, we find that plaintiff will be able to present these allegations to the jury as well.

In Schultz, *supra*, p 454, the Supreme Court held that utility companies must reasonably inspect and repair their electric lines. More importantly, the Supreme Court noted that a company that maintains and employs energized power lines must exercise reasonable care to reduce potential hazards as far as practicable. *Id.*, p 451. Thus, like the utility company and decedent in Schultz, the relationship between defendant and plaintiff in the instant case is sufficient to impose a duty under the circumstances. Electrical energy possesses inherently dangerous properties, and electric utility companies possess expertise in dealing with those properties and delivering electricity. *Id.*, pp 450-451.

Further, it is foreseeable that defendant's conduct may create a risk of harm to the victim. Here, a reasonable person could anticipate that a maintenance worker, doing work on the roof and gutters, could be electrocuted if his aluminum ladder touched an electrical wire carrying approximately 13,200 volts. The Supreme Court has noted that an electric company should realize that homeowners generally maintain their homes, which includes washing windows, repairing the roof, cleaning gutters, cleaning troughs, and painting. *Id.*, pp 452-453. Thus, as the Court in Schultz noted that the lines were twenty-four feet high and fifteen horizontal feet away from the house, we find that considering the proximity of the wire to the condominium unit of twenty-one feet high and 14.5 feet away, it is foreseeable that someone making repairs to the roof could be injured if the aluminum ladder on which he was working came too close to or touched an electrical wire carrying such high voltage electricity. *Id.*, p 453.

Accordingly, the trial court erred in holding that defendant did not owe a duty to plaintiff as a matter of law with regard to the claim that the electrical wires were too near the ground and too near the building.

However, we find that the failure to warn claim was properly dismissed by the trial court. In Koehler v Detroit Edison Co., 383 Mich 224, 231; 174 NW2d 827 (1970), the Supreme Court held that the fact that Edison knew a building was under construction near its power line and that cranes were being used in that construction would not, standing alone, create a duty upon Edison to remove the electrical charge, insulate the line, or notify the parties of the dangerous condition. There was further evidence that the workers fully understood the dangers of the electrical wires and the importance of staying away from them.

In the instant case, it is undisputed that plaintiff knew where the power lines were located and knew of the dangers of those lines. This is not a case where plaintiff did not know of the dangers of the lines. See Wilhelm v Detroit Edison Co, 56 Mich App 116, 130; 224 NW2d 289 (1974). Thus, defendant did not owe a duty to warn plaintiff of the dangerousness of the power lines where defendant was not informed of the maintenance work being done near the lines where plaintiff was admittedly aware of the locations and dangers of the power lines. Carr v Detroit Edison Co, 49 Mich App 332, 340; 212 NW2d 70 (1973).

Finally, the fact that the placement of the power lines complied with the Michigan Public Safety Commission regulations does not preclude plaintiff's claim. As the Supreme Court has held, compliance with industry-wide standards is not an absolute defense to a claim of negligence. Schultz, supra, p 456. Rather, compliance with industry standards or other regulations is evidence of due care and goes to the question of whether a defendant breached its duty of care, not whether a duty existed. Id. Ultimately, whether defendant in this case breached its duty, or acted negligently, is for the trier of fact to determine. Id., p 457; Riddle v McLouth Steel Products Corp, 440 Mich 85, 96; 485 NW2d 676 (1992).

Accordingly, we reverse the grant of summary disposition regarding the general negligence claim that the power lines were placed too near the building and too near the ground and we remand for further proceedings on that claim only. The grant of summary disposition with regard to the failure to warn claim is affirmed.

Affirmed in part, reversed in part, and remanded for further proceedings. Jurisdiction is not retained.

/s/ Kathleen Jansen  
/s/ Michael J. Talbot

STATE OF MICHIGAN  
COURT OF APPEALS

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GERALD GRONCKI and CHERYL GRONCKI

Plaintiff-Appellants,

v

DETROIT EDISON COMPANY,

Defendant-Appellee.

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UNPUBLISHED

No. 153538  
LC No. 91-415015-NO

Before: Jansen, P.J., and White and M.J. Talbot, \*JJ.

WHITE, J. (concurring)

I join in the majority opinion and observe that to the extent plaintiff's claims regarding the failure to mark the lines are determined by the trial court to be properly presented, these claims are part of the negligence claims as to which summary disposition is reversed.

/s/ Helene N. White

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\* Circuit judge, sitting on the Court of Appeals by assignment.

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

February 24, 1994

v

No. 144052  
LC No. 87-03365

THOMAS J. RYAN,

Defendant-Appellee.

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Before: Jansen, P.J., and White and Hansen,\* JJ.

PER CURIAM.

The people appeal by right from the trial court's August 20, 1991 opinion and order setting aside defendant's conviction for possession with intent to deliver 650 grams or more of cocaine, MCL 333.7401; MSA 14.15(7401) on the grounds of governmental vindictiveness. The people challenge the trial court's decision asserting clear error. We affirm.

On March 21, 1987, defendant Thomas Ryan was arrested in Livonia by federal police agents, in the act of transferring one kilogram of cocaine to an undercover Federal Drug Enforcement Administration (DEA) agent. Defendant was charged in state court with possession with intent to deliver 650 grams or more of cocaine, and was convicted by a jury as charged on June 2, 1988. He was sentenced to life imprisonment without parole.

Defendant appealed his conviction. This Court affirmed, but held that his assertions concerning the manner in which the DEA had chosen to bring charges in Michigan set forth a *prima facie* case of governmental vindictiveness, and remanded for an evidentiary hearing on that question, without retaining jurisdiction. *People v Ryan*, No. 113547 (unpublished per curiam opinion, rel'd May 9, 1991).

After an evidentiary hearing on June 19 and 27, 1991, the trial court found that

surrendering the defendant to State prosecution under the circumstances was vindictive governmental action which not only denied defendant his right to counsel but violated his rights under the Due Process Clause of the Fourteenth Amendment to the Federal Constitution as well."

The court then set aside defendant's conviction and ordered him discharged. The prosecutor appealed. This Court granted the prosecutor's motion for a stay of proceedings and for immediate consideration. We note that the prosecutor's brief on appeal misstates the issue as "Did the trial court clearly err in dismissing the instant case on the ground that the prosecution should have been brought in federal court?". The trial court did not dismiss the case on the ground that the prosecution should have been brought in federal court,<sup>1</sup> but, rather, on the ground that the decision to bring it in state court was a vindictive governmental response to defendant's request to consult with counsel.

As with any finding of fact by the trial court, we review a finding of governmental vindictiveness for clear error. MCR 2.613(C); see also *United States v Schoolcraft*, 879 F2d 64, 67 (CA3 1989); *United States v Meyer*, 258 US App DC 263; 810 F2d 1242, 1244 (1987). In so doing, we give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appear before it. MCR 2.613(C).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Our review of the evidence persuades us that the facts found by the trial court are not clearly erroneous. While the evidence lends itself to different interpretations, we are not prepared to say that the trial court clearly erred in finding governmental vindictiveness. The trial court carefully considered all the evidence and set forth sound reasons for crediting defendant's account of the conversations and events. Moreover, the evidence established that this was a federal investigation and that there was no state involvement until the Livonia Police Department was called in to provide back up for the arrest. A DEA agent testified that she could recall no case involving over 650 grams, in her six years as an agent, that had been turned over for state prosecution. The court's findings that after defendant requested an opportunity to consult with counsel and his initial attempt to obtain the advice of counsel failed, the federal authorities referred the case to the state without providing defendant "any additional and reasonable opportunity to consult with counsel," and that they did so out of vindictiveness, were not clearly erroneous.

Affirmed.

/s/ Kathleen Jansen  
/s/ Helene N. White  
/s/ Kurt N. Hansen

<sup>1</sup> The court stated "The court does not wish to be understood as saying that the mere fact that (sic) state prosecution under a harsher statute simply because the defendant would not cooperate would necessarily amount to vindictiveness. The agents did not merely choose to go to the State court. Had they done that merely to see that defendant, if convicted, would have received a harsher sentence even to punish the defendant, that would not have been a denial of due process."

## Westlaw.

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**H**  
 People v. Watroba  
 Mich.App.,1996.  
 Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT  
 RULES BEFORE CITING.

Court of Appeals of Michigan.  
 PEOPLE OF THE STATE OF MICHIGAN,  
 Plaintiff-Appellee,  
 v.

John Michael WATROBA, Defendant-Appellant.  
 No. 192072.

Dec. 17, 1996.

Before: HOLBROOK, P.J., and WAHLS, and  
 WHITE, JJ.

## UNPUBLISHED

## PER CURIAM.

\*1 This case is before us for the second time. We initially reversed and remanded for a new trial, concluding that the trial court reversibly erred by summarily denying the jury's request to review testimony. *People v. John Michael Watroba*, unpublished opinion per curiam of the Court of Appeals, issued June 9, 1995 (Docket No. 160373). In lieu of granting leave to appeal, the Supreme Court peremptorily reversed and remanded to this Court for consideration of the remaining issues defendant raised. We affirm.

## I

Defendant was convicted following a jury trial of one count of possession with intent to deliver less than fifty grams of cocaine, M.C.L. § 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and two counts of possession with intent to deliver over fifty, but less than 225, grams of cocaine,

M.C.L. § 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). He was sentenced to two to twenty years on the count involving less than fifty grams, and to ten to twenty years on each count of over fifty grams, consecutively.

Defendant was charged and bound over with a fourth count, conspiracy to deliver over 225, but less than 650, grams of cocaine, M.C.L. § 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), M.C.L. § 750.157a; MSA 28.354. This count was voluntarily dismissed by the prosecutor.

## II

Defendant first argues that he was denied the effective assistance of counsel by counsel's (1) failure to file a motion to quash, (2) failure to conduct discovery, (3) failure to pursue an entrapment defense, (4) ineffective cross-examination on the search warrant affidavit, (5) failure to argue a defense theory in closing, and (6) failure to request instructions on the credibility of police witnesses and identification.

To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced the defendant as to deprive him of a fair trial. *People v. Pickens*, 446 Mich. 298, 303;521 NW2d 797 (1994). We conclude that defendant was not denied the effective assistance of counsel.

Defendant first asserts that defense counsel was ineffective in failing to file a motion to quash. However, defendant has not explained what the motion would have argued, to which charges it would have pertained, and why it would have been successful. Further, to the extent the motion would have addressed the conspiracy charge, defendant was not prejudiced, as that charge was dismissed.

Defendant further contends that counsel was inef-

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fective in failing to conduct discovery and in failing to raise an entrapment defense. Defendant offers no support for either contention and simply requests a *Ginther*<sup>FN1</sup> hearing. However, the record does not support defendant's contention regarding discovery, FN2 and defendant has made no offer of proof indicating that he had a viable entrapment defense or that a *Ginther* hearing is appropriate.

FN1. *People v. Ginther*, 390 Mich. 436; 212 NW2d 922 (1973).

FN2. During the September 4 hearing, defense counsel stated:

I've probably spent between 30 and 40 hours on this case, with [defendant], visiting him two times, once with her [defendant's mother's] husband, who would be the stepfather of [defendant]. I gave her all pleadings, all the information, the transcripts. She read it over, didn't understand it, came back again. [Defendant's sister] came to the office with all the pleadings, again. We discussed this matter ...

On the morning of trial, defense counsel explained to the court that he had all the necessary discovery in this matter:

... I've talked to [the prosecution] about all this evidence. I've had all this evidence.

Additionally, defense counsel stated:

... I spent 7 hours yesterday, I documented it, going from top to bottom, made copious [sic] of search warrant, tapes, affidavits of search warrants, preliminary exam transcript, and I will do the best I can ...

\*2 Defendant also contends that he was denied the effective assistance of counsel when defense counsel elicited damaging testimony and opened the

door to other testimony during cross-examination of Officer Grant. Counsel sought to impeach Officer Grant's testimony by cross-examining him regarding statements made in his affidavit in support of a search warrant. On redirect, the prosecution was permitted to read the selected paragraphs in their entirety over the objection of defense counsel. As evidenced by cross-examination, counsel was trying to undermine Officer Grant's credibility by demonstrating an inconsistency between his trial testimony and the affidavit. To establish ineffective assistance, a defendant must overcome the presumption that the challenged action might be considered sound trial strategy. *People v. Lavearn*, 448 Mich. 207, 216; 528 NW2d 721 (1995). Defendant has not done so.

Defendant next asserts, without elaboration, that trial counsel failed to argue a defense theory in closing. During closing argument, counsel sought to undermine Officer Grant's credibility by reminding the jury of the inconsistencies between his testimony and the search warrant affidavit. Additionally, counsel argued that if defendant actually knew Officer Grant, as Officer Grant contended, defendant would not have involved himself in a drug transaction with him. Further, counsel asserted that defendant was merely present at the apartment but was not involved in the transaction. It is clear that trial counsel argued the defense of mere presence during closing.

Lastly, defendant argues that he was denied effective assistance of counsel by counsel's failure to request instructions on identification and the credibility of police witnesses. However, defense counsel specifically stated that identification was not an issue in the case. Moreover, counsel was not arguing that someone else was at the apartment rather than defendant, but that defendant was merely present when the transaction occurred. As for the instruction on credibility, the trial court explained to the jury the factors to be used in determining whether a witness should be believed or not. Defendant has shown no prejudice.

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We conclude defendant was not denied the effective assistance of counsel.

## III

Defendant next argues that the trial court erred in failing to grant his request for substitution of counsel. We disagree.<sup>FN3</sup>

FN3. We observe that the trial court did not technically deny defendant's motion for substitution of counsel, and would have allowed substitute counsel, who was present, to enter an appearance and proceed with trial. The court, however, stated that the trial would go forward that day.

After carefully reviewing the record, including defendant's letter to the Chief Judge, the transcript of the aborted plea-taking proceeding, and the colloquy before the trial court on the day of trial, we conclude that the court did not abuse its discretion in refusing to adjourn the trial to allow defendant to proceed with substitute counsel. We observe that substitute retained counsel was present, but never indicated an intent to appear and never requested an adjournment. Further, the trial court gave defendant ample opportunity to explain his differences with counsel and his desire for substitute counsel, and fully explored defendant's expressed dissatisfaction. The trial court's implicit conclusion that defendant's disagreement with counsel lacked foundation was not unreasonable. Applying *People v. Williams*, 386 Mich. 565;194 NW2d 337 (1972), we conclude defendant has failed to demonstrate that the court abused its discretion in denying a continuance so that defendant could proceed with substitute counsel.

## IV

\*3 Defendant next asserts he was denied a fair trial by the admission of hearsay testimony. During direct examination of Officer Grant, the prosecution questioned him regarding his conversations with Curtis Van, the main participant in the drug sale.

Defense counsel objected on the ground that the testimony would constitute hearsay not subject to a valid exception. The prosecution indicated it would fall under the present sense impression and/or declaration against interest exceptions. The trial court allowed the testimony under the declaration against interest exception.

A statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted is hearsay. MRE 801(c); We first observe that many of the objected to statements were not hearsay because not offered for the truth of the matter asserted. Van's statements regarding the weight and quality of the cocaine fall into this category. Further, we reject defendant's argument that the testimony was not relevant.

Defendant challenges an additional colloquy wherein Officer Grant testified:

Q (By the Prosecutor, continuing): Did you make arrangements on that conversation to purchase a quantity of cocaine?

A I did.

Q And what quantity of pur-what quantity of cocaine did you agree to buy?

A Curt Van indicated that he and John [defendant] had three ounces of cocaine -

Q Okay.

A-in their possession, right now, that they would give me for \$1,200.00 apiece.

Q Okay. He said, he being Curt Van and John, had three ounces?

A Clearly is what he stated to me, that he and John had three ounces ready.

Defendant did not specifically object to the introduction of this testimony, and never responded to the argument that the earlier statements were ad-

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missible under MRE 804(b)(3) as declarations against interest. Hearsay by an unavailable declarant is admissible if the statement, at the time it was made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, that a reasonable person in his position would not have made the statement unless he believed it to be true. MRE 804(b)(3); *People v. Petros*, 198 Mich.App. 401;499 NW2d 784 (1993); *People v. Poole*, 444 Mich. 151, 159;506 NW2d 505 (1993). Where the declarant's inculpation of an accomplice is made in the context of a narrative of events, at the declarant's initiative without any prompting or inquiry, that as a whole is clearly against the declarant's penal interest and as such is reliable, the whole statement including portions that inculpate another, is admissible pursuant to MRE 804(b)(3). *Poole*, *supra* at 161. The trial court did not abuse its discretion in concluding that Van's statement to Officer Grant falls within this exception.

## V

Defendant next asserts he was denied a fair trial by the trial court's allowance of the impermissible bolstering of Officer Grant's testimony by the reading into the record of large portions of the search warrant affidavit. We disagree.

\*4 On cross-examination of Officer Grant, defense counsel sought to impeach him by inquiring why he testified defendant was named in a certain portion of the search warrant when in fact he was not named. On redirect, the prosecutor sought to read the two paragraphs of the search warrant affidavit to show that the remainder of the material was consistent with Officer Grant's testimony. Defense counsel objected on hearsay grounds.

The trial court did not abuse its discretion in allowing portions of the affidavit to be read. As a general rule, neither a prosecutor nor anyone else is permitted to bolster a witness' testimony by referring to prior consistent statements of the witness. *People v.*

*Rosales*, 160 Mich.App. 304, 308;408 NW2d 140 (1987). However, a prior consistent statement is admissible if the declarant testifies at trial, the declarant is subject to cross-examination concerning the statement, the statement is consistent with the witness' testimony and the statement is offered to rebut an express or implied charge of recent fabrication or improper influence or motive. MRE 801(d)(1)(B).

Here, defense counsel sought to impeach Officer Grant with his sworn search warrant affidavit by demonstrating inconsistencies between Officer Grant's testimony and the affidavit, specifically focusing on the omission of defendant's name in particular sentences of certain paragraphs in the affidavit. In doing so, defense counsel attempted to demonstrate fabrication by implicitly arguing if defendant was actually involved in the drug transactions, Officer Grant would have included his name in the search warrant affidavit, and his testimony at trial is therefore not true.

To rebut defense counsel's charge of recent fabrication, i.e., to show that Officer Grant's testimony was consistent with the prior statements contained in the search warrant affidavit in that defendant's name was within the affidavit, the prosecution sought to read to the jury prior consistent statements contained within the two paragraphs of the same document that defense counsel used on cross-examination. Pursuant to MRE 801(d)(1)(B), the trial court allowed the prosecution to read to the jury the prior consistent statements to show that Officer Grant was not testifying differently than his sworn affidavit. Under MRE 801(d)(1)(B), the trial court did not abuse its discretion.

## VI

Defendant next asserts he was prejudiced by Officer Grant's references to past contacts with defendant and that his motion for a mistrial should have been granted. We disagree.

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Defendant contends that he was prejudiced on two separate occasions when Officer Grant stated that he knew defendant from previous contacts. Officer Grant testified that when he first went to Van's apartment and defendant opened the door he recognized defendant because he had had face to face contact with him on numerous occasions. Officer Grant also testified that he recognized defendant's voice on the phone because of his numerous contacts with him. After the jury was excused, defense counsel objected and moved for a mistrial, arguing that the logical inference to be drawn from the statements is that Officer Grant had contact with defendant in his official capacity. The prosecution argued that those statements could also mean that since defendant had several meetings with Officer Grant, Officer Grant was referring to those meetings as previous contacts with defendant. The trial court concluded that the previous contacts could have taken place anywhere, and not necessarily in Officer Grant's official capacity, and found the statements more probative than prejudicial. Thereafter, during recross examination, defense counsel reopened the issue by asking Officer Grant if he was in police uniform when he had these previous contacts with defendant, and Officer Grant replied "yes." Defense counsel then attempted to use the previous contacts to his advantage by arguing in closing argument that if defendant actually knew Officer Grant, he would not have then engaged in a drug transaction with a police officer.

\*5 We conclude the trial court did not abuse its discretion in admitting the testimony and in declining to grant a mistrial. *People v. McAlister*, 203 Mich.App 495, 503;513 NW2d 431 (1994).

## VII

Defendant next asserts that prosecutorial misconduct denied him a fair and impartial trial. Defendant asserts the prosecutor improperly shifted the burden of proof to defendant to prove his innocence.

Appellate review of prosecutorial misconduct is foreclosed where the defendant fails to object or request a curative instruction, unless the misconduct was so egregious that no curative instruction could have removed the prejudice to the defendant or if manifest injustice would result from this Court's failure to review the alleged misconduct. *People v. Allen*, 201 Mich.App 98, 104;505 NW2d 869 (1993). Here, defendant failed to object or request a curative instruction. Therefore, this Court's review is for egregious misconduct resulting in prejudice which could not have been cured by a curative instruction or would result in manifest injustice. *Id.*

We have reviewed the arguments challenged on appeal in the context in which they were made, and conclude that the arguments were not improper and that defendant was not denied a fair trial.

## VIII

Defendant next asserts that he was denied a fair trial by the inclusion on the jury of a juror who was equivocal about her ability to exercise independent judgment in rendering a verdict.

A party who has not exhausted all peremptory challenges, and has expressed satisfaction with the jury, waives issues regarding jury selection on appeal. *People v. Taylor*, 195 Mich.App 57, 59-60;489 NW2d 99 (1992). Defendant exercised two out of the five peremptory challenges and twice stated his satisfaction with the jury. Thus, defendant has waived this issue on appeal.

Further, the trial court did not abuse its discretion when it failed to excuse the juror. The unidentified juror stated that she might have a conflict because a person sitting on the jury was considered "family." The juror said they might have "too much of the same mind set." The trial court did an extensive voir dire of the juror regarding her ability to be fair and impartial. Ultimately, the juror did state that she could be fair and render an independent judgment. A potential juror's self-analysis as to whether she

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has formed an opinion need not necessarily control the determination of the potential juror's impartiality; rather, that determination is reserved for the trial judge after sufficient inquiry. *People v. Tyburski*, 196 Mich.App 576, 580;494 NW2d 20 (1992), aff'd. 445 Mich. 606 (1994).

#### IX

We next address whether defendant was denied a fair trial by the trial court's failure to instruct the jury, sua sponte, regarding the credibility of police witnesses and identification. Defendant did not specifically object to the lack of jury instructions on these issues. Therefore, this Court's review is for manifest injustice.

\*6 Jury instructions are reviewed as a whole rather than extracted piecemeal to establish error. Even if somewhat imperfect, there is no error if the instructions fairly presented the issues to be tried and sufficiently protected the defendant's rights. We conclude the trial court did not deny defendant a fair trial when it failed to sua sponte instruct the jury on identification and the credibility of police witnesses. The general instruction on credibility was sufficient to preserve defendant's rights.

#### X

Defendant next asserts that the trial court erred in ruling that a tape recording made by the police of conversations during the negotiations of the narcotics transactions was inadmissible. The decision to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v. Davis*, 199 Mich.App 502, 516;503 NW2d 456 (1993).

Defendant was originally charged with four counts, the last count being conspiracy to deliver over 225 grams, but less than 650 grams, of cocaine. Prior to trial, the prosecutor dismissed the conspiracy count and indicated he was not planning to introduce the tape, as it pertained to the conspiracy count and was

irrelevant to the remaining counts. Defense counsel was of the opinion that the tape was more prejudicial than probative, and tried to convince defendant that it should not be introduced. Defendant, however, wanted portions of the tape introduced to impeach Officer Grant. The court undertook to review the tape. The following day, after reviewing the tape, the trial court concluded that the tape had no probative value as it was useful for limited impeachment purposes regarding the dismissed conspiracy count, and ruled it inadmissible. The court expressed its willingness to reevaluate its ruling should defendant take the stand.

Defendant identified only one area of impeachment. At the preliminary examination, Officer Grant testified:

Q. Okay. Did he did Mr. Watroba ever tell you he didn't want to sell 12 ounces of cocaine to you?

A. No, he did not.

A. He just said, stated they were a little worried about selling the 12 ounces and he went into the charges for deliveries of 50 and over 25[sic] and over 625.

Defendant contended that the tape would establish that he did state he did not want to participate in the transaction.

Based on the record presented, we conclude that the trial court did not commit reversible error in ruling the tape inadmissible. Defendant never established that the tape was relevant to the charges being tried, or that the tape had more than marginal impeachment value.

#### XI

Defendant next argues that the trial court's erroneous admission of a "narcotics ledger" denied him a fair trial.

We find no reversible error in the admission of this

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evidence. To the extent the ledger, which included Officer Grant's address and pager number, tended to show that the transactions occurred, they were relevant. To the extent that the prosecutor failed to connect the ledger to defendant, the failure was evident and the admission of the evidence did not prejudice defendant's mere presence defense.

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END OF DOCUMENT

XII

\*7 Lastly, defendant asserts he was denied due process by the trial court's failure to require a unanimous verdict. He asserts that the trial court erred in not requiring the jury to unanimously find him guilty as either an aider and abettor, or a principal. We find no error.

A jury verdict must be unanimous. MCR 6.410(B); *People v. Yarger*, 193 Mich.App 532, 537;485 NW2d 119 (1992). If a case involves a single offense that could be committed by alternative means, a unanimous verdict as to the means is not required. *Id.* (citing *People v. Johnson*, 187 Mich.App 621, 629-630;486 NW2d 307 (1991)). However, if the case involves two distinct offenses and each could have been committed by an alternative method, then a unanimous verdict is required as to the method. *Yarger, supra.*

Here, the distinction between an accessory and a principal has been abolished. One who aids or abets the commission of an offense may be prosecuted, indicted, tried, and on conviction shall be punished, as if he had directly committed the offense. MCL 767.39; MSA 28.979; *People v. Flowers*, 191 Mich.App 169, 175;477 NW2d 473 (1991). The trial court's instruction was not erroneous. *People v. Paintman*, 92 Mich.App 412;285 NW2d 206 (1979), rev'd on other grounds 412 Mich. 518 (1982). The court required unanimity on the ultimate issue of guilt.

Affirmed.

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 People v. Watroba

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**H**  
 Master v. City of Detroit  
 Mich.App.,1996.  
 Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT  
 RULES BEFORE CITING.

Court of Appeals of Michigan.  
 Charles MASTER, Jr. and Alfred Pare', for themselves and on behalf of all retirants or beneficiaries of the Police and Firemen Retirement System of the City of Detroit, Plaintiff-Appellees,

v.  
 CITY OF DETROIT, Defendant-Appellant,  
 and THE BOARD OF TRUSTEES OF THE POLICEMEN and Firemen's Retirement System of the City of Detroit, Defendant-Appellee.

Charles MASTER, Jr. and Alfred Pare', for themselves and on behalf of all retirants or beneficiaries of the Police and Firemen Retirement System of the City of Detroit, Plaintiff-Appellees,

v.  
 CITY OF DETROIT, Defendant-Appellee,  
 and THE BOARD OF TRUSTEES OF THE POLICEMEN and Firemen's Retirement System of the City of Detroit, Defendant-Appellant.  
 No. 191421, 191422.

Oct. 11, 1996.

Before: JANSEN, P.J., and WHITE and SAAD, JJ.

UNPUBLISHED

ON REMAND

PER CURIAM.

\*1 This case is before us on remand from the Supreme Court for consideration of a single issue: whether the circuit court's ruling that the Act 312 FNI arbitrator's award was a recognition by the arbitrator of a prior improper practice in computing benefits, by which pension benefits were improp-

erly reduced to pre-1990 retirees, was erroneous. In our first opinion we concluded that this issue was unpreserved. *Master et al v. City of Detroit*, unpublished opinion per curiam of the Court of Appeals, issued February 23, 1995 (Docket Nos. 154681, 154984), p 3. On cross applications for leave to appeal, the Supreme Court concluded that defendants sufficiently preserved the issue and, by order dated November 17, 1995, remanded the matter to this Court for consideration on the merits, denying the applications for leave to appeal and cross appeal in all other respects. Because the record on this issue is sparse and the circuit court's reasoning is not clear, we remand for development of the record on this issue prior to our consideration of the merits.

FNI.MCL 423.231 et seq.; MSA  
 17.455(31) et seq..

Plaintiff argues that

[t]he contract of November 20, 1974, does not provide for the reduction of pensions on the interest accumulated on the contributions. It only provides for a reduction of annuity on the accumulated contributions. There is no mention of the word "interest" in the 1974 provision. On July 1, 1990, the arbitrator recognized this discrepancy and clarified the issue.

Plaintiffs-Appellees maintain that the ordinance of November, 1974, states that the annuity shall be based upon the accumulated contributions. Defendants-Appellants freely acknowledge that the term "accumulated contributions" means the sum of all the amounts deducted from the compensation of a member and does not include interest. (See Trial Court transcript p. 22, lines 3-6 attached hereto as Exhibit I). The City has taken the employees' funds and invested them and used the interest on those funds to reduce their portion of the total pension. Since the 1974 pension provision calls only for the reduction of pensions by the contributions and does

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not mention any deduction on the interest, the City has been illegally reducing the pension benefits for retirees.

The portion of the trial transcript that plaintiff attached to its appellate brief in support of this argument states:

MR. BOVE [*counsel for defendant Trustees* ]: The Charter specifically says accumulated contributions shall mean the sum of all amounts deducted from the compensation of a member. Interest is not deducted.

THE COURT: I hear you.

MR. BOVE: Shall be credited to his individual account in the annuity savings fund.

THE COURT: You don't need to make that argument again, I understood your argument the first time ...

However, that transcript of defendants' motion for summary disposition hearing also contains the following argument by defendant Trustees' counsel:

... Now, accumulated contributions aren't outlined in the pension provision in the collective bargaining provision and that collective bargaining agreement also incorporates by reference the Charter of the City of Detroit, specifically Title 9, Chapter 7, Article 2, Section 26. And Section 13 of that section of the Charter reads:

\*2 "Accumulated contributions shall mean the sum of all amounts deducted from the compensation of a member and credited to his individual account in the Annuity Savings Fund, together with regular interest."

Now, it would appear that counsel's argument is certainly misphrased, because "accumulated contributions" is in fact defined. It's defined as the employee's contributions in his annuity fund with regular interest. That's the entire package that was in the 1974 Optional Annuity Withdrawal, accumulated contributions including interest. In 1990 accumulated contributions including interest. Except,

the arbitrator in 1990 said we will not consider the interest credit for your reduction. Now, I, I think the argument has got to fail.

THE COURT: Or did he say just that it has been improperly computed?

MR. BOVE: No, no he never said that, Your Honor, never said there was anything improper or that it was improperly computed.

Counsel also argued that the pension provision had been applied in the same manner for over twenty years without objection by the union or retirees. Later, plaintiff's counsel responded:

... As to the merits of[sic] it, he mentioned accumulated contribution. Accumulated contribution in the sections in question here are not the same as accumulated contributions in the pension chart provisions, and he specifically pointed that out by saying that these contributions went into a pension fund, deferred pension fund. He named two types, and it was not the same thing. This deals with the contributions that had been accumulated that are contributed by the members while they are in active services. That's all that means to say. Now, what we are doing is confusing interest and principal here and there should be no confusion here...

The Charter of the City of Detroit is not before us, except a copy of the page on which the term accumulated contributions is defined.

The Act 312 Arbitration "Opinion and Award of Panel" is before us and states in pertinent part:

Union Issue # 10

*OPTIONAL ANNUITY WITHDRAWAL*

UNION PROPOSAL:

The Union has proposed that employees who retire on or after July 1, 1990 and have elected to receive their total or partial refund of accumulated contributions to the Defined Contribution Plan suffer no

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actuarial reduction in their Defined Benefit Plan benefits with respect to withdrawn interest earnings, but only with respect to actual contributions which the employee withdraws.

The following is the language proposed by the Union as adding to Article 48 of the collective bargaining agreement entitled *OPTIONAL ANNUITY WITHDRAWAL*, a new Section H.

New Section:

H. For employees who retire on or after July 1, 1990, and who have made or make an election to receive a total or partial refund of his or her accumulated contributions to the Defined Contribution Plan, there shall be no reduction of retirement allowances due to the portion of withdrawal representing interest credits.

CITY RESPONSE:

\*3 The present language of the collective bargaining agreement requires that an employee who exercises his/her option to withdraw all or part of his/her accumulated contributions to the defined contribution shall be subject to an actuarial reduction in the benefits provided or to be provided by the Defined Benefit Plan to the extent of the amounts withdrawn whether such amounts consist of principal or interest or both.

DISCUSSION:

1. It is the position of the City that the historically collectively bargained for provision with respect to all such amounts withdrawn, i.e. both the original amount of employee contributions together with interest earned thereon in the Defined Contribution Plan should cause an actuarial reduction in the benefits to be received by the employee from the Defined Benefit Plan notwithstanding that additional earnings in excess of the actuarially assumed interest rate are sufficient to fund the proposed bene-

fit. The City further argues that the current funding features of the retirement system are in excess of that required by the State Constitution, any applicable law and the Retirement System provisions.

2. It is the position of the Union that only the actual contributions made to the Defined Contribution Plan and withdrawn and not the interest earned thereon should be the base for the actuarial reduction in the benefits to be received from the Defined Benefit Plan.

The Union argues that such amounts as are contributed by or for the benefit of employees to the Defined Contribution Plan are mandatory contributions and that the interest earnings on such amounts should not be part of the basis for the reduction in the benefits paid from the Defined Benefit Plan as the result of the partial or total withdrawal of such interest earnings and that the retirement system has the ability to provide such benefit with no increase in employer percent of payroll contribution rates.

The City further argues that in the event this Panel awards the benefit to the Lieutenants and Sergeants Association, historically, because of parity, the benefit will be extended to all firefighter and police officers and there is no safeguard that such benefit extension will not result in increased cost. The City appears to argue that if it is determined that the retirement system can provide the proposed benefit without increased cost to the employer, that the Retirement System can further provide for reduced employer contributions without violating the established constitutional and other legal funding requirements.

AWARD:

The Panel is persuaded by the Union's arguments in favor of adopting the proposal. However, the Panel also recognizes the validity of the City's concerns. Therefore, this Panel orders the adoption of the Union's proposal with the following provisions to become a part of the collective bargaining agree-

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ment.

Provisions indicated in the following paragraphs which will be added to Section H and which along with Said Section H will be made part of the retirement system provisions as applicable to employees affected by this award. The above paragraph is expressly subject to the following requirements.

\*4 1. That this award will not result in an increase in the Employer contribution percentage [sic] of payroll as determined in the June 30, 1989 actuarial valuation.

2. That the board of Trustees of the Policemen and Firemen Retirement System of the City of Detroit determines after assurance from the retirement system's actuary that the cost associated with the implementation of this award can be borne by the retirement system earnings without violation of the constitutional requirements of Article 9, Section 4 of the Michigan Constitution or the funding provisions of the retirement system.

3. That the Board of Trustees of the Policemen and Firemen Retirement System, and its actuary review the actuarial valuation of June 30, 1989 in light of the new updated financial information and adopt the appropriate resolutions consistent with the above provisions.

4. This award with respect to Issue 10 will not be operative unless the Board of Trustees of the Policemen and Firemen Retirement System receives written concurrence from the City with the resolutions of the Board of Trustees as referred to in the preceding paragraph.

Finally, defendant Board of Trustees attached to its appellate brief a document entitled "ACTUARIAL ASSUMPTION CHANGES" which states that the 1990 Board of Trustees forwarded the provisions of the Act 312 arbitration award to the Board's actuary; received the actuary's recommendation that "certain economic assumptions be revised to 7.0% with respect to investment return and 5.0% with re-

spect to wage inflation;" that the Board's actuary submitted to the Board of Trustees those amendments of the June 30, 1989 valuation report resulting from the alternative economic assumptions recommended by the Board's actuary; and that the actuary has assured the Board of Trustees that the adoption of the alternative economic assumptions are consistent with the requirements of Article 9, Section 24 of the Michigan Constitution and the funding requirement provisions of the Policemen and Firemen Retirement System. The following resolutions are then set forth: that the Board of Trustees adopts the arbitrator's award as part of the provisions of the Retirement System, Defined Contribution Plan and Defined Benefit Plan; and that the Board of Trustees adopts and certifies to the City of Detroit that the employer contribution as recommended and determined by the Board's actuary pursuant to the June 30, 1989 actuarial valuation for the fiscal year July 1, 1990 through June 30, 1991 is 36.52% of payroll of those members of the Policemen and Firemen Retirement System of the City of Detroit.

In addressing the issue, the circuit court stated only:

Defendant seek summary disposition on three grounds:

1. Plaintiffs are not entitled to any contractual improvements in pensions received by active employees *after* plaintiffs retired.

Defendants cite persuasive case law for this proposition and plaintiffs do not argue with it.

\*5 However, plaintiffs argue that defendant had been reducing pensions, not only by the amount of employee contributions withdrawn, but, improperly, by the amount of interest thereon since November 20, 1974.

It is plaintiff's argument that the July, 1990, arbitration award is not merely a newly-bargained-for-benefit awarded to active employees. Rather, plaintiffs suggest that it was also a recogni-

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tion by the arbitrator that defendants had improperly reduced pension benefits to pre-1990 retirees by the amount of the interest credits.

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This Court will HOLD that plaintiffs' interpretation of the 1990 arbitration award is the correct one. Plaintiffs cite *Grand Rapids Schools v. City of Grand Rapids*, 146 Mich.App 652 for the proposition that, "Interest on public funds designated for a specific purpose follows those funds... In general, interest is merely an incident of the principal making it the property of the party owning the principal." Even if one views the arbitration award as a new form of compensation bargained for and awarded to 1990 active employees ... and thus not available to pre-1990 retirees by operation of law... it then CLEARLY becomes available to those retirees pursuant to the terms of the *YANK/GENTILE* consent judgment which required that retirees receive a proportionate share of any new form of compensation granted to active employees.

END OF DOCUMENT

We conclude that the record before us contains insufficient information from which we can address this issue on the merits. The arbitration opinion and order does not state on its face that it is rectifying a prior improper practice, and the circuit court's opinion and order does not make clear its reasons for concluding that plaintiff's position to that effect is a proper interpretation of the arbitration award.<sup>FN2</sup> We therefore remand for further development of this issue. The court shall consider the matter anew, entertaining whatever additional testimony, proofs or argument it deems appropriate, and shall clearly set forth its findings and the reasons for its decision. The amplified record and the court's decision shall be transmitted to this court within ninety-one days of the release of this opinion. We retain jurisdiction.

FN2. We do not find the circuit court's reliance on *Grand Rapids Schools v. City of Grand Rapids*, 146 Mich.App 652 (1985), and the proposition quoted therefrom illuminating without further explanation.  
 Mich.App., 1996.

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**STATE OF MICHIGAN  
COURT OF APPEALS**

---

IRIS E. WEISGERBER, personal  
representative of the estate of  
CAROLYN SUE WEISGERBER, deceased,

Plaintiff-Appellant,

November 29, 1993

v

No. 139321  
LC No. 87004443 NH

ANN ARBOR CENTER FOR THE FAMILY,  
a/k/a ANN ARBOR CENTER FOR THE  
FAMILY, INC., a Michigan  
corporation; and KENNETH R. SILK, M.D.;  
jointly and severally,

Defendants-Appellees.

---

Before: Neff, P.J., and Marilyn Kelly and White, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the Washtenaw Circuit Court denying her motion for new trial. On appeal, plaintiff argues that the trial court erred in refusing to investigate allegations of juror misconduct. She asserts, also, that the court erred in failing to grant a new trial. We reverse and remand for an evidentiary hearing.

I

Plaintiff filed a medical malpractice action against defendants, after decedent committed suicide while under defendant Silk's care. The jury returned a verdict in defendants' favor. It indicated on the verdict form that defendant Silk had met the applicable standard of care. Shortly thereafter, the court received a telephone call from juror Clara Debreczeny. She alleged that two of the jurors acted improperly during jury deliberations. The court instructed Debreczeny to write a letter, documenting the alleged misconduct.

Debreczeny claimed that she and juror Gordon Macomber initially voted "no" to the question whether defendant Silk had met his standard of care. The four other jurors on the panel voted yes. Then, juror Marie Conn stated that she could never award money for death, and Macomber agreed. During the second vote, Macomber changed his initial vote and concluded that Silk had met his standard of care. Debreczeny eventually changed her vote. During voir dire, plaintiff's attorney had asked whether any juror would be uncomfortable with the idea of awarding money damages for loss of life; none of the jurors responded.

The trial judge instructed the attorneys to present him with law and arguments as to whether the matters set forth in Debreczeny's letter warranted an investigation or a new trial. He also instructed the attorneys not to contact any of the jurors until he ruled. In finding that neither an investigation nor a new trial was warranted, the court concluded:

This is not a situation where a juror lied during voir dire as to knowing a witness, or having been in an accident previously, etc. The statements of the two jurors can well be interpreted as meaning that they would not vote for a verdict for damages for death in the case before them. It doesn't appear that they were necessarily talking about what they would do in other cases. They were stating that they could not find the damages for death in the

case before them. . . . When the jury was asked by the Jury Clerk, after they read their verdict, that they solemnly swore "that the verdict as read by the foreperson was a verdict of each of you, so help you God," they answered in the affirmative. Ms. Debreczeny at no time objected to the reading of the verdict or stated that she had a different verdict. If, as claimed by the plaintiff's attorney, the two jurors who had an opinion that no one should get money for the death of a person, they could well have answered Question No. 1 of the verdict form that Defendant Silk did not meet his standard of care and could have answered Question No. 2 that his failure to meet the standard of care was a proximate cause of the injury and as to the total amount of plaintiff's damages in Question No. 3, could have answered zero. They did not do this. The jurors found that Defendant Silk met the standard of care.

## II

Initially, plaintiff argues that the trial court abused its discretion in failing to conduct an investigation into the allegations raised by juror Debreczeny. Once a jury has been polled and discharged, its members may not challenge mistakes or misconduct inherent in the verdict. *Hoffman v Spartan Stores Inc*, 197 Mich App 289, 293; 494 NW2d 811 (1992), citing *Hoffman v Monroe Public Schools*, 96 Mich App 256, 260-261; 292 NW2d 542 (1980). However, affidavits or testimony impeaching the verdict are proper if they concern an overt act which is accessible to the knowledge of all the jurors. It must not involve matters inherent in the verdict. *People v Yettes*, 195 Mich App 235, 244; 489 NW2d 514 (1992), citing *People v Graham*, 84 Mich App 663; 270 NW2d 673 (1978). Moreover, a new trial must be granted when it appears that a juror gave untruthful answers during voir dire, whereas truthful answers would have allowed a successful challenge for cause. *Collier v Westland Arena Inc*, 183 Mich App 251, 254; 454 NW2d 138 (1990).

The allegations raised by juror Debreczeny do not involve matters inherent in the verdict. Instead, they challenge the truthfulness of certain jurors' answers on voir dire. See *People v Kage*, 193 Mich App 49, 53; 483 NW2d 424 (1992), vacated on other grounds 439 Mich 1022 (1992). Therefore, affidavits or testimony impeaching the verdict were appropriate to determine if the two jurors could have ever awarded damages for death. MCR 2.611(A)(2).

The trial court abused its discretion by speculating that the jurors refused to award money in the case before them but might award money damages for death in other cases. The judge's assumption is not supported by anything in the record. He should have conducted an investigation into the allegations.

On remand, we instruct the judge to conduct a hearing to investigate the allegations contained in juror Debreczeny's letter. MCR 2.611(A)(2); *People v Kage*, 439 Mich 1022; 486 NW2d 667 (1992). He must determine whether the jurors gave untruthful answers during voir dire and whether truthful answers would have revealed grounds for a successful challenge for cause. *Collier*, 254. If so, a new trial must be granted. *Id*; *Gustafson v Morrison*, 57 Mich App 655, 664; 226 NW2d 681 (1975).

Reversed and remanded. We do not retain jurisdiction.

/s/ Janet T. Neff  
/s/ Marilyn Kelly  
/s/ Helen N. White

**STATE OF MICHIGAN  
COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
August 11, 1995

v

RONNY SUGGS,

No. 179928  
LC No. 85-1729  
ON REMAND AND REHEARING

Defendant-Appellant.

---

Before: MacKenzie, P.J., and Hood and White, JJ.

PER CURIAM.

This case is before us on remand from the Supreme Court as on rehearing granted. Defendant was convicted by jury in 1985 of three counts of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and sentenced to 30 to 50 years. This Court reversed the conviction for prosecutorial error. Prior to his retrial, defendant dismissed his appointed counsel because he was dissatisfied and apparently indicated he wanted to represent himself. The trial court permitted trial counsel to withdraw on March 17, 1989.<sup>1</sup> At the start of trial on June 19, 1989, in the course of being advised by the trial court of the pitfalls of self-representation, defendant said

Your Honor, you recall when I dismissed the attorney . . . , I sent a letter to the Court besides the letter I sent to [him] explaining to the Court why I was dismissing [him]. It's not that I don't want an attorney to represent me, it's just that [appointed counsel] never spoke to me. I had a trial date and never had a chance to talk to my attorney.

The trial court accepted the waiver and defendant proceeded in pro per with advisory counsel. During trial, defendant conducted his own voir dire and cross-examinations, and made his own closing argument. Defendant's advisory counsel was permitted to object as necessary. Defendant took the stand and was examined by advisory counsel. Defendant's request to permit advisory counsel to cross-examine the complainant was denied.

Defendant was again convicted, and again sentenced to 30 to 50 years. On his second appeal, defendant raised three issues, one of which was that the trial court acted arbitrarily and denied him a fair trial by refusing to permit his advisory counsel to cross-examine complainant. This Court identified a further issue after hearing oral argument, and directed the parties to provide supplemental briefs addressing the question whether defendant's waiver of counsel was adequate under MCR 6.005(E) and case law.<sup>2</sup> In response to this Court's order, defendant, through counsel, stated he did not wish to pursue that issue and wished to stand on the brief as filed. Plaintiff filed a supplemental brief arguing defendant had abandoned the issue and that defendant's waiver of his right to counsel was effective.

This Court therefore addressed only the three issues raised in defendant's appellate brief and affirmed defendant's convictions in an unpublished per curiam opinion, People v Suggs, No. 122775, dated January 27, 1994.

Defendant's appellate counsel then filed a motion for rehearing on February 7, 1994, realizing he had overlooked matters of self-representation which became apparent on his reviewing this Court's opinion.<sup>3</sup> This Court denied defendant's motion for rehearing on March 23, 1994, the panel splitting two to one. Defendant appealed this Court's denial to the Supreme Court which, in lieu of granting leave to appeal, remanded the case to this Court for consideration as on rehearing granted. We reverse and remand for a new trial.

## I

Defendant first argues that the trial court abused its discretion and denied defendant's right to counsel when it granted defendant's equivocal, involuntary and unintelligent waiver of counsel without adequate warning of the hazards of self-representation. We agree.

Although a criminal defendant has a right, guaranteed by both federal and state constitution and state statute, to decline representation by a lawyer and conduct his own defense, it is a right contingent upon the accused voluntarily and intelligently electing to do so. Farretta v California, 422 US 806, 835; 95 S Ct 2525; 45 L Ed 2d 562 (1975), US Const, Am VI, Const 1963, art I, sec 13, MCL 763.1; MSA 28.854. To be effective, a defendant's waiver of the constitutionally guaranteed right to counsel must be voluntary, and must constitute a knowing and intelligent relinquishment of that right. Farretta, 422 US at 835, People v Holcomb, 395 Mich 326, 335; 235 NW2d 343 (1975).

The Michigan Supreme Court in People v Anderson, 398 Mich 361; 247 NW2d 857 (1976), set forth three stringent requirements to be met before a trial court may grant a defendant's request to dismiss counsel and proceed *in propria persona*: first, the defendant's request must be unequivocal; second, once the defendant has unequivocally declared his desire to proceed pro se, the trial court must determine whether defendant is asserting his right knowingly, intelligently and voluntarily. Id. at 367, 368. As part of the second requirement, the trial court

must make the pro se defendant aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open. [Anderson at 368, quoting Holcomb, *supra* at 335.]

Third, the trial court must determine that the defendant's acting as his own counsel will not disrupt, unduly inconvenience and burden the court and the administration of the court's business. Anderson at 368.

Here, the pertinent exchanges between the trial court and defendant are:

THE COURT [In the context of a discussion regarding defendant's request for discovery]: Let me say there are some rules to play by when you, the same as yourself or anyone acting as a lawyer.

First of all, you are not allowed anymore than what the lawyer is allowed. You don't get any kind of special privileges when you represent yourself. Part of that, you don't interrupt the Court when the Court is speaking. I will give you a chance to make your statement and what you have to say. When I respond to them, you sit and be quiet and don't interrupt me.

More than that, I hope you discuss the issues regarding the rules of evidence and matters of procedure with Mr. Moore [advisory counsel] to get some guidelines on how to present those and I think we all can save some time on this.

\* \* \*

THE COURT: Now, you do have the U S Supreme Court by way of the Sixth Amendment that says in the case of Florida v California (ph) here, found at 411, 806, a 1975 decision, there is an explicit guarantee for one to represent oneself. It is also found in the Michigan Constitution.

Now there is, and I think there should be some things you should understand, okay.

Do you fully understand you have a right to have a lawyer represent you throughout the proceedings and if you cannot afford to retain counsel, that the Court will appoint counsel for you?

THE DEFENDANT: You asked did I understand?

THE COURT: Yes.

THE DEFENDANT: Yes, I do.

THE COURT: Now, do you further understand that I must make a determination throughout what would disrupt and inconvenience and unduly burden the Court and the Court's business, I realize it is that of judgment call and it depends on your conducting yourself in the proper manner. I realize you are not trained in the law and won't be able to represent yourself the same as a lawyer would represent you. There are some procedure [sic] rules and you have to follow the rules.

THE DEFENDANT: Yes, I do.

THE COURT: Do you further understand there is an inherent danger in you representing yourself. Those include not asking proper questions. It may include not being able to make a proper statement or misstatement about the manner in which you represent yourself or cross-examine a witness. There may be a lot of inherent possibilities there in representing yourself. Do you understand that those things do exist and that you will not be able to raise issues, you know, later on that were matters that might have been better handled by an attorney representing you, do you understand that?

THE DEFENDANT: Yes, I understand that.

THE COURT: You still wish to represent yourself?

THE DEFENDANT: Yes.

Your Honor, you recall when I dismissed the attorney, Mr. Craig Daily, I sent a letter to the Court besides the letter I sent to Craig Daily explaining to the Court why I was dismissing Craig Daily. It is not that I don't want an attorney to represent me, it's just that Craig Daily never spoke to me. I had a trial date and never had a chance to talk to my attorney. I couldn't understand it, it's unprofessional.

THE COURT: Look, I am telling you I do not have a problem with you representing yourself and recognizing the fact that there is case law that says you can. I am also obligated to tell you the problems and pitfalls of that and have you unequivocally indicate on the record you understand those and you do wish to represent yourself.

THE DEFENDANT: I understand -- I understand what you said, yes.

THE COURT: Okay, fine.

Do you have any other preliminary issue that you want to bring up?

That defendant's waiver was not unequivocal is evidenced in his statement to the trial court that "it's not that I don't want an attorney to represent me, it's just that [appointed trial counsel] never spoke to me. I had a trial date and never had a chance to talk to an attorney." The first requirement of Anderson was thus not met.

Defendant also asserts that the trial court failed to adequately make defendant aware of the dangers and disadvantages of self-representation. The trial court stated defendant would not be able to represent himself the same as a lawyer would, that there were some procedural rules he would have to follow, and that there was an inherent danger in defendant representing himself which included not

asking proper questions or making misstatements, and asked defendant if he understood that he would not be able to later raise as issues matters that might have been better handled by an attorney. The trial court did not, however, inform defendant that he would be opposed by an experienced prosecutor and that he would get no help from the court. Nor did the trial court make clear that defendant must follow all the technical rules of substantive law, criminal procedure and evidence, although it did indicate in a different context that defendant would get no special privileges and that the court hoped defendant would discuss "issues regarding the rules of evidence and matters of procedure" with appointed advisory counsel. We conclude that under People v Blunt, 189 Mich App 643, 649-650; 473 NW2d 792 (1991), the trial court's compliance with the second requirement of Anderson was marginal at best.

Defendant further argues that the trial court did not meet the requirements of MCR 6.005(D) before permitting defendant to represent himself. MCR 6.005(D)<sup>4</sup> imposes requirements additional to Anderson's three-part inquiry:

(D) Appointment or Waiver of a Lawyer. If the court determines that the defendant is financially unable to retain a lawyer, it must promptly appoint a lawyer and promptly notify the lawyer of the appointment. The court may not permit the defendant to waive the right to be represented by a lawyer without first

(1) advising the defendant of the charge, the maximum possible prison sentence for the offense, any mandatory minimum sentence required by law, and the risk involved in self-representation, and

(2) offering the defendant the opportunity to consult with a retained lawyer or, if the defendant is indigent, the opportunity to consult with an appointed lawyer.

The record does not indicate that defendant was apprised of the charge or the range of permissible punishment.

As the record does not establish an affirmative showing of defendant's unequivocal or informed choice to waive his right to counsel, Holcomb, *supra* at 335, we must reverse and remand for a new trial. While we have observed that compliance with the second requirement of Anderson was marginal and that defendant was not apprised of the charge and penalty, the real gravamen of the case is the equivocal nature of defendant's waiver, and it is on this basis that we reverse.

In light of our disposition, we need not address defendant's overlapping second argument, that appellate counsel's failure to obtain the critical transcript of trial counsel's motion to withdraw and raise a meritorious and critical issue deprived defendant of his rights to effective assistance of appellate counsel and due process.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie  
/s/ Harold Hood  
/s/ Helene N. White

<sup>1</sup> We were recently provided with a copy of the hearing transcript, dated March 17, 1989, where defendant's appointed trial counsel was permitted to withdraw. This transcript was not previously before us, but was before the Supreme Court when it remanded to this Court as on rehearing granted.

Appellate counsel attached to his brief letters establishing his unsuccessful earlier attempts to secure this transcript dating back to March 27, 1991.

At the hearing, trial counsel indicated defendant had written him and said he did not want counsel to represent him and that defendant wanted to represent himself. Trial counsel indicated he was not interested in representing defendant either as his attorney or second chairing a case in which defendant represented himself. The trial court excused trial counsel from further responsibility in the case. The only colloquy involving defendant was:

THE COURT:

Mr. Suggs, I'm going to--you can represent yourself if you want to. I will give you--I'm sure you are aware of the hazards of doing that--I'm going to appoint at least advisory counsel to assist you and you can, you and that counsel can discuss whatever you might want to do in representing yourself. I hope to be able to do that today.

Defendant responded: "Okay. Thank you, Your Honor." This was defendant's only statement at the hearing.

<sup>2</sup> The Order stated:

It appears to the panel that it cannot adequately address the issues in this case without supplemental briefs addressing the issue whether defendant's waiver of counsel was sufficient under MCR 6.005(E) and pertinent case law.

Therefore, the Court orders that pursuant to MCR 7.216(A)(3) and (9) the parties are directed to file supplemental briefs addressing this issue . . .

<sup>3</sup> In retrospect, it appears that our order requesting further briefs would have been clearer had it referred to MCR 6.005(D) as well as 6.005(E). At the time the order was issued, this Court had the transcript of the court's colloquy with defendant on June 19, 1989, immediately before trial and did not have the earlier transcript. It appeared from the June 19 transcript that defendant had previously waived his right to counsel and so this Court focused on 6.005(E), referring to the need to waive counsel at any subsequent proceedings.

<sup>4</sup> MCR 6.005(D) was modified effective October 1, 1989, and held to apply retroactively in People v Blunt, *supra* at 648 (1991), because "the modified court rule redresses an existing right." The commentary to MCR 6.005(D) states in pertinent part that "it pertains to the defendant's initial waiver of the right to be represented by a lawyer and addresses the defendant's constitutional right to self-representation," citing Farretta, *supra*.

**Responses of Helene N. White  
Nominee to the U.S. Court of Appeals for the Sixth Circuit  
to the Written Questions of Senator John Cornyn**

1. **In the first set of written questions, Senators Hatch and Kyl separately asked if you, as a member of the NAACP, agree with its statement that the Supreme Court's recent decision in *Crawford v. Marion County Election Board*, 128 S.Ct. 1610 (2008), is "akin to voter suppression" (See Question 3 from Senator Hatch and Question 1 from Senator Kyl). You responded that you "have not read the full text of the *Crawford* opinion." Please take this opportunity to read the opinion and comment on whether you agree with the NAACP's statement concerning the *Crawford* decision.**

Response: No, I do not agree with the NAACP's statement concerning the *Crawford* decision.

2. **In response to Senator Specter's Question 8(e)(i) concerning whether it is appropriate for federal judges to cure societal ills when the other two branches have been silent, you stated that "[f]ederal judges should be most reluctant to assume the roles of problem-solver and solution-crafter." In that response, you refrained from using definitive language that this is not the proper role for a judge, as you did when you responded to other questions (e.g., Question 8(c) from Senator Specter where you responded that "judges should not be influenced by the political dimensions of controversial cases"). When, if ever, do you think it is appropriate for a federal judge to act as a "problem-solver" or "solution-crafter"?**

Response: As stated my initial response, federal judges are granted the power and authority to decide individual cases; they are not granted the power or authority to act in place of Congress or the executive branch simply because neither has taken the action the judge may deem appropriate. Federal judges should be deciding individual cases. Federal judges should not assume the roles of problem-solver and solution-crafter simply to fill a void. To do so would usurp the power of the other branches of government.

3. **When Senator Brownback asked you, in Question 2, to name a Supreme Court Justice whose approach to judging is most similar to your own, you responded that you most closely identify with Justices O'Connor and Kennedy.**
- a. **In a response to Senator Brownback's Question 4, you stated that "[j]udges should not view individual cases as opportunities...for imposing new duties or declaring new rights." Justice Kennedy has been heavily criticized by some for creating extra-constitutional rights. For example, in *Lawrence v. Texas*, 539 U.S. 558 (2003), Justice Kennedy struck down a state law by finding a new constitutional right to engage in intimate sexual activity that was previously rejected by the Supreme Court less than two**

decades earlier in *Bowers v. Hardwick*, 478 U.S. 186 (1986).

**1. Do you think the Lawrence Court created a new constitutional right?**

Response: The Supreme Court of the United States held that the petitioners' "right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government."

**2. You also stated that one reason you admire Justice Kennedy is that his approach places a "great importance on stare decisis." Do you believe the majority opinion in Lawrence was grounded in a commitment to stare decisis?**

Response: No. The dissent, rather than the majority, was grounded in a commitment to stare decisis, among other bases. The majority determined that the principle of stare decisis did not dictate that it decide the case based on *Bowers v. Hardwick*, 478 U.S. 186 (1986), and overruled that case.

- b. In response to Senator Sessions' Question 3, whether it is appropriate for federal courts to cite or rely on foreign law, you stated that "foreign law is appropriately considered in interpreting international law or treaties." Is it your position that foreign law is never properly considered when interpreting American law? As you may know, Justices O'Connor and Kennedy have suggested that international and foreign law are helpful resources for interpreting American law. Justice Kennedy mentioned foreign law in *Lawrence v. Texas*, 539 U.S. 558 (2003), when striking down a democratically enacted state law, and in *Roper v. Simmons*, 543 U.S. 551 (2005), when striking down a state criminal sentence. Are Justices Kennedy and O'Connor correct that international and foreign law are validly considered, even if non-binding, when interpreting U.S. laws, including the Constitution?**

Response: The problem with referring to international law in general is that it can never be controlling, is little more than informative, and, because it will sometimes support a justice's opinion and sometimes be opposed to it, there seems to be no principled basis for deciding when and why it is relevant. In *Lawrence*, Justice Kennedy introduced his discussion of international law with the statement "To the extent *Bowers* relied on values we share with a wider civilization, it should be noted that the reasoning and holding of *Bowers* have been rejected elsewhere." This seems an innocuous statement because the relevance of international law is premised on the *Bowers*'s Court having considered it. In *Roper v. Simmons*, similarly, the Court relied on the fact that it had already established an Eighth Amendment jurisprudence that referred to the views of other "nations that share our Anglo-American heritage," as instructive in its interpretation of the Eighth Amendment's prohibition of "cruel and unusual" punishments.

4. **In responding to Senator Grassley's Question 1 on statutory construction, you stated that you "first look to the plain meaning of the statute, giving the words their plain and ordinary meaning." You also stated in a response to Senator Brownback's Question 4 that "expanding the scope of statutes beyond their terms" is a form of judicial activism. Do you believe the same textual commitment should apply to interpreting the Constitution?**

Response: The Constitution should be interpreted in accordance with the precedents of the Supreme Court of the United States. These precedents control without regard to the approach taken by the individual justices in interpreting the text of the document.

**Responses of Raymond M. Kethledge  
Nominee to the U.S. Court of Appeals for the Sixth Circuit  
to the Written Questions of Senator Arlen Specter**

- 1. In your response to question 17(c)(2) of the Committee questionnaire, you state that 50 percent of your practice has been in federal courts and 50 percent has been in state courts. Please describe the types of federal issues on which you have worked, including issues that you handled during your clerkship on the Court of Appeals for the Sixth Circuit and your clerkship with Justice Kennedy on the U.S. Supreme Court.**

The proportion and composition of federal issues in my practice has fluctuated over time. The federal issues on which I have worked as a practicing attorney include the scope of various federal jurisdictional statutes, the constitutional “case or controversy” requirement, the elements of standing, the scope of “[t]he judicial power” under Article III, federal constitutional limitations on punitive damages, various other limitations and guarantees arising from the federal Due Process Clauses, the admissibility of expert testimony under Federal Rule of Evidence 702, the admissibility of hearsay under Federal Rules of Evidence 803 and 804, a wide range of issues under the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure, the interpretation of Treasury Regulations and federal tax statutes, the scope of federal preemption of state-law claims, various aspects of patent law, and the prerequisites for class certification in federal courts, among other issues.

I worked on many of these same issues as a law clerk. I also worked extensively on issues of federal criminal law, including the constitutional guarantees afforded criminal defendants, the elements of various statutory crimes and the proof required to establish them, the application of the Federal Sentencing Guidelines, and issues related to the writ of habeas corpus, among other issues.

- 2. If confirmed as a judge on the Sixth Circuit, you will frequently be called upon to construe statutes. Can you please describe your views on statutory construction and to what would look for guidance in interpreting statutes?**

I would follow Supreme Court precedent regarding the manner in which statutes should be interpreted. To that end, I would begin with the text of the statute. If the meaning of the statute is clear from its text, the inquiry would end there. I would also consider the structure of the statute as necessary to determine the meaning or scope of its text. In most cases, I believe, a court can determine the meaning of a statute by close and careful examination of its text and structure.

## SUBMISSIONS FOR THE RECORD

**Michael S. Greco**  
President

AMERICAN BAR ASSOCIATION

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October 31, 2005

The Honorable Arlen Specter  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Patrick J. Leahy  
Ranking Minority Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Specter and Senator Leahy:

On behalf of the American Bar Association, I write to express our disappointment that you have decided to proceed with the confirmation hearings of Gregory F. Van Tatenhove and Eric N. Vitaliano for district court judgeships in Kentucky and New York, respectively, before completion of the ABA Standing Committee on Federal Judiciary's evaluation of these nominees. As you and your colleagues noted at the confirmation hearings of Chief Justice John Roberts, the Standing Committee's evaluation "is important" to what you do. As Senator Sessions noted, "You talk to the judges, lawyers on both sides, against whom they litigated. You know from your own personal experience normally who will give fair and honest evaluation and place good judgment on a person's professional skills. So I do think it provides a lot of advantages for our Committee."

Central to every evaluation performed by the Standing Committee are the very extensive confidential interviews conducted with a wide spectrum of individuals who know the nominee and are in the best position to evaluate his or her professional qualifications. These interviews provide a window into the nominee's professional strengths and weaknesses.

The ABA Standing Committee is the only entity that performs an extensive confidential peer review, and even in the best of circumstances, this process takes a minimum of 35 days. The Committee cannot begin the process until it receives a nominee's personal data questionnaire (PDQ) from the Department of Justice and a waiver from the nominee that allows a review of important records. The Committee received Mr. Van Tatenhove's PDQ on October 3 and his waiver on October 6. The Committee received Mr. Vitaliano's PDQ on October 24 and has not yet received his waiver.

Chairman Specter and Senator Leahy  
October 31, 2005  
Page Two

The Committee's investigations of these two nominees are under way. It is unfortunate that for the first time in more than half a century, your committee members and the public will not have the benefit of the only non-partisan, non-ideological, comprehensive review of the professional qualifications of judicial nominees that is performed to assist your committee in its deliberations. We regret that the short additional time required for the Standing Committee to complete its reviews was not provided in light of the fact that the nominees, if confirmed, will have lifetime appointments to the federal bench. Nonetheless, I assure you that the Committee will continue its work evaluating both nominees, and will provide its evaluation of each nominee to your committee and to the Administration as soon as possible.

It is our belief that by evaluating the professional competence, judicial temperament and integrity of each nominee, the ABA helps to ensure the confirmation of the best qualified individuals to a lifetime appointment to the federal bench. The ABA Standing Committee looks forward to working with you in the future in pursuit of that goal.

Sincerely,



Michael S. Greco

cc: Stephen L. Tober, Chair, ABA Standing Committee on Federal Judiciary



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AMERICAN BAR ASSOCIATION

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May 6, 2008

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

The Honorable Arlen Specter  
Ranking Minority Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

On behalf of the American Bar Association Standing Committee on the Federal Judiciary, I write to express our concern that you have decided to proceed with the confirmation hearings of Helene N. White to be U.S. Circuit Judge for the Sixth Circuit and Stephen Joseph Murphy III to be U.S. District Judge for the Eastern District of Michigan, currently scheduled for May 7, before completion of the Standing Committee's evaluation of these nominees. Our evaluations provide a unique window into the nominee's professional strengths and weaknesses, and offer members of the Judiciary Committee and the Senate a unique perspective on the nominees that otherwise would not be available. You and your colleagues have noted at numerous confirmation hearings that the Standing Committee's evaluation is important to what you do.

As you know, barring unusual circumstances, the expectation is that the Standing Committee will complete its evaluation and submit its rating within 35 days of receiving a nominee's personal data questionnaire from the Department of Justice and a waiver from the nominee that allows a review of important records. A supplemental evaluation of a nominee whose nomination has been withdrawn or returned and then subsequently resubmitted by the President may require less time to complete.

May 6, 2008  
Page 2

The Standing Committee's investigations of these two nominees are underway. Under our normal timetable, it would be reasonable for you to expect to receive our evaluations by the close of this month. It is unfortunate that, during the confirmation hearing, your committee members will not have the benefit of the Standing Committee's comprehensive review.

Despite these developments, I assure you that the Standing Committee will continue its work evaluating both nominees and will make every effort to expedite the process without compromising the thoroughness or quality of its evaluation. This is consistent with our previous practice when, on rare occasions, we have been confronted with a similar situation. Our evaluation of each nominee will be submitted to your committee and to the Administration as soon as reasonably possible. We sincerely hope that the Judiciary Committee will defer further consideration of, and that the Senate will take no action on, these two nominees until our evaluations are submitted and can help inform your critical deliberations.

It is our belief that by evaluating the integrity, professional competence and judicial temperament of each nominee, the ABA helps to ensure confirmation of the best qualified individuals for lifetime appointments to the federal bench. The ABA Standing Committee on the Federal Judiciary looks forward to continuing to work with you in pursuit of that goal.

Sincerely,



C. Timothy Hopkins  
Chair

CTH:cs

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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**United States Senate**  
COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

May 12, 2008

C. Timothy Hopkins, Esq.  
Chair, ABA Standing Committee on the Federal Judiciary  
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428 Park Ave., P.O. Box 51219  
Idaho Falls, ID 83405-1219

Dear Mr. Hopkins:

Thank you for your letter of May 6. I know that the ABA Standing Committee has worked diligently to provide reviews on the recent nomination of Justice Steven Agee to the Fourth Circuit and many other nominations. Your work has been very helpful, and I appreciate your efforts now, as I have over many years.

Given the colloquy between Senators Reid and McConnell, the importance of the Sixth Circuit nominations, and the fact that the Committee had received ABA ratings in connection with the prior nominations of Judge Helene White and Steven Murphy, I hope that you understand the exceptional circumstances that led to the scheduling of the hearing in advance of receiving your updated ratings on their current nominations. Nevertheless, I appreciate your concerns about preserving the important role that the ABA's reviews play in our process.

I was more surprised that Republican members of the Judiciary Committee appeared to raise concerns about our holding a hearing in advance of receiving the ABA reviews since recent Republican Chairmen of the Committee had often engaged in that practice.

As I said at the hearing, it is not my intention to proceed with a Committee vote without the benefit of the ABA's new ratings on these new nominations, despite that practice by Republican Chairmen. I look forward to our receiving your reviews at your earliest opportunity so that Senators on the Committee will have the opportunity to consider the Standing Committee's ratings before being called upon to vote.

It is also my hope that we can return to a process in which the ABA completes its reviews before nominations are made. That was the practice instituted by President Eisenhower, and it worked well for more than 50 years. Regrettably the current President upset that well-established system and ordered that the Standing Committee be excluded from pre-nomination screening. A return to such a system would allow us to avoid difficult situations going forward.

C. Timothy Hopkins, Esq.  
May 12, 2008  
Page 2 of 2

Thank you, the Standing Committee, again for your hard work on these and many other nominations.

Sincerely,



PATRICK J. LEAHY  
Chairman

Statement of Chairman Patrick Leahy  
Senate Judiciary Committee  
Hearing on Judicial Nominations  
May 7, 2008

I have been speaking during the last several weeks about the progress we have made and are making in repairing the terrible damage done to the confirmation process and about our progress in reducing judicial vacancies.

The American people do not want judicial nominations rooted in partisan politics. They want federal judges who understand the importance of an independent judiciary. Our independent courts are a source of America's strength, endurance and stability. Our judicial system has been the envy of the world. The American people expect the Federal courts to be impartial forums where justice is dispensed without favor to the right or the left or to any political party or faction. The only lifetime appointments in our government, these nominations matter a great deal. The Federal judiciary is the one arm of our government that should never be political or politicized, regardless of who sits in the White House.

Today we witness a demonstration of the progress about which I have been speaking and for which I have been working. Today's hearing moves us closer to confirming President Bush's nominations to the last two vacancies on the Sixth Circuit Court of Appeals. This completes the task I began when I became Chairman in the summer of 2001, when the Sixth Circuit was in turmoil and nominations had been road blocked for years. At that point there were four vacancies on the Sixth Circuit. When I scheduled a hearing and vote for Judge Julia Smith Gibbons, and then for Judge John Marshall Rogers, we were able to break an impasse that had lasted for five years. Confirmation of Judge White and Mr. Kethledge would complete the process by filling the two remaining vacancies on the Sixth Circuit.

I continue in this Congress, and I will continue with a new President in the next Congress, to work with Senators from both sides of the aisle to ensure that the Federal judiciary remains independent, and able to provide justice to all Americans, without fear or favor.

The Michigan vacancies on the Sixth Circuit have proven a great challenge. I want to commend Senator Levin and Senator Stabenow for working to end the impasse. I have urged the President to work with the Michigan Senators and, after seven years, he finally has. Last month our extensive efforts culminated in a significant development that can lead to filling the last two vacancies on the Sixth Circuit, both vacant so long they have been classified as judicial emergencies.

This accomplishment stands in sharp contrast to the actions of Senate Republicans who refused to consider any of the highly-qualified nominations to the Sixth Circuit Court of Appeals during the last three years of the Clinton administration. Those nominees included Judge White; Kathleen McCree Lewis, an accomplished attorney and the

daughter of former Solicitor General of the United States and former Sixth Circuit Judge Wade McCree; and Professor Kent Markus, who was supported by his home state Senators, both Republicans.

Accordingly, I am delighted to welcome Judge Helene White to the Committee. Judge White has served on the Michigan Court of Appeals during the past 15 years, having been elected by the people of Michigan in 1992. Before that she served for a dozen years on the Wayne County Circuit Court, a court of general trial jurisdiction, the Common Pleas Court for the City of Detroit and the 36th District Court of Michigan. She is described on the Bush White House website as "an experienced and highly qualified judge, who is known for her intellect, work ethic, and demeanor." I could not agree more. In addition, she has been active as a member of the legal community and of community organizations including COTS (Coalition on Temporary Shelter), JVS (Jewish vocational services), and the Metropolitan Detroit Young Women's Christian Association.

She was first nominated by President Clinton to a vacancy on the Sixth Circuit in January 1997, more than 11 years ago, but the Republican-led Senate refused to act on her nomination. She waited in vain for 1,454 days for a hearing, before President Bush withdrew her nomination in March 2001. Hers was one of the scores of qualified judicial nominees pocket filibustered. Last month, President Bush reconsidered, and renominated her.

Our second Sixth Circuit nominee is Raymond M. Kethledge. Mr. Kethledge is a young man who has spent eight years in legal practice in Michigan beginning as an associate in the litigation department of Honigan Miller Schwartz and Cohn, later as a partner at the boutique litigation firm of Feeney Kellett Weiner and Bush and, since the summer of 2003, as a founding member of his own firm, that of Bush Seyferth Kethledge and Paige. He also spent a year as an in-house counsel at Ford Motor Company in their general counsel's office. I am glad to see that he has performed pro bono legal services, something I have always thought lawyers should do.

Our third nomination for consideration today is the President's recent nomination of Stephen Joseph Murphy III to be a United States District Judge for the Eastern District of Michigan. That vacancy is also classified as a judicial emergency. When on April 15 he announced the renomination of Judge White, I commended the President. Since then I have sought to expedite consideration of these Michigan nominees in recognition of the breakthrough represented by the agreement reached between the President and the Michigan Senators. The Michigan Senators have always been interested in a bipartisan solution to judicial vacancies on the Sixth Circuit and had previously proposed a bipartisan commission as a way to reach consensus in Michigan. Today, I thank and commend the Senators from Michigan and, again, thank the President for finally working with them and us.

In light of that cooperation, we have taken extraordinary steps to expedite this hearing. I thank all members of the Committee for their cooperation. I recently received a letter from Senator McConnell and Senator Specter in which they note the importance of our

receiving updated ABA peer reviews for these new nominations. I agree that those are important. The ABA Standing Committee has been working diligently to provide reviews on the recent nomination of Justice Steven Agee to the Fourth Circuit as well as other nominations. They have been very helpful, and we appreciate their efforts. Given the ABA ratings we have received in connection with the prior nominations of Judge White and Mr. Murphy, I expect the new ratings will not present a concern about qualifications. As I have assured Senators McConnell and Specter, I will seek to ensure that we proceed in an orderly fashion, that all Senators have a fair opportunity to question the nominees and that we have all the materials we need in order fairly to consider these nominations.

I am sure there are some who prefer partisan fights designed to energize a political base during an election year, but I do not. The Republican Senate majority during the last five years of the Clinton administration more than doubled vacancies on our nation's circuit courts, as they rose from 12 to 26. Those circuit vacancies grew to 32 during the transition to the Bush administration. We have been able to reverse that trend and reduce circuit vacancies by almost two-thirds. Today there are fewer circuit court vacancies than at any time since the 1996 session. In fact, our work has led to a reduction in vacancies in nearly every circuit. We are heading toward reducing circuit court vacancies to single digits for the first time in decades. With these nominations, we are also poised to add the Sixth Circuit to the other five circuits without a single vacancy, thanks to our efforts.

I am determined to prioritize progress, not politics, and focus the Committee on those nominations on which we can make progress and, in particular, on those in which the White House has finally begun to work with the Senate. The alternative is to risk becoming embroiled in contentious debates for months and thereby foreclose the opportunity to make progress where we can. Last year a controversial Bush judicial nomination took five and one-half months of debate after a hearing before Senate action was possible. We also saw what happened during the last several months of the last Congress. There were many hearings on many controversial nominations. That resulted in a great deal of effort and conflict, but not in as many confirmations as might have been achieved. I prefer to make progress where we can and to work together to do so.

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PATRICK J. LEAHY, VERMONT, CHAIRMAN

EDWARD M. KENNEDY, MASSACHUSETTS	ARLEN SPECTER, PENNSYLVANIA
JOSEPH R. BIDEN, JR., DELAWARE	ORRIN G. HATCH, UTAH
HERB KOHL, WISCONSIN	CHARLES E. GRASSLEY, IOWA
DIANNE FEINSTEIN, CALIFORNIA	JOHN KYL, ARIZONA
RUSSELL D. FEINGOLD, WISCONSIN	JEFF SESSIONS, ALABAMA
CHARLES E. SCHUMER, NEW YORK	LINDSEY O. GRAHAM, SOUTH CAROLINA
RICHARD J. DURBIN, ILLINOIS	JOHN CORNYN, TEXAS
BENJAMIN L. CARDIN, MARYLAND	SAM BROWNBACK, KANSAS
SHELDON WHITEHOUSE, RHODE ISLAND	TOM COBURN, OKLAHOMA

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
STEPHANIE A. MCKEYTON, *Republican Staff Director*  
NICHOLAS A. ROSSI, *Republican Chief Counsel*

**United States Senate**  
COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

May 12, 2008

C. Timothy Hopkins, Esq.  
Chair, ABA Standing Committee on the Federal Judiciary  
Hopkins Roden Crockett Hansen & Hoopes PLLC  
428 Park Ave., P.O. Box 51219  
Idaho Falls, ID 83405-1219

Dear Mr. Hopkins:

Thank you for your letter of May 6. I know that the ABA Standing Committee has worked diligently to provide reviews on the recent nomination of Justice Steven Agee to the Fourth Circuit and many other nominations. Your work has been very helpful, and I appreciate your efforts now, as I have over many years.

Given the colloquy between Senators Reid and McConnell, the importance of the Sixth Circuit nominations, and the fact that the Committee had received ABA ratings in connection with the prior nominations of Judge Helene White and Steven Murphy, I hope that you understand the exceptional circumstances that led to the scheduling of the hearing in advance of receiving your updated ratings on their current nominations. Nevertheless, I appreciate your concerns about preserving the important role that the ABA's reviews play in our process.

I was more surprised that Republican members of the Judiciary Committee appeared to raise concerns about our holding a hearing in advance of receiving the ABA reviews since recent Republican Chairmen of the Committee had often engaged in that practice.

As I said at the hearing, it is not my intention to proceed with a Committee vote without the benefit of the ABA's new ratings on these new nominations, despite that practice by Republican Chairmen. I look forward to our receiving your reviews at your earliest opportunity so that Senators on the Committee will have the opportunity to consider the Standing Committee's ratings before being called upon to vote.

It is also my hope that we can return to a process in which the ABA completes its reviews before nominations are made. That was the practice instituted by President Eisenhower, and it worked well for more than 50 years. Regrettably the current President upset that well-established system and ordered that the Standing Committee be excluded from pre-nomination screening. A return to such a system would allow us to avoid difficult situations going forward.

C. Timothy Hopkins, Esq.  
May 12, 2008  
Page 2 of 2

Thank you, the Standing Committee, again for your hard work on these and many other nominations.

Sincerely,



PATRICK LEAHY  
Chairman



**JUDICIAL NOMINATIONS: PAUL G. GARDEPHE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK; KIYO A. MATSUMOTO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK; CATHY SEIBEL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK; GLENN T. SUDDABY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK**

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**WEDNESDAY, JUNE 11, 2008**

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

The Committee met, Pursuant to notice, at 2:17 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles E. Schumer, presiding.

Present: Senator Brownback.

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

Senator SCHUMER. The Committee will come to order.

I want to welcome all the nominees and their families. We have an all-New York panel this afternoon, and that warms my heart. In New York, we have worked out a really wonderful system of nominating judges to the District and Circuit courts, in which the President and I have worked extremely well together to name highly qualified consensus candidates to the Federal bench.

We all know there's often rancor when it comes to judges from other parts of the country, but there's been virtually none in the 7-years of George Bush's term, in the 7-years I've been here in the Senate when we have served together and that's because in New York we select mainstream consensus candidates for the bench.

It's my honor to introduce to the Committee today four such candidates to serve as judges in the District Courts across the great State of New York. All four of our nominees have unanimously been rated "Well Qualified" by the Bar Association.

And so now I would like to ask the nominees to come forward. Okay. Now, Congressman Walsh was going to be here to give an

introduction, particularly to Mr. Suddaby, but he isn't. So if he comes we'll let him do his introduction after the introductions.

[Laughter.]

Now, will you please raise your right hand?

[Whereupon, the nominees were duly sworn.]

Senator SCHUMER. Please be seated.

Now, before I introduce the judges, the witnesses, Senator Brownback? I can sit down, I guess. Would you like to say something, Senator Brownback.

**STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR  
FROM THE STATE OF KANSAS**

Senator BROWNBACK. Yes. Thank you. I wanted to thank Chairman Leahy for holding this hearing and moving these forward. As you know, this has been a controversial issue, the slow pace of judges getting approved, both at the District and the Circuit levels. I'm pleased to see us getting this moving forward, and hopefully these will get floor time to be able to get approved on through the process. We are historic low levels on Circuit Court judges, and my hope is that we can start to get some of those to move, as well as District Court judges.

I am pleased we are getting these four in the hearing today. I have looked through some of your backgrounds; quite impressive. We have even got one here from Manhattan, Kansas. Or was it Manhattan, New York? Okay. Well, I get those mixed up.

Senator SCHUMER. Six of one, half dozen of the other.

Senator BROWNBACK. Big Apple, Little Apple. I get those confused sometimes. But glad to have you here, and glad to be a part of the hearing.

Senator SCHUMER. Well, thank you, Sam. We in New York were proud to name our center island of New York City after Manhattan, Kansas.

Anyway, let me first—I am pleased to introduce Paul Gardephe. He's nominated to be a District Court judge for the Southern District of New York. Mr. Gardephe has an impressive and eclectic legal resumé that includes work in both the public and private sectors in work on criminal prosecution, criminal defense, civil litigation, and corporate law.

After graduating magna cum laude from the University of Pennsylvania and from Columbia Law School, Mr. Gardephe served as a clerk to Judge Albert Engel on the Sixth Circuit. He then worked as an associate with Patterson, Belknap, Webb & Tyler before working 9-years in the U.S. Attorney's Office in the Southern District of New York.

Mr. Gardephe then left to work for the Inspector General at the Department of Justice, where he worked to review the Department's performance in the Robert Hanson and Aldritch Ames spying cases. After the Inspector General's Office, Mr. Gardephe returned to the private sector, first to work as an in-house counsel, and ultimately vice president and deputy general counsel to Time, Inc. Mr. Gardephe later returned to Patterson, Belknap, Webb & Tyler, where he is now a partner and chair of the Litigation Department.

Among other things, Mr. Gardephe has represented a death row inmate pro bono who was eventually released after years of litigation. For his work, Mr. Gardephe was honored with the Thurgood Marshall Award for Pro Bono Death Penalty Representation.

Mr. Gardephe, I understand your wife and four children are here with us today. Would you like to introduce them and make any remarks to the Committee?

**STATEMENT OF PAUL G. GARDEPHE, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK**

Mr. GARDEPHE. Thank you, Mr. Chairman. I would like to thank you, I'd like to thank Senator Specter, Senator Brownback, and all of the members of the Committee for the privilege of appearing before you today. I'd also like to thank the President of the United States for giving me the honor of nominating me to this position.

I am fortunate to have with me today my wife of 27 years, Colleen Davis, along with our four children.

Senator SCHUMER. When is your anniversary, Mr. Gardephe?

Mr. GARDEPHE. 12/27/81, Mr. Chairman.

[Laughter.]

Senator SCHUMER. Because my wife and I are married—we celebrate our 28th on September 24th.

Mr. GARDEPHE. I have with me today, in addition to my wife, my four children: Tess, who just graduated from high school, and I have three other children. They're triplets, 12 years old.

Senator SCHUMER. Ooh.

Mr. GARDEPHE. Emma Kate, Paul William, and Sophie Elayna. In addition, I have two friends with me today.

Senator SCHUMER. Why don't we first have your family stand up so we can just acknowledge them? Mrs. Gardephe. And hi, triplets.

[Laughter.]

Thank you. Welcome.

Please continue.

Mr. GARDEPHE. I have two friends with me, Mr. Chairman. Susan Woodside, who I worked with on the Ames and Hanson investigations at Department of Justice, and also Amanda Kramer, who is an Assistant U.S. Attorney in the Southern District of New York.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Paul George Gardephe

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

United States District Judge for the Southern District of New York

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

Office: Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036

Residence: New Rochelle, New York

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

1957, Fitchburg, MA

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

I am married to Colleen Mae Davis. She is employed as a writer, Family Services of Westchester, One Gateway Plaza, Port Chester, NY 10573.

We have four dependent children.

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

1979 – 1982, Columbia Law School; J.D., May 1982

1975 – 1979, University of Pennsylvania; B.A., May 1979; M.A., May 1979

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

Employment:

2003 – present

Patterson Belknap Webb & Tyler LLP  
Partner, Chair of Litigation Dept.

1996 – 2003

Time Inc. Law Department  
Vice President, Deputy General Counsel (2000 – 2003)  
Deputy General Counsel, Litigation (1998 – 2000)  
Associate General Counsel (1996 -1998)

1996 - 2000, 2001 – 2003

United States Department of Justice  
Inspector General's Office  
Consultant (Special Counsel)

1987 – 1996

United States Attorney's Office, Southern District of New York  
Senior Litigation Counsel (3/95 to 10/96)  
Chief, Appeals Unit, Criminal Division (7/92 to 2/95)  
Assistant United States Attorney (8/87 to 6/92)

1983 – 1987

Patterson Belknap Webb & Tyler LLP  
Litigation Associate

1982 – 1983

United States Court of Appeals for the Sixth Circuit  
Law Clerk to the Honorable Albert J. Engel

1982

United States Attorney's Office, Southern District of New York  
Student Assistant

1981

Hale & Dorr  
Summer Associate

1981  
Townley & Updike (This firm no longer exists)  
Summer Associate

1980 – 1981  
United States District Court for the Southern District of New York  
Student Law Clerk to the Honorable Mary Johnson Lowe (deceased)

1980  
District Council 37  
AFSCME, Legal Department  
Summer Law Clerk

1979  
OAO Corp.  
2101 L Street  
Washington, DC 20037  
Summer Research Assistant

Other: Fund for Modern Courts, Board Member (approx. 2004 to present)

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

I have not served in the military.

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

Columbia Law School Harlan Fiske Stone Scholar  
Columbia Journal of Law and Social Problems - Articles Editor and Staff Member  
University of Pennsylvania - Magna cum laude graduate; Phi Beta Kappa; Honors in English; Dean's List 1976-1979

**Professional Honors:**

2003 U.S. Department of Justice, Inspector General's Office, Special Achievement Award  
1998 Thurgood Marshall Award (for pro bono death penalty representation)  
1996 Stimson Medal Recipient (awarded annually by the Association of the Bar of the City of New York to an Assistant U.S. Attorney in the Southern District of New York who has rendered outstanding public service)  
1996 U.S. Department of Justice, Inspector General's Office, Special Achievement Award  
1992 U.S. Department of Justice, Special Achievement Award

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

American Bar Association, Litigation Section

Federal Bar Council

New York State Bar Association

Association of the Bar of the City of New York, Committee on Criminal Advocacy (1994-96)

Former Member, Rules Committee, U.S. Court of Appeals for the Second Circuit

Member, Disciplinary Committee, New York State Supreme Court, First Department

11. **Bar and Court Admission:**

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

New York State Bar, First Department, February 6, 1984.  
There have been no lapses in membership.

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

United States District Court for the Southern District of New York: September 25, 1984

United States District Court for the Eastern District of New York: October 18, 1984

United States Court of Appeals for the Second Circuit: July 7, 1988

United States Court of Appeals for the Third Circuit: March 4, 1999

United States Court of Appeals for the Sixth Circuit: July 31, 2000

Supreme Court of the United States: May 15, 2006

There have been no lapses in membership.

**12. Memberships:**

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

Penn Club (Spring 2007 to present)

Fund for Modern Courts, Board Member (approx. 2004 to present)

Davenport Club (approx. 1998 to 2007)

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

None of the organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion.

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

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

None.

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

None.

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

None.

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

None.

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

During my years as an Assistant United States Attorney, and occasionally during my years in private practice, I have been contacted by the press with questions about cases that I was responsible for litigating. For example, in connection with the case I argued in the Supreme Court in October 2007 (Board of Education of the City of New York v. Tom F.), I spoke with numerous reporters working for both print and electronic media. I don't recall many of these informal contacts, and I don't consider any of them formal interviews. I do not have transcripts reflecting these contacts with the media nor have I collected clips of articles in which I may have been quoted.

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

None

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

- a. citations for all opinions you have written (including concurrences and dissents);
- b. a list of cases in which certiorari has been requested or granted;

- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and
- f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have not served as a judge.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

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

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

I was appointed as a Law Clerk, by the Honorable Albert J. Engel, United States Circuit Judge for the Sixth Circuit (1982-1983)

I was appointed as an Assistant United States Attorney, U.S. Attorney's Office, Southern District of New York, by U.S. Attorney General Edwin Meese (1987-96)

I have never held elective office.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

None.

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

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

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

I served as a clerk to the Honorable Albert J. Engel, United States Circuit Judge for the Sixth Circuit, 1982-83.

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

I have never practiced law alone.

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

2003 – present

Patterson Belknap Webb & Tyler LLP

1133 Avenue of the Americas

New York, NY 10036

Partner, Chair of Litigation Dept.

1996 – 2003

Time Inc. Law Department  
1271 Avenue of the Americas  
New York, NY 10020  
Vice President, Deputy General Counsel (2000 – 2003)  
Deputy General Counsel, Litigation (1998 – 2000)  
Associate General Counsel (1996 -1998)

1996 - 2000, 2001 – 2003

United States Department of Justice  
Inspector General's Office  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530  
Consultant (Special Counsel)

1987 – 1996

United States Attorney's Office, Southern District of New York  
1 St. Andrew's Plaza  
New York, NY 10007  
Senior Litigation Counsel (3/95 to 10/96)  
Chief, Appeals Unit, Criminal Division (7/92 to 2/95)  
Assistant United States Attorney (8/87 to 6/92)

1983 – 1987

Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036  
Litigation Associate

1982 – 1983

United States Court of Appeals for the Sixth Circuit  
640 Federal Building  
Grand Rapids, MI 49503  
Law Clerk to the Honorable Albert J. Engel

b. Describe:

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

From 1983 to 1987, as an Associate at Patterson Belknap, my practice included First Amendment and media litigation matters, false advertising, products liability and general commercial litigation. I argued motions and appeals, took and defended depositions, and second-chaired several jury trials in Federal and state courts.

From 1987 to 1996, as an Assistant United States Attorney for the Southern District of New York, I served in the Organized Crime, Major Crimes, Narcotics and Special Narcotics Investigations units. I tried more than twenty cases to a jury verdict in cases involving mail fraud, wire fraud, RICO, kidnapping, assault, murder, and narcotics trafficking. I developed extensive experience in prosecuting money laundering cases and pioneered the use of RICO for gang prosecutions in the Southern District. I handled all aspects of criminal practice, including complex grand jury and Title III wiretap investigations, and represented the United States in numerous detention, suppression, and sentencing hearings, trials and appeals.

During the period between July 1992 and February 1995, I served as Chief of the Appeals Unit in the U.S. Attorney's Office. In that capacity, I supervised the preparation and submission of approximately 200 briefs per year to the U.S. Court of Appeals for the Second Circuit. I served as the chief legal advisor to the United States Attorney and to the 120 Assistant U.S. Attorneys in the Criminal Division at that time. I argued numerous cases before the Second Circuit and acquired broad experience in every area of federal criminal law.

During the period between February 1995 and April 1997, I was detailed to the DOJ Inspector General's Office to serve as the chief investigator for a review of the FBI's performance in connection with the Aldrich Ames espionage case. I supervised a dozen agents, analysts, and support staff, interviewed more than 100 active and retired FBI and CIA employees and other witnesses, and wrote a 400-page report for submission to the Attorney General, the FBI Director, and the House and Senate Intelligence Committees with findings and recommendations concerning Ames' espionage and how the FBI's counterintelligence program should be improved.

After FBI Special Agent Robert Hanssen was arrested in 2001, I was asked to do a similar review of the FBI's performance in discovering and interdicting Hanssen's espionage. Our team of ten prosecutors, agents, analysts, and support staff interviewed more than 200 active and retired FBI and CIA employees, and gathered more than 350,000 pages of relevant documents. We prepared a 600-page highly classified report setting forth findings and recommendations concerning Hanssen's espionage and the FBI's internal security protocol and counterintelligence program, which was submitted to the Attorney General, the FBI Director, and the House and Senate Intelligence Committees for use in improving the FBI's counterintelligence effort.

In October of 1996, I joined the in-house legal department of Time Inc., the publishing arm of Time Warner Inc. I was hired as Associate General

Counsel, was promoted to Deputy General Counsel and Assistant Secretary in 1998, and was promoted to Vice President and Deputy General Counsel in 2000. As chief litigation counsel, I was responsible for all litigation involving Time Inc. and its subsidiaries, including counseling clients, developing strategy, briefing and arguing motions, trials and appeals. Unlike most in-house law departments, we litigated many of the Company's cases ourselves rather than using outside counsel. I litigated cases involving libel, trademark, and invasion of privacy, employment and commercial disputes, and consumer marketing issues. I also performed internal investigations and corporate audits for the Company, supervised a staff of in-house litigators and paralegals, and handled multiple trials, appeals, motions and discovery practice, and arbitrations.

In May 2003, I rejoined Patterson Belknap as a partner in charge of the firm's White Collar Criminal Defense and Internal Investigations Practice. In 2005, I became chair of the litigation department. My practice since my return to the firm has been split between criminal defense, regulatory and internal investigation work and civil litigation involving media or entertainment companies.

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

Most of my work in private practice has involved the representation of large corporations, including many leading media companies, two of the largest record companies, and large pharmaceutical companies. Reflecting my experience in the U.S. Attorney's Office and at Time Inc., I have specialized in criminal law/regulatory/internal investigation work and in areas of civil litigation that often involve media companies, such as libel, invasion of privacy, trademark and copyright.

While at Time Inc., I represented the parent company and its subsidiaries.

While at the U.S. Attorney's Office, I represented the United States.

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

i. Indicate the percentage of your practice in:

1. federal courts: 85%
2. state courts of record: 15%
3. other courts.

ii. Indicate the percentage of your practice in:

1. civil proceedings: 55%
2. criminal proceedings: 45%

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

I have tried to verdict or judgment over 26 cases. I was sole or lead counsel in over 21 cases and associate counsel in 5 cases.

- i. What percentage of these trials were:

1. jury: 92%
2. non-jury: 8%

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

I briefed and argued the case of Board of Education of the City of New York v. Tom F. in the Supreme Court of the United States in 2007.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

1. Board of Education of the City School District of the City of New York v. Tom F., on behalf of Gilbert F., a minor, 522 U.S. ---, 128 S. Ct. 1, 169 L. Ed. 2d 1 (2007) (*per curiam*) (affirming Board of Education of the City School District of the City of New York v. Tom F., on behalf of Gilbert F., a minor, 193 F. App'x 26 (2d Cir. 2006)).

Supreme Court of the United States: Chief Justice John G. Roberts, Jr., Justice John Paul Stevens, Justice Antonin Scalia, Justice David H. Souter, Justice Clarence Thomas, Justice Ruth Bader Ginsburg, Justice Stephen G. Breyer, Justice Samuel A. Alito, Jr. (Justice Anthony M. Kennedy recused himself)

U.S. Court of Appeals for the Second Circuit: Honorable Amalya L. Kearse and Honorable Robert D. Sack, Circuit Judges, Honorable Timothy C. Stanceu, Judge of the U.S. Court of International Trade, sitting by designation

As the lead attorney for Tom F. in both the U.S. Supreme Court and the U.S. Court of Appeals for the Second Circuit, I briefed and argued this case brought under the Individuals with Disabilities Education Act ("IDEA"). This case was significant because the U.S. Supreme Court affirmed the Second Circuit's determination that parents of children with disabilities are not required to enroll their children in inappropriate public school placements as a prerequisite to qualify for the opportunity to apply for private school tuition reimbursement.

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2. TVT Records v. The Island Def Jam Music Group, 412 F.3d 82 (2d Cir. 2005), cert. denied, --- U.S. ---, 126 S. Ct. 2968, 165 L. Ed. 2d 951 (2006). U.S. Court of Appeals for the Second Circuit: Honorable Dennis Jacobs, Honorable Barrington D. Parker, Jr., Honorable Peter W. Hall

In this case, the U.S. Court of Appeals for the Second Circuit reversed a \$54 million judgment against my client, Island Def Jam Music Group, a division of Universal Music Group, following a jury trial. The Court found that Island Def Jam Music Group was not liable for tortious interference, fraudulent concealment, and copyright infringement. The Court also reversed the punitive damages award on those claims and on a breach of contract claim. As the lead appellate lawyer in this case, I drafted the brief and argued the appeal. This case was significant because the jury verdict the Court reversed was one of the ten largest jury verdicts rendered in the United States that year.

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3. Atari, Inc. v. Games, Inc., 164 F. App'x 183 (2d Cir. 2006); Atari, Inc. v. Games, Inc., No. 04 Civ. 3723 (JSR), 2005 WL 612711 (S.D.N.Y. Mar. 15, 2005). U.S. Court of Appeals for the Second Circuit: Honorable Jose A. Cabranes and Honorable Barrington D. Parker, Jr., Circuit Judges, and Honorable Loretta A. Preska, U.S. District Judge, sitting by designation. U.S. District Court for the Southern District of New York: Honorable Jed S. Rakoff

As the lead attorney in this licensing dispute involving online games, I obtained summary judgment on behalf of Atari, Inc. following briefing and argument. I drafted the brief and argued the case before the Court of Appeals, which affirmed the District Court's judgment. This case was significant because it involved novel analysis of online rights to MONOPOLY and other well-known board games.

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4. Tucker v. Fischbein, et al., 237 F.3d 275 (3d Cir. 2001); Tucker v. Fischbein, et al., No. Civ. A. 97-6150, 1999 WL 124355 (E.D. Pa. Feb. 9, 1999). U.S. Court of Appeals for the Third Circuit: Honorable Samuel A. Alito, Jr. (then-Circuit Judge), Honorable Richard Lowell Nygaard, Honorable Max Rosenn (deceased). U.S. District Court for the Eastern District of Pennsylvania: Honorable Ronald L. Buckwalter

In this libel case, an anti-rap advocate and her husband alleged that writers at TIME and NEWSWEEK magazines committed libel by writing stories about one of the plaintiff's prior lawsuits against a deceased rapper's estate. I represented Time Inc. The District Court granted our motion for summary judgment, holding that the statements in question were not capable of a defamatory meaning and that the plaintiffs – who had conceded that they were public figures – could not prove actual malice. The Court of Appeals for the Third Circuit affirmed summary judgment in favor of Time Inc. As Time Inc.'s lead

counsel in the trial and appellate courts, I briefed and argued all motions and appeals on Time's behalf.

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5. Ellis v. Time Inc., No. Civ. A. 94-1755 (NHJ), 1997 WL 863267 (D.D.C. Nov. 18, 1997).  
 U.S. District Court for the District of Columbia: Honorable Norma H. Johnson

I was the lead lawyer for Time Inc. in this libel litigation that resulted in summary judgment in favor of Time Inc. The plaintiff, chief photographer for Reuters in Moscow, claimed that Time Inc. libeled him when it published a response to his accusations that certain photographs published in TIME magazine were staged. The plaintiff urged the Court to apply English libel law because of TIME's publication of the allegedly defamatory statements in Britain. This case was significant because the Court held that the application of English libel law would violate the First Amendment's protection of free speech.

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6. DaSilva v. Time Inc., 93 Civ. 8602 (JES). U.S. District Court for the Southern District of New York: Honorable John E. Sprizzo

The plaintiff claimed that TIME magazine libeled her by publishing her photograph with a caption identifying her as a prostitute. She had worked as a prostitute in Brazil for six years but claimed she had reformed. As the lead attorney for Time Inc., I tried this case to a jury, resulting in a verdict in favor of Time Inc.

Opposing Counsel:

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7. Schwartz v. FORTUNE Magazine, 193 F.R.D. 144 (S.D.N.Y. 2000). U.S. District Court for the Southern District of New York: Honorable Robert L. Carter

As co-counsel for defendant FORTUNE Magazine, I tried this breach of contract case to a jury verdict. The jury returned a verdict against our clients, but Judge Carter then immediately granted our motion for judgment as a matter of law.

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8. United States v. Ruggiero, 100 F.3d 284 (2d Cir. 1996), cert. denied, 522 U.S. 1138, 118 S. Ct. 1102, 140 L. Ed. 2d 156 (1998); United States v. Ruggiero, 92 Cr. 811. Court of Appeals for the Second Circuit: Honorable Roger J. Miner, Honorable John M. Walker, Jr., Honorable Fred I. Parker (deceased). U.S. District Court for the Southern District of New York: Honorable Allen G. Schwartz (deceased); Honorable Kenneth Conboy (now at Latham & Watkins, 885 Third Avenue, New York, NY 10022, 212-906-1850)

I was the lead trial and appellate lawyer in this RICO case involving charges of murder and kidnapping arising out of a conspiracy in which the defendants committed their crimes while posing as police officers. Defendants' convictions and sentences were affirmed on appeal. This case was significant because of the nature of the crimes and because it involved novel and complex sentencing issues, including application of a new Sentencing Guidelines' enhancement for brandishing a firearm.

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9. United States v. DiNapoli, 8 F.3d 909 (2d Cir. 1995) (en banc). U.S. Court of Appeals for the Second Circuit: Honorable Jon O. Newman, Honorable Amalya L. Kearse, Honorable Richard J. Cardamone, Honorable Ralph K. Winter, Honorable George C. Pratt, Honorable Roger J. Miner, Honorable Frank X. Altamari (deceased), Honorable J. Daniel Mahoney (deceased), Honorable John M. Walker Jr., Honorable Joseph M. McLaughlin, Honorable Dennis Jacobs

The Court of Appeals for the Second Circuit heard this case en banc after a remand from the Supreme Court. This case was significant because the Court of Appeals for the Second Circuit held that the "similar motive" requirement for admission of testimony from a prior hearing of a currently unavailable witness was not satisfied by grand jury testimony. Consequently, the Court excluded grand jury testimony offered by the defendants and the convictions were upheld. I briefed this en banc appeal.

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10. United States v. Tellier, S4 92 Cr. 869 (MGC). U.S. District Court for the Southern District of New York: Honorable Miriam Goldman Cedarbaum

The defendants in this case were charged with murder and the theft of millions of dollars in art, jewelry and furs. As co-lead counsel, I successfully tried this RICO case for three and a half months to a jury verdict in favor of the United States. This case was significant because it was one of the early successful prosecutions of a criminal gang under RICO in the Southern District of New York.

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20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The two most significant non-litigation matters I have pursued are the Inspector General investigations I conducted as a Special Counsel for the Department of Justice. During the period between February 1995 and April 1997, I was detailed to the DOJ Inspector General's Office to serve as the chief investigator for a review of the FBI's performance in connection with the Aldrich Ames espionage case. I supervised a dozen agents, analysts, and support staff, interviewed more than 100 active and retired FBI and CIA employees and other witnesses, and wrote a 400-page report for submission to the

Attorney General, the FBI Director, and the House and Senate Intelligence Committees with findings and recommendations concerning Ames' espionage and how the FBI's counterintelligence program should be improved.

After FBI Special Agent Robert Hanssen was arrested in 2001, I was asked to do a similar review of the FBI's performance in discovering and interdicting Hanssen's espionage. Our team of ten prosecutors, agents, analysts, and support staff interviewed more than 200 active and retired FBI and CIA employees, and gathered more than 350,000 pages of relevant documents. We prepared a 600-page highly classified report setting forth findings and recommendations concerning Hanssen's espionage and the FBI's internal security protocol and counterintelligence program, which was submitted to the Attorney General, the FBI Director, and the House and Senate Intelligence Committees for use in improving the FBI's counterintelligence effort.

In November 2006, I began representing the Associated Press and its photographer Bilal Hussein, an Iraqi who was hired by the AP to photograph events in Fallujah, Ramadi and other areas in Anbar Province in September of 2004. He was part of a group of AP photographers that won the 2005 Pulitzer Prize for their photographs of the conflict in Iraq. In April 2006, Hussein was taken into custody by U.S. forces. In March of 2007, I traveled to Iraq to conduct an investigation, the results of which are set forth in a report I submitted to the Associated Press and to the U.S. military. In November 2007, the U.S. military referred Hussein to the Central Criminal Court of Iraq ("CCCI") for investigation and possible prosecution. I traveled to Iraq in November 2007 and again in January 2008 to prepare for and appear at investigative hearings at the CCCI. Because my application for admission to the Iraqi bar pro hac vice was denied, I was not permitted to formally appear at these hearings. In March 2008, I returned to Iraq to prepare for a possible trial. On April 7 and 13, 2008, two panels of Iraqi judges serving as an amnesty committee granted Hussein amnesty for all conduct attributed to Hussein in CCCI case files. On April 16, 2008, Hussein was released from custody. During the entire period of his incarceration, Hussein was never charged with a crime.

I have also represented numerous companies in the context of regulatory investigations, including in the following matters (which are public):

1. In 2005, I was primarily responsible for a New York Attorney General's Office investigation of Sony BMG Music Entertainment in connection with payments to radio stations and promoters that promote Sony BMG's music to radio stations. I represented the Company's senior executives at depositions, conducted an internal investigation, and negotiated with prosecutors and then-New York Attorney General Spitzer. In July 2005, the Company entered into an Assurance of Discontinuance that resolved the investigation. The Sony BMG Assurance of Discontinuance has become a template for the industry.
2. In 2004 and 2005, I represented Universal Life Resources, an insurance broker, in a New York Attorney General's Office criminal investigation and civil lawsuit alleging bid-rigging. I negotiated a settlement with the New York Attorney General.

3. Since December 2003, I have been primarily responsible for representing Ortho McNeil, a Johnson & Johnson subsidiary, in connection with an ongoing investigation by the United States Attorney's Office in Boston, MA into the alleged off-label promotion of Topamax (an anti-epilepsy drug). In connection with this representation, I have conducted internal investigations, made several written submissions and made presentations to Department of Justice prosecutors.

Much of my work over the past five years has involved advising companies on compliance matters. Two assignments have involved serving as an independent compliance consultant pursuant to SEC decree:

1. In 2004, I was appointed as the independent compliance consultant for Aim Mutual Funds pursuant to an SEC consent decree. The SEC investigation arose from allegations of market timing activity in mutual funds managed by Aim. I conducted a thorough investigation of Aim's compliance policies and procedures and issued a final report to the SEC in 2005.
2. In 2003, our firm was hired by Putnam Mutual Funds to serve as an independent compliance consultant pursuant to an SEC consent decree. The SEC investigation arose from allegations of market timing activity in mutual funds managed by Putnam. I conducted a full review of Putnam's compliance policies and procedures and issued a final report to the SEC in 2005.

I have not engaged in any lobbying activities.

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

For the past 15 years, I have taught Trial Advocacy at New York Law School as an Adjunct Professor. This course has two components: a large lecture class that is taught by a staff professor, and small sections taught by adjunct professors in which the focus is on developing practical skills in conducting openings, summations, and direct and cross-examination. I have taught the practical skills portion of the class.

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

I receive annual payments from Time Inc. of deferred compensation. The total amount of deferred compensation still outstanding is approximately \$27,400. It will be paid out in installments this year and the next two years (I believe).

Pursuant to my partnership agreement with Patterson Belknap, were I to leave the firm, I would receive payment for my capital account (\$334,596 as of 12/31/07) and shares of undistributed firm net income attributable to the period when I served as a partner.

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

No.

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

See attached Financial Disclosure Report

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

See attached Net Worth Statement

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

The parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include cases involving my present law firm or clients I previously represented.

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

Throughout, I will be guided by the appearance of impropriety doctrine and by the rules governing recusal and conflict of interest. In all cases, I will follow the

Code of Conduct for United States Judges and applicable statutes, policies, and procedures.

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

Throughout my career, I have engaged in significant pro bono activities. While at Patterson Belknap as an Associate, I was part of a team that represented an inmate incarcerated in Florida's maximum security prison under a death sentence. I helped conduct a hearing in state court challenging his conviction. Ultimately, after years of litigation, significant Brady violations came to light and the inmate was released.

More recently, over the past year, I devoted hundreds of hours of time pro bono to litigating the case of Board of Education of the City of New York v. Tom F. This case presented an important issue under the Individuals with Disabilities Education Act ("IDEA"): whether the parents of disabled children are required, under the statute, to place their child in an inappropriate public school placement in order to qualify for a chance at obtaining private school tuition reimbursement. I represented the parent in the Second Circuit and prevailed. The Board of Education successfully petitioned for certiorari, and I argued the case on October 1, 2007. Justice Kennedy recused himself, and a short time later the Court, evenly divided, affirmed.

28. **Selection Process:**

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

I was approached by Attorney General Mukasey in December 2007 and asked whether I would be interested in being considered for a judgeship in the Southern District of New York. I was interviewed by White House and Justice Department personnel on February 5, 2008. Thereafter, I completed all the pre-nomination paperwork, and had conversations with staff from the Department of Justice regarding that paperwork. My nomination was submitted to the United States Senate on April 29, 2008.

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

Absolutely not.

AO-10 (9/97) Rev. 1/2004		FINANCIAL DISCLOSURE REPORT Nomination Report		Report Required by the Ethics in Government Act of 1978, (5 U.S.C. App. §§101-111)
1. Person Reporting (Last name, first, middle initial) Gardephé, Paul G.		2. Court or Organization U.S. District Court, SDNY		3. Date of Report 04/30/08
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee		5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 4/29/08 ___ Initial ___ Annual ___ Final		6. Reporting Period 01/01/2007 to 03/31/08
7. Chambers or Office Address 1133 Avenue of the Americas New York, New York 10036		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____		
<small>IMPORTANT NOTE: This information is confidential. Do not disseminate to the public. If you have any questions, contact the Commission at 202-456-3800. Check the NONE box for each item where you have no reportable information. See our last page.</small>				

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

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Partner	Patterson Belknap Webb & Tyler LLP
2 Board Member	Fund for Modern Courts
3 Advisory Board Member	Sunaglow

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

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements.)	
1 2003	with Time Warner Inc., regarding deferred compensation plan, Time Warner Savings Plan
2 2008	with Patterson Belknap Webb & Tyler LLP, regarding capital account and fees earned while a firm partner, and regarding 401k plan, money purchase plans, and cash balance plans

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

DATE	SOURCE AND TYPE	GROSS INCOME
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 2008	Patterson Belknap Webb & Tyler, partnership income	\$ 258,064.
2 2008	Time Warner Inc., deferred compensation payment	\$ 8948.52
3 2007	Patterson Belknap Webb & Tyler, partnership income	\$ 1,330,401
4 2007	Time Warner Inc., deferred compensation payment	\$ 9615.80
5 2007	New York Law School, teaching fee	\$ 4500
6 2006	Patterson Belknap Webb & Tyler, partnership income	\$ 1,119,742
7 2006	Time Warner Inc., deferred compensation payment	\$ 266,951.89

	2006	New York Law School, teaching fee	\$ 4500
<b>B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)</b>			
<input type="checkbox"/>	NONE (No reportable non-investment income.)		
1	2007	Family Services of Westchester, Salary	
2	2008	Family Services of Westchester, Salary	

**FINANCIAL DISCLOSURE REPORT**

Name of Person Reporting Gardephe, Paul G.	Date of Report 04/30/08
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**IV. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

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

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1	Exempt		\$
2			\$
3			\$
4			\$

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-33 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input checked="" type="checkbox"/>	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			

*Value Codes	01-\$1,000 or less	02-\$15,001-\$50,000	03-\$50,001-\$100,000	04-\$100,001-\$250,000
	05-\$250,001-\$500,000	06-\$500,001-\$1,000,000	07-\$1,000,001-\$3,000,000	08-\$3,000,001-\$5,000,000
	09-\$5,000,001-\$25,000,000	10-\$25,000,001-\$50,000,000	11-\$50,000,001 or more	

**FINANCIAL DISCLOSURE REPORT**

Name of Person Reporting <b>Gardephe, Paul G.</b>	Date of Report <b>04/30/08</b>
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**VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions** (Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)

Description of Asset (including trust name) <i>Please do not check same exempt from prior disclosure</i>	B. Income during reporting period		C. Total value or fair value of reporting asset		D. Transactions during reporting period				
	(1) Ann. Code (A-E)	(2) Type of Income	(3) Value Code (F-I)	(4) Value Method Code (J-K)	If not exempt from disclosure				
					(5) Type of Transaction	(6) Date Month (L-M)	(7) Value Code (N-O)	(8) Gain Code (P-Q)	(9) Identity of Beneficiary (R) (Previous transactions)
<input type="checkbox"/> NONE (No reportable income,									
1 Dreyfus Mutual Fund	D	Dividend	N	T	Exempt				
2 Janus Research Fund	A	Dividend	J	T					
3 Apple Bank cert of deposit	A	Interest	J	T					
4 Neuberger Berman International Fund	A	Dividend	K	T					
5 Janus Enterprise Fund	A	Dividend	J	T					
6 Janus Research Fund	A	Dividend	J	T					
7 Janus Growth and Income Fund	A	Dividend	L	T					
8 Janus Worldwide Fund	A	Dividend	K	T					
9 Fidelity Magellan Fund	A	Dividend	J	T					
10 Neuberger Berman Partners Fund	A	Dividend	J	T					
11 Time Warner Savings Plan	A	Dividend	M	T					
12 Time Warner Deferred Compensation Plan	A	Dividend	K	T					
13 New York College Savings Plan	A	Dividend	O	T					
14 Patton Money Purchase Plan and 401k	A	Dividend	M	T					
15 Vanguard Tax Managed Cap Appreciation	A	Dividend	L	T					
16 Vanguard Tax Managed Growth & Income	A	Dividend	L	T					
17 Vanguard Tax Managed Int'l Fund	A	Dividend	M	T					

1. Income/Gain Codes: A=\$1,000 or less (See Col. B1, D4); F=\$50,001-\$100,000; G=\$100,001-\$1,000,000; H=\$1,000,001-\$5,000,000; I=\$5,000,001-\$15,000,000; J=\$15,000,001-\$50,000,000; K=More than \$50,000,000	2. Value Codes: F=\$15,000 or less (See Col. G1, E3); G=\$15,001-\$50,000; H=\$50,001-\$100,000; I=\$100,001-\$250,000; J=\$250,001-\$500,000; K=\$500,001-\$1,000,000; L=\$1,000,001-\$5,000,000; M=\$5,000,001-\$25,000,000; N=More than \$25,000,000	3. Value Method Codes: G=Appraisal (See Col. C1); H=Book value; I=Cost (cost basis only); J=Other (cost basis only); K=Other (market value)	4. Gain Codes: L=Capital Gain; M=Other (See Col. D1)
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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Gardephe, Paul G.	Date of Report 04/30/08
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VII. Page 2 INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)

A Description of Asset (including trust assets)  <i>Check "X" after each asset exempt from reporting disclosure</i>	B Income during reporting period		C Gross value and life reporting period		D Transactions during reporting period			
	B1 Type Code (A-H)	B2 Code (L)	C1 Value Code (L-F)	C2 Value Method Code (Q,W)	If not exempt from disclosure			
					D1 Date (DD)	D2 Value Code (L-F)	D3 Gain Code (A-H)	D4 Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)								
18 Vanguard Tax Managed Small Cap Fund	A	Dividend	L	T				
19								
20								
21								
22								
23								
24								
25								
26								
27								
28								
29								
30								
31								
32								
33								
34								

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Gardephe, Paul G.	04/30/08

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

**IX. CERTIFICATION.**

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

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

Signature Paul G. Gardephe Date April 30, 2008

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

FILING INSTRUCTIONS:	
Mailed original and 3 additional copies to:	Commissioner of Financial Disclosure Administrative Office of the United States Courts Suite 2-207 One Columbus Circle, N.E. Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		14	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule	1	340	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		138	000				
Cash value-life insurance		77	439				
Other assets itemize:	2	561	330				
(see attached)							
				Total liabilities		0	
				Net Worth	4	130	769
Total Assets	4	130	769	Total liabilities and net worth	4	130	769
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		NO	
On leases or contracts				Are you defendant in any suits or legal actions?		NO	
Legal Claims				Have you ever taken bankruptcy?		NO	
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT**  
**NET WORTH SCHEDULES**

**Real Estate Owned**

Personal residence	\$ 1,200,000
Vermont Condominium	140,000
Total Real Estate Owned	\$ 1,340,000

**Other Assets**

Money Market Funds	\$ 426,950
TSP Plan	340,093
Miscellaneous IRA Accounts	74,212
Janus Growth & Income Fund	84,886
Janus Worldwide Fund	22,075
Fidelity Magellan Fund	12,677
Time Warner 401(k) Plan	162,374
Time Warner Deferred Compensation Plan	26,577
Patterson Belknap 401(k) Plan	222,406
Vanguard Accounts	298,309
Patterson Belknap Capital Account	334,596
Patterson Belknap Cash Balance	46,000
New York College Savings Plan	510,174
Total Other Assets	\$ 2,561,330

AFFIDAVIT

I, PAUL G. GARAPHE, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

May 8, 2008  
(DATE)

Paul R. Rondale  
(NAME)

Carmen Maria Acosta  
(NOTARY)

CARMEN MARIA ACOSTA  
Notary Public, State of New York  
No. 03-4838047  
Qualified in West County  
Commission Expires 06/30/2010

Senator SCHUMER. Thank you, Mr. Gardephe.

Now let's move on. Next, I am particularly proud to introduce Judge Kiyo A. Matusumoto because she was my recommendation to fill the seat on the U.S. District Court for the Eastern District of New York, which covers all of Long Island, which includes Brooklyn and Queens, where I live. Before becoming a well-respected U.S. magistrate judge in the Eastern District, Judge Matsumoto's impressive career included work in the private sector, in academia, and in public service.

After graduating with high honors from the University of California at Berkeley and receiving her J.D. from Georgetown, Judge Matsumoto worked as an associate at McDonald, Hogue & Bayliss from 1981 to 1983. She then worked as an Assistant U.S. Attorney in the Eastern District, and has also taught as an Adjunct Professor of Law at NYU.

As a magistrate judge since 2004, Judge Matsumoto has earned an unimpeachable reputation, and only on one occasion has a reviewing District Court declined to adopt her report and recommendations. I am not only pleased with Judge Matsumoto's nomination because of her integrity and qualifications, but I also believe Judge Matsumoto will contribute to a diversity of perspectives to the Federal bench. Outside the Ninth Circuit, Judge Matsumoto will be only the third Asian American appointee to the Federal courts, and only the second in 14 years.

Judge Matsumoto's father is here with us today. He and Judge Matsumoto's mother spent time in an internment camp during World War II, and I've always been hopeful that by ensuring that the Federal bench is filled with men and women of principle from a diverse range of backgrounds and experiences, we can avoid repeating such tragic mistakes of the past.

Judge Matsumoto and her husband have three beautiful children. So, Judge, why don't you introduce your family and make any brief remarks you wish to make?

**STATEMENT OF KIYO A. MATSUMOTO, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK**

Judge MATSUMOTO. Senator Schumer, I would like to thank you and the Committee for hearing us today, and thank Senator Brownback for being here. I would also like to thank the President for his nomination to the U.S. District Court for the Eastern District.

I'm very pleased to introduce my family. I have here my father, George Matsumoto, and my brother Ken Matsumoto, both from California. And I have my husband of 23 years, Colin Lee, along with our three children, Kimi Lee, Liam Lee, and Miya Lee.

In addition, I am pleased to note that seven of my present and former law clerks are present here.

Senator SCHUMER. Why don't we first have your family stand so we can acknowledge them? It's always nice to see the proud families. Welcome. And particularly for you, Mr. Matsumoto. I'm sure you're very proud of your daughter today.

Judge MATSUMOTO. Thank you, sir.

Senator SCHUMER. Please continue.

Judge MATSUMOTO. I do have, as I said, seven present and former law clerks here today: Ameet Kabrawla, Tomoko Onozawa, Kristin Mattiske, Alvin Lin, Ellen Blain, Jenny Kim, and Joseph Loy, as well as representatives of the Asian American Bar Association of New York and the National Asian-Pacific American Bar Association.

Thank you, sir.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Kiyo Ann Matsumoto

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

United States District Judge for the Eastern District of New York

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

Office: United States Courthouse, 225 Cadman Plaza East, Brooklyn, NY 11201

Residence: New York, New York

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

1955; Raleigh, North Carolina

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

I am married to Colin Loy Lee. He is an artist and Art teacher in Brooklyn, NY.  
We have three dependent children.

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

New York University, School of Continuing and Professional Studies, Fall 1989; No degree

Georgetown University Law Center, 1978-1981; J.D., 1981

University of California at Berkeley, 1972-1976; B.A. with high honors, 1976

7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies; business or professional corporations, companies, firms, or other

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

Employment:

July 2004 – present  
 United States District Court for the Eastern District of New York  
 225 Cadman Plaza East  
 Brooklyn, NY 11201  
 United States Magistrate Judge

July 1983 – June 2004  
 U.S. Attorney's Office, Eastern District of New York  
 271 Cadman Plaza East  
 Brooklyn, NY 11201  
 Assistant United States Attorney

Oct. 1981 – June 1983  
 MacDonald Hoague & Bayless  
 1500 Hoge Building, 705 Second Avenue  
 Seattle, WA 98104-1745  
 Associate  
 Summer associate, 1980 & 1981

Summer 1979 – May 1981  
 Covington & Burling  
 1201 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20004  
 Full time law clerk, Summer 1979  
 Part time law clerk, Fall 1979-Spring 1980, Fall 1980-Spring 1981

August 1980 – May 1981  
 Georgetown University Law Center  
 600 New Jersey Avenue, N.W.  
 Washington, D.C. 20001  
 Part time Law Fellow, Legal Research and Writing Instructor

1976 – 1978  
 Morrison & Foerster  
 425 Market Street  
 San Francisco, CA 94105  
 Litigation Paralegal

August 1998 – May 2004  
New York University School of Law  
40 Washington Square South  
New York, NY 10012  
Adjunct Professor of Law: Government Civil Litigation Clinic

August 1985 – May 1986  
Brooklyn Law School:  
250 Joralemon Street  
Brooklyn, NY 11201  
Legal Research and Writing Instructor

Other Affiliations:

2000 – present  
Federal Bar Council  
Board of Trustees since approx. 2000  
Vice Chair of the Board of Trustees approx. 2004-2006  
Not compensated

2003 – 2004  
Vice Chair, New York City Mayor's Committee on City Marshals  
Not compensated

1990 – present  
Residential coop board member  
Not compensated

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

I have not served in the U.S. Military

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

Legal Research and Writing Fellow: Georgetown University Law Center, 1980-1981

U.S. Attorney's Office: Periodic awards for outstanding performance as an Assistant U.S. Attorney

New York County Lawyers' Association: Outstanding Public Service Award

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

Second Circuit Judicial Conference Planning Committee: 2007 – 2008

Federal Bar Council: Member since approximately 1995

Member of Committee on Second Circuit Courts since approximately 1995

Member of Awards Committee since 2006

Member of the Board of Trustees off and on since approximately 2000

Vice Chair of the Board of Trustees approximately 2004 – 2007

Association of the Bar of the City of New York:

Member of the Committee on the Judiciary: approx. 2002 – 2004

Member of the Federal Courts Committee: approx. 2004 – 2007

E.D.N.Y. and S.D.N.Y. Joint Committee on Local Federal Rules: Member, approximately March 2001-June 2004

Committee on Civil Litigation (E.D.N.Y.): Member, approximately March 2001- June 2004

New York State Bar Association, Executive Committee of the Commercial and Federal Litigation Section: Member, 2006

National Asian Pacific American Bar Association: Member since approximately 1990

Asian American Bar Association of New York: Member, approximately 1990

Women's Committee 2005

Nominating Committee 2007

Asian American Legal Defense and Education Fund: Member, approximately 1990-2005

11. **Bar and Court Admission:**

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

Washington State Bar; 10/27/81; Inactive status since 1999.

District of Columbia Bar; 2/11/91; no lapse in membership.

State of New York, Appellate Division, First Department; 7/12/94; I went into retired status upon becoming a Magistrate Judge in 2004.

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

Washington State Supreme Court; October 1981 (inactive)

District of Columbia Court of Appeals; February 1991

State of New York, Appellate Division, First Department; July 1994 (retired status upon becoming a Magistrate Judge in 2004)

U. S. District Court for the Western District of Washington; December 1981

U. S. District Court for the Eastern District of New York; November 2000

U.S. District Court for the Southern District of New York; November 2000

United States Court of Appeals for the Ninth Circuit; May 1982

United States Court of Appeals for the Second Circuit; February 1984

**12. Memberships:**

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

United States Department of Justice, Civil Chiefs' Working Group member:  
2001-2003

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

None of the organizations to which I belong invidiously discriminate on the basis of race, sex, or religion.

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

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

None.

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

While a member of the Federal Courts Committee of the Association of the Bar of the City of New York, I worked with a subcommittee that published, in 2006, an informational brochure, entitled, "Guide to Mediation in the Southern & Eastern Districts of New York," for use in the Alternative Dispute Resolution/Mediation programs of the United States District Courts for the Eastern and Southern Districts of New York.

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

None.

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

I delivered a speech at my induction ceremony as a United States Magistrate Judge, June 8, 2004.

I introduced former Secretary of Commerce and Transportation Norman Mineta, who was a keynote speaker, at the 2007 annual dinner of the Asian American Bar Association of New York.

I participated as a panel member at the following events sponsored by bar associations or other legal groups for attorneys seeking continuing legal education (CLE) credit:

1/11/08: Practising Law Institute: Bridge the Gap I Program at Brooklyn Law School: Panel on "The Deadly Dozen: 12 of the Most Common Mistakes Lawyers Make When Dealing With Clients."

12/10/07: Justice Resource Center National Mentor Program: Metropolitan mentor Moot Court Competition.

9/25/07: Association of the Bar of the City of New York, Bridge the Gap Program  
Panel member on "Lawyers' Conduct in the Courtroom from the perspective of a State and Magistrate Judge":

9/19/07: Asian American Bar Association of New York, Women's Committee panel member on "Women's Leadership Forum: Successes and Challenges of Women Leaders"

6/20/07: Event sponsored by Stroock & Stroock LLP Diversity Committee and Women of Color Affinity Group, panel member on "Voices of Color from the Bench"

5/3/07: Women's Bar Association of the State of New York, Brooklyn Women's Bar Association and Asian American Bar Association of New York: Panel member on "Communication Skills: Balancing Civility With Zealous Advocacy"

1/12/07: Practising Law Institute: Bridge the Gap Program at Brooklyn Law School: Panel on "The Deadly Dozen: 12 of the Most Common Mistakes Lawyers Make When Dealing With Clients"

6/6/06: Federal Bar Council First Decade Committee Judicial Luncheon Series: informal brown bag lunch with lawyers admitted to practice less than ten years

5/20/06: Asian American Bar Association of New York and National Asian Pacific American Bar Association Northeast Regional Conference: Panel member on "A View From the Bench: Overall Tips for Litigators"

Association of the Bar of the City of New York  
December 5, 2005: Practical Trial Skills: panelist  
February 8, 2005: Taking and Defending Depositions: panelist  
December 4, 2004: How to Become a Judge: panelist

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

None.

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

On July 12, 2004 I was appointed United States Magistrate Judge, Eastern District of New York

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

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

Please see attached list of decisions.

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

None

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

None

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

My Report and Recommendation in Maggio v. City University of New York, 05-cv-4211 (BMC) (E.D.N.Y.), granted plaintiff's motion to amend her Title VII discrimination complaint to add, *inter alia*, a Title IX claim on the basis that neither the Second Circuit nor the Supreme Court had decided whether Title IX claims are preempted by Title VII. Although I do not believe he did so with "significant criticism," Judge Cogan declined to adopt that portion of my Report and Recommendation, finding that Title IX does not provide a private right of action.

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

Because my decisions are subject to review by a district judge, I generally do not send my decisions to legal publishing services for publication. However, those services may publish my decisions, irrespective of whether I have designated the decision as "for publication" or "unpublished." Of the 157 decisions listed in response to question 15 (a) above, approximately 50% were published, and are available on the court's website through PACER, by utilizing the docket number.

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

None.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Upon my appointment to the bench in July 2004, I recused myself from all cases in which I served a supervisory role, was the assigned Assistant U.S. Attorney, or was involved in any way in the case. In addition, the clerk of the court utilizes a system whereby judges list entities in which they have a financial interest so that judges are not assigned cases in which that entity is a party.

In Burgie v. Euro Brokers, Inc., 05-cv-968 (CPS)(KAM) (E.D.N.Y.), plaintiff's counsel requested my recusal (and the recusal of the assigned district judge).

- a. After counsel for defendant Euro Brokers moved for sanctions, plaintiff's counsel questioned whether I could be impartial in considering the defendant's sanctions motion, because plaintiff's counsel and I had been adversary counsel before my appointment as a United States Magistrate Judge, over one year before. I noted that my impartiality could not be

reasonably questioned, based upon the record, but that the matter could be considered further. I thereafter attempted to obtain plaintiff's compliance with court orders in the hope that defendant would withdraw its motion for sanctions. While the defendant's motion for sanctions was pending, plaintiff's counsel filed an "emergency motion" to reassign the case and for a conference with the district judge, claiming that I had engaged in an *ex parte* communication initiated by defense counsel, apparently because of a recently issued order. Both defendants opposed the motion and denied that any *ex parte* communication had occurred, pointing out that a recently issued order had been made in response to submissions by the parties, and not an *ex parte* communication. The district judge denied plaintiff's application "without prejudice to its renewal by motion returnable initially before the Mag. Judge on notice to all parties and the Mag. Judge." Plaintiff's counsel then filed a motion to recuse me and the district judge, after the district judge conducted a conflict hearing, in which I did not participate.

- b. The plaintiff initially questioned my impartiality in considering the defendant's sanctions motion, because plaintiff's counsel and I had been adversary counsel before my appointment as a United States Magistrate Judge, over one year before. The subsequent motions were based on an erroneous allegation of an *ex parte* communication.
- c. In considering plaintiff's motion to recuse, I considered the record before the court, 28 U.S.C. Sections 144 and 455, as well as controlling Second Circuit case law. Title 28 U.S.C. Section 455 provides, "(a) Any... magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice. . . . (2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it; (3) Where he has. . . participated . . . [in] the case in controversy; (4) He knows that he or [his family members] have a financial interest in the subject matter in controversy or in a party to the proceeding; (5) He or his spouse or a person within the third degree of relationship" is in any way related to the proceeding. I denied the plaintiff's motion to recuse.
- d. Plaintiff's counsel did not set forth any clear legal or factual basis for the Court's recusal. She did not allege bias or prejudice, or any "facts and reasons" suggesting bias or prejudice against plaintiff or in favor of defendants pursuant to Section 144. Neither did she allege any of the circumstances enumerated in Section 455. Instead, plaintiff's counsel apparently based her motion on the fact that I was "new" to the bench, and

was an adversary before becoming a Magistrate Judge, and on the erroneous statement in her affirmation that I was present at the conflict hearing before Judge Sifton on February 1, 2007. Those statements failed to suggest any reasonable question regarding, or appearance of, partiality, the existence of a personal bias or prejudice, or personal (as opposed to judicial) knowledge of or investment in the case.

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

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

In 2003, I was appointed by New York City Mayor Michael R. Bloomberg as Vice Chair of the New York City Mayor's Committee on City Marshals, and resigned in 2004, upon my selection as a United States Magistrate Judge.

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

None.

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk:  
I did not serve as a clerk to a judge.
  - ii. whether you practiced alone, and if so, the addresses and dates:  
I have not practiced alone.
  - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

July 2004 – present  
 United States District Court for the Eastern District of New York  
 225 Cadman Plaza East  
 Brooklyn, NY 11201  
 United States Magistrate Judge

July 1983 – June 2004  
 U.S. Attorney's Office, Eastern District of New York  
 271 Cadman Plaza East  
 Brooklyn, NY 11201  
 Assistant United States Attorney  
 Deputy Chief, Civil Division: 12/86-6/98  
 Chief, Financial Litigation: 1/92-3/01  
 Civil Health Care Fraud Coordinator: 1994-3/01  
 First Deputy Chief, Civil Division: 6/98-3/01  
 Chief, Civil Division: 3/01-9/03  
 Senior Trial Counsel: 10/03-6/04

Oct. 1981 – June 1983  
 MacDonald Hoague & Bayless  
 1500 Hoge Building, 705 Second Avenue  
 Seattle, WA 98104-1745  
 Associate

b. Describe:

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

Following graduation from law school in 1981, I worked for approximately two years as an associate in a small civil litigation firm in Seattle, Washington, under the supervision of various partners. I handled litigation and arbitrations, negotiated actions involving fishing rights; handled estate and domestic matters (adoptions and divorces), and a constitutional challenge to the state of Washington's motor vehicle towing practices. I conducted discovery, argued several motions in state and federal court and handled an arbitration.

Starting in July 1983, as an Assistant United States Attorney in the Eastern District of New York, I was responsible for a demanding caseload that, at times, exceeded one hundred cases. I conducted all aspects of litigation, including investigations, drafting pleadings, discovery, settlement negotiations, motion practice, trials and appeals in a broad range of cases on behalf of federal agencies and officials. I also briefed and argued ten appeals before the United States Court of Appeals for the Second Circuit.

Although most of my litigation experience was in civil practice, I had significant experience with criminal investigations and proceedings. Under the supervision of the office's Criminal Division, I co-investigated and prosecuted a criminal case arising out of what was then the largest failure of a federally insured credit union. (United States v. Angelo D'Acunto, CR-89-191 (Glasser, J.)) The investigation involved the use of pen registers, wire taps, surveillance and search warrants. Following the indictment of an individual defendant and his guilty plea, the government recovered approximately \$9 million from criminal restitution and from related civil actions that I litigated. I also handled litigation arising from the enforcement of criminal monetary judgments for fines and restitution, and violations of probation and supervised release.

As a supervisor in the Civil Division since 1986 (as a Deputy Chief of the Civil Division, Chief of Financial Litigation, First Deputy Chief of the Civil Division, and Chief of the Civil Division), in addition to case work, I was responsible for hiring, training and supervising Assistant U.S. Attorneys; reviewing their written work; supervising the development of investigations and the implementation of litigation, settlement and trial strategy; preparing attorneys for arguments before the district and appellate courts; training Assistant U.S. Attorneys; acting as liaison with the Department of Justice, client agencies and the courts; developing new investigations and cases; establishing task forces with local, state and federal agencies; and handling a broad range of administrative and personnel matters.

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

In private practice my clients were members of unions representing public school teachers, television and radio artists, aerospace engineers, of Native American tribes.

As an Assistant United States Attorney, my client was the United States of America. Affirmative practice areas included investigations and litigation of common law fraud, and *qui tam* actions involving federal programs and federal contractors pursuant to the False Claims Act, enforcement of federal environmental laws, civil RICO, federally insured financial institution recovery actions, and civil forfeiture. Defensive practice areas included tort (medical malpractice, accidents on federal property, vehicular accidents, constitutional tort/Bivens actions) and employment discrimination cases. I also defended suits raising constitutional, statutory and regulatory challenges to actions by federal agencies and officials, and represented the interests of the United States in Bankruptcy Court.

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

One hundred per cent of my legal practice has been as a litigator. As an Assistant U.S. Attorney, I appeared in federal district court frequently, the Second Circuit Court of Appeals occasionally, and never in state court during the first fifteen years. During the last five years as an Assistant U.S. Attorney, I appeared in federal district court and the Second Circuit occasionally.

- i. Indicate the percentage of your practice in:
1. federal courts: 100%
  2. state courts of record:
  3. other courts:

- ii. Indicate the percentage of your practice in:
1. civil proceedings: 80%
  2. criminal proceedings: 20%

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

As an attorney, I conducted trials or evidentiary hearings in approximately fifteen to twenty cases during the course of my career. I was co-counsel in approximately ten of the cases and sole counsel in the others.

- i. What percentage of these trials were:
1. Jury: 5%
  2. non-jury: 95%

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

I have not practiced before the Supreme Court of the United States.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;

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

I represented the United States, as an AUSA, in each of the following cases:

- 1) United States v. United States Currency in the amount of \$181,590, 873 F.2d 641 (2d Cir. 1989) (Doc. No. 88-6137); U.S. District Court for the Eastern District of New York; Honorable Thomas C. Platt.

The United States Customs Service and Drug Enforcement Administration seized \$181,590.00 in United States currency at JFK International Airport, from an individual departing on an international flight. The individual then filed a claim for the currency, but disclaimed ownership of the currency and refused to provide information regarding the circumstances under which he came to be in possession of the currency. Representing the United States, I litigated the forfeiture action in district court and drafted and argued the appeal before the United States Court of Appeals for the Second Circuit. The Second Circuit upheld the forfeiture, finding that the claimant did not establish standing as a claimant and that the Government did not engage in unconstitutional delays in commencing the forfeiture action during the time it was negotiating with plaintiff and investigating whether criminal violations had occurred.

Opposing Counsel:  
Edward S. Rudofsky, Esq.  
601 W. 26<sup>th</sup> St.  
New York, NY 10001  
(212) 245-2222

- 2) United States v. Lucchese Organized Crime Family, et al., CV-89-1848 (Glasser, J.); U.S. District Court for the Eastern District of New York; Honorable I. Leo Glasser.

Together with co-counsel, I conducted an investigation of the Long Island carting industry which had long been dominated by the Lucchese and Gambino organized crime families. The investigation culminated in the filing of what was then the largest civil action pursuant to the Racketeer Influenced and Corrupt Organizations (RICO) Act, naming over one hundred carting companies and their individual owners, the private sanitation industry association and two organized crime families (Lucchese and Gambino). I was active in the investigation and litigating initial dispositive and discovery motions, and conducting and responding to discovery. Judge Glasser ultimately appointed a monitor over the industry, but I was not handling the case at that time.

Co-counsel:  
 Joseph D. McCann, Esq.  
 Murray & McCann  
 100 Merrick Road  
 Rockville Centre, NY 11570  
 (516) 766-3131

David Nocenti, Esq.  
 Counsel to the Governor of the State of New York  
 New York State Capitol  
 Albany, New York 12224  
 (518) 474-8343

Opposing Counsel: While many counsel represented over 100 defendants, among the counsel who represented multiple defendants are the following:

Judd Burstein, Esq.  
 1790 Broadway - Suite 1501  
 New York, NY 10019  
 (212) 974-2400

Ronald G. Russo, Esq.  
 Herzfeld & Rubin, P.C.  
 40 Wall Street  
 New York, NY 10005  
 (212) 471-8462

Paul A. Batista, Esq.  
 26 Broadway  
 New York, NY 10007  
 (212) 980-0070

- 3) United States v. Angelo D'Acunto, CR-89-191 (Glasser, J.); U.S. District Court for the Eastern District of New York; Honorable I. Leo Glasser.

This criminal investigation and prosecution arose from the collapse of the Hyfin Credit Union. The defendant had participated in a fraudulent loan scheme in which loan proceeds were utilized in his taxi medallion business. With my co-counsel, I conducted the investigation, presented the case to the grand jury, and negotiated the plea and payment of restitution. The defendant pleaded guilty to mail fraud and paid over \$2 million in restitution and additional amounts in a civil settlement.

Co-counsel:  
 M. Lawrence Noyer, Jr. (deceased)

Opposing Counsel:  
 Gary Greenwald, Esq.  
 252 Main Street - P.O. Box 299  
 Goshen, NY 10924  
 (914) 294-6670 (Last known)

- 4) United States v. Pilot Petroleum Associates, et al., CV-85-2918 (McLaughlin, J.), 122 F.R.D. 422 (E.D.N.Y. 1988), and 712 F. Supp. 1077 (E.D.N.Y. 1989); U.S. District Court for the Eastern District of New York; Honorable I Honorable Joseph M. McLaughlin.

This case sought penalties pursuant to the Clean Air Act against gasoline sellers who sold as "unleaded" gasoline that contained lead. I conducted the investigation prior to the commencement of the action, and thereafter conducted discovery and successfully moved for summary judgment. Counsel for the Environmental Protection Agency provided litigation support with the investigation and documents.

Opposing Counsel:  
 Kenneth L. Robinson, Esq.  
 Robinson & Associates  
 35 Roosevelt Avenue  
 Syosset, NY 11791  
 (516) 496-9044

Paul Sibener, Esq.  
 Tananbaum & Sibener  
 350 Commack Road  
 Commack, NY 11725  
 (516) 499-3400

- 5) United States v. Martin Schwimmer, CR-87-423 (Spatt, J.); U.S. District Court for the Eastern District of New York; Honorable Arthur D. Spatt.

In a post-judgment enforcement proceeding commenced in 1994, pursuant to writs of assistance and writs of garnishment, the government seized gemstones and currency (both foreign and domestic) from a safe deposit box held in the name of defendant's alias. The defendant had escaped from a federal prison camp and was apprehended and subsequently identified by the Drug Enforcement Administration. I conducted discovery and depositions of defendant's family members, who claimed an interest in the seized property. Eventually, the defendant and his family agreed to relinquish any claim to the assets and allowed the proceeds to be applied to his multi-million dollar criminal judgment.

Opposing Counsel:  
 David G. Cotton, Esq.  
 1817 College Point Blvd.  
 College Point, NY 11356  
 (718) 939-6454

- 6) United States v. Bartholomew Rivieccio, et al., CV-86-1441 (Glasser, J.); U.S. District Court for the Eastern District of New York; Honorable I. Leo Glasser.

This civil action was commenced on behalf of the National Credit Union Administration, to recover fraudulent loan proceeds following the collapse of the Hyfin Credit Union, which was then the largest failure of a federally insured credit union. The suit named nearly twenty real estate corporations, former officers of the credit union and individuals who had received fraudulent loan proceeds, and resulted in recoveries of approximately \$20 million. I conducted discovery, drafted and argued motions and negotiated settlements with many of the defendants.

Co-counsel:  
 M. Lawrence Noyer, Jr. (deceased)

Opposing Counsel: Counsel representing multiple defendants or the more prominent defendants include the following.

John N. Cuomo, Esq.  
 260-41 73rd Avenue  
 Floral Park, NY 11004  
 (718) 962-6858

Judd Burstein, Esq.  
 1790 Broadway - Suite 1501  
 New York, NY 10019  
 (212) 974-2400

Robert F. Katzberg, Esq.  
 Kaplan & Katzberg  
 767 Third Avenue  
 New York, NY 10017  
 (212) 750-3100

- 7) United States v. Steven Monas, CR-92-1239 (EDNY) (Platt, J.); U.S. District Court for the Eastern District of New York; Honorable Thomas C. Platt.

I conducted this evidentiary hearing on remand by the Second Circuit to the district court in March-2000, after the district court refused to grant the

defendant, who was on supervised release, personal travel abroad because defendant had the financial means to pay restitution but refused to do so. Representing the United States, I conducted the cross-examination of the defendant, and direct examinations of his probation officer and the government's expert neurologist. The defendant then appealed both the enforcement of the restitution judgment by garnishment and the denial of his travel request. I briefed and argued the expedited, consolidated appeals (Second Circuit Docket Nos. 99-1489, 99-1752). The Second Circuit Court of Appeals upheld the district court's decision. I was sole counsel.

Opposing Counsel:  
 Mark O. Wasserman, Esq.  
 6800 Jericho Turnpike, Suite 120W  
 Syosset, NY 11791  
 (516) 393-5936

- 8) United States v. Nabisco, Inc., et al., CV-93-5611 (Nickerson, J.) U.S. District Court for the Eastern District of New York; Honorable Eugene H. Nickerson.

With the assistance of the Environmental Protection Agency, I investigated, commenced and settled a cost recovery action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). After the Environmental Protection Agency discovered a plume of contaminated groundwater that originated from the defendants' manufacturing site in Sag Harbor, Long Island, the United States installed a new water system for the residents of Sag Harbor. Settlement negotiations failed and an action was commenced to recover the cost of installing the water system. After the complaint was filed, I conducted discovery and negotiated a settlement which resulted in the execution of a consent judgment and the recovery of the costs of the water system.

Opposing Counsel:  
 Burton Brody, Esq. (deceased)  
 Counsel for Nabisco, Inc.

Frank L. Amoroso, Esq.  
 Nixon Peabody  
 990 Stewart Avenue  
 Garden City, NY 11530  
 (516) 832-7575  
 Counsel for Sag Harbor Industries (later disqualified as counsel on Nabisco's motion)

- 9) In addition to the above cases, as an Assistant U.S. Attorney and the Office's Civil Health Care Fraud Coordinator, I handled a number of health care fraud

investigations, pursuant to the False Claims Act, against hospitals, home health agencies, ambulance companies and blood testing laboratories, which resulted in monetary settlements, either prior to a complaint being filed, or in the context of a *qui tam* action.

One health care fraud case that co-counsel and I extensively investigated with the Office of the Inspector General of the Department of Health and Human Services and prepared for litigation, but settled prior to the commencement of a False Claims Act action, involved Olsten Corporation, then among the country's largest home health care agencies. The government's investigation revealed that Olsten Corporation improperly billed executive benefits to the Medicare program through its cost reports. Expenses for executive sales trips to resorts, tickets to sports events, luxury automobiles and parties were among the items improperly claimed for Medicare reimbursement in Olsten's cost reports. The defendant paid a multi-million dollar settlement to the United States and the Medicare Trust Fund.

Co-counsel:  
AUSA Richard Hayes, Esq.  
271 Cadman Plaza East  
Brooklyn, NY 11201  
(718) 254-6050

Opposing Counsel:  
Mark H. Tuohey, Esq.  
Vinson & Elkins  
1455 Pennsylvania Ave., N.W.  
Washington, D.C. 20004  
(202) 639-6660

- 10) Another health care fraud case that I investigated with the Office of the Inspector General of the Department of Health and Human Services, prepared for litigation and settled prior to filing suit under the False Claims Act, involved an entity known as Metropolitan Ambulance and its owner. The investigation revealed that Medicare was improperly billed for ambulance transportation that was not medically necessary. The defendants paid a settlement to the United States and the Medicare Trust Fund.

Opposing Counsel:  
Nathan Lewin, Esq.  
Lewin & Lewin  
1828 L Street, N.W., Suite 901  
Washington, D.C. 20036  
(202) 828-1000

Douglas Curtis, Esq.  
Wilmer Hale  
399 Park Avenue  
New York, NY 10022  
(212) 230-8802

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have not engaged in any lobbying activities.

As an Assistant U.S. Attorney, I participated in a number of matters that did not proceed to trial. As a supervisory Assistant U.S. Attorney, I participated in developing and implementing several affirmative civil enforcement initiatives. For example, with an attorney from what was then the Immigration and Naturalization Service (INS), I created and participated in a program to address a large INS backlog of cases involving employers who had employed undocumented aliens. Working with INS agents, we investigated and initiated successful enforcement actions to collect civil monetary sanctions against employers who had employed and often exploited undocumented workers.

In addition, as a Civil Health Care Fraud Coordinator at the U.S. Attorney's Office, I helped form a health care fraud task force comprised of federal and state agencies. Our mission was to identify and enforce anti-fraud, waste and abuse initiatives against health care providers who participated in the Medicaid and Medicare programs.

Through various bar organizations, I have participated in programs for underprivileged and minority high school and law students, public service lawyers and lawyers newly admitted to practice. With the Second Circuit Courts Committee of the Federal Bar Council, I helped organize Fall Bench and Bar Conferences and Continuing Legal Education (CLE) programs, targeting lawyers employed by small firms and the public sector who generally lack the financial resources to participate in the Federal Bar Council's more established and expensive Winter Bench and Bar Conference. I have also participated in court mentoring programs for underprivileged high school students and moot court programs for high school and law students. With the Asian American Bar Association, I have participated in workshops that provide law students with advice and mentoring regarding resumes and interviewing skills, moot court programs as well as CLE programs for attorneys.

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

Georgetown University Law Center  
August 1980 - May 1981  
Legal Research and Writing

Brooklyn Law School  
August 1985 - May 1986  
Legal Research and Writing Instructor

New York University School of Law  
August 1998 - May 2004  
Government Civil Litigation Clinic

United States Department of Justice  
1995, 1998, 2000, 2001

I have been an instructor in civil trial advocacy course for new Department of Justice Attorneys, including Assistant U.S. Attorneys, and in financial litigation for experienced attorneys at the Attorney General's Advocacy Institute, Washington, D.C. and National Advocacy Center, Columbia, SC.

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

None, other than my Civil Service Retirement System (CSRS), federal Thrift Savings Plan (TSP), and Judicial Retirement System/Judicial Survivors' Annuities System (JRS/JSAS) Plans.

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

I have no such plans, commitments, or agreements.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other

items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report

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

See attached Net Worth Statement

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

The parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated include any case in which, as an Assistant U.S. Attorney, I had a supervisory role, litigation responsibility or any other involvement, and any case where the party is an entity in which I or an immediate family member has an interest. A list of such entities has been provided to the clerk of the court to avoid assignment of such cases. At present, I recuse myself from any in which I had a role as an Assistant U.S. Attorney.

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

I will continue to comply with the Code of Conduct for United States Judges, Administrative Office policies, the judicial canons and the law regarding conflicts of interest. The actions I have taken and will continue to take regarding "the real, apparent or asserted conflict of interest or to cure any other ground for recusal," will be to decide all issues in each case fairly and impartially, and without bias or prejudice against any party or counsel, based on the record, judicial canons and the law.

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

After graduating from law school and passing the bar, I worked with a community group in Seattle, Washington, that provided assistance and shelter for abused women and their children. I also volunteered pro bono legal services with the Northwest Women's Law

Center, which provided pro bono legal services, and ANEW (Apprenticeships for Nontraditional Employment for Women). Assistant U.S. Attorneys are quite restricted from providing legal services beyond official duties. As part of the Department of Justice's "Weed and Seed" program, I have volunteered as a mentor at a day camp for disadvantaged, "at risk" youth, who were taught leadership and confidence-building skills in order to enhance their abilities to resist gang participation and drug use. I have also mentored high school students and law students from minority communities and volunteered to participate in court programs for public high school students. Following the terrorist attacks of September 11, 2001, I assisted with outreach to and interviews of relatives of victims lost in the attacks. My family participates in annual holiday toy drives for disadvantaged children through the Postal Service, the court and/or New York Cares. This past summer, my family visited two schools in Africa and donated school supplies. Each of the foregoing activities involved between several hours to one day.

**28. Selection Process:**

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

In May 2006, I submitted an application to the Chair of Senator Charles Schumer's Judicial Selection Panel. I was granted an interview with the panel in May 2007, and interviewed with Senator Schumer in August 2007, who thereafter recommended that President George W. Bush nominate me for a position as a United States District Judge. On October 9, 2007, I interviewed at the White House with the White House Counsel's Office and a representative from the Department of Justice. On November 7, 2007, I received a telephone call from the Office of White House Counsel, advising me that I had been approved for further consideration and was contacted by the Department of Justice regarding the nomination paperwork. Thereafter, I conferred periodically with the Department of Justice with questions regarding completion and return of the forms. I was formally nominated on March 11, 2008.

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

No.

AO-10 (WP)  
Rev. 1/2004

**FINANCIAL DISCLOSURE REPORT**

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

**Nomination Report**

1. Person Reporting (Last name, first, middle initial) Matsumoto, Kiyoo A.		2. Court or Organization U.S. District Court (E.D.N.Y.)		3. Date of Report 3/12/08	
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge -- Nominee		5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date: 3/11/08 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final		6. Reporting Period 1/1/07 to 2/29/08	
7. Chambers or Office Address U.S. Courthouse 225 Cadman Plaza East Brooklyn, NY 11201		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____			

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

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

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions.)	
1 Board member and Vice Chair	Federal Bar Council
2 Board member	Residential coop
3	

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

DATE	PARTIES AND TERMS
<input checked="" type="checkbox"/> NONE (No reportable agreements.)	
1	
2	

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

DATE	SOURCE AND TYPE	GROSS INCOME
<b>A. Filer's Non-Investment Income</b>		
<input checked="" type="checkbox"/> NONE (No reportable non-investment income.)		
		\$
		\$
3		\$
<b>B. Spouse's Non-Investment Income - If you were married during any portion of the reporting year, please complete this section. (dollar amount not required except for honoraria)</b>		
<input type="checkbox"/> NONE (No reportable non-investment income.)		
1 2008	Art teacher, salary	
2 2007	Art teacher, salary	

**FINANCIAL DISCLOSURE REPORT**

Name of Person Reporting Matsumoto, Kiyo A.	Date of Report 3/12/08
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**IV. REIMBURSEMENTS** -- transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children. See pp. 25-27 of Instructions.)

	SOURCE	DESCRIPTION
<input type="checkbox"/>	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

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

	SOURCE	DESCRIPTION	VALUE
<input type="checkbox"/>	NONE (No such reportable gifts.)		
1	Exempt		\$
2			\$
3			\$
4			\$

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-33 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
<input type="checkbox"/>	NONE (No reportable liabilities.)		
1	Chase Credit Card	Balance transfer	J
2			
3			
4			
5			

Value Codes: A-\$15,000 or less B-\$15,001-\$50,000 C-\$50,001-\$100,000 D-\$100,001-\$250,000 E-\$250,001-\$500,000 F-\$500,001-\$1,000,000 G-\$1,000,001-\$5,000,000 H-\$5,000,001-\$25,000,000 I-\$25,000,001-\$50,000,000 J-\$50,000,001 or more
---

Insurance Code: A-\$1,000 or less (See Col. B, D, E) B-\$1,001-\$2,500 C-\$2,501-\$5,000 D-\$5,001-\$10,000 E-\$10,001-\$25,000 F-\$25,001-\$50,000 G-\$50,001-\$100,000 H-\$100,001-\$250,000 I-\$250,001-\$500,000 J-\$500,001-\$1,000,000 K-\$1,000,001-\$5,000,000 L-\$5,000,001-\$25,000,000 M-\$25,000,001-\$50,000,000 N-\$50,000,001-\$1,000,000,000 O-\$1,000,001-\$5,000,000,000 P-\$5,000,001-\$25,000,000,000 Q-\$25,000,001-\$50,000,000,000 R-Cost (real estate only) S-Assessment T-Cash/Market U-Book Value V-Other W-Estimated
--

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting Matsumoto, Kiyo A.	Date of Report 3/12/08
--	---------------------------

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children. See pp. 34-37 of Instructions.)

Description of Assets (Including trust assets)  <i>Place "X" after each asset exempt from prior disclosure.</i>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	Not exempt from disclosure				
	Am. Code 1 (A-H)	Type (e.g., div., rent or int.)	Value Code 2 (J-P)	Value Method Code 1 (Q-W)	Type (e.g., buy, sell, transfer, redemption)	(2) Date: Month/Day	(3) Value Code 1 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income,									
1 Citibank Smith Barney (IRA)	B	Interest	K	T	Exempt				
2 HSBC Accounts	B	Interest	K	T					
3 New England Variable Life	B	Int./Div.	K	T					
4 Charit. Rem. Trust (North'n. Trust Sec.)	E	Int./Div.	N	T					
5 Memorial Partnership	D	Rent	L	Q					
6 Series EE Savings Bonds		None	J	T					
7 Charles Schwab IRA/Accounts	C	Int./Div.	K	T					
8 TimeWarner(part of IRA)(common)	A	Int./Div.	J	T					
9 Colgate Palmolive (common)	A	Int./Div.	J	T					
10 Proctor & Gamble (common)	A	Int./Div.	J	T					
11 Hewlett Packard (common)	A	Int./Div.	J	T					
12 Diversified Investment Thrift Plan	B	Int./Div.	M	T					
13 NY State Education Fund	A	Interest	J	T					
14									
15									
16									
17									
18									

1. Income/Gain Codes: A- \$1,000 or less; B- \$1,001-\$2,500; C- \$2,501-\$5,000; D- \$5,001-\$15,000; E- \$15,001-\$50,000; F- \$50,001-\$100,000; G- \$100,001-\$149,999; H- \$150,000-\$249,999; I- \$250,000-\$499,999; J- \$500,000-\$999,999; K- \$1,000,000-\$4,999,999; L- \$5,000,000-\$9,999,999; M- \$10,000,000-\$24,999,999; N- \$25,000,000-\$49,999,999; O- \$50,000,000-\$99,999,999; P- \$100,000,000-\$249,999,999; Q- More than \$250,000,000.	2. Value Method Codes: Q- Appraisal; R- Cost (real estate only); S- Assessment; T- Cash/Market.
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FIDUCIARY DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Matsumoto, Kiyu A.	3/12/08

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

**ART III.A. FILER'S NON-INVESTMENT INCOME**

non-investment income was received during the reporting period as salary for duties as a United States Magistrate Judge.

**ART VII. INVESTMENTS AND TRUSTS**

DL is now Time Warner.

letter in prior reports is now listed as Procter & Gamble (the value of which is less than \$5000).

Charitable Remainder Trust

Charitable Remainder Trust is in Northern Trust Securities (Value as of 2/29/08: \$303,330.44):

Dodge & Cox Income: \$152,843.30

Vanguard GNMA: \$76,805.83

Vanguard Longterm Invmt. Grade: \$73,595.49

Cash: \$85.82

**V. CERTIFICATION.**

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

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

Signature: Kiyu A. Matsumoto Date: 3/12/08

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

**FILING INSTRUCTIONS:**

Mail signed original and 3 additional copies to:  
 Committee on Financial Disclosure  
 Administrative Office of the  
 United States Courts  
 Suite 2-301  
 One Columbus Circle, N.E.  
 Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		44	300	Notes payable to banks-secured			
U.S. Government securities-add schedule		4	850	Notes payable to banks-unsecured			
Listed securities-add schedule		318	297	Notes payable to relatives			
Unlisted securities--add schedule		172	274	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		11	600
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		378	410
Real estate owned-add schedule	2	600	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property							
Cash value-life insurance		20	000				
Other assets itemize:							
Memorial Partnership		100	000				
CSRS / TSP (approximate)		250	000				
				Total liabilities		390	010
				Net Worth	3	119	711
Total Assets	3	509	721	Total liabilities and net worth	3	509	721
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT**  
**NET WORTH SCHEDULES**

U.S. Government Securities

Series EE Bonds	\$ 4,850
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Listed Securities

Colgate Palmolive	\$ 5,924
Hewlett Packard	3,331
Proctor & Gamble	4,722
Time Warner	990
Northern Trust Securities (Charitable Remainder Trust) (Dodge & Cox Income) (Vanguard GNMA) (Vanguard Long Term Invmt. Grade)	303,330
Total Listed Securities	\$ 318,297

Unlisted Securities

Diversified Investment Thrift Plan	\$ 148,886
Citibank/Smith Barney IRA	21,498
New York State College Savings Plan	1,890
Total Unlisted Securities	\$ 172,274

Real Estate Owned

Personal residence	\$ 2,500,000
1/5 Family Property	100,000
Total Real Estate Owned	\$ 2,600,000

Real Estate Mortgages Payable

Personal residence	\$ 378,410
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AFFIDAVIT

I, Kiyoko A. Matsunoto, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3/12/08  
(DATE)

Kiyoko A. Matsunoto  
(NAME)

Sworn before me this 12<sup>th</sup> day  
of March, 2008

Jermaine Manuel  
(NOTARY)

JERMAINE MANUEL  
Notary Public, State of New York  
No. 01MA005943  
Qualified in Kings County  
Commission Expires 12/31/2011  
JRM

Senator SCHUMER. Thank you, Judge Matsumoto.

Next, we're going to move on to another nominee who I enthusiastically recommended to the President, and that is Ms. Cathy Seibel. She is nominated for the District Court of the Southern District of New York. She spent 21 years as a Federal prosecutor, mostly in New York. She developed a reputation for fairness and effectiveness. Currently, she's the First Assistant U.S. Attorney for the Southern District, and she's also served as Deputy U.S. Attorney and Assistant U.S. Attorney in Charge during her tenure.

She has prosecuted a number of high-profile tax fraud cases, including the Leona Helmsley case, as well as the very first case when the Violence Against Women Act was used for a murder charge. I was the author in the House of that law, so it is good to see it going into effect in a good way.

Despite the demands on her time as a prosecutor, Ms. Seibel also finds time to teach a course on trial practice at Columbia Law School and has previously taught courses at Fordham. And, I would add that while at the Southern District she has trained several generations of lawyers, and not the least of whom is my own chief counsel, the well-known and outstanding Preet Barara, who is sitting behind me making sure I make no mistakes.

Ms. Seibel graduated magna cum laude from Princeton, received her J.D. from Fordham University where she was editor-in-chief of the *Fordham Law Review*. She clerked for Judge Joseph McLaughlin in the Eastern District after graduation, and so she has truly been working to protect the rule of law in New York since the beginning of her career as a lawyer.

Ms. Seibel, I know you are, too, joined by your family today. Would you like to introduce them to the Committee and make any brief statement?

**STATEMENT OF CATHY SEIBEL, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK**

Ms. SEIBEL. Thank you, Mr. Chairman. I'd like to thank you and Senator Brownback for convening this hearing today, and particularly, Senator Schumer, thank you for recommending me to the White House. I'd like to thank President Bush for accepting that recommendation. It is an honor to be here.

I have with me today my mother, Ellen Seibel, my husband of almost 18 years, Barron Lerner, our two children, Ben, who is 15, and Nina, who is 13.

Senator SCHUMER. Will you please rise, Seibel family? Welcome. Glad you're here. I can see how proud your mother is by the smile on her face.

Ms. SEIBEL. And also some friends from DC are here: Eric Biel, Michael Bosworth, and Christine Parker.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Cathy Seibel

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

United States District Judge for the Southern District of New York

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

Office: U.S. Attorney's Office, 1 St. Andrew's Plaza, New York, NY 10007

Residence: Hastings-on-Hudson, NY

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

1960; West Islip, NY.

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

I am married to Barron H. Lerner. He is a physician/historian employed as a Professor, Columbia College of Physicians & Surgeons and Mailman School of Public Health; Columbia University; 722 West 168th St., 9<sup>th</sup> Floor; New York, NY 10032.  
We have two dependent children.

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

Fordham University School of Law, August 1982 – May 1985; J.D. *cum laude*, May 1985

Princeton University, September 1978 – June 1982; A.B. *magna cum laude*, June 1982

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

Employment:

August 1993 – present  
 United States Attorney's Office for the Southern District of New York  
 1 St. Andrew's Plaza  
 New York, NY 10007  
 First Assistant United States Attorney, January 2008 – present  
 Deputy United States Attorney, September 2005 – January 2008  
 Assistant United States Attorney (AUSA)/Senior Trial Counsel, March 1999 – Sep. 2005  
 Assistant United States Attorney/AUSA-in-Charge, June 1997 - March 1999  
 Assistant United States Attorney, September 1995 - May 1997  
 Assistant United States Attorney/Chief, General Crimes Unit, August 1993 - May 1995

January 2008 – present  
 Lecturer-in-Law, Trial Practice  
 Columbia University School of Law  
 435 West 116<sup>th</sup> Street  
 New York, NY 10027

June 1994 – April 1995  
 Adjunct Associate Professor  
 Criminal Law Externship Program  
 Fordham University School of Law  
 140 West 62<sup>nd</sup> Street  
 New York, NY 10023

July 1991 - June 1993  
 United States Attorney's Office for the Western District of Washington  
 3600 Seafirst Fifth Avenue Plaza  
 Seattle, WA 98104  
 Special Assistant United States Attorney

September 1987 - June 1991  
 United States Attorney's Office for the Southern District of New York  
 1 St. Andrew's Plaza  
 New York, NY 10007  
 Assistant United States Attorney

September 1985 - September 1987  
 United States District Court for the Eastern District of New York  
 225 Cadman Plaza East  
 Brooklyn, NY 11201  
 Law Clerk to the Honorable Joseph M. McLaughlin, United States District Judge

May - August 1984  
 Cravath Swaine & Moore  
 1 Chase Manhattan Plaza  
 New York, NY 10081  
 Summer Associate

May - August 1983  
 Austrian Lance & Stewart  
 30 Rockefeller Plaza  
 New York, NY 10112.  
 Summer Clerk

Other affiliations:

Board member, Fordham Law Alumni Association, 140 West 62<sup>nd</sup> Street, New York, NY 10023; approximately September 2005 - present.

Board member, Hastings-on-Hudson PTSA, c/o Jodie Meyer, 15 Forest Avenue, Hastings-on-Hudson, NY 10706; approximately September 2003 - present.

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

I have not served in the military.

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

Henry L. Stimson Medal; Association of the Bar of the City of New York; 2004

Teamwork Award for Outstanding Achievement in the Service of the U.S. Government; New York Federal Executive Board; 2003

Chief's Award; Internal Revenue Service, Criminal Investigation Division; 2001

Federal Prosecutor of the Year; Federal Law Enforcement Foundation; 2000

Director's Award for Superior Performance; Department of Justice, Executive Office for United States Attorneys; 1991, 2000, 2003

Editor-in-chief, *Fordham Law Review*, 1984-85

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

Member, Federal Bar Council, approximately 1997 to present

11. **Bar and Court Admission:**

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

June 2, 1986, admitted to New York State Bar, 1<sup>st</sup> Department.  
There has been no lapse in membership.

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

United States District Court for Eastern District of New York, admitted  
September 12, 1986

United States District Court for the Southern District of New York, admitted  
March 26, 1987

United States Court of Appeals for the Second Circuit, admitted December 22,  
1988

United States District Court for the Western District of Washington, admitted July  
1, 1991

United States Court of Appeals for the Ninth Circuit, admitted January 22, 1992

12. **Memberships:**

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

participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Alumni Schools Committee, Princeton University, Princeton, NJ 08544;  
approximately 1997 – present; member

Fordham Law Alumni Association; approximately September 2005 – present;  
board member

Hastings-on-Hudson PTSA; approximately September 2003 – present; board  
member

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

None of the organizations to which I belong or have belonged practice any such discrimination.

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

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

During law school, I published a Note in the Fordham Law Review -  
*Note, Fee Awards For Pro Se Attorney and Nonattorney Plaintiffs Under the Freedom of Information Act*, 52 Fordham L. Rev. 374 (1983).

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

None

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

None

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

Cleveland Bar Association; December 2006, "Investigating and Prosecuting White Collar Crime."

I have appeared on numerous panels at Continuing Legal Education courses or the like. These tend to be unscripted, and I do not have transcripts or an outline of my comments. The panels in which I have participated over the last ten years are set forth below:

Fordham University School of Law, Fordham Law Women; March 2008,  
"Women in the Law: Shattering the Glass Ceiling."

Practising Law Institute; New York, NY,  
"Internal Investigations: Legal, Ethical and Strategic Issues"  
August 2006, June 2007

New York County Lawyers' Association/Federal Bar Council  
Federal Criminal Practice Institute  
"Pre-Trial Issues: Plea Bargaining"  
May 2006, October 2007

Association of the Bar of the City of New York  
"The ABCs of Federal Criminal Practice: A Practice Primer;" April 2006  
"Lawyers in the Dock: When Does Good Lawyering Become Criminal Conduct?  
Ethical and Practical Considerations;" February 2006  
"Representing Clients in Federal and State Tax Fraud Investigations;" January  
2001, June 2007

American Bar Association White Collar Crime Conference; San Francisco, CA  
 "Plea Bargaining for Individuals";  
 March 2006

New York University School of Law, NYU Law Women  
 "Crafting a Career: Finding Professional and Personal Fulfillment as a Woman  
 Lawyer"  
 October 2005

Princeton University, American Whig-Cliosophic Society  
 "Can a Lawyer Have a Life?"  
 October 2005

Federal Bar Council Winter Bench and Bar Conference; St. John, USVI  
 "Closing Arguments"  
 February 2001

Association of the Bar of the City of New York  
 American Bar Association, Section of Litigation  
 Annual Meeting, New York, NY  
 "You've Come A Long Way, Baby and Where Do We Go From Here?"  
 July 2000

Second Annual International Conference on Money Laundering in Banking and  
 Financial Systems; Rome, Italy  
 "International Organized Crime"  
 November 1997

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

*Seattle Times*, May 26, 1992, "Helmsley-Prosecution Team Member To Zero In on Bankruptcy Fraud Here"

"An Unexpected Use for a New Statute," *American Lawyer*, April 1997

*New York Times*, July 19, 2000, "Life's Work: Just Another Task in Paradise"

I also was interviewed for an A&E Biography program about Leona Helmsley.

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

I have not held a judicial office.

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

- a. citations for all opinions you have written (including concurrences and dissents);
- b. a list of cases in which certiorari has been requested or granted;
- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and
- f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have not served as a judge.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;

- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

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

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

I have held no public office other than my positions with the United States Attorney's Office. I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

None.

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
  - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From September 1985 – September 1987, I served as a clerk to the Honorable Joseph M. McLaughlin, United States District Judge for the Eastern District of New York

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

I have not practiced alone.

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

United States Attorney's Office for the Southern District of New York  
1 St. Andrew's Plaza  
New York, NY 10007.

First Assistant United States Attorney, January 2008 – present  
Deputy United States Attorney, September 2005 – January 2008  
AUSA / Senior Trial Counsel, March 1999 – September 2005  
AUSA / AUSA-in-Charge, June 1997 - March 1999  
Assistant United States Attorney, September 1995 - May 1997  
AUSA / Chief, General Crimes Unit, August 1993 - May 1995

July 1991 - June 1993

United States Attorney's Office for the Western District of Washington  
3600 Seafirst Fifth Avenue Plaza  
Seattle, WA 98104  
Special Assistant United States Attorney

September 1987 - June 1991

United States Attorney's Office for the Southern District of New York  
1 St. Andrew's Plaza  
New York, NY 10007.  
Assistant United States Attorney

September 1985 - September 1987

United States District Court for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201  
Law Clerk to the Honorable Joseph M. McLaughlin, United States District Judge

b. Describe:

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

Upon graduation from law school I spent two years (September 1985 – September 1987) clerking in the United States District Court for Judge McLaughlin. I became an Assistant United States Attorney (AUSA) in the United States Attorney's Office for the Southern District of New York in September 1987. I served in the General Crimes, Narcotics and Organized Crime Units. From 1991 to 1993, I was a Special AUSA in the Western District of Washington, where I was assigned to the Economic Crime

Unit. I returned to New York and the United States Attorney's Office in 1993, and became Chief of the General Crimes Unit. I trained all new AUSAs and supervised their work. In 1995 I transferred to the Office's White Plains branch, where I served as an AUSA in the criminal division for about two years, until I became AUSA-in-Charge of the White Plains branch. In 1999 I returned to trial work, becoming Senior Trial Counsel for more than six years. In September 2005 I returned to the Manhattan office, serving as Deputy United States Attorney. In January 2008 I became First Assistant United States Attorney.

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

After my clerkship (1985-1987), during which I assisted Judge McLaughlin with both civil and criminal matters, I spent the next 18 years (1987-2005) as a federal prosecutor, handling or supervising criminal cases on behalf of the United States. My responsibilities included conducting or supervising investigations, prosecutions, trials and appeals. In September 2005, I became Deputy United States Attorney. In that capacity, and in my current capacity as First Assistant U.S. Attorney, in addition to various management responsibilities, I supervise both criminal prosecutions and civil cases brought and defended by the federal government.

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

My entire practice has been in litigation. During my stints as a non-supervisory AUSA (1987-1993, 1995-1997, 1999-2005), I appeared in court frequently. During my stints as a supervisor (1993-1995, 1997-1999, 2005-present), I appeared in court only occasionally. My practice has been exclusively in federal court, and the cases I have handled personally have all been criminal. In my current position I have some supervisory responsibility over civil matters.

i. Indicate the percentage of your practice in:

1. federal courts: 100%
2. state courts of record;
3. other courts.

ii. Indicate the percentage of your practice in:

1. civil proceedings;
2. criminal proceedings: 100%

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

I have tried 18 cases to verdict in U.S. District Court. In my first trial, I was the junior prosecutor. In two other cases at the start of my career, I tried the case, but a more senior prosecutor was present to supervise. In six cases, I was sole counsel. In nine cases, I tried the case with a partner or partners as co-counsel. Seventeen of the 18 trials were jury trials.

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 94% |
| 2. non-jury. | 6%  |

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

I have not practiced before the Supreme Court of the United States.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *United States v. Avedis Khawaloujian, et al.*, 69 F.3d 545 (9<sup>th</sup> Cir. 1995); 970 F.2d 536 (9<sup>th</sup> Cir. 1992).

I was a government prosecutor in this investigation of a narcotics money-laundering operation run out of Manhattan's jewelry district. Another AUSA and I, along with Drug Enforcement Administration agents, conducted months of wiretaps, bugs and video surveillance at a Manhattan jewelry-district business that served as a front for the laundering of millions of dollars in proceeds of the sales of illegal narcotics. The investigation was also coordinated with U.S. Attorney's Offices, the Federal Bureau of Investigation, and other investigating agencies

throughout the country. My colleague and I coordinated the New York end of the nationwide takedown, which involved arrest warrants and (I believe) search warrants and seizure warrants. The investigation revealed that the New York operation was part of a Los Angeles-based network, and it was determined that prosecutions in that city were in the best interests of law enforcement. Accordingly, the defendants were charged in the Central District of California and convicted.

Co-Counsel:

AUSA Jonathan Liebman  
Brillstein Entertainment Partners  
9150 Wilshire Blvd., Suite 350  
Beverly Hills, CA 90212  
(310) 205-5132.

2. *United States v. Leona Helmsley, et al.*, 958 F.2d 1202 (2d Cir. 1993), 941 F.2d 71 (2d Cir. 1991), 866 F.2d 19 (2d Cir. 1989), 733 F. Supp. 600 (S.D.N.Y. 1989).

This case was a tax fraud prosecution of hotel and real estate executives. The nine-week trial ran from June through August 1989 in the United States District Court for the Southern District of New York before the Honorable John M. Walker, Jr. I represented the Government, along with my co-counsel. All three defendants were convicted and Helmsley appealed. I drafted most of the Government's 110-page appellate brief, which was filed on June 29, 1990. I argued the appeal. The convictions were affirmed. Defendant Helmsley also filed a motion for a new trial. I assisted with the District Court litigation, although I was living in Seattle at the time. I cannot recall my precise role, but believe I drafted papers and attended at least one District Court hearing. The District Court (the Honorable Thomas P. Griesa) denied the motion. I drafted the Government's 50-page appellate brief which, after editing, was filed on June 25, 1992. I argued the appeal. The denial of the motion was affirmed.

Co-Counsel:

AUSA James DeVita  
Bryan Cave  
245 Park Avenue  
New York, NY 10167  
(212) 541-1241)

Special AUSA Diane Peress  
Nassau County District Attorney's Office  
262 Old Country Road  
Mineola, NY 11501  
(516) 571-5065

Special AUSA Alfredo Mendez  
Abrams, Fensterman, Fensterman, Eisman, Greenbert, Fornato & Eineger LLP  
630 Third Avenue  
New York, NY 10017  
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Opposing Counsel:  
Gerald Feffer  
Williams & Connolly  
725 Twelfth Street N.W.  
Washington, DC 20005  
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Lead trial counsel for defendant Helmsley

Joseph Benfante  
225 Broadway  
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Lead trial counsel for defendant Joseph Licari

William Brodsky  
Fox Horan & Camerini  
825 Third Avenue, 11<sup>th</sup> floor  
New York, NY 10022  
(212) 480-4800  
Lead trial counsel for defendant Frank Turco

Alan Dershowitz  
Harvard Law School  
1563 Massachusetts Avenue  
Cambridge, MA 02130  
(617) 495-4617  
Lead appellate counsel for defendant Helmsley

Robert Bork  
Hudson Institute  
1015 15th Street N.W., 6th Floor  
Washington, DC 20005  
(202) 974-2400  
Lead appellate counsel for defendant Helmsley on motion for new trial

3. *United States v. Rita Gluzman*, 154 F.3d 49 (2d Cir. 1998), 124 F. Supp. 2d 171 (S.D.N.Y. 2000), 953 F. Supp. 84 (S.D.N.Y. 1997).

This case was an interstate domestic violence murder prosecution of woman who, with an accomplice, ax-murdered and dismembered her estranged husband. It was the first murder prosecution under the Violence Against Women Act. The three-and-a-half week trial took place in January 1997 in the United States District Court for the Southern District of New York. The Judge was the Honorable Barrington D. Parker, Jr. I tried the case, along with co-counsel. The defendant was convicted of conspiracy, murder and illegal wiretapping, and acquitted of extortion. The Government's 90-page appellate brief was filed on November 20, 1997. I drafted the brief and argued the appeal. The conviction was affirmed. Also, I represented the United States in Gluzman's petition under 28 U.S.C. Sec. 2255 for a new trial, which was denied.

Co-Counsel:

AUSA Deirdre Daly  
Daly & Pavlis  
107 John Street  
Southport, CT 06490  
(203) 255-6700

Special AUSA Louis Valvo  
Callan, Koster, Brady & Brennan  
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(212) 248-8800

Opposing Counsel:

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Hochheiser & Hochheiser  
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(212) 689-4343  
Trial counsel for defendant Gluzman

Judd Burstein  
1790 Broadway, Suite 1501  
New York, NY 10019  
(212) 974-2400  
Appellate counsel for defendant Gluzman

Alan Untereiner  
Robbins, Russell, Englert, Orseck, Untereiner & Sauber LLP  
1801 K Street N.W., Suite 411  
Washington, D.C. 20006  
(202) 775-4505  
Gluzman's counsel for Section 2255 petition.

4. *United States v. Albert Pirro and Anthony Pirro*, 2001 WL 474647 (2d Cir. May 4, 2001), 212 F.3d 86 (2d Cir. 2000), 96 F. Supp. 2d 279 (S.D.N.Y. 1999), 76 F. Supp. 2d 478 (S.D.N.Y. 1999).

This case was a tax fraud prosecution of an attorney and an accountant. Prior to trial, the Government took an interlocutory appeal of the District Court's dismissal of a portion of a count in the Indictment. The Government's 45-page opening brief was filed on January 28, 2000, and its 26-page reply brief was filed on March 7, 2000. I assisted in preparing the briefs, along with co-counsel and other Assistant United States Attorneys. AUSA Jacobson argued the appeal. The District Court was affirmed. The five-and-a-half week trial took place in May and June 2000. I tried the case, along with AUSAs Jacobson and Weddle. Albert Pirro was found guilty of all 34 counts with which he was charged. Anthony Pirro was convicted on 23 counts and acquitted on 10 counts. The Judge was the Honorable Barrington D. Parker, Jr. Anthony Pirro appealed his conviction. The Government's 72-page brief was filed on February 12, 2001. I wrote the brief and argued the appeal. The conviction was affirmed.

Co-Counsel:

AUSA Elliott Jacobson  
300 Quarropas Street  
White Plains, NY 10601  
(914) 993-1940

AUSA Justin Weddle  
Department of Justice  
1331 F. St. N.W.  
Washington, DC 20530  
(202) 514-1323

Opposing Counsel:

Gustave Newman  
Newman & Greenberg  
950 Third Avenue  
New York, NY 10022  
(212) 308-7900  
Albert Pirro's lead trial counsel

Roger Stavis  
Gallet, Dreyer & Berkey  
845 Third Avenue, 8th Floor  
New York, NY 10022  
(212) 935-3131  
Anthony Pirro's trial and appellate counsel

5. *Town of Poughkeepsie corruption cases*. 2000 WL 232291 (2d Cir. January 25, 2000).

This case involved the investigation and a series of prosecutions of public officials of the Town of Poughkeepsie in Dutchess County. Four public officials - William Paroli (County Election Commissioner), Fred Andros (Town Water Commissioner), James Pickles (Town Building Inspector), and Robert Kortright (Town Deputy Building Inspector) -- were convicted, and three others were charged and had their prosecutions deferred. I handled the investigation myself from April 1997 through February 1999, when AUSA Mark Godsey joined the case. In September 1999, I began working full-time on the *Pirro* case and was replaced on the Poughkeepsie cases by AUSA Cari Robinson. I believe the charges against Paroli were the only ones brought after my departure from the case. Paroli, Pickles and Andros pleaded guilty. Kortright, who was charged with bribe-receiving and extortion under color of official right, went to trial in October 1998. I tried the one-week case myself. The Judge was the Honorable Richard Conway Casey (deceased). Kortright was convicted on both counts. He appealed his conviction. The Government's 32-page appellate brief was filed on September 17, 1999. I wrote the brief and argued the appeal. The conviction was affirmed.

Co-Counsel:

AUSA Mark Godsey  
University of Cincinnati  
Clifton Avenue & Calhoun Street  
Cincinnati, OH 45221  
(513) 556-0107

AUSA Cari Robinson  
IBM  
1133 Westchester Avenue  
White Plains, NY 10604  
(914) 642-4375

Opposing Counsel:

Solomon Abrahams  
Trial counsel for defendant Kortright (Since convicted of criminal contempt in an unrelated matter; whereabouts unknown)

Ronald Cohen  
Whereabouts unknown  
Appellate counsel for defendant Kortright

6. *United States v. Mordechai Samet & Chaim Hollender*, S7 01 Cr. 216 (CM); 466 F.3d 251 (2d Cir. 2006); 2006 WL 2597869 (2d Cir. September 11, 2006); 2008 WL 162848 (2d Cir. Jan. 18, 2008).

This case was a prosecution for racketeering, money laundering and various substantive offenses arising from massive insurance, mass mailing, pyramid scheme, false tax return, bank and leasing frauds. The seven-week trial took place from October to December 2004. The Judge was the Honorable Colleen McMahon. I represented the Government, along with co-counsel. Both defendants were convicted and appealed. The Government's 202-page appellate brief was filed in August 2004. I wrote portions of the brief. AUSA Barton argued the appeal. The convictions were affirmed. Both defendants also appealed from the District Court's denial of their motions for resentencing. AUSA Margery Feinzig wrote the Government's brief in opposition, and I argued the appeal on December 21, 2007. The Government argued as to Samet that resentencing was properly denied, and as to Hollender conceded that the case should be remanded but opposed Hollender's request for remand to a different judge. The Government prevailed.

Co-Counsel:

AUSA Maria Barton  
35 Maple Hill Drive  
Larchmont, NY 10538  
(914) 834-5046

AUSA Sean Eskovitz  
Munger Tolles & Olson  
355 South Grand Avenue, 35<sup>th</sup> Floor  
Los Angeles, CA 90071  
(213) 683-9178

Opposing Counsel:

Samuel I. Burstyn  
(since convicted of obstruction of justice in unrelated matter)  
Lead trial counsel for defendant Samet

Vincent Briccetti  
Briccetti Calhoun & Lawrence  
81 Main Street, Suite 450  
White Plains, NY 10601  
(914) 946-5900  
Lead trial counsel for defendant Hollender

Diarmuid White  
White & White  
148 East 78<sup>th</sup> Street  
New York, NY 10021  
(212) 861-9850  
Samet's appellate counsel

Andrew Citron  
67 Wall Street  
New York, NY 10271  
(212) 804-5759  
Hollender's appellate counsel

Randy Mastro  
Gibson Dunn & Crutcher  
200 Park Avenue  
New York, NY 10166  
(212) 351-3825.  
Appellate counsel for Samet on resentencing appeal

Arthur S. Friedman  
275 Madison Avenue  
New York, NY 10016  
(212) 986-1144.  
Appellate counsel for Hollender on resentencing appeal

7. *United States v. Chaim Wiesel*, 2004 WL 75368 (2d Cir. January 14, 2004)

This case was a related matter to the previous case, *United States v. Mordechai Samet & Chaim Hollender*. Wiesel was a tax return preparer convicted for conspiring to commit and committing mail fraud, and conspiring to present and presenting false claims to the United States, arising from a scheme to file hundreds of false tax returns fraudulently claiming refunds arising from the earned income credit. The Government's 62-page brief was filed on August 6, 2003. I drafted the brief and argued the appeal. The conviction and sentence were affirmed.

Opposing Counsel:  
Nathan Dershowitz  
Dershowitz Eiger & Adelson  
220 Fifth Avenue, Suite 300  
New York, NY 10001  
(212) 889-4009

8. *United States v. Joseph Rainier*, 1996 WL 282135 (2d Cir. May 29, 1996), 1997 WL 282236 (S.D.N.Y. May 27, 1997)

This was the trial of a private investigator who impersonated a federal agent in connection with a custody dispute. The three-day trial took place in January 1994 before the Honorable John S. Martin, Jr. I tried the case myself. The defendant was convicted. Another prosecutor handled the appeal, and I handled the defendant's petition for post-conviction relief. The conviction was upheld.

Opposing Counsel:

John Kerrigan, Jr.  
174 Middletown Blvd.  
Langhorne, PA 19042  
(215) 741-7144

9. *United States v. Kimberly Jones & Monique Dopwell*, S1 04 Cr. 340 (GEL). (Two reported decisions preceded my assignment to the case: *United States v. Butler*, 351 F. Supp. 121 (S.D.N.Y. 2004), and *United States v. Butler*, 2004 WL 2274751 (S.D.N.Y. 2004).)

This was a perjury and obstruction of justice prosecution arising out of a shootout, on a sidewalk outside a radio station, between entourages of two rap performers. The three-week trial took place in March 2005. I represented the Government at trial along with co-counsel. Both defendants were convicted of conspiracy and multiple counts of perjury, and acquitted of obstruction of justice. Neither defendant appealed. The Judge was the Honorable Gerard Lynch.

Co-Counsel:

AUSA Daniel Gitner  
Lankler Siffert & Wohl  
500 Fifth Avenue, 33<sup>rd</sup> floor  
New York, NY 10110  
(212) 921-8399

Opposing Counsel:

Mel Sachs,  
(deceased)  
Trial counsel for Jones

Paul Shechtman  
Stillman Friedman & Shechtman  
425 Park Avenue  
New York, NY 10022  
(212) 223-0200  
Sentencing counsel for Jones

Brian Kaplan  
 Goldberg & Kaplan  
 55 Broad Street  
 New York, NY 10004  
 (212) 269-2363  
 Counsel for Dopwell

10. *United States v. Sanjaya Bahel*, Dkt. No. S3 06 Cr. 918 (TPG).

In this case I represented the government, along with co-counsel, in the trial of a former United Nations ("UN") procurement officer for accepting corrupt payments from representatives of companies doing business with UN and for mail and wire fraud arising from a scheme to deprive the UN of his honest services. The three-week trial began in May 2007 and concluded in June 2007. The Judge was the Honorable Thomas P. Griesa. The defendant was convicted on all counts.

Co-Counsel:  
 AUSA Alexander Willscher  
 1 St. Andrew's Plaza  
 New York, NY 10007  
 (212) 637-2736

Opposing Counsel:  
 Richard Herman  
 300 Park Avenue, Suite 1700  
 New York, NY 10022  
 (212) 759-6300

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have not performed any lobbying activities.

My service in the U.S. Attorney's Office has included more than just litigation. For example, I have also been very involved in training in the office, giving lectures on substantive areas of criminal law or on trial practice, critiquing participants in our in-house trial training program, doing demonstrations for that program, and supervising junior Assistant U.S. Attorneys in their early trials or suppression hearings. I have also frequently participated in panels and programs on criminal law, criminal practice or

ethics for Continuing Legal Education sessions presented by various bar associations or educational groups. I have also spoken at programs on women in the legal profession.

My positions as Deputy U.S. Attorney and now First Assistant have also involved coordination with state and local law enforcement, as well as the various federal law enforcement agencies. Communicating with those entities on sensitive issues and keeping those relationships healthy has been an important part of my job.

Finally, it is my responsibility to supervise our Public Information Office, an often tricky task, as the public's interest in knowing about the activities of a prosecutor's office can often conflict with the needs of law enforcement or the statutes and rules that limit what a prosecutor can say about an investigation or prosecution. The U.S. Attorney and I have taken several measures to improve our relationship with the press that covers our office, including providing daily press guidance about upcoming events, establishing 24/7 availability of press officers, placing more public documents on our web site, issuing fact sheets about various areas of our practice, and doing more to explain the constraints under which we must work, rather than simply saying "no" to press requests.

A significant legal activity I pursued, which did not proceed to trial, was the case of *In re Tommy Hilfiger USA Inc.* This was an investigation of a garment manufacturer for possible tax crimes. The investigation began in 2004 and ended in August 2005 with the announcement of non-prosecution agreement under which the corporation agreed to amend its tax returns, pay approximately \$18 million in back taxes and interest, self-report to Hong Kong taxing authorities, and adopt corporate reforms.

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

I am currently co-teaching a trial practice class at Columbia Law School. There is a small lecture and demonstration component to the class, but most of it consists of our critiques of student performances. The class culminates in a mock trial. For a brief period (June 1994 - April 1995) I served as an Adjunct Associate Professor, running the discussion component of the Criminal Law externship program for Fordham Law students serving as externs in the U.S. Attorney's Office. I met with the externs as a group each week. During these meetings, we discussed events in the Office that week and matters on which the externs were working. I endeavored to place those matters in context for the students, raise issues presented by the cases, and answer questions.

22. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or

customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

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

None. My teaching commitment at Columbia Law School is only for January – April 2008.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Aside from the ordinary conflicts that would be occasioned if a party in which I held a financial interest were a litigant in a case before me, I believe I would have a conflict in cases that were open matters in the U.S. Attorney's Office for the Southern District of New York during the time I was Deputy U.S. Attorney or First Assistant U.S. Attorney. This is so because in that position, I have nominal supervisory authority over all matters (civil or criminal) in the Office. I believe that that would present an appearance of conflict even if I had no actual knowledge of the case. If I am confirmed, I would have to review the cases assigned to me for which the U.S. Attorney's Office represents a party and undertake the appropriate inquiries to make sure that it was not an open matter during my tenure as Deputy U.S. Attorney or First Assistant U.S. Attorney. In the

past, when similarly situated former prosecutors have become District Judges, the Office has added a section to the form it files with each new case. That section states the date the matter was opened, so that cases presenting a conflict can be readily identified.

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

In all cases of any actual or potential conflict of interest, I will follow the Code of Conduct for United States Judges, applicable statutes, as well as policies and procedures established by the District Court, the Court of Appeals for the Second Circuit, and the Judicial Conference.

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

My entire legal career has been in public service and I have done no *pro bono* legal work per se. While I have not devoted as much time as I would like to serving the disadvantaged, I have done and continue to do community service, some of which assists the disadvantaged. I am officer of my local Parent-Teacher-Student Association, an important function of which is to raise funds to provide to students who cannot afford field trips, longer study trips, instrument rentals, SAT preparation classes, Advanced Placement examinations, and the like. I devote anywhere from 3 to 12 hours a month to the PTSA during the school year. Through my synagogue, I occasionally assist at The Children's Village, a local residential facility for boys for whom foster care has been unsuccessful. The synagogue has "adopted" one of the cottages in which the boys live, and members visit for a few hours to read, celebrate holidays or play pick-up sports. Finally, each Christmas I volunteer, with my family, at the holiday dinner and party at a nearby soup kitchen.

28. **Selection Process:**

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

In June 2007, I submitted a screening questionnaire to Senator Charles Schumer's Judicial Screening Panel. I interviewed with that panel on July 12, 2007. On July 31, 2007, I met again with panel chair Mark O'Donoghue, panel member David Barrett, and Senator Schumer's chief Judiciary counsel, Preet Bharara. On August 3, 2007, I met with Senator Schumer and Mr. Bharara. After Senator Schumer recommended me to the White House for nomination, I interviewed on September 19, 2007 with staff from the White House Counsel's Office and the Department of Justice. On or about November 6, 2007, I was informed that a preliminary decision had been reached to go forward with my name. Since then, I have communicated with staff at the Department of Justice regarding nomination paperwork and the process in general. My nomination was submitted to the United States Senate on March 11, 2008.

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

No

AO 10  
Rev. 1/2007

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Cathy, Seibel	2. Court or Organization U.S. District Court -S.D.N.Y.	3. Date of Report 03/12/2008
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 03/11/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2007 to 02/29/2008
7. Chambers or Office Address 1 St. Andrew's Plaza New York, NY 10007	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Vice-President (middle school)	Hastings-on-Hudson PTSA
2.	board member	Fordham Law Alumni Association
3.	Lecturer-in-Law (part-time trial practice instructor)	Columbia University School of Law
4.		
5.		

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

NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	2008	\$2500 compensation for instructing Trial Practice course at Columbia University School of Law January - April 2008
2.		
3.		

**FINANCIAL DISCLOSURE REPORT**  
Page 2 of 8

Name of Person Reporting Cathy, Seibel	Date of Report 03/12/2008
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**III. NON-INVESTMENT INCOME.** (Reporting individual and spouse; see pp. 17-24 of instructions.)

**A. Filer's Non-Investment Income**

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2008	Columbia University -- payment for teaching	\$ 1103
2.		
3.		
4.		
5.		

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

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2008	Columbia University: salary as faculty member and physician
2. 2008	University of Vermont, honorarium
3. 2007	Columbia University: salary as faculty member and physician
4. 2007	Washington Post, payment for writing
5. 2007	American Association of Medical Colleges, honorarium
6. 2007	Duke University, honorarium
7. 2007	New England Journal of Medicine, payment for writing
8. 2007	New York Times, payment for writing
9. 2007	Wake Forest University, honorarium

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

NONE (No reportable reimbursements.)

SOURCE	DESCRIPTION
1. exempt	

**FINANCIAL DISCLOSURE REPORT**  
Page 3 of 8

Name of Person Reporting Cathy, Seibel	Date of Report 03/12/2008
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- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_

**FINANCIAL DISCLOSURE REPORT**  
Page 4 of 8

Name of Person Reporting Cathy, Seibel	Date of Report 03/12/2008
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**V. GIFTS.** *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. exempt	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

**VI. LIABILITIES.** *(Includes those of spouse and dependent children. See pp. 32-33 of instructions.)*

NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

**FINANCIAL DISCLOSURE REPORT**  
Page 5 of 8

Name of Person Reporting Cathy, Seibel	Date of Report 03/12/2008
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. American Century Vista Fund	D	Dividend	L	T	exempt				
2. AT&T common stock	A	Dividend	J	T					
3. AT&T common stock	A	Dividend	J	T					
4. Brandywine Fund	D	Dividend	L	T					
5. Chase Manhattan checking account		None	J	T					
6. Comcast common stock		None	J	T					
7. Comcast common stock		None	J	T					
8. Dryden Global Total Return Fund	A	Dividend	J	T					
9. Dreyfus NY Tax-Exempt Bond Fund	B	Dividend	K	T					
10. Enbridge Energy Partners LP common stock	B	Dividend	K	T					
11. Fidelity Magellan Fund (IRA)		None	K	T					
12. Fidelity Capital Appreciation Fund (IRA)		None	K	T					
13. Fidelity NY Muni Income Fund	C	Interest	L						
14. IBM common stock	A	Dividend	J	T					
15. Janus Fund	A	Dividend	M	T					
16. John Hancock Patriot Premium Div Fund I common stock	A	Dividend	J	T					
17. Metropolitan Transportation Authority NY	A	Interest	J	T					

1. Income Code: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P2 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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**FINANCIAL DISCLOSURE REPORT**  
Page 6 of 8

<b>Name of Person Reporting</b> Cathy, Seibel	<b>Date of Report</b> 03/12/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets)  Place "XY" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
Municipal Bonds									
18. Morgan Stanley Active Assets Money Trust	B	Interest	L	T					
19. NY State 529 College Savings Plan		None	K	T					
20. NY State 529 College Savings Plan		None	K	T					
21. RS Growth Fund	D	Dividend	L	T					
22. TIAA/CREF stock fund (retirement annuity)		None	M	T					
23. TIAA/CREF global equity fund (retirement annuity)		None	K	T					
24. T. Rowe Price Blue Chip Growth Fund IRA		None	J	T					
25. T. Rowe Price Blue Chip Growth Fund IRA		None	J	T					
26. T. Rowe Price Prime Reserve Fund	D	Dividend	M	T					
27. T. Rowe Price Prime Reserve Fund	D	Dividend	N	T					
28. T. Rowe Price Prime Reserve Fund	E	Dividend	N	T					
29. Vanguard 500 Index Fund (retirement annuity)	C	Dividend	M	T					
30. Vanguard International Growth Fund (retirement annuity)	D	Dividend	L	T					
31. Zweig Total Return Fund Inc.	B	Dividend	J	T					

1. Inverse Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	P4 = More than \$50,000,000 S = Assessment W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**  
 Page 7 of 8

Name of Person Reporting	Date of Report
Cathy, Seibel	03/12/2008

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

Non-investment income received during the reporting period included compensation for employment by the United States.

Teaching payment in Part III.A. is net amount.

**FINANCIAL DISCLOSURE REPORT**  
 Page 8 of 8

Name of Person Reporting	Date of Report
Cathy, Seibel	03/12/2008

**IX. CERTIFICATION.**

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

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

Signature



Date

3/12/08

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

**FILING INSTRUCTIONS**

Mail signed original and 3 additional copies to:

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

## FINANCIAL STATEMENT as of 12/31/07

## NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		817	700	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		69	100	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		12	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		163	200
Real estate owned-add schedule		800	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000				
Cash value-life insurance							
Other assets itemize:							
See attached schedule	1	557	300				
				Total liabilities		175	200
				Net Worth		3	093
							900
Total Assets	3	269	100	Total liabilities and net worth	3	269	100
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		NO	
On leases or contracts				Are you defendant in any suits or legal actions?		NO	
Legal Claims				Have you ever taken bankruptcy?		NO	
Provision for Federal Income Tax							
Other special debt							

## FINANCIAL STATEMENT as of 12/31/07

## NET WORTH SCHEDULES

Listed Securities

AT&T	\$ 2,200
Comcast	5,500
Enbridge Energy Partners	25,300
IBM	10,800
John Hancock Patriot Premium Dividend Fund	11,800
Zweig Total Return Fund	13,500
Total Listed Securities	\$ 69,100

Real Estate Owned

Personal residence	\$ 800,000
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Other Assets

American Century Vista Fund	\$ 72,700
Brandywine Fund	110,600
Dreyfus New York Tax-Exempt Bond Fund	29,700
Dryden Global Total Return Fund	5,800
Fidelity Capital Appreciation Fund IRA	17,700
Fidelity Magellan Fund IRA	35,700
Fidelity New York Municipal Income Fund	60,200
Janus Fund	125,600
MTA New York municipal bonds	10,500
New York 529 College Savings Plans	49,600
RS Growth Fund	62,100
Thrift Savings Plan	437,200
TIAA/CREF Stock Fund retirement annuity	182,400
TIAA/CREF Global Equities Fund retirement annuity	38,800
T. Rowe Price Blue Chip Growth Fund IRA 1	15,800
T. Rowe Price Blue Chip Growth Fund IRA 2	16,000
Vanguard 500 Index Fund retirement annuity	221,500
Vanguard International Growth Fund retirement annuity	65,400
Total Other Assets	\$ 1,557,300

Real Estate Mortgages Payable

Personal residence	\$ 163,200
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AFFIDAVIT

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

5/12/08  
(DATE)

Cathy Seibel  
(NAME)

(NOTARY)

Jeanette Ann Grayeb

**JEANETTE ANN GRAYEB**  
Notary Public, State of New York  
No. 01GR4995793  
Qualified in Kings County  
Commission Expires Nov 30, 2009

Senator SCHUMER. Great. Okay. Thank you.

And finally, last but not least, I'd like to introduce the current distinguished U.S. Attorney for the Northern District of New York and the President's nominee to the bench for that same District, Mr. Glenn T. Suddaby.

Mr. Suddaby has been a U.S. Attorney since 2002, but his ties to the Northern District go much further than that. He received his B.A. from Suny at Plattsburg, then received his law degree from Syracuse University, and then began his career as a prosecutor in Onondaga County, which is the county that the city of Syracuse is in.

After a short stint in the private sector at the Syracuse law firm of Mentor, Ruben, and Trivelpiece, Mr. Suddaby returned to the Onondaga County District Attorney's Office as the First Chief Assistant District Attorney, and he served in that position for 10 years. Between college and law school, he served for several years as a legislative aide in the New York State legislature.

Mr. Suddaby has earned his reputation as a hard-working prosecutor who has, in particular, targeted corruption throughout his District. Mr. Suddaby's impressive career in law enforcement and his commitment to placing the rule of law ahead of ideology make him a fine choice for New York and for the Northern District.

Mr. Suddaby and his wife Jane have two children.

Mr. Suddaby, please make any remarks you wish to make, and introduce your family.

**STATEMENT OF GLENN T. SUDDABY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK**

Mr. SUDDABY. Thank you, Mr. Chairman. Thank you for the opportunity to be here today. I want to thank Senator Leahy and the Committee for the opportunity to be here. Senator Brownback, I want to thank you, sir, for being here as well.

I want to particularly thank you, Senator Schumer, for your support now for the second time. I would like to thank the President for the nomination for the ability to sit here today. Thank you.

My family is here. My wife Jane, of almost 19 years on August 25th, and my oldest son, Conor, and my younger son, Ryan.

Senator SCHUMER. Please stand so we may say hello. Welcome. Thank you all for being here.

Okay. Well, great. Now let's begin some questions.

Here is my first question to all four nominees. There's been an age-old debate about how exactly a free society should balance security and liberty. I've always been a strong believer we can have both, that we can continue to exercise the liberty guaranteed by our Constitution without hampering the ability of government to protect us from those who would do us harm. We know there are plenty of people like that, particularly these days.

I believe that our constitutional system requires checks and balances. The most important check on over-reaching executive power is the Federal judiciary. As a judge you will be on the front lines of the debate of how to balance liberty and security. How should a judge approach this question? How will you go about balancing these interests on the bench? We'll start with Mr. Gardephe and work our way to my right.

Mr. GARDEPHE. Thank you, Mr. Chairman. The place I would begin, of course, is with our Constitution and laws that govern our country, and have governed it for the last 200 years. I would be guided by the fact that we have been able to maintain our principles through war and peace for the last 200 years, and most recently by the experience of the prosecutions in the Southern District of New York regarding the first attack on the World Trade Center, as well as the seditious conspiracy involving Sheik Rahman.

I believe in both of those cases the judges involved were able to balance those important—indeed, vital—considerations that you just mentioned, and that we can be confident in the future that those critical values can be balanced.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** Full name (include any former names used).  
Glenn Thomas Suddaby
2. **Position:** State the position for which you have been nominated.  
United States District Judge for the Northern District of New York
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.  
U.S. Attorney's Office-Northern District of New York  
100 South Clinton Street  
Syracuse, New York 13261
4. **Birthplace:** State year and place of birth.  
1956; Glens Falls, New York
5. **Marital Status:** (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.  
I am married to Jane E. Fahey-Suddaby.  
She is employed as Assistant Superintendent, Oswego County Board of Cooperative Educational Services; 179 County Route 64; Oswego, New York 13114.  
We have two dependent children.
6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.  
Syracuse University College of Law, 8/82 through 5/85; Juris Doctorate, May 1985  
State University of New York at Plattsburgh, 1/76 through 5/80; B.A., May 1980
7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other

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

10/02 to Present  
 U.S. Attorney's Office-Northern District of New York  
 100 South Clinton Street  
 Syracuse, New York 13261  
 United States Attorney

1/92 to 10/02  
 Onondaga County District Attorney  
 505 S. State Street - 4<sup>th</sup> Floor  
 Syracuse, NY 13202  
 First Chief Assistant District Attorney

1/89 to 1/92  
 Menter, Rudin & Trivelpiece, P.C.  
 500 South Salina St.  
 Syracuse, NY 13202  
 Associate Attorney

9/83 to 1/89  
 Onondaga County District Attorney  
 505 S. State Street - 4<sup>th</sup> Floor  
 Syracuse, NY 13202  
 Law clerk, 9/83 to 5/85; Assistant District Attorney, 5/85 to 1/89

6/80 to 7/84  
 New York State Assembly  
 Legislative Office Building  
 Albany, NY 12247  
 Legislative Assistant

7/80 to 8/82  
 New York State Senate (Honorable Robert B. Stafford)  
 Albany, NY 12247  
 Legislative Assistant

Empire Housing & Development Corporation  
 643 Park Avenue  
 Syracuse, NY 13204  
 Board Member (1995 to 2002)

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

I have not served in the military.

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

Southside American Little League Award Recognizing Service to Youth; April 2007

City of Syracuse, Department of Police Recognition for Commitment to Gang Prosecution; February 2007

American Bar Association, Division for Public Education Recognition for Commitment to Youth Court Programs; April 2006

City of Schenectady-Recognition for Weed & Seed Commitment; July 2004

U.S. Department of Justice Award for Public Service Northern District of New York; April 2001

New York State Fire Investigators Associations Arson Prosecutor of the Year; 2001

Order of the Barristers; 1985

Syracuse College of Law National Trial Team; 1984 - 1985

Grossman Trial Competition First Place; 1983 – 1984  
Most Outstanding Advocate - Second Year (1983); Best Brief Award - Second Year (1983)

National Leadership Honor Society Omicron Delta Kappa; 1978

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

Federal Court Bar Association-Northern District of New York - Current Member  
American Bar Association  
New York State Bar Association  
New York State Trial Lawyers Association  
Onondaga County Bar Association - Current Member  
National District Attorneys Association

New York State District Attorneys Association - Associate Member - Current  
 Association of Government Attorneys in Capitol Litigation

**11. Bar and Court Admission:**

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

New York State; January 25, 1986

Commonwealth of Massachusetts; December 18, 1985

I am in good standing but in "retired" status with the Massachusetts bar, as I am not practicing in Massachusetts.

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

New York State, 1986

Commonwealth of Massachusetts, 1986

United States District Court, Northern District of New York, 1986

**12. Memberships:**

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

Partnership to Reduce Juvenile Gun Violence - 1992-2002  
 (Steering Committee Member)

Police Services in Onondaga County Beyond 2000 Committee-1997-2002  
 (Chairman of Records and Evidence)

Empire Housing and Development Corporation- 1995-2002  
 (Board of Directors)

Catholic Charities - 1995-2002  
 (Fundraising Committee)

Catholic Youth Organization - 1986-2002  
 (Coach)

Moot Court Advisor - Syracuse University College of Law-1986-2002

Southside American Little League - 1999-2002  
(Board of Directors and Coach)

YMCA - 1985-1994  
(Member)

Town of Onondaga Century Club - 1996-2002

Bellevue Country Club - 1999-2002

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

None.

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

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

I have written three Opinion editorials which were published as follows:  
September 29, 2003; DOJ Prosecution Guidelines and the Patriot Act  
July 20, 2005; Reauthorization of the Patriot Act  
May 1, 2007; Law Enforcement Use of Sting Operations

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

Use of Force laws for U.S. states on Northern Border, prepared for U.S./Canada International Joint Management Team of Integrated Border Enforcement Teams.

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

None.

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

2/26/03; Dhafir Indictment  
 9/16/03; Youth Court Future Leaders  
 10/03; New York State Magistrates Dinner  
 3/9/04; New York State Police Academy - Patriot Act  
 5/13/04; Henniger High School - Violence Intervention  
 1/7/05; Awards Ceremony  
 1/05; Forfeiture Presentation  
 2/14/05; Cortland County Legislature Community Outreach - Patriot Act  
 4/14/05; Corcoran High School; Boot Camp Moms  
 4/16/05; Crime Victims Memorial  
 5/2/05; Red Mass Speech  
 5/9/05; Civic Center; Boot Camp Moms  
 5/16/05; Fowler High School; Boot Camp Moms  
 5/20/05; Henniger High School; Boot Camp Moms  
 5/27/05; Nottingham High School; Boot Camp Moms  
 7/27/05; Corcoran High School; Boot Camp Moms  
 8/05; Gang Speech Law Enforcement  
 9/14/05; Albany United Jewish Group - Patriot Act  
 10/5/05; Plattsburgh Money Laundering Seminar - Patriot Act  
 10/05; Schenectady Rotary Club - Patriot Act  
 12/6/05; Albany Citizens Academy Alumni - Patriot Act  
 12/8/05; Nottingham High School; Gang Violence  
 1/20/06; Levy Middle School; Boot Camp Moms  
 1/25/06; Shea Middle School; Boot Camp Moms  
 2/16/06; Grant Middle School; Boot Camp Moms  
 2/21/06; Syracuse Jewish Federation, Inc. - Patriot Act  
 3/7/06; Albany-DCJS - Patriot Act  
 3/23/06; Roberts Middle School; Boot Camp Moms  
 4/4/06; Skaneateles High School; U.S. Atty's Position

4/14/06; Skaneateles High School-The U.S. Attorney's Role  
 4/24/06; Danforth Middle School; Boot Camp Moms  
 5/16/06; Blodgett Middle School; Boot Camp Moms  
 6/2/06; Beard Middle School; Boot Camp Moms  
 11/6/06; Christian Brothers Academy; Introduction to Law  
 12/14/06; Gang Prevention Symposium

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

As United States Attorney for the Northern District of New York, I have commented on numerous occasions or responded to media inquiries concerning cases and law enforcement programs. The majority of these are unavailable to me. I have made the following media appearances:

1/21/03; Channel 9-WIXT (Christy Casciano)  
 9/10/03; Paul Vandenberg; Patriot Act  
 9/16/03; Colonie Youth Court; Capital District Media; Our Future Leaders  
 9/17/03; WIXT (Cristy Casciano)  
 3/14/05; WAER Radio (Scott Willis)  
 6/7/05; WSYR Radio-Jim Reith Show  
 6/28/05; WSYR Channel 9 (Cristy Casciano); Boot Camp Moms  
 7/14/05; WSYR Radio-Jim Reith Show; Gang Violence  
 9/6/05; WCNY TV Channel 24; Gang Intervention  
 9/29/05; WSYR Radio (Erin Covey); Gang Violence  
 6/15/07; Paul Vandenberg Show; Aref & Hussain Convictions and Project Safe Childhood  
 7/23/07; Steve on Sunday Show; A Look At the U.S. Attorney's Office-NDNY

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

I have not served as a judge.

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

- a. citations for all opinions you have written (including concurrences and dissents);
- b. a list of cases in which certiorari has been requested or granted;

- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and
- f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have not served as a judge.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

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

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

1980 to 1984 (appointed)	Legislative Assistant New York State Assembly Assemblyman Hyman Miller Assemblyman Andrew Ryan
1980 to 1982 (appointed)	Legislative Assistant New York State Senate Senator Ronald B. Stafford
1985 to 1989 (appointed)	Assistant District Attorney - Onondaga County District Attorney Richard Hennesey District Attorney Robert Wildridge
1992 to 1997 (appointed)	Chief Assistant District Attorney - Homicide Bureau Onondaga County-District Attorney William J. Fitzpatrick
1997 to 10/2002 (appointed)	First Chief Assistant District Attorney Onondaga County-District Attorney William J. Fitzpatrick
Sept 2000 (appointed)	Special Assistant District Attorney - Franklin County District Attorney Andrew Scherader
Oct 2002	President Bush appointed me United States Attorney for the Northern District of New York, following confirmation by the United States Senate.

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

I served on the "Fitzpatrick for the People" Committee to elect District Attorney William J. Fitzpatrick. I was Treasurer, 1990 – 1991.

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to a judge.

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

I have not practiced alone.

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

U.S. Attorney's Office-Northern District of New York  
100 South Clinton Street  
Syracuse, New York 13261  
United States Attorney, 10/02 to Present

Onondaga County District Attorney  
505 S. State Street - 4<sup>th</sup> Floor  
Syracuse, NY 13202  
First Chief Assistant District Attorney, 1/92 to 10/02  
Assistant District Attorney, 5/85 to 1/89

Menter, Rudin & Trivelpiece, P.C.  
500 South Salina St.  
Syracuse, NY 13202  
Associate Attorney, 1/89 to 1/92

b. Describe:

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

My practice has been primarily as a career prosecutor, except for 3 years (1989-1992) when my practice was focused on civil litigation.

From 1985 – 1986 I served as a Criminal Law Associate with the Onondaga County District Attorney's Office. I was assigned to handle cases in Justice Court and Traffic Court.

From 1986 – 1989 I served as an Assistant District Attorney. I prosecuted cases in the following areas: Crime Victims Assistant, DWI, White Collar, Sex Crimes, and violent felonies.

In 1989, until 1992 I was in private practice with Menter, Rudin, Trivelpiece, P.C. as an Associate Attorney. I served in the Litigation Department as a Trial Attorney focusing on corporate, civil, personal injury, and criminal matters.

In 1992 I returned to the Onondaga County District Attorney's Office. I served as Chief Assistant District Attorney where I was supervisor Homicide Bureau. I personally prosecuted over 80 homicide cases. In 1997 I became First Chief Assistant District Attorney where I was responsible for the daily administration of the District Attorney's office. I supervised 45 Assistant District Attorneys, 14 Investigators and 40 support staff personnel. In September 2000 I was appointed as Special Assistant District Attorney to Franklin County for prosecution of Murder in the First Degree case. I was the District Attorney's representative for U.S. Attorney/District Attorney joint prosecution of gun cases ("S.A.F.E." - Strategically Applied Firearms Enforcement.)

Since October 2002 I have served as United States Attorney for the Northern District of New York. In addition to my duties as United States Attorney, I am chairman of Attorney General's Advisory Counsel Border and Immigration Sub Committee; a member of Attorney General's Advisory Counsel Environmental Issues Sub-Committee; a member of the Attorney General's Advisory Counsel Native American Issues Sub Committee; a member of the Attorney General's Advisory Counsel Regional Law Enforcement Information Sharing Working Group; and a Justice Department representative for the International Joint Management Team for the United States and Canada's Integrated Border Enforcement Teams.

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

As a prosecutor, I have represented the government in criminal prosecutions. In private practice I was involved in Civil Litigation and Criminal Defense. My clients were corporations, financial institutions, and small business.

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

My entire practice has been in litigation as a prosecutor and civil litigator. The frequency of court appearances has diminished significantly since becoming U.S. Attorney for the Northern District of New York in 2002. As an Assistant District Attorney, I had daily court appearances - calendar, motion hearings, and trials. In my civil practice, I had weekly appearances for motions, hearings and trials. As U.S. Attorney, I appear infrequently in court.

- i. Indicate the percentage of your practice in:
- |                            |     |
|----------------------------|-----|
| 1. federal courts:         | 15% |
| 2. state courts of record: | 80% |
| 3. other courts.           | 5%  |

ii. Indicate the percentage of your practice in:

1. civil proceedings: 20%
2. criminal proceedings. 80%

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

I have tried to verdict or judgment over 70 cases as sole or chief counsel.

i. What percentage of these trials were:

1. jury: 85%
2. non-jury. 15%

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

I have not practiced before the Supreme Court of the United States.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *People v. Phillip Whaley*, 255 AD2d 980, lv denied 93 NY2d 981; Onondaga County Court, Hon. William J. Burke; June 1995 - September 1996

I prosecuted the defendant, who murdered two women on separate occasions. These cases went unsolved for several years because the victims' bodies were never found. I directed the police and grand jury investigations which led to an indictment based on circumstantial evidence. These were the only murder cases in the history of Onondaga County to be prosecuted where the victims' bodies were never recovered, and one of only a few in New York State. After trial, the defendant was found Guilty of Murder Second Degree (2 counts).

Opposing Counsel:  
 Thomas W. Ryan, Esq.  
 21 7 Montgomery St.  
 Syracuse, NY 13202  
 Telephone (315) 476-0781

2. *People v. Lawrence Tutt*, Indictment No. 2000-0025-1, Index No. 9910719.  
 Supreme Court Onondaga County, Hon. John J. Brunetti; December 1998-  
 September 2000.

I prosecuted this defendant who used the victim's identity to smuggle drugs across the U.S. Border into New Mexico. When caught, arrested and charged with Federal crimes he was released on bail under the name of the victim William Freitag. While out on bail the defendant traveled to New York and killed the victim by setting fire to his home while he slept. The defendant's motive was to deceive authorities into believing the man arrested for drug trafficking had died in an accidental house fire, thereby eliminating any chance of being held accountable for impersonation and drug trafficking. The case, originally classified as an accident, went unsolved for a year and one-half. I conducted the Grand Jury investigation which resulted in the indictment and thereafter the prosecution at trial which ended in the conviction of the defendant for murder, arson and criminal impersonation.

Opposing Counsel:  
 Thomas J. Miller, Esq.  
 314 E. Fayette St.  
 Syracuse, NY 13202  
 Telephone (315) 448-0126

3. *People v. Angel Carrasquillo*, Indict. No. 2000-0637- 1, Index No. 0010645;  
 Onondaga County Court, Hon. Anthony F. Alo; February 2000 - May 2001

I prosecuted Angel Carrasquillo for multiple crimes including two murders. This was a Capital Murder case that resulted from the defendant having a domestic dispute with his pregnant girlfriend during which he held her and seven members of her family at gunpoint for over ten hours. Defendant's girlfriend survived multiple stab wounds, however her younger 17 year old brother was stabbed to death and her Aunt was shot and killed by the defendant. During the 10 hours, the defendant also committed a knife point rape of his girlfriend's sister-in-law and the kidnaping of young children family members. I was the prosecutor from the inception of the police investigation through Grand Jury, motion practice, hearings and had prepared the case for trial when the defendant pled guilty to all charges including two counts of First Degree Murder. He was sentenced to life without parole.

## Opposing Counsel:

Sonya Zoghlin, Esq. and William T. Easton, Esq.  
 New York State Capital Defender Office  
 277 Alexander St., Suite 600  
 Rochester, NY 14607  
 Telephone (716) 232-5480

4. *People v. Sam Chinn*, 111,234 AD2d 1014; Onondaga County Court, Hon. J. Kevin Mulroy; November 1995 - July 1997

This was a capital murder case and the first potential death penalty case in Onondaga County after the re-enactment of New York's Death Penalty Statute in 1995. The defendant killed two women. He strangled his first victim during an argument over money for sexual acts and then stabbed to death a neighbor who had seen him with the first victim. I was the prosecutor from the start of the police investigation through grand jury, motion practice, hearings and was prepared for trial when the defendant pled guilty to First Degree Murder. He was sentenced to life without parole.

## Opposing Counsel:

William T. Easton, Esq.  
 New York State Capital Defender Office  
 277 Alexander St., Suite 600  
 Rochester, NY 14607  
 Telephone (716)232-5480

5. *People v. Thomas Stewart*, 89 NY2d 496, affd after remand for trial, 256 AD2d 1147, lv denied, 93NY2d 879; Supreme Court Onondaga County, Hon. John J. Brunetti; December 1993 - May 1997

This murder case involved protracted pretrial litigation over the admissibility of statements made by the defendant while using an alias during police questioning. The defendant Stewart beat the victim to death and remained at large for months. I was the prosecutor on the case which resulted in a guilty verdict for Murder Second Degree after a jury trial.

## Opposing Counsel:

Emil M. Rossi, Esq.  
 307 S. Townsend St.  
 Syracuse, NY 13202  
 Telephone (315) 471-0126

6. *People v. Cornell Flowers*, 245 AD2d 1088, lv denied, 97NY2d 972; Onondaga County Court, Hon. J. Kevin Mulroy; March 1995 - February 1996

This was a domestic violence case which ended in the murder of the victim. The defendant stalked and repeatedly assaulted his estranged wife over a year's time resulting in numerous calls to police. The defendant stabbed the victim to death with a butter knife on a city street while she was trying to catch a bus. I was the prosecutor on the case from the start of the police murder investigation. The defendant was found guilty of Murder Second Degree after a jury trial.

Opposing Counsel:  
 Steven A. Paquette, Esq.  
 One Lincoln Center  
 Syracuse, NY 13202  
 Telephone (315) 422-1391

7. *People v. Carlton Cotton*, 237 AD2d 943, lv denied 90 NY2d 857; Onondaga County Court, Hon. William J. Burke; April 1992-March 1993

I prosecuted this murder case starting with the police investigation. The defendant and his co-defendants were trying to take over inner-city drug trafficking in Syracuse by intimidation and violence. They surrounded a local drug dealer's car and opened fire with several semi-automatic weapons killing an innocent passenger and wounding their intended target. The case was complicated by the refusal of the targeted drug dealer to cooperate with the investigation and prosecution. A jury trial resulted in the conviction of the defendant for Murder Second Degree.

Opposing Counsel:  
 Donald A. Greenwood, Esq.  
 201 E. Jefferson St.  
 Syracuse, NY 13202  
 Telephone: (315) 475-8750

8. *People v. Chester Wood*, 291 AD2d 824; Supreme Court Onondaga County, Hon. John J. Brunetti; June 1999 through January 2000

The defendant shot his wife in the neck with a shotgun during a domestic dispute. He then left his apartment and went to confront his wife's friend. Unable to force his way into the neighbor's apartment, he shot her to death through the door. The defendant claimed at trial that he was not responsible for his actions by virtue of cocaine intoxication. I began the prosecution of the case at the start of the police investigation, performing all litigation which resulted in the conviction of the defendant for Murder Second Degree after a jury trial.

Opposing Counsel:  
 Edward W. Klein, Esq.  
 217 Montgomery St.  
 Syracuse, NY 13202  
 Telephone: (315) 424-3854

9. *People v. Michael Pierce*, Indict. #94- 1073- 1, Index #94-2956; Onondaga County Court, Hon. Patrick Cunningham; October 1994 through May 1995

The prosecution of this arson and murder case began with my work on the police and fire investigation. It was established that the defendant set a fire in the apartment of a casual acquaintance after an argument over money for sex. The fire burned down the entire apartment building killing an elderly couple who lived in a third floor apartment. The defendant offered expert testimony that the cause of the fire was not arson. I had completed putting in the people's case at a jury trial when the defendant entered guilty pleas to two counts of Murder Second Degree and Arson.

Opposing Counsel:  
Paul G. Carey, Esq.  
333 E. Onondaga St.  
Syracuse, NY 1 3202  
Telephone: (315) 474-0077

10. *People v. Kevin Hayes*, 226 AD2d 1055, lv denied, 88 NY2d 936; Onondaga County Court, Hon. J. Kevin Mulroy; January 1994 - January 1995

The defendant and co-defendants came to Syracuse from New York City in 1993 to sell illegal drugs. In order to intimidate local drug dealers that they were in competition with, the defendant shot and killed a Syracuse drug dealer in January 1994. I began as the prosecutor on a multi-agency police investigation which covered Central New York to New York City. I conducted grand jury and all litigation through and including a jury trial which resulted in a guilty verdict for Murder Second Degree.

Opposing Counsel:  
Randi Juda Bianco, Esq.  
247 W. Fayette St.  
Syracuse, NY 13202  
Telephone: (315) 424-0744

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

While in practice with the Menter Law Firm, 1989-1992, I represented some national corporations including a corporate executive who was being investigated by Department of Justice in an anti-trust price-fixing case which I was ultimately able to resolve to benefit of the client without criminal charges or litigation.

During my tenure as United States Attorney I have pursued very significant criminal prosecutions terrorism cases, RICO gang prosecutions, environmental crimes to name just a few. Most significant in my view in areas other than litigation has been my work with the various U.S. and Canadian Law Enforcement officials on "Border Security Issues" and cooperative enforcement programs between our two countries. As a Department of Justice representative on the International Joint Management Team for the Integrated Border Enforcement Teams working cooperatively with U.S. and Canadian Law Enforcement has enabled me to play an important and active role in setting policy and procedures which help to ensure the safety and security of our shared Border with Canada thereby helping to deter criminal and national security threats to our respective countries.

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

None.

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

I will receive payments, upon retirement, from the New York State Employees Retirement System.

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

None.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include any criminal or civil matter that was pending in the U.S. Attorney's Office during my time of service as U.S. Attorney for the Northern District of New York.

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

I will follow the Code of Conduct for United States Judges and all other relevant statutes, policies and procedures.

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

While an Assistant District Attorney I was a regular volunteer to Dispute Resolution Center - volunteer 1 to 2 hours per month. (Hours varied different years depending on job responsibility)

While in private practice, 1989-1992, I volunteered in Syracuse Housing Court representing indigent clients 2 to 3 hours every 3 to 4 months.

28. **Selection Process:**

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

I was recommended to the President by Hon. James T. Walsh, United States Representative, 25<sup>th</sup> Congressional District, New York. I was contacted by the White House Counsel Office for purposes of an interview in July 2007. I was interviewed on July 30, 2007 by members of White House Counsel's Office and

Department of Justice. I was subsequently contacted by staff from the Department of Justice regarding nomination paperwork and have periodic conversations with them regarding that paperwork and the process. My nomination was submitted to the United States Senate on December 11, 2007.

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

No.

AO 10  
Rev. 1/2006

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Suddaby, Glenn T	2. Court or Organization U.S. District Court, NDNV	3. Date of Report 12/12/2007
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominco	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination. Date 12/11/2007 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2006 to 11/30/2007
7. Chambers or Office Address 100 South Clinton Street P.O. Box 7198 Syracuse, New York 13261-7198	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-15 of instructions.)

NONE (No reportable positions.)

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

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 1977	New York State Employees Retirement System, Payment upon Retirement
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
Page 2 of 6

Name of Person Reporting Suddaby, Glenn T	Date of Report 08/20/2007
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**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

**A. Filer's Non-Investment Income**

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

	DATE	SOURCE AND TYPE	INCOME <i>(yours, not spouse's)</i>
1.			
2.			
3.			
4.			
5.			

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

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

	DATE	SOURCE AND TYPE
1.	2006	Oswego County Board of Cooperative Educational Services-Salary
2.	2007	Oswego County Board of Cooperative Educational Services - Salary
3.		
4.		
5.		

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

NONE *(No reportable reimbursements.)*

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

**FINANCIAL DISCLOSURE REPORT**  
Page 3 of 6

Name of Person Reporting Suddaby, Glenn T	Date of Report 08/20/2007
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**V. GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE (No reportable gifts.)

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

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 33-34 of instructions.)

NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Keybank	Preferred Line of Credit	L
2.	Keybank	Credit Card	J
3.	Federal Credit Union	Credit Card	J
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
Page 4 of 6

Name of Person Reporting Saddby, Glenn T	Date of Report 08/20/2007
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**VII. INVESTMENTS and TRUSTS** -- Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "OO" after each asset except from prior disclosure	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Hartford Life	C	Dividend	K	T	Exempt				
2. American Funds	A	Dividend	L	T					
3. Oppenheimer Funds	B	Dividend	J	T					
4. Nationwide	A	Dividend	J	T					
5. Putnam Investment	A	Dividend	J	T					
6. Putnam Investment	A	Dividend	J	T					
7. N.Y.S. Retirement	A	Dividend	K	U					
8. N.Y.S. Teacher's Retirement	A	Dividend	K	U					
9. N.Y.S. Savings College Plan	A	Dividend	J	T					
10. Phoenix Companies	A	Dividend	J	T					
11. Northwestern Mutual Wholelife	A	Dividend	K	T					
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Code: (See Column B and D)	A - \$1,000 or less F - \$50,001 - \$100,000	B - \$1,001 - \$2,000 G - \$200,001 - \$1,000,000	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000	D - \$5,001 - \$15,000 I - More than \$5,000,000	E - \$15,001 - \$50,000
2. Value Code: (See Column C and D)	J - \$15,000 or less N - \$250,001 - \$500,000	K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000	L - \$50,001 - \$100,000 P - \$1,000,001 - \$5,000,000	M - \$100,001 - \$250,000 Q - \$2,000,001 - \$5,000,000	R - More than \$5,000,000
3. Value Method Code: (See Column C)	P1 - Appraisal U - Book Value	P2 - Appraisal V - Other	P3 - Val (Real Estate Only) W - Other	P4 - Mkt (More than \$5,000,000) S - Agreement	T - Cash Market W - Estimated

**FINANCIAL DISCLOSURE REPORT**  
 Page 5 of 6

Name of Person Reporting	Date of Report
Suddaby, Glenn T	08/20/2007

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

Filer only source of income - United States government salary

**FINANCIAL DISCLOSURE REPORT**  
 Page 6 of 6

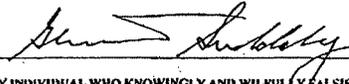
Name of Person Reporting	Date of Report
Suddaby, Glenn T	08/20/2007

**IX. CERTIFICATION.**

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

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

Signature



Date 12-12-07

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

**FILING INSTRUCTIONS**

Mail signed original and 3 additional copies to:

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

## FINANCIAL STATEMENT

## NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		4	100	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		21	340
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		221	491
Real estate owned-add schedule		440	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		65	500	Line of credit		160	065
Cash value-life insurance		26	452	Auto loans		33	670
Other assets itemize:							
See attached schedule		272	877				
				Total liabilities		436	566
				Net Worth		372	363
Total Assets		808	929	Total liabilities and net worth		808	929
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		NO	
On leases or contracts				Are you defendant in any suits or legal actions?		NO	
Legal Claims				Have you ever taken bankruptcy?		NO	
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT**  
**NET WORTH SCHEDULES**

<u>Real Estate Owned</u>	
Personal residence 1	\$ 250,000
Personal residence 2	185,000
Florida timeshare	5,000
Total Real Estate Owned	\$ 440,000
 <u>Real Estate Mortgages Payable</u>	
Personal residence 1	\$ 221,491
 <u>Other Assets</u>	
Hartford Life	\$ 42,458
American Funds - 403(B)	90,087
Oppenheimer Funds-403(B)	11,885
The Best of America IV	6,475
Putnam Investments (College Adv. Plan) #1	11,535
Putnam Investments (College Adv. Plan) #2	11,535
NY State Retirement	46,302
NY State Teacher's Retirement	49,312
NY Savings 529 College Plan (Acct #1)	1,347
NY Savings 529 College Plan (Acct #2)	1,349
Phoenix Companies	592
Total Other Assets	\$ 272,877

AFFIDAVIT

I, **Glenn T. Suddaby**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Jan. 14, 2008  
(DATE)

*Glenn T. Suddaby*  
(NAME)

*Deborah M. Filosi*  
(NOTARY)

**DEBORAH M. FILOSI**  
Notary Public in the State of New York  
Qualified in Onondaga County  
No. 4876759  
My Commission Expires November 10, 19 2010

Senator SCHUMER. Judge Matsumoto.

Judge MATSUMOTO. I agree with my colleague, Mr. Gardephe. I also would start with the Constitution that has governed all of the courts' considerations of issues where one must balance the interests of liberty and due process against the vital national interest of national security, particularly in times as we have experienced recently.

I do believe that a judge, when making those delicate balances, must pay due deference to the executive and understand that in certain circumstances the executive does have certain prerogatives. However, when individual liberties are affected, I do believe that the court must look at the due process considerations to ensure that an individual is given fair notice of the charges and adequate protection of his constitutional rights.

Senator SCHUMER. Thank you.

Ms. Seibel.

Ms. SEIBEL. Thank you, Mr. Chairman. The question you raise is probably the pressing issue of the day. Government has no higher function than to protect its citizens. At the same time, the rights in the Constitution are of utmost importance, and have been, as Mr. Gardephe said, for 200-plus years. If issues involving the conflict between those two principles came before me, I would look to what the higher courts have said on the subject and attempt to achieve, as you said a moment ago, the maximum security with the minimal abridgement of individual liberties based on that body of law.

Senator SCHUMER. Mr. Suddaby.

Mr. SUDDABY. Thank you, Mr. Chair. I think it is, without question, a critical area that we really have to continue to show the world that we will continue to do it the right way and that individual rights will be protected. The judiciary has its role. We have a responsibility to make sure that we follow the law of the Constitution and that those rights are protected, at the same time assuring the public that justice will be done in our country for those who would threaten our liberties and safeties.

Senator SCHUMER. Thank you.

Now, for each of you, a second question. Can you name a judge or a justice whom you admire, and tell us why?

Mr. GARDEPHE. Yes, Mr. Chairman.

Senator SCHUMER. Mr. Gardephe.

Mr. GARDEPHE. There is a judge in the Southern District of New York when I first began as a lawyer named Edward Weinfeld, a District Court judge. Judge Weinfeld was admired greatly by lawyers practicing at the time for his legal scholarship, his work ethic, and his commitment to justice. He, in particular, when citing his opinions, it was the common practice after the citation to list in a parenthetical "Weinfeld, J." because of the imprimatur that came along with any decision he had written. He is someone I admire greatly and would hope to emulate.

Senator SCHUMER. Judge Matsumoto.

Judge MATSUMOTO. Thank you, Senator. I would have to say that I have always had a great deal of respect and admiration for Circuit Judge Rena Radja of the Second Circuit. She served briefly as the U.S. Attorney before her appointment to the U.S. District Court

in the Eastern District, and throughout her career as a jurist has demonstrated a high level of scholarship, clear writing, very strong awareness of protecting the rights of the accused, and ensuring that he or she receives a fair trial. She is also, I think, as a Circuit judge, continued her tradition of writing clear, scholarly decisions and providing guidance for judges to follow.

Senator SCHUMER. Ms. Seibel.

Ms. SEIBEL. I had the good fortune after law school to clerk for Judge Joseph McLaughlin, who was then a District Court judge in Judge Matsumoto's court in Brooklyn. He, to me, is a wonderful example of a judge who is scholarly and yet practical, who runs a tight ship but never loses his humanity, and his recognition that the parties before him are there on what is, in their lives, an incredibly important matter, and I would try to emulate him.

Senator SCHUMER. Mr. Suddaby.

Mr. SUDDABY. Yes. Thank you, Mr. Chairman.

I met the Chief Judge in the Northern District of New York when I was in law school, Judge Munson, who was revered as a very clear-thinking, hard-working, hard-charging, practical judge. He works—you know, took the time to work with law students. He reached out to the community and he was really very well-known for his recall. In the middle of the trial he would quote testimony back to people from a week before. He was just what a District Court should be. He just retired last month after, I think it was, 30-some plus years on the bench. It was a great honor to know him and to have him as a role model.

Senator SCHUMER. Thank you.

I have two more brief questions. My time is up, but with Senator Brownback's indulgence, first, for Judge Matsumoto, you have spent most of your career representing the government, defending it from civil litigation. One of the hallmarks of our legal system is, all citizens have the opportunity to seek redress from their government when it has violated their rights.

What can you tell the committee to assure us that, if confirmed, you'll be able to fairly consider the claims and rights of plaintiffs against the government?

Judge MATSUMOTO. Thank you, Senator. In my capacity as an Assistant U.S. Attorney, I also had occasion to bring suits on behalf of the Federal Government. As a magistrate judge, I certainly do have many cases before me where I must carefully weigh the arguments, both factual and legal arguments, of both parties. I believe that I have attempted, and have in fact achieved, the ability to come to every case with an open mind, read the papers submitted by the parties, research the law, and follow the law to the best of my ability.

I do believe that in my capacity as a magistrate judge, when I've had to select jurors, I try very hard to probe the jurors and ensure that they come to the jury box with an open mind with no pre-conceived prejudices or notions about the outcome of a case or that may affect their ability to be fair and impartial in considering the facts before them.

Senator SCHUMER. Thank you.

And now for both Ms. Seibel and Mr. Suddaby, you both spent the bulk of your legal career as prosecutors, Federal prosecutors.

By all accounts you've been both fair and tough, but you have spent little or no time representing the other side in the criminal justice system. What can you tell the Committee to assure us that, if confirmed, you will be able to fairly consider the claims and rights of criminal defendants who come into your courtroom?

Ms. SEIBEL. Thank you, Senator. I regarded as part of my job as a prosecutor to look at the case from both sides, to make sure that the process is fair, to make sure that the defense has the rights—in fact receives the process to which it's entitled under our laws, and I would like to think, if you spoke to opposing counsel on the cases I've handled, they would tell you that I have succeeded in what I hope I'm achieving, to be open-minded and fair, and I would certainly do my best to continue that if I am fortunate enough to be confirmed.

Senator SCHUMER. Mr. Suddaby.

Mr. SUDDABY. Thank you, Senator.

As in my supervisory capacity, both in the District Attorney's Office of Onondaga County as a U.S. Attorney, I often spoke to our young prosecutors about the fact that they have a high responsibility as prosecutors to do justice, and that means they should be just as happy and satisfied with the dismissal of a case if that warrants—if that accounts for justice as a jury verdict. I think I can say that people who know me understand that that's the way that I look at it, and that if I am fortunate enough to take this next step and be confirmed as a Federal District Court judge, that every person that walks into that courtroom will be treated fairly and just the same as anyone else.

Senator SCHUMER. Thank you. I'm finished with my questions.

Senator Brownback.

Senator BROWNBACK. Thank you very much, Mr. Chairman.

Welcome, all of you. I'm delighted to have you here. I was sitting up here feeling a little bit left out, so I wanted to tell you all, I have been married 25 years to a wonderful wife.

[Laughter.]

I have five children, and August 7th is my anniversary date.

[Laughter.]

So I'm delighted to have all of you here. You've got great records. I've just got one specific question for each of you I'd like to go through, if we could.

Mr. Gardephe, you worked for the Justice Department as Chief Investigator of the FBI's performance in connection with the Ames and Hanson espionage cases. I just wondered, and this is just for personal consumption more than anything, what did we learn as a country through your investigation in coming out of that on the other side?

Mr. GARDEPHE. Thank you, Senator. We learned, I think in part, from both the Ames and the Hanson experiences that it is important to have deterrents in place to make people who are contemplating espionage think about the risks. And I think what we learned from the Ames and the Hanson affairs is that we did not have adequate deterrents in place, we did not have financial disclosure requirements, we did not impose polygraph examinations with the frequency perhaps they should have been. We did not have adequate deterrents in place to prevent people like Ames and Hanson

who attempted to betray their country to think about the consequences and the risks if they went forward with that betrayal.

Senator BROWNBACK. This doesn't have anything to do with your appointment, but have we put those safeguards in place since then?

Mr. GARDEPHE. There have been great improvements in the security regimes at both the CIA and the FBI since Ames and Hanson. While we cannot be certain that there are no moles in these organizations today, there are certainly far more deterrents in place now than there was back when Ames was a CIA officer and Hanson was an FBI agent.

Senator BROWNBACK. Judge Matsumoto, you have an impressive background and impressive family history. I jog or walk around Capitol Hill and will go by the memorial where we recognize the internment, and it's always, I guess, great to see people succeed through difficulty. You and your family, and your father, certainly have a lot to be proud of.

You've done pro bono work for several women's organizations, I noted, including for a community group who provides assistance and shelter for abused women and their children. What have you learned through that work that we should know about here in dealing with that type of situation of abused women and children?

Judge MATSUMOTO. I think the overriding concern, Senator, in that situation was to provide a safe shelter for women who were trying to remove themselves from the abusive situation so that she and her family could seek adequate support, whether it's legal or from the social services agencies, and to give her a place where she could decompress and have some distance from an abusive relationship, which oftentimes would be highly charged. My work there was primarily to assist organizations that would try to set up shelters for these women so that they could receive safe shelter from a situation until those support services were put into place.

Senator BROWNBACK. Are we adequately addressing that situation now? This has no bearing on your appointment, but I just was noting it in your resumé and I just was curious.

Judge MATSUMOTO. This was an organization in Seattle in my first 2 years of practice that I worked with. I haven't ever been back to practice in Seattle, but I do believe that certainly the public awareness of this problem has increased and I do believe that, at least in New York City and other metropolitan areas, there is more attention being focused on the problem of domestic violence and the need to provide shelter for families who may wish to extricate themselves from a difficult situation.

Senator BROWNBACK. Ms. Seibel, you've worked—there was an article on you while you were serving as a Special Assistant U.S. Attorney on bankruptcy and tax fraud crime cases. I think you said in one article, if they quoted you right, said this “made your blood boil”. I like it when people get their blood boiling; we do that a lot around here.

[Laughter.]

In your view has the Federal law enforcement been paying enough attention in recent years to bankruptcy fraud cases? Do law enforcement officers and prosecutors have sufficient tools to effectively attack bankruptcy fraud?

Ms. SEIBEL. Thank you, Senator. I think that quote sounds like me. I think I probably was correctly quoted. There have been improvements since I was doing that work back in the early 1990s. I believe it's Section 152, which is the main criminal bankruptcy fraud statute, that has been amended and rationalized. I think, like anything else, it is a matter of resources. Many bankruptcy frauds are not huge frauds.

It is always difficult in allocating resources: Do you focus on a few huge frauds? Do you try to look at a bunch of little frauds? I think, as in most areas of law enforcement, you can't possibly prosecute everybody who's doing it. You have to try to bring enough cases that it will deter other people who might be thinking of that. But to me, since bankruptcy is a privilege created by government, it does make my blood boil when people abuse it.

Senator BROWNBACK. That undermines the system, as you note, that privilege, if it is abused.

Mr. Suddaby, you mentioned in your written answers to the Committee's question, you personally prosecuted over 80 homicide cases. That's a lot of cases to prosecute. You've represented Department of Justice on a border enforcement team on setting policy at the border with Canada. We generally focus on the southern border a lot more than the northern border here. What do you see as the greatest security threats we have on that northern border, and are they being addressed?

Mr. SUDDABY. Thank you, Senator. Yes. I've had the great opportunity to serve as the Attorney General's chair on the Border and Immigration Subcommittee, and it's mainly because I was up there on the northern border yelling about all the resources going to the southern border, and that we had another border up north and there was a different type of threat, but I thought, and still believe, a very real threat that we have to be aware of.

I'm happy to tell you, I think we've made a lot of progress in our work with the Canadian Government and Canadian law enforcement. Our CMP has worked with our border law enforcement agencies terrifically. One of the committees I sit on is the International Joint Management Team for IBETs, which means Integrated Border Enforcement Teams, where provincial in Canada, Federal in the U.S., State and local, all the way through work together on the border, come together as a task force and share intelligence and do what they can to secure that border.

Now, we still have a lot of work to do and there is a threat there that we need to realize is real and pay attention to, but I think we're doing a good job and we're making great progress.

Senator BROWNBACK. I would ask all of you a narrow question on your background because I guess we tend to look at judges as going into a cloistered life now, and it's okay, now you remove yourself from living and you just sit on a bench and you dispense justice from there. I don't think it's fair to you. I don't think that's good for the system. You each bring different experiences. They may be fairly far back in your background, it may be fairly recent, but those are useful things.

I just want to encourage each of you to continue to do those to the degree you can and maintain your independence on the bench. If it's spending the night at a homeless shelter or checking yourself

into jail sometime—not for breaking the law but for experience basis—I just find, for me, it really changes your outlook when you get a sense, and a smell, and a feel and you can really see the system rather than hear about it through somebody else.

I spent a couple nights in jail of my own volition, not having committed any crime or being held there against my will. Fabulous experience. Just the smell and the feel, it just makes all the difference in the world. So I just urge you to follow some of your instincts on some of those when you get a chance to, because it just will really broaden that background of experiences you have.

Too often when we put people up in your positions, it's okay, that's it, now you've just got to sit here and be a judge and stop experiencing these things, when we really need you to experience a lot more things because you're going to have odd cases come in front of you. You don't know what case is going to come in front of you, but we expect you to be able to make a good judgment once that case comes in front of you. I've you've had a background of experiences to be able to mesh with it, that's just all that much more helpful to be able to do.

My final thought and admonition is just that, in government positions, I think we need a lot of humility, that we just don't know everything. Certainly in my position you can't say that sort of stuff because people expect you to know things, but we don't. I think we just need a good, good dose of humility, of listening to what people have to say, realizing we need wisdom. We've been put in these great positions to be able to do what's right, and the people trust the system. If they ever lose trust in the system we are in real trouble, and you are a big part of that trust in the system.

God bless you. I appreciate all of you, and I appreciate your families, too, for being a part of this because these are key jobs and it requires the whole family to do it.

Thank you, Mr. Chairman.

Senator SCHUMER. Well, thank you, Senator Brownback.

I want to thank all our witnesses. Before ending, I'd like to put into the record the statements of Chairman Leahy, who couldn't be here today—he's got many responsibilities, as you can imagine—and Senator Clinton. So, without objection, their statements will be entered into the record.

[The prepared statements of Senator Leahy and Senator Clinton appear as a submissions for the record.]

Senator SCHUMER. We'll keep the record open for one week for written questions.

With that, our hearing is adjourned.

[Whereupon, at 2:53 p.m. the Committee was adjourned.]

[Submissions follows.]

**SUBMISSIONS FOR THE RECORD**  
**STATEMENT OF SENATOR HILLARY RODHAM CLINTON ON THE**  
**NOMINATIONS OF KIYO MATSUMOTO, CATHY SEIBEL, PAUL**  
**GARDEPHE, AND GLENN SUDDABY TO THE FEDERAL BENCH**

June 11, 2008

I am honored today to recognize four New Yorkers – Kiyō Matsumoto, Cathy Seibel, Paul Gardephe, and Glenn Suddaby – each of whom has been nominated to the federal bench. Each of their careers has been marked by achievement, distinction, and most important, an abiding commitment to public service. If confirmed, I am certain that each will continue to exhibit the character and qualities that have defined their respective careers: a devotion to justice and fairness and a respect for the rule of law.

Kiyō Matsumoto has served as a Magistrate Judge in the Eastern District of New York since 2004. Prior to her appointment, Judge Matsumoto served in the U.S. Attorney's Office for the Eastern District of New York for more than two decades, and held the position of Deputy Chief of the Civil Division. Judge Matsumoto has taught as an adjunct law professor at the New York University School of Law as well as a legal Research and Writing Instructor at the Brooklyn Law School. Judge Matsumoto has also served as a member of the Federal Court Committee of the City of New York Bar. And if confirmed, Judge Matsumoto would be the eighth active Asian-Pacific American judge on the Federal bench.

Since January of this year, Cathy Seibel has served as the First Assistant United States Attorney for the Southern District of New York. She has held several other positions in the U.S. Attorney's Office for the Southern District of New York since joining the office in 1993. Prior to joining the office, Ms. Seibel was a Special Assistant United States Attorney for the U.S. Attorney's Office for the Western District of Washington. She currently co-teaches a course on trial practice at Columbia Law School, and previously in her career she was an Adjunct Associate Professor at Fordham Law School.

Paul Gardephe is a Partner and Chair of the Litigation Department at the New York law firm of Patterson, Belknap, Webb & Tyler LLP. Previously, Mr. Gardephe was a Special Counsel for the U.S. Department of Justice Inspector General's Office. He has also worked for the Law Department of Time Inc., where he held the positions of Vice President, Litigation Deputy General Counsel, and Associate General Counsel. Prior to this work, Mr. Gardephe served in the U.S. Attorney Office for the Southern District of New York for nearly ten years. For

(1)

the past 15 years, Mr. Gardephe has taught Trial Advocacy at New York Law School as an Adjunct Professor.

Glenn Suddaby is the U.S. Attorney for the Northern District of New York, a position he has held since 2002. Prior to this service, Mr. Suddaby worked as First Chief Assistant District Attorney for the Onondaga County District Attorney's Office in Syracuse, and an associate with the Syracuse law firm of Menter, Rudin & Trivelpiece, P.C.

Our nation is fortunate that citizens as qualified as these are willing to serve their country as jurists. I am proud to support their nominations, and I commend Senator Schumer and the Judiciary Committee for their hard work, ensuring that our federal judiciary is served by men and women of such distinction.

**Statement of Senator Patrick Leahy  
Chairman, Senate Judiciary Committee,  
On Judicial Nominations Hearing  
June 11, 2008**

Today, the Committee holds its sixth hearing this year to consider President Bush's nominations for lifetime appointments to the Federal bench. It is the eighth nominations hearing this year, and the 20th nominations hearing this Congress. We will hear from four more judicial nominees— Paul Gardephe and Cathy Seibel for the Southern District of New York, Kiyo Matsumoto for the Eastern District of New York and Glenn Suddaby for the Northern District of New York.

All four of these nominees have the support of the New York Senators, who worked with the White House to identify a slate of consensus nominees. I thank Senators Schumer and Clinton for their consideration of these nominees. I also thank Senator Schumer for chairing today's hearing.

I noted the sudden concern of the Minority Leader last week over district court nominations. Perhaps he did not have a chance to see my statement from earlier in the week in which I said that with Republican cooperation, we have the opportunity this work period to confirm five nominees already reported favorably by the Judiciary Committee. Of course, we continue to make progress. Just yesterday, the Senate confirmed three of this President's district court nominees to the Federal bench.

Sadly, we have not seen much in the way of Republican cooperation. Instead, anonymous Republicans are stomping their feet, objecting to hearing after hearing and objecting to Senate passage of measure after measure intended to help the American people. Yesterday, Republicans objected to Senator Feinstein completing a hearing on coercive interrogation techniques and the recent Inspector General report on the role of the FBI. It was a good hearing and an important hearing. It was conducted fairly and led to important testimony and helpful analysis. It would have been cut short had not the Majority Leader taken action and extended the lunch recess of the Senate briefly so that we could complete it. As he did, the Senate Majority Leader observed:

“By refusing to allow the Judiciary Committee to hold a hearing on interrogation techniques, Bush-McCain Republicans have today found yet another way to cover for this Administration's disregard for the rule of law. This marks the second time in less than one week that Republicans have needlessly wasted the Senate's time, and is the latest in a disturbing trend of Republicans looking the other way from the Administration's use of intolerable interrogation techniques. I call on Senator McCain to condemn his colleagues' efforts to stop the Senate from investigating torture.”

His reference last week was to the childish prank by which the Republican leader refused to allow the global climate change bill to be considered without first forcing the Senate clerks to read it aloud, word for word for hours and hours and thereby effectively shut

down the Senate from action on it. Then, when it came time to vote whether to move to consideration of the bill, the Republican caucus voted to prevent progress on it.

This morning the now all too familiar pattern was repeated. The Judiciary Committee was holding a hearing on the impact on real people – on all Americans – of Supreme Court decisions that have stripped protections for American consumers and workers. The hearing began with the Ranking Republican Member noting how important it is that we discuss these issues, and he was right. In recent decisions, the Supreme Court has misconstrued our laws, ignored the intent of Congress, and ultimately prevented state court juries from providing redress for misconduct that has harmed ordinary Americans. Then an anonymous Republican, without warning, objected to the hearing being completed and prematurely shut it down in the middle of Senator Whitehouse's questions. As Senator Whitehouse properly observed, it was a shame given that the women who had traveled to Washington to testify had already been victimized by insurers, medical device manufacturers and the courts and were then today cut short by an anonymous Senate Republican. Republicans in the Senate earlier this year blocked Senate action on a bill to remedy one of these egregious Supreme Court decisions, that involving Lilly Ledbetter, and now they will not even listen to ordinary Americans who have been hurt.

These "objections" are selective in that Republicans are shutting down hearings on topics on which they apparently do not want the facts to become known. Republicans were apparently perhaps concerned this morning that Americans will understand that "activist judges" include those conservative Supreme Court Justices who are misconstruing laws intended to protect American consumers. The Chamber of Commerce witness had finished when our Republican colleague preemptively insisted that the microphones be turned off the microphones while ordinary Americans were trying to tell us about the injustice they have endured.

It is sad and ironic that Republicans are acting as they are since we are poised to make more progress of filling judicial vacancies. There are three more nominations on the Committee's agenda for our business meeting tomorrow, including the nominations of Judge Helene White and Ray Kethledge to the Sixth Circuit, and the nomination of Stephen Murphy to the Eastern District of Michigan. This hearing includes four more of President Bush's judicial nominees to the vacancies in New York.

As I said last week, with cooperation from across the aisle, the Senate is prepared to confirm four circuit court judges and 11 district court judges before the July 4 recess, bringing the total confirmed this year to 15 lifetime appointments. That compares most favorably to the 17 district court judges confirmed during the entire 1996 session, a session in which the Republican Senate majority refused to confirm a single one of President Clinton's circuit court nominations.

I recall Senator Specter's frustration when he was Chairman with a Republican Majority at the end of the last Congress, and Republican holds prevented the confirmation of 14 district court nominations. Democrats on the Judiciary Committee had worked hard to expedite the nominations at the end of the last Congress. At the time, Senator Specter

noted the serious impact that judicial vacancies can have on the Federal judiciary. That is why, in stark contrast to Republicans who increased vacancies during President Clinton's tenure in anticipation of a Republican president, the Democratic Senate majority has worked steadily and steadfastly to lower vacancies and make progress.

Last year, the Senate confirmed 40 judicial nominees. That topped the total achieved in any of the three preceding years under Republican leadership. It was also more judges than were confirmed in 1996, 1997, 1999, or 2000, when a Republican-led Senate was considering President Clinton's nominations. Indeed, in the almost three years that I have chaired the Committee, the Senate has confirmed 149 of President Bush's lifetime appointments to our Federal courts. That compares favorably to the total of 158 confirmations during the more than four years that Republicans led the Committee during this Republican presidency.

Although Senate Republicans suggest otherwise, we continue to make progress on judicial nominations. On June 1, 2000, when a Republican Senate majority was considering the judicial nominees of a Democratic President in a presidential election year, there were 66 judicial vacancies. Twenty were circuit court vacancies, and 46 were district court vacancies. Those vacancies were the result of years of Republican pocket filibusters of judicial nominations. Today, there are just 44 total vacancies. If we can continue to make progress this month, the current vacancies could be reduced to fewer than 40, with only nine circuit court vacancies.

When Republicans were busy pocket filibustering Clinton nominees, Federal judicial vacancies grew to more than 100, with more than 30 circuit vacancies, and it has been the Democratic Senate majority that worked hard to reduce these vacancies, first when I became Chairman in the summer of 2001, and again in this Congress. We have gone from more than 110 vacancies to less than 45. With respect to Federal circuit court vacancies, we have reversed course from the days during which the Republican Senate majority more than doubled circuit vacancies. Circuit vacancies have not been this low since 1996, when the Republican tactics to slow judicial confirmations began in earnest.

Disputes over a handful of controversial judicial nominations have wasted valuable time that could be spent on the real priorities of every American. I have sought, instead, to make progress where we can. The result is the significant reduction in judicial vacancies.

Despite this progress, the heated partisan rhetoric and petulance from the other side of the aisle might lead one to believe that judicial nominations are the most pressing problem facing the country. It is not. With Americans now facing increasing burdens from the soaring price of gas, high food prices, rising unemployment and a home mortgage foreclosure and credit crisis, with the challenges of global climate change, the wars in Iraq and Afghanistan, and terrorism, the Republican efforts to create an issue over judicial nominees is misplaced. In fact, I have worked hard to make progress and have treated this President's nominees more fairly than Republicans treated those of President Clinton. We have worked hard to reduce vacancies to the lowest levels in decades.

I would rather see us work with the President and make progress where we can than waste precious time fighting about controversial nominations. I would also rather see the Senate focus on addressing the real priorities of the country rather than trying to create partisan advantage. Today's hearing for four more judicial nominations represents the progress we can make when we work together.

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**NOMINATION OF CLARK WADDOUPS, OF UTAH, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF UTAH; MICHAEL M. ANELLO, OF CALIFORNIA, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA; MARY STENSON SCRIVEN, OF FLORIDA, NOMINEE TO BE DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA; CHRISTINE M. ARGUELLO, OF COLORADO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO; PHILIP A. BRIMMER, OF COLORADO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO; AND GREGORY G. GARRE, NOMINEE TO BE SOLICITOR GENERAL OF THE UNITED STATES**

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**TUESDAY, SEPTEMBER 9, 2008**

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

The Committee met, pursuant to notice, at 10:05 a.m., in room SD-562, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Whitehouse, Specter, and Hatch.

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

Chairman LEAHY. The hearing will come to order. Senator Hatch is a former Chairman of this Committee, and he knows that many times these little colloquies between the members is where half the work gets done.

I have been concerned—and I am not saying anything here that I have not said before—about the number of filibusters, Republican filibusters, we faced this year and the refusal to give consent to proceed even on important bills. We had a number of bills out of this Committee that went out with virtually every Republican and every Democrat supporting them, and yet they still get blocked. We do have the Republican Thurmond rule which says no judges

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after—certainly after the 1st of July. But I have gone the extra mile by proceeding with another confirmation hearing, and I hope that I will not get the objections from our Republican colleagues on breaking the Republican Thurmond rule by still having judges this late in the game.

The hearing will include the President's nominee to be Solicitor General. This will almost complete our efforts to expedite consideration of replacements—the entire leadership of the Justice Department resigned in the wake of the scandals of the Attorney General Gonzales era, and so this will bring about almost the replacement of the entire leadership team at the Department of Justice.

We are going to include five additional judicial appointments. Their tenure, of course, is for a lifetime and will not expire in 5 months when the President leaves office. I mentioned the Thurmond rule. That dates back to 1980, Senator Strom Thurmond, the Republicans were in the minority, he was Ranking Minority Member, and he called for shutting down the judicial confirmation process. There was a Democratic President. Republicans were in the minority, and Democrats conceded to the Thurmond rule, which I know everybody on this panel strongly supports.

Then the Republicans used it in another recent Presidential election year, 1996, when the Republican Senate majority did not confirm a single judge after the August recess and no circuit judges during the whole 1996 session. I mention that because I saw something in the press recently that suggested otherwise, and it is unfortunate when reality gets in the way of the rhetoric.

We have confirmed more judges already in this Congress than during the entire 109th Congress, when a Republican Senate majority and Republican Chairman of the Committee did not have to worry about the Thurmond rule and an abbreviated session due to a Presidential election. In the 37 months I have served as Judiciary Chairman, the Senate has confirmed 158 of President Bush's judicial nominees. That is the same number confirmed by the Senate Republican majority in the more than 4 years it controlled for the Republican administration.

But I will work with everybody. It is possible that you know at this time there had been over the year rare exceptions to the Thurmond rule, but it has required the consent of both the Democratic and Republican Leader and the Democratic and Republican leaders of this Committee to do that. And I want to thank Senator Specter who agreed to these judges: Clark Waddoups—am I pronouncing that correctly, Senator Hatch—of Utah; Michael Anello of California; Mary Stenson Scriven of Florida; and two nominees from Colorado: Christine Arguello and Philip Brimmer. They have the support of their home-State Senators, Republicans and Democrats.

Senator Salazar called me so many times at my home last week in Vermont, I think he had me on speed dial. Both my wife and I are friends of the Salazars, and she was always happy to hear from you, and I was always happy to hear from you. At least on one occasion when the phone rang, I said, "Look, I have got a pile of work I have got to do. I do not care who that is. Tell them I am not here." And she answers and she said, "Oh, this is different. Patrick, it is Ken Salazar. You take that call," which I did. And I want to commend you, Senator Salazar, on working it out with

Senator Allard so we could have these judges before us. As you know, they were not originally on the list, and at your request we asked consent to do it. I want to thank Senator Specter, too, because even though the time was not the normal time given for notice, the Republicans did not object, and we were able to put them on.

Ms. Arguello had been nominated before by President Clinton to the Tenth Circuit, but was pocket-filibustered in 2000. So we are trying to get through these, so Ms. Arguello, like Judge Helene White, has now been nominated by Presidents of both parties. We have reduced Federal judicial vacancies from the 10-percent level they hit after the pocket filibusters before, during President Clinton's time, to less than half that number, and have done even better with the circuit vacancies. We have reduced those by more than two-thirds. And so we have actually improved—one of the areas we have improved.

I will put the rest of my statement in the record.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Chairman LEAHY. I will yield, of course, to Senator Specter, and again I thank Senator Specter for making it possible for us to add the two from Colorado at the request of Senator Salazar and Senator Allard.

**STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM  
THE STATE OF PENNSYLVANIA**

Senator SPECTER. Well, thank you, Mr. Chairman. I was pleased to consent to the additions, notwithstanding the technical rule requirements, and we thank you for listing these judges for the confirmation hearing today.

I think that the agreement between Senator Allard and Senator Salazar is a good barometer of moving ahead with the appointment of their judges, and it is my hope that the example which they have set will provide the basis for some additional confirmation hearings. Certainly when two Senators, one a Republican and one a Democrat, come to an agreement, that takes the issue of ideology out of the picture and provides a principled basis for moving ahead, notwithstanding the fact that it is September.

There are some other situations which I have been discussing with the Chairman where the same thing has happened, where Senators of different parties in other States have come together, and it is my hope that it will provide a basis for moving ahead with some additional confirmation hearings.

When the Chairman cites the practices of the past, I agree that there has been certain actions taken by the Republican Caucus which I think were unfortunate and said so at the time. I think the same thing has happened with the Democrats. The Chairman and I have engaged in a very extensive discussion on statistics, which I will not do here today. We have also engaged in discussions about the application of the so-called Thurmond rule, and I would just put in the record a CRS study which raises questions about the Thurmond rule, citing examples where confirmations were held. Perhaps the most notable was now Supreme Court Justice Breyer confirmed to the First Circuit after the 1980 election when Presi-

dent Reagan was elected and the Committee acted and the Senate confirmed First Circuit Court Judge Breyer at that time.

But I think that it is fair to say that the Judiciary Committee of late has acted in a bipartisan, collegial manner, and I think that has been to the benefit of the country. And that is illustrated today by the Chairman setting these hearings, and even though it is September. So I hope we can proceed, and I hope we will one day reach a point where the ideology will be put behind us and we will try to move ahead on qualification only.

Thank you, Mr. Chairman.

Chairman LEAHY. I thank you.

Of course, as Senator Specter knows, we try to work together of every one of these things and try to have them together. So I will go by seniority in calling on the Senators: first, from Utah, Senator Hatch, one of the most senior members of the Senate.

**PRESENTATION OF CLARK WADDOUPS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF UTAH, BY HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH**

Senator HATCH. Well, thank you, Mr. Chairman.

Chairman LEAHY. I knew him when he had dark hair. He knew me when I had hair.

[Laughter.]

Senator HATCH. And I like you better without hair. As long as your wife likes you, I am going to love you, I tell you that.

Well, thank you, Mr. Chairman, for scheduling this hearing. It is very important to us in Utah, as well as the other States involved here today. Let me just take a few moments to introduce to the Committee Clark Waddoups, who is nominated to the U.S. District Court for the District of Utah. And I will just take a few minutes because my colleague Senator Bennett is also here to speak about this exceptional nominee.

When Judge Paul Cassell stepped down from the U.S. District Court last year, Senator Bennett and I set out to find a replacement with legal experience that is both wide and deep. Clark Waddoups truly stood out. It became obvious to us why the Utah Chapter of the Federal Bar Association recognized Clark in 1999 as Utah's Outstanding Lawyer, because that is exactly what he is. Clark has been practicing law for nearly 35 years, the last 27 years as head of his own firm in Salt Lake City. Before that, he was a partner in the law firm of O'Melveny & Myers, but he did come home to Utah.

He has been involved in virtually every aspect of law in our State, including serving on the Board of Visitors of the Law School of Brigham Young University, and for 17 years on the Advisory Committee to the Utah Supreme Court on the Rules of Evidence. He has been involved in legal practice at the Federal as well as State level, having clerked for the distinguished Ninth Circuit Judge Jay Clifford Wallace and twice chairing the Merit Selection Panel for the U.S. Magistrate Judges.

I might mention Judge Wallace was always in contention to be placed on the Supreme Court. That is how well thought of he was by both parties. And Clark Waddoups is the type of person any appellate judge would love to have work.

The majority of Clark's extensive litigation experience has been in Federal court, and I am confident that his confirmation will be a smooth transition from before to behind the Federal bench.

Mr. Chairman, I know this is a somewhat chaotic time of the year in Congress, and we have just a few weeks to get a lot done. Utah has only five U.S. district court seats, and our population has increased by more than 50 percent since the last one was created in 1990. That kind of population growth, among the fastest in America, means more cases and more pressures on the court.

Since Judge Cassell resigned to go back to teaching, he is not available to pitch in the way senior judges do. So it is very important that this seat be filled, and I am so pleased with the excellent nominee the President has sent to the Senate.

Mr. Chairman, I know Clark Waddoups very well. We looked at the whole Utah Bar, and there are a number of very, very fine judges and lawyers there from whom we could have picked this seat. And I have to say that none is finer than Clark Waddoups. Clark Waddoups is truly a lawyer's lawyer. He is somebody that I think everybody on this Committee would respect and will respect. He is a person who I expect to be nonpartisan in every way. He is a person I expect to be one of the pillars of the district court bench in not only Utah but throughout the country. And I believe that he will add a great deal to our Federal courts.

He is here with his wife and son, and I hope that you will get him to introduce them to you. I am very proud of this family, very proud of the services given, very proud of the legal capacity that he has. He is one of the great lawyers in this country, and I know that.

So once again, Mr. Chairman, I appreciate your scheduling this hearing and hope that each of these nominees will be confirmed before our work is finished this year, and I am grateful to you.

Chairman LEAHY. Well, thank you very much, and he should know that the nice things you have said about him here you said to me privately several times, and you have been a very active backer of his and talked to me quite a bit. And, of course, with your support and Senator Bennett's support, two Senators I respect greatly, this has helped a lot.

Senator SPECTER. Thank you.

Chairman LEAHY. Senator Bennett.

**PRESENTATION OF CLARK WADDOUPS, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF UTAH, BY HON. ROBERT F. BENNETT, A U.S. SENATOR FROM THE STATE OF UTAH**

Senator BENNETT. Thank you very much, Mr. Chairman. I am very pleased to join with Orrin in recommending Clark Waddoups, and we did conduct a search together. I had some names, Orrin had some names. We sat down and went through them. And Clark Waddoups' name rather quickly rose to the top of the list, and he became ultimately our only choice as the one to recommend to the President. And I am honored, as is Orrin, that the President has chosen to respect our recommendation and make the nomination to the Senate.

He is a named partner at one of Utah's leading law firms. I am not a lawyer, but I have paid a lot of legal bills in my life.

[Laughter.]

Senator BENNETT. And this is a law firm that the company with which I was associated used in its legal activities, and they were searching for the best, and this is where they went.

He is ranked 26th in this year's list of Best Lawyers in America. Orrin talked about best lawyers in Utah, but he has a reputation that is national. He is an active member of the Utah Supreme Court Advisory Committee on Rules of Evidence, and his educational background shows how ecumenical he is in the primary collegiate competition within Utah. He graduated cum laude from Brigham Young University in 1970 and then graduated Order of the Coif from the University of Utah Law School in 1973. So he has covered both of those bases that demonstrates, I think, a very wise kind of political balance for this man. While in law school, he served as President of the Utah Law Review, and Orrin has mentioned that he clerked for Judge Wallace on the Court of Appeals in the Ninth Circuit.

He has earned the praise of a lot of his colleagues. Let me dip into a few publications and share with you some of the comments that have been made.

In the ABA Journal, it says in an article that he possesses "that rare ability to teach and inspire."

Another colleague said, "He is intellectually strong and doesn't allow himself to be pushed around or walked over. But at the same time, I have never seen him be belligerent with opposing counsel or an opponent or belittle them."

And finally, this quote: His style of legal practice reflects "an unflinching commitment to honesty and professionalism."

These are the comments of those who have worked with him, and I am proud to support his nomination and hope that the Committee will report it out in a judicious and rapid fashion.

Thank you.

Chairman LEAHY. Well, thank you very much, and I know, Senator Bennett, both you and Senator Hatch have other committees that are meeting and going on. You are welcome to stay, of course, but also with the understanding if you have to leave at this point.

Chairman LEAHY. Senator Allard and Senator Salazar, first I might say that my wife and I spent several days in Denver, Colorado, this past month. Senator Allard, understandably you were not there, but—

Senator ALLARD. I was fishing, Mr. Chairman.

[Laughter.]

Chairman LEAHY. Well, there was part of the time I wish I could have been there fishing, and part of the time I wish I was there fishing with you. But I must say that anytime I have ever been in Colorado, I feel so much at home—the friendliness of the people. I live on the side of a mountain in Vermont, nowhere near the height of the Rockies, of course, but just being there I feel very much at home. So I thank all Coloradans, Republican and Democratic alike, for the hospitality they showed us at our convention.

Senator Allard, please go ahead, sir.

**PRESENTATION OF CHRISTINE ARGUELLO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO, AND PHILIP A. BRIMMER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO, BY HON. WAYNE ALLARD, A U.S. SENATOR FROM THE STATE OF UTAH**

Senator ALLARD. Well, Mr. Chairman, thank you for your very gracious remarks on Colorado, and I am glad that you had a good time while you were there. I thought it was a well-run convention and was proud to have you in the State of Colorado.

Also, Ranking Member Specter, thank you for being willing to move forward with these two nominees. Distinguished members of the Committee, I am joined today by my colleague and friend Senator Salazar to speak on behalf of Christine Arguello and Philip Brimmer, two individuals nominated by President Bush to fill judicial vacancies in the United States District Court for the District of Colorado. Again, I just want to state how profoundly thankful I am for both of you being willing to move with both of these nominees.

Christine Arguello, rated as qualified by the American Bar Association, and Phil Brimmer, rated as well qualified by the ABA, would capably and honorably serve the citizens of Colorado and the United States if confirmed.

I would like to begin by thanking Chairman Leahy for holding this hearing. I look forward to the Committee continuing the tone of expediency set by the Chairman by swiftly reporting the nomination to the floor for an up-or-down vote. It is critical to the administration of justice that the vacancies on Colorado's Federal district bench, with a total of three vacancies—two have existed since last year—be filled immediately. And then one was added this spring with the untimely death of Phil Figa on the Colorado district court.

I am pleased that we are joined today by Senator Salazar in what I hope is an early indicator of broad bipartisan support for these nominees.

I would like to welcome to the United States Senate Mr. Brimmer's and Ms. Arguello's family who are here today. All of you no doubt played an important role in Christine's and Phil's being here today. Speaking from my own experience in public service, you are all embarking on this journey together, and your love and support will continue to be instrumental to your spouse's ability to perform his or her public duties.

Mr. Chairman, Mr. Brimmer is an outstanding attorney. He is a graduate of Harvard and Yale Law School, institutions that provided him with tremendous analytical tools and an arsenal of knowledge which has served him well in his career. Upon graduation from law school, Mr. Brimmer spent 2 years clerking with the U.S. District Court for the District of Colorado. Thereafter, he joined a Denver law firm where he spent 7 years in private practice before making a decision to devote his career to public service. This decision led Mr. Brimmer to the Denver District Attorney's Office, serving first as Deputy District Attorney and later promoted to Chief Deputy District Attorney.

Former District Attorney and current Governor of Colorado, Governor Bill Ritter, wrote, "Throughout Mr. Brimmer's service at the Denver District Attorney's Office, he upheld the highest standards

of integrity, fairness, honesty, hard work, and a dedication to public service.” Governor Ritter felt he could trust Phil Brimmer with the most challenging cases that came before the office, and Phil Brimmer did not disappoint.

Current Denver District Attorney Mitch Morrissey recently wrote about his former colleague in a similar fashion: “Phil Brimmer never failed to impress me both with his work ethic and his knowledge of the law. He was one of our most valued attorneys.”

The sentiments of Governor Ritter and District Attorney Morrissey are reflected in numerous other letters sent to my office from people who worked with Mr. Brimmer throughout the years.

Similar to his experience as Deputy District Attorney, Mr. Brimmer has been exceptionally successful as a Federal prosecutor. Almost 7 years ago, he joined the U.S. Attorney’s Office as Assistant U.S. Attorney and has worked on an assortment of criminal cases as chief of the Major Crimes Section and now as chief of the Special Prosecutions Section. As chief of Special Prosecutions in the U.S. Attorney’s Office, Mr. Brimmer handled very challenging and procedurally complex cases, dealing with an assortment of crimes including child exploitation, cyber crimes, capital crimes, and prison crimes. Attorney General of Colorado John Suthers hired Phil Brimmer in the fall of 2001, recognizing his excellent work ethic and his tremendous intellectual capability. It seems Mr. Brimmer continues to impress everyone he works beside as he continues to serve Colorado’s legal community with great distinction.

Anyone familiar with Phil Brimmer’s professional credentials can attest to his intelligence and his talent. Anyone familiar with Phil Brimmer as an individual would certainly observe that he is respectful, loyal, and good humored. His integrity, honesty, and professional dedication to public service also contribute to making Phil Brimmer a rare find.

From my conversations with Mr. Brimmer, it is clear that he recognizes the proper role of the judiciary. His personal qualities and character, coupled with his professional experience and an ABA rating of well qualified and outstanding bipartisan recommendations from within Colorado’s legal, make Phil Brimmer ideally suited to service on the Federal district court.

I would also like to welcome Ms. Christine Arguello to the United States Senate. This is not my first endorsement of Ms. Arguello. In 1999, I made a recommendation to then-President Clinton to nominate Ms. Arguello for a seat on the U.S. District Court for the District of Colorado. This past January, I again offered her name to President Bush and urged he consider nominating Christine Arguello to fill a vacant judgeship on Colorado’s Federal district court.

I speak before this Committee today in support of the nomination of this fine lawyer for service on the Federal bench. In her more than 25 years of legal experience, she has worn many different hats. She is experienced as a trial lawyer, in-house counsel, law professor, and public servant. She is a skilled attorney with impressive credentials and a diverse professional background.

Ms. Arguello earned her undergraduate degree from the University of Colorado and her law degree from Harvard. She began her distinguished professional career working as an associate for a law

firm. She moved to a public service career after 19 years of private practice when she joined the Colorado Attorney General's Office, where she served as Chief Deputy Attorney General under former Attorney General and now my current Senate colleague Ken Salazar. In 2003, she returned to private practice as a civil litigation attorney. In 2006, she assumed her current job as managing senior associate counsel for the University of Colorado at Boulder.

Described by many as a trailblazer, Ms. Arguello and the wide-ranging experiences and accomplishments she brings with her would make her a great asset to the Federal bench. In addition to being the first Hispanic from Colorado to be admitted to Harvard Law School and the first Hispanic to be promoted to partner at one of the "Big Four" law firms in Colorado, Ms. Arguello has added law professor to a long list of accomplishments. She became a tenured professor at the University of Kansas Law School and joined the faculty at the University of Colorado School of Law and the University of Denver College of Law as an adjunct professor and a visiting professor, respectively.

Christine Arguello is a top-flight nominee whom I am proud to introduce to the distinguished members of the Committee.

I look forward to a fair and dignified confirmation process, the outcome of which I am confident will reveal two highly qualified nominees deserving of confirmation.

I would like to congratulate Phil and Christine, and on behalf of the citizens of Colorado, thank each of you for your willingness to serve this great country.

Thank you, Mr. Chairman, and thank you, Senator Specter.

Chairman LEAHY. Thank you, Senator Allard.

Senator Salazar.

**PRESENTATION OF CHRISTINE ARGUELLO, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO, AND PHILIP A. BRIMMER, NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF COLORADO, BY HON. KEN SALAZAR, A U.S. SENATOR FROM THE STATE OF UTAH**

Senator SALAZAR. Thank you very much, Chairman Leahy, for holding this hearing this morning, and thank you for your leadership and your example as a statesman in your position as Chairman of this Committee. Thank you for the numerous telephone conversations that we engaged in over the weekend, and I appreciate Marcelle's patience in always answering the telephone. Thank you for your example.

Senator Specter, you as well, as Ranking Member of this Committee, I very much have enjoyed my 3½ years here in the U.S. Senate, in part because I have had the honor of working with Senator Leahy and you, Senator Specter.

Senator Hatch, thank you for your service on this Committee, and, Senator Whitehouse, thank you as well. I appreciate working with all of you, my colleagues.

To Senator Allard, I want to thank you for what has been a journey that has taken us to where we are today. Some people said that it could not be done, but at the end of the day, I think our working together and recognizing the inherent qualities of the two nominees from Colorado resulted in both of us being able to stand

before this Committee this morning saying that we both unequivocally endorse both of these nominees.

Let me make a comment very briefly about each of the nominees, and I will submit the formal statement that I have written for the record.

First, with respect to Christine Arguello, her life story really is the personification of the American dream. She was born in southern Colorado in a place called Thatcher, far away from where anybody ever expected her to graduate from high school. Her father worked on the railroad, and for a part of her life, she actually grew up in a boxcar on the railroad as they moved from town to town. She became the first Latina, first Hispanic, ever admitted to Harvard Law School, went on to graduate from Harvard Law School and work with some of the most prestigious law firms in the Rocky Mountain West, including Holland & Hart, and later on becoming a partner at Davis, Graham & Stubbs.

But that was not enough in terms of achievement for her because she also wanted to do some other things in terms of teaching and public service. She went on to the University of Kansas, where she became a tenured law professor, and while there also wrote one of the books that is most often used now in courses on evidence in law schools around the country.

When I became Attorney General for Colorado, I looked for the best and the brightest to come to work for me in that Office of Attorney General. Christine Arguello joined me and served as the Chief Deputy Attorney General for the State of Colorado, working on cases that involved both Federal courts as well as the Colorado courts, arguing a number of cases before the Colorado Supreme Court, and the district court and the Tenth Circuit as well. She is a lawyer's lawyer and always tries to make sure that it is the rule of law which she upholds as she does her work in all the various capacities that she has held.

She has most recently been serving as senior counsel for the University of Colorado in Boulder and has done a tremendous job. She also happens to be a wonderful mother of four, including the two youngest of her children which she adopted about 6 or 7 years ago, and I am very proud of what she does within the community beyond her work as a great lawyer.

The story of Phil Brimmer likewise is a remarkable story. Coming from a place in Wyoming named Rawlins, Wyoming, this young man found his way to Harvard and then Yale Law School, and from Yale Law School moving to work for a great judge known to all of us who practiced law in Denver, Zita Weinshienk, and clerked for her for a period of 2 years. She told me just last week she thought Philip Brimmer was one of the very best law clerks who had ever worked with her while she served in that position of U.S. district court judge.

He went on to work with a national law firm, Kirkland & Ellis, and then left Kirkland & Ellis because he reached a point in his own life where he decided that the road that he wanted to take was one of public service. He went on to distinguish himself in the positions in the Denver District Attorney's Office that Senator Allard has mentioned. His bosses there, both current Democratic Governor Ritter for the State of Colorado as well as the Democratic District

Attorney for Denver Mitch Morrissey, have given him their absolutely highest ratings. He is a star in the work that he did on behalf of the people that he represented in the Denver District Attorney's Office.

Then moving to the United States Attorney's Office, he worked on a number of very important and different cases, but it led to the point where he became the chief of the Special Prosecutions Unit and distinguished himself there as well. He is joined today by his wife and his brother in the audience.

I would say in conclusion, Mr. Chairman, two things.

First, I think the common theme among both Phil Brimmer and Christine Arguello is they are the kinds of people that we should be supporting for positions in our Federal judiciary system. They are lawyer's lawyers. They understand the importance of fairness and judicial temperament and the rest of the qualities that make great judges. I appreciate their willingness to sacrifice the other route that they could have taken, which is to make a lot more money in the private sector, to come and be servants of the public.

Second, Mr. Chairman, once again to you especially for holding this hearing at this point in time in our political season to address what is a judicial emergency in the State of Colorado, I am very, very personally appreciative of your efforts in doing so, and I appreciate the cooperation of Senator Specter in getting this done.

Thank you very much, Mr. Chairman.

Chairman LEAHY. Thank you.

Senator SPECTER.

Senator SPECTER. I have the pleasure of introducing Gregory—

Chairman LEAHY. Just before we do this, I also know that both Senator Allard and Senator Salazar have other committees meeting, and if you want to leave, I am sure it will not be seen as any snub of the two fine nominees, who I suspect are not going to have that difficult a time before the Committee today.

Senator ALLARD. Thank you, Mr. Chairman.

Chairman LEAHY. I thank you both very much for being here.

Senator SALAZAR. Thank you, Mr. Chairman.

Chairman LEAHY. Go ahead.

**PRESENTATION OF GREGORY G. GARRE, NOMINEE TO BE SOLICITOR GENERAL OF THE UNITED STATES, BY HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman. I have the pleasure to introduce Gregory G. Garre to the position of Solicitor General of the United States Department of Justice. Mr. Garre comes to this position with a very distinguished academic record, distinguished professional record, and very extensive service already in the Solicitor General's Office.

Academically, he graduated cum laude from Dartmouth in 1987; his law degree with high honors from George Washington University Law School; Order of the Coif; editor-in-chief of the Law Review there. After graduation, he clerked for the chief judge of the Third Circuit, Anthony Scirica, and then for Chief Justice Rehnquist. He has worked with the prestigious law firm of Hogan & Hartson where he became a partner and served there for 5 years

in that capacity. He has been with the Solicitor General's Office as Principal Deputy Solicitor General, and most recently Acting Solicitor General. He has had 23 cases before the United States Supreme Court, which is quite a record and background for coming to this position.

So I am pleased to introduce him, also to note that he has Pennsylvania connections, was born in Bryn Mawr, Pennsylvania, and his grandparents live there.

Chairman LEAHY. Where is that? Where is Bryn Mawr—oh, Bryn Mawr. I know where Bryn Mawr is. Sorry.

Senator SPECTER. It is a little hard to understand Bryn Mawr with either a Kansas or a Vermont accent.

When I first came to Philadelphia years ago and met somebody from Bryn Mawr, I spelled it B-r-i-n-m-a-r, and I soon found out how to spell Eastern style.

[Laughter.]

Senator SPECTER. Mr. Chairman, before excusing myself, I want to ask consent to enter into the record a statement by Senator Martinez for the nomination of Mary Scriven.

Chairman LEAHY. Without objection. Senator Martinez had asked me, too, on that, and that will be part of the record. Thank you.

Well, then, if nobody else has anything to say, I would ask Mr. Waddoups, Mr. Anello, Ms. Scriven, Ms. Arguello, Mr. Brimmer, and Mr. Garre to come forward. Before we start, if you would all stand and raise your right hand and repeat after me. Do you solemnly swear that the testimony you will give in the matter before us will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WADDOUPS. I do.

Judge ANELLO. I do.

Judge SCRIVEN. I do.

Ms. ARGUELLO. I do.

Mr. BRIMMER. I do.

Mr. GARRE. I do.

Chairman LEAHY. Let the record show that all responded in the affirmative. Please sit down.

As has been noted, Mr. Waddoups is a partner at the Salt Lake City, Utah, law firm of Parr, Waddoups, Brown, Gee & Loveless; prior to that at O'Melveny & Myers. We have had over the years a number of judicial nominees who worked at O'Melveny & Myers who have come before us.

I also had the pleasure a few years ago at the opening of the new Air and Space Museum meeting General Myers, who was the original partner, just recently passed away. He was at that time about 90 years old. He had flown his own airplane in for the event, and he was ramrod straight. That has absolutely nothing to do with your hearing, but an interesting bit of esotericism.

Mr. WADDOUPS., please go ahead.

**STATEMENT OF CLARK WADDOUPS, NOMINEE TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF UTAH**

Mr. WADDOUPS. Thank you, Mr. Chairman. It is an honor to be here, and I look forward, if confirmed, to serving in this position.

I would like to introduce my wife, Vickie Waddoups, and my son, Doug Waddoups, who are here with me.

Thank you, Senator.

Chairman LEAHY. Thank you, and I should have asked you to do that to begin with. I will, when each one comes, I will ask for their names, because someday when somebody goes to the Waddoups archives, they will note in our official record that you were there.

Incidentally, on introducing everybody, you will be given a chance to see the transcript and to add names or correct spellings or anything else, because it is not a bad thing to have in the record.

Please go ahead, Mr. Waddoups. Did you want to add anything further?

Mr. WADDOUPS. No; just that I am honored to be here, am thankful for the Committee to consider this hearing at this time, and I look forward to being able to respond to any questions you may have.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Clark Waddoups

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

United States District Judge for the District of Utah

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

Office: 185 South State Street, Suite 1300  
Salt Lake City, UT 84111

Residence: Sandy, Utah

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

1946; Arco, Idaho.

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

I am married to Vickie Lee Waddoups, who is a homemaker. Her maiden name is Vickie Lee Tibbitts. We have no dependent children.

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

S.J. Quinney College of Law, University of Utah, 1970 to 1973; J.D., 1973

Brigham Young University, 1967 to 1970; B.A., 1970

Ricks College, 1964 to 1965; I did not receive a degree.

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

Employment:

12/1981 to present  
 Parr Waddoups Brown Gee & Loveless  
 185 So. State Street, Suite 1300  
 Salt Lake City, Utah 84111  
 Shareholder

9/1974 to 12/1981  
 O'Melveny & Myers  
 400 South Hope Street  
 Los Angeles, California 90071  
 Associate

9/1973 to 9/1974  
 United States Court of Appeals for the Ninth Circuit  
 95 Seventh Street  
 San Francisco, California 94103  
 Law clerk to Judge J. Clifford Wallace  
 (Judge Wallace's Chambers were then located in San Diego, California)

7/1973 to 9/1973  
 O'Melveny & Myers  
 400 South Hope Street  
 Los Angeles, California 20071  
 Law clerk

6/1972 to 9/1972  
 Strong Poelman & Fox/Fox Edwards & Gardiner (Dissolved)  
 57 West 200 South, Suite 400  
 Salt Lake City, Utah 84101  
 Summer clerk

6/1971 to 9/1971  
 University Village, University of Utah  
 1945 E. Sunnyside Avenue  
 Salt Lake City, Utah 84108  
 Maintenance crew member

3/1971 to 9/1971  
William Cayias, Attorney at Law  
15 W. South Temple  
Salt Lake City, Utah 84101  
Summer clerk

6/1970 to 9/1970  
Craters of the Moon National Monument  
P.O. Box 29  
Arco, Idaho 83213  
Maintenance crew member

Other affiliations:

2/2001 to present  
1365 Roosevelt, LLC  
c/o Douglas Waddoups  
Sandy, Utah 84092  
Limited partner – 33% interest--eligible to receive a share of profits earned from rental income collected on property owned by the LLC and would receive a share of any equity upon sale of the property.

2/2001 to present  
1876 Wyoming, LLC  
c/o James Waddoups  
215 So. State Street, Suite 1200  
Salt Lake City, Utah 84111  
Limited partner – 20% interest--eligible to receive a share of profits earned from rental income collected on property owned by the LLC and would receive a share of any equity upon sale of the property.

The Family Support Center of Utah  
Board member, 1990 to 1998; Board President, 1994 to 1995

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

I did not serve in the military.

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

Recognized in "Chambers USA Guide to America's Leading Business Lawyers 2007" for commercial litigation.

Recognized in "The Best Lawyers in America 2007" for antitrust law and commercial litigation.

Recognized in "Utah's Business 2007 Legal Elite" for civil litigation and trial.

Recognized in "2007 Mountain States Super Lawyers" for general litigation.

Recognized in "The Best Lawyers in America 2006" for commercial litigation.

Recognized in "Utah's Business 2006 Legal Elite" for litigation and trial.

Recognized in "Chambers USA Guide to America's Leading Business Lawyers 2006" for commercial litigation.

Recognized in "Utah's Business 2005 Legal Elite" for antitrust, commercial litigation, construction, environmental, and intellectual property.

Recognized in "Chambers and Partners USA: 2005 America's Leading Business Lawyers Guide" for commercial litigation.

Recognized in "Utah Business 2004 Legal Elite" for antitrust, commercial litigation, construction, environmental and intellectual property.

Recognized in "Chambers and Partners USA: 2004 America's Leading Business Lawyers Guide" for commercial litigation.

Awarded "Utah Outstanding Lawyer" in 1999 by the Utah Chapter of the Federal Bar Association.

Order of the Coif, S.J. Quinney Law School, University of Utah (1973).

President of the Utah Law Review, S.J. Quinney Law School, University of Utah (1972-1973).

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

California Bar Association

American Bar Association

Utah State Bar

Chair of Merit Selection Panel for U.S. Magistrate Judge, April, 1999.

Chair of Merit Selection Panel for U.S. Magistrate Judge, January 2002.

Member of the Advisory Committee to the Utah Supreme Court on the Rules of Evidence (1991 to present).

Member of the Ad hoc Committee to the Supreme Court on Rules Governing Committees (2007 to present).

**11. Bar and Court Admission:**

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

Bar of the State of Utah; August 15, 1983

Bar of the State of California; December 18, 1973

There have been no lapses in membership.

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

U.S. District Court of the Northern District of California (5/9/1997 to present)

Supreme Court of the United States of America (10/15/1984 to present)

U.S. District Court for the District of Utah (8/19/1983 to present)

Supreme Court of the State of Utah (8/15/1983 to present)

U.S. Court of Appeals for the Tenth Circuit (1/19/1983 to present)

U.S. Court of Appeals for the Ninth Circuit (4/24/1980 to present)

U.S. District Court for the Central District of California (1/31/1975 to present)

All California State Courts (12/1973 to present)

All Utah State Courts (1983 to present)

I have been admitted *pro hac vice* on various occasions to appear for a particular case in the State Courts of Wyoming, Montana, Nevada, and in the U.S. District Courts in Nevada, Wyoming and Florida.

12. **Memberships:**

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

A. Sherman Christensen American Inn of Court. I have been a Master of the Bench from 1990 to the present. I served as President of the Inn between 1997 and 1998.

The Family Support Center of Utah. I served as a board member from 1990 to 1998 and Board President from 1994 to 1995.

The Board of Visitors, J. Reuben Clark Law School, Brigham Young University. I was a member from 2001 to 2003.

The Historical Society of the Tenth Judicial Circuit. I was a founding member of the board from its inception in 2003 to 2006.

I am a member of the Pepperwood Homeowners' Association, 2500 Pepperwood Drive, Sandy, Utah 84092-4841.

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

None.

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

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

C. Waddoups, "*Hawkins v. Town of Shaw* – Equal Protection and Municipal Services: A Small Leap for Minorities, but a Giant Leap for the Commentators," 1971 Utah Law Review 397.

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

My work on the Advisory Committee to the Utah Supreme Court on the Utah Rules of Evidence has resulted in committee recommendations to adopt or modify the rules of evidence, but no reports or policy statements.

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

None.

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

"Rule 702: What does it Mean to You?" Presentation on 2/22/2008 for Utah Defense Lawyers Association.

"Mentoring" Panel Presentation at Fall Forum on 11/16/2007 for the Utah State Bar.

"The Language of Advocacy." Participated in presentation on 2/28/2006 for the American Inn of Court I.

"Associate Training." Presentation on 12/08/2005 for Parr Waddoups Brown Gee & Loveless.

Speech in honor of Judge Carolyn McHugh at Ceremonial Swearing-in as a member of the Utah Court of Appeals in August, 2005.

"Ethics: How to Get Along with Opposing Counsel." Presentation on 11/11/2004 for the Utah State Bar.

"Stipulations and Agreements." Participated in presentation on 11/18/2003 for the American Inn of Court.

"Rules of Evidence 901-1103, Authentication and Identification, Contents of Writings, Recordings and Photographs, Miscellaneous Rules." Participated in presentation on 3/25/2003 for the American Inn of Court.

"New Utah Rules of Evidence: Expert Opinion." Presentation on 11/13/2001 for the Salt Lake County Bar Association.

"Judge Conducted Jury Voir Dire." Participated in presentation on 10/23/2001 for the American Inn of Court.

"Pitfalls of Trial." Participated in presentation on 2/27/2001 for the American Inn of Court.

"Confidentiality, Attorney-Client Privilege, Work Product Issues." Participated in presentation on 11/30/1999 for the A. Sherman Christensen American Inn of Court I.

Acceptance speech upon receipt of the Award as Utah Outstanding Lawyer by the Utah Chapter of the Federal Bar Association in 1999.

Speech in honor of Judge Dale A. Kimball at Ceremonial Swearing-in as a U.S. District Court judge.

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

The Salt Lake Tribune, 1/11/2006, portion of Supreme Court oral argument quoted in newspaper article entitled "State: Workers must Retire to have Rights to Benefits."

The Salt Lake Tribune, 1/10/2006, excerpt from brief quoted in newspaper article entitled "Retirees Fight Legislation."

ABA Journal, June 2005, subject of article entitled "Guiding Principals: A Look Inside Some Inspired Mentor Relationships Shows How These Pairings Build Careers – and Confidence."

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

I have not held a judicial office.

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

- a. citations for all opinions you have written (including concurrences and dissents);
- b. a list of cases in which certiorari has been requested or granted;
- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and
- f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have not served as a judge.

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

description of that system.) Please identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

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

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

None

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

None

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
  - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a Law clerk to The Honorable J. Clifford Wallace, The United States Court of Appeals for the Ninth Circuit from 1973 to 1974.

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

I have never been a sole practitioner.

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

Parr Waddoups Brown Gee & Loveless  
185 So. State Street, Suite 1300  
Salt Lake City, Utah 84111  
Shareholder, 12/1981 to present

O'Melveny & Myers  
400 South Hope Street  
Los Angeles, California 90071  
Associate, 9/1974 to 12/1981; Law clerk, 7/1973 to 9/1973

United States Court of Appeals for the Ninth Circuit  
95 Seventh Street  
San Francisco, California 94103 (Judge Wallace's Chambers were located in San Diego at the time of my clerkship)  
Law clerk to Judge J. Clifford Wallace, 9/1973 to 9/1974

- b. Describe:

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

Following my clerkship, I joined the Los Angeles office of O'Melveny & Myers. There I worked as a litigation associate, working on mostly antitrust cases. I was a part of the trial team representing IBM in a series of major antitrust actions brought against it, and representing the NFL in an antitrust action against it arising from the relocation of the Oakland Raiders from Oakland to Los Angeles. I had experience in all aspects of litigation, including legal research, drafting motions and complaints, document production, depositions and in the court room at trial.

In 1981, I joined my current firm, Parr Waddoups Brown Gee & Loveless. My practice primarily involves complex commercial transactions, contract disputes, intellectual property, construction, antitrust, securities laws, and claims of discrimination or sexual misconduct. Because of the broad nature of the firm's practice, I have had experience in a number of areas. This experience has included one of the longest civil trials before the U.S. District Court for Utah, antitrust cases involving novel and precedent setting issues, patent and intellectual property disputes, and contractual disputes. Many of

the disputes have been successfully resolved prior to trial, often through mediation or by arbitration. Most of my cases have involved a team of lawyers who worked under my supervision for all aspects of civil litigation.

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

My clients have been predominantly corporations or other commercial legal entities. I have represented clients in industries such as heavy manufacturing, broadcasting, banking and finance, automotive, oil, and real estate. I have, on a number of occasions, represented individuals in suits against corporations or other legal entities

I have specialized in complex commercial litigation, involving antitrust, securities, labor and employment, banking, construction, environmental, and insurance claims.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.  
100% of my practice has been in litigation in federal court, state court (Utah and California), and in private arbitration proceedings. I appear in court frequently and have consistently throughout my career.

- i. Indicate the percentage of your practice in:

1. federal courts: 60%
2. state courts of record: 40%
3. other courts.

- ii. Indicate the percentage of your practice in:

1. civil proceedings: 100%
2. criminal proceedings.

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

I have tried approximately 17 cases to verdict or judgment. I was chief counsel in twelve cases and associate counsel in five cases.

- i. What percentage of these trials were:

1. jury: 53%
2. non-jury: 47%

- e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if

applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never appeared before the U.S. Supreme Court. I have petitioned for certiorari twice: *Pacific Telephone & Telegraph Co. v. PLLC*, 444 U.S. 920 (1979) and *Prudential Federal Savings & Loan Ass'n*, 479 U.S. 980 (1986). Certiorari was denied on both petitions. I have been unable to locate copies of the petitions.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

1. *Butler, et al. v. Access Microsystems, Inc.*; Case No. 97-0905242; Third District Court for Salt Lake County, Utah (Judge L.A. Dever) 1997 to 2007.

I acted as lead counsel for plaintiffs. The plaintiffs sued for defamation and interference with prospective economic advantage. I represented the plaintiffs. The case was tried to a jury, which awarded a verdict of \$2,145,000 in favor of the plaintiffs.

Co-Counsel:

Jonathan Hafen  
Bentley Tolk  
Parr Waddoups Brown Gee & Loveless  
Phone: (801) 532-7840

Opposing Counsel:

Dennis R. James  
Joseph E. Minnock  
Morgan Minnock Rice & James  
136 So. Main Street, 8<sup>th</sup> Floor  
Salt Lake City, UT 84101  
Phone: (801) 531-7888

Stephen B. Goldberg  
 Spierer Woodward Corbalis & Goldberg  
 707 Torrance Blvd, 2<sup>nd</sup> Floor  
 Redondo Beach, CA 90277

2. *Snow v. Office of Legislative Research & General Counsel*, 2007 UT 63 (Justices Durham, Wilkins, Durrant, Parrish, and Nehring).

I acted as lead counsel for the petitioners and intervenors who were members of the Utah State Legislature, Senator Curtis Bramble, Representative Stephen H. Urquhart, Parents for Choice in Education, Inc., and several parents of children who would have been eligible for educational vouchers. This was an original action in the Utah Supreme Court involving a dispute over whether a petition for a referendum to void a law creating educational vouchers met legal requirements under constitutional and statutory law. The petitioners argued that the referendum did not meet the legal requirements. The Court upheld the referendum

Co-Counsel:

David C. Reymann  
 Cheylynn Hayman  
 Parr Waddoups Brown Gee & Loveless  
 Phone: (801) 532-7840

Opposing Counsel:

M. Gay Taylor, Esq.  
 Robert H. Rees, Esq.  
 Legislative Research & General Counsel  
 Utah State Capitol Complex  
 W210 House Building  
 Salt Lake City, UT 84114-5210  
 Phone: (801) 538-1032

Thom D. Roberts, Esq.  
 Assistant Utah Attorney General  
 160 East 300 South, 5<sup>th</sup> Floor  
 P.O. Box 140857  
 Salt Lake City, UT 84114-0857  
 Phone: (801) 366-0353

3. *Beck Office Furniture & Supplies, Inc. v. Haworth, Inc.*, Case No. 2:90-cv-0047-JTG, U.S. District Court, Utah (Judge J. Thomas Greene), on appeal, 1996 U.S. Lexis 20608 (10<sup>th</sup> Cir. 1996) (Circuit Judges Seymour, Alarcon, and Lucero).

I acted as lead counsel for the defendant, Haworth. Plaintiffs sued for wrongful termination of an office furniture distributorship. The case was tried to a jury for

approximately six weeks. The jury returned a verdict for the plaintiff, but awarded damages significantly below the amount requested. On appeal, the court affirmed on liability, but reversed further reducing the amount of damages awarded.

Co-Counsel:

Jill N. Parrish  
Terry E. Welch  
Parr Waddoups Brown Gee & Loveless  
Phone: (801) 532-7840

Opposing Counsel:

Jeffrey R. Oritt  
Cohne Rappaport & Segal  
257 East 200 South, Suite 700  
Salt Lake City, Utah 84111  
Phone: (801) 532-2666

4. *Ligi srl v. Bausch & Lomb Surgical*, Case Nos. 2:99CV-0972DAK and 2: 00-cv-00883DB, U.S. District Court, Utah (Judge Dale A. Kimball) (1999 and 2000).

I acted as lead counsel for the defendant, Bausch & Lomb. Plaintiffs brought an action seeking a preliminary injunction and other relief against the defendant arising from a dispute over ownership and rights to eye mapping technology. The court denied the motion for preliminary injunction and ultimately granted summary judgment for the defendant.

Co-Counsel:

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Opposing Counsel:

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5. *Ballard Medical v. Allegiance Healthcare Corp*; Case No. 2:97CV-0985J, U.S. District Court, Utah (Judge Bruce S. Jenkins), on appeal, 268 F.3d 1352 (Fed. Cir. 2001).

I acted as lead counsel for plaintiff, Ballard Medical, in the district court. Ballard Medical sued the defendant for infringement of its patent for ventilating and aspirating tracheobronchial catheters. The Court held an extended pretrial conference at which it heard argument on claim construction and summary judgment. The court granted summary judgment for the defendant, finding non-infringement. I did not handle the appeal. The decision was affirmed.

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6. *Transonic Systems, Inc. v. Non-Invasive Medical Technologies Corp.*, 2004 U.S. Dist. Lexis 29223 (D. Utah 2004) ((Judge Paul Cassell), on appeal, 143 Fed. Appx. 320, 2005 U.S. App. LEXIS 15195 (Fed. Cir. 2005)(Circuit Judges Schall, Gajarsa and Prost).

I took over from another firm as lead counsel for Non-Invasive Medical Technologies. This case involved a patent dispute over a medical device that measured the rate of blood flow through a dialysis shunt. After extensive discovery and hearing, the court granted summary judgment in favor of Non-Invasive Medical Technologies. On appeal, the case was reversed in part, vacated, and remanded.

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7. *SCFC ILC v. VISA USA, Inc.* 819 F. Supp. 956 (D. Utah 1993) (Judge Dee Benson) 36 F.3d 958 (10<sup>th</sup> Cir. 1994) (Circuit Judges Moore, Seth and Daugherty), cert. denied, 115 S.Ct. 2600 (1995).

I acted as associate counsel and part of a trial team that represented VISA. The plaintiff, which issued the Discover Card, sued VISA for antitrust violations. The case presented novel issues of how antitrust law applied to an entity such as VISA that required the cooperative action of competitors in order for there to be a product. The jury entered a verdict against VISA which was reversed on appeal.

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8. *Reagan v. Bankers Trust Co*; 863 F. Supp. 1511 (D. Utah 1994) (Judge Bruce S. Jenkins).

I acted as lead counsel for defendant, Bankers Trust. Plaintiff sued for failing to close on a loan commitment. After extensive discovery and hearing, the court granted summary judgment in favor of Bankers Trust.

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 Stephen B. Mitchell  
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9. *Utah Public Employees Ass'n v. State of Utah*, 2006 UT 9 (Utah 2006), trial court, Third District Court for Salt Lake County, Utah (Judge William W. Barrett) Case No. 050911548 (2005) (Justices Durham, Wilkins, Durrant, Parrish and Nehring).

I acted as lead counsel for the defendant, State of Utah. The plaintiffs sued challenging the constitutionality of recently passed legislation that modified the employees' unused sick leave benefits. The plaintiffs claimed that the legislation devalued their vested rights, making it an unconstitutional taking. The trial court denied a preliminary injunction and granted the State's motion to dismiss for failure to state a claim. On an expedited appeal, the Utah Supreme Court affirmed.

Co-Counsel:

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 Cheyllyn Hayman  
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Opposing Counsel:

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 Alexander Dushku  
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10. *U.S Industries v. Touche Ross & Co*; Case Nos. 84-1564, 84-1715, 84-1716, 84-1717, 84-1718, 84-1719, U.S. District Court, Utah (Judge Aldon J. Anderson), on appeal, 854 F.2d 1223 (10<sup>th</sup> Cir. 1988) (Circuit Judges Holloway, Barrett and Baldock).

I acted as associate counsel at trial and lead counsel on appeal for plaintiff, U.S. Industries, who sued numerous defendants for violations of securities laws and fraud. The claims arose from a series of transactions relating to the sale of health club memberships and the accounting for those transactions. The trial to the jury lasted approximately six months. The jury returned a verdict in favor of U.S. Industries against five defendants, but a verdict in favor of Touche Ross. The five defendants and Touche Ross appealed. On the appeal, the court affirmed the judgment.

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20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organization(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

My legal practice has been devoted almost entirely to litigation. In recent years, many cases have been resolved either through settlement after mediation or in arbitration. The following is representative of the types of cases I have handled throughout my career. In most of the cases I have worked on, I have worked with a team of lawyers. The results have been due to the work of the entire team. To reflect the team effort, I have used the pronoun "we" to describe these efforts.

In *Pro-Fit Worldwide Fitness, Inc. v. Flanders Corp.*, we tried a case in arbitration involving a dispute between a distributor in Israel and a local supplier of exercise equipment. In *Aero Tech Manufacturing v. Vortex*, we resolved by settlement a dispute over ownership of intellectual property for steam cleaning carpets. In *Jacobsen Construction Co. Inc. v. FS Jackson Hole Development*, we resolved through settlement the principal claims of our client, Jacobsen Construction, over a contract under which it built a luxury hotel in Jackson Hole, Wyoming. In *Oquirrh Artificial Kidney Center v. Interstate Insurance Group*, we resolved by settlement a dispute over the opening and

operation of kidney dialysis centers in Utah. In *Associated Diving & Marine Contractors v. Granite Construction Co.*, we settled a dispute between Union Pacific Railroad Co. and Granite, our client, over construction work on the causeway across the Great Salt Lake. In *Imagraph v. Scardino*, we resolved the claims of our client, Scardino, over the ownership of software for a complicated computer function that he had developed. In *ZARS, Inc. v. Cephalon, Inc.*, we resolved by settlement a dispute over the claimed ownership of medical technology developed by our client, ZARS, to administer drugs through a patient's skin. In *Smith-Larsen v. Lyman Bros.*, we resolved claims of sexual harassment against our client, Lyman Brothers. In *Geneva Steel Co. v. C&I*, we resolved the claims of our client, Geneva Steel, against its insurer to recover for damages suffered from an electrical outage and fire at its steel mill. The claim involved damage to property, as well as damage to the business.

In most of these cases, settlements were reached only after substantial discovery, involving both documents and depositions, had taken place and pretrial motions had been briefed and argued. Many of them involved mediation in which the claims were capsulated and presented to a mediator.

During the operation of the Geneva Steel Works in Provo, Utah, I regularly represented the company in a number of matters including the development and negotiation of the State Implementation Plan for air releases, and in a number of arbitrations of grievances filed by members of the United Steel Workers Union.

I have been registered as a Utah Lobbyist, but have not been actively involved in lobbying activities. My meetings with legislators have been in my role as counsel, representing the legislators in connection with pending litigation over whether a petition for a referendum to void a law creating educational vouchers met legal requirements.

From 1991 to present, I have served on the Advisory Committee to the Utah Supreme Court on the Rules of Evidence. The Committee meets monthly, more or less, to review and recommend proposed changes to the Utah Rules of Evidence. During my tenure on the Committee, it has recommended and the Supreme Court has approved, for example, revisions to the rules governing privileges and the use of expert testimony, new rules governing a shield law and reporters privilege, proposals for the rule governing the admissibility of evidence of prior acts of sexual abuse of a child, as well as a number of other rules.

From 2001 to 2003, I served on the Board of Visitors for the J. Reuben Clark Law School at Brigham Young University. The Board reviewed scholastic programs, made suggestions and offered comments on approaches to legal education. The Board met once a year for a day-long session with members of the law school faculty and administration.

From 1990 to present, I have been a Master of the Bench in the A. Sherman Christensen American Inn of Court. The Inn meets typically once a month during the school year to discuss legal issues, lawyering skills, ethics and civility. The format involves the presentation of the topic selected for discussion, which often includes presentations by

experienced lawyers to demonstrate different skills, such as cross-examination, opening statements, closing arguments, depositions and other discovery practices. I served as president from 1997 to 1998 and served on the executive committee to plan the year's program for several additional years.

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

I taught one semester of freshman English as a graduate student at Brigham Young University in 1969. I do not have a copy of the syllabus used.

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

None.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the

position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Current clients of the firm Parr Waddoups Brown Gee & Loveless would present potential conflicts of interest during my initial service. Clients that I have personally represented during the last five years would also present such a potential conflict of interest. I do not believe that there are any categories of litigation or financial arrangements that would present such a potential conflict, other than my ownership in the two limited partnerships I hold with my sons. I would not hear cases involving those entities under any circumstances.

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

I would resolve any such conflicts of interest (including cases in which current lawyers from the firm of Parr Waddoups Brown Gee & Loveless appear, in cases involving current clients of the firm, and in cases involving any former clients, parties or attorneys with whom I have, in the last five years, had a close relationship, either as counsel or on a personal level) by following the Code of Conduct for United States Judges and applicable statutes, policies and procedures.

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

I have been active in the Utah Supreme Court Advisory Committee and American Inn of Court. In addition, I served as a member of the Board of Directors for eight years for the Family Support Center, which is dedicated to preventing child abuse, providing counseling and supporting parents. Board service involved almost monthly meetings, numerous day-long sessions for planning and funding, training related to work of the Family Support Center and regularly fielding legal questions that arose.

28. **Selection Process:**

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

This jurisdiction does not have a selection commission.

When the vacancy for the federal district judge position opened, I heard indirectly that Senator Hatch and Senator Bennett were considering my name as a recommendation. I understand that Senator Hatch and his staff talked to a number of members of the legal community about my qualifications, some of whom were friends who called on my behalf. In mid-October 2007, I was interviewed by Senator Hatch and Senator Bennett, who told me that they had determined to recommend me to the President for nomination. On December 20, 2007, I was invited to an interview at the White House with counsel from the Department of Justice and White House Counsel's Office. On March 3, 2008, I was advised that the President had made a decision to proceed with my nomination. I have had subsequent conversations with Department of Justice counsel regarding the nomination paperwork and the process. My nomination was submitted to the United States Senate on April 29, 2008.

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

No.

AO 10  
Rev. 1/2007

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Waddoups, Clark	2. Court or Organization U.S. District Court, Utah	3. Date of Report 05/01/2008
4. Title (Article III Judges indicate active or senior status; magistrate Judges indicate full- or part-time) District Judge--Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 04/29/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2007 to 05/01/2008
7. Chambers or Office Address 185 South State St. # 1300 Salt Lake City, Utah 84111	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

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

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. _____	_____
2. _____	_____
3. _____	_____

**FINANCIAL DISCLOSURE REPORT**  
Page 2 of 6

<b>Name of Person Reporting</b> Waddoups, Clark	<b>Date of Report</b> 05/01/2008
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**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

**A. Filer's Non-Investment Income**

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1. 2008	Parr Waddoups Brown Gee & Loveless--salary	\$ 237969.00
2. 2007	Parr Waddoups Brown Gee & Loveless--salary	\$ 564636.59
3. 2006	Parr Waddoups Brown Gee & Loveless--Salary	\$ 571332.00
4.		
5.		

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

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	
2.	
3.	
4.	
5.	

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

NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DESCRIPTION</u>
1. EXEMPT	
2.	
3.	
4.	
5.	

**FINANCIAL DISCLOSURE REPORT**  
Page 3 of 6

<b>Name of Person Reporting</b> Waddoups, Clark	<b>Date of Report</b> 05/01/2008
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**V. GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	EXEMPT		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-33 of instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Key Bank	Credit card	J
2.	Living Scriptures	Installment purchase	J
3.	MEPCO Financial Corp.	Extended warranty on automobiles	J
4.	R.C. Wiley	Credit card-appliances for remodel	J
5.			

**FINANCIAL DISCLOSURE REPORT**  
Page 4 of 6

<b>Name of Person Reporting</b> Waddoups, Clark	<b>Date of Report</b> 05/01/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets)  Place "XQ" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Chase National Bank-account		Interest	J	T	EXEMPT				
2. Key Bank Checking		Interest	J	T					
3. Mass Mutual-universal policy		None	J	T					
4. Mass Mutual-whole life		None	J	T					
5. Mass Mutual-whole life		None	J	T					
6. NACOLAH-whole Life		None	J	T					
7. 1365 Roosevelt LLC		None	K	W					
8. 1876 Wyoming LLC		None	K	W					
9. Batteries&Bands-common stock		None	K	U					
10. ZARS-common Stock		None	K	U					
11. Sterling Trust-IRA-Clark		None	J	T					
12. Sterling Trust-IRA-Vickie		None	K	T					
13. The 401K Company-401k account		None	P1	T					
14.									
15.									
16.									
17.									

<b>1. Income Gain Codes:</b> (See Column B1 and D4)	A=\$1,000 or less F=\$50,001 - \$100,000 J=\$15,000 or less N=\$250,001 - \$500,000 P3=\$25,000,001 - \$50,000,000	B=\$1,001 - \$2,500 G=\$100,001 - \$1,000,000 K=\$15,001 - \$50,000 O=\$500,001 - \$1,000,000 R=Cost (Real Estate Only) V=Other	C=\$2,501 - \$5,000 H1=\$1,000,001 - \$5,000,000 L=\$50,001 - \$100,000 P1=\$1,000,001 - \$5,000,000 P4=More than \$50,000,000	D=\$5,001 - \$15,000 H2=More than \$5,000,000 M=\$100,001 - \$250,000 P2=\$5,000,001 - \$25,000,000 T=Cash Market	E=\$15,001 - \$50,000
<b>2. Value Codes</b> (See Column C1 and D3)	Q=Appraised U=Book Value				
<b>3. Value Method Codes</b> (See Column C7)			S=Assessment W=Estimated		

**FINANCIAL DISCLOSURE REPORT**  
Page 5 of 6

<b>Name of Person Reporting</b> Waddoups, Clark	<b>Date of Report</b> 05/01/2008
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**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of Report.)*

**FINANCIAL DISCLOSURE REPORT**  
Page 6 of 6

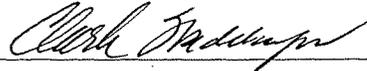
<b>Name of Person Reporting</b> Waddoups, Clark	<b>Date of Report</b> 05/01/2008
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**IX. CERTIFICATION.**

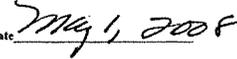
I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions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

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

Signature



Date



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

**FILING INSTRUCTIONS**

Mail signed original and 3 additional copies to:

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

**FINANCIAL STATEMENT**  
**NET WORTH**

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

ASSETS				LIABILITIES			
Cash on hand and in banks		26	453	Notes payable to banks-secured		310	683
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		60	585	Notes payable to relatives			
Unlisted securities--add schedule		76	833	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		24	901
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		231	423
Real estate owned-add schedule		736	900	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	000				
Cash value-life insurance		23	348				
Other assets itemize:							
IRA Accounts		36	035				
401(k) account	1	994	689				
				Total liabilities		567	007
				Net Worth		2	417
Total Assets	2	984	843	Total liabilities and net worth	2	984	843
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	Yes		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT**  
**NET WORTH SCHEDULES**

Listed Securities

Batteries & Bands	\$ 50,000
ZARS	10,585
	<hr/>
Total Listed Securities	\$ 60,585

Unlisted Securities

1365 Roosevelt LLC	\$ 44,633
1876 Wyoming LLC	32,200
	<hr/>
Total Unlisted Securities	\$ 76,833

Real Estate Owned

Personal residence	\$ 736,900
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Real Estate Mortgages Payable

Personal residence	\$ 231,423
--------------------	------------

Assets pledged

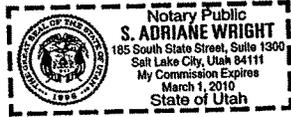
Bank note (for home remodeling) is secured by Personal residence	\$ 310,683
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AFFIDAVIT

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

May 12, 2008  
(DATE)

Clark Waddoups  
(NAME)



[Signature]  
(NOTARY)

Chairman LEAHY. Let me ask you this: The courts, the Federal courts, is the only undemocratic branch in our system, and it was intended to be that way. They are not elected. They are appointed, given lifetime appointments—entirely different from the other two branches of our Federal system. If you go all the way back to reading the Federalist Papers on there, it is to give them the independence without fear or favor of either political party.

I have always looked, when I am going to vote on a judge—I spent a number of years in a courtroom, as many of us did. I ask myself, this person, if they are Federal judge, would I feel comfortable coming into their court, whether I was plaintiff or defendant, whether I represented somebody rich or poor, no matter what my political background or my race or my gender or my religion, would I feel that that judge will hear the case without any preconceived notion about either the attorney or the litigant? Could you give those assurances, that you would look at a case and say whether this person is a plaintiff or defendant, criminal, government, or whatever, you would look at that case and say, “You are going to get the fairest trial you could ever have before me”?

Mr. WADDOUPS. Without any qualification at all, I can give you that representation. I can tell you that as a litigant, when I appear in courts with clients, that is what they are looking for. They want a court that will hear their case without bias and without prejudice. That is a principle on which I am firmly committed and would assure you that that is exactly what I would attempt to do to the best of my ability.

Chairman LEAHY. And do you have any background that can show that kind of equal respect to people no matter what their gender, no matter what their background?

Mr. WADDOUPS. I would hope—I think Senator Hatch referred to the work I have done with my colleagues. I believe I enjoy a reputation among the lawyers in our community as having treated everyone with respect. Part of my service has been to serve on the Board of the Family Support Center in Salt Lake City, in which our principal mission was to look out for mothers who are in abusive situations or who are abusive with their children. I found that to be meaningful and important service. I think that kind of service needs to continue over and be carried on the bench.

Chairman LEAHY. Also, the courts serve as a check on either a runaway executive or a runaway legislature. We had a memo for a while, a secret memo, that once it came to light, it was withdrawn by the White House, which said basically the President could put people outside the law on questions of torture. He could say that the law would not apply to him or anybody he said it does not apply to.

Do I have your assurances that you feel the laws of this country apply to everybody, whether it is a Federal judge, a U.S. Senator, or a President or anybody else?

Mr. WADDOUPS. Without any question at all.

Chairman LEAHY. And you know Federal judges have great abilities that they—on questions of conflicts of interest, basically they have to make this decision, whether they recuse themselves. What would be the kind of thing, do you believe, would require a recusal?

What kind of case do you think that might come before you that would require you to just say, look, I should not sit on this case?

Mr. WADDOUPS. I would be guided by the Rules of Judicial Conduct, but let me give you some illustrations that would seem clear to me.

Any kind of case that came before me from members of my existing law firm, I would be required, at least for a number of years, to recuse myself. I would also feel that I would recuse myself if there were cases in which adversaries, lawyers who have been advocates of mine in the recent past—that would be a shorter period of time, but I would not want anyone to feel that because we had been opposite each other they somehow were mistreated. And the same with recent clients.

Beyond those kinds of clear conflicts, as guided by the Rules of Judicial Conduct, I think a judge has a responsibility to hear the cases that come before him, whether they are hard or easy. And I do not think recusing yourself simply because of the nature of the case would be appropriate. But if there is an appearance that someone feels that they may not be treated fairly because of a past relationship, I would recuse myself.

Chairman LEAHY. Emphasize that last one just a little bit. You feel if the appearance would be that because of a Judge Waddoups, this plaintiff or this defendant might not be treated fairly, you feel that that is cause for recusal?

Mr. WADDOUPS. If there was a factual basis in terms of facts, somebody that was an adversary, somebody that was on the opposite side of me in a case before, somebody whose client was opposed to a client of mine, those kinds of situations. Simply an unsupported factual assertion would not be sufficient.

Chairman LEAHY. I understand. But what you are saying—and I do not want to put words in your mouth, but what you are saying is that your use of recusal would be also to support the integrity, the impression of the Federal court as being independent and open-minded to the American public. Is that correct?

Mr. WADDOUPS. Yes, sir.

Chairman LEAHY. I must say that I find this so important, because, I mean, a court cannot—a court does not have an army or anything else. It has to rely and the whole system breaks down if it cannot rely on the respect the American people have. I have tried an awful lot of cases. I am sure my colleagues here have. But sometimes you win and sometimes you lose, but you have to be able to say to your clients, you have to be able to say to the public, “But it was a fair trial.” And I think that is very important.

Senator Hatch.

Senator HATCH. Well, thank you, Mr. Chairman. I appreciate your courtesy and your kindness and your effort to bring these folks before the Committee, get them through the Committee, and, of course, to the floor. And I am going to help you every step of the way.

This is an impressive group of nominees, and I want to commend each and every one of you for being here today. It means a lot to me to have good people on the bench, and, Mr. Garre, you are terrific. You have the support of Democrats and Republicans in this

town and across the country who have watched you in action and know how good you are.

Having said that, I just want to say that we are very proud to have Clark Waddoups here. We know he is one of the great lawyers in this country. We know that he has an impeccable reputation. He is a leader in one of the great law firms in Utah, and I personally have a great deal of fondness and admiration for him. And I expect him to become one of the great district court judges in this country.

With regard to Mr. Garre, I hope we can confirm Mr. Garre to the position of Solicitor General by the time the Supreme Court begins its hearings when it comes in on October 6th. The 4 months that would remain in this administration would actually be more than half of the time the Supreme Court devotes to oral arguments, which conclude in May. Mr. Garre is eminently qualified, highly respected, and I see no reason why he could not begin the Supreme Court's term with the public backing of the executive and legislative branches.

I ask consent that a letter by a bipartisan group of former Solicitors General on behalf of Mr. Garre's nomination be entered into the record, Mr. Chairman.

Chairman LEAHY. Without objection.

Senator HATCH. Let me quote small portion of that letter. "We have worked with Mr. Garre in the Office of Solicitor General or as co-counsel in cases before the Court. We have observed at close range his vast legal talents, and we are unanimous in our conclusion that by any measure he has been an extraordinarily effective advocate on

behalf of the United States. Mr. Garre's nomination is in keeping with the finest traditions of the Office of Solicitor General."

I certainly agree with that assessment, and I commend you for the reputation that you have been able to develop over these years, and it is a well-earned reputation.

Let me turn to the judicial nominees. By my count, the district court nominees before us today have more than 90 combined years of private practice experience. That is pretty impressive. As somebody who has been on this Committee for 32 years and has held an awful lot of these hearings, this is an impressive group of people. That does not count experience as prosecutors and judges, and that means that each of you has seen many State and Federal judges do what they do.

Now, Mr. Chairman, I do not have any questions because I have looked at the resumes and the information about these terrific people who are before us today. I am going to support every one of you, and I hope that we can do this quickly and get you through and confirmed quickly. And, above all, Mr. Garre, I hope you can continue doing the excellent job you have been doing, only as Solicitor General, at least during the 4 months that remain in this administration, and hopefully even after, regardless of who wins the election come this November.

Mr. Chairman, I personally want to thank you. It is tough being Chairman of this Committee. It is a very partisan Committee in many respects. When I was Chairman, I had a very difficult time from time to time, and I understand how difficult it is, and I am

very grateful that you would hold this hearing today and be willing to push these people.

Chairman LEAHY. Thank you very much.

Senator Whitehouse, did you have anything?

Senator WHITEHOUSE. Yes, if I may. I have some questions that I would like to ask of Mr. Garre, and let me preface them by assuring my colleagues that I do not intend to object to Mr. Garre's nomination. But as the Chairman indicated earlier, we have had a very unfortunate episode in the history of this country and in the history of the Department of Justice that has largely come to its conclusion with the replacement of the entire leadership of the Department of Justice, to which the Chairman referred.

My concern is that the cleanup is not complete. As I have indicated in many other forums, my concern is that the Office of Legal Counsel in particular remains what I have called the "George Bush Little Shop of Legal Horrors." And while I applaud Attorney General Mukasey for many of the steps that he has undertaken to set the Department of Justice right, I do believe—and I am not, of course, Mr. Garre, asking you to accept this belief. I am just stating it to you. I do believe that the OLC remains a very troubled part of the Department of Justice into which the broom that has cleaned up so much else of the Department of Justice still needs to sweep.

You and I probably disagree on a great number of legal issues, and we would probably have a good academic and intellectual combat were we arguing cases against each other. But I think we also agree that there is a basic level of legal competence and scholarship that, irrespective of what the position you choose to take in a case is, is a baseline. And you should never go below that, and you should certainly never go below that if you are the Department of Justice of the United States of America. And I think that after the unfortunate episode that we have been through, you will probably also agree that every officer of the Department of Justice, no matter what their station, has an interest in seeing to the integrity of the entire Department of Justice. And it is off those two principles, to which I see you nodding, that my concern about OLC—it is on those two that the concern stands.

I have recently had an exchange with a member of the Department in the Intelligence Committee on which I serve. Regrettably, that transcript is classified. My efforts to have it be declassified have been resisted by the administration, are unsuccessful. We are still asking for an explanation of what it is about this exchange that contains anything that would reveal any sources or methods of intelligence gathering. I think that the denial of it is, frankly, just a desire to keep the issue out of the public and stands on no legitimate national security footing. But, in any event, we are still engaged in that, and as a result, I cannot in this forum even tell you the name of the person who I had the exchange with. But if you ask within the Department, it will be easy—it is perhaps even obvious.

I would like to ask you—I know how busy you are going to be. I know what it is like to be an appellate attorney with a vast amount of reading to do. I would ask you to take a look at that transcript—I am sure you can get clearance to do it—and to take

a look at the torture memoranda that the OLC wrote, specifically focusing on its failure to treat with a case named *United States v. Lee*, which is a Fifth Circuit Court of Appeals decision in which the court, in a prosecution brought by the Department of Justice, on the conviction of a Texas sheriff and his deputies for waterboarding prisoners to get convictions, found over and over in the opinion that this technique was torture—referred to it as “water torture.” The word “torture” I think appears eight times, sometimes quoting the Government’s own indictment, sometimes using the court’s own language.

For the life of me, I cannot understand how in the lengthy opinions that support the administration’s position on torture which went so far afield legally as to quote standards out of health care reimbursement statutes, they were unable to find or unwilling to discuss a case bang on point, discussing the procedure at issue, calling it “torture,” by a circuit court of appeals of the United States of America, a court in which the Department of Justice itself was the prosecutor and the proponent of the theory that this was torture. To me, that shows that something went seriously, seriously awry.

In the context of that, I would like you to also take a look at the treatment of a decision called *United States v. Hilldow*, which involved a course of abuse at the hands of the Marcos regime of an American citizen. The course of treatment included waterboarding. The course of treatment was referred to as torture, and the distinction that was drawn was that it was a course of treatment that included other forms of abuse than waterboarding. And, therefore, the case could not stand for the proposition that waterboarding alone was torture.

Well, there stands Lee. I do not see how from a pure point of craftsmanship you could ever write an opinion on that subject without addressing Lee. I submit to you that if you wrote that opinion to the United States Supreme Court as a brief and left out a case that on point, it would make the recent episode with respect to the omission of the statute on the death penalty look like child’s play.

I am not going to ask you any more than that. Have a look at it. Don’t tell me—don’t talk publicly, but let ye Deputy Attorney General, let your Attorney General know what your opinion on that subject is. If you agree with me that there is no legitimate standard of advocacy and scholarship that would allow that case to be omitted, then I think that is a sign we need to take a second look at OLC. And I frankly do not see how reasonable lawyers who are well trained and professional frankly could see this any other way. So that is my request to you.

**STATEMENT OF GREGORY G. GARRE, NOMINEE TO BE  
SOLICITOR GENERAL OF THE UNITED STATES**

Mr. GARRE. Thank you, Senator, and thank you, Mr. Chairman, for including this in this hearing. I feel very privileged and honored to be here.

Senator, I will absolutely look at the items that you asked me to look at and follow through in the manner that you requested.

Senator WHITEHOUSE. I appreciate that.

Mr. GARRE. I also agree with you wholeheartedly that the integrity of the Department of Justice and the integrity of the lawyers who work in the Department of Justice is critical for the American people and for the duty that we have for those of us privileged enough to work there.

A former Solicitor General, Solicitor General Soboloff, said that the duty of the Solicitor General's Office and the lawyers in that office is not simply to advocate on behalf of a client but to do justice. And I certainly agree with that. And if I were privileged enough to be confirmed, that is something that I would have foremost in my mind in carrying out my responsibilities with respect to all matters, including the matters that you referred to.

Senator WHITEHOUSE. I appreciate and accept that. I thank you.

Mr. GARRE. Thank you, Senator.

Chairman LEAHY. If I actually could follow up on that just a little bit, because the Solicitor General's Office is very unique. It has the capacity as friend of the court. It is sometimes referred to as the "tenth Justice," and it has to speak and lay out what is best.

Can you assure us that a Solicitor General, whether you had a Democrat or Republican in the White House, you would not serve a partisan interest but, rather, a judicial interest or a judicious interest in your work as Solicitor General?

Mr. GARRE. Absolutely, Senator. I have been privileged to work in the office under two different administrations, and in both administrations, it was made clear to the lawyers of that office that our duty is to represent the best interests of the United States, irrespective of the political administration of that time. And I think that is critical for the Solicitor General to perform his obligations to the Court and to the country to provide the best representation that he can, and to have the courts accept the candor and arguments of the Solicitor General as a representation of what is in the best interests of the United States as opposed to the political interests of any particular time.

Chairman LEAHY. I think we would all agree with that answer, but let us just go to a specific. As Principal Deputy Solicitor General, you signed the amicus brief in *Ledbetter v. Goodyear*. And for those who are not aware of that, that was a case where Lilly Ledbetter for nearly two decades was paid a lot less than her male counterparts. As a supervisor, she was paid less and did not realize it until after she had left employment. But in the brief you signed, you contended she was not eligible for Title VII protection against discriminatory pay because she did not file her claim within 180 days of their repeated discriminatory pay decisions, even though, of course, she was not aware of the pay decisions. And that view contradicted the position of the Equal Employment Opportunity Commission, the EEOC. And some have called your position even more draconian than the Eleventh Circuit.

Did you decide to file an amicus brief as a result of a request of the EEOC, which obviously disagreed with that position?

Mr. GARRE. Senator, the determination to file an amicus brief in that case was made in the same manner it is in any case, and it is a very collaborative process where we, the Solicitor General—

Chairman LEAHY. Was the EEOC involved in that collaborative process?

Mr. GARRE. It was, Senator.

Chairman LEAHY. And did the EEOC agree with your brief?

Mr. GARRE. I believe, as was indicated in the brief, and certainly as made clear through the briefings, that the EEOC had by regulation or policy statement taken a contrary position. The position that we laid out in the brief we believed was consistent with prior positions that the Supreme Court had taken in a number of decisions.

Chairman LEAHY. Who made the final decision to file an amicus brief?

Mr. GARRE. The final—

Chairman LEAHY. I mean, this was *Ledbetter v. Goodyear*. It was not *Ledbetter v. the United States*. Why was the decision made to file an amicus brief?

Mr. GARRE. Senator, the Solicitor General makes that determination. He looks to the interests of the United States in a particular question pending before the Court if the United States is not a party, and he looks to whether or not reasonable arguments can be made in support of that position.

The Federal Government has both the responsibility to enforce the civil rights laws, including Title VII, and is also an employer who is subject to suit under Title VII.

Chairman LEAHY. As you know, there has been some very strong criticism—in fact, we came, I think, within about one vote of overturning it, in fact, of overcoming a Republican filibuster to restore rights for subsequent people in a situation like this. But what I cannot seem to understand is you have a company that hides the fact that they are paying a woman less. The matter is up in litigation, and somebody in the U.S. Government steps in to say we have got to protect that company, not the woman who was being paid less all those years. You write the brief. I still do not fully understand why this administration, why your office, why it was so necessary to weigh in on behalf of Goodyear and not this woman who was given such a bum deal.

Mr. GARRE. Certainly, Senator, no one—and certainly no one in the Department of Justice—condoned discriminatory practices that were alleged in that case. The legal principle that we were focused on was when does the statute of limitations begin to run when someone has suffered a discrete act of discrimination.

Chairman LEAHY. But having taken the position the EEOC had taken, and you taking a contrary position, I mean, you could just as well have just stayed out of the case. Is that not correct?

Mr. GARRE. That is always an option, Senator, that the Solicitor General has. The Solicitor General of the United States had participated in a number of prior cases involving the same—

Chairman LEAHY. Who made the final decision?

Mr. GARRE. The Solicitor General did, Senator. The Solicitor General at that time was Paul Clement.

Chairman LEAHY. Was there any influence from the White House or from the Attorney General in making that final decision?

Mr. GARRE. Senator, in every case there is input from all interested components.

Chairman LEAHY. Was there in this case from the White House and the Attorney General?

Mr. GARRE. I am not personally aware of that. The Solicitor General would make a final determination in that case, listening to all interested parties, because we are interested in representing the views of the United States to the best we can, taking into account all different interests of the interested agencies and components.

Chairman LEAHY. Even though in this case the views were contrary to the views at EEOC, which is the part of the Government that would normally be involved in this.

Mr. GARRE. That is correct, Senator. And certainly it is not uncommon that different components within the Department of Justice or even different agencies may have different perspectives, regulatory perspectives or enforcement perspectives or policy perspectives.

Chairman LEAHY. Some of us were concerned that this may have been political, including to the point when Ms. Ledbetter came here to testify, and her testimony was cut off by a Republican objection. But I just throw that out for what it is worth.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

Gregory George Garre

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

Solicitor General of the United States

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

Office: United States Department of Justice, 950 Pennsylvania Avenue, NW,  
Washington, DC 20530

Residence: Bethesda, Maryland

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

November 1, 1964  
Bryn Mawr, Pennsylvania

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

Married to Lorane Frances Hebert; attorney and partner at the law firm of Hogan & Hartson LLP, 555 13th Street, NW, Washington DC 20004.

Two dependent children.

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

George Washington University Law School (1988-1991); J.D., with high honors; June 1991.

Harvard University Extension School (February 1988-April 1988); extension program, no degree.

Dartmouth College (1983-1987); B.A., *cum laude*; June 1987.

University of London, Birkbeck College (January 1987-March 1987); Hansard Scholar Program, no degree.

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

United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530; Acting Solicitor General (June 2008-present), Principal Deputy Solicitor General (October 2005-present).

Hogan & Hartson LLP, 555 13th Street, NW, Washington, DC 20004; Partner and Head of Firm's Supreme Court and Appellate Practice (July 2004-October 2005).

George Washington University Law School, 720 29th Street, NW, Washington, DC 20052; Adjunct Professor/Lecturer in Law (January 2005-April 2005, January 2004-April 2004, January 2000-April 2000, January 1999-April 1999, January 1998-April 1998, January 1997-April 1997, January 1996-April 1996, January 1995-April 1995).

United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530; Assistant to the Solicitor General (September 2000-July 2004).

George Washington Law Alumni Association, 2000 H Street, NW, Washington, DC 20052; Member, Board of Directors (1993-1994).

Hogan & Hartson LLP, 555 13th Street, NW, Washington, DC 20004; Associate (October 1993-December 2000); Partner (January 2000-October 2000).

Chief Justice William H. Rehnquist, United States Supreme Court, One First Street, NE, Washington, DC 20543; Law Clerk (1992-1993).

Judge Anthony J. Scirica, United States Court of Appeals for the Third Circuit, 22614 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106; Law Clerk (1991-1992).

Gardner, Carton & Douglas, 1001 Pennsylvania Avenue, NW, Washington, DC 20004; Summer Associate (May 1991-June 1991).

Covington & Burling, 1201 Pennsylvania Avenue, NW, Washington DC 2004; Summer Associate (May 1990-July 1990).

Gardner, Carton & Douglas, Quaker Tower, 321 N. Clark Street, Chicago, IL; Summer Associate (July 1990-August 1990).

Gardner, Carton & Douglas, 1001 Pennsylvania Avenue, NW, Washington, DC 20004, and Quaker Tower, 321 N. Clark Street, Chicago, IL; Summer Associate (May 1989-August 1989).

Testa Hurwitz & Thibeault, Exchange Place, 53 State Street, Boston MA 02109; Paralegal (October 1987- August 1988).

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

None.

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

Special Commendation Award for National Security Litigation, United States Department of Justice, Civil Division (December 2007).

Award for Dedication in Teaching, George Washington University Law School (May 2006).

Award for Excellence, Office of the Secretary of Defense, Department of Defense (October 2005).

Distinguished Graduate Award, Barrington High School (June 2004).

Certificate of Commendation, United States Department of Justice, Environment and Natural Resources Division (October 2003).

Attorney General's Award for Excellence in Furthering the Interests of U.S. National Security, United States Department of Justice (June 2003).

Order of the Coif, George Washington University Law School (1991).

Editor-in-Chief, George Washington University Law Review (1990-1991).

Rufus Choate Scholar, Dartmouth College (1986-1987).

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

Administrative Office of the Courts, Advisory Committee on Federal Rules of Appellate Procedure, ex-officio member as Acting Solicitor General (June 2008-present).

Edward Coke Appellate Inn of Court (2003-present); Associate (2003-2005); Barrister (2005-present).

National Chamber Litigation Center Constitutional and Administrative Law Advisory Committee (2005).

National Legal Center for the Public Interest (2004-2005); Legal Adviser.

11. **Bar and Court Admission:**

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

District of Columbia; February 4, 1994.

Illinois; December 20, 1991. My membership status is "inactive" because I do not currently live or practice law in Illinois.

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

United States Supreme Court (admitted January 6, 1997).

Supreme Court of Illinois (admitted December 20, 1991 (inactive)).

District of Columbia Court of Appeals (admitted February 4, 1994).

United States Court of Appeals for the District of Columbia Circuit (admitted February 10, 1997).

United States Court of Appeals for the Second Circuit (admitted October 26, 2004).

United States Court of Appeals for the Fourth Circuit (admitted January 7, 2000).

United States Court of Appeals for the Fifth Circuit (admitted February 25, 2005).

United States Court of Appeals for the Sixth Circuit (admitted July 25, 2005).

United States Court of Appeals for the Seventh Circuit (admitted June 21, 1996).

United States Court of Appeals for the Ninth Circuit (admitted April 21, 2005).

United States Court of Appeals for the Federal Circuit  
(admitted August 23, 2005).

United States District Court for the District of Columbia  
(admitted December 12, 2005).

United States District Court for the Western District of Washington  
(admitted June 2004).

12. **Memberships:**

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

Chevy Chase Presbyterian Church (1993-present); Deacon (2000-2006).

Washington D.C. Vipers Recreational Ice Hockey Team (1998-present).

- b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

No.

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

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

*Our Chief: William H. Rehnquist Served the Nation with Vision and Grace*, Legal Times (Sept. 12, 2005).

*The Beef Debate*, SCOTUSblog ([www.scotusblog.com/wp/the-beef-debate-continued/](http://www.scotusblog.com/wp/the-beef-debate-continued/)) (May 26 and 27, 2008).

Arthur Andersen *Goes to the Supremes: A General Counsel Primer on the Pending Supreme Court Case*, National Legal Center for the Public Interest (Apr. 2005) (with Dirk C. Phillips).

*Copyright Bandits at Large: Supreme Court Should Grant Cert in Grokster Case to Address Important Business Concerns*, Legal Times (Dec. 6, 2004).

*Coded Message: Lower Courts Must Decipher Supreme Court Ruling on Resurrected Alien Tort Statute*, Legal Times (Sept. 6, 2004).

*Fourth Amendment Update*, 15 Criminal Justice 42 (Summer 2000) (with David G. Leitch).

*Cert Alert – Recent Supreme Court Cases*, 14 Criminal Justice 37 (Winter 2000) (with David G. Leitch).

*ACLU Finds – Egad! – Religion at the Ballpark*, Wall Street Journal (June 28, 1999) (with David G. Leitch).

*Court Ruling on Auto Recall Confirms Due Process Protections*, Washington Legal Foundation, Legal Opinion Letter (Feb. 5, 1999).

*The Constitution Forces Senate to Try the President*, Wall Street Journal (Jan. 5, 1999).

*Getting to Know Presidential Perjury*, Washington Times (Aug. 4, 1998).

Note, *CERCLA, Natural Resource Damage Assessments, and the D.C. Circuit's Review of Agency Statutory Interpretations Under Chevron*, 58 Geo. Wash. L. Rev. 932 (1990).

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

I have not prepared or contributed to any such reports, memoranda, or policy statements.

- c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

Please see attached transcript of the Teleconference with Senior Officials of the United States Department of Justice Regarding Supreme Court's Ruling in the *Hamdan* case (June 30, 2006).

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

*The Supreme Court*, The Headmasters Association, Feb. 8, 2008 (Philadelphia, PA) (outline attached).

*Scholars & Scribes Review the Rulings: The Supreme Court's 2006-2007 Term*, The Heritage Foundation, July 11, 2007 (panel) (MP3 copy attached).

*Scholars & Scribes Review the Rulings: The Supreme Court's 2005-2006 Term*, The Heritage Foundation, July 13, 2006 (panel) (MP3 copy attached).

*Sizing Up the 2005-2006 Supreme Court Term: A Practitioner's View*, Legal Times, July 12, 2006 (panel) (published excerpts attached).

*2004-2005 Supreme Court Review*, The University Club of Washington, DC, June 2005 (panel).

*Briefing on Arthur Andersen v. United States*, National Legal Center for the Public Interest, April 2005.

*Impact of United States v. Booker*, D.C. Association of Criminal Defense Lawyers, Feb. 2005 (panel).

*Johanns v. Livestock Marketing Association*, National Cattlemen's Beef Association, Feb. 2005 (San Antonio, Tex.).

*Veneman v. Livestock Marketing: Compelled Commercial Speech Pays Another Visit to the Supreme Court*, Washington Legal Foundation, Dec. 2, 2004 (panel).

*Previewing the 2004 U.S. Supreme Court Term*, Washington Legal Foundation, Sept. 15, 2004 (panel).

I have not maintained a list of speeches or panel presentations that I have given. The foregoing list was prepared based on my best recollection. In addition, I have spoken to law enforcement officials about pending cases and orientation matters in my current position. I generally do not speak from a prepared text, but have attached an outline for one of the speeches listed above as well as published copies of my remarks where they are available, as indicated above.

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

I do not keep a list of interviews I have given, but outside of my time in public service I have from time to time been asked to comment publicly on various legal matters. Listed below are the articles or media in which I was quoted, which I have prepared based on an electronic search.

Caryn Tamber, *High Court to Hear Maryland Cases on IDEA, Police Interrogation*, Daily Record (Baltimore, MD) (Sept. 30, 2005) (quoted).

David Savage and Robert Schmitt, *Senators Aim to Solve the John Roberts Puzzle*, Los Angeles Time (Sept. 12, 2005) (quoted).

Tony Mauro, *New SG Deputy Has Close Ties to Roberts*, Legal Times (Sept. 12, 2005) (quoted).

Michael Grunwald, *Roberts Cultivated an Audience with Justices for Years*, Washington Post (Sept. 11, 2005) (quoted).

Jan Crawford Greenburg, *Philosophy Likely to Evoke Rehnquist; Nominee Expected to Run Top Court with Eye Toward Clarity and Judicial Restraint*, Washington Post (Sept. 6, 2005) (quoted).

Gina Holland, *Once a Maverick, Rehnquist Steered Court in Conservative Direction*, Associated Press (Sept. 4, 2005) (quoted).

John Roberts Nomination, Corporate Legal Times (Sept. 2005) (quoted).

Patti Waldmeir, *Closet Liberals*, Financial Times (Aug. 5, 2005) (quoted).

Marcia Coyle, *A Changing Landscape: After 11 Years, this Collegial Court is in for Major Changes*, National Law Journal (Aug. 3, 2005) (quoted).

Nancy Gibbs et al., *Judging Mr. Right*, Time Magazine (Aug. 1, 2005) (quoted).

Nancy Benac, *Measured Tones, Apt Analogies Part of Roberts' Style*, Associated Press (July 25, 2005) (quoted).

Richard Serrano, David Savage, and Richard Schmitt, *Roberts Was Ready at Every Turn; High Court Nominee's Fortunes Called Result of Being Well-Prepared, Focused*, Los Angeles Times (July 25, 2005) (quoted).

Jason McLure, *Judging Roberts: When Life Was a Beach*, Legal Times (July 25, 2005) (quoted).

Nancy Benac, *Nominee's Lineage: Part Plainspoken Hoosier, Part Creature of Washington*, Associated Press (July 21, 2005) (quoted).

James Vicini, *Conservative Republican Picked for US Top Court*, Reuters News (July 20, 2005) (quoted).

*What the Nominee Has Said*, The State (Columbia, S.C.) (July 20, 2005) (quoted).

Ken Thomas, *Bush Nominee for High Court Represented Chrysler, Toyota*, Associated Press (July 20, 2005) (quoted).

MSNBC's Countdown with Keith Olbermann (July 20 2005) (interviewed).

Patti Waldmeir, *Business Finds Cheer in Roberts' Fidelity to Letter of the Law*, Financial Times (July 20, 2005) (quoted).

Gina Holland, *Former Rehnquist Clerk Picked for Supreme Court Vacancy*, Associated Press (July 19, 2005) (quoted).

Patti Waldmeir, *Supreme Court Goes Hands Off on Innovation*, Financial Times (July 4, 2005) (quoted).

Marcia Coyle, *Corporate Doom: Prosecutors Weigh Retrial of Arthur Andersen in an Environment Changed by the Company's Demise*, Miami Daily Business Review (June 10, 2005) (quoted).

Tony Mauro, *High Court Blesses Document Policies in Andersen Case*, New Jersey Law Journal (June 6, 2005) (quoted).

Tony Mauro, *High Court Overturns Andersen Conviction*, Legal Times (June 1, 2005) (quoted).

Tony Mauro, *Andersen's Paper Jam*, Legal Times (April 18, 2005) (quoted).

Hope Yen, *Ailing Rehnquist Returns to Bench After 5-Month Absence*, Associated Press (March 21, 2005) (quoted).

Tony Mauro, *The Beatles and the Supremes*, Legal Times (Feb. 14, 2005) (quoted).

Susan Butler, *P2P Battle Shifts to High Court*, Billboard Magazine (Dec. 25, 2004) (quoted).

Leo Morris, *Supremely Serious Issues; Here's One Way the Next President Can Affect Us for Decades, Not Just Four More Years*, Fort Wayne News Sentinel (Oct. 5, 2004) (quoted).

Marcia Coyle, *High Court to Revisit Sentencing Guidelines*, National Law Journal (Oct. 4, 2004) (quoted).

Jan Crawford Greenburg, *High Court to Weigh Far-Reaching Issues; Criminal Justice Cases in View*, Chicago Tribune (Oct. 3, 2004) (quoted).

Mark Helm, *Supreme Court Set to Consider Hearings in Key Cases*, Associated Press (Sept. 26, 2004) (quoted).

Mark Helm, *Justices Will Pick Up With 'Mess' From Last Term*, Seattle Post-Intelligencer (Sept. 25, 2004) (quoted).

Vanessa Blum, *Freed Detainee Won't Be Paid, Pentagon Says But Claim May Exist Against U.S. for Wrongful Imprisonment*, Legal Times (Sept. 13, 2004) (quoted).

Tony Mauro, *Speaking Wisely at the Supreme Court*, Legal Times (Sept. 13, 2004), American Lawyer (Sept. 2004) (quoted).

Tony Mauro, *Supreme Advocacy*, Legal Times (Aug. 9, 2004) (quoted).

CNN Burden of Proof (March 10, 1999) (interviewed).

CNN (Feb. 8, 1999) (interviewed).

CNN Burden of Proof (Feb. 2, 1999) (interviewed).

CNN Burden of Proof (Jan. 26, 1999) (interviewed).

CNN Burden of Proof (Jan. 12, 1999) (interviewed).

I was also interviewed briefly about various legal matters by other cable networks in 1998-1999. I do not have records of the particular dates of the interviews and was unable to obtain transcripts of the interviews.

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

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

United States Department of Justice, Acting Solicitor General (June 2008-present), appointed by the President; Principal Deputy Solicitor General (October 2005-present), appointed by the Attorney General.

Supreme Court Fellows Commission, Commissioner (2005); appointed by Chief Justice William H. Rehnquist (I resigned this position shortly after my appointment when I became Principal Deputy Solicitor General in October 2005).

United States Department of Justice, Assistant to the Solicitor General (September 2000-July 2004); appointed by Solicitor General Seth P. Waxman.

Chief Justice William H. Rehnquist, United States Supreme Court, Law Clerk (1992-1993); appointed by the Chief Justice.

Judge Anthony J. Scirica, United States Court of Appeals for the Third Circuit, Law Clerk (1991-1992); appointed by Judge Scirica.

United States House of Representatives, Committee on Budget, Intern (March 1986-June 1986); appointed by Martha Phillips (supervisor).

I have had no unsuccessful candidacies or nominations.

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

D.C. Lawyers' Primary Committee for Bush (1999-2000).

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

Chief Justice William H. Rehnquist, United States Supreme Court, Law Clerk (1992-1993).

Judge Anthony J. Scirica, United States Court of Appeals for the Third Circuit, Law Clerk (1991-1992).

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

No.

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

United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530; Acting Solicitor General (June 2008-present), Principal Deputy Solicitor General (October 2005-present).

Hogan & Hartson LLP, 555 13th Street, NW, Washington, DC 20004; Partner and Head of Firm's Supreme Court and Appellate Practice (July 2004-October 2005).

George Washington University Law School, 720 29th Street, NW, Washington, DC 20052; Adjunct Professor/Lecturer in Law (January 2005-April 2005, January 2004-April 2004, January 2000-April 2000, January 1999-April 1999, January 1998-April 1998, January 1997-April 1997, January 1996-April 1996, January 1995-April 1995).

United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530; Assistant to the Solicitor General (September 2000-July 2004).

Hogan & Hartson LLP, 555 13th Street, NW, Washington, DC 20004; Associate (October 1993-January 2000); Partner (January 2000-October 2000).

Chief Justice William H. Rehnquist, United States Supreme Court, One First Street, NE, Washington, DC 20543; Law Clerk (1992-1993).

Judge Anthony J. Scirica, United States Court of Appeals for the Third Circuit, 22614 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106; Law Clerk (1991-1992).

Gardner, Carton & Douglas, 1001 Pennsylvania Avenue, NW, Washington, DC 20004; Summer Associate (May 1991-June 1991).

Covington & Burling, 1201 Pennsylvania Avenue, NW, Washington DC 20004; Summer Associate (May 1990-July 1990).

Gardner, Carton & Douglas, Quaker Tower, 321 N. Clark Street, Chicago, IL; Summer Associate (July 1990-August 1990).

Gardner, Carton & Douglas, 1001 Pennsylvania Avenue, NW, Washington, DC 20004, and Quaker Tower, 321 N. Clark Street, Chicago, IL; Summer Associate (May 1989-August 1989).

Testa Hurwitz & Thibault, Exchange Place, 53 State Street, Boston MA 02109; Paralegal (October 1987-August 1988)

b. Describe:

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

My practice has focused on Supreme Court and federal appellate matters. On occasion, I have also briefed and argued dispositive legal motions in the trial courts. During the past eight years, I have argued 23 cases in the Supreme Court and numerous additional matters in the federal courts of appeals; before then, I briefed numerous cases in the Supreme Court and argued several matters in federal courts of appeals and the D.C. Court of Appeals. In my current position, and when I worked in the Office of the Solicitor General as an Assistant to the Solicitor General (2000-2004), I have represented the United States and federal agencies and officials on a wide variety of Supreme Court and appellate matters. In private practice, I handled a wide variety of Supreme Court and appellate matters for public and private clients. During my time in private practice, I also worked on a variety of pro bono matters, which are discussed in more detail in response to question 24 below.

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

In my current position, and when I worked in the Office of the Solicitor General as an Assistant to the Solicitor General (2000-2004), my clients have been the United States and various government agencies and officials. For example, I have represented the Equal Opportunity Commission, Department of the Defense, Federal Election Commission, and United States Postal Service. I have also represented the President, Attorney General, Director of the Federal Bureau of Investigation, and Bureau of Land Management Officials in litigation against them.

In private practice, I represented corporate entities, such as John Hopkins Health Systems; state and local entities, such as the States of Alaska and Hawaii and the Montgomery County Public School System; trade associations, such as the National Cattlemen's Beef Association; and individuals, such as the plaintiff in a successful action brought under the Americans with Disabilities Act, Equal Pay Act, and Title VII (*Weber v. Infinity Broadcasting Corporation*, U.S. District Court for the Eastern District of Michigan, No. 2:02-cv-74602-GCS-WC, 2005), who retained me to brief and argue post-trial motions and defend an appeal.

My practice on behalf of the United States in the Office of the Solicitor General and on behalf of various clients in private practice has cut across numerous different areas of law. As a lawyer in the Office of the Solicitor General, I have frequently been involved in defending the constitutionality of Acts of Congress as well as other federal actions. I have not specialized in any particular substantive area of law, but instead in Supreme Court and appellate litigation more generally.

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

My practice has always focused on litigation. I have appeared in court frequently, primarily in the context of Supreme Court and appellate arguments and less frequently with respect to dispositive legal motions at the trial court level. Since 2001, I have presented 23 oral arguments in the Supreme Court and have argued numerous additional matters in the federal courts of appeals during the same period. Before 2001, I argued several matters in the federal courts of appeals and the D.C. Court of Appeals, and briefed numerous matters in the Supreme Court.

- i. Indicate the percentage of your practice in:

1. federal courts;

100% of my appearances in my current job have been in federal court. Previously, 95% of my legal work was in federal court.

2. state courts of record;

Previously, about 5% of my legal work.

3. other courts.

I have participated in administrative proceedings before the Department of Transportation.

ii. Indicate the percentage of your practice in:

1. civil proceedings;

90%.

2. criminal proceedings.

10%. I have undertaken the bulk of my criminal work as a lawyer in the Office of the Solicitor General.

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

My practice has focused on Supreme Court and appellate matters. Since 2001, I have presented 23 oral arguments in the Supreme Court and have argued numerous additional matters in the federal courts of appeals during the same period. Before 2001, I argued several matters in the federal courts of appeals and the D.C. Court of Appeals, and briefed numerous additional matters in the Supreme Court.

While the focus of my practice has been on appellate matters, I have on occasion participated as both chief counsel and associate counsel in briefing and arguing dispositive pre-trial and post-trial legal motions in trial court. For example, in 2005, I briefed and argued the post-trial motions on behalf of the civil rights plaintiff in defending a jury verdict and damages award secured under the Americans with Disabilities Act, Equal Pay Act, and Title VII (*Weber v. Infinity Broadcasting Corporation*, U.S. District Court for the Eastern District of Michigan, No. 2:02-cv-74602-GCS-WC, 2005). In addition, as an associate counsel, I participated (including by cross-examining an expert witness) in a case that was tried to judgment before the D.C. Superior Court.

i. What percentage of these trials were:

1. jury;

N/A

2. non-jury.

The D.C. Superior Court case mentioned above was a bench trial.

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if

applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have appeared on numerous occasions before the Supreme Court as an oral advocate and co-counsel on briefs. My current practice in the Office of the Solicitor General focuses on all facets of Supreme Court litigation, including at both the certiorari and merits stages. In addition, my prior practice at Hogan & Hartson, where I headed the firm's Supreme Court and appellate practice group from 2004 to 2005 and worked in the firm's Supreme Court and appellate practice group from 1994 to 2000 while it was headed by the Hon. John G. Roberts, Jr., likewise involved many Supreme Court matters. Since 2001, I have presented oral argument in 23 cases before the Supreme Court (20 while serving in the Office of the Solicitor General as a Deputy and Assistant to the Solicitor General, and three while in private practice) and have prepared scores of merits briefs filed in the Supreme Court on behalf of both parties and amici, including the United States and various federal agencies and officers. Please see attached briefs.

16. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

In reverse chronological order:

- 1) *Munaf v. Geren*, 128 S. Ct. \_\_\_ (2008) (consolidated with *Geren v. Omar*):

These cases involved habeas challenges to the detention of dual American citizens held in Iraq by the Multi-National Force-Iraq (MNF-I) for criminal offenses allegedly committed in Iraq and to the transfer of such individuals to the Government of Iraq to face trial and punishment for those offenses. I, along with other lawyers in the Department of Justice, represented the Secretary of the Army in the cases. I presented argument on the Secretary's behalf in the Supreme Court. The Court, in a unanimous decision, held that there was habeas jurisdiction over the petitions, but agreed with the government's position that the habeas petitions should be dismissed on the merits. In so holding, the Court agreed with the government's position that Iraq, like all foreign nations, has a sovereign right to prosecute individuals (like the habeas petitioners in these

cases) who voluntarily travel to Iraq and commit criminal offenses within its borders, and that habeas jurisdiction may not be asserted to interfere with that sovereign right.

- a. Date of representation: 2008.
- b. Name of the Court: United States Supreme Court.
- c. Co-counsel and principal counsel for opposing parties:

Co-counsel with me on the briefs were Paul D. Clement, then Solicitor General, Jeffrey S. Bucholtz, Acting Assistant Attorney General, Daryl Joseffer, Assistant to the Solicitor General, Douglas Letter, Jonathan H. Levy, Lewis S. Yelin, Attorneys, U.S. Department of Justice, Washington, D.C. 20530, (202) 514-2217.

Arguing counsel for opposing parties was Joseph Margulies, Northwestern University Law School, 357 East Chicago Avenue Chicago, IL 60611, (312) 503-0890.

2) *Baze v. Rees*, 128 S. Ct. 1520 (2008):

This case concerned a challenge to the constitutionality of the method of execution by lethal injection. I, along with other lawyers in the Department of Justice, represented the United States, which participated in the case as amicus curiae in support of the state defendant. I presented argument on behalf of the United States in the Supreme Court. The Court, in a plurality opinion, adopted the position of the United States and held that the State's method of execution by lethal injection – the same basic method adopted by the Federal Bureau of Prisons – is constitutional. In addition, the plurality agreed with the standard proposed by the United States for evaluating Eighth Amendment claims based on the risk of harm, and held that to establish an Eighth Amendment violation a plaintiff must show a “substantial risk of serious harm” and proffer a feasible and readily available alternative method of execution.

- a. Date of representation: 2007-2008.
- b. Name of the Court: United States Supreme Court.
- c. Co-counsel and principal counsel for opposing parties:

Co-counsel with me on the brief were Paul D. Clement, then Solicitor General, Alice S. Fisher, then Assistant Attorney General, Kannon K. Shanmugam, Assistant to the Solicitor General, Robert J. Erickson, Attorney, U.S. Department of Justice, Washington, D.C. 20530, (202) 514-2217.

Arguing counsel for respondents was Roy T. Englert Jr., Robbins, Russell, Englert, Orseck & Untereiner LLP, 1801 K Street, NW, Suite 411-L, Washington, DC 20006, (202) 775-4500.

Arguing counsel for petitioner was Donald B. Verrilli Jr., Jenner & Block LLP, 1099 New York Avenue, NW, Suite 900, Washington, DC 20001-4412, (202) 639-6000.

3) *Sprint/United Management Co. v. Mendelsohn*, 128 S. Ct. 1140 (2008):

This case concerned the admissibility under the Federal Rules of Evidence of “other supervisor” evidence – *i.e.*, evidence that a supervisor other than the plaintiff’s own supervisor discriminated against other employees – in an action brought by an employee under the Age Discrimination in Employment Act (ADEA). I, along with other lawyers in the Department of Justice and the Equal Employment Opportunity Commission, represented the United States, which participated in the case as *amicus curiae*. I presented argument on behalf of the United States in the Supreme Court. The Court rejected the petitioner’s contention that such evidence is always inadmissible in an individual ADEA case and, instead, adopted the position of the United States that “other supervisor” evidence may be admissible based on the facts and circumstances of the case and that the admissibility of such evidence is within the province of the trial court in the first instance.

a. Date of representation: 2007-2008.

b. Name of the Court: United States Supreme Court.

c. Co-counsel and principal counsel for opposing parties:

Co-counsel with me on the brief were Paul D. Clement, then Solicitor General, Irving L. Gornstein, then Assistant to the Solicitor General, U.S. Department of Justice, Washington, D.C. 20530-0001, (202) 514-2217; Ronald S. Cooper, General Counsel, Equal Employment Opportunity Commission, Washington, D.C. 20507.

Arguing counsel for petitioner was Paul W. Cane Jr., Paul, Hastings, Janofsky, 55 Second Street Twenty-Fourth Floor, San Francisco, CA 94105-3441, (415) 856-7000.

Arguing counsel for respondent was Dennis E. Egan, The Popham Law Firm, P.C., 323 W. Eighth Street Suite 200, Kansas City, MO 64105, (816) 221-2288.

4) *Massachusetts v. EPA*, 127 S. Ct. 1438 (2007):

This case involved a challenge brought by several States and various private groups under the Clean Air Act (CAA) to the denial by the Environmental Protection Agency (EPA) of a rulemaking petition with respect to greenhouse gas emissions from new motor vehicles. I, along with other lawyers in the Department of Justice and the EPA, represented the EPA in the Supreme Court. I presented argument on behalf of the EPA in the Supreme Court. The Court, in a 5-4 decision, held that the States had standing under Article III to challenge the denial of their rulemaking petition; that the CAA authorizes the regulation of greenhouse gas emissions from new motor vehicle emissions; and that the EPA had not provided a sufficient explanation under the CAA for denying

the States' petition. The Court remanded the case for further proceedings, including to give the EPA an opportunity to explain its reasons for "action or inaction."

- a. Date of representation: 2006-2007.
- b. Name of the Court: United States Supreme Court.
- c. Co-counsel and principal counsel for opposing parties:

Co-counsel with me on the brief were Paul D. Clement, then Solicitor General, Sue Ellen Wooldridge, then Assistant Attorney General, Thomas G. Hungar, Deputy Solicitor General, Malcolm L. Stewart, Assistant to the Solicitor General, John M. Lipshultz, Attorney, U.S. Department of Justice, Washington, D.C. 20530-0001, (202) 514-2217; Roger R. Martella, Jr., Acting General Counsel, Carol S. Holmes, Attorney, Environmental Protection Agency, Washington, D.C. 20460.

Arguing counsel for petitioners was James R. Milkey, One Ashburton Place, 18th Floor Boston, MA 02108, (617) 727-2200.

5) *Scott v. Harris*, 127 S. Ct. 1769 (2007):

This case concerned whether or in what circumstances a police officer's use of force to stop a fleeing motorist is deadly or excessive force under the Fourth Amendment. I, along with other lawyers in the Department of Justice, represented the United States, which participated in the case as amicus curiae in support of the police officer (Scott). I presented argument on behalf of the United States in the Supreme Court. The Court adopted the position of the United States and held that, regardless of whether the use of force in such circumstances constitutes "deadly force," the determination whether it is constitutionally excessive turns on the reasonableness of the officer's actions in the particular circumstances he confronted. In addition, the Court held that an officer may use force in such circumstances if he determines that the fleeing motorist posed a "substantial and immediate risk of serious physical injury to others."

- a. Date of representation: 2007.
- b. Name of the Court: United States Supreme Court.
- c. Co-counsel and principal counsel for opposing parties:

Co-counsel with me on the brief were Paul D. Clement, then Solicitor General, Peter D. Keisler, then Assistant Attorney General, Jonathan L. Marcus, then Assistant to the Solicitor General, Barbara L. Herwig, Teal Luthy Miller, Attorneys, U.S. Department of Justice, Washington, D.C. 20530-0001, (202) 514-2217.

Arguing counsel for petitioner was Philip W. Savrin, 100 Galleria Parkway, Suite 1600, Atlanta, GA 30339-5959, (770) 818-0000.

Arguing counsel for respondent was Andrew C. Clarke, Borod & Kramer, 80 Monroe Avenue, Suite G-1, Memphis, TN 38103, (901) 524-0200.

6) *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006):

This case concerned whether alleged violations of Article 36 of the Vienna Convention on Consular Relations may be remedied in a habeas proceeding brought by a foreign national convicted of a state criminal offense by ordering suppression of the defendant's statements or excusal of a state procedural default rule. I, along with other lawyers in the Department of Justice and the Department of State, represented the United States as amicus curiae in support of respondents. I presented argument on behalf of the United States in the Supreme Court. The Court adopted the position of the United States and held that, even assuming that the Convention creates judicially enforceable rights, suppression is not an appropriate remedy for a violation of Article 36 and a State may apply its usual procedural default rules to Article 36 claims.

- a. Date of representation: 2006.
- b. Name of the Court: United States Supreme Court.
- c. Co-counsel and principal counsel for opposing parties:

Co-counsel on the brief were Paul D. Clement, then Solicitor General, Alice S. Fisher, then Assistant Attorney General, Michael R. Dreeben, Deputy Solicitor General, Douglas Hallward-Driemeier, Assistant to the Solicitor General, Robert J. Erickson, Attorney, U.S. Department of Justice, Washington, D.C. 20530-0001, (202) 514-2217; John B. Bellinger, Legal Advisor, U.S. Department of State, Washington, D.C. 20520.

Arguing counsel for petitioners were Peter Gartlan, Office of Public Defense Services, 1320 Capitol Street, NE, Suite 200, Salem, OR 97303, (503) 378-3349; Mark T. Stancil, Robbins, Russell, Englert, Orseck & Untereiner LLP, 1801 K Street, NW, Suite 411-L, Washington, DC 20006, (202) 775-4500.

Arguing counsel for respondents were Mary H. Williams, Solicitor General, Oregon Department of Justice, 1162 Court Street, NE Salem, OR 97301-4096, (503) 378-4402; William E. Thro, Solicitor General, Office of Attorney General, 900 East Main Street Richmond, VA 23219, (804) 786-2436.

7) *Johanns v. Livestock Marketing Association*, 544 U.S. 550 (2005):

This case concerned a challenge to the constitutionality of the Beef Promotion and Research Act of 1985 (Beef Act), which, among other things, provides for an assessment on cattle sales to finance generic advertising overseen by the Department of Agriculture – including the “Beef. It’s What’s for Dinner.” ad campaign – promoting beef products. I, along with another partner at Hogan & Hartson LLP, represented the private petitioners, a state cattlemen’s association and two individual cattlemen who supported the promotional program at issue. I presented argument on behalf of the private petitioners

in the Supreme Court. The Court adopted our position and that of the United States and held that the Beef Act is constitutional because the promotional messages at issue were effectively controlled by the federal government and thus constituted government speech.

- a. Date of representation: 2004-2005.
- b. Name of the Court: United States Supreme Court.
- c. Co-counsel and principal counsel for opposing parties:

Co-counsel with me on the brief was Lorane F. Hebert, Hogan & Hartson LLP, 555 13th Street, Washington, D.C. 20004, (202) 637-6536.

Arguing counsel for the federal petitioner was Edwin S. Kneedler, Deputy Solicitor General, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20532, (202) 514-3261.

Arguing counsel for respondents was Laurence H. Tribe, Houser Hall 420, Massachusetts Avenue Cambridge, MA 02138, (617) 495-4621.

8) *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369 (2004):

This case concerned the statute of limitations for civil rights actions brought under 42 U.S.C. 1981, as amended by the Civil Rights Act of 1991. I, along with other lawyers in the Department of Justice, represented the United States, which participated in the case as amicus curiae in support of the civil rights plaintiff (Jones). I presented argument on behalf of the United States in the Supreme Court. The Court adopted the position of the United States and held that the four-year statute of limitations established by 28 U.S.C. 1658, rather than a shorter state statute of limitations governing personal injury claims, applied, and that the plaintiff's race-based discrimination claims under Section 1981 were therefore timely.

- a. Date of representation: 2004.
- b. Name of the Court: United States Supreme Court.
- c. Co-counsel and principal counsel for opposing parties:

Co-counsel with me on the brief were Theodore B. Olson, then Solicitor General, J. Michael Wiggins, then Acting Assistant Attorney General, Paul D. Clement, then Deputy Solicitor General, Dennis J. Dimsey, Linda F. Thome, Attorneys, U.S. Department of Justice, Washington, D.C. 20530-0001, (202) 514-2217.

Arguing counsel for petitioners was H. Candace Gorman, 220 S. Halsted, Suite 200 Chicago, IL 60661, (312) 427-2313.

Arguing counsel for respondent was Carter G. Phillips, Sidley Austin LLP, 1501 K Street, NW, Washington, DC 20005, (202) 736-8270.

9) *FEC v. McConnell*, 540 U.S. 93 (2003):

This case concerned a challenge to the constitutionality of the Bipartisan Campaign Reform Act (BCRA). I, along with other lawyers in the Department of Justice and the Federal Election Commission, represented the Federal Election Commission and the other federal parties. Along with one other Assistant to the Solicitor General, I had principal responsibility for drafting the government's merits brief in the case in the Supreme Court, which totaled 135 pages, and assisted the Solicitor General and Principal Deputy Solicitor General in preparing for oral argument. With minor exceptions, the Court upheld the constitutionality of the Act in its entirety by a 5-4 majority.

- a. Date of representation: 2003.
- b. Name of the Court: United States Supreme Court.
- c. Co-counsel and principal counsel for opposing parties:

Co-counsel with me on the brief were Theodore B. Olson, then Solicitor General, Peter D. Keisler, then Assistant Attorney General, Paul D. Clement, then Deputy Solicitor General, Malcolm L. Stewart, Assistant to the Solicitor General, Douglas N. Letter, James J. Gilligan, Michael S. Raab, Dana J. Martin, Terry M. Henry, Rupa Bhattacharyya, Andrea Gacki, Attorneys, U.S. Department of Justice, Washington, D.C. 20530-0001, (202) 514-2217; Lawrence H. Norton, then General Counsel, Richard B. Bader, then Associate General Counsel, Stephen E. Hershkowitz, David Kolker, then Assistant General Counsels, Federal Election Commission, Washington, D.C. 20463.

Arguing counsel for the intervenor-defendants was Seth P. Waxman, Wilmer Hale, 1875 Pennsylvania Avenue, NW, Washington, DC 20006, (202) 663-6800.

Arguing counsel for plaintiffs were Kenneth W. Starr, Pepperdine University School of Law, 24255 Pacific Coast Highway, Malibu, CA 90263, (310) 506-4621; Floyd Abram, Cahill Gordon & Reindel LLP, 80 Pine Street, New York, NY 10005, (212) 701-3000; Bobby R. Burchfield, McDermott Will & Emery, 600 13th Street, NW, Washington, DC 20005-3096, (202) 756-8003; Laurence Gold, 815 Sixteenth Street, NW, Washington, D.C. 20006, (202) 637-5130; Jay Sekulow, 200 Maryland Avenue, NE, Washington, D.C. 20002, (202) 337-2273.

10) *United States Postal Service v. Gregory*, 534 U.S. 1 (2001):

This case concerned the ability of federal employers to consider certain prior disciplinary actions in disciplining federal employees. I, along with other lawyers in the Department of Justice, represented the United States Postal Service. I presented argument on behalf of the Postal Service in the Supreme Court. The Court agreed with the position of the

Postal Service and held that, in determining the reasonableness of a penalty imposed on a federal employee, the Merit Systems Protection Board may consider prior disciplinary actions that are still the subject of pending grievance proceedings.

- a. Date of representation: 2001.
- b. Name of the Court: United States Supreme Court.
- c. Co-counsel and principal counsel for opposing parties:

Co-counsel with me on the brief were Barbara D. Underwood, then Acting Solicitor General, Stuart E. Schiffer, Acting Assistant Attorney General, Paul D. Clement, then Deputy Solicitor General, David M. Cohen, Todd M. Hughes, David B. Stinson, Attorneys, U.S. Department of Justice, Washington, D.C. 20530-0001, (202) 514-2217.

Arguing counsel for respondent was Henk Brands, Paul Weiss, 1615 L Street, NW, Suite 1300 Washington, DC 20036-5694, (202) 223-7373.

In addition to these Supreme Court representations, during my time in the Office of the Solicitor General as a Deputy and an Assistant to the Solicitor General, I have participated in the briefing of other high-profile cases in the Supreme Court and argued other important matters in the courts of appeals. The Supreme Court merits briefs (including amicus briefs) for which I have served as counsel of record or co-counsel are attached in response to question 15(e).

17. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In my current position, and when I worked in the Office of the Solicitor General as an Assistant to the Solicitor General (2000-2004), I have participated substantially in the work of the Department of Justice in representing the United States in civil and criminal matters. This work has involved, among other responsibilities, preparing and reviewing briefs, presenting oral argument, interacting with client agencies, advising the Solicitor General on whether to authorize appeals or amicus participation at the appellate level, and meeting with outside attorneys on cases handled by the Office. Since 2001, I have argued 23 cases in the Supreme Court and briefed many additional cases.

During my period at Hogan & Hartson from 2004-2005, I headed the firm's Supreme Court and appellate practice group and served as a Litigation Practice Group Director. In that capacity, I had numerous administrative responsibilities and participated in various training and development programs for junior attorneys. In addition, during my period at Hogan & Hartson from 1993-2000 as an associate and partner, I served for several years

on the firm's recruitment committee and participated in training and development matters for junior attorneys. During my period at Hogan & Hartson, I also participated in numerous pro bono matters. As explained in response to question 24 below, I have devoted hundreds of hours to the pro bono representation of disadvantaged individuals, including the foster mother and a disadvantaged child seeking to terminate the rights of an abusive parent, a former federal employee seeking information under the Freedom of Information Act, and a disabled social security claimant.

For several years (1995-2000 and 2004-2005), I taught (or co-taught) a seminar on the Supreme Court at the George Washington University Law School, which is discussed in more detail in response to question 18 below. While in private practice, I also participated in moot court programs designed to improve the advocacy of those presenting cases before the Supreme Court, including moot courts in a variety of cases sponsored by the Georgetown University Law Center Supreme Court Institute and the National Association of Attorneys General. In addition, I participated in a program co-sponsored by Street Law Inc. and the Supreme Court Historical Society, which brings selected high school teachers from across the country to Washington, D.C. to educate them on how to teach their students about the Supreme Court and cases pending before it.

I have not performed lobbying activities.

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

During the spring of 2004-2005 and 1995-2000, I served as an adjunct professor (or professorial lecturer in law) at the George Washington University Law School. During those years, I taught or co-taught a seminar entitled Constitutional Law and the Supreme Court. The course focused on cases pending before the Court during each semester and considered how the Supreme Court functions as both a practical and institutional manner. Students were responsible for reading the briefs in pending cases, discussing the cases in class, and preparing draft majority and dissenting "opinions" in the cases. A copy of a syllabus from the course is attached.

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

As an employee of the Department of Justice, I participate in the Thrift Savings Plan. I also continue to participate in retirement savings plans set up by my previous employer, Hogan & Hartson LLP, but no continuing contributions are made to those plans.

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

No.

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

Please see attached SF-278.

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

Please see attached Statement of Net Worth and corresponding schedules.

23. **Potential Conflicts of Interest:**

- a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Categories of litigation that may present potential conflicts of interest issues include cases involving my former law firm, Hogan & Hartson LLP, cases involving entities in which I have a financial interest, and cases involving recent former clients from private practice. If such a potential conflict were to arise, I would consult with the appropriate Department of Justice ethics officials and determine whether a recusal from the case or other action is appropriate, as I have done as a Deputy and Assistant to the Solicitor General in evaluating potential conflicts of interests.

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

I will notify the Office of these potential conflicts and monitor filings (with the assistance of case management officials) to ensure that my participation conforms to the ethical rules. When potential conflicts of interest arise, I will consult with the appropriate Department of Justice ethics officials and determine whether a recusal from the case or other action is appropriate.

24. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of

professional prominence or professional workload, to find some time to participate in serving the disadvantaged.” Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

In my current position, I work full time for the public and my ability to work for non-government clients is severely restricted. However, in private practice I dedicated substantial amounts of time to no-fee or substantially reduced fee representations on behalf of the disadvantaged. The law firm at which I previously practiced, Hogan & Hartson, is renowned for its commitment to providing legal services to the disadvantaged – embodied by its Community Services Department – and while at Hogan & Hartson I devoted substantial efforts to the provision of such pro bono services.

For example, during my most recent period in private practice (2004-2005), I prepared a Supreme Court amicus brief on behalf of Senators Orrin G. Hatch, Edward M. Kennedy, and Dianne Feinstein in *United States v. Booker*, 543 U.S. 220 (2005). The brief reviewed the intent of Congress in enacting the Sentencing Reform Act of 1984 and Congress’s effort in the 1984 Act to eliminate racial and other disparities that had plagued the federal sentencing system before 1984 by creating an integrated and cohesive sentencing system. The amicus brief was cited and quoted by the Supreme Court in its landmark decision in *Booker*. See 543 U.S. at 257-258, 267. I devoted more than 50 hours to the preparation of that brief.

In 2005, I also undertook the Supreme Court representation of a state prisoner, Donald M. Adkins, who alleged that state correctional officials had violated his rights under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA). See *Adkins v. Kaspar*, 393 F.3d 559 (5th Cir. 2004). I was retained to file a petition for certiorari in the Supreme Court on behalf of Mr. Adkins. I devoted more than 40 hours to that task, which included multiple filings.

During my period in private practice from 1993 to 2000, I worked on numerous additional pro bono matters. For example, I prepared the briefs and presented oral argument in an appeal brought on behalf of a foster mother and a disadvantaged child seeking to allow the child’s adoption and terminate the rights of a parent who was a convicted child molester with a history of mental illness. In a path-marking family law decision, the court of appeals not only ruled in favor of our clients, the foster mother and foster child, but issued an unprecedented order directing the trial court to grant the petition for adoption. *In re application of L.L.*, 653 A.2d 873 (D.C. 1995). I devoted more than 350 hours to that representation.

I also undertook the court-appointed representation in the United States Court of Appeals for the District of Columbia Circuit on behalf of a former federal employee seeking information from a government agency under the Freedom of Information Act (FOIA). The District of Columbia Circuit ruled in favor of the employee whom I was appointed to support and reversed the dismissal of her FOIA claim. *Croskey v. U.S. Office of Special*

*Counsel*, 132 F.3d 1480 (D.C. Cir. 1997). I estimate that I devoted more than 100 hours to that representation.

I also prepared the merits brief and assisted in the preparation for oral argument (presented by Allen R. Snyder) on behalf of a disabled social security claimant in a court-appointed representation in the Supreme Court. *Forney v. Appel*, 524 U.S. 266 (1998). I estimate that I devoted more than 100 hours to that representation.

In addition to the foregoing, I participated in moot courts and advised on various pro bono matters handled by Hogan & Hartson and have participated on a pro bono basis in moot court programs sponsored by other organizations, including the Georgetown University Law Center Supreme Court Institute and the National Association of Attorneys General. I also participated in a program co-sponsored by Street Law Inc. and the Supreme Court Historical Society, which brings selected high school teachers from across the country to Washington, D.C. to educate them on how to teach their students about the Supreme Court and cases pending before it.

## FINANCIAL STATEMENT

## NET WORTH

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

ASSETS			LIABILITIES				
Cash on hand and in banks	204	276	00	Notes payable to banks-secured		0	
U.S. Government securities-add schedule		0		Notes payable to banks-unsecured		0	
Listed securities-add schedule	379	205	00	Notes payable to relatives		0	
Unlisted securities--add schedule		0		Notes payable to others		0	
Accounts and notes receivable:		0		Accounts and bills due		0	
Due from relatives and friends		0		Unpaid income tax		0	
Due from others		0		Other unpaid income and interest		0	
Doubtful		0		Real estate mortgages payable-add schedule	241	572	00
Real estate owned-add schedule	786	250	00	Chattel mortgages and other liens payable		0	
Real estate mortgages receivable		0		Other debts-itemize:		0	
Autos and other personal property	65	000	00				
Cash value-life insurance	64	220	00				
Other assets itemize:	666	648	00				
				Total liabilities	241	572	00
				Net Worth	1,924	027	00
Total Assets	2,165	599	00	Total liabilities and net worth	2,165	599	00
CONTINGENT LIABILITIES			GENERAL INFORMATION				
As endorser, comaker or guarantor		0		Are any assets pledged? (Add schedule)		No	
On leases or contracts		0		Are you defendant in any suits or legal actions?		No	
Legal Claims		0		Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax		0					
Other special debt		0					

June 30, 2008

Financial Net Worth Statement (for Gregory G. Garre) -- Schedules

<u>Listed Securities</u>	<u>Value</u>
Alcan Inc.	\$9,200
American Funds SmallCap World Fund A	\$24,354
Anne Arundel Co MD Water	\$10,393
Baltimore MD Conv'n Ctr (revenue)	\$10,275
Baltimore MD Ser A (general obligation)	\$5,312
Baltimore MD Prj Rv Balt Ser A	\$97,880
Bank of America	\$19,971
Ford Motor Co.	\$14,438
GMAC LLC (corporate bond)	\$6,600
IBM	\$24,140
Imation	\$937
MD Cmty Dev Admin Dept (revenue)	\$20,275
MD Cmty Dev Admin Dept (revenue)	\$20,323
Montgomery Cty MD Const (general obligation)	\$26,428
Novellis	\$700
Pinnacle West Cap Corp	\$10,182
Sirius Satellite Corp.	\$10,280
3M Co.	\$38,450
Starwood Hotels	\$2,453
Vodafone Group PLC	\$7,915
Visteon Corp.	\$564
Xerox Corp.	\$6,985
XM Satellite Radio Holdings Inc.	\$11,150
Total	\$379,205
<u>Other Assets</u>	<u>Value</u>
Fidelity Contrafund	\$14,434
Fidelity Growth Company	\$32,432
Fidelity Low Pr Stock	\$20,603
Fidelity Mgd Inc Port	\$30,068

Fidelity Overseas	\$42,496
Fidelity Retire Mmkt	\$116,098
Fidelity Short Term Bond	\$28,525
Hogan & Hartson Cash Balance Plan (defined benefit pension plan)	\$32,664
John Hancock Freedom 529 Money Market Portfolio	\$23,459
John Hancock Freedom 529 Portfolio 2017-2020	\$11,594
John Hancock Freedom 529 Portfolio 2021-2024	\$80,110
Legg Mason Value Trust	\$41,155
PIM Real Return Inst	\$22,388
Spartan Extnd Mkt Index	\$56,176
Spartan US Eq Index	\$59,446
Thrift Savings Plan	\$55,000
Total	\$666,648



**U.S. Department of Justice**  
Justice Management Division  
*Departmental Ethics Office*

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Washington, D.C. 20530

JUN 23 2008

Mr. Robert Cusick  
Director  
Office of Government Ethics  
1201 New York Avenue, NW  
Suite 500  
Washington, DC 20005-3919

Dear Mr. Cusick:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Gregory G. Garre, who has been nominated by the President to serve as the Solicitor General of the United States.

We have conducted a thorough review of the enclosed report. The financial conflict of interest statute, 18 U.S.C. 208, requires that Mr. Garre recuse himself from participating personally and substantially in any particular matter that has a direct and predictable effect on his financial interests or the financial interests of any other person whose interests are imputed to him, unless he first obtains a written waiver, pursuant to Section 208(b)(1), or qualifies for a regulatory exemption, pursuant to Section 208 (b)(2). Mr. Garre understands that the interests of the following persons are imputed to him: his spouse; minor children; any general partner; any organization in which he serves as an officer, director, trustee, general partner or employee; and any person or organization with which he is negotiating or has an arrangement concerning prospective employment. Mr. Garre's wife is a non-equity partner with Hogan & Hartson. She receives a fixed salary and is eligible for an annual bonus that may be affected by the firm's total revenue. Mr. Garre is a former partner in Hogan & Hartson and is covered by a vested defined benefit plan (Cash Balance Plan), and a defined contribution plan (Retirement Savings Plan), through Hogan & Hartson.

Mr. Garre agrees that he will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of Hogan & Hartson, unless he first obtains a written waiver pursuant to 18 U.S.C. 208(b)(1). In addition, Mr. Garre agrees that he will not participate personally and substantially in any particular matter which will have a direct and predictable effect on the ability or willingness of Hogan & Hartson to meet its obligations to him under the firm's defined benefit Cash Balance Plan, unless he first obtains a written waiver pursuant to 18 U.S.C. 208(b)(1). In determining whether a particular matter has a direct and predictable effect on his financial interests or on those of any other person whose interests are imputed to him, Mr. Garre will consult with Department of Justice ethics officials.

Mr. Robert Cusick

Page 2

We have advised Mr. Garre that because of the standard of conduct on impartiality at 5 C.F.R. 2635.502, he should seek advice before participating personally and substantially in a particular matter involving specific parties which he knows is likely to have a direct and predictable effect on the financial interests of a member of his household, or in which he knows that a person with whom he has a covered relationship is or represents a party. Mr. Garre agrees that he will not participate personally and substantially in any particular matter involving specific parties in which any client of his wife is or represents a party, unless he is authorized to do so pursuant to 5 C.F.R. 2635.502(d).

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

Sincerely,



Michael H. Allen  
Deputy Assistant Attorney General  
Policy, Management, and Planning and  
Alternate Designated Agency Ethics Official

Enclosure

Executive Branch Personnel Public Financial Disclosure KEVUAI

OMB No. 3209-0001

5010-106 (Rev. 05/2006)

5 CFR, Part 2634

U.S. Office of Government Ethics

Dates of Appointment, Candidacy, Election, Termination (Month, Day, Year)		Reporting Status (Check Appropriate)		Incumbent <input type="checkbox"/>		Calendar Year Covered by Report		New Entrant, Nominee, or Candidate <input checked="" type="checkbox"/>		Termination Date (If Applicable)	
Reporting Individual's Name		Last Name		First Name and Middle Initial		Department or Agency (If Applicable)		Filer <input type="checkbox"/>		Termination Date (If Applicable)	
Position for Which Filing		Title of Position		Department or Agency (If Applicable)		Telephone No. (Include Area Code)		Agency Use Only		Agency Use Only	
Location of Present Office (for forwarding address)		Address (Number, Street, City, State, and ZIP Code)		Department or Agency (If Applicable)		Telephone No. (Include Area Code)		OGE Use Only		OGE Use Only	
Position(s) held with the Federal Government During the Preceding 12 Months (If Not Same as Above)		Title of Position(s) and Date(s) Held		Department or Agency (If Applicable)		Telephone No. (Include Area Code)		Agency Use Only		Agency Use Only	
Presidential Nominee Subject to Senate Confirmation		Name of Congressional Committee Considering Nomination		Do You Intend to Create a Qualified Divested Trust?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Agency Use Only		Agency Use Only	
Certification		Signature of Reporting Individual		Date (Month, Day, Year)		Signature of Other Reviewer		Date (Month, Day, Year)		Agency Use Only	
I CERTIFY that the statements I have made on this form and all attached documents are true and correct to the best of my knowledge.		Signature of Designated Agency Ethics Official/Reviewing Official		Date (Month, Day, Year)		Signature of Designated Agency Ethics Official/Reviewing Official		Date (Month, Day, Year)		Agency Use Only	
Agency Ethics Official's Opinion		On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).		Signature		Date (Month, Day, Year)		Agency Use Only		Agency Use Only	
Office of Government Ethics Use Only		Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)		(Check box if filing extension granted & indicate number of days _____) <input type="checkbox"/>		(Check box if comments are continued on the reverse side) <input type="checkbox"/>		Agency Use Only		Agency Use Only	

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OMB/Audit/Accession Number 5010-106

NSN 7540-01-070-8444

1.02 (10/2006)

**SCHEDULE A**

Page Number  
2 of 8

Reporting Individual's Name  
Gairn, Gregory G.

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

Assets and Income	BLOCK F		BLOCK C												
	Valuation of Assets at close of reporting period		Type	Amount											
BLOCK A For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value of \$200 or more at the end of the reporting period, or which generated more than \$200 in income during the reporting period, together with such income.  For yourself, also report the source and actual amount of earned income exceeding \$200 (other than from the U.S. Government). For your spouse, report the source and actual amount of earned income of more than \$1,000 (except report the actual amount of any honoraria over \$200 of your spouse).  None <input type="checkbox"/>	BLOCK F		Type	BLOCK C											
	Valuation of Assets at close of reporting period			Amount											
	None or less than \$100,000	\$100,001 - \$500,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$500,000	Over \$500,000	Over \$1,000,000*	Over \$5,000,000	Over \$50,000,000	Other Income (Mo., Day, Yr.) Type & Actual Amount
Examples															
Central Airlines Common															
Dow Jones Smith, Hinson, Suter															
Kempstone Equity Fund															
BAI Retirement 500 Index Fund															
1 See attached															
2															
3															
4															
5															
6															

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

Prior Editions Cancelled. Be Used.

002/Adobe Acrobat version 1.0.2 (10/12/00)

Attachment for Gregory G. Garre**SCHEDULE A – For Gregory G. Garre**

<u>Assets and Income</u>	<u>Valuation</u>	<u>Income Type and Amount</u>
<u>Earned Income</u>		
None other than U.S. government salary.		
<u>Stocks, Bonds, and Mutual Funds</u>		
American Funds SmallCap		
World Fund A	\$15,000-\$50,000	EIF/\$2,501-\$5,000
Alcan Inc.	\$1,000-\$15,000	None
Anne Arundel Co MD Water	\$1,000-\$15,000	Interest/\$201-\$1,000
Baltimore MD Conv'n Ctr (revenue)	\$1,000-\$15,000	Interest/\$201-\$1,000
Baltimore MD Ser A (general obligation)	\$1,000-\$15,000	Interest/\$201-\$1,000
Baltimore MD Prj Rv Balt Ser A	\$50,000-\$100,000	Interest/\$2,501-\$5,000
Bank of America	\$15,000-\$50,000	Dividends/\$1,001-\$2,500
Ford Motor Co.	\$1,000-\$15,000	None
General Electric	Zero	Capital gain/\$2,501-\$5,000
GMAC LLC (corporate bond)	\$1,000-\$15,000	Interest/\$201-\$1,000
IBM	\$15,000-\$50,000	Dividends/\$201-\$1,000 Capital gain/\$2,501-\$5,000
Intel Corp.	Zero	Capital gain/\$1,001-\$2,500
MD Cmty Dev Admin Dept (revenue)	\$15,000-\$50,000	Interest/\$201-\$1,000
Meritor Savings Bank PA	Zero	Capital gain/\$1,000-\$15,000
Montgomery Cty MD Const (general obligation)	\$15,000-\$50,000	Interest/\$1,001-\$2,500
Pengrowth Energy Trust	Zero	Capital gain/\$201-\$1,000
Pinnacle West Cap Corp	\$1,000-\$15,000	Dividends/\$201-\$1,000
Sirius Satellite Corp.	\$1,000-\$15,000	None (or less than \$201)
3M Co.	\$15,000-\$50,000	Dividends/\$1,001-\$2,500
Starwood Hotels & Resorts	\$1,000-\$15,000	None
Vodafone Group PLC	\$1,000-\$15,000	Dividends/\$201-\$1000 Capital gain/\$2,501-\$5,000
Xerox Corp.	\$1,000-\$15,000	None (or less than \$201)
XM Satellite Radio Holdings Inc.	\$1,000-\$15,000	None (or less than \$201)
Washington Subn San Dist	Zero	Interest/\$201-\$1000

Washington Subn San Dist            \$1,000-\$15,000            Interest/\$201-\$1000

Employee Retirement Plans

Hogan & Hartson Retirement Savings Plan (defined contribution retirement plan):

Spartan US Eq Index	\$50,001-\$100,000	EIF/\$1,001-\$2,500
Fidelity Growth Company	\$15,001-\$50,000	EIF/None (or less than \$201)
Fidelity Overseas	\$15,001-\$50,000	EIF/\$2,501-\$5,000
Fidelity Low Pr Stock	\$15,001-\$50,000	EIF/\$1,001-\$2,500
Fidelity Retire Mmkt	\$50,000-\$100,000	EIF/\$201-\$1,000

Hogan & Hartson  
Cash Balance Plan            \$15,001-\$50,000            Interest/\$201-\$1,000  
(defined benefit pension plan)

Life Insurance

Fidelity Mutual Life Insurance Policy (Whole)	\$50,001-\$100,000 (cash value)	Interest/\$201-\$1,000
Paragon Life Insurance Group Universal Life	\$1,000-\$15,000 (cash value)	None (or less than \$201)

Bank and Money Market Accounts

Bank of America (Checking)	\$1,000-\$15,000	Interest/None (or less than \$201)
UBS Bank USA Deposit	\$100,001-\$250,000	Interest/\$201-\$1,000

**SCHEDULE A – For Lorane F. Hebert**

<u>Assets and Income</u>	<u>Valuation</u>	<u>Income Type and Amount</u>
<u>Earned Income</u>		
Hogan & Hartson LLP		Salary
<u>Mutual Fund</u>		
Legg Mason Value Trust	\$15,000-\$50,000	EIF/\$2,501-\$5,000

Employee Retirement Plans & 529 Plans

## Hogan &amp; Hartson Retirement Savings Plan (defined contribution retirement plan):

Spartan US Eq Index	\$1,001-\$15,000	EIF/\$201-\$1,000
Fidelity Contrafund	\$1,001-\$15,000	EIF/\$1,001-\$2,500
Fidelity Growth Company	\$1,001-\$15,000	EIF/None (or less than \$201)
Fidelity Overseas	\$1,001-\$15,000	EIF/\$2,501-\$5,000
Spartan Extn'd Mkt Index	\$15,000-\$50,000	EIF/\$2,501-\$5,000
Fidelity Mgd Inc Port	\$15,000-\$50,000	EIF/\$1,001-\$2,500
Fidelity Short Term Bond	\$15,000-\$50,000	EIF/\$1,001-\$2,500
PIM Real Return Inst	\$1,001-\$15,000	EIF/\$1,001-\$2,500
Fidelity Retire Mmkt	\$15,000-\$50,000	EIF/None (or less than \$200)

## Hogan &amp; Hartson

Cash Balance Plan (defined benefit pension plan)	\$5,001-\$15,000	Interest/None (or less than \$201)
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## John Hancock 529 Plan for Dependent Child

(college savings plan offered by the Education Trust of Alaska):

John Hancock Freedom 529 Money Market Portfolio, T. Rowe Price Summit Cash Reserve Fund	\$15,000-\$50,000	EIF/\$201-\$1,000
John Hancock Freedom 529 Portfolio 2017-2020	\$1,001-\$15,000	EIF/\$201-\$1,000
John Hancock Freedom 529 Portfolio 2021-2024	\$50,001-\$100,000	EIF/\$1,001-\$2,500

Bank and Money Market Accounts

Wachovia (Checking)	\$5,001-\$15,000	None
State Farm Insurance Bank (Money Market)	\$50,001-\$100,000	Interest/\$1,001-\$2,500

**SCHEDULE B**

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

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

Reporting Individual's Name: **Garre, Gregory G.** Page Number: **8** of **8**

**Part I: Transactions**

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

Identification of Assets

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474	475	476	477	478	479	480	481	482	483	484	485	486	487	488	489	490	491	492	493	494	495	496	497	498	499	500	501	502	503	504	505	506	507	508	509	510	511	512	513	514	515	516	517	518	519	520	521	522	523	524	525	526	527	528	529	530	531	532	533	534	535	536	537	538	539	540	541	542	543	544	545	546	547	548	549	550	551	552	553	554	555	556	557	558	559	560	561	562	563	564	565	566	567	568	569	570	571	572	573	574	575	576	577	578	579	580	581	582	583	584	585	586	587	588	589	590	591	592	593	594	595	596	597	598	599	600	601	602	603	604	605	606	607	608	609	610	611	612	613	614	615	616	617	618	619	620	621	622	623	624	625	626	627	628	629	630	631	632	633	634	635	636	637	638	639	640	641	642	643	644	645	646	647	648	649	650	651	652	653	654	655	656	657	658	659	660	661	662	663	664	665	666	667	668	669	670	671	672	673	674	675	676	677	678	679	680	681	682	683	684	685	686	687	688	689	690	691	692	693	694	695	696	697	698	699	700	701	702	703	704	705	706	707	708	709	710	711	712	713	714	715	716	717	718	719	720	721	722	723	724	725	726	727	728	729	730	731	732	733	734	735	736	737	738	739	740	741	742	743	744	745	746	747	748	749	750	751	752	753	754	755	756	757	758	759	760	761	762	763	764	765	766	767	768	769	770	771	772	773	774	775	776	777	778	779	780	781	782	783	784	785	786	787	788	789	790	791	792	793	794	795	796	797	798	799	800	801	802	803	804	805	806	807	808	809	810	811	812	813	814	815	816	817	818	819	820	821	822	823	824	825	826	827	828	829	830	831	832	833	834	835	836	837	838	839	840	841	842	843	844	845	846	847	848	849	850	851	852	853	854	855	856	857	858	859	860	861	862	863	864	865	866	867	868	869	870	871	872	873	874	875	876	877	878	879	880	881	882	883	884	885	886	887	888	889	890	891	892	893	894	895	896	897	898	899	900	901	902	903	904	905	906	907	908	909	910	911	912	913	914	915	916	917	918	919	920	921	922	923	924	925	926	927	928	929	930	931	932	933	934	935	936	937	938	939	940	941	942	943	944	945	946	947	948	949	950	951	952	953	954	955	956	957	958	959	960	961	962	963	964	965	966	967	968	969	970	971	972	973	974	975	976	977	978	979	980	981	982	983	984	985	986	987	988	989	990	991	992	993	994	995	996	997	998	
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**SCHEDULE D**

Page Number **8** of **8**

**Reporting Individual's Name**  
Garre, Gregory G.

**Part I: Positions Held Outside U.S. Government**  
Report any positions held during the applicable reporting period, whether compensated or not, in any organization or educational institution. Exclude positions with religious, fraternal, or political entities and those solely of an honorary nature.

Example	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)	None
1	Metl Assn. of Rock Collectors, N.Y. NY Doe Jones & Smith, Hometown, State	Non-profit educational	President	6/92	7/83	<input checked="" type="checkbox"/>
2						
3						
4						
5						
6						

**Part II: Compensation in Excess of \$5,000 Paid by One Source**  
Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other source.

Example	Source (Name and Address)	Brief Description of Duties	None
1	Doe Jones & Smith, Hometown, State Micro University (client of Doe Jones & Smith), Hometown, State	Legal services Larger services in connection with university construction	<input checked="" type="checkbox"/>
2			
3			
4			
5			
6			

Prior Editions Cannot Be Used.

GPO/Ashley Artistic Services 1-82 (10/10/2004)

Chairman LEAHY. Let us go to Mr. Anello. I want to mention to you that both Senator Feinstein and Senator Boxer told me of their strong support for you and that you have their support. I would ask you a similar question to what I asked Mr. Waddoups. You are already a superior court judge in San Diego, and you were a partner with the San Diego law firm of Wingert, Grebing, Anello & Brubaker and deputy city attorney. You were a captain on active duty in the United States Marine Corps, as the father of Lance Corporal Mark Patrick Leahy. That does not influence me a bit.

Judge ANELLO. I hope we did not meet back then. Did we?

Chairman LEAHY. No. He is now a former Marine. As you know, there are no ex-Marines, only former Marines. Special Courts Martial Military Judge, graduated from Bowdoin, graduated from Georgetown University Law Center, where I did. Do you have members of your family here today?

**STATEMENT OF MICHAEL M. ANELLO, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

Judge ANELLO. I do, and thank you very much, Mr. Chairman, and I also would like to express my personal appreciation to you and the other members of the Committee for having this hearing, especially at this late date in the session. I know the Senate is busy, obviously, these days, to put it mildly, and I most appreciate the opportunity to be here and appear before you today.

I do, with your permission, have folks here that I would like to introduce, if I might at this point.

Chairman LEAHY. Please do.

Judge ANELLO. Perhaps they could each stand as I announce them. First of all, my wonderful wife, Pam, who has put up with me for 35 years, is here—thankfully, I should add. We have with us also, thankfully, our three sons, starting with the oldest: Andy is here with his friend, Jane McCormick; and No. 2 son by age is Dan, he is here; and our youngest son, Chris, is here.

Also, I am pleased to have here today my sister, Diane Anello, who has also been a source of wonderful support to me over the years. And, in addition, we have her boss from the Aspen Institute, former Iowa Senator Dick Clark.

And last, but not least, we have a very—

Chairman LEAHY. I served with Senator Clark, and I did not see him there. I should have recognized that shock of white hair back there. Dick, it is always, always good to have you back here.

Judge ANELLO. And last, but not least, we have a very dear friend of ours, Liz Armstrong, from California, recently having moved to the area, and it is a pleasure to have her here today also.

Thank you.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Michael Monroe Anello

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

United States District Judge for the Southern District of California

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

Office: San Diego Superior Court  
330 West Broadway  
San Diego, CA 92101

Residence: La Jolla, CA

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

1943; Miami, Florida

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

I am married to Pamela P. Anello (formerly Pamela Wray Plummer). She has not worked outside the home during the marriage. We have no dependent children.

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

January to May 1982, University of San Diego Law School, Master of Law in Taxation Program, no degree received.

1965 to 1968, Georgetown University Law Center; J.D., June 1968

1961 to 1965, Bowdoin College; B.A., June 1965

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

1998 – present  
San Diego Superior Court  
Superior Court Judge

1973 – 1998  
Wingert, Grebing, Anello & Brubaker  
Partner in the law firm now known as Wingert, Grebing, Brubaker & Goodwin LLP

1972 – 1973  
San Diego City Attorney's Office  
Deputy City Attorney (Prosecutor)

1968 – 1972  
U. S. Marine Corps  
Captain

1966 – 1968 (Jan–May 1966, Oct 1966-May 1967, Oct-Nov 1968)  
Library of Congress  
Security Guard

June-August 1966, and June-August 1967.  
Pierson, Ball & Dowd  
Law Clerk

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

I served on active duty in the U.S. Marine Corps from November 25, 1968, to February 1, 1972, when I was honorably released from active duty as a Captain. While on active duty, I served a full tour in Vietnam from September 1969 to September 1970. After being released from active duty, I joined the U. S. Marine Corps Reserve, and ultimately retired as a Lt. Col. (USMCR) in 1990.

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.

Dean's List (all four years) and James Bowdoin Scholar Award (two years) at Bowdoin College

East Coast Regional Candidate from Bowdoin College in the 1965 Rhodes Scholarship competition (not successful)

Class Marshall for the 1965 graduating class at Bowdoin College (elected by vote of the Senior Class)

cum laude graduate of Bowdoin College

selection for law review (Georgetown Law Journal)

Military awards and honors include: National Defense Service Medal; Vietnam Service Medal; Vietnam Campaign Medal; various unit citations; and a special Certificate of Commendation from the Commanding General, Marine Corps Base, Camp Pendleton, CA, citing me meritoriously for monitoring and supervising trial of approximately 1000 general and special courts-martial as Chief Trial Counsel (Chief Prosecutor), and presiding over approximately 60 special courts-martial as Military Judge.

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

San Diego County Barrister's Club - I served as a Director of the Barrister's Club in 1976 and 1977, as its Treasurer in 1976, and as its President in 1977.

San Diego County Bar Association - I served as a Director of the Association from 1982 to 1984, and as Vice-President of the Association in 1984. I served as a County Bar Association Delegate to the annual California State Bar Convention for approximately 10 years (approx. 1975-1985).

San Diego Defense Lawyers Association - I served as a Director of SDDL in 1991 and 1992.

Enright Chapter of the American Inns of Court - I am a Master in the Enright Chapter of the American Inns of Court (presently on sabbatical), and served as the Program Chair in 1993-1994.

Association of Southern California Defense Counsel (former member)

San Diego Inn of Court - I am a former member and Work Shop Instructor of the San Diego Inn of Court.

San Diego County Bar Association Committees and Sections - I was formerly a member of, and active in, several bar association committees and study sections, including the Real Property, Appellate, Insurance, Probate, and Litigation Committees/Sections.

San Diego Superior Court Executive Committee - I am presently serving in my fourth annual term on the San Diego Superior Court Executive Committee (elected by the 128 Judges of the court). I also currently serve on the Technology and Civil Policy Committees of the San Diego Superior Court.

11. **Bar and Court Admission:**

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

District of Columbia Bar - Feb. 16, 1969,

California State Bar - June 2, 1972.

I allowed the DC bar membership to lapse when I moved to California. I remained continuously licensed in California until I was appointed to the San Diego Superior Court in June 1998 at which time I became an "inactive" member. Under the Constitution of California, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office. See California Constitution Article 6, § 9.

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

United States District Court for the District of Columbia, Feb. 16, 1968

United States Court of Military Appeals, Oct. 7, 1971

Supreme Court of the State of California, June 2, 1972

United States District Court for the Southern District of California, May 31, 1974

United States Court of Appeals for the Ninth Circuit, June 9, 1986

Supreme Court of the United States, June 23, 1986

12. **Memberships:**

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

Greater San Diego County Arthritis Foundation; member of the Board of Directors (in the approx. mid-1980's timeframe)

Muirlands Junior High School Foundation; founding member of the Board of Directors (in the approx. late 1980's timeframe)

La Jolla High School Foundation; I served on the Board of Directors in the approx. early 1990's timeframe.

La Jolla Beach and Tennis Club

Youth Sports. I served in several positions in youth sports organizations in the 1980's and 1990's, including coaching several youth baseball and soccer teams in the La Jolla Youth Recreation League, serving as a Division Director of La Jolla Youth's Soccer League, and sponsoring several teams in the Mira Mesa-Scripps Ranch and Kearney "Pop" Warner Football Leagues.

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

To my knowledge, none of the organizations in which I have served, or to which I have belonged, have ever discriminated on the basis of race, sex, or religion.

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

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

None

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

None

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

None

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

None

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

I was the subject of articles published in the following:

Los Angeles Daily Journal, March 17, 1999

"Update" published by the San Diego Defense Lawyers, Spring 1999

North County Lawyer Magazine, August 2000

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

I currently serve as a Superior Court Judge on the San Diego Superior Court, having been appointed to that position by former California Governor Pete Wilson on June 24, 1998. The Superior Court is a state court of general jurisdiction hearing all levels and types of criminal and civil matters. Judges are elected every six years. My current term expires January 16, 2013.

In or about 1971 and 1972, while serving on active duty in the U.S. Marine Corps, I served as a Special Courts-Martial Military Judge at Marine Corps Base, Camp Pendleton, CA, where I presided over approximately 60 special court-martial trials (all criminal cases, involving prosecutions under the Uniform Code of Military Justice).

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

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

As a state trial court judge, I have not written any citable appellate decisions. I have, however, authored many (approx. 75 to 100) "Tentative Decisions" or "Statements of Decision" following non-jury trials.

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

None

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

As a state court trial judge, I have been reversed in nine appellate decisions, two published and seven unpublished.

The two published decisions (with summaries) are:

(1) *Carlsbad Aquafarm, Inc. v. Department of Health Services* (2000) 84 Cal.App. 4<sup>th</sup> 809. (Plaintiff corporation grew and harvested mussels for commercial sale at its facilities in Carlsbad, California. Plaintiff alleged that defendant Department of Health Services violated its due process rights by refusing to provide a hearing before removing plaintiff from a list of approved interstate shellfish sellers. The jury agreed and awarded plaintiff monetary damages of \$290,000. Defendant appealed, contending plaintiff was not entitled to recover money damages based upon a constitutional due process violation. The court of appeal reversed the judgment, finding that plaintiff was not entitled to recover monetary damages for a constitutional due process violation.)

(2) *Morris v. Employers Reinsurance Corporation* (2000) 84 Cal.App.4<sup>th</sup> 1026. (In an insurance coverage dispute, plaintiff, as an assignee of certain rights under a real estate broker's professional liability policy, sued defendant insurer for breach of contract for failure to defend and indemnify its assignor in an underlying lawsuit. The trial court granted summary judgment to defendant insurer, concluding that there was no coverage based upon a policy exclusion for claims relating to property owned by the broker. The appellate court reversed, finding that the subject exclusion was ambiguous, and that the ambiguity should be construed against the insurer and in favor of coverage.)

The seven unpublished decisions (with summaries) are:

- (1) *Noble v. Aldred*, DO42196, issued June 7, 2004. (Plaintiff was injured while dancing in a “mosh pit” during a “punk rock” concert at defendant’s bar. Plaintiff claimed that defendant was negligent in managing the concert, and that its negligence was a cause of plaintiff’s injury. The jury rendered its verdict in favor of defendant. Plaintiff claimed on appeal that the trial court had erred in excluding an audio recording from evidence, and that it had improperly rushed the jury to its verdict. The appellate court agreed, and reversed the judgment and ordered a new trial.)
- (2) *Moore v. San Diego Cemetery Ass’n*, DO42196, issued June 25, 2004. (Plaintiff sued defendant for negligence and breach of contract in connection with a written contract for funeral arrangements. The contract contained an arbitration provision, and defendant moved to compel arbitration pursuant thereto. Based upon affidavits from plaintiff and her husband that defendant’s representative agreed the arbitration provision would not be binding on them, the trial court denied the motion to compel arbitration. Defendant contended on appeal that the contract was not ambiguous and that extrinsic evidence (i.e., the Moore’s affidavits) should not have been admitted to vary or alter its terms. The appellate court agreed that the Moore’s affidavits should not have been admitted, and reversed and remanded for further proceedings.)
- (3) *Morris v. Employers Reinsurance Corporation*, DO40993, issued Jan. 5, 2004. (In an insurance coverage dispute, plaintiff, as an assignee of certain rights under a real estate broker’s professional liability insurance policy, sued defendant insurer for failing to defend and indemnify the assignor in an underlying lawsuit. After a non-jury trial, the trial court entered judgment in favor of defendant insurer on the ground that even though there may have been an initial breach of duty under the subject policy, plaintiff could not establish an entitlement to any compensatory damages. Plaintiff contended on appeal that the trial court failed to give appropriate value to the settlement in the underlying lawsuit. The appellate court agreed and reversed and remanded for further proceedings.)
- (4) *Kuebler v. McCambridge*, DO35812, issued May 3, 2001. (Plaintiff sued defendant for declaratory relief regarding the proper interpretation of the Mobilehome Residency Law and the City of Escondido’s rent control ordinance in connection with plaintiff’s sale of his mobilehome. Defendant then filed a cross-complaint against plaintiff seeking punitive damages for alleged violations of the Mobilehome Residency Law. Both the complaint and the cross-complaint were ultimately dismissed, and plaintiff then moved for an award of attorneys fees contending he was the “prevailing party.” The trial court awarded attorneys fees to plaintiff, and defendant appealed contending that plaintiff was not the “prevailing party.” The appellate court agreed, and reversed the attorney fee award.)
- (5) *Garces v. Cannon Pacific Services*, DO44540, issued Oct. 5, 2005. (Plaintiffs sued defendant for violation of overtime laws, contending they were

common law “employees” and not “independent contractors.” After a non-jury trial, the trial court entered judgment in favor of defendant. Plaintiffs appealed, contending that the evidence presented led to a reasonable inference that they were employees, and not independent contractors. The appellate court agreed, and reversed and remanded for further proceedings.)

(6) *Citizens for Better Rancho Santa Fe Schools v. Rancho Santa Fe School District Board of Trustees*, DO47210, issued April 20, 2006. (Plaintiff sued defendant to enjoin it from proceeding with plans to develop and construct a new school within the covenant area of Rancho Santa Fe. Defendant demurred to the complaint, contending that plaintiff could not establish the necessary predicate of waste of public funds or illegal expenditures of public money. The trial court sustained the demurrer without leave to amend, and dismissed the complaint. Plaintiff appealed, contending it had adequately stated a cognizable claim. The appellate court agreed, and reversed the judgment of dismissal.)

(7) *Pender v. Waldenmayer*, DO44781, issued August 2, 2005. (Plaintiff sued defendant developers for alleged breach of an agreement to make certain improvements on a private road which abutted her residence. During the non-jury trial, at the conclusion of plaintiff’s case in chief, the trial court granted defendants’ non-suit motion and entered judgment for defendants. Plaintiff appealed, contending she had presented sufficient evidence to make a prima facie showing of the elements of her claim, and that the non-suit motion should not have been granted. The appellate court agreed, and reversed the non-suit and remanded the case for trial.)

I have been affirmed in part, and reversed in part, in eight appellate decisions, two partially published, and six unpublished.

The two partially published decisions (with summaries) are:

(1) *Hogar v. Community Development Commission of the City of Escondido* (2003) 110 Cal.App.4<sup>th</sup> 1288. (Plaintiff sued defendant claiming the city was not paying sufficient funds into the low-income housing fund as required under the Community Development Law. After a non-jury trial, the trial court applied the “delayed discovery” rule and ordered reimbursement by the city of amounts that should have been paid into the fund from the date it was established until the date of trial. Defendant appealed, contending the “delayed discovery” rule was not applicable, and that reimbursement should be ordered only for amounts that accrued within the three-year limitations period under the applicable statute of limitations. The appellate court agreed, holding that under the unique facts of this case the “delayed discovery” rule was not available, and reversed the judgment in part and remanded for determination of how much reimbursement was required.)

(2) *Gober v. Ralphs Grocery Company* (2006) 137 Cal.App.4<sup>th</sup> 204. (Plaintiffs sued defendant for failing to take reasonable steps to prevent a

supervisor from sexually harassing them. After a jury awarded Plaintiffs both compensatory and punitive damages, the trial court denied defendant's motion for judgment notwithstanding the verdict, but conditionally granted defendant's motion for new trial on the ground that the punitive damages were excessive. On appeal, the appellate court reversed the order denying defendant's motion for JNOV, and remanded to the trial court with directions that the punitive damages be further reduced.)

The six unpublished decisions (with summaries) are:

- (1) *Pinho v. Lobo*, DO42669, issued June 4, 2004. (In a third party lawsuit against Pinho and others, Pinho cross-complained against Lobo for defamation, interference with business relations, and conversion. Lobo moved to strike the cross-complaint under California's anti-SLAPP statute (CCP § 425.16), which allows for early dismissal of an action determined to be a strategic lawsuit against public participation. The trial court denied the motion, and Lobo appealed, contending that the anti-SLAPP statute did apply. The appellate court agreed that it applied to certain of her claims, and affirmed in part, and reversed in part, and remanded for further proceedings.)
- (2) *Brumfield v. Richardson*, DO36348, issued Feb. 19, 2002. (Plaintiffs sued defendant veterinarian for alleged veterinary malpractice in treating their horse. During the jury trial, the court dismissed plaintiffs' claims for fraud and breach of contract, but allowed the veterinary malpractice claims to go to the jury. The jury rendered its verdict in favor of the defendant. The plaintiffs appealed, contending that it was error for the trial court to dismiss their fraud and breach of contract claims. The appellate court agreed that there was some evidence of alleged fraud (i.e., alleged misrepresentation of veterinarian experience), and that the fraud claim should have been allowed to go to the jury. The appellate court affirmed in part, and reversed in part, and remanded for a new trial on the fraud claim.)
- (3) *Moore v. Orthodontic Centers of America, Inc.*, DO35808, issued Jan. 11, 2002. (Plaintiff sued defendant seeking to compel it to agree to his purchase of an OCA affiliated orthodontic practice, and defendant cross-complained against plaintiff alleging breach of contract and fraud. After a jury trial on the cross-complaint, a substantial monetary verdict was rendered in favor of OCA and against Moore. Moore appealed, contending that the underlying contract was unenforceable, and that there was insufficient evidence to support the verdict. The appellate court concluded that certain portions of the contract were unenforceable, but that those provisions could be severed from the subject contract, and that the balance of the agreement could be enforced upon retrial. )
- (4) *Argonaut Great Central Insurance Co. v. St. Mar Enterprises*, DO34787, issued June 5, 2001. (This complicated matter involved three appeals from defense verdicts and subsequent denials of post-judgment motions in an insurance subrogation action and a cross-action, both of which arose out of a fire at an

Escondido shopping mall. After considering various claims of error at trial, the appellate court reversed the portion of the judgment in favor of St. Mar on Argonaut's complaint and Zurich's complaint-in-intervention, and affirmed the portion of the judgment in favor of Cole on St. Mar's cross-complaint.)

(5) *Gandy v. Asplundh Tree Expert Co.*, DO43307, issued Oct. 20, 2005. (Plaintiff sued defendant for cutting down and removing trees from its property without its consent. After a jury trial, a verdict was rendered in favor of plaintiff and against defendant in the amount of \$475,000. Plaintiff then sought, in post-trial motions, to treble or double the award pursuant to applicable statutes. The court doubled the award, and both parties appealed. Plaintiff contended that treble damages were appropriate, whereas defendant contended that the entire verdict should be overturned due to certain alleged errors at trial. The appellate court agreed that treble damages were appropriate, and reversed that portion of the judgment, but affirmed the judgment in all other respects.)

(6) *Shuster v. Hilton*, DO45249, issued Jan. 18, 2006. (Plaintiff sued defendant for fraud and breach of contract, among other things, arising out of a failed business relationship involving the manufacture and sale of helicopters. The defendant cross-complained against plaintiff for the alleged non-payment of various loans. The complaint was tried to a jury, resulting in a verdict in favor of plaintiff Shuster in the amount of \$312,706. The cross-complaint was then tried to the court, sitting without a jury, which resulted in a net recovery to defendant Hilton after all set-offs were applied. Both parties appealed. The appellate court found that the law of set-off was incorrectly applied, and reversed the judgment to that limited extent, but affirmed the judgment in all other respects.)

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

As a state trial judge, I have not issued any appellate opinions, published or unpublished. All appellate opinions reversing, or reversing in part and affirming in part, my trial court decisions are listed and summarized in the answer to Question 15 c above.

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

As a trial court judge, I have not authored any appellate opinions. However, I have authored approximately 75 to 100 written "Tentative Decisions" and "Statements of Decision" following non-jury trials. Those written decisions are filed by case name and number in the court clerk's office or are in storage. In addition, I maintain copies of those written decisions, which can be provided upon request.

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

None

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
  - b. a brief description of the asserted conflict of interest or other ground for recusal;
  - c. the procedure you followed in determining whether or not to recuse yourself;
  - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

Our court does employ a form of "automatic" recusal system pursuant to which each judge provides the court clerk's office with a list of attorneys (e.g., former partners or good friends) and parties (e.g., former clients) whose cases the judge deems it inappropriate to hear due to actual or potential conflicts of interest. That list is incorporated into our court's initial case assignment system, and, if it works properly, no case involving any of those persons or entities is assigned to that judge. Should such a case be assigned to me, or if I subsequently determine that there is a real or apparent conflict of interest, or some other ground to recuse myself, I voluntarily, on my own motion, recuse myself at that point.

In addition, California has a "peremptory" challenge procedure (set forth in Cal. Code of Civ. Proc. § 170.6) which allows, within a specified time frame, each party to exercise one "peremptory" challenge of the judge assigned to the case (exercised by signing and filing a peremptory challenge form which is then automatically granted by the judge) without stating any reason other than that "the party or attorney cannot or believes that he or she cannot have a fair and impartial trial or hearing before the judge." Accordingly, many cases are routinely reassigned either without the judge's knowledge or based upon a "peremptory" challenge which is automatically granted, and there is no practical way to compile a list of those cases and parties.

California also has a "for cause" challenge or disqualification procedure (set forth in Cal. Code of Civ. Proc. § 170.3) which permits a party to file a motion requesting disqualification for cause (which "shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification").

The only instance I can recall in which a party filed such a motion to disqualify me was in or about February 2002 in the case of *Gober, et. al., v. Ralphs Grocery Company* (San Diego Superior Court Case No. N72141). The motion to disqualify in that case was filed long after I had made several pretrial rulings with which the attorney filing the motion (Plaintiffs' counsel) obviously disagreed. Although the stated reason for the disqualification motion was that I was allegedly "biased" or "prejudiced" against that party and/or its attorneys, it was clear that the motion was motivated simply by disagreement with prior rulings, and it was summarily denied as being without legal basis.

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

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

None

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

None

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

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

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

I did not serve as a clerk to a judge.

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

I have not practiced alone.

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

1998 – present  
 San Diego Superior Court  
 Central Division (Hall of Justice)  
 330 W. Broadway  
 San Diego, CA 92101  
 Superior Court Judge

1973 – 1998  
 Wingert, Grebing, Anello & Brubaker  
 (now known as Wingert, Grebing, Brubaker & Goodwin LLP)  
 600 W. Broadway, 7th Floor  
 San Diego, CA 92101  
 Partner

1972 – 1973  
 San Diego City Attorney's Office  
 1200 Third Ave., Suite 1620  
 San Diego, CA 92101  
 Deputy City Attorney (Prosecutor)

1968 – 1972; United States Marine Corps

b. Describe:

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

Except for a brief time as a prosecutor with the San Diego City Attorney's Office, my entire civilian career as a lawyer (1973 to 1998) was spent in a civil litigation law firm. During my first few years with the firm, I did some criminal defense work, and handled a substantial number of family law and probate matters. Later on, I was involved primarily in civil litigation matters, with an emphasis on real estate, insurance, business and professional liability matters. I also became the firm's appellate specialist, and records from the California Court of Appeal, 4<sup>th</sup> Appellate District, should confirm that I appeared on more than 50 matters before that court.

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

Typical clients were real estate brokers, mortgage brokers, small builders and developers, insurance companies and their insureds, small business

owners, and attorneys and other licensed professionals.

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

As an attorney/partner in a civil litigation firm for 25 years, the great majority of my practice was in litigation. Since most of my matters dealt with real estate, business, insurance, professional liability, and appellate work, however, I did not appear in court as frequently as some of my partners who were more involved in personal injury, construction defect, and other matters which seemed to require more frequent trials and court appearances. Although it's difficult to quantify, I would still describe my court appearances as "frequent" rather than "occasional."

- i. Indicate the percentage of your practice in:

- |                            |     |
|----------------------------|-----|
| 1. federal courts:         | 2%  |
| 2. state courts of record: | 98% |
| 3. other courts.           |     |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 95% |
| 2. criminal proceedings. | 5%  |

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

While in the U.S. Marine Corps, I tried literally hundreds of courts-martial cases, all of which were criminal cases, and approximately one-third of which were jury trials. As a Deputy City Attorney (Prosecutor), I tried approximately 20 misdemeanor criminal trials, approximately half of which were jury trials. While in private practice, I tried approximately 60 to 80 civil cases, approximately 15 of which were jury trials to verdict.

- i. What percentage of these trials were:

- |              |                   |
|--------------|-------------------|
| 1. jury:     | approximately 33% |
| 2. non-jury: | approximately 67% |

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

I have never practiced before the Supreme Court of the United States.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

(1) United Services Automobile Ass'n v. Cavanaugh (San Diego Superior Court Case No. 582128).

This matter resulted in a 6-day court trial before the Hon. J. A. Kilgarif (now deceased) in July 1988. It was a declaratory relief action filed by an insurance company (USAA) seeking a determination that it had no duty to defend or indemnify its insured (Evanna Cavanaugh) in an underlying wrongful death action brought against her by the heirs of a person she had shot and killed.

I represented USAA, and Mrs. Cavanaugh and the decedent's heirs were represented by Glen R. McAllister (now with the San Diego District Attorney's Office, 250 East Main Street, El Cajon, CA, phone 619-441-4239).

The trial was interesting and unusual in that it resembled the trial of a homicide case. To establish that the killing was not an "accident" (and/or an act of self-defense), we attempted to "reconstruct" the incident in the courtroom using a mock-up of the room where the shooting occurred, and a demonstration (using laser beams to show bullet paths) by a renowned criminalist. Sophisticated blood-spatter analysis was also used, along with voice analysis and audio tape enhancement of a portion of the recorded conversation of the victim just before the shooting. A representative of the County Coroner testified as to his autopsy findings (e.g., bullet paths, entry and exit wounds, which shot was likely to have caused death, etc.), and two psychiatrists testified as to the mental state (including intent) of the victim and the shooter.

In a judgment entered on August 25, 1988, the Court found that there was no coverage for the subject claims, and thus no duty to defend or indemnify the insured, because the shooting was intentional (i.e., not an "accident" and not an act of self-defense). The judgment was subsequently appealed (to the California Court of Appeal, 4<sup>th</sup> Appellate District, Civil No. D009071), and, in an opinion filed January 18, 1991, the judgment was affirmed. A subsequent Petition for Review was denied by the California Supreme Court.

- (2) Devin v. United Services Automobile Ass'n (San Diego Superior Court Case No. N38806).

This was an insurance "bad faith" action filed against USAA by its insureds for failing to defend and indemnify them in an underlying lawsuit brought against them by the disgruntled buyer of their home (who alleged misrepresentation and non-disclosure of defects).

I represented USAA, and the plaintiffs were represented by David J. Noonan, Esq., of the firm of Kirby, Noonan, Lance & Hoge LLP (600 West Broadway, Suite 1100, phone 619-231-8666).

On the fourth day of a jury trial, after the plaintiffs rested, the court granted a motion for non-suit on behalf of USAA on the ground that an alleged misrepresentation in the sale of real estate is not an "occurrence" triggering coverage under a liability policy. The judgment was subsequently appealed (Fourth District Court of Appeal No. D011407) and affirmed in a published decision on May 22, 1992, cited at 6 Cal.App.4<sup>th</sup> 1149 (another firm handled the appeal). A subsequent Petition for Review to the California Supreme Court was denied.

At the time this matter went to trial, there were no California cases directly on point, and the coverage issue was unresolved. There were several similar cases in the pipeline and both the insurance industry and the real estate industry were anxiously awaiting a resolution. Subsequent appellate opinions have followed this case, which is often cited for the proposition that a misrepresentation in a real estate transaction is not an "occurrence" for the purposes of triggering coverage under a liability policy.

- (3) Norman v. Fleener (San Diego Superior Court Case No. N32449).

This was a 6-day jury trial before the Hon. Franklin J. Mitchell (now retired) in March 1990. It was a personal injury action filed by a bicycle rider struck from the rear by a motorist on Via de la Valle in Del Mar, CA, near the Del Mar Racetrack.

I represented the Fleener defendants (owners of property abutting the accident scene). Plaintiff was represented by Charles Kavalaris, Esq., of San Jose, CA (according to a recent attorney directory, now located at 1099 N. 4<sup>th</sup> St., San Jose, CA, phone 408-971-3226). The City of Del Mar was represented by Neal S. Meyers of the firm of Daley & Heft (462 Stevens Ave., Suite 201, Solan Beach, CA 92075, phone 858-755-5666). The motorist (Michael Engle) did not appear, and his default was taken.

The theory of liability asserted against my clients (the Fleeners) was that the alleged negligent maintenance of their property (which abutted the accident site) was a proximate cause of the accident. Specifically, it was alleged that dirt and debris eroded out onto the roadway (across the bike path) causing the plaintiff to have to swerve outside the bike path when she was struck and injured by a passing motorist. The Fleeners denied any

negligence, and presented evidence that the erosion, if it did contribute to the accident, was caused by another landowner.

The jury came back with a defense verdict in favor of the Fleeners and the City of Del Mar. Plaintiff then proved up a default judgment against the motorist. There was no appeal.

(4) Marincovich v. Cattedra (San Diego Superior Court Case No. 626513).

This was a 2-day court trial before the Hon. Jeffrey T. Miller (now sitting on the U.S. District Court for the Southern District of California) in October 1991. It was essentially a very heated boundary dispute between two neighbors. Among other things, the Marincoviches claimed the right to a prescriptive easement across a portion of the Cattedra's property. The Cattedras claimed that certain improvements constructed by the Marincoviches encroached on their property.

I represented the Cattedras. The Marincoviches were represented by Donald Merkin, Esq. (now located at 4747 Morena Blvd., Suite 302, San Diego, CA 92117, phone 858-454-3244).

In a judgment entered January 23, 1992, the court denied the Marincoviches' easement claim, and ordered them to remove certain encroaching improvements and to pay a monetary judgment, plus costs, to the Cattedras.

(5) Hambrick v. Bharadwaja (San Diego Superior Court Case No. 624794).

This was an 8-day jury trial before the Hon. G. Dennis Adams (now retired) in January 1992. It was a personal injury (product liability and premises liability) case resulting from a severe lacerating injury to the plaintiff's arm caused by the shattering of a glass shower door.

I represented the defendant landlord (Bharadwaja and the Mauryan Condominium HOA). Co-defendant Guardian Industries, Inc. (the manufacturer of the glass shower door panel) was represented by Charles H. Dick, Jr., Esq. of the firm of Baker & McKenzie (101 West Broadway, Suite 1200, San Diego, CA 92101, phone 619-235-7790). Plaintiff was represented by David G. Ronquillo, Esq. (3033 Fifth Avenue, Suite 425, San Diego, CA 92103, phone 619-294-7474).

The jury returned a defense verdict in favor of my clients, and awarded money damages against Guardian Industries. There was no appeal.

(6) Simms v. Love (San Diego Superior Court Case No. 627578).

This was a 6-day jury trial before the Hon. J. Richard Haden (now retired) in January and February 1992. It was essentially a misrepresentation, non-disclosure claim brought by the buyer (Sims) against the broker (Love) and the seller (Richardson).

I represented the real estate agent (Chris Love) and her then-broker (Willis M. Allen Co.). Plaintiff was represented by Richard R. Leuthold, Esq. (now at 12625 High Bluff Drive, Suite 303, San Diego, CA, phone 858-792-7070). The seller (Richardson) was not represented, and was ultimately dismissed from the case.

Expert witnesses were called by both sides on the subject of the broker's standard of care with respect to the non-disclosure claim. There was also an allegation that the real estate agent forged signatures on certain documents, and questioned-document examiners were called to testify on that subject.

The jury returned a defense verdict on all claims. There was no appeal.

(7) United Services Automobile Ass'n v. Anderson (San Diego Superior Court Case No. EC003461).

This was a 3-day jury trial before the Hon. James Malkus (now retired) in June 1992. It was essentially a declaratory relief action in which an insurance company (USAA) sought a determination that it had no duty to defend or indemnify its insured (Anderson) in an underlying action brought against him for assault and battery.

I represented United Services Automobile Ass'n. Defendant Anderson was represented by Elliott N. Kanter, Esq. (now at 2445 Fifth Avenue, Suite 350, San Diego, CA 92101, phone 619-2321-1883). The victim of the alleged assault (Teresa Anne Meno) was represented by William O. Dougherty, Esq. (now at 2550 Fifth Avenue, Suite 617, San Diego, CA 92103, phone 619-232-9131).

An usual aspect of this case was the submission to the jury (by a lengthy special verdict form containing 31 questions) of all possible factual issues upon which the ultimate coverage determination might be made. Based upon the jury's answers to those questions, the court had no choice but to find that there was no coverage, and thus no duty to defend or indemnify, and judgment was entered in favor of USAA. There was no appeal.

(8) Royston v. Nelson (San Diego Superior Court Case No. 642267).

This was a 3-day binding arbitration (by stipulation) before the Hon. William Yale (retired) in 1993. It was essentially a misrepresentation/non-disclosure case, brought by the dissatisfied buyer (Royston) of a luxury ocean-view home in La Jolla against the

sellers (Mr. and Mrs. Douglas Allred) and the listing broker (Andrew Nelson and Willis M. Allen Co.)

I represented the broker (Nelson and Willis M. Allen Co.). The plaintiff/buyer (Royston) was represented by Brian L. Forbes, Esq. of the firm now known as DLA Piper US LLP (401 B Street, Suite 1700, San Diego, CA 92101, phone 619-699-3642). The sellers (the Allreds) were represented by Mark Smith, Esq., of the firm of Latham & Watkins LLP (600 West Broadway, Suite 1800, San Diego, CA 92101, phone 619-236-1234).

The primary claim here related to prospective view impairment, and consequent diminution in value, as a result of the plans of the neighbor across the street (to the West) to construct a second-story addition on his house, which would potentially block or eliminate Royston's ocean view. It was alleged that the sellers and the broker knew of the impending construction, and should have disclosed that knowledge to the Roystons when they purchased their house. Royston claimed the loss of his view would diminish the value of his property by \$2,000,000, or more, and he sought either damages in that amount or rescission.

Defendants denied any prior knowledge of the neighbor's building plans, and thus denied liability. In order to address the damages claim, however, out of an abundance of caution, we retained experts (computer simulation expert, architect, surveyor, etc.) to create a computer-generated simulation (in glossy, color photo format) to show what the neighbor's project would look like if built, and what the impact would be, if any, on Royston's view. The simulation showed, in a persuasive and virtually undeniable manner, that the view impairment would be minimal.

In exercising his wide discretion as an arbitrator, Judge Yale awarded \$25,000 to the plaintiffs, finding that the brokers could have been a little more careful with their due diligence, but agreeing that the damages were minimal. By stipulation, the arbitration was binding, and there was no appeal.

(9) Burroughs v. Heater (San Diego Superior Court Case No. 593572).

This was a malicious prosecution action brought against Henry E. Heater and his law firm (Endeman, Lincoln, Turek & Heater LLP) by former limited partners of a mobile home park who had been sued by Mr. Heater in an underlying action on behalf of tenants of the mobile home park.

I was retained by their insurance carrier (Lawyer's Mutual) to represent Mr. Heater and his law firm. Charles W. Rees, Jr., Esq. (now retired), formerly of the firm of Higgs, Fletcher & Mack LLP (401 West A Street, Suite 2600, San Diego, CA 92101, phone 619-236-1551) was associated in as personal counsel for Mr. Heater. Plaintiffs were represented by Dennis E. Golub, Esq., of the Los Angeles firm of Gustlin, Golub & Bragin (according to a recent attorney directory, the firm of Golub Bragin & Sassoe is

now located at 1990 S. Bundy Drive, #540, Los Angeles, CA 90025, phone 310-979-0321).

In the underlying action (filed in Contra Costa County), the limited partner defendants (plaintiffs in this action) had their demurrer sustained, with leave to amend, on the ground that limited partners ordinarily have no personal liability for claims against a limited partnership. Rather than amend, however, and in return for other concessions, Mr. Heater elected to dismiss the underlying complaint against the limited partners. They then filed the instant action for malicious prosecution.

The primary issue was whether Mr. Heater's clients had a "tenable claim" against the limited partners at the time the underlying action was filed (i.e., was there reasonable or probable cause to sue them). Mr. Heater's investigation revealed that these limited partners had been "bought out" shortly before, and had thus received a return of some portion of their capital investment. His research indicated that limited partners could be sued to recover the amount of any capital distributions made to withdrawing limited partners. Accordingly, Mr. Heater felt that his clients did have a "tenable claim" and did have "probable cause."

We filed a summary judgment motion on behalf of Mr. Heater and his firm on that basis. The motion was granted, and judgment was subsequently entered, by the Hon. James R. Milliken (now retired) on October 28, 1988. The judgment was subsequently appealed (California Court of Appeal, 4<sup>th</sup> Appellate District, No. D009014) and the summary judgment was reversed in an unpublished opinion issued on January 25, 1990. The case was then reset for trial, and it ultimately settled for a nominal amount.

(10) Griffin v. Milwaukee Electric Tool Corp. (San Diego Superior Court Case No. 642976).

This was a personal injury/products liability case brought by a construction worker (plumber) who incurred a permanently disabling injury to his right (dominant) arm and elbow while working on a construction site.

I represented the plaintiff (Franklin Griffin). Defendant Milwaukee Electric Tool Corp. was represented by Robert W. Harrison, Esq. (now with the firm of Koeller, Nebeker, Carlson & Haluck, at 225 Broadway, 21<sup>st</sup> Floor, San Diego, CA 92101, phone 619-233-1600) and by Kris B. Thompson, Esq. (now with the firm of Thompson & Alessio, LLP, at 2550 Fifth Avenue, Suite 600, San Diego, CA 92103, phone 619-233-9100). Defendant J.L. Construction Co., the general contractor, was represented by Scott M. Bonesteel, Esq. (now with the firm of Summers & Shives, APC, at 8755 Aero Drive, Suite 230, San Diego, CA 92123, phone 858-874-1800). Defendant S.R. Bray, dba Temporary Utility Services, was represented by William P. Volk, Esq. (now with the firm of Campbell, Volk & Lauter, a 5040 Shoreham Place, Suite 150, San Diego, CA 92122, phone 858-546-1122).

The injury was caused by the sudden twisting action of a high-powered electric drill (Milwaukee "Hole Hawg" drill) when power to the site was interrupted and then suddenly restored. Experts retained by the plaintiff testified that the drill was unreasonably dangerous, and that the risk of injury could have been reduced or eliminated if the drill had been designed and manufactured with a "slip clutch" (or other torque-limiting safety device) similar to what is provided in other competing brands of electric drills. Defendants' experts disagreed, and contended that the tool was reasonably designed and reasonably safe if used properly.

Defendant Milwaukee Electric Tool Corp. brought a motion for summary judgment just prior to the scheduled trial date, which was granted by the Hon. Lawrence Kapiloff (now retired). We then appealed that judgment (California Court of Appeal, 4<sup>th</sup> Appellate District, No. D018696), and Judge Kapiloff stayed the action against the remaining defendants pending resolution of that appeal. The summary judgment was reversed on appeal, and the matter was subsequently settled (for a relatively nominal amount) prior to trial.

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a Superior Court Judge for the last 10 years, I have presided over more than 200 trials, including approximately 10 felony criminal jury trials, approximately 60 to 80 civil court trials, and well over 100 civil jury trials. I have also been involved in court administration, having been elected to four terms on the court's Executive Committee, and having served on several standing court committees (including the Technology Committee and the Civil Policy Committee).

In private practice, in addition to my trial work, I also became the appellate specialist in my former law firm, and in that capacity I handled all of our firm's appellate work for approximately fifteen (15) years. I handled approximately 50 or more matters before the Fourth Appellate District of the California Court of Appeal over that time frame.

During my 25 years in private practice, I was active in many bar related activities, including various bar committees and study sections. I served in various leadership positions in the San Diego Barrister's Club (Director and President), the San Diego County Bar Association (Director and Vice-President), the San Diego Defense Lawyers Association (Director), and the Enright Inn of Court (Master and Program Chair).

Before going into private practice, I served in various legal capacities in the U.S. Marine Corps for over three years, including legal assistance officer, defense counsel, trial

counsel, and ultimately Military Judge. At Marine Corps Base, Camp Pendleton, shortly after returning from my tour in Vietnam, I was appointed as Chief Trial Counsel (i.e., Chief Prosecutor), and in that capacity I supervised the trial of approximately 1000 general and special courts-martial. Thereafter, I was appointed as a Special Courts-Martial Military Judge, and in that capacity I presided over approximately 60 special court martial trials.

I have never performed any lobbying activities, whether on a pro bono basis or otherwise, for any individuals or organizations.

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

Other than occasionally serving as a Work Shop Instructor for programs put on by the San Diego Inn of Court some years ago while I was in private practice, I have not taught any courses or produced any course syllabi.

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

With the exception of my military reserve retirement annuity (currently approx. \$1100 per month), and social security benefits for which I will become eligible at age 66, and potential retirement benefits (depending upon when I retire) accrued in connection with my judicial service on the San Diego Superior Court, I have no deferred income arrangements, or any similar entitlement to income payments or other benefits as contemplated by this question.

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

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court, if confirmed.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other

items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

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

See attached Net Worth Statement

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include cases involving my former law partners; cases involving any companies based upon my and my spouse's actual or potential financial interest; any case involving the tenants of my rental property, or otherwise arising out the ownership or management of that property; and any cases involving anyone I deem to be a personal friend.

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

As a state court judge for approximately ten (10) years, I have been careful to avoid actual or potential conflict-of-interest issues. With regard to the concerns referenced above, my present practice is to: (1) provide a list of all persons and entities as to which there may be a conflict of interest to the person (or case management program) charged with assignments so that no case involving those persons or entities would be assigned to me; and (2) personally review all new cases as they come in to ascertain whether there are any actual or potential conflicts. If I am confirmed as a United States District Judge, in all cases I would be guided by the Code of Conduct for United States Judges and all applicable statutes, policies and procedures.

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

As part of the mission of my former Marine Corps military reserve unit, I regularly provided free legal assistance to needy service members at local military bases, particularly including Marine Corps Recruit Depot, San Diego, and Marine Corps Base, Camp Pendleton. As a former member of the San Diego County Bar Association's Volunteer Lawyer Program, I provided legal assistance to indigent individuals as part of the mission of that program. I also provided representation on a pro bono basis to several juveniles in juvenile court as a result of referrals from local schools and family acquaintances. I also handled a few agency adoptions on a pro bono basis, again as a result of referrals from other attorneys and family acquaintances.

In addition, I found opportunities to provide pro bono legal services to deserving individuals and organizations from time to time during my 25 years or so in my law practice. For example, I provided legal services to the Greater San Diego Arthritis Foundation for several years, and as a founding member of the Muirlands Junior High School Foundation I organized the new entity as a non-profit corporation and obtained its tax-exempt status. As another example, although I was not a member of that church, I assisted a new church congregation (Hope United Methodist Church in Rancho Bernardo, CA) in forming its non-profit corporation and obtaining its tax-exempt status.

**28. Selection Process:**

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

There is a federal judicial selection commission in California (under the direction of Gerald Parsky). Each federal judicial district in California has a bipartisan judicial selection committee composed of 6 members (3 appointed by the administration and 3 appointed collectively by Senators Feinstein and Boxer). I submitted my written application to the local Southern District selection committee, and was personally interviewed by the members of that committee. It is my understanding that the committee then recommended me unanimously for consideration by the President for nomination to the U.S. District Court for the Southern District of California. I was invited to the White House Counsel's Office for an interview on February 20, 2008, at which time I met with staff from the White House Counsel's Office and from the Department of Justice. Since that time, I have had conversations with staff from the Department of Justice regarding nomination paperwork and the process in general. After completion of all the pre-nomination paperwork, my nomination was submitted to the United States Senate on April 30, 2008.

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

No one involved in the process of selecting me as a judicial nominee discussed with me any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

AO 10  
Rev. 1/2006

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Anello, Michael M	2. Court or Organization California, Southern District	3. Date of Report 5/2/2008
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 4/30/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2007 to 4/15/2008
7. Chambers or Office Address San Diego Superior Court 330 West Broadway San Diego, CA 92101	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	
<p><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.</p>		

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

NONE (No reportable positions.)

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

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. _____	_____
2. _____	_____
3. _____	_____

**FINANCIAL DISCLOSURE REPORT**  
Page 2 of 6

<b>Name of Person Reporting</b> Anello, Michael M	<b>Date of Report</b> 5/2/2008
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**III. NON-INVESTMENT INCOME.** (Reporting individual and spouse; see pp. 17-24 of instructions.)

**A. Filer's Non-Investment Income**

NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2008	San Diego Superior Court, salary	\$ 59,596
2. 2007	San Diego Superior Court, salary	\$ 175,218
3. 2006	San Diego Superior Court, salary	\$ 154,320
4.		
5.		

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

NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	
2.	
3.	
4.	
5.	

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

NONE (No reportable reimbursements.)

<u>SOURCE</u>	<u>DESCRIPTION</u>
1. EXEMPT	
2.	
3.	
4.	
5.	

**FINANCIAL DISCLOSURE REPORT**  
Page 3 of 6

<b>Name of Person Reporting</b> Anello, Michael M	<b>Date of Report</b> 5/2/2008
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**V. GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	EXEMPT		
2.			
3.			
4.			
5.			

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

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	USSA Savings Bank	Credit Card	J
2.	American Express	Credit Card	J
3.	Citibank	Credit Card	J
4.	Chase Home Finance	Rental Property Mortgage	N
5.	Union Bank of California	Overdraft Credit Line	J

**FINANCIAL DISCLOSURE REPORT**  
Page 4 of 6

<b>Name of Person Reporting</b> Anello, Michael M	<b>Date of Report</b> 5/2/2008
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**VII. INVESTMENTS and TRUSTS** - income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Rental Property	E	Rent	O	W	Exempt				
2. AT&T Common Stock	A	Dividend	J	T					
3. Chevron Common Stock	A	Dividend	K	T					
4. General Electric Common Stock	A	Dividend	K	T					
5. IDEARC Common Stock	A	Dividend	J	T					
6. PPG Industries Common Stock	B	Dividend	K	T					
7. Verizon Common Stock	A	Dividend	J	T					
8. Alcatel Lucent Common Stock	A	Dividend	J	T					
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

<b>1. Income Gain Codes:</b> (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000	E = \$15,001 - \$50,000
<b>2. Value Codes</b> (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
<b>3. Value Method Codes</b> (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**  
Page 5 of 6

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Anello, Michael M	5/2/2008

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

**FINANCIAL DISCLOSURE REPORT**  
Page 6 of 6

<b>Name of Person Reporting</b>	<b>Date of Report</b>
Anello, Michael M	5/2/2008

**IX. CERTIFICATION.**

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

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 581 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature:  May 1, 2008

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

**FILING INSTRUCTIONS**

Mail signed original and 3 additional copies to:

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

**FINANCIAL STATEMENT**  
**NET WORTH**

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

ASSETS				LIABILITIES			
Cash on hand and in banks		5	000	Notes payable to banks-secured		95	000
U.S. Government securities-add schedule				Notes payable to banks-unsecured		5	000
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule		143	373	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		21	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		628	100
Real estate owned-add schedule	2	200	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		100	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		749	100
				Net Worth	1	699	273
<b>Total Assets</b>	<b>2</b>	<b>448</b>	<b>373</b>	<b>Total liabilities and net worth</b>	<b>2</b>	<b>448</b>	<b>373</b>
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT**  
**NET WORTH SCHEDULES**

Listed Securities

AT&T	\$ 2,590
Chevron	34,000
GE	44,400
IDEARC	92
PPG	48,720
Verizon	13,176
Alcatel Lucent	395
Total Listed Securities	<u>\$ 143,373</u>

Real Estate Owned

Personal residence	\$ 1,200,000
Rental property	1,000,000
Total Real Estate Owned	<u>\$ 2,200,000</u>

Real Estate Mortgages Payable

Personal residence	\$ 344,990
Rental property	283,110
Total Real Estate Mortgages Payable	\$ 628,100

AFFIDAVIT

I, Michael M. Anello, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5-12-08  
(DATE)

Michael M. Anello  
(NAME)

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

Michael M. Anello  
Signature of Document Signer No. 1

\_\_\_\_\_  
Signature of Document Signer No. 2 (if any)

State of California  
County of San Diego

Subscribed and sworn to (or affirmed) before me on this  
12th day of May, 2008, by  
Date Month Year  
(1) Michael Anello  
Name of Signer

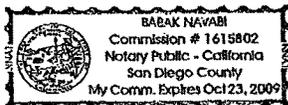
proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and

(2) \_\_\_\_\_  
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature B. Navabi  
Signature of Notary Public



Chairman LEAHY. Well, if I might ask the same question I asked before—and it is the sort of thing that I think all of us have in mind when we vote on a lifetime judgeship. This is an area where you are outside of politics. It is the undemocratic part, and rightly so, the undemocratic branch of our three branches of Government.

If you walk into a courtroom, if you have any respect for our Federal courts around the Nation, you have to walk in and think, okay, I am going to be treated the same as the person on the other side; my race, my color, my creed, plaintiff, defendant, wealth, non-wealth, it is not going to make a difference.

Can you give that assurance that when somebody comes in and sees you sitting there as the judge, they are not going to say, “We are in trouble,” but, rather, “We are going to get a fair hearing”?

Judge ANELLO. I can certainly give you that assurance without qualification, Senator. I have endeavored to do that through the 10 years plus that I have been sitting on the State court, and should I be fortunate enough to be appointed to this position, I would hope to continue that. So I certainly agree with that and those sentiments 100 percent.

Chairman LEAHY. Have you had occasion to do things where you would show your commitment to equal treatment of people?

Judge ANELLO. Well, I have. Like, I would say, most lawyers, I have volunteered to perform legal services for indigent people as a public service. In my many years in the military—I remained in the Marine Corps Reserve after getting off active duty—one of our missions was to provide legal assistance to the young semi-indigent, unfortunately, men and women of the Marine Corps. And we would go to the local bases on Saturdays. With some notice they would show up. We would do the best we could to help them deal with their personal and legal problems. So that is one thing that we did often over the years throughout my entire military reserve career.

Chairman LEAHY. I like to think the country has reached a point where people are treated the same. I think of the stories I remember from my maternal grandparents when they emigrated to this country from Italy, and having difficulty first with the language and treated differently. And some of the things they had to put up with even as they established a business and then helped many others who were not able to get the kind of—or who were being treated much the same. I like to think in our State that is no longer the case. But I think that immigrants’ rights are extremely important. You do not think of Vermont so much as being a State with that, although we share a border with Canada. My parents-in-law emigrated from Canada, had to learn a new language, as did my grandparents and my mother.

You are in San Diego. One only needs to look at the map. Can you assure people who come into your court, the Federal district court, that they are going to be treated fairly, whether it is an immigration or a civil case?

Judge ANELLO. I can certainly give you that assurance, Senator. You are correct. Obviously, we are a border State. We have immigration issues. We have not dealt with them so much in the State court. Certainly, if I were fortunate enough to be confirmed to the Southern District Court, we would deal with those issues on a more

daily basis. But certainly you have my assurance that, if confirmed, I would agree 100 percent with those sentiments and act accordingly.

Chairman LEAHY. And you heard Mr. Waddoups' comments before about the need to recuse oneself to preserve the integrity of the court. Now, you might have a case that would come to Federal court for post-conviction relief or something like from the court you now sit on. That should be fairly easy, I would assume. But do you agree with what Mr. Waddoups said about protecting the integrity of the court and the appearance of conflicts?

Judge ANELLO. I do absolutely, and the appearance aspect of that, of course, is most important for the citizenry to retain their respect for the courts. Obviously, the appearance is important. Again, I have faced those issues over the past 10 years, and I have not found it difficult. But as Mr. Waddoups says, if someone appears before me who is a former client, that is pretty easy; a former law partner, that is pretty easy. Where it gets a little dicey is someone who perhaps is a friend, a casual friend. So we try to draw lines there, make whatever disclosures are necessary. But as he also indicates, and as I agree, we also are duty-bound and required to try cases that come before us unless there is a real reason to recuse.

Chairman LEAHY. Well, disclosure is always a very good thing. I mean, you can—certainly in my own years of practice, we would have the kind of friends or associations, a neighbor or whatever, and matters that would come up. And when the court has made the disclosure, it is not unusual to have the lawyers on both sides say we have discussed this with our clients and we have no problem. And it certainly takes care of the problem later on when somebody says, "Well, wait a minute. I lost."

Senator Hatch, did you want to—

Senator HATCH. No. Thank you, Mr. Chairman.

Chairman LEAHY. And I would assume you would say the same to the earlier question that no one is above the law, not the President, not a judge, not a U.S. Senator.

Judge ANELLO. Absolutely. We have a rule of law, not a rule of man. Absolutely, I agree 100 percent.

Chairman LEAHY. Thank you very, very much.

Ms. Scriven, we have already put the letter of support in from Senator Martinez for you. You spent 11 years serving as a magistrate judge in the U.S. District Court for the Middle District of Florida, taught contracts, banking law, associate professor at Stetson University College of Law; partner at the Tampa, Florida, law firm of Carlton Fields; graduate of Duke, Florida State.

Do you have members of your family here with you?

**STATEMENT OF MARY STENSON SCRIVEN, NOMINEE TO BE  
DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF FLORIDA**

Judge SCRIVEN. Thank you, Senator Leahy. Yes, I do. Chairman, I have with me almost my entire family. I have my parents, who are here from Georgia: Reverend Marshall Stenson and Dr. Mary Stenson, if they would stand.

I have my younger brother, Joel Stenson and his wife, Kartika Stenson.

I have my dear friend, Jaye Ann Terry; a friend of the family and a colleague, Fred McClure; and a young guy that my husband has mentored, Romeo Domdii Cliff, who is also here. He lives here in D.C.

And last, but not least, I have my immediate family. I have my daughter, 15-year-old Sarah; and Charles, who is enjoying a day out of school but getting an education nonetheless.

[Laughter.]

Chairman LEAHY. I bet you he hated to miss school today.

Judge SCRIVEN. And I have my husband of 20 years and my best friend, Lansing Scriven, who is an attorney in Tampa, Florida.

Chairman LEAHY. Thank you very much. I appreciate that. Did you want to give any opening statement?

Judge SCRIVEN. I just want to say, as my colleagues have already said, that I am honored and humbled by the opportunity to be here. I thank the Chairman and the Committee for convening this hearing. I thank the home-State Senators, Senator Martinez and Senator Nelson, for working together across lines to bring this nomination forward. And I thank the President for nominating me for what I hope will be a confirmation to serve as United States District Judge for the Middle District of Florida.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Mary Stenson Scriven  
Mary Adrienne Stenson (maiden name)

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

United States District Judge for the Middle District of Florida

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

United States District Court  
801 North Florida Avenue  
Tampa, Florida 33602

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

1962; Atlanta, Georgia

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

I am married to Lansing Charles Scriven. He is an attorney employed in his own law firm, Lansing C. Scriven, P.A. His firm address is 442 W. Kennedy Blvd. Suite 280, Tampa, Florida 33606.

We have three dependent children.

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

1984-1987, Florida State University College of Law; J.D. with High Honors, 1987

Summer 1985, Oxford University; Certificate of Matriculation

1980-1983, Duke University; B.A., *Cum Laude*, 1983

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

12/97 – Present  
 U. S. District Court, Middle District of Florida  
 801 North Florida Avenue, Tampa, Florida 33602  
 Magistrate Judge

08/96 – 12/97  
 Stetson University College of Law  
 1401 61st Street South, St. Petersburg, Florida 33707  
 Associate Professor

08/87 – 12/97  
 Carlton Fields  
 4221 West Boy Scout Blvd., Tampa, Florida 33607  
 Shareholder (4/95 – 12/97)  
 Associate Attorney (8/87 – 4/95)

01/87 – 05/87  
 Huey Guilday Kursteiner Tucker  
 1983 Centre Pointe Blvd., #200, Tallahassee, Florida 32308  
 Intern

5/86 – 6/86  
 Carlton Fields  
 4221 West Boy Scout Blvd., Tampa, Florida 33607  
 Summer associate

8/85 – 5/86  
 Florida House Majority Office  
 411 East College Avenue, Tallahassee, Florida 32301  
 Intern

4/85 – 6/85  
 Florida State University College of Law  
 425 West Jefferson Street, Tallahassee, Florida 32306  
 Research Assistant

12/83 – 7/84  
 Bibb County Board of Education  
 1710 Canterbury Road, Macon, Georgia 31206  
 Substitute teacher

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

I have not had any military service.

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

Stetson University College of Law Honorary Doctor of Laws  
 Outstanding Service to the Spring of Tampa Bay, Inc., (2007)  
 Lifetime Public Service Award (Hillsborough Association of Women Lawyers, 2000)  
 "First" Award (Florida Association of Women Lawyers, 2001)  
 Distinguished "First" Award (Judicial Council of Florida Chapter of the NBA, 2002)  
 Distinguished Service Award (Tampa Bay Federal Agencies, 2002)  
 President's Award (for outstanding service to the George Edgecomb Bar Association)  
 Woman of Distinction (Suncoast Girl Scouts)  
 Florida Legal Services Award (The Florida Bar/Florida Bar Foundation Joint Commission on the Delivery of Legal Services to the Indigent in Florida)  
Profiled: Upscale, The Tampa Tribune, Tampa Bay Urban Business Magazine, Florida Trend, HCBA Lawyer Magazine  
 Equal Opportunity Award (Tampa Urban League)  
 One of the Most Inspirational Professors (voted by Stetson Law School Students, Fall 1996)  
 Guest lecturer (five day summer segment) - Nottingham Law Institute (Nottingham, England) Masters program in Advanced Litigation (Trial and Advocacy skills)  
 Francisco Rodriguez Award, George Edgecomb Bar Association (lifetime achievement award in law practice)  
 Proclamation of Service - Hillsborough County Bar Association  
 Key to the City of Macon, Georgia (2000)

FLORIDA STATE UNIVERSITY COLLEGE OF LAW:

High Honors graduate  
 University Fellowship (Full academic scholarship, tuition and stipend)  
 William-Blank-David Miller Scholarship  
 Book Award - Supreme Court Role Playing (highest grade in class)  
 Virgil Hawkins Fellowship  
 Selected first annual student graduation speaker (law school commencement)  
 Orin Slagle Oxford Fellowship  
 Order of Barristers (Excellence and High Honors, Art of Courtroom Advocacy)

DUKE UNIVERSITY:

*Cum Laude* graduate (Duke University)  
 President's Leadership Award (Duke University)  
 Chief Justice Judiciary Council (Duke University)

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

NATIONAL

Federal Magistrate Judges Association  
 Executive Board (President-Elect 2008-2009, Treasurer 2007-2008,  
 Secretary 2006-2007);  
 Board of Directors (11th Circuit Elected Representative 2005);  
 National Convention Committee FMJA (Chair 2005-2006)  
 American Inns of Court (1994-Present)  
 American Law Institute (1998-2004)  
 American Bar Association (1987-2003)  
 General Litigation Section, American Bar Association (1987-2003)  
 American Judicature Society (1986-1988)  
 National Bar Association (1988-2005)  
 Women's Law Division, National Bar Association (1994)  
 Minority Partners in Majority Firms Section, National Bar Association (1994)  
 American Association of Law Schools (1996-2003)

STATE

Florida Bar (1987-Present)  
 Florida Bar Foundation (Board of Directors; Executive Committee; Chairperson,  
 Law Students Assistance Committee; Programs Grant Committee) (1989-1996)  
 Florida Chapter of the National Bar Association (1989-2005)  
 Florida Association for Women Lawyers  
 The Florida Bar/Florida Bar Foundation Joint Commission on the Delivery of  
 Legal Services to the Poor (1994)  
 Florida Bar Planning Committee for the 1995 Women and Minority Business  
 Development Conference (1994-1995)  
 US District Court, Middle District of Florida (Chair, Education Committee;  
 CM/ECF Implementation Committee; Court Rules Committee)

LOCAL

Master/Former President, Cheatwood Inn of Court (formerly William Glenn  
 Terrell Inn of Court) (1999-Present)  
 Executive Board - Secretary, Hillsborough County Bar Association (1994-1995);  
 Elected Board Member, Hillsborough County Bar Association (1995-1997)  
 Hillsborough County Bar Foundation (1999-2007)  
 President, Hillsborough Association for Women Lawyers (1994-1995)  
 Vice President for Programs, Hillsborough Association for Women Lawyers  
 (1992-1993)  
 Newsletter Chairperson, Hillsborough Association for Women Lawyers (1991-  
 1992)  
 Board Member/Member, Hillsborough Association for Women Lawyers (1991-  
 2007)  
 Racial, Ethnic and Gender Bias Committee, Hillsborough County Bar Association  
 (1993-1996)

Availability of Legal Services Committee, Hillsborough County Bar Association (1994-1996)  
 George Edgecomb Bar Association Second Vice President, (1994-1995), Secretary, (1993-1994); Treasurer, (1991-1993); Banquet chairperson, (1992, 1993, 1994)  
 Hillsborough County Bar Association Long Range Planning Committee (1994-1995)

**11. Bar and Court Admission:**

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

Florida Bar; December 30, 1987

There has been no lapse in membership. I am presently in Judge status, not eligible to practice law.

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

Florida Supreme Court and all Florida state courts	1987
United States District Court for the Middle District of Florida	1988
United States Court of Appeals for the Eleventh Circuit	1994
Supreme Court of the United States	2006

There has been no lapse in membership.

**12. Memberships:**

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

Tampa Bay Performing Arts Center Board of Trustees (1990-1992)  
 Leadership Tampa Class of 1994; Alumni Board of Directors (1995)  
 Leadership Florida Class of 1995; Board of Regents (1996)  
 The Athena Society (1992-1994) (Chair of Retreat Committee 1994); Executive Vice President - Membership (1996-1997); Executive Board 2006-2008; President 2008  
 Greater Tampa Chamber of Commerce Governmental Affairs Board of Directors (1993-1994)  
 Board of Directors, National Conference (1994)

Boys and Girls Club of Greater Tampa (Board Member 1987-1988)  
 Junior League of Tampa (1992-1994) (Provisional Project Chair -- Revitalization  
 of the Children's Advocacy Center, a video witness facility for victims of  
 child abuse)  
 Black American Law Students Association (1984-1987)  
 The Tampa Club Board of Directors (1995-1997)  
 First Baptist Church of West Tampa Education Committee, Children's Church  
 Chair (1996-1999)  
 New Hope Missionary Baptist Church (1999-2007)  
 Grace Family Church (2007-Present)  
 Member, Alpha Kappa Alpha Sorority, Inc. (2003-2004)  
 Co-Chairperson, Chair Emeritus, Board Member, Board of Directors  
 The Spring of Tampa Bay, Inc. (1999-present)

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

Neither of these organizations discriminates against anyone on the basis of race, sex or religion and have not as long as I have been a member. I am not aware of their ever having discriminated at any time in the past. The only exception is the national service sorority, Alpha Kappa Alpha, Inc., which, as a sorority, admits only women.

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

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

I have no such writings.

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

I have not participated in the preparation of reports, memoranda or policy statements; and therefore, I have no documents responsive to this request.

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

I have not given any testimony, official statements or other communications related to matters of public policy or legal interpretation, other than written orders; and therefore, I have no documents responsive to this regard.

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

I have spoken on numerous panels and given speeches to various local voluntary bar and civic associations over the past twenty-seven (27) years.

Effective Written Advocacy – date unknown  
 Stetson University College of Law Commencement Address – May 13, 2006  
 Speech to youth group on federal criminal law – date unknown  
 Tribute to Judge Joseph Hatchett upon his retirement – April 1999  
 When the Judge is both Judge and Jury: Effective Advocacy Before the Bench – several occasions 2007-2008  
 Unity Day Speech: Celebration of Federal Law Enforcement Agencies – date unknown  
 Stetson Law Intern Address - date unknown  
 St. Pete Times and Poynter Institute Scholarship Banquet - date unknown  
 Villa Madonna 8<sup>th</sup> Grade Commencement - date unknown  
 Speech for local youth group - date unknown  
 Stetson University Conclave: Role of the Bar in Promoting Professionalism – November 22, 1996

In addition, I have hosted various school groups in court and conducted mock trials with the students. I have not retained copies or transcripts of those talks. Finally, I can recall generally having given the following speeches or presentations. Although I have not retained copies or notes, I can recall generally the contents as set forth below.

MIMS Graduating Seniors: Find your Tree House and Get in it; May 2006  
 Holland & Knight Law Firm 100 North Tampa Street, Suite 4100 Tampa, FL 33602  
 This was an Inspirational talk to high school graduates about finding their own life's purpose and striving to attain success in it.

Stetson University College of Law; May 2007  
 Stetson University College of Law Gulfport Campus  
 1401 61st Street South Gulfport, FL 33707

This was a panel discussion about balancing life with the practice law presented by myself and my husband, Lanse Scriven.

When the Judge is both Judge and Jury: Effective Advocacy Before the Bench; Various (last date – Spring 2008) presentations to local bar associations: Hillsborough County Bar Association; Carrollwood Bar Association, Saady & Saxe, P.A. 205 Crystal Grove Boulevard Lutz, FL 33548; Cheatwood Inns of Court c/o Wayne Thomas, 707 N. Franklin Street, Suite #10, Tampa, FL 33602; George Edgecomb Bar Association c/o Julie Sneed, Fowler White 501 E. Kennedy Blvd., Suite 1700 Tampa, FL 33602

American Bar Association, Section of Labor and Employment Law; April 6-9, 2005; The Registry Resort, Naples, Florida  
 Panel discussion: View from the bench on developments in employment law and best practices.

Academy Prep Center of Tampa, Inc. (Preparatory Middle School for Minority and Disadvantaged Students - 1407 East Columbus Drive, Tampa, Florida, 33605); January 22, 2008; Panel discussion with other federal and state judges on becoming and serving as a judge.

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

I have not given any substantive interviews to media outlets. I have been asked to comment on a colleague who was featured in a public interest piece; a copy of that profile is attached. I have been featured in articles and periodicals, and in that context have, on occasion, been quoted by the writer of the profile.

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

I have served as a United States Magistrate Judge for the Middle District of Florida since December 1997. I was reappointed on unanimous consent of the Court in December 2004. This is an appointed position, appointed by the District Judges of the District.

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

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

As a magistrate judge in the Middle District of Florida, I carry a caseload of approximately 430 civil cases and well over 123 criminal cases. As a result, I

issue opinions on a constant basis. I have not maintained a list of all of those opinions. By searching both Lexis and Westlaw, I am able to provide the attached list of opinions that have been published in some manner.

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

Petition for writ of certiorari was requested by the plaintiff in R. J. Fitzgerald & Co., Inc v. Commodity Futures Trading Comm'n, 543 U.S. 1034 (2004). The petition for writ of certiorari was denied.

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

I can only recall two instances in my 11 year career in which my decision has been reversed by an appellate court. They are cited below:

CFTC v. R.J. Fitzgerald & Co., Inc., 173 F. Supp. 2d 1295 (M.D. Fla. 2001). Affirmed in part and reversed in part, the 11th Circuit opinion is found at 310 F.3d 1321.

St. Paul Fire & Marine Insurance Co. v. Sea Quest International, Inc., case no. 8:00-cv-00571-MSS. Affirmed in part and reversed in part, the 11th Circuit opinion is found at case no. 02-12248.

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

None to my knowledge.

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

I have not maintained any statistics or information that would allow me to determine the percentage of my decisions which are published or unpublished. However, beginning in July of 2004, the Middle District of Florida became an "electronic" court. This means that regardless of whether a decision is considered published or unpublished, it is available for review on the Court's electronic docket.

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

None.

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
  - b. a brief description of the asserted conflict of interest or other ground for recusal;
  - c. the procedure you followed in determining whether or not to recuse yourself;
  - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I am not aware of any instance in which a litigant requested that I recuse myself from a case. Upon taking the bench in 1997, I recused myself sua sponte from all cases in which my former firm, Carlton Fields, was counsel as well as all cases in which my husband's former firm, Trenam Kemker, was counsel. That order of recusal remained in place for five years for my former firm and until all financial ties were severed between my husband and his former law firm. Currently, I maintain an automatic recusal on all cases involving Tampa General Hospital, on whose board my husband serves, and all cases in which my husband is involved in any way.

In our court, it is a non-waivable conflict for a judge to sit on a case if he or she has a financial interest in a party or in a company that is wholly owned or operated by such party. Judges provide information concerning such interest to the clerk of the court and recusal is automatic. To the extent that a case is filed that system would automatically assign the case to another judge.

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

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

I was appointed by the Governor and confirmed by the Florida Senate to serve a two-year term on the Tampa Bay Regional Planning Council in 1993.

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

Legislative Assistant (student intern) for the House Majority Office of the Florida House of Representatives 8/85-5/86

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

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

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

I did not serve as a clerk to a judge.

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

I have not practiced alone.

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

12/97 – Present  
 U. S. District Court, Middle District of Florida  
 801 North Florida Avenue, Tampa, Florida 33602  
 Magistrate Judge

08/96 – 12/97  
 Stetson University College of Law  
 1401 61st Street South, St. Petersburg, Florida 33707  
 Associate Professor

08/87 – 12/97  
 Carlton Fields  
 4221 West Boy Scout Blvd., Tampa, Florida 33607  
 Shareholder (4/95 – 12/97)  
 Associate Attorney (8/87 – 4/95)

- b. Describe:

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

During my career as an attorney at Carlton Fields, my practice consisted of complex commercial litigation. The character of my practice remained consistent throughout my tenure.

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

My clients consisted primarily of government entities, including the FDIC, FSLIC, RTC, and county and state agencies. Additionally, I represented corporate entities, exemplars being financial institutions, Fortune 500 companies, and the like. On occasion, I represented individuals and smaller closely-held corporations and privately owned companies. The primary focus of my practice was banking litigation and professional malpractice litigation.

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

- i. Indicate the percentage of your practice in:

- |                            |     |
|----------------------------|-----|
| 1. federal courts:         | 80% |
| 2. state courts of record: | 20% |
| 3. other courts:           |     |

- ii. Indicate the percentage of your practice in:

- |                          |      |
|--------------------------|------|
| 1. civil proceedings:    | 100% |
| 2. criminal proceedings: |      |

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

I tried two cases to verdict or judgment, one as associate counsel and one as sole counsel.

- i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 50% |
| 2. non-jury: | 50% |

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

None

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- a. the date of representation;
  - b. the name of the court and the name of the judge or judges before whom the case was litigated; and
  - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. **FDIC v. Kearney**— In 1995, I tried this case along with two of my former law partners. It was a six-week jury trial before Judge Ralph Nimmons. I was responsible for the preparation and examination of all government regulatory witnesses, the government's chief banking expert and the government's damages expert. Additionally, I was primarily responsible for oversight and/or drafting of all legal memoranda and arguing all major motions other than the FDIC's directed verdict motion. As well, I presented the government's closing rebuttal. As a result of this trial, the FDIC obtained a \$62 million jury verdict on each of its two alternative claims, which was reduced by the comparative fault of non-present co-defendants and other substantial settlements obtained prior to trial. The case was appealed. I had primary responsibility for all negotiations and mediations on behalf of the client through the Eleventh Circuit mediation office. The malpractice case, the related insurance coverage case, and the Eleventh Circuit appeal were settled in April 1997. This case also applied for the first time in Florida the then newly established Supreme Court limits on the FDIC's comparative liability for bank failures.

This case is also significant because it lasted approximately 10 years in litigation. It was one of a series of cases arising from a single bank failure, and though it was hotly contested on all fronts, I developed strong professional relationships with many of the opposing counsel, as well as other in-house counsel and outside counsel for the FDIC.

LAWYERS  
 Hendrick Milne (opposing counsel)  
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James Middleton (opposing counsel)  
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 Ste. 1500  
 Jacksonville, Florida 32207  
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Harvey Moore (expert)  
 101 Kennedy Boulevard  
 Tampa, Florida 33601  
 (813) 221-6448

2. FDIC v. Cherry Bekaert— I was principally responsible for all pre-trial matters in this case. It was ultimately resolved through binding arbitration. This was an accountants' malpractice case which required me to be intimately familiar with bank loan loss reserves, interest rate calculations on compounding debts, loan to value ratios, complex damage calculations and the like. I worked with our banking and damages experts and our FDIC forensic accountants in developing the case theory. Several reported decisions on important discovery issues flowed from that case, and I was principally responsible for preparing the memoranda for the FDIC. See FDIC v. Cherry Bekaert and Holland, 742 F. Supp. 612 (M.D. Fla. 1990); FDIC v. CBH, 131 F.R.D. 596 (M.D. Fla. 1990); FDIC v. CBH, 131 F.R.D. 202 (M.D. Fla. 1990); FDIC v. CBH, 129 F.R.D. 188 (M.D. Fla. 1989). The matter was resolved through binding arbitration presided over by John Upchurch.

LAWYERS

Elizabeth Sara "Sally" Gere (opposing counsel)  
 2001 K Street N.W.  
 Washington, District of Columbia 20006-1040  
 (202) 662-2005

Jack Gerstein (opposing counsel)  
 2001 K Street N.W.  
 Washington, District of Columbia 20006-1040  
 (202) 662-6000

3. RTC v. Refco — This was a securities litigation matter that I handled as Chief Counsel. It was litigated by Carlton Fields after the initial counsel was removed from the case. We obtained a favorable settlement after a successful summary judgment on key legal issues. I was principally responsible for preparing the legal memoranda in the case and negotiating the settlement.

LAWYERS

Paul Dengel  
 Schiff Hardin LLP  
 6600 Sears Tower  
 Chicago, Illinois 60606-6473  
 (312) 258-5500

In addition to the cases above, which I litigated, the following cases are significant cases over which I presided as a United States Magistrate Judge:

1. I presided over the non-jury trial of Teamsters Local Union No. 444 v. Coca-Cola Company. The action arose out of the consummation of an Asset Purchase Agreement between the Defendant and another company related to one of Defendant's citrus plant. Plaintiff, a union that formerly represented employees employed by Defendant at the

plant, initiated this action for damages pursuant to the Worker Adjustment and Retraining Notification Act (the "WARN Act"), 29 U.S.C. § 2101 *et seq.*, claiming that Defendant failed to provide the employees represented by the Plaintiff sixty days advance notice of the consummation of the Asset Purchase Agreement. Prior to the trial, I issued an order on the parties' cross motions for summary judgment and found in favor of the Plaintiff on the issue of whether the Defendant was liable for failing to provide WARN notice to those employees not hired by the other company. I further found that the Defendant was not liable for failing to provide notice to the employees hired by the other company. The remaining issue for trial related to damages. After the close of the Defendant's case but prior to closing arguments, the parties requested a continuance of closing arguments until the following morning and amicably resolved the case the next day.

## LAWYERS

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Miami, Florida 33133  
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Elizabeth Finn Johnson  
Coca Cola Company  
P.O. Box 1734  
Atlanta, Georgia 30301  
(404) 676-3736

2. I presided over the trial of Messer v. GATX. Mr. Messer alleged that the Defendant denied him training and promotional opportunities because of his sex and ultimately laid him off due to his sex and age. He further claimed that Defendant suggested that another company not hire him in retaliation for his having filed an EEOC charge. At the close of the Plaintiff's case, I entered judgment as a matter of law in favor of the Defendant on Plaintiff's claims of age discrimination and retaliation. The parties amicably settled the matter the following morning before the start of the Defendant's case.

## LAWYERS

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(813) 258-2808

William Radford  
Ford & Harrison LLP  
100 SE 2<sup>nd</sup> Street

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Miami, Florida 33131  
(305) 808-2100

3. In April 1999, I entered a Report and Recommendation on a Joint Motion for Judgment on the Pleadings to foreclose a preferred ship mortgage in an admiralty action styled Madeleine L.L.C. v. The M/V Sea. Various parties filed intervening complaints in rem seeking payment for services they provided to the M/V Sea. The issue in the motion related to the priority of liens as between two companies that provided architectural services to the M/V Sea. I found that the two companies provided necessities to a vessel and said necessities were provided in the United States. I therefore concluded that the architectural companies had necessities liens pursuant to 46 U.S.C. § 31342(a), and that their liens primed Madeleine's preferred mortgage liens. The parties later consented to have me conduct the non-jury trial. Several of the parties settled prior to trial. The remaining parties settled amicably at the conclusion of the first day of the trial.

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4. In January 2005, I presided over the trial in Bogacki v. Buccaneers Limited in which the Plaintiff asserted a claim under the Fair Labor Standards Act alleging failure to pay overtime and retaliation. After a week long trial, the jury found for the Defendant on the retaliation claim and awarded the Plaintiff \$36.68 on her overtime claim.

## LAWYERS

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 (813) 229-8300

Thomas Gonzalez  
 Thompson, Sizemore & Gonzalez  
 501 E. Kennedy Blvd.  
 Ste. 1400  
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 (813) 273-0050

5. In January 2005, I presided over White v. Purdue Pharma, Inc., a two week jury trial in which Plaintiff asserted a Florida Whistle-blower/wrongful termination claim. Plaintiff alleged that she suffered an adverse employment action when she complained about the Defendant pharmaceutical company's sales and marketing strategies used in the distribution of OxyContin. The matter involved a number of significant legal issues resulting in the entry of several substantive orders, one of which is published and has been cited favorably. (White v. Purdue Pharma, 369 F. Supp. 2d 1335 (M.D. Fla. 2005)). The jury returned a defense verdict.

## LAWYERS

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 Ste. 301  
 Tampa, Florida 33605  
 (813) 248-6400

Patricia Lowry  
 Squire, Sanders & Dempsey, LLP  
 1900 Phillips Point West  
 777 S. Flagler Dr.  
 West Palm Beach, Florida 33401  
 (561) 650-7214

David Spector  
 222 Lakeview Ave.  
 Ste. 210  
 West Palm Beach, Florida 33401  
 (561) 659-1911

6. In February 2005, I presided over a jury trial in IMPORT A-N-T, Inc. v. C. Haven Imports, LLC, which was brought by a distributor of a foreign beer against another distributor Plaintiff contended was infringing on its exclusive territory. Plaintiff asserted

a claim for tortious interference with an advantageous business relationship and violations of the Florida Beer Distributors Act. Because of the relative obscurity of the Act, this case also involved novel legal issues, requiring construction of the applicable statutes. The matter was tried over a week, but settled after several trial rulings before a jury verdict could be reached.

## LAWYERS

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Jeffrey Bergman  
Sachnoff & Weaver, Ltd.  
30 S. Wacker Dr.  
Chicago, IL 60606-7484  
(312) 207-1000

7. Niziol v. Pasco Co. District – I presided over this matter, resolving it on jurisdictional grounds after extensive briefings and hearings. The case involved an accidental shooting by a student of another student who had brought a gun to school. The suit was brought by the deceased student's parent against school officials. Ultimately, I entered judgment on behalf of the Defendants, finding, among other grounds, that the Defendants were immune from suit under federal law.

## LAWYERS

J. Meredith Wester  
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(813) 968-1002

Dennis J. Alfonso  
McClain & Alfonso, PA  
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Dade City, Florida 33526  
(352) 567-5636

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a United States Magistrate Judge I have presided over approximately twenty-five Bench and Jury Trials (excluding evidentiary hearings and criminal proceedings numbering more than 300). I have served over 4000 hours in active Federal Court proceedings, including 217 Settlement Conferences.

While on the court I have served in various capacities, on the district, circuit and national levels. Those positions are described below.

In March 2008, I was appointed by the Director of the Administrative Office of the Courts, Director Duff, to serve on the Advisory Group of Magistrate Judges, which provides assistance to the Director and to the Magistrate Judges Division in preparation for meetings of the Judicial Conference Committee on the Administration of the Magistrate Judges System.

I was elected in 2005 and 2006 by the full membership of the Federal Magistrate Judges Association to serve as the Secretary and the Treasurer, respectively, on the national organization's Executive Board.

Additionally, in 2005, I was appointed by the President of the FMJA to chair the national convention committee of the Board. In this position, I was responsible for overseeing the planning, programming and budgeting for the annual convention, which was held in New York.

I was elected in 2003 by the Magistrate Judges of the Eleventh Circuit to serve as the representative for the Circuit on the Board of Directors for the Federal Magistrate Judges Association ("FMJA"). In this capacity, I presided over meetings of the Magistrate Judges during circuit conferences, and I attended the Board meetings of the FMJA to develop policy and direct the activities of the FMJA.

I was also appointed in 1999 by then Chief Judge Joseph Hatchett to serve on the planning and implementation Committee which planned and hosted the Eleventh Circuit Judicial conference in Marco Island, Florida.

Locally, I have served for the past four years as the EEO coordinator for the Middle District of Florida, overseeing the Court's response to any complaint or request for counseling concerning allegations of discrimination in the workplace by any of the agencies of the Court or Court employees.

I served as chair of the Judicial Education Committee for three years, 2005-2007. My responsibilities included planning education programs for judicial officers and planning

our annual meetings. These meetings included substantive educational programs on issues such as judicial ethics, sentencing guidelines, preservation of Court history through oral and written material and management of inmates in the Bureau of Prisons. The meetings have been held throughout the district including in St. Augustine, Orlando, Naples, the Coleman Federal Corrections Facility, and Amelia Island.

Additionally, I serve or have served on the Court's CM/ECF Implementation Committee, the Magistrate Judges Advisory Committee, the Court's Rules Committee, the Judicial Resources Committee and the Case Management Committee.

In addition to the aforementioned matters, I consider my service to the court as a mediator to be a significant contribution to the Administration of Justice by the Court. As one of only two magistrate judges serving as mediators here in Tampa, I have mediated over 200 cases, with settlements achieved in approximately 85% of those cases. These matters range from substantial commercial disputes with multi-million dollar demands after prior unsuccessful mediation attempts to simple single party suits where the demands are small. In this context, I assist the parties in fashioning outcomes to the litigation preserving judicial resources for criminal and civil matters for which no amicable resolution can be reached.

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

I was a full time Associate Professor of Law at Stetson University College of Law from Fall 1996 through Fall 1997. I taught Contracts, Legal Malpractice, Banking Law and Remedies. I did not retain copies of the syllabi for those courses.

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

None other than my accrued pension and retirement benefits through the federal retirement system.

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

No

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all

salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report

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

See attached Net Worth Statement

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

The only conflict I foresee is a potential conflict in service on a case involving my husband or his law firm and the hospital board on which he sits.

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

I will continue to follow the conflict procedures currently in place in the Middle District of Florida, automatically recusing from the cases described above and those that may arise in which I have a financial interest. In all circumstances, I will follow the Code of Conduct for United States Judges.

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

I serve and have served my community in many ways, both formally and informally, providing assistance to the disadvantaged in individual matters and in a more global fashion. I serve as Chair Emeritus of the Spring of Tampa Bay, providing guidance in the implementation of policy and community outreach to help end domestic violence in our community. I serve as a mentor through the Hillsborough Association for Women Lawyers and have served in this capacity for the University of South Florida's Minority Student Union. I host area school children in the courthouse year round, conducting mock trials and civic lessons to impress upon them the impact that the judicial system has on their lives. I also support Stetson's trial practices classes, holding pretrial and mediation conferences for their course requirements and hosting practices for the moot court teams preparing for competitions.

I served as a Board member of the Florida Bar Foundation continuously from 1990 – 1996. The Bar Foundation's primary responsibility is to allocate the \$11 million IOTA fund to appropriate grantees, the largest single recipient group being legal services providers such as Bay Area Legal Services. In addition, I was instrumental in developing and implementing the Florida Bar Foundation Scholarship Program which through my tenure had awarded \$1,160,937 in scholarships to students in Florida law schools. The Foundation augmented the program by instituting a companion mentoring program, pursuant to which all recipients of scholarship funds are paired with mentors from the legal community to enhance their law school experience and improve their chances of success in the practice of law. Similarly, my responsibility as chair of the Law Students Assistance Committee was to administer the Public Services Fellows program under which law schools offer public service opportunities for law students to encourage those students to make public service their career choice.

I also served while at Stetson as the interim faculty advisor to the Public Service Fellows. These students receive grants from the Florida Bar Foundation based upon their commitment to pursue a public service career or devote time in their law career to public service. As their advisor, I oversaw their work in several public service agencies and assisted them in their effort to encourage other law students to contribute public service hours during and after law school. In the Spring of 1997, we sponsored a public service career day which featured general private and public sector lawyers who have devoted their time to ensuring that all people have equal access to justice. I moderated the program which was attended by about 200 students and guests.

While practicing law I provided direct legal services to individual clients on a voluntary pro bono basis, for example, I handled adoptions, dissolutions of marriage, civil claims by elderly citizens against construction contractors and claims to recover state benefits.

**28. Selection Process:**

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

The state of Florida utilizes a Federal Judicial Nominating Commission to recommend candidates for nomination to the United States District Court. In November 2007, I submitted an application to the Judicial Nominating Commission indicating my interest in one of two positions as United States District Judge, Middle District of Florida. On December 3, 2007, I was notified that I had been selected for an interview by the Commission. I, along with approximately twelve other applicants, appeared for an interview before the full

Middle District of Florida Commission on December 17, 2007, a date that had been previously disclosed as the likely interview date. That evening, I was notified that I, along with five other candidates, had been selected by the Commission to be recommended for further consideration. Approximately two weeks later, on January 3, 2008, I was notified that the two Florida Senators were interviewing the six candidates in Washington on either January 20 or February 6, 2008. Consistent with this schedule, on February 6, 2008, I had the privilege of interviewing with the Senators from the state of Florida, Senator Nelson and Senator Martinez, as well as representatives from their offices. Thereafter, I was notified on February 19, 2008, that I would be interviewed by the staff from the White House Counsel's Office and from the Department of Justice on March 5, 2008. That interview took place as scheduled. I was later informed by the White House that President Bush had selected my name to be forwarded for further consideration for the position of United States District Judge for one of the two vacancies in the Middle District of Florida. Since then, I have had conversations with staff from the Department of Justice regarding the nomination paperwork and the process. My nomination was forwarded to the Senate on July 10, 2008.

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

No

AO 10  
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial) Scriven, Mary S	2. Court or Organization Florida, Middle District	3. Date of Report 07/11/2008
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 07/10/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2007 to 06/30/2008
7. Chambers or Office Address U.S. District Court 801 North Florida Avenue Tampa, FL 33602	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1.	Director	The Spring of Tampa Bay
2.	Treasurer	Federal Magistrate Judges Association
3.		
4.		
5.		

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

NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

**FINANCIAL DISCLOSURE REPORT**  
Page 2 of 7

Name of Person Reporting Scriven, Mary S	Date of Report 07/11/2008
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**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

**A. Filer's Non-Investment Income**

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

	DATE	SOURCE AND TYPE	INCOME <i>(yours, not spouse's)</i>
1.			
2.			
3.			
4.			

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

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

	DATE	SOURCE AND TYPE
1.		
2.		
3.		
4.		

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

NONE *(No reportable reimbursements.)*

	SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1.	EXEMPT				
2.					
3.					
4.					
5.					

**FINANCIAL DISCLOSURE REPORT**  
Page 3 of 7

<b>Name of Person Reporting</b> Scriven, Mary S	<b>Date of Report</b> 07/11/2008
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**V. GIFTS.** (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	EXEMPT		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT  
Page 4 of 7

Name of Person Reporting Scriven, Mary S	Date of Report 07/11/2008
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-I)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-I)	(5) Identity of buyer/seller (if private transaction)
1. Mutual Fund - Scudder Scudder Tax Exempt Money Fund	A	Interest	J	T	EXEMPT				
2. Mutual Fund - American Century ACI Growth Select ultra	A	Dividend	K	T					
3. Vanguard Growth Index Fund	A	Interest	J	T					
4. Hartford Advisers FD CL A	A	Interest/Div	K	T					
5. Hartford Div & Growth FD CL A	A	Interest/Div	K	T					
6. Hartford Global Leaders FD A	A	Interest/Div	K	T					
7. Hartford Midcap FD CL A	A	Interest/Div	K	T					
8. Hartford Fortis	A	Interest/Div	J	T					
9. AMCAP Fund	A	Interest/Div	K	T					
10. Growth Fund of America	A	Interest/Div	J	T					
11. Hartford Small Cap Growth	A	Interest/Div	J	T					
12. The Investment Fund of America Bal Lrg Cap	A	Interest/Div	K	T					
13. American Balanced Fund	A	Interest/Div	K	T					
14. Capital Income Builder American Funds	A	Interest	J	T					
15. The Growth Fund of America American Funds	A	Interest	J	T					
16. American Funds The Investment Company of America	A	Interest/Div	K	T					
17. American Funds New Perspective Fund	A	Interest	J	T					

1. Income Gain Codes: (See Columns B1 and D1)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$750,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 Q = \$250,001 - \$50,000,000	R = \$500,001 - \$25,000,000
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	S = Assessment T = Cash Market	W = Estimated

FINANCIAL DISCLOSURE REPORT  
Page 5 of 7

Name of Person Reporting Seriven, Mary S	Date of Report 07/11/2008
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VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of spouse and dependent children; see pp. 34-50 of filing instructions.)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. American Funds AMCAP	A	Interest	J	T	buy	1/07	J		
19. American Funds Europacific Growth	A	Interest	J	T	buy	1/07	J		
20. American Funds Small Cap World	A	Interest	J	T	buy	1/07	J		
21. American Funds Capital World Growth and Income	A	Interest	J	T	buy	1/07	J		
22. American Funds Washington Mutual	A	Interest	J	T	buy	1/07	J		
23. American Funds AMCAP	A	Interest	K	T	buy	1/07	K		
24. American Funds American High Income Trust	B	Interest	K	T	buy	1/07	K		
25. American Funds Growth Fund	A	Interest	J	T	buy	1/07	J		
26. Hartford Advisors	A	Interest	J	T	buy	1/07	J		
27. Hartford Midcap	A	Interest	K	T	buy	1/07	K		
28. Hartford Div and Growth	A	Interest	J	T	buy	1/07	J		
29. American Fund Income Fund	A	Interest	J	T	buy	1/07	J		
30. American Fund Investment Company of America	A	Interest	K	T	buy	1/07	K		
31. American Fund New Perspective	A	Interest	K	T	buy	1/07	K		
32. American Fund Small Cap World	A	Interest	J	T	buy	1/07	J		

1. Income Code:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Columns B1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I = \$5,000,001 - \$10,000,000	J = More than \$5,000,000
2. Value Codes	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	N = \$250,001 - \$500,000
(See Columns C1 and D3)	O = \$500,001 - \$1,000,000	P = \$1,000,001 - \$5,000,000	Q = \$5,000,001 - \$10,000,000	R = More than \$10,000,000	
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	S = Amusement	T = Cash Market	
(See Column C2)	U = Book Value	V = Other	W = Estimated		

FINANCIAL DISCLOSURE REPORT  
Page 6 of 7

Name of Person Reporting Scriven, Mary S	Date of Report 07/11/2008
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

Part III.A. - Non-reportable Income was received during the reporting period as compensation for current employment by the United States as a U.S. Magistrate Judge

FINANCIAL DISCLOSURE REPORT  
Page 7 of 7

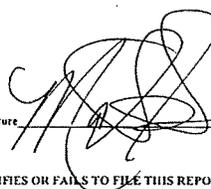
Name of Person Reporting Scriven, Mary S	Date of Report 07/11/2008
---	------------------------------

IX. CERTIFICATION.

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

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

Signature



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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

**FINANCIAL STATEMENT**  
**NET WORTH**

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

ASSETS			LIABILITIES		
Cash on hand and in banks		15 000	Notes payable to banks-secured		
U.S. Government securities-add schedule			Notes payable to banks-unsecured	27	160
Listed securities-add schedule			Notes payable to relatives		
Unlisted securities--add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due	7	255
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid income and interest		
Doubtful			Real estate mortgages payable-add schedule	289	432
Real estate owned-add schedule	575	000	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property	240	000	Student Loan	30	000
Cash value-life insurance	29	969	Automobile Loan	8	217
Other assets itemize:			401(k) loan	42	096
See attached	623	335	Policy Loan	20	087
			Total liabilities	424	247
			Net Worth	1	059 057
Total Assets	1	483 304	Total liabilities and net worth	1	483 304
<b>CONTINGENT LIABILITIES</b>			<b>GENERAL INFORMATION</b>		
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)		
On leases or contracts			Are you defendant in any suits or legal actions?		
Legal Claims			Have you ever taken bankruptcy?		
Provision for Federal Income Tax					
Other special debt					

**FINANCIAL STATEMENT**  
**NET WORTH SCHEDULES**

<u>Real Estate Owned</u>	
Personal residence	\$ 575,000
 <u>Real Estate Mortgages Payable</u>	
Personal residence	\$ 289,432
 <u>Other Assets</u>	
LPL Financial IRA #1	\$ 189,155
LPL Financial IRA #2	105,600
LPL Financial IRA #3	37,884
American Century	45,144
PAI 401(k)	39,918
TSP Federal	156,749
Law Practice NBV	48,885
Total Other Assets	\$ 623,335

Attachment in response to Question 15.a. – citations for opinions written, Judge Mary S. Scriven

Case Name	Southern Reporter	Lexis Citation	Westlaw Citation
Rivero v. Goodman Distribution, Inc.		2008 U.S. Dist. LEXIS 32453	2008 WL 655983 2008 WL 818509
U.S. v. Seither In re Burton Wiand			2008 WL 4233560
Gwinn v. U.S.		2007 U.S. Dist. LEXIS 96116	2008 WL 4800641
Carlta v. N. Am. Arms, Inc.		2007 U.S. Dist. LEXIS 88801	2008 WL 4841061
Gwinn v. U.S.			2008 WL 3120255
Izrailieva v. Chertoff		2007 U.S. Dist. LEXIS 68823	
U.S. v. Lupi		2007 U.S. Dist. LEXIS 68829	2007 WL 2729657
CFTC v. R.J. Fitzgerald & Co.		2007 U.S. Dist. LEXIS 95841	
Sanfilippo v. Astrue			2007 WL 5159601
Am. Collegiate Financial Services v. Cology, Inc.		2007 U.S. Dist. LEXIS 63307	
Employer Reinsurance Corp. v. Laurier Indem.		2007 U.S. Dist. LEXIS 61174	2007 WL 2412939
Van Dalen v. Safeco Ins. Co.			2007 WL 1831775
In re Burton Wiand		2007 U.S. Dist. LEXIS 27294	2007 WL 604950
Access for the Disabled, Inc. v. Missouri Mart, Inc.		2007 U.S. Dist. LEXIS 22539	
Johnson v. Barnhart			2007 WL 963162 2007 WL 5432711 2007 WL 3507952

General Motors Corp v. Phat Cat Carts, Inc.	504 F. Supp. 2d 1278	2006 U.S. Dist. LEXIS 96708 2006 U.S. Dist. LEXIS 75803 2006 U.S. Dist. LEXIS 74666 2006 U.S. Dist. LEXIS 72005 2006 U.S. Dist. LEXIS 60003 2006 U.S. Dist. LEXIS 60057 2006 U.S. Dist. LEXIS 96884 2006 U.S. Dist. LEXIS 62960	2006 WL 2982869  2006 WL 2850099  2006 WL 2375050  2006 WL 4835917 2006 WL 2521399 2006 WL 2165759 2006 WL 2166349 2006 WL 2092645
Jackson v. Knight		2006 U.S. Dist. LEXIS 46021	2006 WL 1822833
Moseley v. Awerbach		2006 U.S. Dist. LEXIS 44277	2006 WL 1679366 2006 WL 1679586
Duffy v. MIV Donna Ann		2006 U.S. Dist. LEXIS 40451	2006 WL 1679586 2006 WL 5159185 2006 WL 1677923 2006 WL 5042033
Schwarz v. City of Treasure Island		2006 U.S. Dist. LEXIS 52235	
Bullard Bldg. Condo Ass'n v. Travelers Prop. Cas. Co. of Am.			
Schwarz v. City of Treasure Island			
Phillips v. Am. Airlines, Inc.			
Taylor v. JP Morgan Invest, LLC			
Schauer v. SW Acceptance Finance, Inc. Profit Sharing Plan			
Employer Reinsurance Corp. v. Laurier Indem. Co.			
U.S. v. Velasco			
U.S. v. Velasco Wedding & Even Videographers, Ass'n Intern., Inc. v. Videocasion, Inc.			
Hargo v. Waters			
Adams v. Skolte			

Commodity Futures Trading Com'n v. R.J. Fitzgerald & Co.	2006 U.S. Dist. LEXIS 31841	2006 WL 1406542
St. Luke's Cataract and Laser Institute, P.A. v. Sanderson	2006 U.S. Dist. LEXIS 28873	2006 WL 1320242
Commodity Futures Trading Com'n v. R.J. Fitzgerald & Co.	2006 U.S. Dist. LEXIS 23254	2006 WL 1119174
Motion Dynamics, Inc. v. Nu-Best Franchising, Inc.	2006 U.S. Dist. LEXIS 31841	2006 WL 1050639
St. Paul Fire and Marine Ins. Co. v. Sea Quest Intern., Inc.	2006 U.S. Dist. LEXIS 14848	2006 WL 889994
Wedding & Event Videographers Ass'n Intern., Inc. v. Videocasion, Inc.	2006 U.S. Dist. LEXIS 37926	2006 WL 821809
U.S. v. Genslinger	2006 U.S. Dist. LEXIS 11586	
Benavides v. Velocity IQ, Inc.	2006 U.S. Dist. LEXIS 11584	
Employer Reinsurance Corp. v. Laurier Indem. Co.	2006 U.S. Dist. LEXIS 14777	2006 WL 680656
Motor-Services Hugo Stamp, Inc. v/ M/V Regal Express	2006 U.S. Dist. LEXIS 10943	2006 WL 532113
Washington v. U.S.	2005 U.S. Dist. LEXIS 40975	2005 WL 3783038
Bryan Media, Inc. v. City of St. Petersburg	2005 U.S. Dist. LEXIS 41225	2005 WL 2861357
U.S. v. Prater	2005 U.S. Dist. LEXIS 45837	2005 WL 2371992
Washington v. U.S.	2005 U.S. Dist. LEXIS 24952	2005 WL 2715401
Caffo v. Dillard's, Inc.	2005 U.S. Dist. LEXIS 41226	2005 WL 1631971
St. Joseph's Hosp., Inc. v. Blue Cross and Blue Shield of Florida, Inc.	2004 U.S. Dist. LEXIS 27674	2005 WL 1216965
Collins v. Hendrickson	371 F. Supp. 2d 1326	2005 WL 5974557
		2005 WL 1220660

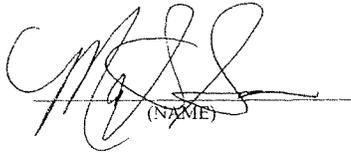
White v. Purdue Pharma, Inc.	369 F. Supp. 2d 1335 370 F. Supp. 2d 1201	2005 U.S. Dist. LEXIS 14882 2005 U.S. Dist. LEXIS 13213 2005 U.S. Dist. LEXIS 13880	2005 WL 1220663 2005 WL 1220664 2004 WL 5572031 2004 WL 2937239
Bogacki v. Buccaneers Ltd. Partnership			
Burton v. Hillsborough County			
Knopfel v. Tech Data Corp.	225 F.R.D. 263	2004 U.S. Dist. LEXIS 25813 2003 U.S. Dist. LEXIS 16089	2004 WL 2937239
U.S. v. Prater		2003 U.S. Dist. LEXIS 18743	
U.S. v. Prater		2003 U.S. Dist. LEXIS 8534	2003 WL 21254811 2003 WL 21224781
U.S. v. Prater			
Niziol v. District School Bd. of Pasco County		2002 U.S. Dist. LEXIS 21371	2002 WL 31095093
Niziol v. District School Bd. of Pasco County	240 F. Supp. 2d 1194	2002 U.S. Dist. LEXIS 21386	2002 WL 31063883
Colon v. Environmental Technologies, Inc.	184 F. Supp. 2d 1210	2001 U.S. Dist. LEXIS 22779	2001 WL 1638651
Lazaro v. U.S. Dept. of Agr.	186 F. Supp. 2d 1203	2001 U.S. Dist. LEXIS 22787	2001 WL 1774049
Commodity Futures Trading Com'n v. R.J. Fitzgerald & Co., Inc.	173 F. Supp. 2d 1295	2001 U.S. Dist. LEXIS 23736	2001 WL 1141457
In re Weeks Marine, Inc.		2000 U.S. Dist. LEXIS 20494	
Piven v. Sykes Enterprises, Inc.	137 F. Supp. 2d 1295	2000 U.S. Dist. LEXIS 20491	2000 WL 33389207
Crown Mktg. Group, Inc. v. U.S.		2000 U.S. Dist. LEXIS 20986	
		2000 U.S. Dist. LEXIS 20983	2000 WL 33257010
		2000 U.S. Dist. LEXIS 14558	

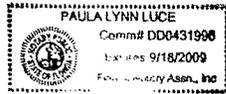
Voyeur Dorm, L.C. v. City of Tampa, Florida	2000 U.S. Dist. LEXIS 19887 2000 U.S. Dist. LEXIS 22563 2000 U.S. Dist. LEXIS 22593 2000 U.S. Dist. LEXIS 22594 1999 U.S. Dist. LEXIS 19505	2000 WL 34248401  2000 WL 34235978 2000 WL 34248413 1999 WL 1043861 1999 WL 33226474
Voyeur Dorm, L.C. v. City of Tampa, FL.	1998 U.S. Dist. LEXIS 20914	1998 WL 776848
Voyeur Dorm, L.C. v. City of Tampa, FL	1998 U.S. Dist. LEXIS 13286	1998 WL 299923
Codrington v. Anheuser-Busch, Inc.		
Gibbons v. Food Lion, Inc.		
Stewart v. Town of Zolfo Springs		
Perkins v. U.S. Airways, Inc.	8 F. Supp. 2d 1343	

AFFIDAVIT

I, Mary Stenson Scriven, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 18, 2008  
(DATE)

  
(NAME)



Paula Lynn Luce 7/18/08  
(NOTARY)

Chairman LEAHY. Well, I appreciate that, and both Bill Nelson and Mel Martinez have talked to me privately in support, doing, as I said, what Senator Hatch and Senator Bennett have for Mr. Waddoups, and the Senators from California with Judge Anello.

Let me ask you the same thing. I walk into your court as a litigant. Can I look at a Judge Scriven—and you have your reputation as a magistrate judge, and I have gone through those cases. Can I look at you and say, “I am going to be treated the same no matter who I am, rich, poor, Democrat or Republican, white, black, Hispanic, whatever, male, female, plaintiff, defendant, am I going to be treated the same”?

Judge SCRIVEN. There is no question, Senator, that you are going to be treated the same without respect of who you are, and I think there is a great deal of assurance in the context of my consideration here, because I have come to you as a candidate from a non-partisan, bipartisan judicial nominating committee that has presented my name forward for consideration.

In addition to that, I have 11 years on the bench, and as a magistrate judge, you do not serve a lifetime term. You get terms. And I served one term, and then I had to be questioned and evaluated by the people who had come in front of me, and I had unanimous approval from the Retention Committee after an extenuous review in the community for the service that I had provided to the court. And I was humbled and challenged by the respect that people had shown as part of the process.

And so, yes, I think anyone coming before me could feel confident that they would be given fair and just treatment under the law.

Chairman LEAHY. Judge, I looked at that retention, and I must admit I was impressed with it. Do you have any question on being able to recuse yourself? It would be an obvious case if your husband’s law firm—

Judge SCRIVEN. He would be grateful that I would recuse myself.  
[Laughter.]

Chairman LEAHY. You do not want somebody coming forward in the court and instead of calling you “Judge,” and they call you “Honey,” or something like that.

Judge SCRIVEN. He calls me “Your Honor” at home, too.  
[Laughter.]

Chairman LEAHY. I do not even want to get into that. I do not get called “Senator” at home, let me tell you right now.

Judge SCRIVEN. No, seriously, Senator, I have faced the question of recusal throughout my tenure as a magistrate judge. I recused from my law firm of Carlton Fields that I had practiced for years, for the first 5 years of my tenure as a magistrate judge. And if my husband has cases before me, or his firm does, or if any—he serves, for example, on the board of the Tampa General Hospital. I do not handle cases that the hospital handles. And, more importantly, as I think you have indicated, it is not just the impropriety of serving on cases, but the appearance of impropriety that courts must observe, because lay people, more than lawyers, look to what is happening in the court and how judges comport themselves. And if we do not avoid the appearance of impropriety, it sort of falls on deaf ears when we occasionally recuse ourselves.

Chairman LEAHY. And I think the appearance—the public has to—we went through this, and I do not mean to be picking on either Justice Scalia or Vice President Cheney. But I remember the dispute. Senator Lieberman had made the original complaint where Vice President Cheney and Justice Scalia were going hunting together at a time when a case involving Vice President Cheney was before the Supreme Court. And I think you have to—and courts get attacked, oftentimes unfairly, just because somebody disagrees with an opinion. To overcome those attacks, we have to be able to say these courts are impartial. We have had Members of Congress who have said we should impeach these judges because we disagreed with this decision. Of course, maybe somebody on the other side disagreed with other judges. And the reason that law is somebody sent out a press release but goes no further is that people respect our Federal judges and respect the impartiality of it. And I think that everybody who comes on the Federal bench has an enormous responsibility for that.

I have had the honor of being able to recommend both Democrats and Republicans to various Presidents to go on the Federal bench from our State. But the point I have made in my reviews of every one of them: Can you be, will you be impartial?

Now, we are a very small State, and if you are anything but impartial, it becomes pretty obvious very quickly. You are probably the fastest-growing State or one of the two fastest-growing States in the country, but it is still important because many people, the only time they will ever know about the Federal courts is when they come before you. And, obviously, this is directed at all of you because—and I am sure you all feel that way.

Did you have anything, Orrin?

Senator HATCH. No. I am just grateful to all these folks for being willing to serve, and I think we ought to introduce Mr. Garre's family as well, if you would.

Chairman LEAHY. Mr. Garre, we questioned you, and you did not get a chance to mention your family, as Senator Hatch just pointed out. Would you, please, for the Garre archives?

Mr. GARRE. Thank you, Mr. Chairman. I would be thrilled to do that.

I am very proud to say that my wife, Lorane Hebert, is here today, and—

Chairman LEAHY. They put you way in the back out there.

Mr. GARRE. Our two children: our little daughter, Natalie, who is going to be 3 in October; and our newest member, Sawyer, who is going to be 3 months later this week, who I think just wheeled in. They are really the reason I am here today, and my inspiration.

I am proud to say that my parents, Sam and Maryjo Garre, are not only here today, but celebrating their 47th wedding anniversary today.

Chairman LEAHY. Congratulations. My wife and I celebrated our 46th when we were in Denver at the convention. It was not quite the way we normally would, but youngest son, whom I mentioned earlier is a Marine—a former Marine—is now a pilot for a large corporation, their jets—he flew a number of their executives out and joined us for dinner on our 46th. I am always delighted to see people with long marriages like that. I will not even give Senator

Hatch a point to point out that he has been married longer than all the rest of us—of course I will.

Senator HATCH. Well, let me just say that I really believe Marcelle deserves a medal for bearing this heavy cross all these years.

[Laughter.]

Senator HATCH. She is a wonderful person. Elaine and I celebrated our 51st wedding anniversary on August 28th, so this is a crusty old judiciary with a lot of us being married for a long time.

Chairman LEAHY. Our wives are bearing the brunt.

Do you have anybody else?

Mr. GARRE. I am very happy to say my sister flew here from Minneapolis to be here today, and I am grateful that many friends and mentors and colleagues in the Office of Solicitor General made time to be here today. And I am particularly grateful that you included me in this hearing and feel very privileged to be here.

Chairman LEAHY. Thank you.

Chairman LEAHY. Ms. Arguello, do you have family members here?

**STATEMENT OF CHRISTINE M. ARGUELLO, NOMINEE TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF COLORADO**

Ms. ARGUELLO. Unfortunately, I did not get the news with enough time to—I was lucky to bring myself out. But I would like to—

Chairman LEAHY. But you did not object to coming out.

Ms. ARGUELLO. I did not object at all.

Chairman LEAHY. Would you like to put their names in the record just so it can be—

Ms. ARGUELLO. I would love to recognize them: my husband, Ron Arguello, husband of 34 years; my older son, Ronnie; my older daughter, Tiffany; my younger daughter, Jennifer; and my son, Kenny. And I would just like to thank them for their love, their support, and their patience with me.

Chairman LEAHY. Good. And you should know that we talked about it here, but Senator Salazar was—as I said, I think he has my farmhouse in Vermont on speed dial. He was calling me from home. He was calling me from the road. He was calling me elsewhere to make sure you would be here, and I committed to him that we definitely would.

Ms. ARGUELLO. Well, I definitely appreciate the fact that you and this Committee have taken the time in what I know is a very busy schedule.

I would also like to thank Senator Allard and Senator Salazar and President Bush for having confidence in my ability to serve them well.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Christine Marie Arguello  
f/k/a Christine Marie Martinez  
a/k/a Christy Arguello, Chris Martinez, Marie Christine Martinez (birth certificate)

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

United States District Judge for the District of Colorado

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

Office: University of Colorado at Boulder  
924 Broadway, UCB 013  
Boulder, CO 80309

Residence: Westminster, CO

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

1955; Thatcher, Colorado

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

I am married to Ronald Leroy Arguello. He is employed by Boulder Valley School District as an elementary school teacher.  
We have 3 dependent children.

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

1977 – 1980, Harvard University; J.D., 1980

1973 – 1977, University of Colorado; B.S. with *Special Honors*, 1977

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

2006 – Present  
 University of Colorado at Boulder  
 924 Broadway, 013 UCB  
 Boulder, Colorado 80309  
 Managing Senior Associate Counsel

2004 – 2006  
 Davis Graham & Stubbs LLP  
 1550 17th Street, Suite 500  
 Denver, Colorado 80202  
 Equity Partner

2003 – 2004  
 Duncan Green Brown & Langeness, P.C.  
 600 17th Street, Suite 2800 South  
 Denver, Colorado 80202  
 Shareholder & Managing Partner

2003  
 University of Denver College of Law  
 2255 East Evans Avenue  
 Denver, Colorado 80208  
 Visiting Professor

1999 – 2002  
 Colorado Attorney General's Office  
 1525 Sherman Street, 5th Floor  
 Denver, Colorado 80203  
 Chief Deputy (2000 – 2002)  
 Deputy for State Services (1999 – 2000)

1999 – 2002  
 University of Colorado School of Law  
 Campus Box 401  
 Boulder, Colorado 80309  
 Adjunct Professor (Spring 2002, 2001, and 2000)  
 Visiting Professor (Spring 1999)

1991 – 1999  
 The University of Kansas School of Law  
 Green Hall, 15th Street & Burdick  
 Lawrence, Kansas 66045  
 Full Professor (1998 – 1999)  
 Associate Professor (1991 – 1998)

1991 - 1997  
 Professional Fee Examiners, Inc.  
 6452 E. Bates Avenue  
 Denver, Colorado 80222  
 Consultant (1991 – 1996)  
 Vice-President of Legal (part-time) (1996 – 1997)

1985 – 1991  
 Holland & Hart  
 90 South Cascade Avenue, Suite 1000  
 Colorado Springs, Colorado 80903  
 Equity Partner (1988 – 1991)  
 Senior Associate (1985 – 1988)

1980 – 1985  
 Valdes-Fauli, Cobb & Petrey  
 One Biscayne Tower, Suite 3400  
 2 South Biscayne Blvd.  
 Miami, Florida 33131-1803  
 Associate (1980 – 1985)

Summer 1979  
 Smathers & Thompson (now dissolved)  
 Summer Clerk

Summer/Fall 1978  
 Greater Boston Legal Services, Domestic Relations Division  
 Summer Intern

Summer 1977  
 University of Colorado, EOP Summer Program  
 Boulder, Colorado  
 Algebra Instructor

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

None

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

University of Colorado:

Graduated with *Special Honors*

Was first in GPA rank in my class

Selected as the Outstanding Senior of 1977 (School of Education)

In my junior year, I was hired by the University as an undergraduate instructor to teach algebra to incoming freshman

Elected to the University of Colorado Student Union

Recipient, Colorado Springs Veterans Scholarship

Harvard University:

Articles Editor, Civil Rights Civil Liberties Law Review, Harvard Law School

General Honors and Awards:

- 2007 Recipient, "Scouting . . . Vale La Pena!" Service Award, Denver Area Boy Scout Council
- 2007 Recipient, Distinguished Individual Award, University of Colorado Hispanic Alumni Association
- 2007 Recipient, Qwest Diversity Trailblazer: Individual of the Year Award, Rocky Mountain Legal Diversity Summit
- 2004 Recipient, Dia de la Mujer Latina Courage and Valor Award, Latino/a Research & Policy Center, University of Colorado at Denver
- 2003 Finalist, Colorado Rockies Hispanic Adult Leadership Award
- 2002 Recipient, Distinguished Alumnus Award, University of Colorado Hispanic Alumni Association
- 2001 Recipient, Hispanic Pioneer Award, Denver Hispanic Chamber of Commerce
- 2000 Recipient, Mary Lathrop Award (Woman Trailblazer), Colorado Women's Bar Association
- 1999 Recipient, Outstanding Hispanic Lawyer Award, Colorado Hispanic Bar Association
- 1998 Awarded Tenure and Promoted to Full Professor, University of Kansas School of Law
- 1996 Recipient, William T. Kemper Fellowship for Teaching Excellence, University of Kansas
- 1995 Recipient, Plaque of Recognition for Outstanding Contributions as a Minority in the Law, University of Kansas School of Law Minority Alumni Banquet
- 1993 Recipient, Frederick J. Moreau Award for Student Counseling, University of Kansas School of Law
- 1991 Recipient, Hispanic of the Year Award, Cinco de Mayo Committee, Colorado Springs, Colorado
- 1990 Recognized by the Gazette Telegraph as one of the 50 most influential women in Colorado Springs, Colorado

- 1989 Recipient, Recognition Award from El Paso County Bar Association for Outstanding Service in establishing the Legal Literacy School
- 1988 Recipient, Portia Award (Outstanding Woman Lawyer), El Paso County Bar Association, Colorado
- 1987 Recipient, Women's Trade Fair Recognition Award for Outstanding Performance in the area of Professional Service, Colorado Springs, Colorado
- 1986 Recipient, Recognition Award from El Paso County Bar Association for Outstanding Service in establishing the High School Mock Trial Competition, Colorado Springs, Colorado

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

National Association of College and University Attorneys

Member, Board of Directors of the Journal of College and University Law, 2007 – Present

Colorado Women's Bar Association Foundation

Member, Board of Directors, 2006 – Present

Member, Planning Committee for Raising the Bar Dinner, 2007 – Present

Colorado Women's Bar Association

At Large Representative, 2004 – 2005

Co-chair, Judicial Committee, 2003 – 2004

Co-chair, Publications Committee, 2001 – 2002

Colorado Hispanic Bar Association

Director, 2007 – Present

Treasurer, 2004 – 2006

Chair, Nominations & Endorsements Committee, 2002 – 2003

Co-chair, Nominations & Endorsements Committee, 2001 – 2002

Treasurer, 2001 – 2003

Director, 2000 – 2001

Hispanic National Bar Association

Kansas Bar Association

Member, Kansas Bar Association Task Force on the Status of Minorities in the Profession, 1991 – 1993

El Paso County (Colorado) Bar Association

Chairperson and Coordinator, Adult Legal Literacy Committee, 1988 – 1990

Founder and Chairperson, High School and Ninth Grade Junior High Mock Trial Competition (Subcommittee of the Citizen's Law Committee), 1985 – 1987

Dade County (Florida) Bar Association  
Chairperson, High School Mock Trial Committee of the Young Lawyers Section  
of the Dade County Bar Association, 1983 – 1984

Colorado Bar Association (current)

Florida Bar Association (inactive status)

American Bar Association (expired)

Dade County Bar Association (expired)

Association of Trial Lawyers of America (expired)

Judicial-related Committees or Selection Panels:

Friend of the Commission, Commission on Families in the Colorado Courts, 2001 – 2002

Member, Pattern Instructions for Kansas Criminal Advisory Committee to the Kansas  
Judicial Council, 1992 – 1998

Member, Pattern Instructions for Kansas Civil Advisory Committee to the Kansas  
Judicial Council, 1992 – 1998

Member, Colorado Supreme Court Nominating Commission (Gubernatorial appointment)  
1987 – 1991

Other Law Related Activities:

Vice-chair, Board of Directors, Colorado Campaign for Inclusive Excellence, 2007 –  
Present

Member, Advocacy Task Force, University of Colorado School of Law, 2007 – Present

Member, Deans' Diversity Council; Chair, Retention Working Group, 2006 – Present

Member, Sentencing Reform Project, Colorado Lawyers Committee, 2004 – 2006

Master, Minoru Yasui Inn of Court, Denver, Colorado, 2002 – Present

Mentor for First Year Law Student Mentorship Program (University of Denver and  
University of Colorado), 2002 – Present

Master, Judge Hugh Means Inn of Court for Douglas County, Kansas, 1992 – 1998

**11. Bar and Court Admission:**

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

Florida – October 23, 1980 (inactive status - voluntary)

Colorado – April, 22 1985 (no lapse in membership)

Iowa – December 19, 2003 (voluntary retired inactive – not practicing in Iowa)

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

Florida State Courts, 1980

Colorado State Courts, 1985

United States District Court for the Southern District of Florida, 1981

United States Court of Appeals for the Fifth Circuit, 1981

United States Court of Appeals for the Eleventh Circuit, 1981

United States District Court for the District of Colorado, 1986

United States Court of Appeals for the Tenth Circuit, 1986, 1999

There have been no lapses in membership.

**12. Memberships:**

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

Organizations to which I currently belong:

Women's Forum of Colorado, Inc., 2005 – Present

Stapleton Development Corporation (Mayoral appointment); Director, 2004 – Present

Rocky Mountain News Hispanic Community Advisory Committee; 2003 – Present

Kroenke Sports Enterprises Latino Advisory Committee; 2003 – Present

Circle of Latina Leadership; Mentor and Trainer, 2002 – Present

Organizations to which I have belonged:

Latina Chamber; Director, 2005 – 2007

Arapahoe House; Director, 2003 – 2006, Secretary (2005)

Smart Government, Inc. (Advisory Board to Denver Mayor John Hickenlooper),  
2003

2025 Commission; Executive Committee Member, 2002-2003

City Attorney Transition Subcommittee of Denver Mayor-elect John  
Hickenlooper's Transition Committee; Co-chair, Member, Board of  
Advisors, 2003

Justicia, Inc., Director, 1994 – 1996

The Hispanic Network of KU; Co-founder and member, 1994 – 1998

University of Kansas Hispanic American Advisory Committee; Member, 1992 –  
1993

Colorado Hispanic League; First Vice President, 1990 – 1991

National Caucus of Hispanic School Board Members; Member, 1988 – 1991;  
Treasurer (1989, 1990), Vice President for the Western Region (1988),

Colorado Springs School District 11; Trustee, Board of Education, (elected),  
1987 – 1991

Advisory Council for SER: Employment for Older Americans, 1987 – 1991

Pikes Peak United Way; 1986 – 1991, Director, Secretary (1990-91), Executive  
Committee (1989-91),

Pikes Peak Legal Services Board; Trustee, 1986 – 1991

Citizens' Goals Board; Director, 1986 – 1991

League of United Latin American Citizens, Colorado Springs Chapter, Member,  
1985 – 1991

Director, Advisory Board of Colorado Civics/Legal Education Program, Boulder,  
Colorado, 1986 – 1988

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

implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed in response to 12a above discriminate on the basis of race, sex or religion. I do not currently belong, nor have I ever belonged, to any organizations that discriminate on the basis of race, sex, or religion.

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

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

Dennis Prater, Daniel Capra, Stephen Saltzburg, Christine Arguello, *Evidence: The Objection Method* (Lexis, Third Edition 2007)

Christine M. Arguello, "The Marital Discord Exemption to Hearsay: Fact or Judicially Legislated Fiction?" 46 *Kansas Law Review* 64 (1997).

Christine M. Arguello, "Cash Collateral: The Debtor's Lifeblood," Chapter 3 of *Small Business Bankruptcy Reorganizations* (Wiley Law Publications 1994).

"Consumer Protection," Chapter 129 - *Pattern Instructions for Kansas 3d - Civil* (West Group 1997).

Letter to the Editor, Rocky Mountain News, September 26, 2003

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

None

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

Attorney General Formal Opinion 2000-2, AG Alpha No. ST EL FBQSN, responding to a request from the Secretary of State requesting clarification of certain issues relating to the term limits provisions of Colo. Const. Art. XVIII, section 11 ("Amendment 17").

Attorney General Formal Opinion 2001-3, AG Alpha No. LE HR AGBAP, responding to a request from the Speaker of the House regarding term of At-Large Member of State Board of Education.

Letter to House and Senate Judiciary Committees, March 31, 1998, signed by fifty-seven bankruptcy law professors urging Congress "to pause, to hold full hearings on the issues, and to seek out a balanced, reasoned approach" to reform of the nation's bankruptcy laws.

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

The following are the speeches or presentation I was able to identify from my records. In addition to the listed speeches and presentations, I have given numerous presentations to community groups and elementary, junior high, and high school classes on the importance of education. In my capacity as a Law Professor, I have given hundreds of hours of lectures to law students in the substantive areas of Trial Advocacy, Advanced Litigation, Bankruptcy, Creditors' and Debtors' Rights, Criminal Law and Procedure, Contracts, Legal Research & Writing and Appellate Practice.

"A Few Ideas about Ideas - First Amendment and the State University" (Panelist)  
– 2008 Summer Council of Presidents, American Association of State Colleges and Universities

"Effective Direct & Cross Examination" (Presenter) – 2007 University of Colorado Counsel Retreat (copy of power point attached)

Acceptance Speech for the "Scouting . . . Vale La Pena!" Service Award, Denver Area Boy Scout Council 2007 (copy attached)

"Hand in Hand: The Value of Mentoring" (Panelist) – 2007 Rocky Mountain Legal Diversity Summit

"Legal Issues in Diversity Initiatives" (Panelist) – 2007 NALP Annual Education Conference (copy attached)

"Passing the Gender Bar: A Discussion on Gender Disparity in the Legal Profession" (Moderator) – 2007 CWBA and the CU Women's Law Caucus

- “Effective Internal Investigations” (Presenter) – 2006 UCAR Measuring Up Conference (copy attached)
- “Effective Internal Investigations” (Presenter) – 2005 Davis Graham & Stubbs Employment Update
- “Reforming the Bankruptcy Code: Developments and Consumer Law” (Moderator) – 2005 Hispanic National Bar Association Annual Convention
- “Choosing a Path to Achieve” (Commencement Speaker) - Remington College Graduation, May 6, 2005 (copy attached)
- “Choosing a Path to Achieve” (Key Note Speaker) - Latina Chamber Luncheon, November 30, 2004 (copy attached)
- “Diversity in the Legal Profession” (Speaker) - University of Denver College of Law Orientation, August 13, 2003
- “Strength in Unity” (Key Note Speaker) – 2002 Hispanic Heritage Month, Aerospace Data Facility Diversity Program, Buckley Air Force Base
- “Protecting our Seniors” (Speaker) - Los Alegres Ancianos Mexicanos, El Dia de Los Ancianos, Greeley, Colorado, August 17, 2002
- “Tips on Being a Good Supervisor and the Secret of Success” (Key Note Speaker) – 2002 Annual Employee Recognition Luncheon, Crossroads Managed Health Care Systems, Inc., Pueblo, Colorado
- “Success – What Is it and How Do You Achieve It?” (Key Note Speaker) – 2002 Scholarship Awards Ceremony, Coors Hispanic Employee Network
- “The Privileges and Obligations of Being an Attorney” (Key Note Speaker) – 2001 Swearing In Ceremony for New Bar Admittees, Colorado Supreme Court (copy attached)
- “Conquering the Obstacles: How to Succeed as a Latina in the Professional Fields” (Speaker) – U.S. Fish and Wildlife Service, October 10, 2001
- “Women in Law – It’s a Long Way from First to Finished” (Panel Moderator) – 2001 Colorado Women’s Bar Association Annual Convention
- “Why Diversity Matters – Law School and Beyond” (Speaker) – 2001 and 2003 First Year Law Student Orientation, University of Denver College of Law

- “The Critical Role Parents Play in the Development of their Children” (Key Note Speaker) – 2001 Annual Convention, Los Padres Colorado Statewide Parents Coalition
- “What to Expect from Your Law School Experience” (Speaker) - University of Colorado School of Law 2001 Minority Orientation Program
- “You Are Our Hope for the Future” (Key Note Speaker) –2001 Scholarship and Awards Dinner, Brighton Hispanic Advisory Committee
- “What Makes a Successful Manager and Administrator” (Speaker) - Denver City Attorneys Office, March 15, 2001
- “Inclusion in Institutions of Higher Education – My Personal Experiences” (Key Note Speaker) – 2001 Annual Diversity Conference, University of Colorado
- “Hopwood vs. Texas” (Panelist) – Hispanic American Law Students Association, University of Oklahoma (February 26, 2000)
- “Finding Support and Challenges Outside Our Institutions” (Speaker) – 1999 AALS Workshop for Women in Legal Education (October 1, 1999)
- “Women & Education” (Speaker), www.hro (Working with Women) Centennial Awards Reception, Holme Roberts & Owen, Denver, Colorado, May 6, 1999
- “Conquering the Obstacles: How to Succeed as a Latina in the Legal Profession” (Key Note Speaker) – Center for Latina/Latino Legal Studies, St. Mary’s Law School, November 5, 1998 .
- “Multiculturalism and Education” (Presenter) - The University of Kansas, Latino/Latina Symposium, May 1, 1998
- “The Problem of Attorneys Fees in Bankruptcy” (Presenter) - Harvard Law School, La Alianza Annual Conference, April 13, 1996
- “The Use of Fee Audits in Bankruptcy as a Means of Monitoring Reasonableness of Compensation” (Presenter) - San Francisco Bay Area Forum on Compensation of Attorneys in Bankruptcy, November 6, 1995
- “Latinos as Law Professors: Success in the Face of Challenge” (Panelist) - Harvard Law School, La Alianza Annual Conference, April 13, 1996
- “Court Systems Panel on the Influence of the Mass Media” (Moderator) - The University of Kansas School of Law, Kansas Journal of Law and Public Policy Symposium, March 9, 1995

“How Do or Should Law Schools Teach Students Professionalism” (Moderator) - University of Kansas School of Law Faculty Forum, February 16, 1995 (copy attached)

“The Added Obstacles of Being an Hispanic Woman in Today's Society” (Speaker) - University of Kansas Hispanic Heritage Week, September 22, 1994

Central Junior High (Speaker) – Lawrence, Kansas, date unknown (copy attached)

1992 – 1998 Speaker, KU Law Night, University of Kansas School of Law (copy attached)

1995, 1997; Presenter, KU Minority Law Day, University of Kansas School of Law

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

On air interview with KNRV La Buena Onda 1150AM; 2/26/2008 – no clip or transcript available

“Set Goals and Dream Big”: A DILP Profile of Christine Arguello, The Colorado Lawyer, Vol. 34, No. 11; 11/2005 (copy attached)

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

I have not held a judicial office.

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

- a. citations for all opinions you have written (including concurrences and dissents);
- b. a list of cases in which certiorari has been requested or granted;
- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and
- f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have not served as a judge.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

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

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

On July 27, 2000, I was nominated by President William Clinton to be a United States Circuit Judge for the Tenth Circuit. On December 15, 2000, my nomination was returned to the President upon the adjournment of the 106th Congress.

I was elected to the nonpartisan position of Trustee for the Board of Education for Colorado Springs School District 11, Colorado Springs, Colorado. I served a

four-year term and did not seek re-election because I moved to Kansas to begin teaching. I served in this position from 5/1987 – 5/1991.

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

For a brief period of time in 2004, I was Treasurer (uncompensated) for the Don Quick for DA (17th Judicial District) campaign.

During 2002, I was an uncompensated volunteer in the Ken Salazar for Colorado (Attorney General) re-election campaign.

During 2004, I was an uncompensated volunteer in Ken Salazar's senatorial campaign. My responsibilities included stuffing envelopes and walking door to door delivering literature, and delivering signs for both of Ken Salazar's campaigns.

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

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;  
I did not serve as a clerk to a judge.
  - ii. whether you practiced alone, and if so, the addresses and dates;  
I have not practiced alone.
  - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

2006 – Present  
University of Colorado at Boulder  
924 Broadway, 013 UCB  
Boulder, Colorado 80309  
Managing Senior Associate Counsel

2004 – 2006

Davis Graham & Stubbs LLP  
1550 17th Street, Suite 500  
Denver, Colorado 80202  
Equity Partner

2003 – 2004

Duncan Green Brown & Langeness, P.C.  
600 17th Street, Suite 2800 South  
Denver, Colorado 80202  
Shareholder & Managing Partner

2003

University of Denver College of Law  
2255 East Evans Avenue  
Denver, Colorado 80208  
Visiting Professor

1999 – 2002

Colorado Attorney General's Office  
1525 Sherman Street, 5th Floor  
Denver, Colorado 80203  
Chief Deputy (2000 – 2002); Deputy for State Services (1999 – 2000)

1999 – 2002

University of Colorado School of Law  
Campus Box 401  
Boulder, Colorado 80309  
Adjunct Professor (Spring 2002, 2001, and 2000)  
Visiting Professor (Spring 1999)

1991 – 1999

The University of Kansas School of Law  
Green Hall, 15th Street & Burdick  
Lawrence, Kansas 66045  
Full Professor (1998 – 1999)  
Associate Professor (1991 – 1998)

1991 - 1997

Professional Fee Examiners, Inc.  
6452 E. Bates Avenue  
Denver, Colorado 80222  
Consultant (1991 – 1996)  
Vice-President of Legal (part-time) (1996 – 1997)

1985 – 1991  
 Holland & Hart  
 90 South Cascade Avenue, Suite 1000  
 Colorado Springs, Colorado 80903  
 Equity Partner (1988 – 1991)  
 Senior Associate (1985 – 1988)

1980 – 1985  
 Valdes-Fauli, Cobb & Petrey  
 One Biscayne Tower, Suite 3400  
 2 South Biscayne Blvd.  
 Miami, Florida 33131-1803  
 Associate (1980 – 1985)

b. Describe:

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

From May of 1980 to June of 1991 and from May of 2003 to March of 2006, I was a civil litigation attorney in private practice. I successfully prosecuted and defended, in state and federal courts, a broad variety of civil litigation matters including cases involving domestic or family law, breach of contract, employment discrimination and harassment, trademark infringement, statutory liens, debt collection or foreclosure, commercial litigation, lender liability defense, personal injury, and medical malpractice. The general character of my practice remained consistent over the years I was in private practice, although from 2003 to 2006 my emphasis shifted from commercial litigation to employment related investigations and litigation.

In June of 1991, I joined the University of Kansas School of Law as an associate professor, assuming responsibility for teaching and directing the School's Trial Advocacy Program. I also taught bankruptcy, contract law, legal research and writing, and appellate advocacy. During 1997, I supervised students in the Prosecutors' Clinic at the law school. In 1996, I was the first law professor to be awarded one of the most prestigious teaching awards given by the University of Kansas - the William T. Kemper Fellowship for Teaching Excellence. In April of 1998, I was granted tenure and promoted to the rank of Full Professor by the University of Kansas. I am the co-author of a casebook, Evidence: The Objection Method, which is used in numerous law schools around the country. I taught bankruptcy law as a Visiting Professor at the University of Colorado School of Law in the Spring of 1999, and as an adjunct professor in the Spring of 2000, 2001 and 2002. I also taught bankruptcy

and commercial law (Articles 2 and 9) as a visiting professor at the University of Denver College of Law during the Spring of 2003.

In January of 1999, I left academia and returned home to Colorado where I joined Attorney General (now Senator) Ken Salazar's new administration in the Colorado Attorney General's office. From January of 1999 until October of 2000, I served as Deputy Attorney General for State Services, supervising a group of 35 attorneys and 20 support staff who advised and defended the State of Colorado in state and federal trial and appellate courts in matters involving challenges to the State Constitution, laws passed by the legislature, and initiatives passed by the people. In late 2000, Attorney General Salazar promoted me to Chief Deputy where, in addition to being the chief advisor to the Attorney General, I was responsible for the administration of the Office of the Attorney General, including oversight of all sections of the office (approximately 200 attorneys and 150 support personnel), budget and expenditures, crisis control, and policy.

In my current position as Managing Senior Associate Counsel at the University of Colorado in Boulder, I supervise a team of 4 lawyers, 1 legal assistant, and 1 administrative assistant who provide legal advice to and representation of the University on all its legal needs. In addition, as a member of the Chancellor's cabinet, I assist in the development and implementation of campus policies and long-term strategic plans for the University.

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

As a private practitioner, my typical corporate clients included banking institutions, savings and loan lending institutions (and later, during the savings and loan crisis, the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation), construction companies, franchise companies, and other similar businesses. My non-corporate clients included individuals for whom I handled only a single matter related to personal injury, medical malpractice, employment discrimination and harassment, breach of contract disputes, divorce, or release of trust fund monies. As a public servant in the Colorado Attorney General's Office, my clients included the Governor, all of his cabinet members and the state agencies they direct, the Judiciary, the Department of Local Affairs, the Department of Military Affairs, the Secretary of State, the State Controller, the Department of Human Services, the Department of Health Care Policy and Financing, the Department of Labor and Employment, General Support Services, and all Colorado state higher education agencies and institutions. As Managing Senior Associate Counsel my client is the University of Colorado.

In private practice, I specialized in commercial, employment, breach of contract, and medical malpractice litigation and bankruptcy matters. As a professor and scholar, my areas of specialization were trial practice, the rules of evidence, contract law and bankruptcy law. At the Attorney General's office, I defended government employees, institutions, and agencies in a variety of trial and appellate matters. In my current position at the University of Colorado, I advise the Chancellor and other administrators, employees, and students on the Boulder campus on a wide spectrum of matters ranging from constitutional law issues such as academic freedom and first amendment rights, to compliance with statutory research restrictions, to personnel and other day to day operational matters.

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

90% of my practice was litigation related. As a civil litigator, I appeared in court occasionally. Between 1990 and 1991, I appeared in bankruptcy court on contested matters and adversarial proceedings on a frequent basis.

- i. Indicate the percentage of your practice in:

1. federal courts: 50%
2. state courts of record: 50%
3. other courts.

- ii. Indicate the percentage of your practice in:

1. civil proceedings; 100%
2. criminal proceedings.

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

To the best of my recollection, I tried approximately fifty trials or major evidentiary hearings in State and Federal courts while in private practice, 1980 - 1991. I was sole counsel in all the matters I tried, except for one jury trial in which I was chief counsel and one jury trial in which I was associate counsel. From 2003 to 2006, I was lead counsel on dozens of active litigation matters but, due to good pretrial preparation, only one had to be litigated to judgment.

- i. What percentage of these trials were:

1. jury; 20%
2. non-jury. 80%

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

I have not practiced before the Supreme Court of the United States.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

1. *In re: West Central Housing Development Organization*, United States Bankruptcy Court for the District of Colorado, Case No. 04-23758-HRT. Presiding Judge: Howard R. Tallman.

I represented the State of Colorado, Department of Local Affairs, Division of Housing, which sought to recover notes receivable and funds valued at approximately \$4,000,000 from the bankrupt debtor, a 501(c)(3) not-for-profit Community Housing Development Organization that administered the State's affordable housing programs for cities and counties in the western part of the State. This case was factually and legally complicated because of the lack of precedent on the issue, lack of clarity in the contract documents governing the relationship between the State and the debtor, and the numerous federal regulations that governed the grant monies involved. The State's attempt to recover these assets was adamantly opposed by two creditors because the assets at issue comprised the bulk of the debtor's estate. In 2005, after a two day trial and full briefing of the matter, the court accepted my argument that the debtor had held these assets in a custodial capacity and ordered that the Trustee return the assets to the State.

Opposing Counsel:  
William S. Silverman, Esq.,  
1601 Blake St., Ste. 500  
Denver, Colorado 80202  
(303) 623-6966

Charles Greenhouse, Esq.  
Franke Greenhouse List & Lippitt, LLP

Granite Building, 1228 Fifteenth Street, Second Floor  
 Denver, Colorado 80202  
 (303) 623-4500

2. *Diedre Scott vs. City of Englewood, et al.*, United States District Court for the District of Colorado, Case No. 05-CV-1320 EWN-MJW. Presiding Judge: Magistrate Judge Michael Watanabe.

This was a gender discrimination case in which my co-counsel and I represented a female police officer who had been terminated from her position with the Englewood Police Department. We obtained a probable cause finding of discrimination from the Colorado Civil Rights Division and attempted to mediate a settlement with the City. After filing suit in Federal court, I took the depositions of two key witnesses for the City of Englewood. Shortly after taking these depositions, the City settled the case for significantly more than it had offered in the mediation.

Opposing Counsel:  
 Patrick Mooney, Esq.  
 Semple Miller & Mooney PC  
 1120 Lincoln St., Ste. 1308  
 Denver, Colorado 80203  
 (303) 595-0941

Co-counsel:  
 Joseph A. Salazar  
 3842 E. 127th Lane  
 Thornton, CO 80241  
 (303) 452-5601

3. *Thomas Wells vs. Emmett Emanuel Miller*, United States District Court for the District of Colorado, Case. No. 03-F-1796 (CBS). Presiding Judge: Magistrate Judge Craig Shaffer.

I represented Plaintiff Thomas Wells in this medical malpractice/wrongful death case. Defendant, despite not being licensed to practice medicine in the State of Colorado, provided regular psychotherapy sessions to Plaintiff's wife in her home in Colorado via the telephone. Without appropriately monitoring and conducting personal examinations of Plaintiff's wife, Defendant prescribed anti-psychotic drugs, anti-depressant drugs, controlled substances, and other prescription drugs to Plaintiff's wife by phoning in such prescriptions to pharmacies in Colorado. Defendant prescribed these drugs in such high dosages that Plaintiff's wife became addicted and her existing psychological debilities were aggravated instead of assisted. After Defendant abandoned Plaintiff's wife by suddenly terminating his doctor/patient relationship with her, Plaintiff's wife committed suicide. I successfully opposed the Defendant's vigorous challenge to the court's exercise of personal jurisdiction over him. After key discovery was taken, the case was settled prior to trial.

Opposing Counsel:

Craig A. Sargent  
 Pryor Johnson Carney Karr Nixon, P.C.  
 5619 DTC Parkway, Suite 1200  
 Greenwood Village, CO 80111  
 (303) 773-3500

4. *Pearce v. First Nat'l Bank of Colo. Springs*, Case Number 86CV5445, Division 6, District Court, El Paso County, Colorado. Presiding Judge: Judge Stephen Pelican (719) 448-7520.

Plaintiff asserted that our client, the First National Bank of Colorado Springs, had put him out of business by wrongfully foreclosing on his home and business property in breach of an alleged oral agreement entered into with the bank during negotiations over a Cash Collateral Agreement in the bankruptcy of the Plaintiff's company. Plaintiff sought actual and punitive damages based on breach of contract and fraud. Judge Pelican granted my motion for summary judgment on the fraud count and my motion to strike the request for punitive damages based on admissions obtained from the Plaintiff during deposition. The case was tried to a jury on the sole count of breach of contract. I was lead counsel on this case. After a weeklong trial, the jury returned a verdict in favor of Plaintiff.

Opposing Counsel:

James W. Kin and Thomas Herd  
 Gaddis, Kin & Herd, P.C.  
 118 S Wahsatch  
 Colorado Springs, Colorado 80903  
 (719) 471-3848

(original attorneys for Plaintiff who were allowed to withdraw from case for ethical reasons).

James A. Carleo  
 503 North Main Street, Suite 658  
 Pueblo, Colorado 81003  
 (719) 632-5001  
 (counsel for plaintiff after withdrawal by Mr. Kin and Mr. Herd).

5. *Alvarado v. Herrington*, Case Number 86CV142, Division B, District Court, Pueblo County, Colorado. Presiding Judge: Judge Thomas Phelps (original trial judge); Judge Dennis Maes took over upon Judge Phelps' retirement.

This was a medical malpractice case in which I represented the Plaintiffs. The case was originally tried to a jury with Judge Phelps as the presiding judge. Halfway through the trial, over objection of Plaintiffs, the judge granted defense counsel a mistrial because the defense's expert witness was precluded from rendering an opinion on an issue that was critical to the defense of Plaintiffs' malpractice claims. The judge's granting of a mistrial

was not immediately appealable and my clients, who had mortgaged their home to pay for the expert witnesses and court costs, could not afford a second trial. Thus, they were forced to settle the case.

Opposing Counsel:

Lewis M. Quigg  
Shaw & Quigg, P.C.  
Suite 222, 501 North Main Street  
Pueblo, CO 81003-3124  
(719) 543-8596

Co-counsel:

Roger D. Hunt - retired

6. *Resolution Trust Corporation, as Receiver for Pacific Savings Bank v. Ragan*, Case Number 90CV3087, Division 10, District Court, El Paso County, Colorado. Presiding Judge: Judge Gilbert Martinez.

On behalf of our client, the Resolution Trust Corporation (RTC), I obtained an order appointing a Receiver for five apartment complexes owned by the defendants and on which the RTC held deeds of trust. Upon conducting an accounting, the Receiver determined that the defendants had removed a significant amount of cash and personal property, including rents, equipment, and furniture, from the apartment complexes. On behalf of the RTC and the Receiver, I filed a motion to compel turnover of this property. The defendants denied that they collected the rents and asserted that the personal property in question did not belong to TSR Properties, one of the defendants, but rather that it belonged to another entity owned by them. As a result of my pretrial investigation, I located documents signed by the defendants under penalty of perjury in a prior bankruptcy in which they attested that the personal property did in fact belong to TSR. Through discovery, I was able to track the collection of the disputed rents to deposits in the debtors' bank accounts. An evidentiary hearing was held on our motion on May 16, 1991. In the middle of my cross-examination of Mr. Ragan, Judge Martinez called a short recess and instructed Mr. Gelt to take this time to advise his client regarding the penalty for committing perjury in a court proceeding. The Court ultimately granted the motion to compel turnover.

Opposing Counsel:

Howard B. Gelt  
Shughart Thomson & Kilroy PC  
1050 17th Street, Ste. 2300  
Denver, CO 80265  
(720) 931-8143

7. *In re McClanahan Surveying, Inc.*, Bankruptcy No. 87-B-0161E, Chp. 11, United States Bankruptcy Court, District of Colorado. Presiding Judge: Judge Roland Brumbaugh, (retired).

My client, First Colorado Bank, N.A., held a perfected security interest in all accounts receivable and equipment of the debtor which had defaulted on its loan payments to the bank. The bankruptcy of the debtor was due, in part, to the lack of managerial skills and overspending by the individual owners. Because the bank held a perfected security interest in the debtor's cash collateral, it would have been easy for me to collect what I could by liquidating the assets of the debtor even if that meant putting the debtor out of business. However, by doing so, the bank would recover less than half the debt due it. After reviewing the financial documentation and speaking with both the bank and the McClanahans (with their attorney present), it was my opinion that this company had the means to rehabilitate itself, assuming proper oversight and management. I persuaded my client not to close down the debtor and to allow them to use, under strict limitation, some of the cash collateral. I drafted a stipulation for the use of cash collateral, which was approved by the court. The debtor emerged from bankruptcy intact and the bank was paid in full.

Opposing party/counsel:

Gayle L. McClanahan  
 President, Charles A. McClanahan  
 915 South 8th St.  
 Colorado Springs, CO  
 (Debtors) (last known address).

Rodney Bradley, (not listed in Martindale or the Colorado Legal Directory)  
 old address: 1080 Cheyenne Road  
 Colorado Springs, CO 80906  
 (Attorney for Debtors).

8. *In re David A. Weseloh, d/b/a Innovative Growth Investments*, Bankruptcy No. 86-B-2709J, Chp. 11, United States Bankruptcy Court, District of Colorado. Presiding Judges: Judge Charles Matheson and Judge Roland Brumbaugh, (both retired).

In this bankruptcy, I represented Stan and Nina Predmore, creditor of the debtor by virtue of a note and deed of trust he gave them to finance his purchase from them of the Royal Scotchman Motel in Gunnison. In November of 1986, the debtor filed an objection to the claim of my clients and also asserted three claims against Stan Predmore for fraud, negligent misrepresentation and breach of fiduciary duty related to the sale of the motel. Several times I provided debtor's counsel with evidence that the claims of the debtor were false and that there was no basis in fact to support the debtor's allegations. On May 27, 1987, after a day of trial, Judge Brumbaugh dismissed the claims as groundless and frivolous. In a subsequent evidentiary hearing, Judge Brumbaugh sanctioned both the debtor and his counsel in an amount equal to the attorney's fees and court costs expended by my client in defending himself in this matter. In November of 1988, I filed an adversary proceeding against the debtor for purposes of obtaining a preliminary injunction to enjoin the debtor from conducting a fire sale of all the assets of the business without court authorization. On November 15, 1988, after an evidentiary hearing on the merits, Judge Matheson issued an order granting the preliminary injunction.

Subsequently, my client obtained relief from the automatic stay and had a receiver appointed to protect against further deterioration of the motel pending foreclosure.

Opposing Counsel: Jeffrey Cohen (address unknown).

9. *In re Trainor Ranch, Inc.*, Bankruptcy No. 91-12200 SBB, Chapter 12, United States Bankruptcy Court, District of Colorado. Presiding Judge: Judge Sidney Brooks (retired).

In this Chapter 12 (Family Farmer Reorganization) case, I represented the First National Bank of Ordway which held a perfected security interest in the Trainor Ranch real property and in the cattle owned by the Trainor Ranch. After filing bankruptcy, the bank became concerned that the owners of the Trainor Ranch were diverting cattle that were subject to the bank's security interest and transferring them to their adult son. When the bank and a veterinarian were denied access to the ranch for purposes of inventorying and checking the health of the cattle, I filed a Motion to Remove the Debtor in Possession and to Appoint a Trustee. The motion was presented to the court at an emergency hearing on April 23, 1991, at which time Judge Brooks ordered the Chapter 12 Trustee to appoint an independent evaluator to report on the number and condition of the cattle, the water and the grass on the ranch. On June 1, 1991, the Debtors and the bank entered into a stipulation resolving the dispute. The debt was extended and the debtors agreed to round up and account for all the cattle and allow them to be inspected. Shortly thereafter, the parties were successful in negotiating a plan of reorganization.

Opposing Counsel:

Joseph A. Hambright  
PO Drawer 3868, 3026 Patterson (F) Rd.  
Grand Junction, Colorado 81504  
(970) 434-4685  
(Attorney for Debtor)

William M. Bass  
P.O. Box 100035  
Denver, CO 80163  
(no phone number available)  
(Chapter 12 Trustee).

10. *Nor'wood Development Corp. v. Federal Savings & Loan as Conservator for First Fed'l Savings & Loan Assoc'n of Colo. Springs*, Civil Action Number 89-A-529, United States District Court for the District of Colorado. Presiding Judge: Zita Weinshienk, (Senior Status).

Plaintiffs filed this lender liability action in state court against the Federal Savings & Loan Insurance Corporation, as Conservator for First Federal Savings and Loan of Colorado Springs. I removed the matter to federal court on behalf of the FSLIC. The matter was put on a fast track with accelerated discovery cut-off and pre-trial conference

dates. The matter was settled pursuant to a loan workout agreement and the matter was dismissed by stipulation.

Opposing Counsel:

J. Gregory Walta  
105 East Moreno  
Colorado Springs, Colorado 80903  
(719)578-8888

Patrick J. Canty  
no listing available.

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to the fourteen years I was in private practice, I spent six and a half years teaching trial practice skills, bankruptcy law, and appellate advocacy at the University of Kansas School of Law. As the Director of the Trial Advocacy program at KU, I developed, coordinated and taught a program that focused on the students' development of forensic technique in the basic trial practice skills of direct examination, cross examination, impeachment, introduction and use of exhibits, defense of examinations, expert witness examination, jury communication, opening statement, and closing argument. My program also impressed upon the students the importance of well-developed analytical skills, strategic evaluation of the case, case theory development, precise fact analysis, tactical decision making, technical and tactical application of the rules of evidence, professionalism, and negotiating skills. I dedicated substantial time and effort to researching and writing about the rules of evidence and bankruptcy law. My book, *Evidence: The Objection Method*, addresses how to teach the Federal Rules of Evidence to law students. The three years I devoted to researching and writing this book helped me gain an extensive knowledge of the intricacies of the Federal Rules of Evidence. Few lawyers and judges ever attain that in-depth level of familiarity and expertise with these operative rules.

As a law professor, I worked to expand my knowledge and understanding of criminal law and procedure. From 1992 - 1998, I served as the only non-judicial member of the Pattern Instructions for Kansas - Criminal, Advisory Committee to the Kansas Judicial Council. In addition, during academic year 1997-98, I supervised KU's Criminal Justice (Prosecutors') Clinic which required me to supervise and monitor student interns working in the offices of the U.S. Attorney, Wyandotte District Attorney, Johnson

County District Attorney, and Douglas County District Attorney, and to coordinate a two hour presentation each week on substantive topics of criminal prosecution.

As Chief Deputy and Deputy Attorney General, I served as mentor and advisor to attorneys, including the Criminal Law Section of the Attorney General's Office, in numerous matters in the state and federal trial and appellate courts. I was also personally involved in defending the State in several high-profile litigation and appellate matters including:

*In re Submission of Interrogatories on House Bill 99-1325*, 979 P.2d 549 (Colo. 1999). Presiding Judges: Justices Mullarkey, Scott, Love Kourlis, Hobbs, Martinez, Bender, and Rice. Opposing Counsel: Edwin G. Perlmutter (now Congressman Perlmutter), 415 Cannon House Office Building, Washington, DC 20515, (202) 225-2645. Co-Counsel: Rebecca C. Lennahan, Office of Legislative Legal Services (Retired). This matter involved the submission of three interrogatories by the General Assembly and the Governor to the Colorado Supreme Court regarding the constitutionality of legislation authorizing the issuance of revenue anticipation notes to fund highway construction. At the request of the Governor, I presented the oral argument on behalf of the Governor before the Colorado Supreme Court. We prevailed on two of the three interrogatories.

*Sturdevant v. Paulsen*, 218 F.3d 1160 (10th Cir. 2000). Presiding Judges: Judges Seymour, Lucero, and Ellison. Opposing Counsel: Sharon Dreyer, Colorado Education Association, 1500 Grant Street, Denver, CO 80203-1800, (303) 837-1500. This case involved an appeal of the denial of the State Board for Community Colleges & Occupational Education's motion to dismiss based on Eleventh Amendment immunity. The district court's finding that the SBCCOE, the governing board of the State's community college system, was not an arm of the state had serious negative ramifications for governing boards of other State educational institutions. Because of the import of this case to the State, I drafted the State's appellate brief and I argued this appeal before the Tenth Circuit Court of Appeals. The Tenth Circuit reversed the district court, holding that the Eleventh Amendment bars claims for damages against entities that are arms or instrumentalities of a state and that the SBCCOE was an arm of the state.

*Giardino v. Colorado State Bd. of Educ.*, Case No. 98CV0246 (Denver County District Court). Presiding Judge: Judge Paul A. Markson. Opposing Counsel: Randolph W. Barnhart, Hillyard Barnhart Ekker & McNally LLP, 7887 E Belleview Ave., Ste. 1200, Englewood, Colorado 80111-6015, (303) 793-0700. This case was filed as a class action on behalf of minor students who attended public schools in eleven of the 186 school districts in Colorado. The Plaintiffs challenged the constitutionality of Colorado's school finance system as it related to capital construction for public schools. I supervised the trial strategy for this case. More importantly, I was actively involved in assisting Attorney General Salazar with the complex negotiations among Plaintiffs' counsel, the Colorado General Assembly, and the Governor to achieve an unprecedented settlement in this case.

For the past two years, as Managing Senior Associate Counsel at the University of Colorado in Boulder, I have supervised a team of lawyers who provide for all the legal needs of the University. We advise the Chancellor and other administrators, employees, and students on a wide spectrum of matters ranging from constitutional law issues such as academic freedom and first amendment rights, to compliance with statutory research restrictions, to personnel and other day to day operational matters. As a high-level administrative member of the Chancellor's cabinet, I also assist and advise in the development and implementation of campus policies and long-term strategic plans for the University.

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

From August of 1991 through December of 1998, I was employed as a law professor [Full Professor from 8/1998 – 1/1999; Associate Professor from 8/1991 – 5/1998] at the University of Kansas School of Law in Lawrence, Kansas. I taught the following courses at KU:

- a. Trial Advocacy: focused on the students' development of forensic technique in the basic trial practice skills of direct examination, cross examination, impeachment, introduction and use of exhibits, defense of examinations, expert witness examination, jury communication, opening statement, and closing argument. Also impressed upon the students the importance of well-developed analytical skills, strategic evaluation of the case, case theory development, precise fact analysis, tactical decision making, technical and tactical application of the rules of evidence, professionalism, and negotiating skills.
- b. Advanced Litigation: Reinforcement of the skills and techniques taught in the basic Trial Advocacy course through a series of bench and jury trials
- c. Bankruptcy/Creditors' and Debtors' Rights: State remedies, Chapters 1, 3, 5, 7, 13 and 11 of the Bankruptcy Code (with emphasis on Chapters 7 and 13)
- d. Advanced Bankruptcy Law: Indepth review and analysis of Chapter 11 (Reorganization) of the Bankruptcy Code
- e. Criminal Justice (Prosecutor's) Clinic: Lectures and supervision of students interning with local DA and US Attorney offices in Kansas and Missouri
- f. Contract Law
- g. Legal Research and Writing (as a component of Contract Law)
- h. Appellate Advocacy

I taught Bankruptcy Law at the University of Colorado School of Law as a Visiting Professor (Spring 1999) and as an Adjunct Professor (Spring 2000, 2001 and 2002).

I taught Bankruptcy Law and Commercial Law (Articles 2 and 9 of the UCC) at the University of Denver College of Law as a Visiting Professor during the Spring of 2003.

I am attaching representative examples of the syllabi I was able to find for most, but not all, of these courses.

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

I receive annual royalty payments in the approximate amount of \$4,000 from sales of my book, *Evidence: The Objection Method*.

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

I have committed to teach Advanced Litigation as an adjunct professor at the University of Colorado School of Law during the Spring 2009 semester.

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

See attached Financial Disclosure Report

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

See attached Net Worth Statement

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

The potential conflicts of interest that might arise during my initial service would include litigation involving the University of Colorado or its representatives; litigation in which a lawyer of Davis Graham & Stubbs is counsel for a party; litigation involving AG Edwards which handles most of my retirement accounts; and litigation involving any of the companies in which any of my retirement funds are invested.

Potential conflicts might also arise as a result of my service on the boards of non-profit organizations, especially those that are involved in lobbying or who submit amicus briefs in litigation matters, e.g., the Colorado Hispanic Bar Association and the Colorado Women's Bar Association Foundation.

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

To identify and resolve conflicts-of-interest issues, I would follow the Code of Conduct for United States Judges, the Ethics Reform Act of 1989, 28 U.S.C. Section 455, and any other relevant guidelines. I have reviewed these materials, but hardly consider myself an expert in this area. Should I be nominated, I will take all necessary steps to understand the intricacies of these provisions and the realities of their application by conducting further research and by consulting with and seeking guidance from appropriate court officials.

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

Between 1985 and 1991, when I was in private practice in Colorado Springs, not only did I serve as a Trustee for Pikes Peak Legal Services, but I regularly accepted pro bono referrals. I was actively involved in the El Paso County (Colorado) Bar Association and established both the High School Mock Trial Program and the Adult Legal Literacy Program. In addition I served as a Trustee for the Board of Education of Colorado Springs School District #11 (elected position), as a Director and Officer of Pikes Peak United Way, and as a Director of the Citizens' Goals Board.

Because I was not admitted to practice law in Kansas, my pro bono activities in Kansas involved state and local bar activities and community service activities. Between 1991 and 1999, I served as a member of both the Civil and Criminal Pattern Jury Instructions Advisory Committees to the Kansas Judicial Council. I served as a Master in the Judge Hugh Means Inn of Court for Douglas County, Kansas, and as a member of the KBA Task Force on the Status of Minorities in the Profession. I also spent much of my time giving presentations and inspirational talks to students and community groups, and I founded and coordinated the KU Law School/Lawrence High School Partnership.

During the time I was Chief Deputy of the Colorado Attorney General's Office, I worked with legal services to establish a partnership for the referral of family and domestic matters to attorneys in the office. Between 2003 and 2006, while I was in private practice, I handled several pro bono matters for Spanish speaking clients who had not been paid for work performed. I also provided training and legal forms to law students at the University of Denver College of Law on how to file mechanic's liens and otherwise protect the interests of day laborers for work performed. In addition, I serve on the Board of Directors for several non-profit organizations including the Colorado Hispanic Bar Association, the Colorado Women's Bar Association Foundation, and the Stapleton Development Corporation. Because of my interest in working with and mentoring young people, each year I give numerous presentations and inspirational talks to elementary school, middle school, high school, and college students.

**28. Selection Process:**

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

On October 31, 2007, I received a telephone call from Senator Wayne Allard who informed me that my name had been suggested as a potential nominee for one of the federal district court vacancies and he inquired as to whether I was interested in being considered. I responded affirmatively. Senator Allard was familiar with my qualifications because, based on the recommendation of his Judicial Selection Commission, in 1999 he had recommended me to President Clinton for consideration as a nominee for a federal district court vacancy. I submitted an updated Judicial Questionnaire to Senator Allard on November 5, 2007. On December 10, 2007, I was interviewed by staff from the White House Counsel's office and the Department of Justice. In late January of 2008, Senator Ken Salazar established a Bi-Partisan Judicial Nomination Commission ("Salazar Commission"). I submitted an Application for Judgeship to the Salazar Commission. On March 13, 2008, I was interviewed by the Salazar Commission. The Salazar Commission recommended that Senator Salazar consider me further and, on March 19, 2008, Senator Salazar interviewed me. On April 3, 2008, Senator Salazar submitted my name to President George Bush for consideration as a nominee for one of the three judicial vacancies existing on the Colorado district court bench. On May 16, 2008, I received a telephone call from the White House Counsel's office informing me that I was under consideration by the President and that the next step would be for me to undergo an FBI background check and to submit the requisite forms. I had subsequent conversations with staff

from the Department of Justice regarding the nomination paperwork and process. My nomination was submitted to the United States Senate on July 10, 2008.

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

No.

AO 10  
Rev. 1/2007

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Arguello, Christine M	2. Court or Organization U.S. District Court, Colorado	3. Date of Report 07/11/2008
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 07/10/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2007 to 06/30/2008
7. Chambers or Office Address 924 Broadway, 013 UCB Boulder, CO 80309	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Managing Senior Associate University Counsel	University of Colorado
2. Partner	Davis Graham & Stubbs LLP
3. Director	Stapleton Development Corporation - Volunteer
4. Vice Chair	Colorado Campaign for Inclusive Excellence - Volunteer
5. Director	Colorado Hispanic Bar Association - Volunteer

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 2008	University of Colorado - Teach 2 credit hour course in Advanced Trial Advocacy, Spring 2009, \$3500
2. 2008	Davis Graham & Stubbs LLP - Buy-out of equity interest, \$4776
3.	

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Arguello, Christine M	<b>Date of Report</b> 07/11/2008
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**III. NON-INVESTMENT INCOME.** (Reporting individual and spouse; see pp. 17-24 of instructions.)

**A. Filer's Non-Investment Income**

NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2008	University of Colorado - Salary as of 6/30/2008	\$ 73,933
2. 2007	University of Colorado - Salary	\$ 142,824
3. 2006	University of Colorado - Salary	\$ 95,326
4. 2006	Davis Graham & Stubbs LLP - Distributions	\$ 44,097
5.		

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

NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2008	Boulder Valley School District, Salary
2. 2007	Boulder Valley School District, Salary
3. 2008	Colorado Department of Human Services, Childcare Subsidy
4. 2007	Colorado Department of Human Services, Childcare Subsidy
5.	

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

NONE (No reportable reimbursements.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>
1.	EXEMPT	
2.		
3.		
4.		
5.		

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Arguello, Christine M	<b>Date of Report</b> 07/11/2008
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**V. GIFTS.** *(Includes those to spouse and dependent children. See pp. 28-31 of instructions.)*

NONE *(No reportable gifts.)*

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	EXEMPT		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** *(Includes those of spouse and dependent children. See pp. 32-33 of instructions.)*

NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Washington Mutual	Mortgage on mother-in-law's home, Pueblo, CO	L
2.	Chase Visa	Credit Card - 0%	J
3.	Elevations Credit Union	Co-signor on son's car loan	K
4.	AES Student Loan	Co-signor on son's student loan	K
5.			

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Arguello, Christine M	<b>Date of Report</b> 07/11/2008
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**VII. INVESTMENTS and TRUSTS** - income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Investment Property 1, Colorado Springs, CO (2005 \$86,000)		None	L	R	EXEMPT				
2. Investment Property 2, Pueblo, CO (\$172,727)		None	M	S					
3. Chase Bank Account	A	Int./Div.	J	T					
4. Wells Fargo Bank Account	A	Int./Div.	J	T					
5. MetLife Insurance Policy		None	J	U					
6. Federated Govt Obligations Fund Class SS	A	Int./Div.	J	U					
7. ABIAX	A	Int./Div.	J	U					
8. PCVAX	A	Int./Div.	J	U					
9. AHTEFX	B	Int./Div.	J	U					
10. BFAFX	A	Int./Div.	J	U					
11. NFEAX	A	Int./Div.	J	U					
12. Delaware US Growth FD CL A	A	Int./Div.	J	U					
13. AEGFX	A	Int./Div.	J	U					
14. GCMAX	A	Int./Div.	J	U					
15. GGOAX	A	Int./Div.	J	U					
16. GFAFX	A	Int./Div.	J	U					
17. IBFFX	A	Int./Div.	J	U					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I1 = \$1,000,001 - \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000 I2 = More than \$5,000,000
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**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting Arguello, Christine M	Date of Report 07/11/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. AICFX	A	Int./Div.	J	U					
19. LAFFX	A	Int./Div.	J	U					
20. ANFFX	A	Int./Div.	J	U					
21. NWFFX	A	Int./Div.	J	U					
22. PTTAX	A	Int./Div.	J	U					
23. TRMCX	A	Int./Div.	J	U					
24. SCWFX	A	Int./Div.	J	U					
25. WSHFX	A	Int./Div.	J	U					
26. Jackson Natl Life Ins. Co Perspective II 05/05		None	K	U					
27. Metlife Invs Ins Prods L Share Variable Annuity		None	J	U					
28. Metlife Invs Ins Prods Variable Annuity Class AA		None	L	U					
29. Nationwide Life Ins Co BOA Choice Venue SM II		None	K	U					

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

**FINANCIAL DISCLOSURE REPORT**  
 Page 6 of 7

Name of Person Reporting	Date of Report
Arguello, Christine M	07/11/2008

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

- I. Positions**  
 6. Director - Colorado Women's Bar Association Foundation - Volunteer  
 7. Director - Latina Chamber - Volunteer - 2006 - 2007

**FINANCIAL DISCLOSURE REPORT**  
 Page 7 of 7

Name of Person Reporting	Date of Report
Arguello, Christine M	07/11/2008

**IX. CERTIFICATION.**

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

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

Signature Christine M Arguello Date 07/11/08

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

**FILING INSTRUCTIONS**

Mail signed original and 3 additional copies to:

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

**FINANCIAL STATEMENT**  
**NET WORTH**

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

ASSETS				LIABILITIES			
Cash on hand and in banks		12	500	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		2	450	Notes payable to relatives		60	000
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		10	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		612	906
Real estate owned-add schedule	1	035	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable		12	000	Other debts-itemize:			
Autos and other personal property		148	000				
Cash value-life insurance		8	665				
Other assets itemize:							
Retirement Accounts (see attached schedule)		425	482				
				Total liabilities		682	906
				Net Worth		961	191
Total Assets	1	644	097	Total liabilities and net worth	1	644	097
<b>CONTINGENT LIABILITIES</b>				<b>GENERAL INFORMATION</b>			
As endorser, comaker or guarantor		30	139	Are any assets pledged? (Add schedule)	Yes		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**Listed Securities

Alcide Corporation	\$ 2,450
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Real Estate Owned

Personal residence #1	\$ 550,000
Personal residence #2	200,000
Investment Property #1	86,000
Investment Property #2	175,000
Time share #1	10,000
Time share #2	3,000
Time share #3	6,000
Time share #4	5,000
Total Real Estate Owned	\$ 1,035,000

Retirement Accounts

Fidelity Investments	\$ 44,140
Colorado 457 Plan	1,470
Wachovia/AG Edwards IRA #1	149,989
Wachovia/AG Edwards IRA #2	35,161
MLI Variable Annuity #1	67,140
MLI Variable Annuity #2	9,926
Jackson Nat Life Variable Annuity # 1	10,728
Jackson Nat Life Variable Annuity # 2	31,100
Best of America Venue Annuity	37,178
PERA	38,650
Total Retirement Accounts	\$425,482

\*Real Estate Mortgages Payable

Personal residence #1	\$ 427,948
Personal residence #2	92,349
Investment Property #2	92,609
Total Real Estate Mortgages Payable	\$ 612,906

Assets pledged: Real property to secure mortgages.

AFFIDAVIT

I, Christine M Arguello, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7/25/08  
(DATE)

Christine M Arguello  
(NAME)

ALICE R. CLARK  
NOTARY PUBLIC  
STATE OF COLORADO

Alice R. Clark  
(NOTARY)

*Expires 4.10.2012*

Chairman LEAHY. Well, thank you. You are one of those rare people that has the distinction of having been nominated by both a Democratic President and a Republican President. I am glad you are here.

Let me ask you the same questions. You are in a State, a beautiful, wonderful State, but a State of great diversity in income, races, creed, everything else. Can somebody come before a court where you preside and look at you, no matter who they are, no matter their background or religion, gender, or anything else, can they look at you and say, "Okay, if I have got a winning case, I win; if I do not, I lose; but it will be solely on what the case I have is"?

Ms. ARGUELLO. Absolutely. I believe that my reputation in the community for fairness and objectivity is very strong. I have lived my life or I have attempted to live my life by the Golden Rule, to do unto others as I would have them do unto me. And so I treat everyone with respect. And the No. 1 lesson I taught my trial lab students was treat everyone as if they were a very important person. It does not matter at what level they interact with them.

Chairman LEAHY. I mentioned my grandparents, and I still remember the details of them coming here from Italy, speaking a different language and having to overcome that, and eventually becoming one of the most respected members of the community for what they had overcome. Is it fair to say that nobody is going to have to overcome those kind of hurdles if they come before your court?

Ms. ARGUELLO. Absolutely not, and that would be very fair to say. I recall—although I was not an immigrant, my family has been in the United States for four or five hundred years. I was bilingual, but I remember being told not to speak Spanish on the playground at school and being punished for having done so. So I am very sensitive to those issues.

Chairman LEAHY. My wife's first language is not English, even though she was born here in the United States. She remembers that. Now, of course, it is a great advantage to be bilingual. I had to learn the same language when we started dating as teenagers because I wanted to know what her parents were saying about me.

[Laughter.]

Chairman LEAHY. And they still let her marry me.

On the recusal issue, do you have any different answer than what has already been given on recusal?

Ms. ARGUELLO. I would say my answer would be exactly as Judge Anello had stated.

Chairman LEAHY. You could possibly have in your career at times when a court has to step in because everything else has failed—the political process and everything else has failed. Do you have any problem with that? I am thinking back to *U.S. v. Carolane Products*. It is now a 60-, 70-year-old case, but the Supreme Court held that legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation is to be subjected to more exact judicial scrutiny under the general prohibitions of the 14th Amendment than are most other types of legislation. In other words, if an un-

fair result is coming about in legislation, do you believe that the court has a duty for stronger scrutiny of such legislation?

Ms. ARGUELLO. I believe if a case were to come before me and I were fortunate enough to have been confirmed by the Senate, my job would be to review the controlling precedent and attempt to come to a decision that would be within the rule of law.

Chairman LEAHY. Senator Hatch

Senator HATCH. I have to say that I am pleased with this whole set of nominees, and, frankly, I think you have covered the basic questions that need to be covered.

Chairman LEAHY. Thank you.

. Now, Mr. Brimmer, you have not had a chance to introduce your family. I mentioned that he was chief of the Special Prosecutions Section in the U.S. Attorney's Office in the District of Colorado, and I mentioned Chief Deputy District Attorney in the Denver District Attorney's Office. Those of us who had the opportunity to be district attorneys, or as we call them in Vermont "State's Attorneys," appreciate that; Harvard and Yale, obviously a great background. But we have not heard whether you have family members here, and I realize you are here on short notice, but do you have family members here?

**STATEMENT OF PHILIP A. BRIMMER, NOMINEE TO BE  
DISTRICT JUDGE FOR THE DISTRICT OF COLORADO**

Mr. BRIMMER. I do, Mr. Chairman, and I would like to take this opportunity to introduce them to the Committee.

Chairman LEAHY. Please.

Mr. BRIMMER. My wonderful wife, Dana Brimmer, is here. My brother Andy Brimmer is here. And my cousin Rob Wallace is also here.

Chairman LEAHY. Thank you all for being here.

Mr. Brimmer, you have been in private practice. You have also been a prosecutor. You could have litigants before you on criminal matters as well as private matters. Let us go first with the criminal matters. Would you be able to fairly look at a criminal case, even though you have been a prosecutor, would you be able to fairly judge it on the merits without a bias toward either side?

Mr. BRIMMER. Yes, I absolutely could do that. As you know from being a prosecutor, prosecutors wear different hats. One of the hats is being not just an advocate but being a minister of justice. And so in a role as a prosecutor, you need to look at fairness to the defendants in deciding whether to charge them, whether to offer them a plea bargain, or whether you have sufficient evidence to proceed. So I am confident that I can do that and not simply be in the role of an advocate on behalf the Government.

Chairman LEAHY. And you have been in private practice, and you have been in the prosecutor's office. Do you have any doubts of being able to recuse yourself if a case came up that might have involved directly matters that you had handled before?

Mr. BRIMMER. No. In fact, if I were lucky enough to be confirmed, I would set up a procedure with the clerk's office so that I could be informed if there were any matter that my name is associated with from the U.S. Attorney's Office, and also given the fact that I am the chief of the Special Prosecutions Unit, if any case came

from one of those attorneys, I would in all likelihood recuse if it seemed to be one that arose during the time that I was there.

Chairman LEAHY. And do you agree that no one is above the law? And I am thinking back to the infamous torture memo that we can immunize—Presidents can immunize people from legal action itself. Would you agree with me that no one is above the law? You would not be as a Federal judge. Senator Hatch and I would not be as U.S. Senators. And the President would not be and nobody else would be.

Mr. BRIMMER. I strongly agree with that, Mr. Chairman.

Chairman LEAHY. That it keeps our system of Government working.

Mr. BRIMMER. Absolutely. If it were something else, then the system would not be fair.

Chairman LEAHY. Thank you.

Senator Hatch.

Senator HATCH. Again, very happy to welcome you to the Committee. I frankly support you very strongly, and I look forward to seeing you be confirmed.

Mr. BRIMMER. Thank you.

[The biographical information follows.]

Chairman LEAHY. With this grueling part to have somebody show up here on short notice, especially Ms. Arguello and Mr. Brimmer, I appreciate you all being here. I appreciate your family coming. Sorry we had to take you out of school, young man, but—

[Laughter.]

Chairman LEAHY. If you are like my grandchildren, you probably did not mind that.

We will stand in recess subject to the call of the Chair, and we will keep the record open, and I would hope that we could get cooperation on both sides of the aisle to move quickly. I appreciate Senator Hatch, who is sitting here, I appreciate his efforts in helping move this forward, and I appreciate Senator Specter's willingness to waive the notice on the two nominees from Colorado. I realize that meant you have to move very quickly in getting out here, but you were probably willing to do that under the circumstances.

We stand in recess.

[Whereupon, at 11:42 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Philip Andrew Brimmer

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

United States District Judge for the District of Colorado

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

Office: United States Attorney's Office  
1225 17<sup>th</sup> Street, Suite 700  
Denver, Colorado 80202

Residence: Denver, Colorado

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

1959; Rawlins, Wyoming

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

I am married to Dana Jones Brimmer (previous names: Dana Elisabeth Jones, Dana Jones Benet). She is employed as a Behavioral Scientist with Centers for Disease Control and Prevention (McKing Contractor); 1600 Clifton Road NE; Atlanta, Georgia, 30333

We have no dependent children.

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

1982-1985, Yale Law School, J.D. (May 1985)

1977-1981, Harvard College, A.B. (June 1981)

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

Employment:

11/01 – present  
United States Attorney’s Office, District of Colorado  
1225 17<sup>th</sup> Street, Suite 700  
Denver, Colorado, 80202  
Chief of Special Prosecutions Section (10/06 – present)  
Chief of Major Crimes Section (6/06 – 10/06)  
Assistant United States Attorney (11/01 – 6/06)

5/94 – 11/01  
Denver District Attorney’s Office  
303 West Colfax Avenue  
Denver, Colorado, 80204  
Chief Deputy District Attorney (1/01 – 11/01)  
Deputy District Attorney (5/94 – 1/01)

3/87 – 5/94  
Kirkland & Ellis  
1999 Broadway  
Denver, Colorado, 80202.  
Associate

8/85 – 3/87  
United States District Court, District of Colorado  
1929 Stout Street  
Denver, CO 80294  
Law Clerk to the Honorable Zita L. Weinshienk

6/83 – 8/83  
Kirkland & Ellis.  
1225 17<sup>th</sup> Street  
Denver, CO 80202  
Summer Associate

6/84 – 8/84  
McCutchen, Doyle, Brown & Enersen  
3 Embarcadero Center, San Francisco, CA 94111  
Summer Associate

6/81 – 8/82  
Jack Ferguson Associates  
203 Maryland Ave. N.E.  
Washington, D.C. 20002  
Research Assistant

Other affiliations (Volunteer positions):

St. Barnabas Episcopal Church  
1280 Vine Street  
Denver, Colorado, 80206  
Senior Warden (2/01 – 2/04)  
Vestry Member (2/89 – 2/93; 2/00 – 2/01)

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

I have not served in the Military.

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

Harvard College: Phi Beta Kappa.

Harvard College: Magna cum Laude.

Century III Leaders Scholarship, one of two recipients from Wyoming (two awarded from each state) (1977).

Finalist, Rhodes Scholarship, state competition, Wyoming, 1977.

Criminal Justice Award from the Colorado Coalition against Sexual Assault for demonstration exemplary sensitivity in the field of sexual assault prosecution (June 2001).

Performance Award, Department of Justice (Dec. 2003).

Special Achievement Award, Department of Justice (April 2002).

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

Past member of the Colorado Bar Association and the American Bar Association.

11. **Bar and Court Admission:**

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

Colorado, November 1, 1985

There have been no lapses in membership.

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

Colorado State courts, 1985

United States Court of Appeals for the Tenth Circuit, 1986

United States District Court, District of Colorado, 1987

12. **Memberships:**

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

Environmental Crimes Task Force (approximately 1997 to 1999).

James Joyce Reading Society (approximately 1986 to present).

Rocky Mountain Harvard University Club (approximately 1986 to present).

Colorado Yale Association (approximately 1986 to present).

St. Barnabas Episcopal Parish (1986 to present)  
Elected Senior Warden (2001-2004).  
Elected to Vestry (1989-1993; 2000 until elected Senior Warden).  
Delegate to Diocesan (State) Convention (2000, 2001, 2002, 2004).  
Chairman of the Information Sharing Committee (2000).  
Member of Personnel Committee (approximately 2001 to present).  
St. Barnabas representative to Richard Hooker Forum.

Denver Bonsai Society (approximately 1985 to 1987)

Denver Police Protective Association (approximately 2000 to 2007)

Internet Safety Foundation (2007 to present)

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

No.

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

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

None.

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

None.

- c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal

interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

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

February 20, 2002 – Speech at training dinner at the Denver Athletic Club, 1325 Glenarm Place, Denver CO, for Denver District Attorney’s Office on “Trial Issues Involving Co-Defendants.”

September 24, 2002 – Gave an hour-long presentation with a state assistant attorney general at the Copper Mountain ski resort, Colorado, for the annual conference of Colorado District Attorneys entitled “Trial Issues Involving Co-Defendants.”

June 29, 2004 – Brief remarks to ATF-sponsored conference of federally licensed firearms dealers at Westin Hotel, 1672 Lawrence Street, Denver CO. Subject: The ways firearms dealers can assist the prosecution of prohibited persons who attempt to purchase firearms.

September 17, 2007 – Gave an hour-long presentation with another Assistant U.S. Attorney in Steamboat Springs, Colorado, at the annual conference of Colorado District Attorneys entitled “Cyber Scourge: Prosecuting Child Pornography Cases.”

September 21, 2007 – Brief introductory remarks at Internet Safety Summit in Broomfield, Colorado, regarding importance of educators taking steps to protect children from internet predators.

October 20, 2007 – Taped a cable television segment for Comcast’s Metro TV “Student Voices” program on internet safety (viewable at <http://www.metrobeat.tv/svEp4.aspx#14>).

October 23, 2007 – Speech to FBI Citizen’s Academy at Macaroni Grill, 2500 E. 1<sup>st</sup> Avenue, Denver, CO. Subject: The FBI’s interaction with the Colorado U.S. Attorney’s Office.

November 28, 2007 – Speech to the Doyle Inn of Court at the University Club, 1673 N. Sherman Street, Denver, Colorado, on internet safety.

February 27, 2008 – Helped to lead discussion regarding federal grand juries for a class at Colorado University Law School in Boulder, Colorado taught by Judge Morris Hoffman, Denver District Court Judge.

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

Comment to reporter for Denver Westword newspaper regarding a murder case that I prosecuted, *People v. Meshel Turtle Sirio*; May 1997.

Comment to reporter from Rocky Mountain News regarding sentencing of a co-defendant in a murder case, *People v. Thomas Holden*; March 24, 2000.

Interview by Felisa Cardona of the Denver Post regarding Project Safe Childhood and internet safety for children; December 3, 2007.

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

I have not held a judicial office.

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

- a. citations for all opinions you have written (including concurrences and dissents);
- b. a list of cases in which certiorari has been requested or granted;
- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and

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

I have not served as a judge.

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

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

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

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

I have held no public offices other than my employment with the Department of Justice and with the Denver District Attorney's Office. I have no candidacies for elective office or unsuccessful nominations for appointed office.

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

Mitch Morrissey, Denver District Attorney election. Campaigned on behalf of Mitch Morrissey in the summer of 2004 during the primary election.

Bill Ritter, Denver District Attorney election. Campaigned on behalf of Bill Ritter in 1996.

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

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

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

I served as a law clerk to the Honorable Zita L. Weinshienk  
United States District Court, District of Colorado  
August 1985 to March 1987

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

I have not practiced alone.

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

11/01 – present  
United States Attorney's Office, District of Colorado.  
1225 17<sup>th</sup> Street, Suite 700  
Denver, Colorado, 80202  
Chief of Special Prosecutions Section (10/06 – present)  
Chief of Major Crimes Section (6/06 – 10/06)  
Assistant United States Attorney (11/01 – 6/06)

5/94 – 11/01  
Denver District Attorney's Office  
303 West Colfax Avenue  
Denver, Colorado, 80204  
Chief Deputy District Attorney (1/01 – 11/01)  
Deputy District Attorney (5/94 – 1/01)

3/87 – 5/94  
Kirkland & Ellis  
1999 Broadway  
Denver, Colorado, 80202  
Associate

## b. Describe:

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

I began my legal career as a law clerk to U.S. District Court Judge Zita L. Weinshienk. Through my clerkship with Judge Weinshienk, I learned a great deal about federal procedure and, through observation, about the qualities that make a good judge. In particular, I saw how important judicial demeanor is to litigants' sense of whether they were treated fairly.

After my clerkship in 1987, I joined the Denver branch of Kirkland & Ellis. My practice had a great deal of variety. I worked on matters involving commercial disputes, real estate issues, labor relations, employee benefit disputes, and Superfund litigation.

My law practice changed dramatically when I joined the Denver District Attorney's Office and began practicing criminal law. My primary reason for joining the Denver DA's Office was to gain trial experience. I soon realized that it was also a privilege to represent the State of Colorado. As a prosecutor, I could always be on the side of justice: If the facts were egregious, I could seek punishment. If the facts were weak, I could offer a plea bargain, make an appropriate sentence recommendation, or dismiss the case. At the Denver District Attorney's Office, I started in the County Court division, where I handled misdemeanor cases such as drunk driving and domestic violence matters, moved to the Juvenile Division where I handled charges ranging from theft to sexual assaults, and then transferred to the District Court Division, where I handled adult felony matters. In January 2001, I was promoted to a Chief Deputy, where I was the Chief of Courtroom 16 and later Courtroom 11. As a Chief Deputy, I supervised two attorneys, an investigator, a victim advocate, and a legal assistant. I also participated in office management meetings and was periodically on homicide duty, meaning that, if a murder took place, I was available for consultation or to go to the scene.

My legal practice changed again when I joined the U.S. Attorney's Office in November 2001. The interview was memorable – it took place on the afternoon of September 11, 2001, when both the Denver DA's Office and the U.S. Attorney's Office were officially closed due to the terrorist attacks and were staffed only by senior management. At the U.S. Attorney's Office, I joined a team of prosecutors in the Major Crimes Section handling gun cases being prosecuted under the Attorney General's initiative to reduce gun violence, Project Safe Neighborhoods. The philosophy of Project Safe Neighborhoods is to aggressively prosecute felons in possession of firearms. I also handled a wide variety of other cases, including prison crimes, immigration cases involving aggravated re-

entry to the United States, and escapes. In June 2006, I was promoted to Chief of the Major Crimes Section. There I supervised ten attorneys who handled crimes involving firearms, immigration, bank robberies, identity theft, prison assaults, and postal crimes. This Section accounted for approximately half of all criminal cases filed by the U.S. Attorney's Office. When Troy Eid became the U.S. Attorney later that summer, he reorganized the Criminal Division and named me the chief of the newly-created Special Prosecutions Section, which handles child exploitation cases, cyber crimes, capital crimes, and prison crimes.

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

In private practice, with Kirkland & Ellis (1987 – 1994) my typical clients were corporations who retained the firm for a specific case. I specialized in toxic tort litigation and related insurance coverage disputes during the last four years at the firm.

As a criminal prosecutor with the Denver District Attorney's Office I represented the State of Colorado.

As an Assistant United States Attorney, my client is the United States of America.

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

At Kirkland & Ellis, I appeared in court occasionally, usually in connection with motions hearings. While a Denver District Attorney, I appeared in state court almost every day during my seven years at the Denver District Attorney's Office. Since becoming an Assistant United States Attorney, I appear in court frequently, usually several times a week. I am occasionally involved in post-trial proceedings in Denver District Court regarding matters that I worked on as a Deputy District Attorney.

- i. Indicate the percentage of your practice in:
- |                            |     |
|----------------------------|-----|
| 1. federal courts:         | 60% |
| 2. state courts of record; | 40% |
| 3. other courts.           |     |
- ii. Indicate the percentage of your practice in:
- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 35% |
| 2. criminal proceedings: | 65% |

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

I have tried approximately 110 trials to verdict or judgment. I tried 87 of the trials by myself. I tried the remaining cases with another prosecutor.

- i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 83% |
| 2. non-jury: | 17% |

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

I have not practiced before the Supreme Court of the United States.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

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

1. United States v. Rudy Sablan, Case No. 00-cr-531-WYD. Trial to jury. March 17 to May 20, 2008. U.S. District Court for the District of Colorado. Judge Wiley Daniel. I represented the United States. Co-counsel: Brenda Taylor, U.S. Attorney's Office, 1225 17<sup>th</sup> Street, Suite 700, Denver, Colorado 80202, (303) 454-0206. Defendant's counsel: Forrest Lewis, 1600 Broadway, Suite 1525, Denver, Colorado 80202, (303) 830-2190. Charge: First Degree Murder. Attorney General Janet Reno authorized seeking the death penalty. Facts: On October 7, 1999, inmate William Sablan arrived at the United States Penitentiary in Florence, Colorado, following his federal conviction for leading a prison riot in his native Saipan. He was placed in the same cell as his cousin, Rudy Sablan, and an inmate named Joey Estrella. On October 10, 1999, correctional officers looked in the cell window and saw Estrella dead on the floor, with his abdomen cut open. William and Rudy Sablan then pulled organs from the victim's abdomen and otherwise abused the victim's body. William Sablan said that he killed Estrella and eviscerated him. At trial,

counsel for Rudy Sablan claimed that William Sablan was mentally ill and was responsible for the homicide. The jury convicted the defendant of First Degree Murder, but was unable to reach a unanimous verdict in the penalty phase of the trial. By operation of law, the defendant was sentenced to life imprisonment without parole. Co-counsel Brenda Taylor and I divided the trial responsibilities equally, as well as responsibilities for the numerous motions hearings. I handled the mental health experts. Various rulings of the court can be found on Westlaw. See, e.g., Order re constitutional challenges, 2006 WL 1028780 (D. Colo. April 18, 2006).

2. United States v. William Sablan, Case No. 00-cr-531-WYD. Trial to jury. January 24 to April 6, 2007. U.S. District Court for the District of Colorado. Judge Wiley Daniel. I represented the United States. Co-counsel: Brenda Taylor, U.S. Attorney's Office, 1225 17<sup>th</sup> Street, Suite 700, Denver, Colorado 80202, (303) 454-0206. Defendant's counsel: Nathan Chambers, 1601 Blake Street, Denver, Colorado 80202, (303) 825-2222. Charge: First Degree Murder. Attorney General Janet Reno authorized seeking the death penalty. Facts: See description of U.S. v. Rudy Sablan above. At trial, defense counsel claimed that William Sablan was incapable of deliberation due to mental illness. After the jury convicted the defendant of First Degree Murder, the defense primarily relied upon the defendant's mental health history as a mitigator in the penalty phase. The jury was unable to reach a verdict in that phase of the trial. By operation of law, the defendant was sentenced to life imprisonment without parole. Co-counsel Brenda Taylor and I divided the trial responsibilities equally, as well as responsibilities for the numerous motions hearings. I handled the mental health experts. Various rulings of the court can be found on Westlaw. See, e.g., Order re constitutional challenges, 2006 WL 1028780 (D. Colo. April 18, 2006).
3. U.S. v. Clemmeth Nevels, Case No. 04-cr-417-LTB. Trial to jury. March 6-10, 2006. U.S. District Court, District of Colorado. Judge Louis Babcock. I represented the United States. Co-counsel Joshua Stein, 5041 Pleasant Ave., Norfolk, VA 23518, (303) 847-3365. Defense counsel: Dana Casper, 600 South Cherry, Suite 305, Denver CO 80246, (303) 321-5850. Charge: Felon in Possession of a Firearm. Facts: Nevels shot and killed a fellow gang member in Nevels' residence. The police got a call about the shooting. When they arrived, Nevels said that a guy inside his apartment pulled a gun on him and he did what he had to do. His girlfriend told the police that she was upstairs and heard the gunfire. The defendant then came upstairs and told her that the victim had pulled a gun on him. The victim was on the couch and had been shot multiple times. A pistol was near the body. At trial, a Denver Police Department detective testified that an analysis of bullet trajectories showed that the victim was shot rising up from a sitting position and then adopted a defensive posture when the other bullets hit him, which was inconsistent with the defendant possessing the firearm for self-defense. The defendant was convicted of the charge and sentenced to 300 months prison. Note: This prosecution was significant in that state murder charges had been declined due to self-defense issues. Co-counsel Joshua Stein handled the crime scene reconstruction expert; otherwise, trial duties were divided equally. Reported at 490 F.3d 800 (10<sup>th</sup> Cir. 2007).

4. U.S. v. Michael Somerville, Case No. 04-cr-185-REB. Trial to jury. April 11-15, 2005. U.S. District Court, District of Colorado. Judge Robert Blackburn. I represented the United States. Co-counsel James Hearty, U.S. Attorney's Office, 1225 17<sup>th</sup> Street, Suite 700, Denver, CO 80202, (303) 454-0233. Defense counsel: Robert Berger, 7476 E. 29<sup>th</sup> Ave., Suite 108, Denver, CO 80238, (303) 436-1596. Charges: Five counts of Possession with Intent to Distribute More Than Five Grams of Crack Cocaine and two counts of Possession of Ammunition by a Convicted Felon. Facts: ATF agents arranged four cocaine purchases from the defendant by a confidential informant. The agents then executed a search warrant on the defendant's residence and seized ammunition and a large amount of cash. Verdict: Guilty of four counts of Possession with Intent to Sell Five Grams of more of Cocaine Base and one count of Possession of Ammunition by a Convicted Felon. The Court sentenced the defendant to 324 months prison. Co-counsel James Hearty and I divided trial responsibilities equally. Reported at 179 Fed. Appx. 460 (10<sup>th</sup> Cir. 2006).
  
5. U.S. v. Christopher Holyfield, Case No. 00-CR-439-S. Trial to jury. November 3, 2003 to December 15, 2003. U.S. District Court, District of Colorado. Judge Daniel Sparr. I represented the United States. Co-counsel: Robert Troyer, Hogan & Hartson, 1200 17<sup>th</sup> Street, Suite 1500, Denver, CO 80202, (303) 454-2522. Defense counsel: Lisa Wayne, 950 17<sup>th</sup> Street, Suite 1800, Denver CO 80202, (303) 860-1661. Charges: Conspiracy to Distribute More than 50 Grams of Crack Cocaine and More than 5 Kilos of Powder Cocaine and First Degree Murder in furtherance of a Continuing Criminal Enterprise. Facts: Holyfield was a mid-level drug dealer in the Pomona West Side Mafia Crips who moved to Pueblo, Colorado in 1998 to sell crack cocaine. The trial testimony established that Holyfield sold over 1.5 kilograms of crack cocaine in the course of the conspiracy. Verdict: guilty of Count One (drug distribution) and not guilty of the murder in further of a continuing criminal enterprise. Holyfield was sentenced to life imprisonment under 21 U.S.C. 851 as a repeat drug dealer. Co-counsel Troyer handled the majority of the accomplice witnesses; otherwise, the trial witnesses were divided evenly. I handled sentencing motions. Reported at 481 F.3d 1260 (10<sup>th</sup> Cir. 2007).
  
6. People v. Darnell Weare, Case No. 02CR769. Trial to jury. January 5-13, 2004. Denver District Court. Judge Martin Egelhoff. I represented the People. Co-counsel: Timothy Twining and Verna Carpenter, Denver District Attorney's Office, 201 West Colfax Avenue, Denver Colorado 80204, (720) 913-9000. Defendant's attorney: Charles Elliott, 1801 Broadway, Suite 1100, Denver, Colorado, 80202, (303) 623-2013. Charges: First Degree Murder, Felony Murder, First Degree Kidnapping. Facts: A federal/state drug task force suspected that Darnell Weare and Andre Shoeboot were using a car lot on Colfax Avenue in Denver as a front for selling drugs. The task force tapped the phones of Weare and Shoeboot and set up surveillance on the business. When the task force saw a suspected cocaine supplier make a delivery and saw Weare put a briefcase in the trunk of a car on the lot, the task force got a search warrant for the car, broke into the trunk, and removed the drugs. The goal was to generate chatter on the tapped phones when Weare realized that the drugs were gone. When Weare and Shoeboot noticed that the drugs had been stolen, they accused an innocent man staying at a cheap motel next door of taking them. They eventually took him into a garage bay and strangled him. When the task

force officers monitoring the phones realized something was wrong, they raided the business and found the victim's body. Co-counsel Tim Twining, Verna Carpenter, and I divided trial responsibilities equally. I cross-examined the defendant. Verdict: Guilty of Reckless Manslaughter, First Degree Kidnapping, Felony Murder, and Conspiracy to Commit First Degree Murder. Weare was sentenced to life imprisonment without parole. Reported at 155 P.3d 527 (Colo. App. 2006). Note: I tried this case while at the U.S. Attorney's Office. I was appointed a special prosecutor for the case at the request of Denver DA Bill Ritter.

7. People v. Donta Page, Case No. 99CR2029. Denver District Court. Trial to jury. October 30 to November 21, 2000. Judge Joseph Meyer. I represented the People. Co-counsel: Henry Cooper, Denver District Attorney's Office, 201 West Colfax Avenue, Denver Colorado 80204, (720) 913-9000. Defendant's counsel: James Castle, 1860 Race Street, Denver, Colorado 80206, (303) 675-0500. Charges: First Degree Murder, Felony Murder, First Degree Sexual Assault, First Degree Burglary, and Aggravated Robbery. Denver District Attorney Bill Ritter sought the death penalty in this case. Facts: Donta Page was a Maryland parolee sent to a halfway house in Denver. On February 24, 1999, before being sent back to Maryland on a bus, Page broke into a house across the street. While he was still in the house, one of the residents, Peyton Tuthill, age 24, returned to let her dog out. Page beat Tuthill, brutally raped her, and bound her with a cord. He demanded money from her and went to her SUV to look for her purse. When he returned, Tuthill was getting loose, so he cut her throat to stop her screams and stabbed her in the heart, killing her. He then took the bus back to Maryland. Denver police located Page in a Maryland jail. The defendant made a statement implicating himself, and DNA evidence conclusively linked him to the crime. At the liability phase, the defense contended that he had brain damage and, as a result, could not deliberate. The People put on evidence that his neurological tests were normal. Verdict: The jury convicted him of all charges. The penalty phase, which at that time consisted of a trial to a three-judge panel (Judge Meyer, Judge Brooke Jackson, and Judge Leyland Anderson), took place between February 20 and February 27, 2001. The panel sentenced the defendant to life imprisonment. Co-counsel Henry Cooper and I divided the trial and motion responsibilities equally. I handled the mental health experts and contact with the victim's family.
8. People v. Christopher Ball, Case No. 99CR4530. Denver District Court. Trial to jury. March 14-22, 2000. Judge Herbert Stern. I represented the People. Co-counsel Bonnie Benedetti, Denver District Attorney's Office, 201 West Colfax Avenue, Denver Colorado 80204, (720) 913-9000. Defendant's counsel: Joseph Gavaldon, 125 S. Howes Street, Suite 401, Ft. Collins, CO 80521, (970) 419-4750. Charge: First Degree Murder. Facts: Two homeless men in their 20s, Nathan Harrison and Thomas Holden, saw an older homeless man, Melvin Washington, at a 7-11 store in downtown Denver. Washington asked them for spare change, which they considered a sign of disrespect. Later in the evening, Christopher Ball, Harrison, and Holden saw Washington sleeping on a steam grate near Skyline Park, which they considered their turf. They kicked Washington in the ribs and stomped on his head. Washington died a week later from his injuries. Co-

counsel Bonnie Benedetti and I divided the trial responsibilities equally. Verdict: Guilty of Manslaughter. Ball was sentenced to ten years prison.

9. People v. O'Neal, Williams, and Mingo, Case Nos. 98CR2671, 98CR2672, and 98CR2673. Trials to jury (O'Neal and Williams on December 8, 1998; Mingo on February 8, 1999). Denver District Court. Judge Stephen Phillips. I represented the People. Co-counsel: William Robbins, Denver District Court Judge, 1437 Bannock Street, Courtroom 7, Denver CO 80202, (720) 865-8308. Defense counsel: Robert Pepin represented O'Neal, Office of the Federal Public Defender, 633 17<sup>th</sup> Street, Suite 1000, Denver, CO 80202, (303) 294-7002; Harv Holtzman represented Williams, 303 16<sup>th</sup> Street, Suite 200, Denver CO 80202, (303) 629-9700; Evans Garcia (deceased) represented Mingo. Charge: First Degree Murder. Facts: Moustapha Marouf, a taxicab driver from Morocco, was leaving an apartment building in Denver when he bumped his cab into a car in the parking lot. The car's owner, Christopher Buchanan, saw the collision from the balcony of his apartment. Buchanan and his friends, Bruce Mingo, Demetris O'Neal, and Brett Williams, then ran down to the parking lot. O'Neal and Mingo hit Marouf in the face. Then all four started kicking Marouf on the ground. O'Neal ran up and stomped the victim in the head with both feet, followed by Mingo stomping him very hard in the face. They then put Marouf in the trunk of his cab and left in Buchanan's car. The police responded and found the victim dead in the trunk. Buchanan pled guilty to Attempted 2<sup>nd</sup> Degree Murder and was sentenced to ten years prison. Verdicts: The jury convicted O'Neal of Manslaughter and Williams of First Degree Assault. The court sentenced O'Neal to 12 years prison and Williams to 20 years prison. The jury convicted Mingo of First Degree Murder. He was sentenced to life imprisonment without parole. Co-counsel William Robbins and I divided trial responsibilities equally. The one reported decision is *People v. O'Neal*, 32 P.3d 533 (Colo. App. 2000).
10. People v. Meshel Turtle Sirio, Case No. 96CR304. Trial to Jury. March 18-21, 1997. Denver District Court, Colorado. Judge Larry Naves. I represented the People. Co-counsel Thomas Mulvahill, 1601 Blake Street, Denver, CO 80202, (303) 825-2222. Defense counsel: Robert Berger, 7476 E. 29<sup>th</sup> Ave., Suite 108, Denver, CO 80238, (303) 436-1596. Charges: First degree murder, felony murder, aggravated murder, second degree kidnapping. Facts: Victim Manuel Rodriguez disappeared on May 17, 1996. Accomplice Bridgit Zorn contacted the police anonymously on May 19 to report that an unnamed friend had lured a man named "Roberto" into a home, struck him in the head with a hammer, tied him up, drove him to the foothills, and then dumped him into a creek. The victim's body was found two weeks later, at which time Zorn came forward and made a statement identifying the defendant. When arrested, defendant Sirio said, "I'm not taking this alone; Bridgit is an accomplice." Defendant Sirio told another witness that she had hit her "abusive boyfriend" with a hammer, and that she and her girlfriend wrapped him in a carpet and dumped him into a river while still alive. Zorn testified against Siro. Verdict: Guilty of all counts. The defendant was sentenced to life imprisonment without parole. Co-counsel Thomas Mulvahill and I split the trial duties equally.

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Since becoming Chief of the Special Prosecutions Section at the U.S. Attorney's Office, I have been involved in Project Safe Childhood, the Attorney General's program to protect children from internet predators and pedophiles. Through this program, I have worked to form partnerships with state and federal law enforcement agencies and district attorneys to prosecute child exploitation and child pornography cases. I have also helped to identify ways to educate children and parents about the dangers of sexual predators on the internet. I supervise the AUSA who serves as the Project Safe Childhood coordinator, have conducted training for prosecutors at the U.S. Attorney's Office and at the Colorado District Attorney's Conference, and have participated in and spoken at community education events.

The most significant civil matter that I worked on that did not progress to trial took place between about 1989 and 1993 when I represented Hughes Aircraft Company concerning groundwater contamination from waste disposal near the Tucson, Arizona Airport. There were two aspects to this litigation. First, the defense of a class action toxic tort suit against Hughes and several other companies who had operations in the airport area. Second, the defense of declaratory judgment actions by Lloyd's of London and other insurance carriers who disclaimed coverage for any potential liabilities. Another associate and I coordinated the defense of approximately 80 current or former employees' depositions and responded to related motions filed in U.S. District Court for the District of Arizona.

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

I have not taught a formal course, but I have given training speeches to Denver police officers on the proper way to interact with sex assault victims; to Denver District Attorneys and to the Colorado District Attorney's Council's fall conference on co-defendant issues; to police officers and district attorneys, on federal firearms laws; and to U.S. Attorneys, federal agents, and to the Colorado District Attorney's Council's fall conference on prosecuting child pornography cases.

22. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted

contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Net Worth Statement.

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

The parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include criminal matters for which I entered an appearance as an AUSA or which were pending in the Special Prosecutions Section of the U.S. Attorney's Office while I worked there. Although I have done no civil work in the U.S. Attorney's Office, I would consider disclosing my past employment to civil litigants where the United States is a party to the action and the matter was pending while I was employed in the U.S. Attorney's Office. Another potential conflict would be any matter where the law firm of Holland & Hart represents a party, as my sister, Geraldine A. Brimmer, is a partner of that firm.

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

In all circumstances I will follow the Code of Conduct for United States Judges and applicable statutes, policies and procedures. For criminal matters assigned to me, the Clerk's Office can alert me if I entered an appearance as an AUSA. For cases being handled by members of the Special Prosecutions Section of the U.S. Attorney's Office, I would make inquiries in open court of the assigned AUSA as to whether I was involved in any way in the investigation, charging, or supervision of the case.

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

As a Department of Justice employee, I am restricted from representing clients in criminal matters. See 5 C.F.R. § 3801.106. However, I regard my work as both a District Attorney and an Assistant United States Attorney as service to the community. While not performing representational "pro bono" work, I give back to the community in other ways. For example, while a Denver District Attorney, I was part of the Capitol Hill Neighborhood Association, which was a community outreach program of the DA's Office that addressed crime concerns of residents and businesses in Capitol Hill. I was also a representative from the Denver DA's Office to the Sexual Assault Interagency Council and the Rape Assistance Awareness Program. In addition, I participated in several "phone-a-thons" for Denver Victims Service Center, a victim assistance organization. While at the Denver DA's Office, I taught a course for five years called "Courtrooms to Classrooms" to teach middle school children the basics about the legal system. As an AUSA in 2003, I was part of the state Restraining Order Committee that proposed revisions to Colorado domestic violence restraining orders. I have also judged a number of mock trials for various law school classes. In September 2007, I participated in the Internet Safety Summit in Louisville, Colorado, which provided information to educators and school computer technicians regarding protecting children from sexual predators on the internet, which is believed to have been the first of its kind in the country. I taped a segment for Comcast's Metro Beat TV "Student Voices" television program in October 2007 on Internet Safety (viewable at <http://www.metrobeat.tv/svEp4.aspx#14>). In November 2007, I gave a speech to the Doyle Inn of Court in Denver on the subject of child exploitation through the internet.

28. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your

jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On January 10, 2008, Sean Conway, Senator Wayne Allard's chief of staff, interviewed me concerning the vacancy on the District Court for the District of Colorado caused by the death of Judge Phillip Figa. On January 17, 2008, Senator Allard and his State Director interviewed me at Senator Allard's office in Englewood, Colorado. Later that day, Senator Allard's office informed me that Senator Allard would submit my name to the White House as one of seven persons to fill the three vacancies on the District Court for the District of Colorado.

On January 17, 2008, Senator Ken Salazar announced the formation of a bipartisan commission ("the Salazar Commission") to recommend persons to him to fill the vacancies on the District Court. I submitted an application to the Salazar Commission on February 15, 2008. On March 14, 2008, I had an interview with the Salazar Commission, although I did not make the Commission's short list. On April 3, 2008, Senator Salazar announced that he was nominating three persons for the three vacancies for the District of Colorado.

On April 15, 2008, the White House called me to schedule an interview. On April 29, 2008, staff from the Office of White House Counsel and the Department of Justice interviewed me at the White House. On May 16, 2008, the White House informed me of its intention move forward with my possible nomination for one of the vacancies on the District Court for the District of Colorado. Since that time, I have had conversations with staff from the Department of Justice regarding the pre-nomination paperwork and the nomination process. My nomination was submitted to the Senate on July 10, 2008.

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

No.

AO 10  
Rev. 1/2007

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Brimmer, Philip A	2. Court or Organization U.S. District Court, Colorado	3. Date of Report 07/11/2008
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 07/10/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2007 to 6/30/2008
7. Chambers or Office Address 1225 17th Street, Suite 700 Denver, CO 80202	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

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

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 2001	Denver Employees Retirement Plan; pension at age 55 (reduced) or age 65; no control.
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
Page 2 of 7

<b>Name of Person Reporting</b> Brimmer, Philip A	<b>Date of Report</b> 07/11/2008
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**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

**A. Filer's Non-Investment Income**

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1.		
2.		
3.		
4.		
5.		

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

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2007	Oak Ridge Associated Universities, Inc. -- salary
2. 2007	Centers for Disease Control & Prevention -- salary
3. 2007/2008	McKing Consulting Corp. -- salary
4.	
5.	

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

NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DESCRIPTION</u>
1. Exempt	
2.	
3.	
4.	
5.	

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Brimmer, Philip A	<b>Date of Report</b> 07/11/2008
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**V. GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-33 of instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Direct Loan Servicing Center -- U.S. Dept. of Education	Student Loan	M
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Brimmer, Philip A	<b>Date of Report</b> 07/11/2008
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**VII. INVESTMENTS and TRUSTS** - income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets)  Place "XY" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. ING Direct	A	Interest	J	T	Exempt				
2. DWS Prime Money Market	A	Interest	J	T					
3. Van Kampen High Yield Municipal Fund A	A	Interest	J	T					
4. Van Kampen Equity & Income	A	Dividend	J	T					
5. Van Kampen Comstock Class A (IRA)	A	Dividend	J	T					
6. Van Kampen Mid Cap Growth Fund A (IRA)	A	Dividend	J	T					
7. Van Kampen Emerging Markets Class A (IRA)	C	Dividend	J	T					
8. Vanguard 500 Index	D	Dividend	O	T					
9. Vanguard Intermediate Term Bond	D	Dividend	K	T					
10. Vanguard Precious Metals	D	Dividend	K	T					
11. Vanguard REIT Index	B	Dividend	K	T					
12. Vanguard Total Internat'l Stock	A	Dividend	K	T					
13. Vanguard Long-Term Tax Exempt Bond	B	Dividend	K	T					
14. Vanguard Prime Money Market (IRA)	B	Interest	K	T					
15. Vanguard Long-Term Bond Index (IRA)	A	Dividend	J	T					
16. Vanguard Extended Market Index (IRA)	B	Dividend	M	T					
17. Vanguard 500 Index (Roth IRA)	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$500,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Brimmer, Philip A	<b>Date of Report</b> 07/11/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code J (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Vanguard Pacific Index (Roth IRA)	A	Dividend	J	T					
19. Vanguard Windsor II (IRA)	D	Dividend	L	T					
20. Vanguard Total Stock Market Index (Roth IRA)	A	Dividend	J	T					
21. Berkshire Hathaway Class B		None	K	T					
22. Principal Life Gov't & HQ Bond (401k)	A	Dividend	J	T					
23. Principal Life Large Cap Stock Index (401k)	A	Dividend	J	T					
24. Principal Life Mid Cap Stock Index (401k)	A	Dividend	J	T					
25. Denver Employees Retirement Plan		None	K	T					
26.									
27.									
28.									
29.									
30.									
31.									

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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FINANCIAL DISCLOSURE REPORT  
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Name of Person Reporting	Date of Report
Brimmer, Philip A	07/11/2008

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

Section IIIA (Non-Investment Income) -- I received income during the reporting period from employment by the United States.

FINANCIAL DISCLOSURE REPORT  
Page 7 of 7

Name of Person Reporting	Date of Report
Brimmer, Philip A	07/11/2008

IX. CERTIFICATION.

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

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

Signature 

Date 7-11-08

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

## FINANCIAL STATEMENT

## NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		6	121	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	065	571	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		508	934
Real estate owned-add schedule		699	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		88	000	American General Finance		1	615
Cash value-life insurance				Sears		2	307
Other assets itemize:				Home Depot		6	982
Thrift Savings Plan		108	320	Student Loan		104	435
Denver Employees Retirement Plan		39	440				
				Total liabilities		624	273
				Net Worth	1	382	179
Total Assets	2	006	452	Total liabilities and net worth	2	006	452
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

## FINANCIAL STATEMENT

## NET WORTH SCHEDULES

Listed Securities

DWS Money Mrkt Fund	\$ 1,332
Van Kampen High Yield Muni Bond Class A	1,062
Van Kampen Equity/Income Class A	3,364
Van Kampen Comstock Class A (IRA)	4,148
Van Kampen Mid Cap Growth Class A (IRA)	8,032
Van Kampen Emerging Mrkts Class A (IRA)	10,549
Vanguard 500 Index Fund	548,201
Vanguard Intermediate Term Bond Index	31,691
Vanguard Precious Metals	36,180
Vanguard REIT Index Fund	26,629
Vanguard Total Int'l Stock Index	17,393
Vanguard L-T Tax-Exempt Inv	24,219
Vanguard Prime Money Mrkt Fund (IRA)	39,587
Vanguard L-T Bond Index (IRA)	8,386
Vanguard Extended Mrkt Index (IRA)	171,429
Vanguard 500 Index (Roth IRA)	3,583
Vanguard Pacific Stock Index Inv (Roth IRA)	4,824
Vanguard Windsor II Fund (IRA)	96,347
Vanguard Total Stock Market Index (Roth IRA)	3,323
Berkshire Hathaway Class B	20,060
Principal Life Gov't & HQ Bond (401k)	1,884
Principal Life Large Cap Stock Index	1,671
Principal Life Mid Cap Stock Index	1,677
Total Listed Securities	<u>\$ 1,065,571</u>

Real Estate Owned

Personal residence	\$ 699,000
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Real Estate Mortgages Payable

Personal residence	\$ 508,934
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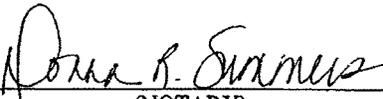
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AFFIDAVIT

I, Philip Andrew Brimmer, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

7-30-08  
(DATE)

  
(NAME)

  
(NOTARY)

My Commission Expires  
03/30/2009

QUESTIONS AND ANSWERS



U.S. Department of Justice

Office of the Solicitor General

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Acting Solicitor General

Washington, D.C. 20530

September 17, 2008

The Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you again for the privilege of appearing before your Committee last Tuesday and for extending such a kind welcome to me and my family.

Attached are my responses to written questions for the record posed to me after my confirmation hearing. If I can be of further assistance in this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gregory G. Garre".

Gregory G. Garre  
Acting Solicitor General

cc: The Honorable Arlen Specter  
Ranking Minority Member  
Committee on the Judiciary

Enclosures

Senator Dick Durbin  
Senate Judiciary Committee  
September 16, 2008

Written Questions for Gregory Garre  
Nominee to be Solicitor General of the United States

1. In the case *Northwest Austin Municipal Utility District Number One v. Mukasey*, filed in 2006, the Justice Department has been strongly defending the constitutionality and legality of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. In a May 2008 opinion, a three-judge panel ruled in favor of the Justice Department and upheld the constitutionality of this important law. The case is now on appeal to the U.S. Supreme Court and the Justice Department's response brief is due next month.

**Will you commit to continuing the Justice Department's strong defense of the Voting Rights Act Reauthorization and Amendments Act of 2006?**

ANSWER: The Justice Department has successfully defended the constitutionality of the Voting Rights Act Reauthorization and Amendments Act of 2006 before the three-judge court, and will continue to defend the Act before the Supreme Court. The Office of the Solicitor General has a long tradition of defending the constitutionality of congressional enactments whenever a reasonable legal argument can be made in their defense. As both a career and non-career lawyer in the Office of the Solicitor General, I have participated in the defense of the constitutionality of numerous Acts of Congress. As Acting Solicitor General and, if I am fortunate enough to be confirmed, as Solicitor General, I will maintain that important tradition.

2. In a second important voting rights case currently pending before the Supreme Court, *Bartlett v. Strickland*, you filed an amicus brief in opposition to the interests of the civil rights community. Your brief advocates a rigid approach to the creation of majority-minority legislative districts, under which, according to a brief filed by the NAACP et al, "the state would be free under Section 2 [of the Voting Rights Act] to eliminate all these districts and thus relegate African Americans to token representation in the North Carolina General Assembly."

**Why did you decide to advance a position in this case that would undermine the ability of African Americans to elect representatives of their choice and to achieve more political power?**

ANSWER: The position of the United States in *Bartlett v. Strickland* is that the Voting Rights Act of 1965 did not require the State to draw a legislative district with an approximately 39% African American voting age population, but that a State would be free to draw such a district under Section 2. In explaining that position, the government's amicus brief (at 8-29) pointed to, among other factors, the text of Section 2, the Supreme Court's statement in *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986), that a plaintiff must

show as a “necessary precondition” of a Section 2 vote-dilution claim that a minority group is “sufficiently large and geographically compact to constitute a majority in a single-member district,” and that a contrary interpretation raised constitutional concerns identified by the Supreme Court. In addition, the government’s brief emphasized (at 7) that “the United States certainly supports efforts to draw legislative districts in a manner that will provide equal electoral opportunities for all voters, regardless of race, including districts in which minority voters constitute less than a majority but nonetheless may carry significant political clout because of coalitions with voters from other minority groups or ‘crossover’ voting by members of the majority.”

As explained in the government’s amicus brief (at 10), the position of the United States in this case is consistent with the positions of the United States in prior cases before the Supreme Court in which the United States has argued that a Section 2 plaintiff must generally show that a minority group would constitute a majority of a proposed district in order to state a Section 2 vote-dilution claim. The government’s brief further explains (at 13-14) -- consistent with the position of the United States in prior cases before the Supreme Court -- that the general majority-minority requirement is not absolute and may be relaxed in two situations: where “intentional racial discrimination has been shown,” and where the minority group is “compact \* \* \* and substantial in size yet just short of a majority.” In this respect, the government’s brief (at 6, 13) agrees with the State that the North Carolina Supreme Court went further than necessary in this case in stating that a numerical majority is always required to state a Section 2 claim.

3. According to Senate testimony and media reports, there was nearly a mass resignation of senior officials at the Justice Department in 2004 over the issue of White House pressure to approve a secret surveillance program. These reports indicate that the Solicitor General at the time, Theodore Olson, may have shared concerns over the program and may have considered resigning over this matter.

**Mr. Garre, in 2004 you were part of the core group within the Solicitor General’s office who worked on terrorism and national security matters. If you were aware of the controversy over the surveillance program, did you consider resigning from the Justice Department over it? Based on what you now know, do you believe it would have been advisable to resign had the White House refused to back down?**

ANSWER: In 2004, I was a career attorney in the Office of the Solicitor General and one of several career attorneys in the Office who worked on the government’s defense in cases challenging the detention of enemy combatants in the wake of the September 11 attacks. I had no involvement with or knowledge of the matter described in this question and therefore had no occasion to consider resigning from the Department in connection with such matter. While I had no involvement with and thus lack personal knowledge of the matter in question, I feel strongly that the Solicitor General has an obligation to protect the integrity of the Department of Justice and the Office of the Solicitor General, as well as the rule of law. As Acting Solicitor General and, if I were fortunate enough to be confirmed, as Solicitor General, I would therefore exercise my independent judgment and make determinations that I believe to be supported by the law and in the best interests

of the United States. In making such a determination, I would want to know and carefully consider all the pertinent facts and circumstances. I would not defend, nor would I lend either my name or that of the Office of the Solicitor General, to a legal position that I did not believe was supported by a reasonable, good faith argument and in the best interest of the United States. If I were forced to choose between doing so and resigning, I would resign my position.

4. In responding to a question from Senator Kennedy in 2005, your predecessor, Paul Clement, acknowledged that the Attorney General and the President have the power to overrule legal judgments of the Solicitor General but that "the President and the Attorney General are both best served when they have confidence in the judgments of the Solicitor General and therefore do not find occasion to overrule the Solicitor General."

**Have there been any instances during the Bush Administration in which the Attorney General or the President has overruled the Solicitor General? If so, please identify the matter and the reasons why the Solicitor General was overruled.**

ANSWER: I have not worked in the Office of the Solicitor General during the entire period of the Bush Administration and can only speak to my experience in the Office. Since June 2, 2008, when I became Acting Solicitor General, there has not been any instance in which the Attorney General or the President has overruled a position that I have taken as Acting Solicitor General. Nor have I worked on any matter in the Office of the Solicitor General in any other capacity (as a career or non-career attorney) in which, to my knowledge, the Attorney General or the President has overruled the position of the Solicitor General.

5. Please provide a list of all amicus cases in which the Justice Department has participated before the U.S. Supreme Court or a federal court of appeal during your tenure as Acting Solicitor General. Please provide a capsule summary of the substance of each case, the positions and arguments advanced by the Justice Department, the status of the case, and the specific nature of your participation in the case.

ANSWER: Please see Attachment A. In answering this question, I have relied on the Office of the Solicitor General's internal recordkeeping system for filings authorized by the Office of the Solicitor General. Based on that system, a list of the cases in which the government has participated before the U.S. Supreme Court or a federal court of appeals as an amicus curiae during my tenure as Acting Solicitor General, which began on June 2, 2008, has been generated and is attached as Attachment A. The list includes a summary of the substance of the case, position/argument advanced by the government, status of the case, and nature of my participation.

6. Please provide a year-by-year breakdown of the number of Supreme Court cases and federal court of appeals cases originating in the Justice Department's Civil Rights Division since January 1, 2005 in which the government has participated as an amicus curiae, along with a capsule summary of the substance of each case, the positions and

arguments advanced by the Justice Department, the status of the case, and the specific nature of your participation in the case.

ANSWER: Please see Attachment B. In answering this question, I have relied on the Office of the Solicitor General's internal recordkeeping system for filings authorized by the Office of the Solicitor General and the recordkeeping system of the Civil Rights Division. Based on those sources, a year-by-year breakdown of the number of Supreme Court cases and federal court of appeals cases originating in the Civil Rights Division since January 1, 2005 in which the government has participated as an amicus curiae has been generated and is attached as Attachment B. The list includes a summary of the substance of the case, position/argument advanced by the government, status of the case, and nature of my participation. The Office of the Solicitor General does not maintain copies of the amicus briefs filed on behalf of the government in court of appeals cases in which the Solicitor General has authorized amicus participation, but where possible I have provided a summary of the requested information based on information obtained from the litigating Division.

## ATTACHMENT A

**U.S. Supreme Court**

Kennedy v. Louisiana, No. 07-343: This case concerns whether the Constitution forbids the imposition of capital punishment for the offense of child rape. The government's amicus brief takes the position that it does not, and that the Court should grant rehearing in this case to reconsider its decision in light of a 2006 Act of Congress amending the Uniform Code of Military Justice to authorize the death penalty for child rape. The case is pending before the Court on the State's petition for rehearing. I authorized amicus participation and reviewed and commented on the government's brief.

Pacific Bell Telephone Co. v. LinkLine Communications, No. 07-512: This case concerns whether a price-squeeze allegation based solely on the margin between a vertically-integrated defendant's wholesale and retail prices is insufficient to state a claim under Section 2 of the Sherman Act. The government's amicus brief takes the position (consistent with the position stated in an amicus brief authorized at the certiorari stage in this case by the former Solicitor General) that such an allegation is insufficient to state a Section 2 claim. The case is pending before the Court. I authorized amicus participation and reviewed and commented on the government's brief.

Melendez-Diaz v. Massachusetts, No. 07-591: This case concerns whether a state laboratory's certificate of analysis as to drug-testing results constitutes a testimonial statement within the meaning of the Confrontation Clause. The government's amicus brief takes the position that such a certificate is not a testimonial statement. The case is pending before the Court. I authorized amicus participation and reviewed and commented on the government's brief.

Ministry of Defense v. Elahi, No. 07-615: This case concerns whether and in what circumstances a judgment is subject to attachment by a plaintiff under the Terrorism Risk Insurance Act. The government's amicus brief takes the position (consistent with the position stated in an amicus brief filed at the certiorari stage in this case by the former Solicitor General) that the judgment at issue is not subject to attachment in this case. The case is pending before the Court. I authorized amicus participation and reviewed and commented on the government's brief.

Pearson v. Callahan, No. 07-751: This case concerns whether a police entry into a home after an undercover informant alerted the police to criminal activity in the home violated the Fourth Amendment and whether the officers were entitled to qualified immunity from suit. The government's amicus brief takes the position that the Fourth Amendment was not violated and that the officers are in any event entitled to immunity from suit. The case is pending before the Court. I authorized amicus participation and reviewed and commented on the government's brief.

AT&T Corp. v. Hulteen, No. 07-543: This case concerns whether an employer violates Title VII, as amended, if it determines eligibility for certain benefits without correcting

discrimination that was not unlawful under Title VII when it occurred and whether finding such a violation would give Title VII an impermissible retroactive effect. The government's amicus brief takes the position (consistent with the position stated in an amicus brief filed at the certiorari stage in this case by the former Solicitor General) that finding such a violation would give impermissible retroactive effect to Title VII. The case is pending before the Court. I authorized amicus participation and reviewed and commented on the government's brief.

Altria Group v. Good, No. 07-562: This case concerns whether statements and orders issued by the Federal Trade Commission impliedly preempt state-law tort claims based on a cigarette manufacturer's allegedly fraudulent use of "Light" and "Lowered Tar and Nicotine" descriptors. The government's amicus brief takes the position that the FTC's statements and actions do not impliedly preempt such claims. The case is pending before the Court. I authorized amicus participation and reviewed and commented on the government's brief.

14 Penn Plaza v. Pyett, No. 07-562: This case concerns whether an arbitration clause in a collective bargaining agreement, which clearly and unmistakably waives the union members' right to a judicial forum for their statutory discrimination claims, is enforceable. The government's amicus brief takes the position that such a clause is not enforceable. The case is pending before the Court. I authorized amicus participation and reviewed and commented on the government's brief.

Pleasant Grove v. Sumnum, No. 07-665: This case concerns whether the First Amendment entitles a private group to insist that a city permit it to erect a permanent monument in a city park that contains a number of objects donated by other private individuals and groups and accepted by the city for display. The government's amicus brief takes the position that the First Amendment does not entitle the private group to insist that the city erect such a display. The case is pending before the Court. I authorized amicus participation and reviewed and commented on the government's brief.

Bartlett v. Strickland, No. 07-689: This case concerns whether the Voting Rights Act of 1965 obligated a state to draw a legislative district in which African Americans constituted approximately 39% of the voting-age population. The government's amicus brief takes the position that the state was not required to draw such a district. The case is pending before the Court. I authorized amicus participation and reviewed and commented on the government's brief.

Morris v. Center for Bio-Ethical Reform, No. 07-811: This case concerns whether the court of appeals misapplied qualified immunity principles in reversing the entry of summary judgment for law-enforcement officers on First and Fourth Amendment claims arising out of a vehicle detention. The government's amicus brief takes the position that the court of appeals did so err. The case is pending before the Court. I authorized amicus participation in response to the Court's invitation to file a brief and reviewed and commented on the government's brief.

Van de Kamp v. Goldstein, No. 07-854: This case concerns whether supervisory prosecutors are entitled to absolute immunity from suits for damages alleging that they failed to develop policies to protect against violations of Giglio v. United States, 405 U.S. 150 (1972). The government's amicus brief takes the position that supervisory prosecutors enjoy immunity from such suits. The case is pending before the Court. I authorized amicus participation and reviewed and commented on the government's brief.

Arizona v. Johnson, No. 07-1122: This case concerns whether a police officer who is participating in a lawful traffic stop may frisk a passenger when the officer has reasonable suspicion that the passenger is armed and dangerous but lacks reasonable suspicion that the passenger is committing or has committed a criminal offense. The government's amicus brief takes the position that an officer may conduct such a frisk. The case is pending before the Court. I authorized amicus participation and reviewed and commented on the government's brief.

#### **Federal Courts of Appeals**

Sheehan v. San Francisco 49ers, No. S155742 (Cal. S. Ct.): This case concerns whether the owner and operator of a sports stadium violated the Constitution by conducting pat-down searches of fans entering the stadium to see National Football League games. The government's amicus participation supports the position that the pat-down searches at issue did not violate constitutional rights. The case is pending before the California Supreme Court. I authorized amicus participation.

Oneida Indian Nation v. Madison County, Nos. 05-6408 *et al.* (2d Cir.): This case concerns whether land owned and occupied by an Indian Tribe is subject to foreclosure for nonpayment of county property taxes and related issues. The government's amicus participation supports the Tribe's position that it is immune from such an action. The case is pending before the Second Circuit. I authorized amicus participation.

Castaneda v. United States, No. 08-55684 (9th Cir.): This case concerns whether, under 42 U.S.C. 233, the sole remedy available to a plaintiff suing PHS physicians and employees for alleged injuries arising out of medical treatment is a suit against the United States under the Federal Tort Claims Act. The government's amicus participation supports the position that Section 233 precludes a constitutional tort claim in such circumstances. The case is pending before the Ninth Circuit. I authorized amicus participation.

United States ex rel. Ritchie v. Lockheed Martin, No. 07-07-1295 (10th Cir.): This case concerns when a relator's pre-filing release is generally unenforceable to bar a subsequent qui tam action under the False Claims Act and related issues. The government's amicus participation was by invitation of the court and supports the position that such a pre-filing release is unenforceable against public policy if the government has not been made aware of the information concerning the claim. The case is pending before the Tenth Circuit. I authorized amicus participation.

Kimbro v. Hildebrand, No. 08-5871 (6th Cir.): This case concerns whether 11 U.S.C. 707(b)(2)(A)(ii)(I) permits a debtor to count as monthly expenses a vehicle ownership expense when the debtor owns the vehicle outright and thus has no ownership expense associated with the vehicle. The government's amicus participation supports the position that the statute does not permit the counting of such expenses. The case is pending before the Sixth Circuit. I authorized amicus participation.

Friends of Milwaukee's Rivers v. Milwaukee Metropolitan Sewage, No. 08-1103 (7th Cir.): This case concerns whether or to what extent a settlement between a state and municipal sewage district bars a citizen suit under the Clean Water Act as a matter of res judicata. The government's amicus participation was by invitation of the court and supports the position that in determining the res judicata effect of such a settlement the court should focus on the facts known to the State at the time of the stipulation. The case is pending before the Seventh Circuit. I authorized amicus participation.

Boim v. Holy Land Foundation, 511 F.3d 707 (7th Cir.): This case concerns whether a donor to an organization that, the donor knows, practices terrorism, can be liable under 18 U.S.C. 2333(a) in the absence of proof that the donor intended to advance the violent component of the recipient's activities. The government's amicus participation was by invitation of the en banc court and supports the position that the defendant's lack of intent to facilitate terrorist acts does not preclude liability under the statute. The case is pending before the Seventh Circuit. I authorized amicus participation.

United States ex rel. Duxbury v. Ortho Biotech Products, No. 08-1409 (1st Cir.): This case concerns the requirements for bringing a qui tam action under the False Claims Act. The government's amicus participation supports the position that a qui tam suit may qualify as "based upon" a covered "public disclosure" even if the relator does not actually derive his information from publicly available materials. The case is pending before the First Circuit. I authorized amicus participation.

Contilli v. Local 705, No. 07-2673 (7th Cir.): This case concerns whether a pension plan's rule that no benefits are payable for any month that precedes a formal application for benefits violates 29 U.S.C. 1053(a). The government's amicus participation was by invitation of the court and supports the position that the plan provisions at issue violate that statute. The case is pending before the Seventh Circuit. I authorized amicus participation.

In re Pharmaceutical Industry Average Wholesale Price Litigation, Nos. 08-1055 et al. (1st Cir.): This case concerns whether the term "average wholesale price," as used in the Medicare statute, referred to the average price at which drugs were actually sold, or the average list price for the drugs. The government's amicus participation supports the position that the term refers to the average price at which drugs were actually sold. The case is pending before the First Circuit. I am recused from this case and thus have had no involvement in it.

Babin v. Washburn, No. 08-2023 (8th Cir.): This case concerns whether 11 U.S.C. 707(b)(2)(A)(ii)(I) permits a debtor to count as monthly expenses a vehicle ownership expense when the debtor owns the vehicle outright and thus has no ownership expense associated with the vehicle. The government's amicus participation supports the position that the statute does not permit the counting of such expenses. The case is pending before the Eighth Circuit. I authorized amicus participation.

In re Trusted New Media Holdings, No. 07-13429 (11th Cir.): This case concerns whether the requirements set forth in 11 U.S.C. 303(b) for commencing an involuntary bankruptcy proceeding are jurisdictional. The government's amicus participation supports the position that such requirements are not jurisdictional. The case is pending before the Eleventh Circuit. I authorized amicus participation.

Pugliese v. Pukka Development, No. 07-15198 (11th Cir.): This case concerns whether the two-year right to revoke a contract under the Interstate Land Sales full Disclosure Act, 15 U.S.C. 1703(d), applies to a contract for the sale of a lot that is partially exempt from other provisions of the act. The government's amicus participation supports the position that the Act does not apply to such a contract. The case is pending before the Eleventh Circuit. I authorized amicus participation.

Nelson v. Miller, No. 08-2044 (7th Cir.): This case concerns whether a prison official's refusal to approve an inmate's request for a vegetarian diet was a "substantial burden" on his religious exercise within the meaning of the Religious Land Use and Institutionalized Persons Act. The government's amicus participation supports the position that the inmate has shown such a burden. The case is pending before the Seventh Circuit. I authorized amicus participation.

United States v. Caremark, No. 08-50354 (5th Cir.): This case concerns whether claims asserted by a False Claims Act defendant against a state and the United States are compulsory counterclaims such that the governments waived their sovereign immunity with respect to those claims by filing suit against the defendant. The government's amicus participation supports the position that the plaintiff-governments did not waive their sovereign immunity with respect to particular claims by filing suit. The case is pending before the Fifth Circuit. I authorized amicus participation.

American Atheists v. Detroit, Nos. 07-2398 et al. (6th Cir.): This case concerns whether a city violated the Establishment Clause by making available community beautification grants for the renovation, repair, and improvement of certain facilities. The government's amicus participation supports the position that the grants at issue are constitutional. The case is pending before the Sixth Circuit. I authorized amicus participation.

Liberty Mutual Insurance v. Superior Court, No. S156555 (Cal. S. Ct.): This case concerns whether insurance claims adjusters are exempt from state law requiring overtime pay. The government's amicus participation explains the Department of

Labor's interpretation of various regulations and statements. The case is pending before the California Supreme Court. I authorized amicus participation.

Quon v. Arch Wireless, No. 07-55282 (9th Cir.): This case concerns whether a public employee has a reasonable expectation of privacy in text messages on his government-issued pager, when the government had established an official policy that such messages were not confidential. The government's amicus participation supports the position that there was no reasonable expectation of privacy in such messages. The case is pending before the Ninth Circuit. I authorized amicus participation.

BGA, LLC v. Ulster County, No. 06-0096 (2d Cir.): This case concerns whether a district court properly declined to adjudicate a case concerning whether a group should be recognized by the federal government as an Indian tribe. The government's amicus participation supports the position that the district court lacked jurisdiction. The case is pending before the Second Circuit. I authorized amicus participation.

Vonage Holdings Corp. v. Nebraska Public Service, No. 08-1764 (8th Cir.): This case concerns whether orders of the Federal Communications Commission preempt a state requirement that providers of voice over IP service must contribute to a universal-service fund under a certain formula. The government's amicus participation supports the position that there is no preemption. The case is pending before the Eighth Circuit. I authorized amicus participation.

Terry v. Tysons Farms, Inc., No. 08-5577 (6th Cir.): This case concerns whether the Packers and Stockyards Act of 1921's prohibitions against certain business practices apply only to acts that adversely affect competition. The government's amicus participation supports the position that the statute prohibits specified business practices regardless of whether they have an anticompetitive effect. The case is pending before the Sixth Circuit. I am recused from this case and thus have had no involvement in it.

Young v. GM Investment Management, No. 08-1532 (2d Cir.): This case concerns whether the plaintiffs' claims for breach of fiduciary duty under the Employee Retirement Income Security Act are time-barred. The government's amicus participation supports the position that the claims are not time-barred. The case is pending before the Second Circuit. I authorized amicus participation.

Hayden v. Freightcar America, No. 08-1109 (3d Cir.): This case concerns whether, when an employer lays off employees in order to prevent their pension benefits from vesting, the court may order that the employees be reinstated to their jobs. The government's amicus participation supports the position that reinstatement is an appropriate remedy. The case is pending before the Third Circuit. I authorized amicus participation.

Johnston v. Tam Sports Authority, No. 06-14666 (11th Cir.): This case concerns whether the operator of a sports stadium violated the Constitution by conducting pat-down searches of fans entering the stadium to see National Football League games. The government's amicus participation supports the position that the pat-down searches did

not violate constitutional rights. The case is pending before the Eleventh Circuit. I authorized amicus participation.

Azza v. Alaska Airlines, Inc. (9th Cir.): This case concerns whether the pilot of an aircraft had “reasonable grounds to believe” that passengers posed a threat to “good order and discipline,” and was thus entitled to divert the aircraft and remove the passengers under the Tokyo Convention and whether the Warsaw Convention preempts related defamation claims. The government’s amicus participation was by invitation of the court and generally supports the position that the pilot had grounds for removing the passengers and that related statements to the police were protected by the Warsaw Convention. The case is pending before the Ninth Circuit. I authorized amicus participation.

## ATTACHMENT B

2005

**U.S. Supreme Court (3 cases)**

1. Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49 (2005): This case concerned whether, under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. 1400 et seq., when parents initiate an administrative “due process” hearing to seek reimbursement for private-school tuition and challenge their child’s individualized education program, the burden of proof falls on the parents or the school district. The government’s amicus brief took the position that the IDEA should be read to place the burden of proof on the party initiating and seeking relief at an administrative hearing under the Act. The Court agreed with that position. At the time the government’s brief was filed in June 2005, I was an attorney at Hogan & Hartson L.L.P. While at Hogan, I filed a brief and presented oral argument on behalf of the respondent in this case.

2. Arbaugh v. Y & H Corporation d/b/a The Moonlight Cafe, 546 U.S. 500 (2006): This case concerned whether Title VII’s fifteen-employee requirement limits the courts’ subject matter jurisdiction, or instead is relevant only to the merits of a Title VII claim. (Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., prohibits employment discrimination by an “employer,” and defines an “employer” for that purpose to be a person who, inter alia, had fifteen or more employees for each working day during 20 or more weeks in the current or preceding year.) The government’s amicus brief took the position that the fifteen-employee requirement is not jurisdictional. The Court agreed with that position. I had no involvement in the case.

3. Arlington Central School District Board of Education v. Murphy, 546 U.S. 1085 (2006): This case concerned whether the fee-shifting provision of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. 1400 et seq., authorizes a court to award “expert” fees.” At the Court’s invitation, the government filed an amicus brief arguing that the petition should be granted on that question. The Court agreed. I reviewed and commented on the brief as deputy solicitor general.

**Federal Courts of Appeals (8 cases)**

1. Barnes-Wallace v. Boy Scouts of America, 471 F.3d 1038 (9th Cir. 2006), withdrawn and superseded on rehearing by 530 F.3d 776 (9th Cir. 2008): This case concerns whether a policy under which a city offers low-cost leases of city property to community organizations providing benefits to the public violates the Establishment Clause as applied to a lease of parkland to the Boy Scouts of America to operate a campground and a boating center open to the public. The government’s amicus brief took the position that the Boy Scouts is not a religious organization such that its receipt of government benefits would violate the Establishment Clause; that the leases were value-for-value transactions that could not be deemed benefits to the Boy Scouts for constitutional purposes; and that the large number of other diverse community organizations that had similar leases with

the city created a context in which it could not be said that the city was endorsing or advancing religion in violation of the Establishment Clause. The Ninth Circuit issued an order certifying questions to the California Supreme Court. That order remains subject to a pending petition for rehearing. I had no involvement in this case.

2. Muntaqim v. Coombe, 449 F.3d 371 (2d Cir. 2006): This case concerned whether Section 2 of the Voting Rights Act of 1965 (“VRA”) applies to New York Election Law § 5-106(2), which prohibited incarcerated felons from voting. The government’s amicus brief took the position that Section 2 of the VRA should not be construed as applying to the New York law. The Second Circuit ruled that the plaintiff lacked standing because he was not a New York resident before his incarceration in a New York prison. I had no involvement in this case.

3. Hayden v. Pataki, 449 F.3d 305 (2d Cir. 2006): This case concerned whether Section 2 of the Voting Rights Act of 1965 (“VRA”) applies to New York Election Law § 5-106(2), which prohibited incarcerated felons from voting. The government’s amicus brief took the position that Section 2 of the VRA should not be construed as applying to the New York law. The Second Circuit agreed. I had no involvement in this case.

4. Atkinson v. Lafayette College, 460 F.3d 447 (3d Cir. 2006): This case concerned whether Section 901 of Title IX of the Education Amendments of 1972, 20 U.S.C. 1681(a), which prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance, encompasses a prohibition on retaliation for complaining about sex discrimination. In 2003, the government filed an amicus brief taking the position that it does. The Third Circuit stayed the appeal pending the Supreme Court’s decision in Jackson v. Birmingham Board of Education, 544 U.S. 167 (2005). In 2005, the United States filed a supplemental memorandum as amicus arguing that Jackson was directly on point and supported the position we took in our original amicus brief. The Third Circuit agreed. I had no involvement in this case.

5. Baker v. The Home Depot, 445 F.3d 541 (2d Cir. 2006): This case concerned whether an employee seeking a reasonable accommodation of his religious practices under Title VII to refrain from work on Sundays was provided with a reasonable accommodation as a matter of law when his employer offered to give him Sunday mornings off to attend religious services. The government’s amicus brief took the position that in order for a proffered accommodation to be reasonable as a matter of law under Title VII, and thereby bypass the undue-hardship-on-the-employer inquiry, the accommodation must remove the conflict between job duties and religious practice. The Second Circuit agreed. I had no involvement in this case.

6. Fitzgerald v. Camdenton R-III School District, 439 F.3d 773 (8th Cir. 2006): This case concerned whether the “child find” provision of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. 1412(a)(3), requires a school district to evaluate a child the school district suspects of having a disability if the child’s parents refuse consent, remove the child from public school, and waive any claim to public educational

benefits under the IDEA. The government's amicus brief took the position that it does not. The Eighth Circuit agreed. I had no involvement in this case.

7. Faith Center Church Evangelic Ministries v. Glover, 462 F.3d 1194 (9th Cir. 2006), revised and rehearing en banc denied by 480 F.3d 891 (9th Cir. 2007): This case concerned whether a community room in a public library that was open to a variety of community organizations for various events and activities could exclude a group wishing to hold a conference that would include a religious worship element. The government's amicus brief took the position that the defendants had discriminated against religious expression in violation of the First Amendment. The Ninth Circuit disagreed. I had no involvement in this case.

8. Wisconsin Community Services, Inc. v. City of Milwaukee, Wisconsin, 465 F.3d 737 (7th Cir. 2006) (en banc): This case concerned the application and validity of two regulations, 28 C.F.R. 35.130(b)(7) and 28 C.F.R. 41.53, promulgated by the Department of Justice to implement Title II of the Americans with Disabilities Act ("ADA") and Section 504 of the Rehabilitation Act. In response to an invitation from the Seventh Circuit, the government filed an amicus brief asserting that the regulations were valid and explaining how they applied in this case. The Seventh Circuit reversed and remanded. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

## 2006

### U.S. Supreme Court (7 cases)

1. LULAC v. Perry, 548 U.S. 399 (2006): This case concerned a statutory and constitutional challenge to a Texas redistricting plan. The government's amicus brief took the position that the State's plan complied with Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973. It did not address the constitutional issues presented by the case. The Court agreed with the government's position as to one Section 2 claim but disagreed as to another. I reviewed and commented on the brief as deputy solicitor general and argued the case before the Court.

2. Arlington Central School District Board of Education v. Murphy, 548 U.S. 291 (2006): This case, in which the government previously had filed a brief at the certiorari stage, see supra, concerned whether the fee-shifting provision of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. 1400 et seq., authorizes a court to award "expert fees." The government's amicus brief took the position that it does not. The Court agreed with that position. I reviewed and commented on the brief as deputy solicitor general and assisted in the preparation for oral argument by another attorney in the Office of the Solicitor General.

3. Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53 (2006): This case concerned whether a plaintiff who asserts a claim of retaliatory discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-3(a), must show

that she suffered a materially adverse employment action. The government's amicus brief took the position that a plaintiff was required to make such a showing and that the plaintiff in this case should prevail because she had done so. The Court agreed with the government's argument that the plaintiff should prevail, but disagreed with its interpretation of Title VII. I reviewed and commented on the brief as deputy solicitor general and argued the case before the Court.

4. Parents Involved in Community Schools v. Seattle School District No. 1, 127 S. Ct. 2738 (2007): This case concerned whether a school district's race-based student assignment plan violated the Equal Protection Clause of the Fourteenth Amendment. The government's amicus brief took the position that it did. The Court agreed with that position. I reviewed and commented on the brief as deputy solicitor general and assisted in the preparation for oral argument by the Solicitor General.

5. Meredith v. Jefferson County Board of Education, 127 S. Ct. 2738 (2007): This case concerned whether a school district's race-based student assignment plan violated the Equal Protection Clause of the Fourteenth Amendment. The government's amicus brief took the position that it did. The Court agreed with that position. I reviewed and commented on the brief as deputy solicitor general and assisted in the preparation for oral argument by the Solicitor General.

6. Winkelman v. Parma City School District, 127 S. Ct. 1994 (2007): This case concerned whether a non-lawyer parent of a minor child with a disability may proceed *pro se* in a federal court action brought pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. 1400 *et seq.* The government's amicus brief took the position that the parents of a child with a disability may proceed *pro se* when they bring a civil action in federal court either to enforce procedural rights under the statute or to seek relief for a substantive violation of the right to a free appropriate public education. The Court agreed with the government's position. I reviewed and commented on the brief as deputy solicitor general and assisted in the preparation for oral argument by another attorney in the Office of the Solicitor General.

7. Ledbetter v. Goodyear Tire & Rubber Co., Inc., 127 S. Ct. 2162 (2007): This case concerned whether a plaintiff may bring an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, alleging illegal pay discrimination when the allegedly disparate pay is received during the statutory limitations period, but is the result of intentionally discriminatory pay decisions that occurred outside the limitations period. The government's amicus brief took the position that the plaintiff's Title VII claims was time-barred in those circumstances. The Court agreed with the government's position. I reviewed and commented on the brief as deputy solicitor general and assisted in the preparation for oral argument by another attorney in the Office of the Solicitor General.

#### **Federal Courts of Appeals (6 cases)**

1. Living Water Church of God v. Meridian Charter Township, 2007 WL 4322157 (6th Cir. Dec. 10, 2007): This case concerned whether a municipality's limitation of a

church's expansion created a substantial burden on religious exercise for purposes of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). The government's amicus brief took the position that RLUIPA's substantial burden had been met. The Sixth Circuit disagreed. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

2. Faith Temple v. Town of Brighton, No. 06-0354 (2d Cir.): This case concerned whether a town's use of its eminent domain power to take church land in accordance with its comprehensive land-use plan would constitute application of a "land use regulation" under the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). The government's amicus brief took the position that under the circumstances of this case, the taking would be a land use regulation and RLUIPA therefore would apply. The case settled after briefing but prior to argument and the appeal was withdrawn. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

3. Jones v. Gale, 470 F.3d 1261 (8th Cir. 2006): The case concerned whether an individual may sue a state official in his official capacity to enjoin continuing violations of Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 *et seq.* The government's amicus brief took the position that private plaintiffs may enforce the requirements of Title II of the ADA through suits filed under the doctrine of Ex parte Young, 209 U.S. 123 (1908). The Eighth Circuit's opinion did not address the ADA issue. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

4. Lighthouse Institute for Evangelism, Inc. v. City of Long Branch, 510 F.3d 253 (3d Cir. 2007): This case concerned a claim that a church was improperly excluded from a commercial district in violation of Section 2(b)(1) of the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). The government's amicus brief argued that a church bringing a claim under Section 2(b)(1) need only show discrimination against churches as compared to equivalent secular assemblies, and need not additionally show a "substantial burden" on its religious exercise. The Third Circuit agreed with the government's position, but ruled against the church on the facts. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

5. Bronx Household of Faith v. Board of Education of the City of New York, 492 F.3d 89 (2d Cir. 2007): This case concerns whether a school board's refusal to rent facilities to a religious group after hours on an equal basis with other community organizations on the grounds that the group intends to engage in worship violates the Constitution. The government's amicus brief took the position that the discrimination violated the First Amendment. The court remanded the case to the district court to determine if it was ripe for adjudication. The district court ruled that it was ripe, and the case is again pending before Second Circuit. See *infra*. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

6. Westchester Day School v. Village of Mamaroneck, 504 F.3d 338 (2d Cir. 2007): This case concerned whether a Jewish day school that was denied zoning approval to expand to meet its needs had its religious exercise “substantially burdened” for purposes of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”), and whether RLUIPA was a constitutional exercise of Congress’s power. The government’s amicus brief argued that the school had established facts demonstrating substantial burden, and that RLUIPA is constitutional. The Second Circuit agreed. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

## 2007

U.S. Supreme Court (4 cases)

1. Board of Education of the City School District of the City of New York v. Tom F., 128 S. Ct. 1 (2007): This case concerned whether the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. 1400 *et seq.*, permits an award of private school tuition reimbursement when a child with a disability has been denied a free appropriate public education but the child has not “previously received special education and related services under the authority of a public agency.” The government’s amicus brief took the position that IDEA authorizes such an award. The Court affirmed the decision below (which the government supported) by an equally divided vote. I reviewed and commented on the brief as deputy solicitor general and argued the case before the Court.

2. Federal Express Corporation v. Holowecki, 128 S. Ct. 1147 (2008): This case concerned what constitutes “a charge alleging unlawful discrimination” under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. 621 *et seq.* The government’s amicus brief took the position that the Court should adopt Equal Employment Opportunity Commission’s (“EEOC”) interpretation of that term, *i.e.*, that a “charge” is a submission that meets the form and content requirements set forth in the EEOC’s regulations and objectively manifests a submitter’s intent to make a formal accusation that a named party has engaged in unlawful discrimination. The Court adopted the government’s position. As Acting Solicitor General, I authorized amicus participation and reviewed and commented on the brief. I also assisted in the preparation for oral argument by another attorney in the Office of the Solicitor General.

3. Crawford v. Marion County Election Board and Indiana Democratic Party v. Rokita, 128 S. Ct. 1610 (2008): These consolidated cases concerned whether an Indiana statute mandating that those seeking to vote in person produce a government-issued photo identification on its face violates the First and Fourteenth Amendments to the Constitution. The government’s amicus brief took the position that the statute was not unconstitutional on its face. The Court agreed with that position. I reviewed and commented on the brief as deputy solicitor general and assisted in the preparation for oral argument by the Solicitor General.

4. Crawford v. Metropolitan Gov’t of Nashville & Davidson County, No. 06-1595: This case concerns whether, or to what extent, Title VII’s anti-retaliation provision, Section

704(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-3(a), protects an employee from being dismissed because she cooperated with her employer's internal investigation of sexual harassment. The government's amicus brief takes the position that it does. The case is pending before the Court. I reviewed and commented on the brief as deputy solicitor general.

**Federal Courts of Appeals (7 cases)**

1. Disabled in Action of Pennsylvania v. SEPTA, 539 F.3d 199 (3d Cir. 2008): This case concerned a claim that renovations to two subway stops in Philadelphia violated the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 *et seq.* The question presented was what events trigger the running of the statute of limitations on such a claim. The government's amicus brief took the position that the statute of limitations does not begin to run, at the earliest, until the defendant has completed the alterations that are the subject of the lawsuit. The Third Circuit agreed. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

2. Digrugilliers v. Consolidated City of Indianapolis, 506 F.3d 612 (7th Cir. 2007): This case concerned whether the City of Indianapolis violated Section 2(b)(1) of the Religious Land Use and Institutionalized Persons Act ("RLUIPA") when it barred a church from a zone in which clubs, assembly halls, community centers, and similar assembly uses were permitted. The government's amicus brief took the position that the exclusion violated Section 2(b)(1), and that the proffered reasons for the discrimination (that the exclusion was necessary to protect churches from locating near businesses selling pornography and alcohol) was not valid. The Seventh Circuit agreed. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

3. Miller v. California Speedway Corporation, 536 F.3d 1020 (9th Cir. 2008): This case concerned whether the Department of Justice's regulations issued pursuant to Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 *et seq.*, require newly-constructed assembly areas to provide wheelchair seating locations with lines of sight over standing spectators where patrons can be expected to stand during events. The government's amicus brief took the position that they do. The Ninth Circuit agreed. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

4. John M. v. Board of Education of Evanston Township High School District 202, 502 F.3d 708 (7th Cir. 2007): This case concerned the issue of whether the "stay-put" provision of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. 1415(j), requires the provision of services using a methodology not specified in a student's individualized educational program. The government's amicus brief took the position that it does not. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

5. Saunders v. Farmers Insurance Exchange, 537 F.3d 961 (8th Cir. 2008): This case concerned whether the McCarran-Ferguson Act, 15 U.S.C. 1011-1015, barred plaintiffs'

claims alleging race-based insurance discrimination under the Fair Housing Act, 42 U.S.C. 3601 *et seq.* The government's amicus brief took the position that, in light of Missouri law, the McCarran-Ferguson Act did not bar plaintiffs' race-based insurance discrimination claims under the Fair Housing Act. The Eighth Circuit held that the McCarran-Ferguson Act barred the particular claims at issue. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

6. Colorado Christian University v. Weaver, 534 F.3d 1245 (10th Cir. 2008): This case concerned whether the State of Colorado violated the constitutional rights of students when it barred them from using state scholarship and aid programs, which may be used at public and private schools within the state, to support education at a nondenominational Christian university. The government's amicus brief took the position that the bar discriminated against the students in violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. The Tenth Circuit agreed. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

7. Harkless v. Brunner, Nos. 07-3829 & 07-4165 (6th Cir.): This case concerns whether the head of a state agency designated as a voter registration agency under the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg *et seq.*, is liable for NVRA violations resulting from failures by the agency's local offices. The government's amicus brief took the position that such a state official is liable for NVRA violations resulting from failures by the agency's local offices. The case is pending before the Sixth Circuit. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

## 2008 To Date

### U.S. Supreme Court (6 cases)

1. CBOCS West, Inc. v. Humphries, 128 S. Ct. 1951 (2008): This case concerned whether a claim asserting retaliation against an individual who has complained of intentional racial discrimination is cognizable under 42 U.S.C. 1981. The government's amicus brief took the position that such a claim is cognizable under Section 1981. The Court agreed with the government's position. I reviewed and commented on the brief as deputy solicitor general and assisted in the preparation for oral argument by the Solicitor General.

2. Riley v. Kennedy, 128 S. Ct. 1970 (2008): This case concerned whether the implementation of a change affecting voting concerning a state law that was previously precleared and enforced is exempted from Section 5 of the Voting Rights Act of 1964 simply because it is precipitated by a state court decision declaring that the state law violates the state constitution. The government's amicus brief took the position that such a change is not exempted from Section 5. The Court disagreed with that position. I reviewed and commented on the brief as deputy solicitor general and assisted in the preparation for oral argument by another attorney in the Office of the Solicitor General.

3. AT&T v. Hulteen, No. 07-543: This case concerns whether an employer violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, as amended, if it determines eligibility for certain benefits without correcting discrimination that was not unlawful under Title VII when it occurred and whether finding such a violation would give Title VII an impermissible retroactive effect. The government's amicus brief takes the position (consistent with the position stated in an amicus brief filed at the certiorari stage in this case by the former Solicitor General) that finding such a violation would give impermissible retroactive effect to Title VII. The case is pending before the Supreme Court. As Acting Solicitor General, I authorized amicus participation and reviewed and commented on the government's brief.

4. Board of Education of the City School District of the City of New York v. Gulino, 128 S. Ct. 2986 (2008): This case concerned whether the Court should grant certiorari on the question of whether an employer's compliance with a facially neutral state licensing requirement for teachers that allegedly has a disparate impact on members of a protected class may subject it to liability under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* At the Court's invitation, the government filed an amicus brief expressing the view that certiorari should be denied. The Court denied certiorari. I reviewed and commented on the brief as deputy solicitor general.

5. 14 Penn Plaza v. Pyett, No. 07-581: This case concerns whether an arbitration clause in a collective bargaining agreement, which clearly and unmistakably waives the union members' right to a judicial forum for their statutory discrimination claims, is enforceable. The government's amicus brief takes the position that such a clause is not enforceable. The case is pending before the Court. As Acting Solicitor General, I authorized amicus participation and reviewed and commented on the government's brief.

6. Bartlett v. Strickland, No. 07-689: This case concerns whether the Voting Rights Act of 1965 obligated a state to draw a legislative district in which African Americans constituted approximately 39% of the voting-age population. The government's amicus brief takes the position that the state was not required to draw such a district. The case is pending before the Court. As Acting Solicitor General, I authorized amicus participation and reviewed and commented on the government's brief.

#### **Federal Courts of Appeals (4 cases)**

1. Germano v. International Profit Association, Inc., No. 07-3914, --- F.3d --- (7th Cir. 2008): This case concerned a suit filed under the Americans with Disabilities Act, 42 U.S.C. 12111 *et seq.*, by a plaintiff with a severe hearing impairment who alleged that the defendant rejected him for a job because of his disability. The district court granted summary judgment for the defendant employer after concluding that a statement by an agent of the defendants that was conveyed to the plaintiff through a telecommunications relay service was inadmissible hearsay and that, absent this evidence, the plaintiff failed to raise any issues of triable fact regarding the reason for his rejection. The government filed an amicus brief in support of the plaintiff-appellant arguing that the statement at

issue was not inadmissible hearsay. The Seventh Circuit agreed. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

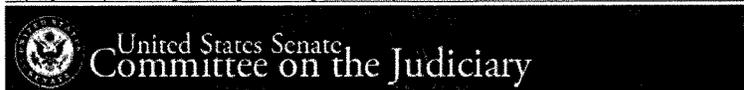
2. Bronx Household of Faith v. Board of Education of the City of New York, No. 07-5291 (2d Cir.): This case concerns whether a school board violates the Constitution by refusing to rent facilities to a religious group after hours on an equal basis with other community organizations on the grounds that the group intends to engage in worship. The government previously had filed an amicus brief in this case. See supra. On appeal after remand, the government filed another amicus brief reiterating its argument that the exclusion of the religious group violates the Constitution. The case is pending before the Second Circuit. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

3. B.W.A. v. Farmington R-7 School District, No. 07-3099 (8th Cir.): This case concerned whether a school district violated the First Amendment by prohibiting students from wearing clothing displaying the Confederate flag where the school and the community in which it was located recently had experienced numerous incidents of racial violence and racial tension, and school officials had reason to believe that display of the flag would cause material and substantial disruption to the school's educational function. The government filed an amicus brief in support of the school district, arguing that the school officials' actions did not violate the First Amendment. The case is pending before the Eighth Circuit. As deputy solicitor general, I made a recommendation concerning amicus participation to the Solicitor General.

4. Nelson v. Miller, No. 08-2044 (7th Cir.): This case concerns whether a prison official's refusal to approve an inmate's request for a vegetarian diet was a "substantial burden" on his religious exercise the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C. 2000cc-1(a). The government filed an amicus brief supporting the inmate. The case is pending before the Seventh Circuit. As Acting Solicitor General, I authorized amicus participation.

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Statement of

## The Honorable Dianne Feinstein

United States Senator  
California  
September 9, 2008

Senator Dianne Feinstein

Statement for the Record  
Judicial Nominations Hearing, Tuesday, Sept. 9, 2008  
Judge Michael Anello

I would like to thank Chairman Leahy for his leadership on this Committee and for his commitment to moving well qualified judicial nominees through the confirmation process.

Today the Committee is hearing testimony from California Superior Court Judge Michael M. Anello, who has been nominated to a judgeship on the U.S. District Court for the Southern District of California.

As many of you know, in California we have established a bipartisan Judicial Advisory Committee that is responsible for recommending nominees to fill vacancies in California's federal district courts. Judge Anello was a unanimous recommendation of that committee.

All of the Committee's members found Judge Anello extremely well-qualified to serve on the district court. By all accounts, he is the kind of nominee that we had hoped would come out of that bipartisan process.

Born in 1943, Judge Anello graduated from Bowdoin College and Georgetown Law School before entering active duty in the United States Marine Corps in 1968. While serving in Vietnam, he acted as a military prosecutor, defense counsel, and judge, until he was released in 1972 with multiple honors, a certificate of commendation, and the rank of captain.

As he told members of the California Judicial Advisory Committee, his experience applying military justice in a war zone instilled in him a lasting respect for the rules of evidence and procedure.

Following military service, Judge Anello moved to San Diego, where he worked first as a Deputy City Attorney and then for a prominent law firm known as Tood, Toothacre & Wingbert when he entered, and Wingert Grebing Anello & Brukaber when he left. During his time as a litigator, he developed experience in criminal and civil litigation, as well as appellate law.

In 1998, California Governor Pete Wilson appointed him to the State Superior Court, where he has served with distinction for a decade. His colleagues on that court have elected him to the court's Executive Committee four times; and in the Southern California legal community, he is well known and well respected for his intelligence and his judicial temperament.

I am pleased that Judge Anello is here today to testify before the Committee.

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Paul D. Clement  
Walter E. Dellinger, III  
Theodore B. Olson  
Barbara D. Underwood

September 8, 2008

The Honorable Patrick Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Leahy:

We are former Solicitors General of the United States and Acting Solicitors General of the United States who served in the administrations of Presidents George W. Bush and William J. Clinton. We are writing to urge you to move to confirm Gregory G. Garre, Esq., to the position of Solicitor General of the United States.

As you are doubtless aware, Mr. Garre is eminently qualified for the position. Shortly after Mr. Garre was elected to the partnership of Hogan & Hartson LLP, Solicitor General Seth Waxman selected him to serve as an Assistant to the Solicitor General in 2000. (Mr. Waxman has sent for your consideration his own letter of support for Mr. Garre's nomination.) As an Assistant to the Solicitor General, Mr. Garre argued nine cases before the Supreme Court, and briefed dozens of others. He left the Office of the Solicitor General in 2004 to become the head of Hogan & Hartson's appellate practice, where he argued three more cases before the Court. But he was soon called back to public service in the Office of the Solicitor General—this time to serve as the Principal Deputy Solicitor General under Solicitor General Paul D. Clement. In that position, Mr. Garre argued another eleven cases before the Court, covering a wide and balanced array of substantive areas.

We have worked with Mr. Garre in the Office of the Solicitor General or as co-counsel in cases before the Court. We have observed at close range his vast legal talents, and we are unanimous in our conclusion that, by any measure, he has been an extraordinarily effective advocate on behalf of the United States. Mr. Garre's nomination is in keeping with the finest traditions of the Office of the Solicitor General.

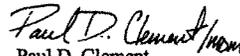
We have no doubt that Mr. Garre will continue his outstanding service as Acting Solicitor General even if the Senate is not afforded an opportunity to pass upon his nomination. Yet we urge you to move Mr. Garre's nomination forward so that he may be confirmed before the Supreme Court's Term opens in October. Historically, the Solicitor General has held a nonpartisan role in our government. When appearing before the Court, the Solicitor General does so not merely as a lawyer for the Executive Branch, but rather as the lawyer for the *United States*. Except in limited circumstances, the Solicitor General traditionally has defended the constitutionality of Acts of Congress whenever a good faith defense could be made. For that

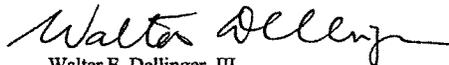
reason and others, the Office of the Solicitor General has generally enjoyed autonomy within the Department of Justice, answering first and foremost to the interests of the United States.

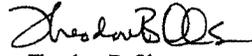
In the first two months of the Term, the Court will hear argument in 27 cases—up from 19 during the same period last year—covering the waterfront of substantive areas. The interests of the United States in those cases will be best served by an advocate who has both the Executive Branch and the Legislative Branch standing behind him.

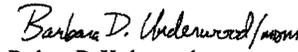
We respectfully urge you to expeditiously advance Mr. Garre's nomination to the full Senate and to confirm him before the opening of the Supreme Court's Term on October 6.

Very truly yours,

  
Paul D. Clement  
Solicitor General (2005-2008)

  
Walter E. Dellinger, III  
Acting Solicitor General (1996-1997)

  
Theodore B. Olson  
Solicitor General (2001-2004)

  
Barbara D. Underwood  
Acting Solicitor General (2001)

cc: Honorable Arlen Specter




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**Memorandum**

July 10, 2008

**SUBJECT:** Whether the Senate, in the Judicial Confirmation Process, Customarily Observes the “Thurmond Rule”

**FROM:** Denis Steven Rutkus  
Specialist on the Federal Judiciary  
Government and Finance Division

Kevin M. Scott  
Analyst on the Federal Judiciary  
Government and Finance Division

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Under the Constitution of the United States, the President and the Senate share the responsibility for filling vacancies in the federal judiciary. While the President nominates persons to fill federal judgeships, the appointment of each nominee also requires Senate confirmation. Although not mentioned in the Constitution, the Senate Judiciary Committee also plays an important role midway in the process — after the President selects, but before the Senate as a whole considers, the nominee. It is the Judiciary Committee in the Senate that maintains committee jurisdiction over most federal judicial nominations — namely, those to the Supreme Court, the circuit courts of appeals, the district courts (including the territorial district courts), the U.S. Court of International Trade, and the U.S. Court of Federal Claims.

A continuing point of contention in the 2<sup>nd</sup> session of the 110<sup>th</sup> Congress has been the pace at which the Senate should consider judicial nominations, particularly those to the courts of appeals, in a presidential election year. Some Senators, apparently along party lines, have differed as to whether, thus far in the 110<sup>th</sup> Congress, a sufficient number of court of appeals nominees have been confirmed, or are on track to be confirmed.<sup>1</sup> Some Senators

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<sup>1</sup> See, for instance, the contrasting views on this question in the floor remarks of the Senate Republican Leader on June 5, 2008, and of the chairman of the Senate Judiciary Committee on June 10, 2008. Sen. Mitch McConnell, “Judicial Nominations,” *Congressional Record*, daily edition, vol. 154 (June 5, 2008), p. S5128; and Sen. Patrick J. Leahy, “Nominations of Mark Steven Davis to be United States District Judge for the Eastern District of Virginia,” *Congressional Record*, daily edition, vol. 154 (June 10, 2008), pp. S5413-S5416. For periodically updated information on the number of nominations by President George W. Bush to the U.S. courts of appeals and district courts confirmed by the Senate during the 110<sup>th</sup> Congress, and during the entire Bush presidency, see CRS Report RL33953, *Nominations to Article III Lower Courts by President George W. Bush During the* (continued...)

have asserted that, in a presidential election year, the Senate customarily slows down the processing of judicial nominations at an earlier point than in other years. Other Senators, however, have disputed the notion that such slowdowns are customary or appropriate, pointing to past presidential election years in which the Judiciary Committee and Senate processed relatively large numbers of judicial nominations, including some late in the year.

Thus far in 2008, much of this debate has revolved around the question whether the Senate and its Judiciary Committee customarily observe a practice referred to by some as the “Thurmond Rule,” named after the late Senator, and former Judiciary Committee chairman, Strom Thurmond of South Carolina. Those who claim the existence of the Thurmond Rule contend it originated when Senator Edward M. Kennedy of Massachusetts chaired the Judiciary Committee and Senator Thurmond served as the committee’s ranking member. The Thurmond Rule has been expressed in various ways, differing, for instance, as to precisely when in the year the slowdown occurs. Nevertheless, almost all Senators who have cited it have characterized it as an established practice according to which, at some point in a presidential election year, the Judiciary Committee and the Senate no longer act on judicial nominations — with exceptions sometimes made for nominees who have bipartisan support from Senate committee and party leaders.

**Debate over the Thurmond Rule in the 110<sup>th</sup> Congress.** The Senator who most frequently has asserted the existence of a Thurmond Rule has been the current chairman of the Judiciary Committee, Patrick J. Leahy of Vermont. In December 2006, just before assuming the chairmanship of the committee, Senator Leahy, told a law school audience:

The Thurmond Rule, in memory of Strom Thurmond — he put this in when the Republicans were in the minority — which said in a presidential election year after Spring no judges would go through except by the consent of both the Republican and Democratic leader... I want to be bipartisan. We will institute the Thurmond Rule.<sup>2</sup>

Subsequently, in a March 3, 2008, Senate floor statement, Senator Leahy referred to the “history of the Thurmond Rule, by which Republicans, then [in 1980] in the minority, insisted that judicial vacancies in the last year of a President’s term remain vacant in order to be filled with the nominations of the next President.”<sup>3</sup> Again, four days later, in another floor statement, Senator Leahy recalled that:

...when President Reagan was running for President and Senator Thurmond, then in the Republican minority as ranking member of the Judiciary Committee, instituted a policy to stall President Carter’s nominations. That policy, known as the “Thurmond Rule,” was

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<sup>1</sup> (...continued)  
*110<sup>th</sup> Congress*, by Denis Steven Rutkus, Kevin M. Scott, and Maureen Bearden.

<sup>2</sup> Sen. Patrick J. Leahy, remarks in question-and-answer session, at Georgetown [University] Law Forum, following speech entitled, “Ensuring Liberty and Security Through Checks and Balances: A Fresh Start for the Senate Judiciary Committee in the New 110<sup>th</sup> Congress,” Dec. 13, 2006, accessed June 17, 2008, at [www.law.georgetown.edu/webcast/eventDetail.cfm?eventID=246].

<sup>3</sup> Sen. Patrick J. Leahy, “Judicial Nominations,” remarks in the Senate, *Congressional Record*, daily edition, vol. 154 (Mar. 3, 2008), p. S1462.

put in when the Republicans were in the minority. It is a rule that we still follow, and it will take effect very soon here.<sup>4</sup>

Senator Harry Reid of Nevada, the Senate Majority Leader, has concurred that the Thurmond Rule exists. In April 10, 2008, floor remarks, Senator Reid stated that “[i]n a Presidential election year, it is always very tough for judges. That is the way it has been for a long time, and that is why we have the Thurmond rule and other such rules.”<sup>5</sup> In similar floor remarks five days later, Senator Reid stated, “you know, there is a Thurmond doctrine that says: After June, we will have to take a real close look at judges in a Presidential election year.”<sup>6</sup>

Various Republican Senators, however, have disputed the assertion by some Senate Democrats that there is an established Judiciary Committee or Senate practice known as the Thurmond Rule. In an April 1, 2008 floor statement, Senator Orrin G. Hatch of Utah, a former chairman of the Judiciary Committee (1995-2001 and 2003-05), declared, “we have already heard about the so-called Thurmond rule, supposedly justifying grinding the confirmation process to a halt in this Presidential election year. The Thurmond rule neither is a rule nor can it be attributed to the late Senator Strom Thurmond...”<sup>7</sup> Expressing similar sentiments, Senator Jeff Sessions of Alabama, in April 16, 2008, floor remarks, stated:

I would say there has been talk about invoking the so-called Thurmond Rule. The Thurmond Rule could sort of be, if you want it to be, an excuse for slow-walking nominees and not approving the nominees who ought to be approved just because there is a Presidential election on the horizon. Majority Leader Harry Reid mentioned last night that the so called rule would be invoked in June. Senator Leahy has mentioned before he would invoke it in the second half of this year. Let me say this about the Thurmond Rule. It is a myth. It does not exist. There is no reason for stopping the confirmation of judicial nominees in the second half of a year in which there is a Presidential election.<sup>8</sup>

A similar view was expressed earlier, at the start of the 110<sup>th</sup> Congress in January 2007, by Senator Arlen Specter of Pennsylvania, ranking Republican member on the Judiciary Committee (who served as committee chair in the 109<sup>th</sup> Congress). In a Senate floor statement, Senator Specter alluded to “what has been called the ‘Thurmond Rule.’” Some,

<sup>4</sup> Sen. Patrick J. Leahy, “Judicial Nominations,” remarks in the Senate, *Congressional Record*, daily edition, vol. 154 (Mar. 7, 2008), p. S1731.

<sup>5</sup> Sen. Harry Reid, “Confirmation of Judges,” remarks in the Senate, *Congressional Record*, daily edition, vol. 154 (Apr. 10, 2008), p. S2829. Senator Reid, however, indicated that it was not his intention to use his understanding of the Thurmond Rule to prevent Senate consideration of judicial nominations that had recently been approved by the Senate Judiciary Committee. He said that he had “indicated to the Republican leader that we are going to try to move these nominations along. We are trying to keep up with the average that has gone on in years past without a lot of political bickering.” *Ibid.*

<sup>6</sup> Sen. Harry Reid, “Highway Technical Corrections Act of 2007 — Motion to Proceed,” remarks in the Senate, *Congressional Record*, daily edition, vol. 154 (Apr. 15, 2008), p. S3012.

<sup>7</sup> Sen. Orrin G. Hatch, “The Confirmation Process,” *Congressional Record*, vol. 154, daily edition (Apr. 1, 2008), p. S2263.

<sup>8</sup> Sen. Jeff Sessions, “Judicial Confirmations,” *Congressional Record*, vol. 154, daily edition (Apr. 16, 2008), p. S3041.

he said, “have suggested that this so-called rule holds that the Senate should dramatically curtail confirmations after the spring of a presidential election year. Review of the historical record suggests that this rule is more myth than reality.”<sup>9</sup>

**First Emergence of the Thurmond Rule as an Issue.** Although mentions by Senators of the Thurmond Rule can be traced as far back as 1997,<sup>10</sup> it first emerged as a major point of contention between Senate Democrats and Republicans only in 2004. In July 2004, an analysis of the Thurmond Rule by a Capitol Hill newspaper referred to it as a “new concept [that] has crept into the back-and-forth between Republicans and Democrats — or at least a long-dormant one [that] has been dusted off ....” The article, based on contacts made with some Senators and senior Senate staff, reported that “even some of the most skillful senators aren’t quite sure whether the Thurmond Rule is really a rule at all. Some call it a ‘precedent.’ Others term it a ‘general understanding.’ Some have never even heard of it.”<sup>11</sup> Sources for the article cited different points in time at which, according to their view of the rule, the Senate would stop processing judicial nominations: on July 1, or at the beginning of the first national political party convention that summer, or during the last few months of a President’s term in office.

One of the Senators interviewed for the article was Senator Kennedy, a longtime member of the Judiciary Committee and former chairman (1979-81). The article reported that Senator Kennedy said that, at the point the Thurmond Rule went into effect during a presidential election year, “‘for all intents and purposes, we’d leave it,’ meaning not confirm any more judges. ‘That having been said,’ he added, ‘there has always been sort of an effort to try and work through some sort of accommodation at different times.’”<sup>12</sup>

The article (without identifying any Republican Senator by name) reported that Republicans, as well Democrats, “acknowledge there is a Thurmond Rule, or at least a precedent dating back to the days when Thurmond chaired the Judiciary Committee.”<sup>13</sup> The

<sup>9</sup> Sen. Arlen Specter, “Judicial Nominations,” remarks in the Senate, *Congressional Record*, daily edition, vol. 153 (Jan. 4, 2007), p. S27. “The fact of the matter,” Sen. Specter continued, “is that the Senate has regularly confirmed judges in presidential election years.” *Ibid*.

<sup>10</sup> One of the first public mentions of the phrase “Thurmond Rule” in reference to judicial nominations appears to have been made by Senator Leahy at a press conference on February 12, 1997. Noting the lack of progress on President Clinton’s nominations to the courts of appeals during 1996, a presidential election year, Senator Leahy suggested that the rule contemplated slowing down, but not completely stopping, the processing of judicial nominations in presidential election years. Sen. Patrick J. Leahy, News Briefing, Feb. 12, 1997, FDCH Political Transcripts. The phrase “Thurmond Rule” first appeared in the *Congressional Record* two months later. Senator Leahy, expressing frustration with the pace of Senate consideration of judicial nominations at the beginning of President Clinton’s second term, said that “We have followed, in the past, the so-called Thurmond rule of stalling a President’s appointments to the judiciary in about the last few months of their term in office. I have never seen the stall start in the first few hours of a President’s 4-year term.” Sen. Patrick Leahy, “The Crisis In Our Federal Judiciary,” remarks in the Senate, *Congressional Record*, daily edition, vol. 143 (Apr. 17, 1997), p. S3392.

<sup>11</sup> Geoff Earle, “Senators Spar over ‘Thurmond Rule,’” *The Hill*, vol. 11, July 21, 2004, p. 4.

<sup>12</sup> *Ibid*.

<sup>13</sup> *Ibid*. The article, however, singled out only one unnamed Republican staff member, and no Republican Senators, as attesting to this rule or traditional practice. Specifically, the article cited  
(continued...)

article indicated that, with Republican President George W. Bush in office, invocation of a Thurmond Rule to slow down processing of judicial nominations would be more to the advantage of Senate Democrats than to Senate Republicans. “By invoking the Thurmond Rule,” the article said, “Democrats may be able to attach legitimacy to their ongoing campaign against some [of] President Bush’s controversial nominees in a chamber that reverses history and precedent.”<sup>14</sup>

On July 19, 2004, only two days before the publication date of the aforementioned article, Senator Hatch, then Chairman of the Judiciary Committee, rejected the notion that the Thurmond Rule exists. In Senate floor remarks, he stated:

We have heard from the other side about the mythical ‘Thurmond rule’ and all kinds of other suggestions that judges should not be confirmed from here on, this late in a Presidential election year. I remember way back when, cases where we confirmed judges, Democratic nominees, Carter nominees, even after President Reagan had won the election. In fact, one of them [Stephen Breyer] is sitting on the Supreme Court of the United States of America.<sup>15</sup>

Senator Hatch had also dismissed the Thurmond Rule a month earlier. During a Judiciary Committee business meeting, Senator Hatch referred to the “so-called Thurmond Rule,” while expressing hope that the committee would report several of President Bush’s circuit nominations.<sup>16</sup>

**Judicial Nomination Events in 1980 Involving Senator Thurmond.** The debate over whether there is, or has ever been, a Thurmond Rule appears to arise out of different meanings attached to events involving Senator Thurmond in 1980. At that year’s Republican National Convention, Senator Thurmond reportedly said that, at his urging, the presidential nominee, Ronald Reagan, had agreed that the Senate should block all presidential nominations by President Jimmy Carter until after the November 4 elections.<sup>17</sup> One account, without directly quoting Senator Thurmond, reported him as having said that by withholding their consent, Senators could “prevent appointments that would continue

<sup>13</sup> (...continued)

“one senior Republican aide [who] said the tradition was a general understanding that there would be no floor votes on controversial nominees, rather than an understanding that there would be no action on nominees at all.” Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Sen. Orrin Hatch, “The Nomination of William Gerry Myers III to be a U.S. Circuit Judge for the Ninth Circuit,” remarks in the Senate, *Congressional Record*, daily edition, vol.150 (July 19, 2004), pp. S8406-S8412. Senator Hatch’s remarks are the first instance in the *Congressional Record* that any Senator other than Senator Leahy has referred to the “Thurmond Rule” by name.

<sup>16</sup> “Statement of Chairman Orrin G. Hatch before the United State Senate Committee on the Judiciary,” June 3, 2004, at [[http://judiciary.senate.gov/member\\_statement.cfm?id=1211&wit\\_id=51](http://judiciary.senate.gov/member_statement.cfm?id=1211&wit_id=51)], visited June 18, 2008.

<sup>17</sup> Senator Thurmond, one account reported, “said he told Reagan that he should contact Minority Leader Howard H. Baker Jr. (R.-Tenn.) and all other Republican members of the Senate in an attempt to withhold Senate confirmation of appointments [until after the Nov. 4 election]. ‘He said he would be glad to do that,’ Thurmond said.” “Reagan May Seek to Bar New Carter Nominations,” *The Washington Post*, July 17, 1980, p. A15. See also, “GOP Senators Urged to Stall Appointments,” *Los Angeles Times*, July 17, 1980, p. A19.

beyond Jimmy Carter's term, should he be defeated in the general election."<sup>18</sup> At this time, Senator Thurmond was the ranking Republican member on the Judiciary Committee, to which all circuit and district court nominations were referred. The blocking of appointments urged by Senator Thurmond presumably extended to those judicial nominations.

In the weeks immediately thereafter, however, the Judiciary Committee processed district and circuit court nominations, although not all referred nominations. This occurred without Senator Thurmond repeating his earlier call to block President Carter's appointments. The Judiciary Committee continued to hold hearings and report judicial nominations during August and September (although the committee reported only one circuit court nomination during this period). The Senate in turn, in September, confirmed 12 judicial nominations (11 district, one circuit).

In mid-September 1980, the news media had reported conflict between the Democratic majority and Republican minority in the Senate Judiciary Committee over the pace at which judicial nominations were being processed. A press account of the committee's September 10 meeting reported that Senator Thurmond's move to block a vote on 13 judicial nominations was perceived by "some Democrats ... as a Republican plot to delay all judgeship nominations in the hopes that Ronald Reagan will be elected president and can fill the posts with good Republicans."<sup>19</sup> However, a week later, on September 17, the committee approved motions, to which no objections were heard, to report 10 of the judicial nominations (all district court nominations) to the Senate. Six other judicial nominations, also on the committee's agenda, were not reported. Following the votes to report, Senator Thurmond stated that he intended to exercise his privilege, under the committee's rules, of "carrying over" to a later committee meeting a vote on three other judicial nominees who had "just had a hearing." Senator Thurmond prefaced that statement with the following remarks:

Now, Mr. Chairman, I want to say at this juncture, let me make the point, that the Minority has tried to be more than fair in considering all of the nominees that have appeared before this committee. I would remind you it is just about six weeks before the election, and I want to say that for a year and a half before the last election, there was no action taken on judges when we had a Republican President. But, anyway, last week it was necessary for me to lay over all 13 judicial nominees because our investigation had not been entirely completed on some of them. Today I will again exercise the privilege and request that the three that have just had a hearing . . . be held over."<sup>20</sup>

**Subsequent Senate Action on Judicial Nominations in 1980.** All 10 district court nominations approved by the Judiciary Committee on September 17 were considered and confirmed en bloc by the Senate on September 29. In floor remarks preceding the Senate action, Senator Mark Hatfield of Oregon noted that, a few months earlier, he was one of the three Senators appointed by the Senate Minority Leader to a committee within the Republican Conference tasked with screening the qualifications of President Carter's

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<sup>18</sup> "Campaign: GOP," *The National Journal*, vol.12, July 26, 1980, p. 1248.

<sup>19</sup> Richard L. Lyons, "On Capitol Hill," *Washington Post*, Sept. 11, 1980, p. A8.

<sup>20</sup> "Transcript of Proceedings, United States Senate, Committee on the Judiciary, Executive Session No. XIV, September 17, 1980," Miller Associates Reporting Service, p. 4. (Copy in archival records of Senate Judiciary Committee.)

nominations (“not just judicial appointments but all nominations”<sup>21</sup>). The three-member committee, he said, had “gone over all the nominations that have been sent up here for many posts besides the judiciary.”<sup>22</sup> In anticipation of the Senate confirming the 10 judicial nominations, Senator Hatfield stated:

I think today is again strong evidence that we want to try to minimize what may have been a tradition in this body in years past of holding up nominations per se in an election year because our commitment is that all the functions of Government must perform to their utmost capacity and efficiency. If there is a failure to confirm, it is going to impinge upon that ability to perform in a judicial district or in an administrative post. We are not going to try to frustrate that ability because we want to facilitate that highest performance of duties and responsibilities of government.<sup>23</sup>

The final weeks of the second session, following the November 4 election, witnessed an unusually late consideration by the Senate Judiciary Committee and the Senate of a circuit court nomination. The nomination was transmitted to the Senate by a “lame-duck” President, who had just lost his bid for re-election, and was the only lower court nomination made by President Carter in the second session after September. The nomination of Stephen G. Breyer of Massachusetts to the First Circuit Court of Appeals was received in the Senate on November 13, received a Judiciary Committee hearing on November 17, was reported by the committee on December 1, and was confirmed by the Senate on December 9, just one week before the Senate adjourned *sine die* on December 16. Although its expedited treatment generated some controversy, the nomination enjoyed the support of the committee’s ranking minority member, Senator Strom Thurmond of South Carolina, as well as of other Republican members of the committee, which approved the nomination by a 12-0 vote. The nomination ultimately was confirmed by the Senate by a vote of 80-10.<sup>24</sup>

**Interpretations of 1980 Events in More Recent Congresses.** Some of the above-narrated events of 1980 were later cited in Senate floor debates concerning the “Thurmond Rule” in the judicial confirmation process. In a Senate floor statement in July 2004, for instance, Senator Leahy, then the ranking Democratic member on the Judiciary Committee, maintained that the Republican majority in the Senate was, at that point, “intent on violating the ‘Thurmond Rule’ and the spirit of cooperation reached earlier this year” on processing President George W. Bush’s judicial nominations. The “Thurmond Rule,” Senator Leahy said:

... dates back at least to July 1980 when the Reagan campaign urged Senate Republicans to block President Carter’s judicial nominees. Over time, Senator Thurmond and Republican leaders refined their use of and practices under the rule to prevent the consideration of lifetime judicial appointments in the last year of a Presidency unless [the nominees under consideration were] consensus nominees.”<sup>25</sup>

<sup>21</sup> Sen. Mark Hatfield, “Executive Session,” *Congressional Record*, vol. 126, part 21 (Sept. 29, 1980), p. 27758.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> At the time of his nomination, Stephen Breyer was the Chief Majority Counsel for the Senate Judiciary Committee.

<sup>25</sup> Sen. Patrick J. Leahy, “Nomination of Henry W. Saad to be United States Circuit Judge for the (continued...)”

Two months later, in September 2004, Senator Leahy again pointed to events in 1980 as the genesis of the Thurmond Rule. In a Senate floor statement, he declared:

In July 1980 Republican presidential candidate Ronald Reagan asked Senate Republicans, then in the minority, to stop confirming the judicial nominees of President Carter. Senator Strom Thurmond, who was then the Ranking Member of the Judiciary Committee, was happy to oblige. Republicans were able to accomplish this blockade with only a few exceptions that required Republican consent. Senate Republicans have adhered to this rule with a Democratic President, whether they were in the minority, as in 1980, or the majority, as in 1996 and 2000.<sup>26</sup>

The meaning of judicial nominations events of 1980, however, have been interpreted differently by Senate Republicans. In January 4, 2007 floor remarks, Senator Specter stated that it did not appear that Senator Thurmond “ever publicly asserted that nominations should be delayed due to an impending presidential election.” Rather, Senator Specter said:

The only comment that could be so construed was made after the [Judiciary] Committee approved ten nominees at a September 17, 1980 markup. He stated, “[L]et me make the point [that] the Minority has tried to be more than fair in considering all of the nominees that have appeared before this Committee. I would remind [the Committee] it is just about six weeks before the election, and I want to say that for a year and a half before the last election, there was no action taken on judges when we had a Republican President.” However, because Senator Thurmond used this as a point of contrast, the natural implication seems to be that he considered blocking nominations in the lead up to an election unfair.<sup>27</sup>

Several months later, in a May 9, 2007 floor statement, Senator Specter again disputed the idea that the “historical record supports any kind of ‘rule’” calling for a “dramatic slow down in confirmations in the latter part of next year.” At the same time, he said that:

...we do know that the press of a Presidential election has a tendency of slowing down work in the Senate. If nothing else, we can expect the Congress will be in recess for a substantial portion of the second half of next year.

Therefore, in order to meet the standards set by similar Congresses in recent times, it will be necessary for us to confirm approximately one circuit court judge for every month we are in session.<sup>28</sup>

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<sup>25</sup> (...continued)

Sixth Circuit,” remarks in the Senate, *Congressional Record*, daily edition, vol. 150 (July 22, 2004), p. S8588.

<sup>26</sup> Sen. Patrick J. Leahy, “Nomination of Michael H. Schneider, Sr., to be United States District Judge for the Eastern District of Texas,” remarks in the Senate, *Congressional Record*, daily edition, vol. 150 (Sept. 7, 2004), p. S8834.

<sup>27</sup> Sen. Arlen Specter, “Judicial Nominations,” remarks in the Senate, *Congressional Record*, daily edition, vol. 153 (Jan. 4, 2007), p. S27.

<sup>28</sup> Sen. Arlen Specter, “Nomination of Debra Ann Livingston to be United States Circuit Judge for the Second Circuit,” remarks in the Senate, *Congressional Record*, daily edition, vol. 153 (May 9, 2007), p. S5835.

**Data Indicating Slowdown Trend in Senate Processing of Circuit Court Nominations.** Although Senators disagree about the existence of the Thurmond Rule, data on Senate consideration of court of appeals nominees in 1980 and subsequent presidential election years may help to illuminate the degree to which the Senate has followed a pattern consistent with what one might expect if the “Rule” were in effect. The following section examines Senate processing of court of appeals nominations in presidential election years from 1980 to 2004, according to two kinds of data:

- *Number of committee and Senate actions:* On average, there were fewer hearings held, nominations reported, and nominations confirmed in the last three presidential election years of 1996, 2000, and 2004 than in 1980, 1984, 1988, and 1992.
- *Last dates of committee and Senate actions:* In 1980, 1984, 1988, and 1992, the data reveal that the Senate confirmed its last court of appeals nominee of the session in October or later. By contrast, in 1996, 2000, and 2004, the last confirmation of a court of appeals nominee occurred in July or earlier.

**Decline in Number of Court of Appeals Nominations Confirmed by the Senate in Recent Presidential Election Years.** Table 1, below, presents data on Judiciary Committee and full Senate action on nominations to U.S. court of appeals judgeships in each presidential election year from 1980 to 2004. For each of these presidential election years, the table lists the number of nominations transmitted to the Senate, hearings held, nominations reported, and nominations confirmed. The table also presents the same kind of data for 2008, but only through early July. (The 2008 data, of course, are subject to change, depending on any further judicial nominations activity that might occur during the rest of the year.)

The data indicate, among other things, a sharp decrease in the average number of court of appeals nominees confirmed by the Senate in recent presidential election years. Specifically, the average number of court of appeals nominees confirmed in the three most recent completed presidential election years (1996, 2000, and 2004) was less than half of the corresponding average for the four presidential elections before that time (1980, 1984, 1988, 1992). On average, the Senate confirmed 9.5 court of appeals nominations in the presidential election years from 1980 to 1992. In 1980, 1984, 1988, and 1992, there were 65 total nominees to the courts of appeals pending, of which the Senate confirmed 38, or 58.5%. Over the next three presidential election years, the average has fallen to 4.3 confirmed court of appeals nominees: In 1996, 2000, and 2004, there were a total of 55 nominees to the courts of appeals pending, of which the Senate confirmed 13, or 23.6%.<sup>29</sup> Furthermore, Table 1 shows, in each of three most recent presidential election years, the Senate confirmed a smaller percentage of court of appeals nominations than in any of the four preceding presidential election years.

<sup>29</sup> Also, on average, the Senate Judiciary Committee held hearings on 66.2% (43 of 65) and reported 63.1% (41 of 65) of pending circuit court nominations in the 1980, 1984, 1988, and 1992 presidential election years. Corresponding percentages were much smaller for the presidential election years of 1996, 2000, and 2004, when the Judiciary Committee, on average, held hearings on 33.3% (24 of 72) and reported 29.2% (21 of 72) of pending circuit court nominations.

**Table 1: Nominations, Hearings, Reports, and Confirmations of U.S. Court of Appeals Nominees in Presidential Election Years, 1980-2008 (through July 7, 2008)**

Year	New Nominations	Previously Pending Nominations <sup>a</sup>	Total Nominations	Hearings Held	Nominations Reported	Nominations Confirmed	% Confirmed
1980	10	4	14	12	10	10	71.4%
1984	13	1	14	12	11	10	71.4%
1988	7	9	16	7	9	7	43.8%
1992	14	7	21	12	11	11	52.4%
1996 <sup>b</sup>	4	5	9	4	3	0	0.00%
2000	9	17	26	5	3	8	30.8%
2004	2	18	20	11	11	5	25.0%
2008 <sup>c</sup>	3	14	17	4	4	4	23.5%

Source: CRS Judicial Nominations Database, based on data from the *Journal of the Executive Proceedings of the Senate*, various years. In cases where a nominee was nominated more than once in a given year, more than one hearing was held on a nominee in a given year, or where a nominee was reported more than once in a given year, only the first nomination/hearing/report is included in **Table 1**.

**Notes:**

- a. Includes nominations held over from the previous session of a Congress and those returned at the end of the previous session of Congress but resubmitted by the President during the session of Congress that coincided with the presidential election year.
- b. The data are for the second session of the 104<sup>th</sup> Congress, which began on January 3, 1996. The Senate confirmed two nominees to the courts of appeals on January 2, 1996, at the end of the first session of the 104<sup>th</sup> Congress.
- c. Through July 7, 2008.

**Earlier Cut-Off in Senate Action on Nominations in Recent Presidential Election Years.** The data presented in **Table 1** may be seen as useful in revealing one particular trend — the smaller percentage of court nominees in presidential election years from 1996 to 2004 receiving Senate confirmation than in the four previous presidential election years. The data, however, are not useful in determining how late in each of these years the Senate processed judicial nominations or at what point, if any, in these years the Senate might have begun to slow down the pace of the judicial confirmation process. To help in that determination, **Table 2**, below, presents data on when, in recent presidential election years, the Senate, and its Judiciary Committee, ceased their consideration of court of appeals nominees. Specifically, **Table 2** presents, for each presidential election year between 1980 and 2004, the last dates on which the Senate received a court of appeals nomination, the Judiciary Committee held a hearing on or voted to report such a nomination, and the Senate voted on its confirmation.

**Table 2** sheds light on the Senate's ability to move court of appeals nominations forward after July in presidential election years.<sup>30</sup> Among other things, the table shows the

<sup>30</sup> July is often used by those Senators who assert the existence of a Thurmond Rule as the time after which judicial nominations, unless supported by the Chairman and Ranking Member of the Judiciary Committee and the Majority and Minority Leaders of the Senate, will no longer be considered by the full Senate. For example, Senator Leahy noted that "there is an informal procedure called the Thurmond rule, named after our beloved President pro tempore, the Senator from South Carolina, Strom Thurmond. This rule basically says that as we get close to the Presidential election time--July, August, and into the fall--we slow down and nearly stop the confirmation of judges to lifetime appointments to see how the Presidential election comes out, because the next President will be able

(continued...)

cut-off dates for Senate action occurring earliest in the most recent presidential election years. The Senate confirmed court of appeals nominees *after* July in four consecutive presidential election years from 1980 to 1992. In 1980, Stephen G. Breyer was confirmed to the First Circuit on December 16; in 1984, 1988, and 1992, the Senate confirmed court of appeals nominees in October of each year, in each case within several days of the Senate's adjournment *sine die*. In the three subsequent presidential election years, however, the Senate confirmed *no* court of appeals nominees after July. In 1996, the Senate confirmed no court of appeals nominees in the second session of the 104<sup>th</sup> Congress; its last confirmations were on January 2, 1996, the final day of the *first* session. In 2000, the last confirmation of a court of appeals judge occurred on July 21; in 2004, the last confirmation occurred on June 24. Although the Senate considered four court of appeals nominations in late July, it rejected motions to invoke cloture on them and did not subsequently vote on their confirmation.

**Table 2: Last Dates of Court of Appeals Nominations, Hearings, Committee Reports, and Confirmations, Presidential Election Years 1980-2004**

Congress	Year	Last Nomination	Last Hearing	Last Report	Last Confirmation	Adjourn <i>Sine Die</i>
96 <sup>th</sup>	1980	11/13/1980	11/17/1980	12/2/1980	12/16/1980	12/16/1980
98 <sup>th</sup>	1984	10/5/1984	9/26/1984	9/28/1984	10/4/1984	10/12/1984
100 <sup>th</sup>	1988	9/16/1988	10/4/1988	10/5/1988	10/14/1988	10/22/1988
102 <sup>nd</sup>	1992	9/17/1992	9/24/1992	10/2/1992	10/8/1992	10/9/1992
104 <sup>th</sup>	1996	4/18/1996	7/31/1996	6/27/1996	— <sup>a</sup>	10/4/1996
106 <sup>th</sup>	2000	10/26/2000	6/16/2000	7/20/2000	7/21/2000	12/15/2000
108 <sup>th</sup>	2004	5/10/2004	11/16/2004	10/4/2004	6/24/2004 <sup>b</sup>	12/8/2004

Source: CRS Judicial Nominations Database; data on sessions of Congress derived from *Congressional Directory 2007-2008* pp. 516-532.

**Notes:**

- The Senate confirmed two court of appeals nominees on January 2, 1996, the final day of the first session of the 104<sup>th</sup> Congress.
- The Senate failed to invoke cloture on one court of appeals nominee on July 20, 2004, and three court of appeals nominees on July 22, 2004.

**Concluding Observations.** As noted above, recent debate over whether there is, or has ever been, a Thurmond Rule in the Senate appears to arise out of different meanings attached to events involving Senator Thurmond in 1980. The foregoing review of these events found, among other things, that Senator Thurmond did appear, in July 1980, to have asked Ronald Reagan, the Republican Party's presidential candidate, to endorse a plan to slow Senate consideration of all judicial and executive appointments that would extend beyond President Jimmy Carter's term. Shortly thereafter, the Senate Republican Conference apparently detailed three Senators to review pending nominations to the judiciary and executive agencies. Notwithstanding the existence of such a screening mechanism and Senator Thurmond's request to Mr. Reagan, the Senate Judiciary Committee continued to report judicial nominees to the Senate, and the Senate confirmed district court nominees as late as September 29, 1980, and one court of appeals nominee as late as December 10, 1980.

Senate floor remarks in the 110<sup>th</sup> Congress, and in other recent Congresses, indicate a sharp disagreement between some Senators, apparently along party lines, as to whether, in

<sup>30</sup> (...continued)

to nominate judges." Sen. Patrick Leahy, "The Confirmation of Judges," remarks in the Senate, *Congressional Record*, daily edition, vol. 146 (May 18, 2000), p. S4210.

presidential election years, the Senate and its Judiciary Committee customarily observe a practice referred to by some as the Thurmond Rule. Senate floor debate has indicated the absence of bipartisan agreement on whether a drop-off in Senate processing of lower court nominations is to be expected in presidential election years and how many judicial nominations the Senate should confirm before its final adjournment.

As noted above, quantitative analysis of Senate judicial nomination activity reveals that the Senate has, in each of the three most recent presidential election years (1996, 2000, and 2004), confirmed a smaller percentage of court court of appeals nominations than in the four preceding presidential election years (1980, 1984, 1988, and 1992). Coincident with that development, the Senate, in the three most recent presidential election years, stopped confirming court of appeals nominations earlier than in the four preceding presidential election years.

Statement Of Senator Patrick Leahy,  
Chairman, Senate Judiciary Committee,  
Hearing on Nominations  
September 9, 2008

Despite Republican filibusters and their refusal to give consent to proceed even on important bills with broad bipartisan support, I have, nonetheless, again gone the extra mile by proceeding with yet another confirmation hearing for the President's nominees.

This hearing includes the President's nominee to be Solicitor General, which will bring to near completion our work at expediting consideration of replacements for the entire leadership of the Justice Department that resigned in the wake of the scandals of the Gonzales era.

This hearing also includes five additional judicial nominations, which, if confirmed, are lifetime appointments. Their tenure will not expire when President Bush leaves office in five months. This is extremely late in a presidential election year for such a hearing and serves as an exception under the Thurmond Rule. That rule dates back to 1980, when Republican Senator Strom Thurmond was the Ranking Minority Member of this Committee, and called for shutting down the judicial confirmation process. At the time, there was a Democratic President and Senator Thurmond wanted to wait until the next President, a Republican, was elected and had the opportunity to send his nominations to the Senate. Republicans used the Thurmond Rule in another recent presidential election year, 1996, when the Republican Senate majority did not confirm a single judge after the August recess and, in fact, refused to confirm any circuit court nominees during the entire 1996 session.

This Congress has already confirmed more judges than were confirmed during the entire 109th Congress, when a Republican Senate majority and Republican chairman of this Committee did not have to worry about the Thurmond Rule and an abbreviated session due to a presidential election. Indeed, in the 37 months I have served as Judiciary chairman, the Senate has already confirmed 158 of President Bush's judicial nominees. That is the same number of President Bush's nominees confirmed by the Senate Republican majority in the more than four years it controlled the pace of confirmations for this Republican administration.

I have long said that by this stage of the year I will be working with the Majority Leader, as well as our Republican counterparts, in order to be able to proceed. At this juncture, during a presidential election year, progress on judicial nominees requires consensus and the cooperation of all Senators.

Today the Committee is poised to hear from five more nominees for lifetime appointments to the Federal bench: Clark Waddoups of Utah, Michael Anello of California, Mary Stenson Scriven of Florida, and two nominees from Colorado, Christine Arguello and Phillip A. Brimmer. All of these nominees have the support of their home state Senators, Republicans and Democrats. I was happy to accommodate Senator Salazar's request that we add two Colorado nominees to the hearing today, after he and Senator Allard reached an agreement. Yesterday, Senator Allard finally returned the blue slip for Ms. Arguello. Of course, Ms. Arguello was nominated by President Clinton to the 10th Circuit, but a Republican pocket filibuster in 2000 stalled her nomination. Today, we are attempting to right another wrong from the Republican abuses of those years. Ms. Arguello, like Judge Helene White, who was confirmed to the 6th Circuit earlier this year, has now been nominated by Presidents of both parties. I am hopeful that we can complete the consideration of her nomination promptly. If Committee consideration of today's nominees is expedited, if the nominations are not held over, but can be reported promptly to the Senate, and if there are no delays in their floor consideration, then they can be confirmed before we recess later this month.

By hearing from the President's nominee to be Solicitor General, Greg Garre, we continue with the extensive time and attention we have devoted to rebuilding the Department of Justice. This is the ninth hearing we have held to restock and restore the leadership of the Department of Justice in the last year alone, including confirmation hearings for the new Attorney General, the new Deputy Attorney General, the new Associate Attorney General, and so many others.

At the beginning of this Congress, the Judiciary Committee began its oversight efforts. Over the next nine months, our efforts revealed a Department of Justice gone awry. The leadership crisis came more and more into view as I led a bipartisan group of concerned Senators to consider the United States Attorney firing scandal, a confrontation over the legality of the administration's

warrantless wiretapping program, the untoward political influence of the White House at the Department of Justice, and the secret legal memos excusing all manner of excess and subverting the rule of law.

What our efforts exposed was a crisis of leadership that took a heavy toll on the tradition of independence that has long guided the Justice Department and provided it with safe harbor from political interference. It shook the confidence of the American people. Through bipartisan efforts among those from both sides of the aisle who care about federal law enforcement and the Department of Justice, we joined together to press for accountability. That resulted in a change in leadership at the Department, with the resignations of the Attorney General and virtually all of its highest-ranking officials.

The two reports we have received so far from the Department's Inspector General and Office of Professional Responsibility have confirmed what our oversight efforts in this Congress have uncovered about the politicization of hiring practices at the Department. It confirms our findings and our fears that the same senior Department officials involved with the firing of United States Attorneys were injecting improper political motives into the process of hiring attorneys for career positions throughout the Department, from career prosecutors, to immigration judges, to young attorneys through the Department's prestigious honors program. I suspect the further reports we expect from the Inspector General will continue to shed light on the extent to which the Bush administration has allowed politics to affect – and infect – the Department's priorities, from law enforcement to the operation of the crucial Civil Rights Division.

I hope that Mr. Garre shares my view that it is vital to ensure that we have a functioning, independent Justice Department, and that we ensure that this sad era in the history of the Department is not repeated. We have seen what happens when the rule of law plays second fiddle to a President's agenda and the partisan desires of political operatives. It is a disaster for the American people. Both the President and the nation are best served by a Justice Department that provides sound advice and takes responsible action, without regard to political considerations — not one that develops legalistic loopholes and ideological litmus tests to serve the partisan ends of a particular administration.

I am holding these proceedings in spite of the legislative obstructionism from Republicans. The Judiciary Committee has worked throughout this Congress to advance the priorities of Americans. We have reported legislation to support local law enforcement to make our cities and towns safe from crime, which is on the rise after consistent declines in the 1990s. These legislative efforts include the COPS Improvements Act, S.368, and my bill to extend the Bulletproof Vest Partnership Grant Act, S.2511. We have reported legislation to combat fraud and corruption, like the War Profiteering Prevention Act, S.119, and the Public Corruption Prosecution Improvements Act, S.1946. We have reported legislation to protect the civil rights and voting rights of Americans, like the Emmett Till Unsolved Civil Rights Crime Act, S.535, and Senator Obama's Deceptive Practices and Voter Intimidation Prevention Act of 2007, S.453. We have reported legislation to protect Americans' data privacy, like my Personal Data Privacy and Security Act, S.495. We have reported measures to provide the Federal judiciary with increased resources both in terms of salary restoration and additional judgeships, S.1638 and S.2774. We have reported intellectual property measures like the Shawn Bentley Orphan Works Act, S.2913. And, of course, we have reported the bill to confront the OPEC cartel, NOPEC, S.879. I have also been seeking for months to find a way to extend the EB-5 investor visa pilot program that brings benefits not only to Vermont but to Pennsylvania and Iowa, and elsewhere. Authority for this worthwhile program that leads to investments here in the United States expires in September. My efforts to clear H.R. 5569, a bill to extend the program for five years, have been stymied by Republicans who insist on using this bill as a vehicle for other immigration-related matters. They have ensnared it in a series of competing concerns. I look forward to a time when Republicans work with us on these matters instead of obstructing us at every turn.

Legislation with broad bipartisan support that I have managed to move through the Judiciary Committee has then been stalled on the Senate floor by the obstruction of a few Republicans. Of the bills that have been reported from the Judiciary Committee this Congress, Republicans have blocked legislation to support runaway and homeless young people, S.2982; to help law enforcement cope with mentally-ill offenders, S.2304; to support the investigation and prosecution of Civil Rights Era murders left unsolved for too long, S.535; and to protect our children from the scourges of drugs, child pornography, and child exploitation, such as S.1210, S.1738 and S.2344. I joined the Majority Leader in introducing a measure that combined some of these Committee-approved and House-passed bipartisan measures into one bill, S.3297. These

should have been consent items and already been considered and passed by the Senate. Instead, they fell victim to another Republican filibuster.

Republicans have become masters of obstruction, boycotting business meetings of the Judiciary Committee and cutting short important hearings, including a hearing at which two courageous women from Pennsylvania testified about severe injuries they suffered to help us understand the plight of hardworking Americans whose legitimate grievances have been rejected by a pro-business Supreme Court. Sadly, we have seen Republican obstructionism since the beginning of this Congress, with Republicans using filibuster after filibuster to thwart the will of the majority of the Senate from doing the business of the American people.

Republican filibusters prevented Senate majorities from passing the Lilly Ledbetter Fair Pay Act; the climate change bill; the Employee Free Choice Act; the DC Voting Rights Act; the Renewable Fuels, Consumer Protection, and Energy Efficiency Act of 2007; the Renewable Energy and Job Creation Act of 2008; the Medicare Improvements for Patients and Providers Act of 2008; the Consumer-First Energy Act and the Advancing America's Priorities Act. These are critical pieces of legislation to address urgent priorities like ensuring equal pay for equal work for women and fair wages for all working Americans, the energy crisis, the environment, voting rights, health care and law enforcement needs. All of them had the support of the majority of the Senate. And all were blocked by a minority of Republican Senators bent on preventing us from making progress. Republicans have now filibustered more than 80 pieces of legislation in this Congress and are heading for 100 before we adjourn. Imagine what we could have accomplished in this Congress with cooperation rather than obstruction.

This long list of priorities unaddressed because of the Republicans in Congress would be even longer if we were to include the many important bills President Bush has vetoed since the beginning of this Congress. This list includes legislation to fund stem cell research to fight debilitating and deadly diseases, to extend and expand the successful State Children's Health Insurance Program that would have provided health insurance to more of the millions of American children without it, to set a timetable for bringing American troops home from the disastrous war in Iraq, and to ban waterboarding and help restore America as a beacon for the rule of law.

I have always said that we would treat this President's nominees more fairly than Republicans treated President Clinton's. Despite their legislative obstruction, we have. Indeed, we have matched the confirmation record that Republicans achieved for a President from their own party. We have not pocket filibustered more than 60 of this President's nominees. We are not going to return 17 circuit court nominees without action to this President as the Republican-led Senate did to President Clinton. We have not doubled the judicial vacancies and forced them above 100 nationwide, nor have we doubled the number of circuit court vacancies. To the contrary, we have cut judicial vacancies by more than half, and reduced circuit court vacancies by more than two-thirds from a high point of 32, to a low of single digits throughout all 13 Federal circuits.

The 100 nominations we confirmed in only 17 months in 2001 and 2002, while working with a most uncooperative White House, reduced the vacancies by 45 percent by the end of 2002. With 40 additional confirmations last year, and another 18 already this year, we have already exceeded the total confirmations for the last Congress, which was under Republican majority control. Nearly half of the judicial nominees the Senate has confirmed while I have served as the Chairman of the Judiciary Committee have filled vacancies classified by the Administrative Office of the Courts as judicial emergency vacancies. Eighteen of the 27 circuit court nominees confirmed while I have chaired the Committee filled judicial emergency vacancies, including nine of the 10 circuit court nominees confirmed this Congress. This is another aspect of the problem created by Republicans that we have worked hard to improve. When President Bush took office there were 28 judicial emergency vacancies. Those have been reduced by more than half.

We have reduced Federal judicial vacancies from the 10 percent level they hit after Republican pocket filibusters of President Clinton's nominees, to less than half that number. With respect to the circuit courts, we have done even better. We have moved from the 32 circuit court vacancies that arose from years of Republican pocket filibusters of President Clinton's moderate and qualified nominees and more than doubled the circuit court vacancies nationwide to less than 10 earlier this summer. Thus, we have reduced circuit court vacancies by more than two thirds.

Partisan Republican critics ignore the progress we have made on judicial vacancies. They also

ignore the crisis that they had created by not considering circuit nominees in 1996, 1997 and 1998. They ignore the fact that they refused to confirm a single circuit nominee during the entire 1996 session. They ignore the fact that they returned 17 circuit court nominees without action to the White House in 2000. They ignore the public criticism of Chief Justice Rehnquist to their actions during those years. They ignore the fact that they were responsible for more than doubling circuit court vacancies during their pocket filibusters of moderate and qualified Clinton nominees or that we have reduced those circuit court vacancies by more than two thirds.

I have yet to hear praise from a single Republican for our work in lowering vacancies. I also have yet to hear in the Republican talking points any explanation for their actions during the congressional session in the 1996 presidential election year, when the Republican Senate majority refused to allow the Senate to confirm even one circuit court judge. I have yet to hear explanations for why they did not proceed with the nominations of Bonnie Campbell, Allen Snyder and so many others.

There are currently 10 judicial vacancies without a nominee, even though the White House has in the last weeks rushed forward with a number of new nominations on which the paperwork has yet even to be completed. Eleven judicial nominations had yet to be reviewed by the ABA when we noticed the hearing on September 2nd. Currently eighteen do not have blue slips or support from both their home state Senators. No nominations received after June 6 were confirmed when the Republicans were in charge in 1996. Following that standard would eliminate 18 recent nominees, more than half of all those pending. Instead, working with Senators from both parties we are proceeding today with the nomination of Mary Stenson Scriven of Florida.

The reduction in judicial vacancies is one of the few areas in which conditions have actually improved over the last couple of year. I wish we could say the same about unemployment, the cost of gasoline, food prices, health care costs, inflation, the credit crisis, home mortgages and the national debt, but all those indicators have been moving in the wrong direction, as is consumer confidence and the percentage of Americans who see the country as on the wrong track.

Just last week unemployment was reported at 6.1 percent. It is much higher in some

communities. Americans have suffered through job losses every month this year and they now exceed 600,000. The day-to-day lives of hardworking Americans have only become more difficult during the last several years. The Treasury Secretary has been quite sobering about the financial difficulties still ahead. Thousands of Americans are in danger of losing their homes after falling behind on mortgage payments. Inflation is now on the rise, jobs are being lost, gas and food prices have skyrocketed, health care and college are less affordable, the American dream of owning a home is under assault -- and yet we can expect Republicans to pick a partisan fight about judicial confirmations, an area in which we have done better than they have, even with this Republican President, and where we have taken great strides to fix the system they broke.

Hardworking Americans trying to do the best they can for their families are more concerned about critical issues they face in their lives each day. They are concerned about affording to heat their homes this winter. They are concerned about gas prices that have skyrocketed so high they do not know how they will afford to drive to work. They are concerned about the steepest decline in home values in two decades. Americans are worried about soaring health care costs, rising health insurance costs, the rising costs of education and rising food prices. The partisan, election-year rhetoric over judicial nominations, at a time when judicial vacancies have been significantly reduced, is a reflection of misplaced Republican priorities.

I look forward to hearing from the nominees today. The Federal judiciary is the one arm of our government that should never be political or politicized, regardless of who sits in the White House. I will continue in this Congress, and with a new President in the next Congress, to work with Senators from both sides of the aisle to ensure that the Federal judiciary remains independent, and able to provide justice to all Americans, without fear or favor.

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Testimony of

The Honorable Mel Martinez

Senator

September 9, 2008

Statement regarding Mary Scriven's nomination to the United States District Court for the Middle District of Florida

Presented by U.S. Senator Mel Martinez (R-FL)

Tuesday, September 9, 2008

Mr. Chairman, it gives me great pleasure to come before this Committee today in support of the President's nomination of Magistrate Judge Mary Scriven to the United States District Court for the Middle District of Florida. Judge Scriven is an outstanding attorney and a committed public servant. She will make a fine United States District Judge.

In 1987, after earning her undergraduate degree from Duke University and her law degree from Florida State University, Judge Scriven entered private practice with the Tampa office of Carlton Fields. Judge Scriven eventually became a partner there before taking on a Magistrate Judgeship in 1997.

During her more than 10 years of private practice at Carlton Fields, Judge Scriven focused on representing corporations and governmental clients in complex, commercial litigation. She litigated and tried matters over amounts ranging from \$50,000 to \$122 million. She handled securities and anti-trust matters, defended corporate clients against class-actions, and pursued insurance coverage for banking clients facing losses from embezzlers.

Throughout her career, she earned the respect of a variety of people – from the lawyers at her own large, regional firm, to co-counsel, to opposing counsel, to, of course, members of the bench before whom she appeared.

In December 1997, Judge Scriven, was selected to serve an 8-year term as a Federal Magistrate Judge. She was re-appointed to another 8-year term in 2005. In her 11 years as a Magistrate, Judge Scriven has proven herself to be a committed public servant. Judge Scriven has garnered significant courtroom experience in both criminal and civil matters. She has put in the time and effort necessary to understand and fairly decide issues of often little glamour, but critical importance to the litigants and lawyers before her.

Beyond her professional accolades, Judge Scriven is married and the mother and step-mother to four children. And, despite the demands of her current position, she has remained involved in the local Tampa community through her service on various charity boards and through her church.

I believe I echo the sentiment of all those who know Judge Scriven when I say that she reflects the necessary attributes of a jurist – intelligence, honesty, and even-handedness.

The President has made a good choice in nominating Mary Scriven to the bench. I ask that you look favorably upon her nomination and see to it that she may continue her career serving the people of the Middle District of Florida.

PATRICIA A. MILLETT  
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pmillett@akingump.com

September 15, 2008

VIA HAND DELIVERY

The Hon. Senator Patrick J. Leahy, Chairman  
The Hon. Senator Arlen Specter, Ranking Member  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

Re: Nomination of Gregory G. Garre to be Solicitor General

Dear Chairman Leahy and Senator Specter:

I am writing to express my enthusiastic support for the nomination of Gregory G. Garre to be the Solicitor General of the United States. While I am now in private practice, I had the privilege of serving with Greg in the Solicitor General's Office during my eleven years there as an Assistant to the Solicitor General (1996 to 2007). I worked with Greg both when he was an Assistant in the Office and when he returned to serve as Principal Deputy Solicitor General. In both roles, Greg consistently demonstrated the highest caliber of legal advocacy skills, both oral and written. He quickly developed a well-deserved reputation within the office for the exceptional vigor and persuasiveness of his oral arguments, and his smoothly written briefs. His work consistently reflected extraordinary legal acumen and litigation judgment. He is, in short, one of the best appellate and Supreme Court advocates of our time, possessing the exceptional skills needed to properly serve the people of the United States as Solicitor General.

But what lies behind those skills is even more important. In every case I worked on with Greg, he always demonstrated extraordinary and balanced judgment. While I might not personally agree with every governmental policy that Greg was tasked with defending, I have never doubted the even-handed judgment, common-litigation-sense, and devout commitment to serving the interests of the United States that he brought to bear in every case on which he worked. Most importantly, Greg is an individual of the very highest integrity and unflagging honesty – characteristics that he would bring to bear on every one of the difficult and critically important litigation decisions that he would have to make as Solicitor General. Beyond that, his easygoing demeanor, humility, fairness, and the universal esteem in which he is held will make his nomination welcome news within the Department of Justice and the Office of the Solicitor General.

*Statement of Senator Ken Salazar  
Senate Judiciary Committee Hearing on Nominations  
September 9, 2008*

Thank you Chairman Leahy and Ranking Member Specter for holding this hearing today. I am very pleased that two of the five nominees that the Committee will consider, Christine Arguello and Phillip Brimmer, were nominated to serve as U.S. District Judges for the District of Colorado.

Senator Allard and I recognize that very few nominees are approved this late in the Congressional session, especially when they are nominated as late as July. Given this fact, we are very grateful that the process to confirm Christine Arguello and Philip Brimmer is moving forward.

I am honored to introduce Christine M. Arguello to the Committee. Ms. Arguello is a Colorado native who received her Juris Doctor

from Harvard Law School. Throughout her impressive career, she has served as a law school professor and co-authored a law school casebook on Evidence that is used at law schools across the country. Ms. Arguello is a former partner of Davis Graham & Stubbs in Denver and at Duncan, Green, Brown & Langeness in Denver. Ms. Arguello also served as Chief Deputy at the Colorado Attorney General's office. Today, Ms. Arguello serves as Senior Associate Counsel for the University of Colorado.

In January, I formed a bipartisan Judicial Nominations Advisory Commission to help select highly qualified individuals to forward to the White House for consideration of judicial appointments. The Commission highly recommended Christine Arguello to me to consider citing her outstanding legal experience.

Philip Brimmer was born in Rawlins, Wyoming, but has been a long-time Colorado resident. He received his Juris Doctor from Yale Law School and served as a law clerk to the Honorable Zita

L. Weinshienk, a United States District Court Judge for the District of Colorado. Mr. Brimmer was an Associate at Kirkland & Ellis before joining the Denver District Attorney's office. Today, Mr. Brimmer serves as an Assistant U.S. Attorney. Last week, the American Bar Association rated Mr. Brimmer "well qualified" to serve, its highest rating.

We can all agree that these are vitally important lifetime appointments to our federal judiciary. These judgeships should be filled only by the most competent and highly qualified individuals. Both Christine Arguello and Philip Brimmer would serve the people of Colorado and the Nation well as District Court judges. I am hopeful that this Committee will approve these nominations and that the full Senate will confirm them as soon as possible.



**JUDICIAL NOMINATIONS ANTHONY J. TRENGA, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA; C. DARNELL JONES, II, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; MITCHELL S. GOLDBERG, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; JOEL H. SLOMSKY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA; ERIC F. MELGREN, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF KANSAS**

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**TUESDAY, SEPTEMBER 23, 2008**

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

The Committee met, Pursuant to notice, at 3:09 p.m., in room SD-562, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Brownback and Specter.

Also present: Senators Warner, Webb, Casey, and Roberts.

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

Chairman LEAHY. There are rather extraordinary things going on on the Hill and we get one request after another to vote for a blank check on a "just trust us" basis involving Wall Street. Unfortunately, the form of the blank check tends to change all the time, so there's been some skepticism raised, I think as much on the Republican side of the aisle as the Democratic side. But I'm holding this exceptional hearing this late in a Presidential election year as an accommodation to Senator Specter, who is the Ranking Republican member of our Committee and a former Chairman.

The Thurman rule, which was certainly established and followed by Republicans when there's a Democratic President in the White House, calls for Senate consideration of judicial nominations to stop

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in the last several months before a Presidential election until we see the outcome of the election.

Senator Hatch followed that practice in both 1996 and 2000 when he chaired the Judiciary Committee. In fact, in the 1996 Presidential year, no one nominated after June 6th was considered and there were no judicial confirmations after the August recess. In 2000, there were none after July 25th.

I have said throughout my chairmanship I would treat President Bush's nominees better than Republicans treated President Clinton's, and I've done so. This hearing is another example of that. This is the second hearing I've held for judicial nominees in September of this Presidential election year.

I've included the five judicial nominees from Utah, California, Florida, and Colorado, who participated in our September 9 hearing on the Committee's agenda for consideration in our business meeting later this week.

Today we are going to hear from five additional nominees for lifetime appointments to the Federal bench in Pennsylvania, Virginia, and Kansas. I have consistently said this time of the year I will work with the Majority Leader and the Republican Leader in order to be able to proceed on consensus nominees.

Progress on judicial nominees requires consensus and the cooperation of all Senators, I think something that is one of those things that both Republicans and Democrats would agree on. I want to thank Majority Leader Reid, with whom I've consulted, for his willingness to have us proceed with this.

Now, three of the nominees are included at Senator Specter's request: C. Darnell Jones, Mitchell Goldberg, and Joel H. Slomsky, and they all have the support of the other distinguished Senator from Pennsylvania, Senator Casey.

President Bush did not nominate these men until just before the August recess. At the time I set this hearing last week we still had not received ABA ratings, but based on peer reviews of all of them. We are expediting these proceedings as a courtesy to Senator Specter, and he's agreed with me to waive the 1-week notice required by our Senate rules.

I am also happy to accommodate the request of the senior Senator from Virginia that we include the nomination of Anthony J. Tringa to a judicial vacancy in Virginia. Senator Warner is one of our most distinguished members, and he's retiring at the end of this Congress. In this case he's been helped by Senator Webb, who has worked with him on the nomination and supports this nomination as well with his bipartisan support of the nominee. I compliment Senator Webb, who's sitting right here, for that, for making it possible to go forward.

The final nominee is Eric Melgren of Kansas. I am accommodating the request of Senator Brownback by including this nomination. I must say to my friend Senator Brownback, I did so notwithstanding his rather constant criticism of my efforts in expediting other nominees, including when I worked to provide consideration of long-delayed judicial nominations for Michigan earlier this year.

I talked to him about having his delaying of Senate consideration of first one, and then as a result a dozen other, of President Bush's

nominees at the end of the last Congress. He's explained his reasons for doing that, and of course he was within his rights to, whether I agree with him or not.

There's more that I could say, but I understand we're going to have to go back on the floor very soon. I would note, we've cut the judicial vacancies that I encountered in the summer of 2001 by more than half. A lot of those vacancies occurred because of the pocket filibuster by Republicans of President Clinton's nominees. Right now, we are proceeding with this hearing when we're facing what the White House describes as the worst financial crisis since the Great Depression, and many of us have to get back to that.

We'll go for opening statements by seniority of those who are here. I think the only person senior to Senator Specter is Senator Warner, and he's not here at the moment. So I will yield to you.

**STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman. Senator Warner is not here because he is still at the Republican conference. When I exited just a few moments ago, he asked me to explain his absence and his assurance that he will be along shortly.

Today is a very complicated day on Capitol Hill because of the economic crisis. I did not use the word "tumultuous", which I used earlier today, commented on by the Chairman.

We have a Republican luncheon, as the Democrats do. It starts at about 12:30 and usually goes to 2:15. When I left a few moments before 3, it was still in process. Secretary Paulson was supposed to be there early and didn't finish up the hearing until past 2. I left a few minutes before 3, even though I didn't have a chance to ask a question, or questions, that I wanted to. Senator Warner remained.

I had planned to meet with three of the Pennsylvania nominees earlier today and just arrived a few moments ago here. But the schedule is very involved. We were scheduled to have a series of votes starting at 2:15, 2:30 and the photograph of the Appropriations Committee, and all of that has been deferred. The Senators may be interrupted at any time to go to the floor for votes, depending upon what happens there.

I thank Chairman Leahy especially for scheduling this hearing. It is very unusual to have judicial hearings on the week when the Senate is scheduled for termination. The reasons are very complicated and we don't have time to discuss them now. But suffice it to say that Chairman Leahy has gone the extra mile, the extra two miles, the extra 25,000 miles around the globe to accommodate this proceeding.

I also thank Senator Reid, the Majority Leader, for his acquiescence, for his support of this proceeding. It is my hope—really, my expectation—that we will be able to complete these nominations. That, of course, in the final analysis rests with the Majority Leader who sets the agenda for confirmation. But we do have a very distinguished panel of lawyers who are here.

If I may, Mr. Chairman, I will just proceed with very brief introductions of the three Pennsylvania nominees.

Chairman LEAHY. I see Senator Warner is here.

Senator SPECTER. Senator Warner.

Chairman LEAHY. I'd like to hear from Senator Casey before we introduce people from Pennsylvania.

Senator Warner, we've already given you glowing accolades as one of the most senior members of the Senate, and praised your work, your bipartisan work, with Senator Webb. That's why we're here.

With that, I'll go to you because apparently we're going to have votes fairly soon. I doubt if we'll come back to this hearing once those votes start, so we're going to see how many judges we get done before the votes start. I'm not suggesting that anybody—put speeches in the record.

**PRESENTATION OF ANTHONY J. TRENGA, A NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA BY HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA**

Senator WARNER. Mr. Chairman, you and I have been here together 30 years, and the man on your right, 28 of those years he's been with us.

Chairman LEAHY. That's right.

Senator WARNER. I think it's just important to say that I have had the privilege of introducing many, many, many individuals before the U.S. Senate, particularly this Committee. In the first place, I thank the courtesy that the Chairman and the Ranking Member extend to all members of the Senate as they deal with these situations, because each of us has nominations coming up for the judiciary.

I was a former lawyer and prosecutor myself, so I've had some modest experience. I can cut to it right away. This gentleman that I have the privilege of introducing, Anthony Trenga, is a lawyer's lawyer. He has tried and proven his skills. He has the highest ratings of our State Bar Association and of the American Bar Association. His career is what every young lawyer I think dreams about when they finally make their way through law school and pass the Bar. So I will simply put in my statement, but first I would ask that he introduce his family.

Chairman LEAHY. I was thinking, because we have not heard from—

Senator WARNER. Senator Webb joins me in this nomination. Whatever the pleasure of the Chair might be.

Chairman LEAHY. Well, I'll tell you what. Because of the time—normally I would, but because of the time thing, why don't I go to Senator Brownback, Senator Casey, and Senator Webb for any comments they want. Then we'll introduce all the nominees.

Senator Brownback.

**PRESENTATION OF ERIC F. MELGREN, A NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF KANSAS BY HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS**

Senator BROWNBACK. Thank you very much, Mr. Chairman.

Chairman LEAHY. I'm just afraid, if we run out of time, some of these people will have to wait till next year and take their chances with a new president.

Senator BROWNBACK. Thank you very much, Mr. Chairman. I appreciate that. I appreciate your accommodating this on the schedule and the nominee. I visited with you about policy concerns on prior nominees, but more than anything I want to thank you for holding this hearing and putting up Eric Melgren in this. I think it is an extraordinary act on your part and I deeply appreciate it, and I want you to know that.

If I could—and I will cut to the chase on this as well. Eric Melgren is somebody I've known for a number of years. He was born in Minneola, Kansas, which probably the only other person that would even know about that in this room would be the Ranking Member of where that is. It's a very small community near Dodge City, not far from Russell, Kansas. He's been married for 30 years. He's got four kids.

But he's also a lawyer's lawyer as well: graduated Washburn University. He was student body president first at Wichita State, magna cum laude at his law school, top 5 percent. Then he went out and clerked for the very judge and on the bench on which he seeks to go now, on the Federal court bench in Wichita, where we have three senior judges that are helping us carrying our cases—I mentioned last week in the hearing, the oldest of which is 100 years old, who is still hearing cases. We're just a little concerned about his work ethic at this point in time at that age.

He joined a major law firm in Kansas, did a great job there. He's been U.S. Attorney for the last 6 years, very publicly involved. I think he's earned the highest ranking from the Bar Association of Unanimously Well Qualified. I urge his consideration.

Chairman LEAHY. Thank you. We'll put the full statements in the record. I apologize for rushing, but we would not have this hearing if we couldn't do it otherwise.

[The prepared statement of Senator Brownback appears as a submission for the record.]

Chairman LEAHY. Senator Casey.

**PRESENTATION OF C. DARNELL JONES, II, A NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, MITCHELL S. GOLDBERG, A NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, AND JOEL H. SLOMSKY, A NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA BY HON. ROBERT CASEY, JR., A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA**

Senator CASEY. Mr. Chairman, thank you very much. I appreciate the time you're putting into holding this hearing and scheduling it so late in the legislative year. I want to thank Senator Specter for his work that went into today's proceeding.

I'm going to be very brief but I wanted to say, in summary fashion—I know that Senator Specter and the record will reflect more detail about the records of all of these individuals. I want to say, first of all, by way of support for all three individuals, Judge C. Darnell Jones, Mitchell Goldberg, and Joel Slomsky, all of them in one way or another have the requisite legal experience, in some cases—in two cases they are judges.

Each of them has some other kinds of experience, including experience as prosecutors. I think they're all ready to assume the important responsibilities of being not just a judge, but a judge on the Federal District Court in the Eastern District of Pennsylvania. I am honored to stand here—to sit here, I should say—in this hearing and to be able to support them. It is an honor to work with Senator Specter to bring them forward, and we look forward to their confirmation.

Chairman LEAHY. You and Senator Specter, like Senator Warner and Senator Webb, have shown the way a bipartisan effort can be done to bring about judges, and I commend both of you.

Senator Webb.

**PRESENTATION OF ANTHONY J. TRENGA A NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA BY HON. JIM WEBB, A U.S. SENATOR FROM THE STATE OF VIRGINIA**

Senator WEBB. Thank you, Mr. Chairman and Ranking Member Specter. I have a longer statement I would ask be inserted in the record at this point.

Chairman LEAHY. All statements will be.

[The prepared statement of Senator Webb appears as a submission for the record.]

Senator WEBB. I appreciate very much the unusual step of having this hearing. Senator Warner and I, as you know, have worked hard, jointly, in a bipartisan way to come up with highly qualified candidates. I think a lot of that work would have been for naught if you had not given us the courtesy of this hearing.

Mr. Trenga enjoyed a long career. He's earned the respect of colleagues and clients. He received a rating of Highly Qualified by the Virginia Bar. His nomination was, as I said, the result of a very rigorous process that Senator Warner and I jointly participated in. I am very proud to be supporting him, along with Senator Warner. He has a number of family members who are with him today; this is a big day for their family. We wish him the best as a judge.

Chairman LEAHY. Thank you very much. We will put the full statements of everybody in the record.

Senator Roberts, did you wish to speak? I noted before, anybody who doesn't get heard by the time we have our roll call votes probably will not get heard this year.

Go ahead.

**PRESENTATION OF ERIC F. MELGREN A NOMINEE TO BE DISTRICT JUDGE FOR THE DISTRICT OF KANSAS BY HON. PAT ROBERTS, A U.S. SENATOR FROM THE STATE OF KANSAS**

Senator ROBERTS. Mr. Chairman, I used to, when I was chairman of the Intelligence Committee, say that people would have 1 minute and if they exceeded that they would be taken to Dodge City and hung by the neck until they're dead.

Chairman LEAHY. You've used up about half of that 1 minute. Go ahead.

Senator ROBERTS. I've got it. I support the President's nomination of Eric Melgren as Federal District Judge for the District of

Kansas. I associate myself with the remarks of my distinguished colleague and the senior Senator from Kansas, Senator Brownback.

Simply put, Eric Melgren is qualified for this important responsibility. On the other side of it, we are in desperate need of active judges as opposed to senior judges and he would do a great job. Thank you.

Chairman LEAHY. Thank you very much.

Senator Specter, do you and Senator Casey wish to note who is here? Maybe their families may want to stand up and be recognized.

Senator SPECTER. Thank you, Mr. Chairman. That's a good idea. If the families of the three nominees from Pennsylvania would stand, you'd be recognized.

Chairman LEAHY. It would be Mr. Jones, Mr. Goldberg, and Mr. Slomsky. Thank you. And when the individual nominee testifies, we'll make sure we put in the names of all the families so that someday in the Jones, Goldberg, and Slomsky family archives, we'll know exactly who was here.

Senator Warner and Senator Webb.

Senator WARNER. Thank you. As Senator Webb said so eloquently, we both worked on this and it was a pleasure to have interviewed this nominee who is right here with his family. If he'd stand with the family, and then we'll get all the names in due course. Wonderful.

Chairman LEAHY. Thank you.

Senator WARNER. And could I add one note? Throughout this process and others, I just want to compliment the dignity of the staff. They were always responsive, both Majority and Minority, in working on this and other nominations this year.

Chairman LEAHY. You instill that in everybody, Senator Warner, and I mean that very seriously.

Senator Brownback, Senator Roberts.

Senator BROWNBACK. Eric Melgren's family is not here, but obviously he is here and will be testifying.

Chairman LEAHY. Thank you. Well, I know that all Senators have about four other hearings they have to go to. If you want you're welcome to stay, but if you want to leave, feel free also. The statements are all going to be put in the record.

All the nominees, Trenga, Judge Jones, Judges Goldberg, Slomsky, and Melgren, please come.

Would you please stand, raise your right hand, and repeat after me.

[Whereupon, the witnesses were duly sworn.]

Chairman LEAHY. The record can show they all were sworn in.

**STATEMENT OF ANTHONY J. TRENGA NOMINEE TO BE  
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA**

Mr. Trenga, would you please just put in, for the record, those of your family and friends who are here? Later we'll make sure we get all the spelling right for the Trenga archives.

Mr. TRENGA. Yes. Thank you, Mr. Chairman. I'm very fortunate to have here today with me my family and some very close friends and colleagues. First and foremost is my wife, Rita. We have been married 25 years and we have two children. My daughter Elizabeth

is here with me. Unfortunately, my son Anthony was unable to be here. Also with me are my two siblings: my sister, Marilyn McClain and her husband Charles; and my brother, Larry Trenga, who came in from Philadelphia today.

I also am very fortunate to have with me my brother-in-law, Colonel Ken Dahl, who is currently here in this area.

I am also very fortunate to have with me a number of my very good colleagues and friends from my law firm: Mr. Charles McAleer, Elizabeth O'Keefe, Megan Ellis, Pat Hackman, and also very good friends, Agnes Dover and Mary Hanigan have joined us. Also, very good friends, Tom Hylden and Shelley Davis.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Anthony John Trenga

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

United States District Judge for the Eastern District of Virginia

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

Office: Miller & Chevalier Chartered  
655 15<sup>th</sup> Street, NW, Suite 900  
Washington, D.C. 20005.

Residence: Alexandria, Virginia.

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

1949; Wilkinsburg, Pennsylvania

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

I am married to Rita Marie FlorCruz Trenga (Rita Marie FlorCruz, pre-marriage), who is a homemaker and part-time accountant and sailmaker, employed by Potomac Sailmakers, 5645-K, General Washington Drive, Alexandria, Va. 22312.  
I currently have one dependent child.

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

1985 – 1988, Georgetown University Law Center; non-degree graduate law courses  
1971 – 1974, University of Virginia Law School; J.D., 1974  
1967 – 1971, Princeton University; A.B., 1971

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

1998-present  
 Miller & Chevalier Chartered  
 655 15<sup>th</sup> Street, Suite 900, Washington, D.C  
 Chairman, Litigation Department, 2001-2003  
 Member, Executive Committee, 1999- 2000, 2001-2003  
 Firm representative at Annual ALAS Risk Management Conferences (1998-2008).

1987-98  
 Hazel & Thomas, P.C.  
 510 King Street, Alexandria, Va.  
 Member, 1987-98  
 Vice-President (Managing Partner), Alexandria Office, 1992-98  
 Chair, Practice Committee (consisting of all practice area chairs)  
 Member, Budget Committee  
 Loss Prevention Partner with respect to all conflicts and professional responsibility issues

1975-87  
 Sachs, Greenebaum & Tayler, Washington, D.C.  
 1140 Conn. Ave., NW, Washington, D.C.  
 Partner (1982-1987)  
 Associate (1975-1982)

1974-75  
 Law Clerk to the Honorable Ted Dalton  
 United States District Court for the Western District of Virginia  
 Charlottesville, Va.

1973-74  
 Prof. Michael Dooley  
 University of Virginia Law School  
 Research Assistant

Summer, 1973  
 Reed, Smith, Shaw & McClay  
 Pittsburgh, PA  
 Summer Associate

Summer, 1972  
 Law Offices of A. Andrew Giangreco, Esq.  
 Alexandria, VA  
 Summer law clerk

Summer, 1971  
 U.S. Office of Education  
 Washington, D.C.  
 Summer intern

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

None

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

Fellow, American College of Trial Lawyers

Faculty, National Trial Advocacy College of the University of Virginia, sponsored by the Virginia CLE Committee of the Virginia Bar Foundation.

Fellow, International Society of Barristers (induction pending)

Martindale-Hubbell Rating AV

Public Arbitrator, Panel of Arbitrators, Nat'l Assoc. of Securities Dealers (FINRA)

Member, Virginia State Bar Disciplinary Committee, through appointment of the Chief Justice of the Virginia Supreme Court, 1996-2002

Master of the Bench, George Mason Inns of Court

Outstanding Citizen Award, Northern Virginia Urban League, 1998

Chair, Alexandria Human Rights Committee, 1982-85

Woodrow Wilson School Princeton University Scholar, 1970-71

Scholarship Recipient, Class of 1905 Scholarship, Princeton University, 1967-71

Scholarship Recipient, The Mercersburg Academy, 1964-67. Head Waiter, 1966-67

Eagle Scout, 1964

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

Virginia State Bar Association, 1974-present:

Member, Continuing Legal Education Committee, Virginia Bar Foundation, 2002-present

VSB Disciplinary Board, 1996-2002

Eighth District Disciplinary Committee (Chairman; Secretary), 1989-1995

Trustee, VSB Client Protection Fund, 1991-1995

American College of Trial Lawyers, 2006 - present

George Mason Inns of Court (Master), 1989-present Co-Chair, Program Committee, 2005-2006

Alexandria Bar Association, 1975-present

Fairfax Bar Association, 1975-present

Federal Bar Association, Northern Virginia Chapter, 1999-present

Defense Research Institute, 1988-2006

District of Columbia Bar Association, 1975-present

Virginia Association of Defense Lawyers, 1990-2006

American Bar Association, 1975-present

American Trial Lawyers Association, 1977-1987

11. **Bar and Court Admission:**

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

Virginia State Bar, 1974

District of Columbia Bar, 1975

There have been no lapses in membership.

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

Virginia Supreme Court, 1974

District of Columbia Court of Appeals/ D.C Superior Court, 1975

United States Court of Appeals for the D.C. Circuit, 1976

United States Court of Appeals for the Ninth Circuit, 1978

United States Court of Appeals for the Fourth Circuit, 1986

United States Court of Appeals for the Federal Circuit, 1993

Supreme Court of the United States, 1997

United States District Court for:

Eastern District of Virginia, 1974

Western District of Virginia, 1974

District of Maryland, 1986

Southern District of Texas, 1992

There have been no lapses in membership.

12. **Memberships:**

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

Board of Directors, Bethesda Center for Excellence, 2001-present

Board of Trustee, Alexandria Symphony, 1992-1999.

Coach, Alexandria Youth Baseball, 1996-98

Alexandria Human Rights Committee, 1979-85

Board of Directors, Northern Virginia Urban League, 1995-1999

Alexandria Chapter of the National Conference of Christian and Jews, 1982-84

Princeton University Club of Washington, DC, 1977 to the present

Father's Club, St. Stephens-St. Agnes School, 2005-2007

Seminary Valley Civic Association, Alexandria, Va., 1987-present

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

None

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

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

Presentation to the International Litigation Consortium, Luxembourg, November 29 -December 2, 2007, 2007, *Several Firsts: Recent Developments Regarding the Extraterritorial Enforcement of the United States White Collar Laws.*

Presentation to the International Litigation Consortium. Amsterdam, Netherlands, November 9-11, 2006, *An Overview of Public and Private Corruption Cases in the United States.*

Presentation to the International Litigation Consortium. Amsterdam, Netherlands, November 9-11, 2006, *Overview of the American Attorney-Client Privilege and Work Product Doctrine*

Presentation to the International Litigation Consortium, Barcelona, Spain, November 11- 12, 2005, *Extraterritorial Enforcement of United States Evidence Gathering Procedures*

Presentation to the International Litigation Consortium, Leuven, Belgium, December 3-2004, *Extraterritorial Enforcement of United States Criminal Laws, Sanctions and Procedures*

Article, *State-of-Mind Hearsay Evidence in Contract Interference Cases*, American Bar Association's Business Tort Journal, Fall 2004

Miller & Chevalier International Litigation Alert, November 1, 20002, *The Alien Tort Claims Act, The Ninth Circuit Announces New Standards of Liability for U.S. Corporations Investing Abroad*

Miller & Chevalier Focus on Employee Benefits, January 1, 2008, January 24, 2008, and February 8, 2008 (listed as practice group member)

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

None

- c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None

- d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I served as the Panel Moderator in March, 2006 with Judge Lee of the Eastern District and Judge Lamberth of the District of Columbia federal court on "Judicial Perspectives on *Daubert* in D.C. and Virginia federal courts," co-sponsored by the Northern Virginia Chapter of the Federal Bar Association.

In January and February, 2006, I presided over a two part program at the George Mason Inns of Court titled "You know you have to finally decide - choosing between State and Federal Court." I have also participated in other presentations on the cross-examination of experts and other trial practice issues before the George Mason Inns of Court.

In May, 2005, I served as a panelist in an American Bar Association sponsored regional conference on Electronic Discovery.

- e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I am quoted in the following articles:

Legal Times, Vol. 25, NO. 19, May 13, 2002, *Inadmissible: Fighter Jets*

National Law Journal, Vol. 23, No 40 and 41, May 28-June 4, 2001, *A Firm You Can Bank On, Banks Hire Little Elias Matz for Litigation, but It Has No Litigation*

Washington Post, May 17, 2007, *Seven Short Listed for U.S. Bench in Alexandria*

I also participated with my law partner in two press conferences held in 2005 in Kiev, Ukraine concerning the arrest and detention of Boris Kolesnikov. I did not personally make any statements at those conferences and to my knowledge, there are no transcripts available, although Ukrainian television stations that covered the conferences may have video tapes.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. **Citations:** If you are or have been a judge, please provide:

- a. citations for all opinions you have written (including concurrences and dissents);
- b. a list of cases in which certiorari has been requested or granted;

- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and
- f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have not served as a judge.

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

17. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I served as a member of the Alexandria Human Rights Commission, appointed by the Alexandria City Council, from 1979 to 1985.

I was an unsuccessful candidate for the Alexandria City Council in 1981.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Member, Alexandria Democratic Committee, 1980-87

1968 Presidential Campaign of Hubert Humphrey. Volunteer aide at Democratic National Convention, Chicago.

18. **Legal Career:** Please answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a Law clerk to the Hon. Ted Dalton, United States District Judge Western District of Virginia; U.S. District Court for the Western District of Virginia, Charlottesville, Virginia; 1974-75.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1998-present  
Miller & Chevalier Chartered  
655 15th Street, Suite 900, Washington, D.C  
Chairman, Litigation Department, 2001-2003  
Member, Executive Committee, 1999- 2000, 2001-2003  
Firm representative at Annual ALAS Risk Management Conferences  
(1998-2008).

1987-98

Hazel & Thomas, P.C.

510 King Street, Alexandria, Va.

Member, 1987-98

Vice-President (Managing Partner), Alexandria Office, 1992-98

Chair, Practice Committee (consisting of all practice area chairs)

Member, Budget Committee

Loss Prevention Partner with respect to all conflicts and professional responsibility issues

1975-87

Sachs, Greenebaum & Tayler, Washington, D.C.

1140 Conn. Ave., NW, Washington, D.C.

Partner (1982-1987)

Associate (1975-1982)

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

Throughout my career of more than 30 years, my practice has been primarily devoted to litigation and trial practice, the primary focus of which has been the Eastern District of Virginia where I have served as lead litigation/trial counsel in well over 50 cases. In addition to trial skills and expertise in procedural and evidentiary issues, I have developed a substantive law expertise in commercial, fraud-based and fiduciary claims, including cases under federal statutes dealing with securities regulation (1933 Securities Act, 1934 Securities Exchange Act, 1940 Investment Advisors Act), economic regulation (Bankruptcy, Anti-trust), ERISA; RICO, Foreign Corrupt Practices Act, intellectual property (patent infringement, Lanham Act), government procurement (False Claims Act); and civil rights (Title VII, ADA, ADEA) and also state law claims involving fraud and fiduciary duties within investment contexts, personal liability, directors' and officers' liability and corporate governance, financial institutions liability, professional liability, trade secrets, partnership, trusts and joint venture disputes, and contracts. That experience has also included dealing with federal and state jurisdictional and procedural issues, including those dealing with class actions, privileges, evidence, classified materials, expert testimony, discovery (including electronic discovery), international treaties (Hague Convention), injunctions and other equitable relief, jurisdictional abstention and comity, transfer, and removal from state court. In addition, my trial practice has provided extensive experience in the evaluation and presentation of scientific and technical evidence.

I also have had experience in criminal investigations, including internal investigations pertaining to securities fraud, the Foreign Corrupt Practices Act, mail and wire fraud, public corruption, false statement, economic sanctions and business related crimes, commercial bribery, and computer crimes.

I have served as lead litigation/trial counsel in numerous complex cases, both jury and non-jury, many with parallel criminal and regulatory proceedings. By way of example, I served as lead trial counsel in a private government procurement dispute that resulted in my client's favor, after an eight-week jury trial, in one of the largest verdicts of 2002, as listed by the National Law Journal; obtained on behalf of a group of 122 plaintiffs a multi-million dollar recovery for securities fraud, and successfully defeated both take-over attempts of public companies and challenges to tender offers for control of public companies. In the RICO area, I obtained on behalf of a government sponsored secondary mortgage market maker a \$60 million RICO judgment for systematic fraud by a seller and servicer of mortgages and successfully defeated at trial and on appeal RICO class action claims. I have obtained at trial defense verdicts in a \$35 million environment clean up case and a \$65 million fraud on the market class action securities claim and successfully defended at trial the award of a \$4 billion military contract. Following internal, congressional, administrative and criminal investigations, I have been lead litigation counsel on claims against former officers of a company for insider trading and other breaches of fiduciary duty under ERISA and state law.

I participated for twelve years in the Virginia State Bar's lawyer disciplinary system, including for six years as a member of the Virginia State Bar Disciplinary Committee, through appointment of the Chief Justice of the Virginia Supreme Court. I have also served for fourteen years as a public arbitrator in securities fraud disputes.

The nature of my litigation/trial practice has changed somewhat over my career. At Sachs, Greenebaum & Tayler (1975-87), my practice was a general civil and criminal defense practice with a wide range of cases and clients. On the civil side, my practice consisted of insurance defense, plaintiff tort, professional liability (both plaintiff and defense), domestic relations and commercial matters. At Hazel & Thomas (1987-98), my practice focused predominantly on civil matters filed in the Eastern District of Virginia, Alexandria Division. The cases covered a wide range of business disputes, including a substantial number of securities fraud and intellectual property cases. At Miller & Chevalier (1998-present), my practice has been a civil litigation and trial practice, both in the Eastern District and throughout the country, that often involves matters with multiple parallel regulatory or criminal proceedings, although I have

continued to represent clients in general business and employment disputes.

- ii. your typical clients and the areas, if any, in which you have specialized.

At Sachs, Greenebaum & Tayler, the clients I represented ranged from individuals of moderate means and small to medium sized businesses to wealthy individuals and major corporations, including both plaintiffs and defendants on the civil side. On the criminal side, my practice consisted of both court appointed cases and retained clients. At Hazel & Thomas, the clients I represented also included both individuals and corporations of various means, both as plaintiffs and defendants.

At Miller & Chevalier, the clients we represent are predominantly corporate or other types of business clients or associated officers or employees. Miller & Chevalier also maintains a large and active pro bono practice for which the firm employs a dedicated lawyer whose sole responsibilities are to coordinate and administer our pro bono program. Through that program, the firm handles a wide spectrum of pro bono cases including those pertaining to child custody, landlord & tenant matters, public benefit appeals for disabled people, federal immigration matters on behalf of political asylum applicants, displaced workers seeking benefits in the Court of International Trade under the Trade Adjustment Act, court appointments in both civil and criminal matters, and constitutional challenges, including a current case involving a constitutional challenge to the District of Columbia's disability compensation program, and tax exempt charitable entities. I have been involved in this program, which is structured around more senior lawyers supervising and consulting with younger lawyers who serve as lead or primary counsel.

The substantive areas in which I have concentrated have also changed from time to time. While at Sachs, Greenebaum & Tayler, I concentrated on insurance defense, plaintiff tort, criminal defense and business disputes. At Hazel & Thomas, my practice concentrated around business disputes, employment, intellectual property, professional liability, fraud based claims, both statutory and common law, and ERISA. At Miller & Chevalier, my practice continues to be concentrated in the areas of commercial litigation, fraud based claims, ERISA, corporate governance issues and professional liability.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:

- |                            |     |
|----------------------------|-----|
| 1. federal courts:         | 70% |
| 2. state courts of record: | 25% |
| 3. other courts:           | 5%  |

ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 85% |
| 2. criminal proceedings: | 15% |

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried to verdict or judgment approximately 50 cases. I was either sole or chief counsel in all but seven of the above cases. I was "second chair" on five of these cases and co-counsel on two cases.

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 40% |
| 2. non-jury: | 60% |

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

Many years ago, I filed petitions for certiorari on behalf of one or two criminal defendants and on one occasion, a civil litigant. I have not been able to locate copies of those petitions. None of the cert. petitions was granted.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *General Motors Corporation and Allison Engine Company, Inc. v. Northrop Corporation, Northrop Aircraft Division*, Cause No. 49D01-9109-CP-1029, the Honorable Gary L. Miller, presiding, filed in the Marion Superior Court Civil Division.

During the period 1998-2003, I represented the plaintiffs General Motors and Allison Engine Company in the above styled action. I served as lead trial counsel. The case asserted claims against Northrop Corporation for breach of its duty to disclose superior knowledge and to provide adequate specifications for major components of the FY-23 prototype Advanced Fighter Jet, which resulted in a \$68 million judgment in favor of General Motors Corporation/Allison Engine Company after an eight week jury trial. The case was affirmed on appeal in a published opinion, at 807 N.E. 2d 70 (Ind. Ct. App.).

Opposing Counsel:

Joseph F. Coyne, Jr., Esq.  
Sheppard, Mullin, Richter & Hampton  
Forty-Eighth Floor, 333 South Hope Street  
Los Angeles, California 90071-1448  
(213) 617-4200

2. *Colonial Pipeline Company, et al. v. Beers Construction Company, et al.*, Civil Action No. 96-1700-A, the Honorable Richard Williams, presiding, filed in the United States District Court for the Eastern District of Virginia, Alexandria Division.

I served as lead trial defense counsel for defendant Patten-Beers Construction Company in 1996-97 in defense of a \$35 million environmental cleanup claim arising out of a 400,000 gallon pipeline rupture. The lawsuit included claims by the pipeline owner and its managers under the federal Oil Pollution Act, state environmental statutes and common law theories of recovery. The claims against my client were settled at the close of the evidence at trial.

Opposing Counsel:

Alan B. Croft, Esq.  
Baach, Robinson & Lewis  
1 Thomas Circle, N.W., Suite 200  
Washington, D.C. 20005  
(202) 833-8900

Jay Range, Esq.  
Hutton & Williams  
1900 K Street NW  
Washington, D.C.  
(202) 955-1500

Counsel for co-defendant:

Thomas F. Holt, Jr., Esq.  
 K&L Gates  
 Boston, Mass  
 (617) 951-9061

3. *In re: Elections of Directors of Allstate Financial Corporation*, Chancery No. 97-790, the Honorable Benjamin Kendrick, presiding, filed in the Arlington County Circuit Court.

I served as lead trial counsel in 1997-98 for outside directors and the largest shareholder who challenged the election of directors of a publicly held company. After a trial, the court found in favor of my clients and ordered a new election of directors.

Opposing Counsel:

William Coston, Esq.  
 Venable Baetjer & Howard LLP  
 1201 New York Avenue, N.W., Suite 1000  
 Washington, DC 20005-3917  
 (202) 962-4800

4. *Kaiser Aerospace and Electronics Corporation, Kaiser Space Products Division v. Alliant Techsystems, Inc.*, Civil Action No. 2:95CV28, the Honorable Richard Williams presiding, filed in the United States District Court for the Northern District of West Virginia at Elkins.

Before my involvement, the trial court had entered judgment against defendant Alliant Techsystems for approximately \$4 million on claims arising out of the SRAM-II Missile Systems procurement. The case was reversed on appeal and remanded for a new trial. I served as lead defense trial counsel in 1998 for defendant Alliant Techsystems at the second trial. Following the second trial, the trial court entered judgment against our client in an amount less than \$1million.

Opposing Counsel:

Lawrence M. Farrell, Esq.  
 Ray M. Aragon, Esq.  
 McKenna & Cuneo, LLP  
 1900 K Street, N.W.  
 Washington, D.C. 20006,  
 (202) 496-7500.

5. *MPR Associates, Inc. v. The General Electric Company*, Civil Action No. 95-439, no single judge assigned, filed in the United States District Court for the Eastern District of Virginia, Alexandria Division.

I served as lead counsel in 1995-96 for plaintiff MPR Associates, Inc., a nuclear engineering design firm, against defendant General Electric Co., alleging that GE

misappropriated MPR's trade secrets, and infringed MPR's patented method for the repair of cracking in core shrouds of boiling water nuclear reactors. After extensive pretrial discovery, a settlement was reached shortly before trial, which included a consent order that acknowledged that the MPR patent was valid and enforceable. The case involved extensive discovery and evaluation of engineering, metallurgical and other scientific evidence.

Opposing Counsel:

Thomas Slater, Esq.  
Hutton & Williams,  
Richmond, VA  
(804) 788-8475.

6. *Federal National Mortgage Association v. Freedlander, The Mortgage People, et al.*, Civil Action No. 88-0172-R, the Honorable Richard Williams, presiding, filed in the United States District Court for the Eastern District of Virginia, Richmond Division.

I served as lead litigation counsel in 1988-89 for plaintiff Federal National Mortgage Association ("Fannie Mae") against a national, affiliated group of mortgage banking companies and their principal officers and directors on RICO and state law fraud claims. Judgment was obtained against the corporate group and the principal officers and directors on RICO claims in the amount of \$57 million, \$19 million of which has been adjudicated as non-dischargeable in bankruptcy. Approximately \$2 million was also recovered on related claims brought on behalf of Fannie Mae against certain professionals. I also worked in cooperation with the U.S. Attorney's Office in its successful criminal prosecution.

Opposing Counsel  
Joe Kaestner, Esq.,  
Richmond, VA  
(804) 648-2801

7. *Robert J. Caviness, et al. v. DeRand Resources Corporation, et al.*, Civil Action No. 91-1192-A, no single judge assigned, filed in the United States District Court for the Eastern District of Virginia, Alexandria Division.

I served as co-counsel in 1991-92 for defendants Marshall Exploration, Inc., Carlile and Howell, Inc. and Kenneth Q. Carlile (the "Marshall defendants"), a Texas group of defendant oil and gas operators/drillers, in their successful defense of a \$10 million class action for federal and state securities law and RICO violations arising out of the syndication of oil and gas limited partnerships. The District Court entered summary judgment in favor of the defendants; and the case was affirmed on appeal by the Fourth Circuit, in a reported decision, No. 92-143, decided on January 11, 1993, 983 F.2d 1295. In this case, the Fourth Circuit first decided that "loss causation" was a necessary element of proof for establishing damages under RICO.

Co-counsel:

Kim J. Askew, Esq.,  
K&L Gates  
Dallas, Texas  
(214) 939-5579

Opposing Counsel:

Robert N. Levin, Esq.  
Schweitzer, Bentzen & Scher  
815 Connecticut Ave., N.W.  
Washington, DC 20006-4004,  
(202) 785-1530.

Counsel for co-defendant:

Howard V.B. Sinclair, Esq.  
Arent Fox L.L.P.  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 857-8948

8. *John J. Turner et al. v. Merle Harmon, Sr., et al.*, Civil Action No. 89-0839, no single judge assigned, filed in the United States District Court for the Eastern District of Virginia, Alexandria Division.

I served as lead counsel in 1988-89 on behalf of 122 individual plaintiff investors in a nationally marketed syndication of limited partnerships. The plaintiffs asserted securities fraud and RICO claims, which settled for over 90% of their investment.

Opposing counsel:

W. Stuart Parsons, Esq.  
Quarles & Brady L.L.P.  
411 East Wisconsin Avenue, Suite 200  
Milwaukee, WI 53202-4497  
(414) 277-5000

9. *In Re: Tomlinson Interests, Inc.*, multiple proceedings in federal and state courts in Texas (U.S. Bankruptcy Court Judge Wheelless, presiding), Mississippi and Alabama.

I served as lead litigation counsel in 1992-96 for the plaintiff trustee in bankruptcy of Tomlinson Interests, Inc. ("TII"), a gas exploration and development company located in Houston, Texas, and its related corporations in multiple state and federal proceedings in Texas, Mississippi and Alabama, which concerned, among other things: (1) defending the validity of a take-or-pay gas contract having an estimated value to the TII estate in excess of \$100 million; and (2) substantive consolidation of all the corporate debtors for the purposes of the bankruptcy proceedings, an issue having a potential impact on a group of bank lenders in excess of \$75 million. Aspects of the representation involved technical

and scientific issues pertaining to deep high pressure sour natural gas wells. After extensive discovery and numerous hearings, the cases settled.

Opposing Counsel:

Allen Gover, Esq.  
Weil, Gotshall  
700 Louisiana, suite 1600  
Houston, Texas 77002  
(713) 545-5000;

Thomas Cunningham, Esq.  
Fulbright & Jaworski,  
Fulbright Tower, 1301 McKinney, suite 5100  
Houston, Texas 77010.  
(713) 651-5151

10. *Mobil Oil Corporation v. Texas Petrochemicals Corporation*, Civil Action No. 92-343-A, filed in the United States District Court for the Eastern District of Virginia, Alexandria Division, and transferred to the Southern District of Texas, the Honorable David Hittner, presiding, where it settled before trial.

I served as lead counsel in 1992-96 for the defendant and counterclaim plaintiff Texas Petrochemicals Corporation, which asserted a \$200 million breach of contract and fraud claim involving the chemical Methyl Tertiary Butyl Ether (MTBE).

Opposing Counsel:

David Beck, Esq.  
Beck, Redden & Secrest, L.L.P.  
One Houston Center  
1221 McKinney St., Suite 4500  
Houston, Texas, 77010  
(713) 951-3700

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activities that I have pursued have been in the area of litigation and trial work, including those cases referenced above. I have not engaged in lobbying activities on behalf of any clients. In addition to the cases referenced above, I regard as most significant my Bar, teaching, mentoring and other activities that have allowed me to work with other lawyers. Those include the following:

I served for four years as a Trustee of the Virginia State Bar Client Protection Fund, which compensates clients who have been victims of unethical conduct by their lawyers. During the time I served, we were successful in requesting and obtaining increased funding by the VSB as well as higher limits on recoveries for clients.

I served for twelve years in the VSB lawyer disciplinary system, first for six years as a member and officer of a local District Committee and then for six years as a member of the VSB Disciplinary Board, appointed by the Chief Justice of the Virginia Supreme Court, which reviews the most serious cases of lawyer misconduct. The Disciplinary Board was a particularly valuable experience because it provided the opportunity to work with other lawyer Board members from throughout the Commonwealth, who brought to our deliberations diverse experiences, from small town, rural sole practitioners to large firm urban practices, and also with non-lawyer lay members appointed to the Board, who brought their own distinctive insights and expectations of the legal profession.

I have participated for nearly fifteen years as a member of the George Mason Inns of Court. As a Master of the Bench (the highest designation), I have worked with law students to make presentations to the Inn on a wide range of litigation and trial topics. In the process, I have had the opportunity to see the attitudes and expectations of young lawyers and to contribute to their development. For similar reasons, I have found working with our younger associates in our law firm particularly rewarding.

I have been involved with European lawyers through the International Litigation Consortium, a private organization that I helped organize in 2004 and whose mission is focused on the exchange of information and ideas within the areas of international criminal and economic sanctions. The organization consists of prominent lawyers in The Netherlands, Belgium, Luxembourg and Spain, who annually meet and make presentations on various topics and developments from the perspective of a particular country. Those topics have included the extraterritorial enforcement of criminal laws and sanctions, money-laundering, discovery, and privacy laws.

I was involved as a member of an international defense team for a prominent Ukrainian regional elected official who had been imprisoned on criminal charges in violation of the recently adopted Ukrainian constitution, which was based in large measure on the constitutions of Western Democracies, including the United States Constitution. My involvement focused on issues of pre-trial detention and possible proceedings before the European Court for Human Rights.

I have served on the panel of public arbitrators for the National Association of Securities Dealers (NASD), now the Financial Industry Regulatory Authority (FINRA). In that capacity, I have heard claims principally by customers of broker-dealers against their brokers and brokerage companies. These claims covered the range of issues that often come up with customer accounts, including suitability issues, churning issues and market drop issues and involved small, medium and large customer accounts and losses and a range of sophistication among customers.

21. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

I have served frequently as a faculty member for CLE seminars, including for the week long National Trial Advocacy College in January, 2007 and January 2008 at the University of Virginia, sponsored by the Virginia CLE Committee of the Virginia Bar Foundation..

I served as a judge in law school moot court competitions, most recently as a judge for the 2007 Region 4 Rounds, sponsored by the American College of Trial Lawyers and hosted by George Mason University.

I have served as an instructor at several in-house courses at our firm sponsored by the National Institute for Trial Advocacy (including courses in depositions, expert witnesses and trial examinations). I have also participated in a teaching capacity in our firm's other in-house training programs, including those involving witness preparation, internal investigations, depositions, direct and cross examination, and experts, several of which have qualified for Virginia CLE credit.

I have served as an instructor in a Legal Reasoning Program, sponsored by the D.C. Bar Association for minority students entering their first year of law school.

22. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Under our firm's by-laws, the value of a departing member's stock in the law firm is paid out over five years, with interest. It is customary, however, for that stock value to be paid in a single lump sum payment upon leaving the firm to members who leave to pursue government service, including judgeships. The current value of my law firm stock is \$142,000. In addition, I am currently covered by the Miller & Chevalier Retirement Plan that provides that at age 65 I would receive an annual annuity payment of approximately \$15,000 per year.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

25. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

While none are likely, the parties, categories of litigation, and financial arrangements that could present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include family, close friends, clients, members of my law firm, and financial interests which I may have.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I would review any potential conflicts issues with reference to the Code of Conduct for United States Judges. More specifically, I would review the parties in each case and their disclosed affiliates in order to determine any potential or actual conflicts. I would then identify to the parties involved any matters that may reasonably raise an issue as to my impartiality and make full disclosure concerning that matter, even where I do not think my impartiality would be affected. I will follow the Code of Conduct and established policies and procedures in determining whether or not recusal is appropriate.

27. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Consistent with the goals adopted by the American Bar Association, our firm has an institutional commitment to devote at least 3% of our billable hours to pro bono work.

Each year for at least the last seven years we have met that goal and in 2006, substantially exceeded it. The firm employs a dedicated lawyer whose sole responsibilities are to coordinate and administer our pro bono program; and our official policy is to encourage all the lawyers to do pro bono work, grounded in the D.C. Rules of Professional Responsibility, which call on all lawyers to devote 50 hours annually to pro bono work.

I have meet or exceeded the firm's pro bono goals. My pro bono work has revolved around both the firm's pro bono program, my work with the Bethesda Center for Excellence and my involvement with Bar activities and CLE programs, which is addressed elsewhere in this Questionnaire.

Miller & Chevalier has handled a wide spectrum of pro bono matters, including those pertaining to child custody, landlord & tenant matters, public benefits appeals for disabled people, federal immigration matters on behalf of political asylum applicants, displaced workers seeking benefits under the Trade Adjustment Act in the Court of International Trade, court appointments in both civil and criminal cases, tax exempt, charitable entities, and constitutional challenges, including a current case involving a constitutional challenge to the District of Columbia's disability compensation program

Under the structure of our pro bono program, more senior lawyers serve as supervisors and consultants with respect to cases handled by younger lawyers. Consistent with that approach, and as a former chair of our Litigation Department and one of the more senior litigation/trial lawyers in the firm, I spend most of my pro bono involvement within the firm in consulting with and mentoring younger lawyers on a wide range of cases that our younger lawyers handle as primary, lead counsel. I have also participated in the firm sponsored six-week "Introduction to Legal Reasoning" course for rising first year law students, which is designed to teach principles of law to students from traditionally disadvantaged backgrounds.

I also currently serve on a pro bono basis as General Counsel to the Bethesda Center for Excellence (BCE), which is a non-profit organization dedicated to supporting Olympic level athletes in the Olympic events of whitewater slalom and also recreational boating on the Potomac and other area rivers, including outreach to disadvantaged youths. (Two members of the 2004 and three members of the 2008 U.S. Olympic Team are BCE members). I devote approximately 100 hours per year to that activity. The website is located at [www.bce-racing.com](http://www.bce-racing.com).

28. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or

communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I have participated in the judicial selection process endorsed by the U.S. Senators from Virginia. That has included appearing before the judicial selection committees of the various bar associations, including the Virginia State Bar Judicial Nominations Committee. Following that process, I was interviewed by Senators James Webb and John Warner and was latter selected for inclusion in a list of candidates endorsed by both Senators for the open seats in the Eastern District of Virginia, which was forwarded to the White House for consideration. I was interviewed at the White House by representatives of the White House Counsel's office and the Justice Department on May 15, 2007 and also on March 12, 2008. On May 13, 2008, I was contacted by the White House Legal Counsel's office concerning its interest in proceeding further with me in connection with a possible nomination and have had subsequent communications with the Justice Department. On July 17, 2008, the President delivered my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AO 10  
Rev. 1/2006

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Trenga, Anthony J	2. Court or Organization U.S. District Court, ED VA	3. Date of Report 07/21/2008
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge-Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 07/17/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2007 to 06/30/2008
7. Chambers or Office Address 655 Fifteenth Street, N.W. Suite 900 Washington, DC 20005	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of instructions.)

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Member	Miller & Chevalier Chartered
2. Director, Secretary and General Counsel	Bethesda Center for Excellence
3. Member	VA CLE Committee
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of instructions.)

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 1998	Miller & Chevalier Retirement Plan, no control
2. 1998	Miller & Chevalier Employment Agreement
3.	

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Trenga, Anthony J	<b>Date of Report</b> 07/21/2008
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**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

**A. Filer's Non-Investment Income**

NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <small>(yours, not spouse's)</small>
1. 2008	Miller & Chevalier, member compensation	\$ 218,750
2. 2007	Miller & Chevalier, member compensation	\$ 709,857
3. 2006	Miller & Chevalier, member compensation	\$ 897,751
4.		
5.		

**B. Spouse's Non-Investment Income** *- If you were married during any portion of the reporting year, complete this section. (Dollar amount not required except for honoraria.)*

NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2008	Potomac Sailmakers, salary
2. 2007	Potomac Sailmakers, salary
3.	
4.	
5.	

**IV. REIMBURSEMENTS** *- transportation, lodging, food, entertainment. (Includes those to spouse and dependent children. See pp. 25-27 of instructions.)*

NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DESCRIPTION</u>
1. EXEMPT	
2.	
3.	
4.	
5.	

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<b>Name of Person Reporting</b> Trenga, Anthony J	<b>Date of Report</b> 07/21/2008
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**V. GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. EXEMPT			
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

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Name of Person Reporting Trenga, Anthony J	Date of Report 07/21/2008
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**VII. INVESTMENTS and TRUSTS** - Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If no exchange from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Brokerage Account #1					EXEMPT				
2. -money market account	D	Interest	N	T	EXEMPT				
3. -MMM common stock	B	Dividend	K	T					
4. -AIG common stock	A	Dividend	J	T					
5. -BAC common stock	B	Dividend	K	T					
6. -BRKZB common stock		None	L	T					
7. -CPB common stock	B	Dividend	L	T					
8. -CNI common stock	A	Dividend	I	T					
9. -CTAS common stock	A	Dividend	K	T					
10. -KO	B	Dividend	L	T					
11. -DEO stock (ADRs)	B	Dividend	L	T					
12. -D common stock	B	Dividend	L	T					
13. -FO common stock	A	Dividend	K	T					
14. -GE common stock	B	Dividend	L	T					
15. -GAIN comon stock	B	Dividend	J	T					
16. -GE common stock	C	Dividend	L	T					
17. -ISCA common stock-A	A	Dividend	K	T					

1. Income Gain Codes (See Column B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Column C) and D1)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	P4 = More than \$50,000,000
3. Value Method Codes (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

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<b>Name of Person Reporting</b> Trenga, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. -IYZ stock (index fund)	A	Dividend	K	T					
19. -JNJ common stock	B	Dividend	K	T					
20. -MCD common stock	B	Dividend	K	T					
21. -MSFT common stock	B	Dividend	L	T					
22. -NGG stock (ADRs)	B	Dividend	K	T					
23. -ORCL common stock		None	J	T					
24. -PFE common stock	C	Dividend	K	T					
25. -PBI common stock	B	Dividend	L	T					
26. -PGN common stock	C	Dividend	L	T					
27. -GLD		None	K	T					
28. -TFX common stock	B	Dividend	L	T					
29. -UL stock (ADRs)	B	Dividend	L	T					
30. -UPS common stock	B	Dividend	K	T					
31. -UTX common stock	B	Dividend	L	T					
32. -VLO common stock	A	Dividend	K	T					
33. -WMT common stock	A	Dividend	K	T					
34. -WAG common stock	B	Dividend	L	T					

1 Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$150,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cash (Real Estate Only) V = Other	C = \$2,501 - \$5,000 I11 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P11 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I12 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2 Value Codes (See Columns C1 and D1)	N = \$150,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	R = Cash (Real Estate Only) V = Other	P4 = More than \$50,000,000		
3 Value Method Codes (See Column C2)	Q = Appraisal U = Book Value		S = Assessment W = Estimated		

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<b>Name of Person Reporting</b> Trenge, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** - income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. -WFSL common stock	B	Dividend	K	T					
36. -WMI common stock	B	Dividend							
37. -WRI common stock	A	Dividend	K	T					
38. -WTM common stock	A	Dividend	K	T					
39. -WYE common stock	B	Dividend	K	T					
40. -303820Q49 tax exempt Bd (Fairfax, VA)	C	Interest	K	T					
41. -40952MAP0 tax exempt Bd. (Hampton, VA)	A	Interest	J	T					
42. -42605MBH4 tax exempt Bd. (Henrico, VA)	A	Interest	J	T					
43. -927780YEO tax exempt Bd. (Va. St.)	A	Interest	K	T					
44. -927780UT1 tax exempt Bd. (Va. St.)	A	Interest	J	T					
45. -SGENX mutual fund		None	K	T					
46. -BAM common stock	A	Dividend							
47. -C common stock	A	Dividend							
48. -ECA common stock	A	Dividend							
49. -Florida Rock common stock	A	Dividend							
50. -GCI common stock	A	Dividend							
51. -GGG common stock	A	Dividend							

1. Income, Gain Codes: (See Column B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,001 or less N = \$250,001 - \$300,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$1,500 G = \$100,001 - \$1,000,000 K = \$13,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$100,001 - \$5,000,000 I11 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessments W = Estimated	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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<b>Name of Person Reporting</b> Trenga, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. -HD common stock	A	Dividend							
53. -IR common stock	A	Dividend							
54. -Kraft Foods common stock	A	Dividend							
55. -MWA'B	A	Dividend							
56. -Suffolk Va. tax-exempt bond	A	Interest							
57. -AFL common stock	A	Dividend							
58. -MO common stock	A	Dividend							
59. -AXP common stock	A	Dividend							
60. -BJS common stock	A	Dividend							
61. -COSWF common stock	A	Dividend							
62. -CVX common stock	A	Dividend							
63. -XEC common stock	A	Dividend							
64. -LUK common stock	A	Dividend							
65. -MCD common stock	A	Dividend							
66. -MOT common stock	A	Dividend							
67. -PM common stock	A	Dividend							
68. -SNV common stock	A	Dividend							

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = \$5,000,001 - \$10,000,000	E = \$15,001 - \$50,000 J = More than \$5,000,000
2. Value Codes (See Columns C1 and D3)	F = \$15,000 or less N = \$250,001 - \$500,000	G = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	H = \$50,001 - \$100,000 P = \$1,000,001 - \$5,000,000	I = \$100,001 - \$250,000 Q = \$250,001 - \$500,000	J = \$500,001 - \$1,000,000 R = \$1,000,001 - \$25,000,000
3. Value Method Codes (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	P4 = More than \$50,000,000 T = Cash Market	

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<b>Name of Person Reporting</b> Trenga, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** - Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-37 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
69. -TSS common stock	A	Dividend							
70. -WFC common stock	A	Dividend							
71. -MPG.A preferred stock	A	Dividend							
72. -Montgomery Va tax-exempt bond	A	Interest							
73. -BRCLY taxable bond	A	Interest							
74. Brokerage Account #2 (IRA)									
75. -Money Market VMXX	A	Interest	J	T					
76. -AIG	A	Dividend	J	T					
77. -BDV common stock	B	Dividend	K	T					
78. -CDR common stock	B	Dividend	K	T					
79. -COD I stock	B	Dividend	K	T					
80. -DRH common stock	B	Dividend	K	T					
81. -GLAD common stock	B	Dividend	K	T					
82. -GOOD common stock	B	Dividend	J	T					
83. -HFT common stock	C	Dividend							
84. -OLP common stock	B	Dividend	K	T					
85. -ARE.C preferred stock	C	Dividend	K	T					

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$10,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only)	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	S = Assessment W = Estimated
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	V = Other	T = Cash Market		

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<b>Name of Person Reporting</b> Trenga, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
86. -ABW.A preferred stock	B	Dividend	J	T					
87. -CCPCN preferred stock	C	Dividend	K	T					
88. -CPL.C preferred stock	B	Dividend	J	T					
89. -CDR.A preferred stock	B	Dividend	K	T					
90. -C.O preferred stock	B	Dividend	K	T					
91. -OFG.G preferred stock	B	Dividend	J	T					
92. -DDR.G preferred stock	B	Dividend	K	T					
93. -GOODO preferred stock	B	Dividend	J	T					
94. -NNN.C preferred stock	B	Dividend	K	T					
95. -NBD preferred stock	B	Dividend	J	T					
96. -PRE.C preferred stock	B	Dividend	J	T					
97. -OUI preferred stock	B	Dividend	K	T					
98. -BFS.A preferred stock	B	Dividend	J	T					
99. -American Gen. taxable bond 02635PTB9	B	Interest	K	T					
100. -Barclays Bank taxable bond 06738CK40		None	K	T					
101. -Barclay Perform taxable bond 06738CMS5		None	K	T					
102. -Constln Brds taxable bond 21036FADO	B	Interest	K	T					

1. Income Code (See Column B1 and D4)	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
2. Value Code (See Columns C1 and D3)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I = \$5,000,001 - \$10,000,000	J = More than \$10,000,000
3. Value Method Code (See Column C2)	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	N = \$250,001 - \$500,000	O = \$500,001 - \$1,000,000
	P = \$1,000,001 - \$5,000,000	Q = \$5,000,001 - \$25,000,000	R = \$25,000,001 - \$50,000,000	S = More than \$50,000,000	T = Cash Marker
	U = Appraisal	V = Cost (Real Estate Only)	W = Assessment	X = Other	Y = Estimated
	Z = Book Value				

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<b>Name of Person Reporting</b> Trenge, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** -- Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
103. -Credit Suisse taxable bond 22541FDN3		None	K	T					
104. -Dayton Hudson taxable bond 239753BK1	B	Interest	K	T					
105. -Donnelley R taxable bond 257867AM3	B	Interest	K	T					
106. -Elec Data Stp taxable bond 285661AD6	B	Interest	K	T					
107. -Fortune NI taxable bond 349631AL5	B	Interest	K	T					
108. -Fund American Co taxable bond 36077BAA5	B	Interest	K	T					
109. -GE Global Insu taxable bond 36158FAC4	B	Interest	J	T					
110. -Genwrth Fnl taxable bond 37247XAE2	B	Interest	K	T					
111. -GTE Nthwest taxable bond 36233RAF0	B	Interest	K	T					
112. -GTE Nthwest taxable bond 36233RAG8	A	Interest	J	T					
113. -Marke Corp taxable bond 570535AF1	B	Interest	K	T					
114. -Morgan Comdts taxable bond 6174464T3		None	K	T					
115. -Morgan Stanley taxable bond 6174462G3		None	K	T					
116. -Nabisco Inc taxable bond 629527AU6	C	Interest	K	T					
117. -Nextel Commu taxable bond 65332VBH5	B	Interest	K	T					
118. -Premcor Refing taxable bond 74047PAH7	B	Interest	K	T					
119. -Royal Amern Bk taxable bond 78004TBG2	B	Interest	K	T					

1. Income Gain Codes (See Column B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = \$5,000,001 - \$50,000,000	E = \$15,001 - \$50,000,000
2. Value Codes (See Column C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cash (Real Estate Only)	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	S = Assumed W = Estimated
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	V = Other	T = Cash Market		

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<b>Name of Person Reporting</b> Trenge, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
120. -SLM Corp Var taxable bond 78490FS23		None	K	T					
121. -Toyota Mtr Var taxable bond 89233PV37	C	Interest	K	T					
122. -Verizon Vir taxable bond 92345NAA8	B	Interest	K	T					
123. -Xerox Corp taxable bond 98412BM4	B	Interest	K	T					
124. -BRE PPTY INC preferred B 05564E403	A	Dividend							
125. -SG CMS SPRD VAR taxable bond 78422XNH2	A	Interest							
126. -WASHINGTON taxable bond 939671AB9	A	Interest							
127. -MERRILL MTN VAR taxable bond 59018YB67	A	Interest							
128. -INTL Lease taxable bond 45974EACO	A	Interest							
129. -WFC common stock	A	Dividend							
130. -Rabobank taxable bond 74977ENM1	C	Interest							
131. Brokerage Account #3 (IRA)									
132. -money market CLASS A 196	A	Interest	J	T					
133. -BDV stock	A	Dividend	J	T					
134. -BGR stock	A	Dividend	J	T					
135. -BALCX mutual fund	A	Dividend	J	T					
136. -MARKEL CORP taxable bond 570535AE4	A	Interest							

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less	B = \$1,001 - \$2,500 G = \$100,001 - \$100,000 K = \$15,001 - \$50,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000	D = \$5,001 - \$15,000 I = \$1,000,001 - \$5,000,000 M = \$100,001 - \$250,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D1)	N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	Q = \$500,001 - \$1,000,000 R = Cost (Real Estate Only)	U = Book Value	P2 = \$5,000,001 - \$25,000,000 P3 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	S = Assumed W = Estimated
3. Value Method Codes (See Column C2)	Q = Appraisal	V = Other	T = Cash Market		

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**VII. INVESTMENTS and TRUSTS** – Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
137. -WSHCX mutual fund		None	J	T					
138. Brokerage Account #4									
139. -Money Market	A	Interest	J	T					
140. -BRKZB	A	Dividend	J	T					
141. -WSHCX		None	J	T					
142. Brokerage Account #5									
143. -MO common stock	A	Dividend	J	T					
144. -AXP common stock	A	Dividend	J	T					
145. -AIG common stock	A	Dividend	J	T					
146. -BAC common stock	A	Dividend	J	T					
147. -BMY common stock	A	Dividend	J	T					
148. -C common stock	A	Dividend	J	T					
149. -DIS common stock	A	Dividend	J	T					
150. -D common stock	A	Dividend	J	T					
151. -GE common stock	A	Dividend	J	T					
152. -INTC common stock	A	Dividend	J	T					
153. -SJM common stock	A	Dividend	J	T					

1. Income Gain Codes (See Column B1 and D4)	A = \$1,000 or less F = \$10,001 - \$100,000	B = \$1,001 - \$1,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Column C1 and D3)	J = \$15,001 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	P4 = More than \$50,000,000
3. Value Method Codes (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	P4 = More than \$50,000,000 S = Assessment W = Estimated	T = Cash Market	

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**VII. INVESTMENTS and TRUSTS** - income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
154. -NJ common stock	A	Dividend	J	T					
155. -MOT common stock	A	Dividend	J	T					
156. -ORCL common stock		None	J	T					
157. -PFE common stock	A	Dividend	J	T					
158. -PG common stock	A	Dividend	J	T					
159. -SVNT common stock		None	J	T					
160. -TXN common stock	A	Dividend	J	T					
161. -Money market acct.	A	Dividend	J	T					
162. FISERV IRA		None	J	T					
163. -CREALDE MALL NOTE	C	Dividend	K	T					
164. ING Pension IRA									
165. -Oppenheimer Global Port. - I	A	Dividend	J	T					
166. UBS Account #1									
167. -GE common stock	A	Dividend	J	T					
168. -Money market acct.	A	Dividend	J	T					
169. -Face Large Co Value Equity Investment Fund Class A	A	Dividend	J	T					
170. UBS Account #2									

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$125,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cash (Real Estate Only) V = Other W = Estimated	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = Mon - thru \$50,000,000 S = Assessment	D = \$5,001 - \$10,000 H2 = Mon. thru \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D1)	Q = Appraisal U = Book Value				
3. Value Method Codes (See Column C2)					

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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
	Amount Code 1 (A-H)	Type (e.g. div., rent, or int.) Code 2	Value Code 2 (J-P)	Value Method Code 3 (Q-W)		(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
171. -Money market acct.	A	Dividend	J	T					
172. -Am. Funds Cap Income Building Fund CL A Mutual Fund		None	J	T					
173. -Putnam New Opportunity Fund CL A Mutual Fund	A	Dividend	J	T					
174. -Pace Large Co. Value Equity Investment Fund CL A	A	Dividend	J	T					
175. -Eastgrowth TSY STRPD CPN	A	Dividend	J	T					
176. -Treasury Investment Growth	A	Dividend	J	T					
177 UBS Account #3 (SEP)	A	Interest	J	T					
178. -Pace Inf'l Equity Investment Fund CL A	A	Interest	J	T					
179. Brokerage Account #6									
180. -Legg Mason Opportunity Trust Primary Class Mutual Fund	A	Dividend	J	T					
181. -Morgan Stanley US Gov't Sec TR B Mutual Fund	A	Dividend	J	T					
182. Janus Fund (JANSX)	A	Dividend	J	T					
183. IBM common stock	A	Dividend	J	T					
184. Dominion Resources Inc. common stock	B	Dividend	K	T					
185. American Century Growth Mutual Fund (TWXCGX)	A	Dividend	J	T					
186. Navy Federal Credit Union (IRA #1) (CD)	A	Dividend	J	T					
187. Navy Federal Credit Union (IRA #2) (CD)	A	Dividend	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$1,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$120,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	Q = Cash Market
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated		

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<b>Name of Person Reporting</b> Trenga, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** - Income, value, transactions (includes those of the spouse and dependent children. See pp. 14-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
188. Navy Federal Credit Union CD	B	Interest	K	T					
189. Navy Federal Credit Union Accounts	B	Interest	K	T					
190. Virginia Commerce Bank CD	A	Interest	J	T					
191. Burke and Herbert Bank Account	A	Interest	J	T					
192. Wachovia Bank Accounts	B	Interest	K	T					
193. First Republic Bank Account	A	Interest	K	T					
194. Brokerage Account #7 (401-K)									
195. -AGTHX Mutual Fund	C	Dividend	M	T					
196. -ANCFX Mutual Fund	C	Dividend	M	T					
197. -AMECX Mutual Fund	C	Dividend	L	T					
198. -JAVLX Mutual Fund	A	Dividend	L	T					
199. -AHITX Mutual Fund	A	Dividend	J	T					
200. -EMIXX Money Market	A	Dividend	J	T					
201. Northwestern Mutual Joint Complife Insurance Policy	E	Dividend	M	T					
202. New York Life Whole Life Policy	A	Dividend	J	T					
203. Reliastar Life SEC DES II 08/2000 Nationwide	A	Dividend	J	T					
204. SFT Holdings LLC Stock		None	J	U					

1. Income Code (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = \$15,001 - \$50,000	E = \$15,001 - \$50,000 J = \$50,001 - \$100,000
2. Value Code (See Columns C1 and D1)	N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	Q = \$500,001 - \$1,000,000 R = Cont (Ret) Estate Only	S = Assessment V = Other	W = Exempted	
3. Value Method Code (See Column C3)					

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<b>Name of Person Reporting</b> Trenge, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** – Income, value, transactions (includes those of the spouse and dependent children. See pp. 14-17 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
205. Brokerage Account #8 (Closed Oct 2007)-Past Transactions									
206. -ANGLO AMER. ADR 03485P-10-2	A	Dividend							
207. -BNI common stock	A	Dividend							
208. -STZ common stock	A	Dividend							
209. -RRD common stock	A	Dividend							
210. -First Trust Y ALUE LN 100 Mutual Fund	A	Dividend							
211. -FO common stock	A	Dividend							
212. -HNZ common stock	A	Dividend							
213. -KMB common stock	A	Dividend							
214. -NSC common stock	A	Dividend							
215. -ORH common stock	A	Dividend							
216. -EMF Mutual Fund	A	Dividend							
217. -TYCO Int'l Ltd. New	A	Dividend							
218. -UPS common stock	A	Dividend							
219. -WMI common stock	A	Dividend							
220. -WYE common stock	A	Dividend							
221. -AFL common stock	A	Dividend							

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$2,500,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other U = Book Value	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D1)	N = \$2,500,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000				
3. Value Method Codes (See Column C2)					

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**VII. INVESTMENTS and TRUSTS** – Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
222. -BAC common stock	A	Dividend							
223. -BNI common stock	A	Dividend							
224. -CYX common stock	A	Dividend							
225. -C common stock	A	Dividend							
226. -GCI common stock	A	Dividend							
227. -GAIN common stock	A	Dividend							
228. -HD common stock	A	Dividend							
229. -ITW common stock	A	Dividend							
230. -MCD common stock	A	Dividend							
231. -MSFT common stock	A	Dividend							
232. -MSF Mutual Fund	A	Dividend							
233. -PFE common stock	A	Dividend							
234. -WMT common stock	A	Dividend							
235. -WFC common stock	A	Dividend							
236. -UPPR OCCOYA (916277-GA-8) Bond	A	Dividend							
237. -MO common stock	A	Dividend							
238. -AXP common stock	A	Dividend							

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$30,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000 J = More than \$50,000,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 Q = \$5,000,001 - \$25,000,000	R = \$25,000,001 - \$50,000,000 S = Assessment
3. Value Method Codes (See Column C2)	P3 = Appraisal Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	P4 = More than \$50,000,000 S = Assessment W = Estimated	T = Cash Market	

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Name of Person Reporting Trenga, Anthony J	Date of Report 07/21/2008
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**VII. INVESTMENTS and TRUSTS** - Income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
239. -D common stock	A	Dividend							
240. -GE common stock	A	Dividend							
241. -JNJ common stock	A	Dividend							
242. -KFT common stock	A	Dividend							
243. -MOT common stock	A	Dividend							
244. Brokerage Account #9 (IRA) (Closed Oct 2007)-Past Trans.									
245. -CBL&ASSC PPTY preferred stock	A	Dividend							
246. -Equity Inns Inc preferred stock	A	Dividend							
247. -TA common stock	A	Dividend							
248. -JPM CAPTR preferred stock 46623-AA-2	A	Dividend							
249. -Cleveland Electric Bond	A	Dividend							
250. -CODI Electric Stock	A	Dividend							
251. -DEV DIV RLTY 251591-87-1	A	Dividend							
252. -New Plan Excel Realty TR 648990-34-9	A	Dividend							
253. -PS Business Parks 69360J-70-1	A	Dividend							
254. -Penn REIT SER PFD 709102-20-6	A	Dividend							
255. -Second BNCRP CAP TR 81311X-20-0	A	Dividend							

1. Income Gain Codes (See Column B1 and D4)	A = \$1,000 or less F = \$10,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$500,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	P3 = \$25,000,001 - \$50,000,000
3. Value Method Codes (See Column C2)	P3 = Appraisal Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	P4 = More than \$50,000,000 S = Assessment W = Estimated	T = Cash Market	

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<b>Name of Person Reporting</b> Trenga, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
256. --URSTADT BIDL PPTY CL A (UBA)	A	Dividend							
257. --Telecom DE PR 87929SD-Aj-5	A	Dividend							
258. --ARE.C preferred stock	A	Dividend							
259. --AIG common stock	A	Dividend							
260. --ABW.A preferred stock	A	Dividend							
261. --BBRE PYYY Preferred 05564E-40-3	A	Dividend							
262. --BVD Mutual Fund	A	Dividend							
263. --CBL.C preferred stock	A	Dividend							
264. --CDR common stock	A	Dividend							
265. --CDR.A preferred stock	A	Dividend							
266. --C.O. preferred stock	A	Dividend							
267. --OFC.G preferred stock	A	Dividend							
268. --DDR.G preferred stock	A	Dividend							
269. --GOOD common stock	A	Dividend							
270. --GLAD common stock	A	Dividend							
271. --GOODO preferred stock	A	Dividend							
272. --HPT common stock	A	Dividend							

1. Income Gain Codes: (See Column B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000	D = \$5,001 - \$15,000 I = \$500,001 - \$1,000,000 M = \$100,001 - \$250,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	N = \$150,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only)	P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	Q = Appraisal U = Book Value	S = Assessment W = Estimated
3. Value Method Codes (See Column C2)				T = Cash Market	

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Name of Person Reporting Trenga, Anthony J	Date of Report 07/21/2008
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (includes those of the spouse and dependent children. See pp. 14-17 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
273. -NBD common stock	A	Dividend							
274. -NNN C preferred stock	A	Dividend							
275. -OLP common stock	A	Dividend							
276. -PRE.C preferred stock	A	Dividend							
277. -OUJ preferred stock	A	Dividend							
278. -BFS.A preferred stock	A	Dividend							
279. -VMMXX Money Market	A	Dividend							
280. -WFC common stock	A	Dividend							
281. -BARCLAYS BK 06738C-K4-0 taxable bond	A	Interest							
282. -BARCLAYS PERFORMO 06738C-MS-5 taxable bond	A	Interest							
283. -CONSTLTN BRDS STZ16 taxable bond	A	Interest							
284. -Credit Suisse 22541F-DN-3 taxable bond	A	Interest							
285. -Donnelly R RRD14 taxable bond	A	Interest							
286. -Fortune NT 349631-AL-5 taxable bond	A	Interest							
287. -Elect Data STP 285561 AD-6 taxable bond	A	Interest							
288. -Fund Amer Co 36077B-AA-5 taxable bond	A	Interest							
289. -GE Global INSU 36158F-AC-4 taxable bond	A	Interest							

1. Income Code (See Column B) and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Code (See Column C) and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	P4 = More than \$50,000,000 T = Cash Market
3. Value Method Code (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Corp (Real Estate Only) V = Other	P4 = More than \$50,000,000 S = Assessor W = Estimated		

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<b>Name of Person Reporting</b> Trenga, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B Income during reporting period		C. Gross value at end of reporting period			D Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure				
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)	
290. -GTE NTHWEST 36223R-AF-0 taxable bond	A	Interest								
291. -INTL Lease 45974E-AC-0 taxable bond	A	Interest								
292. -Markel Corp MKL 13 taxable bond	A	Interest								
293. -Merrill MTN VAR 59018Y-B6-7 taxable bond	A	Interest								
294. -Nextel Commu 65332V-BH-5 taxable bond	A	Interest								
295. -PRECOR REFNG 74047P-AH-7 taxable bond	A	Interest								
296. -RABOBANK 74977E-NM-1 taxable bond	A	Interest								
297. -Royal Amern Bk 78004T-BG-2 taxable bond	A	Interest								
298. -SLM Corp VAR 78490F-SZ-3 taxable bond	A	Interest								
299. -SG BKSXT 4 CRNCO 78422X-LK-7 taxable bond	A	Interest								
300. -SG CMS SPRD VAR 78422X-NH-2 taxable bond	A	Interest								
301. -Washington 939671-AB-9 taxable bond	A	Interest								
302. Brokerage Account #10(IRA) (Closed Oct 200) Past Trans.										
303. -BBV Mutual Fund	A	Dividend								
304. -BGR Mutual Fund	A	Dividend								
305. -WSHCX	A	None								
306. -Markel Corp taxable bond 570535-AE-4	A	Interest								

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$10,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$10,000 I = More than \$5,000,000	E = \$10,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	P3 = More than \$25,000,000
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	P4 = More than \$50,000,000 S = Assessment W = Estimated	T = Cash Market	

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<b>Name of Person Reporting</b> Trenga, Anthony J	<b>Date of Report</b> 07/21/2008
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or mt.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure				
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)	
307. USAA S&P 500 Index Fund	A	Dividend								
308. Robert W. Baird & Co. checking and cash management accounts	B	Interest								
309. DRYFUSS money market accounts GGM 370375206 & GMA 370375107	B	Interest								

1. Income Gain Codes (See Column B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I1 = \$1,000,001 - \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000 I2 = More than \$5,000,000
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Name of Person Reporting	Date of Report
Trenga, Anthony J	07/21/2008

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

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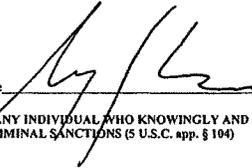
Name of Person Reporting	Date of Report
Trenga, Anthony J	07/21/2008

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature



Date

July 21, 2008

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

**FINANCIAL STATEMENT**  
**NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		100	000	Notes payable to banks-secured			
U.S. Government securities-add schedule		9	500	Notes payable to banks-unsecured			
Listed securities-add schedule	3	524	167	Notes payable to relatives			
Unlisted securities--add schedule		176	410	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends		40	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule	1	051	000
Real estate owned-add schedule	1	500	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		245	400	Auto lease		9	600
Cash value-life insurance		242	600				
Other assets itemize:							
				Total liabilities	1	060	600
				Net Worth	4	777	477
Total Assets	5	838	077	Total liabilities and net worth	5	838	077
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	Yes		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

**FINANCIAL STATEMENT****NET WORTH SCHEDULES**U.S. Government Securities

Morgan Stanley MS US Govt Sec TR B Mutual Fund	\$ 9,500
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Listed Securities

Robert W. Baird & Co. Brokerage Account # I	
-money market account	\$ 353,600
-AIG common stock	27,300
-BAC common stock	22,900
-BRKZB common stock	68,000
-CPB common stock	55,200
-CNI common stock	49,600
-CTAS common stock	42,600
-DEO common stock (ADRs)	53,400
-D common stock	57,400
-FO common stock	26,800
-GE common stock	50,600
-GAIN common stock	11,500
-ISCA common stock-A	26,300
-IYZ common stock (index fund)	38,500
-JNJ common stock	41,200
-MCD common stock	45,900
-MSFT common stock	53,100
-NGG stock (ADRs)	41,100
-ORCL common stock	9,800
-PFE common stock	37,600
-PBI common stock	52,200
-PGN common stock	51,600
-GLD	21,500
-TFX common stock	53,300
-UL stock (ADRs)	49,000
-UPS common stock	41,500
-UTX common stock	48,000
- VLO common stock	35,900
-WMT common stock	30,900
-WAG common stock	54,400
-WFSL common stock	51,500
-WMI common stock	59,300
-WRI common stock	49,200
-WTM common stock	26,900
-WYE common stock	43,600

-40952MAPO tax exempt Bd. Hampton, VA	10,500
-42605MBH4 tax exempt Bd. (Henrico, VA)	10,200
-927780YEO tax exempt Bd. (Va. St.)	15,600
-927780UTI tax exempt Bd. (Va. St.)	10,000
-SGENX mutual fund	37,800
Sub-Total	\$ 1,865,300

## Robert W. Baird &amp; Co. Brokerage Account #2 (IRA)

-Money market VMMXX	25,800
-AIG common stock	6,800
-BDV common stock	16,100
-CDR common stock	15,500
-COD I stock	19,000
-DRH common stock	14,400
-GLAD common stock	17,800
-GOOD common stock	10,700
-HPT common stock	16,900
-IEF common stock	17,200
-OLP common stock	17,000
-ARE.C preferred stock	25,300
-ABW.A preferred stock	14,600
-CCPCN preferred stock	20,000
-CBL.C preferred stock	13,200
-CDR.A preferred stock	24,300
-C.O preferred stock	21,700
-OFG.G preferred stock	9,600
-DDR.G preferred stock	18,700
-GOODO preferred stock	12,000
-NNN.C preferred stock	23,000
-NBD preferred stock	8,800
-PRE.C preferred stock	12,600
-OUI preferred stock	20,200
-BFS.A preferred stock	9,700
-American Gen. taxable bond 02635PTB9	23,300
-Barclays Bank taxable bond 06738CK40	28,900
-Barely Perform taxable bond 06738CMS5	23,500
-Constltn Brds taxable bond 21036PADO	19,600
-Credit Suisse taxable bond 22541FDN3	20,400
-Dayton Hudson taxable bond 239753BK1	22,000
-Donnelley R taxable bond 257867AM3	18,500
-Elec Data Stp taxable bond 285661AD6	20,900
-Fortune Nt taxable bond 349631AL5	27,700
-Fund American Co taxable bond 36077BAA5	28,700
-GE Global Insu taxable bond 36158FAC4	10,400
-Genwrth Fnl taxable bond 37247XAE2	24,700
-GTE Nthwest taxable bond 36233RAF0	30,500

-GTE Nthwest taxable bond 36233RAG8	10,000
-Markel Corp taxable bond 570535AF1	30,600
-Morgan Comdts taxable bond 6174464T3	19,900
-Morgan Stanley taxable bond 6174462G3	24,400
-Nabisco Inc taxable bond 629527AU6	32,100
-Nextel Commu taxable bond 65332VBH5	25,400
-Premcor Refng taxable bond 74047PAH7	20,800
-Royal Amern Bk taxable bond 78004TBG2	25,100
-SLM Corp Var taxable bond 78490FSZ3	16,600
-Toyota Mtr Var taxable bond 89233PV37	29,700
-Verizon Vir taxable bond 92345NAA8	19,200
-Xerox Corp taxable bond 98412BM4	20,700
Sub-Total	\$ 984,500

## Robert W. Baird &amp; Co. Brokerage Account #3 (IRA)

- money market CLASS A 196	1,600
- BDV stock	2,100
- BGR stock	3,600
- BALCX mutual fund	3,700
- GLD	8,700
- WSHCX mutual fund	2,900
Sub-Total	\$ 22,600

## Robert W. Baird &amp; Co. Brokerage Account #4

-Money Market	2
-BRKZB	12,700
-WSHCX	1,000
Sub-Total	\$ 13,702

## Charles Schwab Brokerage Account

-MO common stock	9
-AXP common stock	37
-AIG common stock	3,600
-BAC common stock	3,300
-BMJ common stock	4
-C common stock	2,600
-DIS common stock	2
-D common stock	44
-GE common stock	3
-INTC common stock	18
-SJM common stock	1
-JNJ common stock	23
-MOT common stock	8
-ORCL common stock	7
-PFE common stock	6,200

-PG common stock	160
-SVNT common stock	16
-TXN common stock	15
-Money Market Acct.	2,141
Sub-Total	\$ 18,188
ING Pension IRA	
-Oppenheimer Global Port.- I	1,900
UBS Account #1	
-GE common stock	7,000
-Money Market	1,700
-Pace Large Co. Value Equity Investment Fund Class A Mutual Fund	2,900
Sub-Total	\$ 11,600
UBS Account #2	
-Money Market	4,100
-American Funds Cap Income Builder Fund CI A Mutual Fund	5,300
-Putnam New Opportunity Fund CI A Mutual Fund	3,600
-Pace Large Co. Value Equity Investment Fund Class A Mutual Fund	1,400
-Eastgrowth Tsy Strpd Cpn	4,900
-Treasury Investment Growth	3,800
Sub-Total	\$ 23,100
UBS Account #3 (Sep)	
-Pace Int'l Equity Investment Fund Class A Mutual Fund	800
Citi/Smith Barney Legg Mason Opportunity Trust Primary Class Mutual Fund	3,000
Janus Fund(Jansx)	9,500
IBM Common Stock	9,000
DOMINION RESOURCES INC Common Stock	34,700
American Century Growth Mutual Fund (TWXCGX)	2800

Wachovia Brokerage Account (401-K) (As Of  
5/31/08)

-AGTHX Mutual Fund	199,028
-ANCFX Mutual Fund	178,389
-AMECX Mutual Fund	83,810
-JAVLX Mutual Fund	49,195
-AHITX Mutual Fund	55
Sub-Total	\$ 510,477

USAA S&P 500 INDEX FUND	13,000
Total Listed Securities	\$ 3,524,167

Unlisted Securities

FISERV IRA-Crealde note	\$ 31,600
Law Firm Stock	142,510
SFT Holdings LLC stock	2,300
Total Unlisted Securities	\$ 176,410

Real Estate Owned

Personal residence	\$ 1,500,000
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Real Estate Mortgages Payable

Personal residence	\$ 1,051,000
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Assets Pledged – Personal Residence

AFFIDAVIT

I, Anthony John Trenga, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

July 24, 2008  
(DATE)

[Signature]  
(NAME)

[Signature]  
(NOTARY)

DISTRICT OF COLUMBIA, ss:

Subscribed and sworn to before me this 24<sup>th</sup> day of July, 2008.

[Signature]  
Notary Public

My commission expires 7/14/13.

Chairman LEAHY. Which indicates he is—being from Virginia and nearby. I appreciate that. I'd note that we'll put in the record your background and the fact that you're a partner at the DC law firm of Miller & Chevalier, and so on.

**STATEMENT OF C. DARNELL JONES, II, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Then if I could have Judge Jones, who is a judge on the Philadelphia Court of Common Pleas, the highest trial court in the Commonwealth of Pennsylvania. He's been there 21 years. He was elected president judge by the judges of the Court of Common Pleas in 2006. Prior to becoming a judge, he was an Office Assistant in the Citizens Crime Commission and practiced law at the Defender Association of Philadelphia. And down through—and I will put, again, in the record his whole background, which is significant.

I would note that Judge Srika, Tony Srika, took me aside at the Supreme Court the other day and praised you—not very much—Judge Jones.

Could you please introduce any members of your family who are here?

Mr. JONES. Yes, sir. Good afternoon, Mr. Chairman. Thank you again for the honor of being here, Senator Specter. My wife, Evelyn Jones, my daughter, Sheinelle Jones, my daughter, Dr. Keesha Elliott, my daughter, Antonia Jones, and my son-in-law, Uche Ojeh. And my close friend from law school, Judge Reggie Walton and his daughter Dannin.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** Full name (include any former names used).

Cardozie Darnell Jones, Jr.  
C. Darnell Jones II

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Eastern District of Pennsylvania

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: Office of the President Judge  
Room 386 City Hall  
Philadelphia, PA 19107

4. **Birthplace:** State year and place of birth.

1949; Claremore, Oklahoma

5. **Marital Status:** (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

I am married to Evelyn Antonia Jones (Pre-marriage-Evelyn Antonia Williams).  
She is employed with the Defender Association of Philadelphia-Federal Division, Capital Habeas Unit; 601 Walnut St., Suite 545 West Curtis Ctr; Independence Sq. West; Philadelphia, PA 19106.  
We have no dependent children.

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1972 – 1975, The American University - Washington College of Law; Juris Doctor, 1975

1968 – 1972, Southwestern College; B.A., 1972

7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Employment:

1987 – present  
 Administrative Office of Pennsylvania Courts (Philadelphia Court of Common Pleas)  
 5001 Louise Drive  
 Mechanicsburg, PA 17055-0719  
 Judge, Court of Common Pleas, 1987 – present  
 President Judge, Court of Common Pleas, 2006 – present

March 1987 – November 1987  
 Citizens Crime Commission  
 1518 Walnut St, Suite 902  
 Philadelphia, PA 19102  
 Office Assistant

1975 – 1987  
 Defender Association of Philadelphia  
 111 S 15th St # 111  
 Philadelphia, PA 19102  
 Chief, Family Court Division, 1985-1987  
 Assistant Chief, Family Court Division, 1979-1985  
 Special Defense Unit, 1979  
 Trial attorney, 1976-1987

1974 – 1975  
 Pratt, Bowers and Queen  
 Washington, DC  
 Part-time law clerk

1973 – 1974  
 Federal Filing Service  
 Chevy Chase, MD  
 Part-time package delivery

1972 – 1973  
 Sears  
 Chevy Chase, MD  
 Part-time stock clerk

Faculty Positions:

1998 – present  
 The National Judicial College  
 Judicial College Building/MS 358  
 Reno, NV 89557  
 Instructor, Curriculum developer  
 (All judicial faculty are volunteers)

1993 – present  
 The University of Pennsylvania School of Law  
 3400 Chestnut St.  
 Philadelphia, PA 19104  
 Adjunct Professor (Salaried)

1992 – 1996  
 Temple University Beasley School of Law  
 1719 No. Broad Street  
 Philadelphia, PA 19122  
 Adjunct Professor (Salaried)

1991 – 1992  
 St. Joseph's University - School of Criminal Justice Graduate Program  
 5600 City Avenue  
 Philadelphia, PA 19131-1395  
 Adjunct Professor (Salaried)

1984 – 1985  
 The National Institute of Trial Advocacy  
 Volunteer faculty

Other Affiliations:

American College of Business Court Judges- Board of Directors -2006 to present)

Salvation Army Advisory Board

New Directions For Women Advisory Board

Zion Baptist Church-Board of Trustees

8. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

I did not serve in the military.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

In my campaign for Pennsylvania Supreme Court (Spring 2007):  
 Pennsylvania Bar Association rating: "Highly Recommended for Pennsylvania Supreme Court"

Endorsed by Hon. Edward G. Rendell, Governor

Endorsed for Pennsylvania Supreme Court by the following newspapers:

Philadelphia Inquirer, Philadelphia Daily News, Pittsburgh Post Gazette, Philadelphia Tribune, Philadelphia Courier, Allentown Morning Call, Reading Eagle

500 leading judges in America by Lawdragon magazine

Martin Luther King, Jr. Award for Social Justice

Brandeis Law Society Award for Community Service

Thurgood Marshall Award

Hurricane Katrina Volunteer

Public Internet Rating by Citizens—[www.ratephillyjudges.com](http://www.ratephillyjudges.com)

Inductee, Claremore Public School Foundation Hall of Fame, Claremore, OK

Benjamin Lerner Career Achievement Award

Outstanding Young Men in America

Stakeholder in Juvenile Justice Award

Southwestern College-Honor Roll; Moundbuilders

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association-Judicial Section; Business Law Section

Selected as a Business Court Representative to the Business Law Section of the ABA 2008. Selected as Business Court Liaison to the Judicial Section of the ABA effective August 11, 2008.

American College of Business Court Judges

Member, Board of Directors -2006 to present

Barristers Association

National Conference of State Trial Judges

National Bar Association

Pennsylvania Bar Association

Philadelphia Bar Association-Judicial Selection and Retention Committee

Supreme Court of Pennsylvania- Judicial Auditing Agency (Audits Supreme Court's budget); Judicial Council of Pennsylvania; 02/06-Present

Chair, Administrative Governing Board First Judicial District (Philadelphia)

Judicial Education Committee

Chair, Computer and Technology Committee

Chair, Committee on General Rules

11. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Pennsylvania - April 26, 1976 to Present

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Commonwealth of Pennsylvania courts – 1976

United States District Court for the Eastern District of Pennsylvania – 1976

There have been no lapses in membership.

12. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or

participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Salvation Army Advisory Board; Appointed Spring 2008  
 The Junior Legal Club; Admitted Spring 2008  
 The University of Pennsylvania American Inn of Court; 1998-Present  
 Crime Prevention Association; 1980's  
 Family Support Services; 1980's  
 Fellowship Commission; 1980's  
 The Citizens Crime Commission; March 1987 - November 1987  
 New Directions For Women Advisory Board; 2007-Present  
 Oak Lane Community Action Association; 1989-Present  
 Sleighton School; 1980's  
 Zion Baptist Church; 1977-Present

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of these organizations discriminates on the basis of race, sex, or religion.

13. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

*"Pretrial Matters Unique to Capital Cases"* National Judicial College (Course taught yearly, 2000-Present) [Modified to teach specific states' laws at each presentation]

*"Pretrial Matters Unique to Homicide Cases"* Coursebook for the Kansas Judicial Conference, taught June 9, 2008

*"Trial Matters Unique to Capital Cases"* National Judicial College (2000 to Present) [Modified to teach specific states' laws at each presentation]

*"Criminal Evidence"* National Judicial College (Course taught yearly, 1998-2006) [Curriculum modified to teach state judges and US military judges.]

*"Drug Testing in the Workplace"* Criminal Defense Techniques, Matthew Bender & Co., Inc. (2001) (Updated existing chapter)

*"Sentencing"* Prosecution and Defense of Sex Crimes, Matthew Bender & Co., Inc. (1997) (Rewrote existing chapter)

*"Assignment of Counsel in State Courts"* Criminal Defense Techniques, Matthew Bender & Co., Inc. (1997) (Rewrote existing chapter)

*"Presenting the Direct Case-Foundations for Evidence"* Criminal Law Advocacy, Matthew Bender & Co., Inc. (1996) (Rewrote existing chapter)

- b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None

- c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None

- d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

Presidents Day and George Washington's Birthday - National Museum Of American Jewish History; February 18, 2008

Campaign advertisement for Supreme Court of Pennsylvania candidacy; Spring 2007

Supreme Court Campaign Announcement; January 17, 2007

"On The Occasion Of The Inaugural Swearing-In Ceremony Of President Judge C. Darnell Jones, II; January 20, 2006

Address to the State Civil Committee, Philadelphia Bar Association; June 2, 2004

- e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have given numerous interviews to editorial boards, however the subsequent editorials were the statements and opinions of the editors, with references to me, and a brief quote here and there.

"10 Questions for President Judge C. Darnell Jones II", The Philadelphia Lawyer, Philadelphia Bar Association Magazine Summer 2006

Pennsylvania Cable Network (PCN) broadcasted an interview with me (and all Pennsylvania appellate court candidates) in May 2007. I am unable to retrieve a recording of the broadcast.

Case In Point (Magazine of the National Judicial College) Winter/Spring 2006  
 "Saved by Gumbo and Brotherly Love"  
[http://www.judges.org/pdf/caseinpoint\\_winter06.pdf](http://www.judges.org/pdf/caseinpoint_winter06.pdf)

Philadelphia Inquirer, Sunday, July 6, 2008

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have served as a Judge on the Philadelphia Court of Common Pleas since 1987. I was appointed by Governor Robert P. Casey in November 1987 and subsequently elected to a ten year term in November 1987. I was retained for a ten year term in November 1997 and again in November 2007.

The Court of Common Pleas in Pennsylvania is a court of General Jurisdiction. It is the highest trial court in the Commonwealth of Pennsylvania.

15. **Citations:** If you are or have been a judge, please provide:

- a. citations for all opinions you have written (including concurrences and dissents);

Our state trial courts' opinions are not published, and thus, there are no citations except for the case caption at the trial level. However, I have authored well over

four hundred trial court opinions in the last twenty and one-half years as a trial judge.

- b. a list of cases in which certiorari has been requested or granted;

None

- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

In over twenty years as a state trial judge, having authored over 400 trial court opinions, no appellate court has ever criticized my substantive or procedural rulings. Please note that trial court opinions are not published. They are forwarded to the appellate court after an appeal from the trial court verdict has been filed.

Cases reversed on appeal:

Plotkin v. Prudential Fox & Roach, Sept. Term, 1999 No. 2889 (C.P. 1st Dist. Aug. 1, 2001), aff'd in part rev'd in part, No. EDA 2001 (Super. Ct. filed April 8, 2002) (The allowance of punitive damages was found to be in error).

Fine v. Checchio, et al., Aug. Term, 2000 No. 0315 (C.P. 1st Dist. Oct. 9, 2002), rev'd, No. 2757 EDA 2002 (Super. Ct. filed May 22, 2003), aff'd, No. 55 EAP 2003 (Sup. Ct. argued Apr. 15, 2004) (Trial court denied Defendant Checchio's Motion for Summary Judgment but granted said relief for Co-Defendant Rice. The Pennsylvania Superior Court reversed the trial court in both instances. The Pennsylvania Supreme Court subsequently reversed the Superior Court, ruling that neither Defendant was entitled to summary judgment).

Cargitlada v. Binks Mfg. Co., April Term, 1999 No. 2981 (C.P. 1st Dist. Jan. 24, 2003), rev'd, No. 3790 EDA 2002 (Super. Ct. filed Nov. 25, 2003) (Trial Court erred in granting Motion to Strike Judgment. Case was remanded for trial court to determine if facts supported a Petition to Open. On remand, trial court found that facts did support a Petition to Open and said decision was affirmed on appeal.)

In Re Petition to Contest Nomination of Anthony Payton as Democratic Candidate in 179th Legislative District, 1781 CD 2006, reversed 10-04-06.  
Summary- In reversing the order of the Court of Common Pleas of Philadelphia County, the Commonwealth Court concluded that Petitioners had not set forth specific allegations of fraud or error to warrant a re-canvass of the votes in the subject election districts

Banacol Marketing Corp. v. Penn Warehousing, 17 CD 2006, Affirmed in part, reversed in part 8-11-06. Affirmed in part and reversed in part by *Banacol Mktg.*

*Corp. v. Penn Warehousing & Distrib.*, 904 A.2d 1043, 2006 Pa. Commw. LEXIS 442 (Pa. Commw. Ct., Aug. 11, 2006)

Summary - The trial court sustained the city port authority's preliminary objections and dismissed all of the corporation's claims against the authority.

*Limbach Co. v. City of Philadelphia*, 1575 CD 2005, reversed remanded 7-24-06. Supplemental opinion at *Limbach Co. LLC v. City of Phila.*, 2005 Phila. Ct. Com. Pl. LEXIS 457 (2005) Reversed by *Limbach Co., LLC v. City of Philadelphia*, 905 A.2d 567, 2006 Pa. Commw. LEXIS 399 (Pa. Commw. Ct., July 24, 2006) Summary- Plaintiff subcontractors sued defendants, a city and the Philadelphia, Pennsylvania, Authority for Industrial Development (PAID), asserting claims of quantum meruit and constructive trust against PAID and a claim of quantum meruit against the city. The city and PAID moved for summary judgment; the subcontractors filed a motion to reconsider the dismissal of claims under which they sought relief as third-party beneficiaries of a development lease.

*D.C. K.C. & K.J. v. School District*, Affirmed in part and reversed in part by *D.C. v. Sch. Dist. of Phila.*, 879 A.2d 408, 2005 Pa. Commw. LEXIS 399 (Pa. Commw. Ct., July 20, 2005) Summary- Plaintiff students filed a class action against defendant school district alleging that 24 Pa. Stat. Ann. § 21-2134 was unconstitutional. The students were previously adjudicated delinquent pursuant to 42 Pa.C.S. § 6341 and faced alternative educational placement under 24 Pa. Stat. Ann. § 21-2134 when they sought to return to regular public school programs after successful completion of a residential placement.

*Tesauro v. Quigley*, 3490 EDA 2006, vacated/remanded Vacated by, Remanded by, Without opinion *Tesauro v. Quigley Corp.*, 2008 Pa. Super. LEXIS 818 (Pa. Super. Ct., Feb. 19, 2008) Summary- Plaintiffs, a class of persons who bought a cold medicine (consumers), sued defendant drug manufacturer for unjust enrichment and breach of an implied warranty based on false assertions on the label. The trial court granted the manufacturer's motion in limine and found that the claims were expressly preempted by the Food and Drug Modernization Act, 21 U.S.C.S. § 379(r).

*Thomas Jefferson v. Wapner*, Reversed by, Remanded by, Without opinion by *Thomas Jefferson Univ. v. Wapner*, 2007 Pa. Super. LEXIS 3367 (Pa. Super. Ct., July 24, 2007) Summary- Plaintiff universities asserted causes of action against defendant professors for, inter alia, breach of contract. The professors asserted counterclaims for violation of Pennsylvania's Wage Payment and Collection Law (WPCL), 43 Pa. Stat. Ann. 260.1 et seq. The jury returned a verdict in favor of the professors on the universities' claims and for one professor on the WPCL claim. The parties moved for attorneys' fees and costs.

*Rambo v. Greene*, 2126 EDA 2005, reversed/remanded 8-23-06 Summary-In relation to a medical malpractice action, an appellant sought treatment from the doctor, who prepared two expert opinions in preparation for the suit. The doctor

refused to testify at the trial despite being subpoenaed. As a result of the doctor's absence, a non-suit was entered in the malpractice action. The order sustaining the preliminary objections and dismissing Appellants' Amended Complaint, with respect to breach of an implied contract only, is reversed.

Temple University Health System v. National Union Fire, 625 EDA 2005/429  
EDA 2005, Later proceeding at *Temple Univ. Health Sys. v. Nat'l Union Fire Ins. Co.*, 2005 Phila. Ct. Com. Pl. LEXIS 1 (2005)

Affirmed in part and reversed in part by, Without opinion by *Temple Univ. Health Sys. v. Nat'l Fire Union Co.*, 898 A.2d 1143, 2006 Pa. Super. LEXIS 560 (Pa. Super. Ct., Mar. 30, 2006) Summary- Plaintiff insureds, three corporations and individual officers and directors of the corporations, sued defendant insurer seeking a declaration that the insurer had a duty under a management liability policy to defend and indemnify the corporate insureds and indemnify the individual insureds in a lawsuit filed against the insureds. The insurer filed a motion for judgment on the pleadings.

Café Parissa v. 1601 Associates, et. al., 3380 EDA 2004,  
affirmed/reversed/remanded 7-13-05. Affirmed in part and reversed in part by, Remanded by, Without opinion by *Cafe Parissa v. 1601 Assocs.*, 883 A.2d 684, 2005 Pa. Super. LEXIS 3632 (Pa. Super. Ct., 2005); Supplemental opinion at *Cafe Parissa, Inc. v. 1601 Assocs.*, 2005 Phila. Ct. Com. Pl. LEXIS 69 (2005) Summary- The trial court entered judgment in favor of the landlord on the trespass and conversion to chattel count of the complaint. The court found in favor of the tenant on the breach of contract count of the complaint and entered judgment for the amount of damages sought by the tenant.

Margaret Auto Body v. Universal Underwriters Group, et. al., Affirmed in part and reversed in part by, Remanded by, Without opinion by *Margaret Auto Body v. Universal*, 885 A.2d 593, 2005 Pa. Super. LEXIS 5096 (Pa. Super. Ct., Aug. 10, 2005) Summary- Plaintiff insureds filed an action against defendant insurance companies alleging breach of contract, bad faith, and malicious prosecution. The insurance companies filed motions for summary judgment on the grounds that the breach of contract and bad faith claims were time barred and the insureds failed to demonstrate in their malicious prosecution claim that the insurance companies instituted criminal proceedings against the insureds.

- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

Plotkin v. Prudential Fox & Roach, Sept. Term, 1999 No. 2889 (C.P. 1st Dist. Aug. 1, 2001), aff'd in part rev'd in part, No. EDA 2001 (Super. Ct. filed April 8, 2002)

Fine v. Checchio, et al., Aug. Term, 2000 No. 0315 (C.P. 1st Dist. Oct. 9, 2002), rev'd, No. 2757 EDA 2002 (Super. Ct. filed May 22, 2003), aff'd, No. 55 EAP 2003 (Sup. Ct. argued Apr. 15, 2004)

Cargitlada v. Binks Mfg. Co., April Term, 1999 No. 2981 (C.P. 1st Dist. Jan. 24, 2003), rev'd, No. 3790 EDA 2002 (Super. Ct. filed Nov. 25, 2003)

In Re Petition to Contest Nomination of Anthony Payton as Democratic Candidate in 179th Legislative District, 1781 CD 2006, reversed 10-04-06.

Banacol Marketing Corp. v. Penn Warehousing, 17 CD 2006, reversed in part 8-11-06

Limbach Co. v. City of Philadelphia, 1575 CD 2005, reversed remanded 7-24-06.

D.C. K.C. & K.J. v. School District, affirmed in part/reversed, 7-20-05.

Tesauro v. Quigley, 3490 EDA 2006, vacated/remanded

Thomas Jefferson v. Wapner, reversed/remanded in part, 7-24-07

Rambo v. Greene, 2126 EDA 2005, reversed/remanded 8-23-06

Temple University Health System v. National Union Fire, 625 EDA 2005/429 EDA 2005, affirmed in part/reversed, 3-30-06.

Café Parissa v. 1601 Associates, et. al., 3380 EDA 2004, affirmed/reversed/remanded 7-13-05.

Margaret Auto Body v. Universal Underwriters Group, et. al., affirmed/reversed/remand, 8-10-05.

- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and

I have authored well over four hundred opinions since becoming a trial judge over twenty years ago. It was not uncommon to preside over five bench trial per day for three weeks per month when I began in 1987. Whenever an appeal was filed, I wrote an opinion to support the verdict of the trial court, and forwarded the record to the appellate court. Those trial court opinions are unpublished. I have maintained the majority of trial opinions on my computer records.

- f. citations to all cases in which you were a panel member in which you did not issue an opinion.

None; I have not served as a panel member.

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

*Fine v. Checchio*, Aug. Term, 2000 No. 0315. Attorney George Szymanski represented himself in an interpleader action, seeking counsel fees. Court issued a Rule to Show Cause why Mr. Szymanski's Fourth Amended Complaint should not be dismissed. Attorney Szymanski sought recusal via written correspondence to the Court on the basis that the Court issued the Rule to Show Cause sua sponte and because opposing counsel allegedly made a comment to Mr. Szymanski on the telephone that they and their law firm were "very friendly" with the Court. Opposing counsel also allegedly stated that as a result, Mr. Szymanski would have "little chance of prevailing in [his] claims for attorney fees." This Court heard argument from both sides on the issue and although the statements regarding the Court's familiarity with opposing counsel were wholly inaccurate, the Motion for Recusal was granted to avoid any appearance of impropriety.

*Commonwealth v. John Wayne*, Dec. Term, 1994, No. 0698. Subsequent to this Court issuing its decision in a protracted capital post conviction matter, counsel for Defendant sought recusal on the basis of an article appearing in the Philadelphia Daily News. Said newspaper inadequately quoted this Court regarding his alleged interest in potentially seeking the office of District Attorney. In response, this Court issued an Order which stated in part that "In view of Petitioner's sealed motion, the Court hereby vacates its Opinion and Order of January 30, 2008, to allow for the deliberate and conscientious consideration of

the issues raised therein." Subsequent to issuance of the Order, the Commonwealth filed a brief in opposition to the recusal request and counsel for Defendant filed a response to the Commonwealth's brief. After reviewing all submissions and conducting a lengthy on-the-record discussion of the matter by and between the Court and counsel, this Court concluded that absolutely no conflict existed. As such, Defendant's Motion was denied and the Court reinstated its original Opinion denying post-conviction relief for Defendant.

17. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have held no public offices, other than judicial offices. I have had no unsuccessful nominations for appointed office. In 2007 I was an unsuccessful candidate in the Democratic primary election for the Pennsylvania Supreme Court.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None

18. **Legal Career:** Please answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1987 – present  
Administrative Office of Pennsylvania Courts  
Philadelphia Court of Common Pleas  
5001 Louise Drive  
Mechanicsburg, PA 17055-0719  
Judge, Court of Common Pleas, 1987 – present  
President Judge, Court of Common Pleas, 2006 – present

March 1987 – November 1987  
Citizens Crime Commission  
1518 Walnut St, Suite 902  
Philadelphia, PA 19102  
Office Assistant

1975 – 1987  
Defender Association of Philadelphia  
111 S 15th St # 111  
Philadelphia, PA 19102  
Chief, Family Court Division, 1985-1987  
Assistant Chief, Family Court Division, 1979-1985  
Special Defense Unit, 1979  
Trial attorney, 1976-1987

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

I began my practice as an Assistant Public Defender in 1975, representing indigent defendants charged with criminal offenses. I've tried virtually every kind of criminal case there is. During my tenure there as a Trial Attorney, the Defender Association of Philadelphia was not allowed to represent defendants charged with murder.

In 1979, I became Deputy Chief of the Family Court Division, which represents indigent juvenile defendants charged with delinquent (criminal) offenses. In 1985 I became Chief of the Family Court Division. In 1987, I became the first Assistant Public Defender in the 50 year history of that office who was appointed directly to the bench by a Governor.

- ii. your typical clients and the areas, if any, in which you have specialized.

I represented indigent criminal defendants.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

- i. Indicate the percentage of your practice in:
1. federal courts: 100%
  2. state courts of record:
  3. other courts:

- ii. Indicate the percentage of your practice in:
1. civil proceedings:
  2. criminal proceedings: 100%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

From 1976 to 1987, I tried hundreds of non-jury cases and approximately 8 cases to juries.

- i. What percentage of these trials were:
1. jury: 2%
  2. non-jury: 98%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I was an Assistant Public Defender over 21 years ago. Many cases were complex major trials, jury and non-jury. I cannot remember the most significant ones. Therefore, in lieu of cases, I am providing a list of professional references.

Hon. Lynn Abraham, District Attorney of Philadelphia  
215-686-8701

Hon. Jacqueline Allen, Judge, Court of Common Pleas, Philadelphia  
215-686-7038

Mr. Mitchell Bach, Esquire, American Bar Association Representative and  
Business Court specialist  
215-851-8466

Honorable Amanda Cooperman, Judge, Court of Common Pleas; (former  
adversary in the Office of the District Attorney when I was an Assistant Public  
Defender)  
215-683-7080

Honorable Kevin Dougherty, Administrative Judge, Family Division  
215-686-7970

Hon. William Dressel, President, National Judicial College  
775-327-8262

Dr. Stephen Feiler, Dir. Of Judicial Education, Administrative Office of  
Pennsylvania Courts  
717-795-7460

Ellen Greenlee, Esquire, Chief, Defender Association of Philadelphia  
267-765-6600

Hon. Chester Harhut, Immediate Past President, Pennsylvania Conference of State  
Trial Judges  
570-963-6306

Mr. Ronald Harper, Esquire, Chairman, Board of Trustees, Zion Baptist Church (I  
am a member of this church, and former Trustee.)  
215-844-4848

Hon. Nazario Jimenez, Judge, Municipal Court of Philadelphia  
215-683-7232

Hon. D. Webster Keogh, Administrative Judge, Trial Division  
215-686-2602

Ms. Sayde Ladov, Chancellor-elect, Philadelphia Bar Association  
215-587-0840

Hon. Benjamin Lerner, Judge, Court of Common Pleas, Philadelphia  
215-683-7077

Ms. Lynn Marks, President, Pennsylvanians for Modern Courts  
215-569-1150

Hon. Michael Nutter, Mayor, City of Philadelphia  
215-686-2160

Professor Edward Ohlbaum, Temple University Beasley School of Law  
215-204-1856

Hon. George Overton, Judge, Court of Common Pleas, Philadelphia  
215-683-7103

Zygmunt Pines, State Court Administrator, Administrative Office of Pennsylvania  
Courts  
215-560-6337

Mr. Michael Pratt, Chancellor, Philadelphia Bar Association  
215-981-4386

Mr. Eliot B. Present, Esquire (Mr. Present was an Assistant District Attorney  
against whom I tried cases as an Assistant Public Defender.)  
215-735-9200

Hon. Lisa Rau, Judge, Court of Common Pleas, Philadelphia  
215-686-3768

Hon. Edward G. Rendell, Governor, Commonwealth of PA  
717-787-2500

Mr. Andrew Susko, Esquire, Immediate past President, Pennsylvania Bar  
Association  
215-864-6228

Hon. Ben Tennille, North Carolina Business Court, ABA Business Court Liaison  
336-334-5260

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities

and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activities I have pursued in past twenty years on the bench have been centered on teaching state trial judges, military judges, lawyers and law students. I have also become very active in the area of Business Courts for the American Bar Association, and served in the Business Court (Commerce Case Management Program) in Philadelphia. I am the Business Court Representative to the American Bar Association's Business Law Section, Appointed as the Business Court Liaison for Judicial Section and Business Law Section of the ABA (effective 8.11.08), and serve as a member of the Board of Directors of the American College of Business Court Judges.

21. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

1998 to Present

The National Judicial College

Special Problems in Criminal Evidence NJC-Reno, NV  
Handling Capital Cases (Charleston, Chicago, New Orleans, Reno, Seattle, Pennsylvania)

1993 to Present

The University of Pennsylvania School of Law  
Trial Advocacy

1992 to 1996

Temple University Beasley School of Law  
Trial Advocacy

1991 to 1992

St. Joseph's University - School of Criminal Justice Graduate Program  
"Court Administration"

1984 to 1985

The National Institute of Trial Advocacy

Seminars Taught:

Alabama Judicial Education; (scheduled Sept. 2008)  
Kansas Judicial Education; June 2008  
Arizona Judicial Education; 2007  
Supreme Court of Pa Capital Litigation for Trial Judges; 2007  
New Jersey Judicial Education; 2004  
Pennsylvania Bar Institute-August 13, 2008 Trial of a Felony Case

22. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I anticipate being able to begin collecting my state judiciary pension the day I leave office from my position as a state court judge. According to the estimate I have been provided from the State Employee Retirement System, I will be eligible to collect approximately \$8,280.04 (Eight Thousand Two Hundred Eighty Dollars and four cents) per month.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

The decision on any outside employment would be made after conferring with the Chief Judge of the court. I would like to continue teaching at the University of Pennsylvania Law School.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report

25. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

The parties, categories of litigation, and financial arrangements that may present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include those attorneys and or litigants who may appear before me who contributed to my Spring 2007 Campaign for a seat on the Pennsylvania Supreme Court. Since I made every effort not to know who

contributed, I have publicly stated on various occasions that the campaign finance records are public, and if any attorney or party made a motion for recusal on that basis, I would gladly grant the recusal motion to avoid any appearance of impropriety.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In all situations, I will consult and comply with the Code of Conduct for United States Judges.

27. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While I have not practiced law for over twenty years, I have spent a great deal of my time as President Judge recruiting and publicly acknowledging the work of Pro Bono Counsel. I have created two programs in our court: 1) Fraudulent Conveyance of Real Property, and 2) Mortgage Foreclosure Diversion Pilot Program. Each is dependent upon pro bono counsel.

28. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In November 2007, I was interviewed by the judicial selection commission in Philadelphia. After a morning interview, I was invited back for an afternoon interview. In June, I was contacted by Sen. Robert Casey, Jr. and was informed of his desire, after consultation with Sen. Arlen Specter, to submit my name to the President for consideration for an appointment to the United States District Court for the Eastern District of Pennsylvania. On June 3, 2008 I met with and was extensively interviewed by the Office of White House Counsel. On June 12, 2008 I was traveled to Washington and was met by a representative of the White House Counsel's office who escorted me to the offices of Sen. Casey. During a large portion of the day I was interviewed Sen. Casey and members of his staff. On June 6, 2008 I traveled to Washington to meet with Sen. Arlen Specter. I was

interviewed by Sen. Specter and his staff, and accompanied him to the Capitol during the day. Subsequently, I have had conversations and communication with staff members from the Department of Justice regarding the nomination process and paperwork. My nomination was forwarded to the United States Senate on July 24, 2008.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No

AO 10  
Rev. 1/2007

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) JONES II, C. DARNELL	2. Court or Organization Pennsylvania, Eastern District	3. Date of Report 07/27/2008
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 07/24/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2007 to 06/30/2008
7. Chambers or Office Address Office of the President Judge Room 386 City Hall Philadelphia, PA 19107	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	
<p><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.</p>		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of instructions.)

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of instructions.)

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 1987	COMMONWEALTH OF PENNSYLVANIA STATE EMPLOYEES RETIREMENT SYSTEM-PENSION UPON DEPARTURE FROM CURRENT STATE TRIAL JUDGE POSITION
2. _____	_____
3. _____	_____

**FINANCIAL DISCLOSURE REPORT**  
 Page 2 of 7

Name of Person Reporting JONES II, C. DARNELL	Date of Report 07/27/2008
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**III. NON-INVESTMENT INCOME.** (Reporting individual and spouse; see pp. 17-24 of instructions.)

**A. Filer's Non-Investment Income**
 NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2006	Administrative Office of Pennsylvania Courts-Judicial Salary	\$ 154447.17
2. 2006	Trustees of the University of Pennsylvania-Adjunct Law Professor	\$ 6,000.00
3. 2007	Administrative Office of Pennsylvania Courts-Judicial Salary	\$ 155263.33
4. 2007	Trustees of the University of Pennsylvania-Adjunct Law Professor	\$ 6,000.00
5. 2008	Administrative Office of Pennsylvania Courts-Judicial Salary	\$ 80,304.00
6. 2008	Trustees of the University of Pennsylvania-Adjunct Law Professor	\$ 3,000.00
7. 2008	Kansas Judicial Conference-Lecturer	\$ 800.00

**B. Spouse's Non-Investment Income** - If you were married during any portion of the reporting year, complete this section.  
 (Dollar amount not required except for honoraria.)

 NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2008	Defender Association of Philadelphia, Salary
2. 2008	Premier Design, Inc.-direct sales
3. 2007	Defender Association of Philadelphia, salary
4.	
5.	

**IV. REIMBURSEMENTS** - transportation, lodging, food, entertainment.  
 (Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

 NONE (No reportable reimbursements.)

<u>SOURCE</u>	<u>DESCRIPTION</u>
1.	EXEMPT
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
Page 3 of 7

<b>Name of Person Reporting</b> JONES II, C. DARNELL	<b>Date of Report</b> 07/27/2008
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4. \_\_\_\_\_  
5. \_\_\_\_\_

**FINANCIAL DISCLOSURE REPORT**  
Page 4 of 7

<b>Name of Person Reporting</b> JONES II, C. DARNELL	<b>Date of Report</b> 07/27/2008
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**V. GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.		EXEMPT	
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-33 of instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Sallie-Mae	College loans	M
2.	General Motors Acceptance Corporation	Automobile lease	K
3.	Philadelphia Federal Credit Union	Personal Loan	J
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
Page 5 of 7

<b>Name of Person Reporting</b> JONES II, C. DARNELL	<b>Date of Report</b> 07/27/2008
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	1. US Treasury Bond	A	Interest	J	T	EXEMPT			
2. CITIZENS BANK ACCOUNTS	A	Interest	J	T					
3. PNC BANK ACCOUNT	A	Interest	J	T					
4. ROGERS COUNTY BANK	A	Interest	J	T					
5. FIRST TRUST BANK ACCOUNTS	A	Interest	J	T					
6. AMERICAN HERITAGE CREDIT UNION	A	Interest	J	T					
7. PHILADELPHIA FEDERAL CREDIT UNION	A	Interest	J	T					
8. Comm. of Pa. State Employees' Retirement System		None	P1	T					
9. Alliance Benefit Group Mid Atlantic, LLC		None	K	T					
10. EXXON MOBIL	A	Dividend	J	T					
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	P4 = More than \$50,000,000 S = Assessment W = Estimated	T = Cash Market	

**FINANCIAL DISCLOSURE REPORT**  
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Name of Person Reporting	Date of Report
JONES II, C. DARNELL	07/27/2008

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of Report.)*

**FINANCIAL DISCLOSURE REPORT**  
Page 7 of 7

Name of Person Reporting	Date of Report
JONES II, C. DARNELL	07/27/2008

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature

*C. Darnell Jones II*

Date

*07/27/2008*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

**FILING INSTRUCTIONS**

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		9	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule		5	565	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		100	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		305	000
Real estate owned-add schedule		380	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		50	000				
Cash value-life insurance							
Other assets itemize:							
Retirement annuity	1	559	252				
				Total liabilities		405	000
				Net Worth	1	598	817
Total Assets	2	003	817	Total liabilities and net worth	2	003	817
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT  
NET WORTH SCHEDULES

<u>Unlisted Securities</u>	
Alliance Benefit Group Mid Atlantic, LLC	\$ 5,565
<u>Real Estate Owned</u>	
Personal residence	\$ 380,000
<u>Real Estate Mortgages Payable</u>	
Personal residence	\$ 305,000

AFFIDAVIT

I, C. Darnell Jones II, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

Aug. 15, 2008  
(DATE)

C. Darnell Jones II  
(NAME)

Desiree Vincent  
(NOTARY)



Chairman LEAHY. Thank you all for being here.

Judge Goldberg, who's next, is a judge in the Bucks County Court of Common Pleas. He was appointed in February 2003, elected into office for a 10-year term in November of 2003. He was a former Assistant U.S. Attorney for the Eastern District of Pennsylvania, a senior partner at the Philadelphia law firm of Cousin O'Connor, Assistant D.A. for the Philadelphia District Attorney's Office, one office that I first knew about when the distinguished senior Senator from Pennsylvania was the District Attorney there.

Would you like to indicate, Judge Goldberg, do you have family members here?

**STATEMENT OF MITCHEL S. GOLDBERG, NOMINEE TO BE DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Mr. GOLDBERG. I do. Thank you, Chairman Leahy and Senator Specter. My wife, Helene Goldberg, is here. My children are not. My daughter is attending Boston University, her first year. My son Sam, hopefully is in school right now.

[Laughter.]

My sister-in-law, Sandi—

Chairman LEAHY. When he reads this record he's going to pray he was.

[Laughter.]

Mr. GOLDBERG. I'm going to show it to him. My sister-in-law, Sandi Widlitz, who—really, sister-in-law is just a term. Sandi Widlitz is like a sister to me. She is here. And my sister, who lives in Bethesda, Maryland, Aileen Kantor, is also here. I hope I haven't missed anybody.

I did have a brief opening statement. The lawyer in me wanted to give it, but you've emphasized brevity so I'll waive my opening statement, Senator.

Chairman LEAHY. That shows you're a very good lawyer.

[Laughter.]

[The biographical information follows.]

[The prepared statement of Judge Goldberg appears as a submission for the record.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** Full name (include any former names used).

Mitchell Steven Goldberg

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Eastern District of Pennsylvania

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: Bucks County Courthouse  
55 E. Court Street  
Doylestown, PA 18901

Residence: Yardley, Pennsylvania

4. **Birthplace:** State year and place of birth.

1959; Philadelphia, Pennsylvania

5. **Marital Status:** (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

I am married to Helene Goldberg, formerly Helene Robins. She is a Financial Manager, Heartsine Inc., 105 Terry Drive, Suite 116, Newtown, Pennsylvania 18940

We have two dependent children.

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1983 – 1986, Temple Law School; J.D., 1986

1977 – 1981, Ithaca College; B.A., 1981

7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Employment:

2003 – Present  
 Bucks County Court of Common Pleas  
 Bucks County Courthouse  
 55 E. Court Street  
 Doylestown, Pennsylvania  
 Judge

2002 – 2006 (Various semesters)  
 Temple Law School,  
 719 N. Broad Street  
 Philadelphia, Pennsylvania 19122  
 Adjunct Professor, Trial Advocacy

1997 – 2003  
 United States Attorney's Office, Eastern District of Pennsylvania  
 615 Chestnut Street  
 Philadelphia, Pennsylvania 19106  
 Assistant United States Attorney

1990 – 1997  
 Cozen O'Connor  
 1900 Market St.  
 Philadelphia, Pennsylvania 19103  
 Senior Partner

1986 – 1990  
 Philadelphia District Attorney's Office  
 Three South Penn Square  
 Philadelphia, Pennsylvania 19107  
 Assistant District Attorney

1984 – 1985  
 Pennsylvania Trial Lawyers Association  
 121 S. Broad St.  
 Philadelphia, Pennsylvania 19107  
 Law Clerk

1981 – 1983  
 United States Senate Subcommittee on Investigations  
 Russell Senate Office Building  
 Washington DC 20510  
 Legislative/Investigative Assistant

**Other Affiliations:**

Friends of the Delaware Canal – Advisory Board and Board member – 2003- present  
 Bucks County Opportunity Council, Board of Directors, 2003 – present

8. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

I did not serve in the military.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Highest Possible Attorney Performance Rating – U.S. Attorney’s Office, Eastern District of Pennsylvania

Nominated by U.S. Attorney’s Office for Attorney General Award for Outstanding Presentation

Winner – Temple Law School Trial Competition;

Winner – Best Appellate Brief, Samuel Polsky Moot Court Competition;

Recipient – International Academy of Trial Lawyers’ Commencement Award for Distinguished Achievement in Trial Advocacy

Semi-Finalist – Eastern Regional Mock Trial Competition

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Bucks County Bar Association – 2000 – present; member of Pro Bono Committee.

11. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Pennsylvania – November 13, 1986

This membership is in inactive status due to my position as a Judge.

New Jersey – 1986

Inactive status - Not permitted to practice in New Jersey as U.S. Attorney (prior job) or as Bucks County, Pennsylvania, Judge. Membership administratively revoked in 2005 due to lapse in payment of dues for 7 years.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Pennsylvania Supreme Court – 1986 (currently inactive status due to my position as a Judge.)

State of New Jersey – 1986 – currently Inactive Status - Not permitted to practice in New Jersey as U.S. Attorney (prior job) or as Bucks County, Pennsylvania, Judge.

Eastern District of Pennsylvania – Federal District Court – 1986

U.S. Court of Appeals for the Third Circuit – 1986

**12. Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Bucks County Opportunity Council – Board member – 2003 – present

Friends of the Delaware Canal – Advisory Board and Board member – 2003- present

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

These organizations do not discriminate.

13. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

None

- b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None

- c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None

- d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

None

- e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

None

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Judge – Bucks County Court of Common Pleas (PA)

Appointed – February, 2003; Elected to ten year term – November 2003

The Bucks County Court of Common Pleas is a trial level Court with jurisdiction over Criminal, Civil, Juvenile, Family and Orphan's Court matters.

15. **Citations:** If you are or have been a judge, please provide:

- a. citations for all opinions you have written (including concurrences and dissents);

I have submitted a total of 86 Opinions while sitting on the Bucks County Court of Common Pleas bench. Please note that for several cases, multiple Opinions were submitted. Cases that were published in D & C 4<sup>th</sup> Reporter are indicated with an \*, along with D & C cite.

1. Donna M. Beck v. John F. Jackson, Bucks County Family Court Docket No. A06-96-62291
2. Citifinancial Services, Inc. v. Grumbkow, Ronald C. and Rushen, Bucks County Civil Docket No. 1999-06630
3. Commonwealth of Pennsylvania v. Kenneth Lee, Bucks County Criminal Docket No. 01-06901 (2 Opinions filed)
4. Commonwealth of Pennsylvania v. Louis F. Meyers, III, Bucks County Criminal Docket No. 2003-0029
5. Commonwealth of Pennsylvania v. Jeffrey Friedman, Bucks County Criminal Docket No. 02-01424, (3 Opinions filed)
6. Yoder, Courtney v. Yoder, Brian, Bucks County Family Court Docket No. A06-97-61848-S
7. Commonwealth of Pennsylvania v. Robert Strike, Bucks County Criminal Docket No. 2003-3633
8. Commonwealth of Pennsylvania v. Brian Jones, Bucks County Criminal Docket No. 2003-1542
9. Herbert Elsner, Sr. v. Linda Lee Elsner, Bucks County Family Court Docket No. A06-01-61709-Q-26
10. Wendy S. Lang, formerly Wendy S. Meske v. Robert H. Meske, Bucks County Family Court Docket No. A06-00-62889-Q-19
11. Commonwealth of Pennsylvania v. Hein Nguyen, Bucks County Criminal Docket No. 2001-3344
12. Philip Steeley and Jane Steeley and Kenneth B. Hill, Jr. and Dorothy D. Steeley v. Richland Township and Upper Bucks Young Men's Christian Association, Bucks County Civil Docket No. 2003-00587
13. Commonwealth v. Thomas Saldi, Bucks County Criminal Docket No. 2003-3001
14. In Re: Appeal of Korman Commercial Properties, Inc., Nockamixon Crossing Shopping Center Associates, L.P. v. Nockamixon Township, Bucks County Civil Docket Nos. 2003-4578 and 2002-7649

15. Commonwealth of Pennsylvania v. Thomas Eagan, Bucks County Criminal Docket No. 2003-3381
16. Mary Beth Huff v. James H. Crouch, Jr., and Terrence Patrick Huff, Bucks County Civil Docket No. 2002-07945
17. Appeal of Tenet Healthsystems Bucks County, LLC from the Bucks County Board of Assessment Appeals, No. 1999-6488-28-6
18. Rep. Allan Egolf, et al. v. Robert Seneca and Stephen Stahl, Bucks County Civil Docket No. 2004-03160
19. Julia P. Rakowsky v. Larry F. Rakowsky, Bucks County Family Court Docket No. A06-00-62878-S-18
20. Commonwealth of Pennsylvania v. Darryl Gottschalk, Bucks County Criminal Docket Nos. 2003-1808, 1809, 4184
21. The Telephone Company, Inc. t/a Total Tariff Consultants v. The Reily Companies, Inc., Bucks County Civil Docket No. 2003-3670
22. Leslie T. Smith v. The Borough of New Hope, a Municipal Corporation, Bucks County, Pennsylvania, Bucks County Civil Docket No. 2002-6690
23. John G. Belli and Jeremy Belli v. Zoning Hearing Board of Bedminster Township and Bedminster Township, Bucks County Civil Docket No. 2003-5270-28-5
24. Commonwealth of Pennsylvania v. Edward Domino, Bucks County Criminal Docket No. 2003-1208
25. Chromate Industrial Corp. v. Steven Brown and Advanced Fasteners Industries, Inc., Bucks County Civil Docket No. 2004-8569-28-1
26. \* Commonwealth of Pennsylvania v. Thomas Mullins, 1<sup>st</sup> Opinion – 70 Pa. D. & C.4<sup>th</sup> 462 (Pa.Com.Pl., Feb 14, 2005), 2<sup>nd</sup> Opinion - 76 Pa. D. & C. 4<sup>th</sup> 129 (Pa. Com. Pl., Oct. 06, 2005); Bucks County Criminal Docket No. 2003-4098 (2 filed)
27. Commonwealth of Pennsylvania v. Andrew Williams, Bucks County Criminal Docket No. 2004-4346
28. \* Renee Sexton v. Robert Haug, 72 Pa. D. & C. 4<sup>th</sup> 284 (Pa. Com.Pl., Apr 01, 2005); Bucks County Family Court Docket No. A06-03-61759-C-28
29. \* Commonwealth of Pennsylvania v. Albert Senzick, 73 Pa. D. & C.4<sup>th</sup> 166 (Pa.Com.Pl., May 05, 2005); Bucks County Criminal Docket No. 2004-7044
30. Condemnation of 23.015 Acres, More or Less, Known as Tax Map Parcel No. 15-29-129, Lands N/L Condemnor/Appellee v. Robert L. and Maryanne P. Showalter, h/w, Condemnee/Appellants, Bucks County Civil Docket No. 2000-07052
31. Kenneth T. Spector v. Commonwealth of Pennsylvania, Bucks County Criminal Docket No. 1302 Misc. 2003
32. Commonwealth of Pennsylvania v. Jeffrey Fahnestock, Bucks County Criminal Docket No. 2004-3676
33. \* Commonwealth of Pennsylvania v. Christopher Leddington, 75 Pa. D. & C.4<sup>th</sup> 294 (Pa.Com.Pl., Aug 12, 2005); Bucks County Criminal Docket No. 2001-06221 (2 Opinions filed)

34. DCR Fund I, LLC v. Bucks County Industrial Development Authority, Randolph A. Scott and United States of America, Bucks County Civil Docket No. 2003-01550-28-1
35. \* Commonwealth of Pennsylvania v. Roman Lungin, 77 Pa. D. & 4<sup>th</sup> 267 (Pa.Com.Pl., Sep 15, 2005); Bucks County Criminal Docket Nos. 2003-2778, 2003-2779
36. Carol Hughes Grundy v. James A. Grundy, Jr., Bucks County Family Court Docket No. A06-03-60379-Q-28
37. Commonwealth of Pennsylvania v. Sean McDavison, Bucks County Criminal Docket No. 2003-4104
38. Sarah Jane Tomlinson v. PMA Capital Corporation and Caliber One Indemnity Company, Bucks County Civil Docket Nos. 2003-2409, 2004-3469
39. Commonwealth of Pennsylvania v. Arnold Parsons, Bucks County Criminal Docket No. 2004-3468 (2 Opinions filed)
40. Jessica Miklavic v. Bruce M. Miklavic, Bucks County Family Court Docket No. A06-04-63486-C-26
41. Commonwealth of Pennsylvania v. Cheryl Ward, Bucks County Criminal Docket No. 2005-3317
42. Commonwealth of Pennsylvania v. Bryan Jones, Bucks County Criminal Docket No. 1998-5563
43. Nicholas Baxevane v. John Lawless, D.O., et al., Bucks County Civil Docket No. 1999-6895-13-2
44. \* Roman Liberchuk and Anna Liberchuk, h/w v. Kenneth Nolte,; 79 Pa. D. & C.4<sup>th</sup> 449 (Pa. Com.Pl., Apr 18, 2006); Bucks County Civil Docket No. 2002-8547-20-2
45. Charles Campbell v. Allstate Insurance Company, Bucks County Civil Docket No. 2004-5181
46. Mary E. Crawley v. James G. Wiles, Bucks County Family Court Docket No. A06-92-62646-S-20
47. R.C. Ford Plumbing and Heating, Inc. v. Nancy S. C. Thomer, Bucks County Civil Docket No. 2004-80322
48. Commonwealth of Pennsylvania v. Qing Lu, Bucks County Criminal Docket No. 2005-4610 (2 Opinions filed)
49. Commonwealth of Pennsylvania v. William Rissman, Bucks County Criminal Docket No. 2006-1111
50. Commonwealth of Pennsylvania v. Gary Thompson, Bucks County Criminal Docket No. 2005-6492
51. Commonwealth of Pennsylvania v. Jonathan Beagle, Bucks County Criminal Docket No. 2005-4114
52. Commonwealth of Pennsylvania v. Andre Moore, Bucks County Criminal Docket No. 2004-1306, 2004-1705
53. Pennridge Regional Police Commission, East Rockhill Twp. & West Rockhill Township v. Sellersville Borough, Bucks County Civil Docket No. 2003-7742 (2 Opinions filed)

54. Leo A. Holt, Julie Laughlin, and Cresmont Limited Partnership, v. Upper Makefield Township, Board of Supervisors, Daniel worden, Robert A. West, William Gunser, Jr., Dan Rattigan, Dave Kulig, and Upper Makefield Township Planning Commission, Kathleen Pisauro, Conrad Baldwin, Walter Wydro, Mary Ryan, Paul Greger and Tom Ragan, Bucks County Civil Docket No. 2006-6104
55. Janice Paul v. Mitchell and Eileen Cohen, Bucks County Family Court Docket No. A06-06-61769-C
56. Commonwealth of Pennsylvania v. Mark Murphy, Bucks County Criminal Docket No. 2005-4387
57. Commonwealth of Pennsylvania v. Donald B. Walton, Bucks County Criminal Docket No. 2006-1143
58. Angel and Enid Maldonado v. Louis Rodriguez Olavarria, U-Haul Co. of Pa. and U-Haul Co. of Az., Bucks County Civil Docket No. 2005-3357-31-2
59. Nermin Nameli v. Daniel Bettucio, Bucks County Family Court Docket No. A06-01-60199-A
60. Commonwealth of Pennsylvania v. Richard Davis, Jr., Bucks County Criminal Docket No. 2006-1782
61. Commonwealth of Pennsylvania v. James Swarts, Bucks County Criminal Docket No. 2006-4988
62. David T. Yates v. Jackie Yates, Bucks County Family Court Docket No. A06-02-63378-C (2 Opinions filed)
63. Commonwealth of Pennsylvania v. Tillman Tyrone Stewart, Bucks County Criminal Docket No. 2005-6664
64. Robert Glosson v. Bedminster Township, Bucks County Civil Docket No. 2004-4254
65. Commonwealth of Pennsylvania v. John Patrick Nagele, Bucks County Criminal Docket No. 2006-8363
66. Commonwealth of Pennsylvania v. Juan Ortiz, Bucks County Criminal Docket No. 2005-3260
67. D. Richard Tonge v. Karen Tonge, Bucks County Family Court Docket No. A06-97-60773-DQRY-22
68. Ethal Mae Bowen, et al v. Scott Calcagno, et al., Bucks County Civil Docket No. 1996-8409-22-2
69. Robert J. Towarnicki and Kathleen Towarnicki v. George E. Michael d/b/a George Michael, Inc., et al., Bucks County Civil Docket No. 1999-4376-28-1
70. Commonwealth of Pennsylvania v. Juan Rodriguez, Bucks County Criminal Docket No. 2006-3628
71. DE & RS, Inc. v. Ericka Kirkpatrick, Bucks County Civil Docket No.2002-3166-28-5
72. Ronald M. Krajewski and Theresa M. Krajewski, h/w v. Edward Jakubowicz and Catherine Jakubowicz, h/w, Martha Bennett, Admin. Of the Estate of James Edward Jones and Denise Miller, Admin. Of the Estate of Patricia A. Jones, Bucks County Civil Docket No. 2005-5796
73. In re: Appeal of George Moore From the Decision of the Upper Southampton Board of Supervisors Granting a Conditional Use Cluster Development Dated February 21, 2006, Bucks County Civil Docket No. 2006-2570-28-5; In Re:

Appeal of Charles Moore and George Moore from the Decision of the Upper Southampton Board of Supervisors Granting a Conditional Use Cluster Development Dated February 21, 2006, Bucks County Civil Docket No. 2006-3620 (2 Opinions filed)

74. Regis Insurance Company v. Kenny's Bar & Restaurant, Inc. t/a Kenny's Spirited Eatery and Terrance Oliver; Bucks County Civil Docket No. 2006-5703-28-5
75. Ronald L. Oskiera v. Wolodmir W. Martiuk, Bucks County Civil Docket No. 2003-04303-28-5
76. Commonwealth of Pennsylvania v. James Kelly, Bucks County Criminal Docket No. 2007-2055

- b. a list of cases in which certiorari has been requested or granted;

None

- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

Philip Steeley and Jane Steeley and Kenneth B. Hill, Jr. and Dorothy D. Steeley v. Richland Township and Upper Bucks Young Men's Christian Association, Bucks County Civil Docket No. 2003-00587; Commw. Ct. 1753 C.D. 2004. Reversed 5/4/05. Issue on appeal involved interpretation of Township open space ordinance.

Leslie T. Smith v. The Borough of New hope, A Municipal Corporation, Bucks County Civil Docket No. 2002-06690; Commw. Ct. 1691 C.D. 2004. Affirmed in part and reversed in part 8/5/05. Issue on appeal involved whether the lack of public use of the street in question vested ownership of that street with the petitioner.

Condemnation of 23.015 Acres, More or Less, Known as Tax Map Parcel No. 15-29-129, Lands N/L Condemnor/Appellee v. Robert L. and Maryanne P. Showalter, h/w Condemnee/Appellants, Bucks County Civil Docket No. 2000-07052, Commw. Ct. 2583 C.D. 2004. Reversed 2/28/05. Case involved eminent domain and value of land. Issue on appeal involved evidentiary issue on admissibility of prior discussions on value of land.

Kenneth T. Spector v. Commonwealth of Pennsylvania, Bucks County Criminal Docket No. 1302 Misc. 2003; Commw. Ct. 365 C.D. 2005. Reversed 2/10/06. Return of Property case involving car stereo lost by law enforcement after the vehicle in question was seized. Issue on appeal involved whether Trial Court had authority to order damages in favor of petitioner for lost stereo.

- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

Philip Steeley and Jane Steeley and Kenneth B. Hill, Jr. and Dorothy D. Steeley v. Richland Township and Upper Bucks Young Men's Christian Association, Bucks County Civil Docket No. 2003-00587; Commw. Ct. 1753 C.D. 2004.

Leslie T. Smith v. The Borough of New Hope, A Municipal Corporation, Bucks County Civil Docket No. 2002-06690; Commw. Ct. 1691 C.D. 2004.

Condemnation of 23.015 Acres, More or Less, Known as Tax Map Parcel No. 15-29-129, Lands N/L Condemnor/Appellee v. Robert L. and Maryanne P. Showalter, h/w Condemnee/Appellants, Bucks County Civil Docket No. 2000-07052, Commw. Ct. 2583 C.D. 2004. Reversed 2/28/05.

Kenneth T. Spector v. Commonwealth of Pennsylvania, Bucks County Criminal Docket No. 1302 Misc. 2003; Commw. Ct. 365 C.D. 2005. Reversed 2/10/06.

- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and

Most of my opinions (approximately 90%) are unpublished and listed in the response to question 15.a. My office has a copy of each opinion.

- f. citations to all cases in which you were a panel member in which you did not issue an opinion.

None

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;

- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

There are two matters I can recall I recused myself from:

Livezy v. Livezy, Bucks County Family Court Docket No. 1999-60175-CD. Sometime in 2003, the parties appeared before me for a custody hearing. At that time, I was sitting on the bench by appointment from the Governor and preparing to run in an election for a full ten-year term. One of the lawyers in the case was a member of a firm who had planned an up-coming fundraiser for all Republican candidates (i.e., County Commissioners, row officers and four Judicial openings) and I thought it best to disclose that information and offer to recuse myself. After doing so, the lawyer on the other side requested recusal, which I agreed to and did not hear the case; and

Stanton v. Clark, Bucks County Family Court Docket No. A06-01-61666-C. As best as I can recall, the Defendant, Clark, was the son of a former police officer who was involved in litigation regarding the Pennsylvania Police Tenure Act. While in private practice, I represented Falls Township who recommended the police officer's (i.e., Clark's father) removal for misconduct under the Police Tenure Act. Given this background, I agreed to recuse myself.

**17. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Lower Makefield Zoning Hearing Board – Appointed by Lower Makefield Board of Supervisors – 1992 – 1995

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Bucks County Republican Executive Committee – 2000 – 2002 – appointed.

Campaign Manager – Pennsylvania State Representative Dave Steil – 1994

**18. Legal Career:** Please answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation

from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

2003 – Present  
 Bucks County Court of Common Pleas  
 Bucks County Courthouse  
 55 E. Court Street  
 Doylestown, Pennsylvania  
 Judge

2002 – 2006  
 Temple Law School,  
 719 N. Broad Street  
 Philadelphia, Pennsylvania 19122  
 Adjunct Professor, Trial Advocacy

1997 – 2003  
 United States Attorney's Office, Eastern District of Pennsylvania  
 615 Chestnut Street  
 Philadelphia, Pennsylvania 19106  
 Assistant United States Attorney

1990 – 1997  
 Cozen O'Connor  
 1900 Market St.  
 Philadelphia, Pennsylvania 19103  
 Senior Partner

1986 – 1990  
 Philadelphia District Attorney's Office  
 Three South Penn Square  
 Philadelphia, Pennsylvania 19107  
 Assistant District Attorney

## b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

The general character of my legal experience has been varied between civil and criminal, but mostly focused on litigation trial work. I have served as both a State and Federal Prosecutor and practiced in civil law at a full service law firm. For the last 5 ½ years I have served as a State Court Trial Judge, hearing criminal, civil and family court matters.

- ii. your typical clients and the areas, if any, in which you have specialized.

While in private practice, I represented a variety of companies in all types of commercial litigation. I also specialized in representing insurance companies in insurance fraud cases.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Virtually all of my legal experience has been focused on litigation, trial and appellate work.

- i. Indicate the percentage of your practice in:

- |                            |     |
|----------------------------|-----|
| 1. federal courts:         | 60% |
| 2. state courts of record: | 40% |
| 3. other courts.           |     |

- ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 40% |
| 2. criminal proceedings: | 60% |

- d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Including bench trial and arbitrations, I estimate I have tried hundreds of cases to verdict. In excess of 25 of these cases were jury trials. In most of these cases I was lead counsel, although on a few larger cases, I served as co-counsel or associate counsel.

What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 25% |
| 2. non-jury: | 75% |

- e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Matters listed below were litigated in Federal Court-Eastern District of Pennsylvania. For all cases except Novick v. St. Paul, I represented the U.S. Attorney's Office, 615 Chestnut Street, Philadelphia, PA. 19106-4476 (215) 861-8200

1. U.S. v. Mike Mustafa, 2:98-cr-00609-RK, case filed 12/98, arson for profit, food stamp and bank fraud, guilty plea midway through jury trial. Affirmed on appeal, 238 F.3d 485 (3<sup>rd</sup> Cir. 2001)

Judge Robert Kelly  
Co-Counsel, Assistant U.S. Attorney, Richard Zack (215)-861-8463  
Defense Counsel, Brian McMonagle, 30 S. 15<sup>th</sup> St., Philadelphia, PA 29201 (215)-981-0999;

2. U.S. v. Alan Robert Johnson, et al, 2:00-cr-00435-AB, case filed 7/00, multi-defendant bank robbery, guilty plea.

Judge Anita B. Brody  
Defense Attorney for principal defendant – Lou Busico, 246 South State St., Newtown, PA 18940 (215)-504-2930

3. U.S. v. Gallo, et al., 2:94-cr-00225-CG, case filed 5/94, HUD fraud, mail fraud and obstruction of justice. Jury trial, not guilty most counts, guilty obstruction of justice.

Judge Herbert Hutton (deceased)  
 Co-Counsel, Assistant U.S. Attorney, Maureen Barden (215)861-8566  
 Defense Counsel Shane Creamer, I believe retired, could not locate.

4. U.S. v. Sixto Lizardo, 2:99-cr-00385-RB, case filed 7/99, multiple kilo drug organization. Jury trial, guilty verdict.

Judge Ronald Buckwalter  
 Defense Counsel – Carlos Martir, 3 N. 2<sup>nd</sup>. St., Philadelphia, PA (215) 731-9886;

5. U.S. v. Edward Tunick, 2:00-cr-00234-RK, case filed 5/00, multi-million dollar telemarketing fraud, money laundering scheme. Jury trial, guilty verdict.

Judge Robert Kelly  
 Co-Counsel – Assistant U.S. Attorney – Jeff Whitt (215) 861-8404  
 Defense Counsel – Patrick Egan, 2000 Market St., Philadelphia, PA 19103  
 (215) 299-2825;

6. U.S. v. Andre Ferguson, 2:01-cr-00172-WY, 3/021, multi-million dollar bank fraud. Jury trial, guilty verdict.

Judge William H. Yohn, Jr.  
 Defense Counsel, Gerald Ingram, 1315 Walnut Street, Suite 800, Philadelphia, PA 19107 (215) 732-9011

7. Novick Adjustment v. St. Paul Fire, 2:95-cv-02308-SD, case filed 4/95. Issue in case involved insurance damages not covered due to insurance fraud. Jury trial, verdict in favor of my client, St. Paul Fire

Judge Stewart Dalzell  
 Client, St. Paul Ins. Co.  
 Plaintiff's Counsel, Harry Begier, Jr., 201 S. 18<sup>th</sup> St., Suite 402, Philadelphia, PA 19103-5997 (215) 994-1515

8. U.S. v. Phoebe & Samuel Kuttab, et al., 2:02-cr-00071-SD, case filed 2/02, multi-defendant tax evasion conspiracy. All defendants pled guilty.

Judge Jay Waldman (deceased)  
 Co-Counsel, Assistant U.S. Attorney, Richard Zack (215) 861-8463  
 Defense Counsel for defendant Phoebe Kuttab, Jeff Minehart, 1205 Criminal Justice Ctr., 1301 Filbert St., Philadelphia, PA (215) 683-7032  
 Defense Counsel for Samuel Kuttab, Luther E. Weaver, III, 14<sup>th</sup> Floor, 1525 Locust St., Philadelphia, PA 19102-3732 (215) 790-0600

9. U.S. v. Gil Epstein, 2:02-cr-00045-ER, case filed 1/02, embezzlement, Trading with the Enemy Act, guilty plea.

Judge Eduardo Robreno  
 Defense Counsel, Donald Goldberg, 1735 Market Street, Philadelphia, PA 19103  
 (215) 864-8345

10. Multiple Defendant, Nationwide Telemarketing Fraud Investigation that involved prosecution of over 20 telemarketing companies. Some cases included were:

U.S. v. Lee Lerman, 2:00-cr-00261-JP, case filed 5/00, guilty plea

Judge John R. Padova  
 Co-Counsel, Assistant U.S. Attorney, Jeff Whitt (215) 861-8404  
 Defense Counsel, Ellen Brotman, 123 S. Broad Street, Avenue of the Arts,  
 Philadelphia, PA 19109 (215) 772-7683

U.S. v. David Fleisher, 2:00-cr-00021-JCJ, case filed 1/00, guilty plea

Judge James Curtis Joyner  
 Co-Counsel, Assistant U.S. Attorney, Jeff Whitt, (215) 861-8404  
 Defense Counsel, Wallace H. Bateman, Jr., 104 South 6<sup>th</sup> Street, Perkasie, PA  
 18944 (215) 257-6811

U.S. v. Eugene A. Marella, Jr., 2:02-cr-00213-RK, case filed 4/02, guilty plea  
 Judge Robert Kelly

Co-Counsel, Assistant U.S. Attorney, Jeff Whitt (215) 861-8404  
 Defense Counsel, L. Felipe Restrepo (now a Federal Magistrate), 900 Market  
 Street, Suite 219, Philadelphia, PA 19106-4299 (267) 299-7690

U.S. v. Gary Shull and Andy Shull, 2:99-cr-00331-JF, case filed 6/99, guilty plea

Judge John Fullam  
 Defense Counsel, Marc Neff, 123 South Broad Street, Suite 1812, Philadelphia, PA  
 19109 (215) 563-9800

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As a Trial Judge in Bucks County, Pennsylvania, I have presided over, in excess of 70 jury trials, both Civil and Criminal. I have also handled a fair amount of Family Court cases, including protracted custody matters and complex equitable distribution cases.

For most of my time on the bench, I have served as the Court's liaison to the Bucks County Bar Association's Pro Bono Committee. In this capacity, I have involved the Bucks County Court in improving pro bono services in Bucks County.

As an Assistant United States Attorney, I handled the grand jury investigation in the case of U.S. v. Clayton Lee Waagner. Waagner, who was on the FBI's top ten most wanted list, perpetrated a nationwide anthrax scheme against multiple women's clinics throughout the United States. I was assigned by the Justice Department as lead counsel for the grand jury investigation, which resulted in a multiple count indictment. Waagner proceeded to trial and was convicted of all charges. (I did not try the case as I was appointed to the Bucks County bench).

21. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

Trial Advocacy – Temple Law School – various semesters from 2002-2006.

22. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

Spring, 2009 – Drexel Law School – Teaching Civil Litigation.

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

25. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement

**26. Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

The parties, categories of litigation, and financial arrangements that may present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include family and friends, or matters where I may have some yet unspecified financial interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

Each case is fact specific and handled accordingly, but I would first and foremost consult with, and abide by the Code of Conduct for United States Judges.

- 27. Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Bucks County Court liaison – Bucks County Bar Association  
Pro Bono Committee  
Bucks County Opportunity Council – Board of Directors

For most of my time on the bench, I have served as the Court's liaison to the Bucks County Bar Association's Pro Bono Committee. In this capacity, I have involved the Bucks County Court in improving pro bono services in Bucks County.

**28. Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I have interviewed several times with the Federal Judicial Selection Committee for the Eastern District of Pennsylvania – headed by Tom Kline, Esquire. I do not know what the results of these interviews were. I interviewed with White House Counsel on March 17, 2008. After I was informed that my name would go forward in the process, I had conversations with staff from the U.S. Department of Justice regarding the process and nomination paperwork. My nomination was submitted to the United States Senate on July 24, 2008.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AO 10  
Rev. 1/2006

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Goldberg, Mitchell S	2. Court or Organization Eastern Dist. Federal Court	3. Date of Report 07/28/2008
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)  District Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 7/24/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final  5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2007 to 07/20/2008
7. Chambers or Office Address  Bucks County Courthouse 55 E. Court Street Doylestown, PA 18901	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.  Reviewing Officer _____ Date _____	
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of instructions.)

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Board of Directors	Bucks County Opportunity Council
2. Advisory Board	Friends of Delaware Canal
3.	
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of instructions.)

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 2/03	State Employee Retirement System
2. 1/97	Thrift Savings Plan
3. 6/08	Drexel University Law School
4.	

FINANCIAL DISCLOSURE REPORT Page 2 of 6	Name of Person Reporting	Date of Report
	Goldberg, Mitchell S	07/28/2008

**III. NON-INVESTMENT INCOME.** (Reporting individual and spouse; see pp. 17-24 of instructions.)

**A. Filer's Non-Investment Income**

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2006	Salary, Bucks County Court of Common Pleas	\$ 151,513
2. 2006	Temple University Law School	\$ 5,046
3. 2007	Salary, Bucks County Court of Common Pleas	\$ 152,200
4. 2007	Family Trust	\$ 18,555
5. 2008	Salary, Bucks County Court of Common Pleas	\$ 76,100
6.		

**B. Spouse's Non-Investment Income** - If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2007	Spouse Salary, Heartsine Technology
2. 2007	Spouse Salary, Heartsine Technology
3. 2008	Spouse Salary, Heartsine Technology
4.	
5.	

**IV. REIMBURSEMENTS** - transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

NONE (No reportable reimbursements.)

SOURCE	DESCRIPTION
1. exempt	exempt
2.	
3.	
4.	
5.	

**FINANCIAL DISCLOSURE REPORT**  
Page 3 of 6

<b>Name of Person Reporting</b> Goldberg, Mitchell S	<b>Date of Report</b> 07/28/2008
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**V. GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. exempt	exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
Page 4 of 6

<b>Name of Person Reporting</b> Goldberg, Mitchell S	<b>Date of Report</b> 07/28/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A Description of Assets (including trust assets)  Place "XX" after each entry except first price disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code F (A-F)	(2) Type (e.g., DIV, INT, or etc.)	(3) Code Code 2 (A-F)	(4) Value Method Code 5 (1-5)	(1) Type (e.g., BUY, SELL, TRANSFER, REDEMPTION)	(2) Date Month Day	(3) Value Code 1 (1-7)	(4) Gain Code 1 (A-F)	(5) Identity of Buyer/Seller (if relevant, disclose)
1. Family Trust - 1/3 interest	E	Rent	M	T	exempt				
2. Vanguard Admiral Money Market	B	Dividend	K	T	exempt				
3. Wachovia Securities:	A	Dividend	N	T	exempt				
4. - Wachovia Securities - #1					exempt				
5. - Wachovia Securities - #2					exempt				
6. - Wachovia Securities #3					exempt				
7. - Wachovia Securities - #4					exempt				
8. - American Fund - #1					exempt				
9. - American Fund - #2					exempt				
10. - American Fund - #3					exempt				
11. - American Fund - #4					exempt				
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes:	A - \$1,000 or less	B - \$1,001 - \$1,500	C - \$1,501 - \$5,000	D - \$5,001 - \$15,000	E - \$15,001 - \$50,000
(See Column B1 and D4)	F - \$50,001 - \$100,000	G - \$100,001 - \$1,000,000	H - \$1,000,001 - \$5,000,000	I - \$5,000,001 - \$10,000,000	J - More than \$10,000,000
2. Value Codes:	J - \$15,000 or less	K - \$15,001 - \$50,000	L - \$50,001 - \$100,000	M - \$100,001 - \$250,000	N - \$250,001 - \$500,000
(See Column C1 and D3)	O - \$500,001 - \$1,000,000	P - \$1,000,001 - \$5,000,000	Q - \$5,000,001 - \$25,000,000	R - More than \$25,000,000	S - Appraisal
3. Value Method Codes:	T - Cash Market	U - Book Value	V - Other	W - Estimated	X - Not Disclosed
(See Column C2)					

FINANCIAL DISCLOSURE REPORT Page 5 of 6	Name of Person Reporting	Date of Report
	Goldberg, Mitchell S	07/28/2008

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

FINANCIAL DISCLOSURE REPORT Page 6 of 6	Name of Person Reporting	Date of Report
	Goldberg, Mitchell S	07/28/2008

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature  Date 7/29/08

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

**FILING INSTRUCTIONS**

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

**FINANCIAL STATEMENT**  
**NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		15	656	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		147	500
Real estate owned--add schedule		650	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts--itemize:			
Autos and other personal property		400	000	Home equity loan		15	800
Cash value-life insurance				Tuition		69	400
Other assets itemize:				Automobile loan			900
See attached		844	410				
				Total liabilities		233	600
				Net Worth	1	676	466
Total Assets	1	910	066	Total liabilities and net worth	1	910	066
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		NO	
On leases or contracts				Are you defendant in any suits or legal actions?		NO	
Legal Claims				Have you ever taken bankruptcy?		NO	
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT  
NET WORTH SCHEDULES

<u>Real Estate Owned</u>	
Personal residence	\$ 650,000
<u>Real Estate Mortgages Payable</u>	
Personal residence	\$ 147,500
<u>Other Assets</u>	
Family Trust	\$ 225,527
College Funds	194,678
Retirement Annuity	120,026
Retirement account	52,481
Money Market	25,527
TSP account	134,694
Pennsylvania State Employees Retirement	91,477
Total Other Assets Owned	\$ 844,410

AFFIDAVIT

I, Mitchell S. Goldberg, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

8/8/08  
(DATE)

*Mitchell S. Goldberg*  
(NAME)

*Annora Michalski*  
(NOTARY)



[The prepared statement of Judge Goldberg appears as submission for the record.]

Chairman LEAHY. Joel Slomsky, for the past 38 years, has been a Federal prosecutor, a partner in a law firm, a sole practitioner, a Federal prosecutor with the Criminal Division of the Organized Crime section with the U.S. Department of Justice in Washington, and down through. Again, your whole background, Mr. Slomsky, will be in the record. Of course, you know that having two former prosecutors up here, we both read that part of your background.

Do you have members of your family here?

**STATEMENT OF JOEL H. SLOMSKY, NOMINEE TO BE DISTRICT  
JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Mr. SLOMSKY. I do. I just want to thank you also for holding the hearing and giving us this opportunity, and also thank Senator Specter, and certainly Senator Casey.

I have here today my wife, Paula. Next March, we celebrate our 40th anniversary, and I've been truly blessed. Also, my daughter Mona, who is here, who we both love dearly.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** Full name (include any former names used).

Joel Harvey Slomsky

2. **Position:** State the position for which you have been nominated.

United States District Judge for the Eastern District of Pennsylvania

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office: 30 South 17<sup>th</sup> Street, 12<sup>th</sup> Floor  
Philadelphia, PA 19103-4196

Residence: Wynnewood, Pennsylvania

4. **Birthplace:** State year and place of birth.

1946; Brooklyn, New York

5. **Marital Status:** (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

I am married to Paula Beth Slomsky (maiden name-Paula Beth Gilbert). She is a clinical social worker and therapist, Northeast Community Center for Mental Health/Mental Retardation, Adams Avenue and Roosevelt Boulevard, Philadelphia, Pennsylvania. I have no dependent children.

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1968 - 1970, New York Law School; J.D., June 1970.

1967 - 1968, Buffalo Law School of the State University of New York, no degree

1963 - 1967, Brooklyn College of the City University of New York; B.A., June, 1967.

7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Employment:

1990 – present

sole practitioner in the practice of law  
30 South 17<sup>th</sup> Street, 12<sup>th</sup> Floor (last address)  
Philadelphia, PA 19103

1982 – 1990

DiGiacomo and Slomsky, P.C  
DiGiacomo and Slomsky  
DiGiacomo, Slomsky and Baffa  
1626 Pine Street (last address)  
Philadelphia, PA  
Partner and 50% shareholder

1974 – 1982

sole practitioner in the practice of law  
Two Mellon Bank Plaza, Suites 2400 and 2616  
Philadelphia, Pennsylvania

1973 – 1974

Lipschitz and Danella  
915 Robinson Building  
15<sup>th</sup> and Chestnut Streets  
Philadelphia, Pennsylvania.  
Associate

1970 – 1973

United States Department of Justice  
Criminal Division, Organized Crime Section  
Philadelphia Strike Force (1971-1973)  
Washington, D.C. (1970-1971)  
Special Attorney

1968 – 1970

United States Attorney's Office for the Eastern District of New York  
271 Cadman Plaza East  
Brooklyn, New York 11201  
Law clerk

1968  
 New York City Department of Social Services  
 Brooklyn, NY  
 Caseworker

Other affiliations:

1974 – 1976  
 Gold Minds, Inc.  
 Partner

I incorporated with a partner a company called Gold Minds, Inc. to engage in motivational writing and meetings. I recall attending several motivational meetings but the company did not succeed. I do not recall being compensated for my services.

In 1993, while practicing law, I also attempted to promote music but did not receive compensation for this service.

8. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

I did not serve in the military. I was called and reported for a physical at a base in Brooklyn, New York about 1967. I was deferred and classified 1-Y due to a medical condition.

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.

Hired by the United States Department of Justice under the Attorney General's Honors Program for honor law students.

Award from the Criminal Justice Section - Philadelphia Bar Association for Dedicated Service as Chairman of the Section (1981).

Award for contributions and leadership by the National Association of Criminal Defense Lawyers (1977-1978).

Award for Distinguished Service in Continuing Legal Education from the Federal Bar Association, Philadelphia Chapter (1985).

Certificate from the Federal Bar Association, Philadelphia Chapter, for periodic review of appellate cases for the Criminal Law Committee (1990-1991).

The Best Lawyers in America, 1991-1992 Edition

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Federal Bar Association, Philadelphia Chapter  
Member of Criminal Law Committee

Philadelphia Bar Association  
Secretary - 1997 and 1998 (elected position)  
Assistant Secretary - 1995 and 1996 (elected position)  
Member of the Board of Governors (1981 and 1991 to 1993 - elected to three-year term)  
Former Editor and Former Associate Editor - The Philadelphia Lawyer Magazine  
Member of the Committee on Judicial Selection and Retention (1981)  
Chairman of the Criminal Justice Section (1981)  
Member of Fee Disputes Committee  
Member of the Criminal Justice Section  
Former Member of Long Range Planning Committee  
Member of Federal Courts Committee

Pennsylvania Bar Association - Presently a Delegate to the House of Delegates

Pennsylvania Association of Criminal Defense Lawyers

National Association of Criminal Defense Lawyers  
Former Member of the Board of Directors, November, 1978 to August, 1984  
Former Member of Continuing Legal Education Committee

Brandeis Law Society - Member - Executive Committee

Historical Society of the Eastern District of Pennsylvania

Former Memberships:  
American Bar Association  
Philadelphia Trial Lawyers Association  
Pennsylvania Trial Lawyers Association

11. **Bar and Court Admission:**

- a List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York State, April 1971  
Pennsylvania, April 23, 1973

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

New York, (through the Second Appellate Department), April 1971

Supreme Court of Pennsylvania, April 23, 1973

Supreme Court of the United States, June 10, 1974

United States Court of Appeals for the Third Circuit, April 3, 1973

United States Court of Appeals for the Tenth Circuit, May 6, 1981

United States Court of Appeals for the Second Circuit, April 13, 1992

United States District Court, Eastern District of Pennsylvania, May 11, 1973

United States District Court, Middle District of Pennsylvania, April 30, 1986

United States District Court, Western District of Pennsylvania, July 19, 1994

United States District Court, Southern District of New York, May 26, 1992

United States District Court, Eastern District of New York, May 26, 1992

United States District Court, Northern District of New York, October 12, 2000

There have been no lapses in membership.

12. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications

Present Memberships

New York Law School Alumni Association

Mason's--Brotherhood Lodge No. 126 into which Mac Sanders Brotherhood Lodge No. 773 merged.

Metropolitan Opera Guild

Opera Club of Philadelphia

The Pennsylvania Society

Republican Party - Committeeman (Montgomery County, Pennsylvania)

Member of Finance Committee of Lower Merion Township Republican Committee

Former Memberships:

Knights of Pythias - Steuben Lodge

Pennsylvania Horticultural Society

Tau Epsilon Phi College Fraternity- Inactive Alumnus

Phi Delta Phi Law School Fraternity- Inactive Alumnus

Golden Slipper Club

Opera Guild of Philadelphia-Board Member and Counsel

Beth David Reform Congregation

JCC Kaiserman Branch

Philadelphia Music Alliance

Finance Committee of Republican State Committee of Pennsylvania

I was only a dues paying member in many of these organizations. The dates of membership go back many years, especially in former memberships.

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion - either through formal membership requirements or the practical

implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

These organizations did not and do not discriminate on the basis of race, sex or religion.

**13. Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

An Updated Civil RICO Primer (The Legal Intelligencer, January 5, 1990)

RICO: The Emerging "Pattern" Element (The Legal Intelligencer, April 3, 1990)

Federal Sentencing Guidelines: A Practical Analysis (The Legal Intelligencer, September 13, 1990)

Recent Trends in Criminal Law (The Legal Intelligencer, March 4, 1991)

Book Review: Federal Grand Jury Practice and Procedure (NACDL Publication: "The Champion", March 1991 and August 2002)

Commentary: An Occasion to Appreciate Our Bill of Rights (The Retainer, Bar Association Newspaper, December 11, 1991)

Recent Trends in Civil RICO (The Philadelphia Lawyer Magazine, Spring 1992, Vol. No. 8, p. 42)

Asset Forfeiture, Reporting and Money Laundering Offenses -Weapons of the 1990s (The Philadelphia Lawyer Magazine, Summer 1993), Vol. 56, No. 2, p. 32)

Downward Departures Under the Rigid Federal Sentencing Guidelines (The Philadelphia Lawyer Magazine, Fall 1993, Vol. 56, No. 3, p. 50)

Changing Rules on Expert Witnesses (The Philadelphia Lawyer Magazine, Winter 1994, Vol. 57, No. 4, p. 30)

The United States Supreme Court Unleashes a New Era In Downward Departures (The Philadelphia Lawyer Magazine, Winter 1997, Vol. 60, No. 4, p. 24)

The Controversial Application of State Ethical Rules to Federal Prosecutors (The Philadelphia Lawyer Magazine, Winter 1999, Vol 62, No. 4, p. 30)

Testimonial Hearsay: The Supreme Court's Radical Revision in Crawford v. Washington (The Philadelphia Lawyer Magazine, Summer 2005, Vol 68, No. 2, p. 24)

While Editor of the Philadelphia Lawyer Magazine in 2000 and 2001, I wrote several articles for the Magazine entitled: "Lawyers and the Arts", "Quotes for All Time" and "A Short Lesson for Lawyers".

"The Dream House" (fiction), (the Philadelphia Lawyer Magazine, Summer 1995, Vol. 58, No. 2, p. 72)

- b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I contributed to reports or statements of the Philadelphia Bar Association while I was an active member. I cannot recall specific subject matter other than a committee I served on to evaluate the sentencing practices of a judge seeking another judicial appointment. Service on this committee was about ten years ago.

- c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I recall about five years ago speaking before the Board of Commissioners of Lower Merion Township, Montgomery County, Pennsylvania, where I reside, in opposition to enacting an earned income tax. Because Philadelphia County, where I work, imposed a wage tax, I would have been exempt from paying the earned income tax in Lower Merion Township. I did not feel that it was fair for our first responders - police, firemen, hospital employees, ambulance service providers - who worked in Lower Merion Township to be required to pay the tax while I would have been exempt. Other reasons may have been advanced. The Commissioners did not impose the tax. I do not have a tape recording of my remarks or any notes of my remarks. My remarks were delivered in the Township Building located on Lancaster Avenue in Ardmore, Pennsylvania.

- d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and

readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have lectured on the Federal Immunity statute and sentencing procedures in State and Federal Court at two seminars attended by lawyers. The seminars occurred in the early 1980's.

I also lectured in the late 1970's on "Recent Trends in Search and Seizure Law" at a seminar sponsored by the National Association of Criminal Defense Lawyers.

I was a guest speaker at a synagogue in Northeast Philadelphia on January 6, 1985 and spoke on the subject of a police corruption trial in which I had represented a defendant.

Lecturer at workshop: "Criminal Law As It Affects the Civil Practitioner-Law Office Searches, Fraud, Forfeitures and Grand Jury Proceedings". Workshop conducted at the Pennsylvania Trial Lawyers Association Convention, July, 1994.

The written material presented at these sessions was not maintained.

- e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have been interviewed several times after a court proceeding by reporters about a case. They were very short interviews and occurred many years ago. I cannot recall the dates and have no clips or transcripts of these interviews.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held a judicial office.

15. **Citations** If you are or have been a judge, please provide:

- a. citations for all opinions you have written (including concurrences and dissents).
- b. a list of cases in which certiorari has been requested or granted.

- c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
- e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and
- f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have not served as a judge.

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

17. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed

you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I am an elected Republican Committeeman in the area in which I reside in Lower Merion Township, Montgomery County, Pennsylvania. It takes ten votes to get elected. I have been a Committeeman for about fifteen years. I have not been an unsuccessful candidate for elective office or an unsuccessful nominee for appointed office.

From August 1970 to November 1973, I was a Special Attorney with the United States Department of Justice, Criminal Division, Organized Crime and Racketeering Section. This was an appointed position. I was hired as part of the Honors Program of the United States Department of Justice.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I am on the Finance Committee of the Lower Merion Township Republican Committee and contribute at the Chairman's Club level. I also contribute at the Chairman's Club level to the Montgomery County Republican Party.

About six years ago, I was a campaign chairman for an elected local district justice running for re-election. It was an uncontested election and I just attended a few meetings with her. The District Justice's name was Caroline Stine.

I am a former member of the Finance Committee of Republican State Committee in Pennsylvania. I served on this Committee for about a two or three-year period in approximately the late 1990's.

I have held or co-chaired fund raisers for candidates for political office. They were former Philadelphia Councilwoman Joan Specter (July 1995); former U.S. Congressman Jon Fox (July 1996, July 1997 and August 1998); U.S. Senator Arlen Specter (September 1998); Pennsylvania State Senator Stewart Greenleaf in his campaign to be a U.S. Congressman (June 2000); District Attorney Bruce Castor of Montgomery County, Pennsylvania running for re-election (May 2003); U.S. Congressman Jim Gerlach (October 2003); and candidates for Lower Merion Township School Board (July 1996). The dates are approximate ones.

18. **Legal Career:** Please answer each part separately.

- a Describe chronologically your law practice and legal experience after graduation from law school including

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a law clerk.

- ii. whether you practiced alone, and if so, the addresses and dates;

From November, 1974 to August, 1982, I was a sole practitioner. My office was located at Suites 2616 and then 2400, Two Mellon Bank Plaza, Philadelphia, Pennsylvania.

From August, 1990 to the present, I have practiced law as a sole practitioner. From August, 1990 to August, 1997, my office was located at 1600 Market Street, Suite 1720, Philadelphia, Pennsylvania. From September, 1997 to May, 2005, my office address was Two Penn Center Plaza, 1500 John F. Kennedy Boulevard, Suite 1204, Philadelphia, Pennsylvania 19102. From June, 2005 to April, 2007, my office address was 1601 Market Street, 16th Floor, Philadelphia, Pennsylvania 19103. My office is presently located at 30 South 17th Street, 12th Floor, Philadelphia, Pennsylvania 19103.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1982 – 1990

DiGiacomo and Slomsky, P.C  
DiGiacomo and Slomsky  
DiGiacomo, Slomsky and Baffa  
1626 Pine Street (last address)  
Philadelphia, Pennsylvania  
Partner and 50% shareholder

1973 – 1974

Lipschitz and Danella  
915 Robinson Building  
15th and Chestnut Streets  
Philadelphia, Pennsylvania.  
Associate

1970 - 1973

United States Department of Justice  
Criminal Division, Organized Crime Section  
Philadelphia Strike Force (1971-1973)  
Washington, D.C. (1970-1971)  
Special Attorney

## b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

From August, 1970 to November, 1973, I was a federal prosecutor assigned first to the Organized Crime Section of the Criminal Division in Washington, D.C., and then to the Philadelphia Strike Force. In my position with the Department of Justice, I served as a prosecutor in the Eastern and Middle Districts of Pennsylvania. I prosecuted cases, handled appeals and supervised and conducted grand jury investigations. I prosecuted individuals for crimes involving tax, labor, counterfeiting, narcotics and other racketeering violations.

From November 12, 1973 to November, 1974, I was in private practice employed by the firm Lipschitz and Danella, 915 Robinson Building, Philadelphia, Pennsylvania.

From 1974 to the present, I have been primarily a criminal defense attorney representing clients mainly in Federal Court before the grand jury, at trial and on appeal. I have tried numerous cases, argued many appeals, including one case before the United States Supreme Court. The cases I have handled ranged from antitrust matters to labor, ERISA, tax, RICO (racketeering), securities fraud, healthcare and government contracting fraud and other violations contained in the United States Code. In addition, I represent clients in forfeiture matters in which the Government seeks to restrain the transfer of assets and to forfeit them.

From November, 1974 to August, 1982, I was a sole practitioner. My office was located at Suites 2616 and then 2400, Two Mellon Bank Plaza, Philadelphia, Pennsylvania.

From August 23, 1982 to September, 1983, I practiced law as a professional corporation, DiGiacomo and Slomsky, Ltd. My office was located on the 8<sup>th</sup> Floor, Atrium Building, 1900 Market Street, Philadelphia, Pennsylvania. I was a 50% shareholder and a principal of the professional corporation.

From September 1983 to January 1990, I practiced law as a partnership. The names of the practice were DiGiacomo and Slomsky and then DiGiacomo, Slomsky and Baffa. I was a partner. Our last office address was 1626 Pine Street, Philadelphia, Pennsylvania. Since then, I have been a sole practitioner.

I have also handled civil matters in state and federal courts, including among other matters RICO suits, cases under the Federal False Claims Act

(Qui Tam Actions), a wrongful discharge case and a suit involving an insurance company. I have also had some involvement in different kinds of personal injury cases which was the primary area of practice of my former partners.

I have been involved in many criminal matters in state court, representing, for example, a major defendant in the investigation into corruption in the Philadelphia Traffic Court and a prominent doctor charged with transporting body parts. I also represented a doctor who was charged with "check-kiting." I have tried cases and argued many appeals before the state courts in Pennsylvania.

- ii. your typical clients and the areas, if any, in which you have specialized.

My typical client is a doctor, lawyer, accountant, executive, union worker or employee of a small or large business who is either under investigation or has been charged with an offense. I specialize in all phases of federal criminal law, particularly in white collar offenses. Over the years I have represented a number of defendants who would not fall within the category of white collar offender, especially in cases in which I was appointed by the Court to represent an indigent defendant in the Eastern District of Pennsylvania.

In civil cases, I usually represent principals of closely held companies and the companies themselves.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

I appear in court regularly. A large percentage of my practice has been in litigation, trials (jury and non-jury), hearings on pre-trial and post-trial motions, guilty pleas, sentencing hearings and other matters. The frequency of my court appearances has not varied over the years, except the number of trials in federal court has decreased.

- i. Indicate the percentage of your practice in:

1. federal courts: 85%
2. state courts of record: 15%
3. other courts.

- ii. Indicate the percentage of your practice in:

1. civil proceedings: 5%
2. criminal proceedings: 95%

- d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried to verdict or judgment 52 cases - 26 as sole counsel, 16 as chief counsel in multiple defendant cases, and 10 as associate counsel with equal responsibility as co-counsel.

- i. What percentage of these trials were:

1. jury: 70%
2. non-jury: 30%

- e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

My practice before the U.S. Supreme Court is infrequent. I argued one case before the Court in 1979. United States v. Apfelbaum, 445 U.S. 115 (1980). I have no transcript of the oral argument. I participated in another case on brief that was argued by co-counsel. Three petitioners were involved in that case. United States v. Abney, 431 U.S. 651 (1977). Over the years I have filed two or three other Petitions for a Writ of Certiorari, but none were granted. One recently filed was Pojilenko v. United States, No. 07-472, cert. denied 1/7/2008. Enclosed are four copies of the briefs in the Apfelbaum and Abney cases and the last Petition for a Writ of Certiorari in the Pojilenko case.

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. United States v. Stanley Apfelbaum; United States District Court, Eastern District of Pennsylvania (Crim. Nos. 77-172 and 77-317); Jury Trial before the Honorable Donald W. VanArtsdalen from September 26 to 29, 1977.

Mr. Apfelbaum was charged with making false statements when he testified before the federal grand jury under a grant of immunity. I represented Mr. Apfelbaum in the trial court. Mr. Apfelbaum was charged with making two series of false statements to the grand jury knowing that they were false. The first indictment filed against Mr. Apfelbaum was dismissed by the trial judge after I filed pretrial motions showing that the offenses were not properly charged in the indictment as a matter of law. The government then reindicted Mr. Apfelbaum and the case went to trial before a jury which found him guilty. The Third Circuit Court of Appeals reversed his conviction, 584 F.2d 1264 (1978). I represented Mr. Apfelbaum in this appeal and those that followed and presented oral argument. I also researched and prepared the briefs on appeal. The Third Circuit agreed that in order for the grant of immunity to be coextensive with the Fifth Amendment privilege against self-incrimination it replaces, the prosecution in a perjury case may not use truthful immunized testimony as substantive evidence against a defendant. The government may only use that testimony which is alleged to be false and is the core of the charges. The United States Supreme Court granted certiorari and reversed the Third Circuit. 445 U.S. 115 (1980). The Supreme Court held essentially that only in a perjury prosecution may truthful immunized statements be used against a defendant without violating the Fifth Amendment privilege it replaces. The same result would not necessarily hold if a defendant were charged with a substantive offense as opposed to a false swearing offense. Thereafter, the case was remanded to the Third Circuit for consideration of other issues I raised on appeal. The Third Circuit considered them and affirmed the conviction. 621 F.2d 62 (1980).

The Prosecutor was Robert E. Madden, Esquire, 1401 Walnut Street, Suite 300, Philadelphia, Pennsylvania 19102, telephone number (215) 568-3331. Government Counsel on appeal were the Honorable William C. Bryson, United States Court of Appeals for the Federal Circuit, National Courts Building, 717 Madison Place, N.W., Washington, D.C. 20439, telephone number (202) 633-6550 and Assistant United States Attorney Vincent Gambale (Address and telephone number of Mr. Gambale could not be located).

2. United States v. Raymond Feinstein; United States District Court, Eastern District of Pennsylvania (Crim. No. 84-276). Jury Trial before the Honorable J. William Ditter, Jr. from October 31, 1984 to November 13, 1984.

Mr. Feinstein was charged with mail fraud in violation of 18 U.S.C. Section 1341. The defendant was a public adjuster who adjusted a claim for a company and its principals. A wind and rainstorm damaged a building leased by the company and destroyed inventory located in the building. Mr. Feinstein was charged with assisting the corporate principals in a scheme to inflate the insurance claim by watering down additional stock after the storm and making it appear that the inventory was damaged by the storm. The jury found Mr. Feinstein not guilty on all counts. I represented Mr. Feinstein at trial before the jury. I cross-examined the three principals of the company and convinced the jury that their credibility was suspect and their attempt to blame Mr. Feinstein was self-serving. Mr. Feinstein had no prior record and testified in his own defense.

The Prosecutor was Karl K. Lunkenheimer, Esquire. Mr. Lunkenheimer is deceased.

3. United States v. Donald Abney; United States District Court, Eastern District of Pennsylvania (Crim. No. 74-98 and 74-133); Jury Trial before the Honorable Donald W. VanArtsdalen from June 18, 1974 to July 1, 1974 and non-jury trial before Judge VanArtsdalen on October 12-13, 1977.

Mr. Abney and his co-defendants were charged with extorting money from the owner of a tavern in Philadelphia in violation of 18 U.S.C. Section 1951. I represented Mr. Abney as his trial counsel and in the appeals that followed. I also filed pre-trial motions, many of which formed the basis for the eventual acquittal of Mr. Abney. Mr. Abney was convicted by a jury following a ten day jury trial. On appeal, the Third Circuit Court of Appeals reversed the conviction. United States v. Starks, 515 F.2d 112 (3d Cir. 1975). I researched and prepared the Brief for Appellant Abney and argued the case before the Court of Appeals. In addition to finding a defect in the one-count indictment, which improperly charged two offenses in one count, in violation of Rule 8(a), Federal Rules of Criminal Procedure, the Third Circuit held that the Government failed to properly authenticate a tape-recording of conversations made by its principal witness with one of the defendants. In footnote 11, the Court set forth the necessary foundation which must be established by the proponent of tape-recorded evidence. Since tape-recordings and videotapes now play a central role in the evidence-gathering process of law enforcement, the Starks case is often relied upon as setting the standard for the admissibility of such evidence. A pre-trial Starks hearing is commonplace in the district courts in the Third Circuit. After remand for a new trial, the defense moved to dismiss the indictment on the ground that a retrial would violate double jeopardy. This motion was denied and Mr. Abney took an interlocutory appeal to the Third Circuit which decided the appeal on the merits and affirmed the denial by the trial judge of the motion to dismiss.

The United States Supreme Court granted certiorari limited to the question of whether a pre-trial order denying a motion to dismiss an indictment on double jeopardy grounds is a final decision within the meaning of 28 U.S.C. Section 1291 and thus immediately appealable. The Supreme Court held that the denial of the motion was appealable. 431 U.S. 651 (1977). I assisted in preparing the Brief filed in the United States Supreme Court.

Following a remand of the case, I represented Mr. Abney at trial. The defendant waived a trial by jury and was found not guilty by the trial judge.

The Prosecutors were Donald F. Manno, Esquire, 900 Dudley Avenue, Suite 250, Cherry Hill, New Jersey 08002, telephone number (856) 665-6464, and Kenneth Bravo, Esquire, 1300 East 9<sup>th</sup> Street, Cleveland, Ohio 44114-583, telephone number (216) 621-8400. Government counsel on appeal were Mr. Manno, along with Marshall Tamor Golding, United States Department of Justice, Civil Division, National Place, Room 9414N, 1331 Pennsylvania Avenue, N.W. Washington, D.C. 20004, telephone number (202) 616-4871. Then Assistant Attorney General Richard Thornburgh argued in the United States Supreme Court on behalf of the Government. Co-counsel representing other defendants

were: 1) Jack Myers, Esquire, represented a co-defendant. Mr. Meyers is retired from the practice of law; 2) Thomas Carroll, Esquire represented a co-defendant. Mr. Carroll is deceased; 3) Robert B. Mozenter, Esquire, 121 South Broad Street, Suite 1720, Philadelphia, Pennsylvania 19107, telephone number (215) 985-4280; and 4) Ralph David Samuel, Esquire, 215 South Broad Street, Suite 10, Philadelphia, Pennsylvania 19107, telephone number (215) 893-9992.

4. United States v. James S. Hill, Jr.; United States District Court, Eastern District of Pennsylvania (Crim. No. 90-353); Jury Trial before the Honorable Ronald L. Buckwalter from April 1 to April 3, 1991.

Mr. Hill was indigent and I was appointed by the Court to represent him in his federal criminal case. He was charged with offenses involving controlled substances and firearms. I represented Mr. Hill at his trial and the appeal that followed to the Third Circuit Court of Appeals. One of the unique issues in Mr. Hill's case concerned the warrantless search of his business by parole officers in the Commonwealth of Pennsylvania. Mr. Hill had a prior conviction in state court and was being supervised by Pennsylvania parole officers. The officers received information that Mr. Hill maintained drugs and guns at his home and this information led the parole officers to search Mr. Hill's place of business where they seized guns and drugs. These seizures led to the federal prosecution in which I represented Mr. Hill. A Motion to Suppress the use of this evidence was filed in which it was contended that the warrantless search was illegal under the Fourth Amendment to the United States Constitution. The trial judge denied the Motion. Mr. Hill was convicted by the jury on many of the counts contained in the indictment and he appealed to the Third Circuit Court of Appeals. In United States v. Hill, 967 F.2d 902 (3d Cir. 1992), the Court held essentially that in light of the parole systems special needs, the search of Mr. Hill's business was reasonable under the Fourth Amendment. The need to supervise a parolee and to investigate whether violations have occurred provide parole agents with greater authority to conduct unannounced searches. Extensive conditions of parole are part of the parole process and a parolee has a diminished expectation of privacy in his home and business.

The prosecutor was Joseph LaBrum, III, Esquire, Assistant United States Attorney, 615 Chestnut Street, Room 1250, Philadelphia, Pennsylvania; telephone number (215) 861-8412. Mr. LaBrum also represented the Government on appeal.

5. United States v. Timothy Kehrig, D.C.; Guilty Plea and Sentencing before the Honorable Eduardo C. Robreno, Eastern District of Pennsylvania, on October 5, 1998 and December 30, 1988.

Timothy Kehrig was a chiropractor. I represented him in his federal criminal case. I began my representation after search warrants were executed by federal agents at several locations where chiropractic offices were located. Dr. Kehrig was a relatively young chiropractor who was hired to work in one of the offices and to build a practice there. He was charged in an Information, along with nine other persons, many of whom were founders and owners of the company of which Dr. Kehrig was a part. The company was

run in a fraudulent manner and bills to insurance companies were falsified in many ways in order to generate illegal fees to the company.

Dr. Kehrig is a typical client I represent in federal court. He cooperated with the United States Attorney's Office and the federal agents and agreed to testify against the principals who created the fraudulent scheme and pressured him into participating in it. In return for his cooperation, the Government informed the Court of the extent of his cooperation and Dr. Kehrig received a more favorable sentence under the Federal Sentencing Guidelines than he would otherwise have been entitled to receive. He was sentenced to four months imprisonment to be served in a halfway house, to be followed by three years supervised release and ordered to pay \$50,000 restitution.

The prosecutor was Thomas M. Gallagher, Esquire. Mr. Gallagher practices law at Pepper Hamilton, LLP, 3000 Two Logan Square, 18<sup>th</sup> and Arch Streets, Philadelphia, Pennsylvania 19103, telephone number (215) 981-4068.

6. Kehr Packages, Inc. V. Fidelcor, Inc.; United States District Court, Eastern District of Pennsylvania (Civil No. 90-1396); Motions to Dismiss an Amended Complaint before the Honorable Robert F. Kelly in 1990.

Kehr Packages, Inc., my client, brought a civil RICO action against Fidelcor, Inc. under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. Sections 1961-68. There are many elements of a civil RICO action. The critical one in question in this case involved whether the facts alleged in the complaint were sufficient to establish a "pattern of racketeering activity."

Two brothers had entered into an agreement to purchase Kehr. Fidelity Bank had agreed to provide secured financing. Fidelity had agreed to a loan package, including working capital, which was critically important to the success of the venture. The two brothers who purchased Kehr alleged that during settlement bank officers made an oral commitment to lend additional working capital and did so numerous times over an eight-month period. No additional working capital was made available and the matter continued through the summer of 1988 when the bank declared the loans in default.

The District Court Judge held that the facts alleged did not establish a pattern of racketeering activity and dismissed the complaint. I represented Kehr and the two brothers in the district court and on appeal to the Third Circuit Court of Appeals. The Third Circuit affirmed the dismissal and wrote an opinion and further defined the parameters of a "pattern of racketeering activity." 926 F.2d 1406 (1991). The Court held essentially that the absence of any threat of continued activity beyond a short term attempt to force the corporation into bankruptcy did not constitute a pattern of racketeering activity. I researched and prepared the brief on appeal and argued the case before the Third Circuit.

Counsel representing Fidelcor, Inc. was Walter Weir, Jr., Weir & Partners, LLP, The Widener Building, 1339 Chestnut Street, Suite 500, Philadelphia, PA 19107; telephone number (215) 241-7751. Mr. Weir also represented Fidelcor, Inc. on appeal.

7. Commonwealth v. David Stern, et al.; Court of Common Pleas of Philadelphia County, Nos. 9500-2665, 9500-2662 and 9500-2636; This case involved a motion to dismiss a criminal complaint for failure to state a crime and was before the Honorable Jacqueline Allen in 1996.

David Stern was a lawyer charged in a criminal complaint with a violation of 18 Pa. C.S.A. Section 4117(b)(1), which prohibited compensating or giving anything of value to a non-lawyer for recommending or securing employment by a client. The Attorney General was investigating "runners" or non-lawyers who are paid a fee to obtain clients for or to make referrals to lawyers and healthcare providers. An undercover officer posed as an operator of an automobile which had been in an accident. He was introduced to David Stern as a client by a confidential source to whom Stern paid \$500 for the referral.

Both the Municipal Court and the Court of Common Pleas of Philadelphia County agreed with my argument that the criminal statute, Section 4117(b)(1), was unconstitutional because it violated Article V, Section 10(c) of the Pennsylvania Constitution which grants sole authority to regulate the conduct of attorneys to the Supreme Court of Pennsylvania. The statute violated the separation of powers doctrine.

The Commonwealth appealed to the Supreme Court of Pennsylvania. The Supreme Court also agreed that there was a separation of powers violation. 701 A.2d 568 (1997). I researched and prepared the brief and argued the appeal before the Supreme Court. I also argued the case in the lower courts. The Supreme Court in its decision made clear that supervising the conduct of an attorney before the courts of the Commonwealth of Pennsylvania was a matter exclusively for the Supreme Court.

Counsel representing the Commonwealth on appeal was Jerome T. Foerster, 560 Belmont Drive, Harrisburg, PA 17112, telephone number (717) 545-4127. Counsel representing a co-defendant was Samuel C. Stretton, Esquire, 301 South High Street, West Chester, PA 19381, telephone number (610) 696-4243.

8. United States v. Wilson; United States District Court, Eastern District of Pennsylvania (Criminal Nos. 78-1829, 78-1867, 79-1014 and 79-1015); Jury Trial before the Honorable John B. Hannum (deceased).

Defendant Thomas Wilson and his co-defendant John MacGregor, my client, were charged with conspiring to possess checks stolen from the mail and with preparing false income tax returns. In addition, Mr. MacGregor was charged with possessing two of the stolen checks. I represented Mr. MacGregor at the first trial in which there was an acquittal on some counts and a hung jury on other counts. Defendants were convicted at the second trial. I represented Mr. MacGregor at the second trial.

In this case, I researched, prepared and filed a motion to take the deposition of a potentially crucial witness residing in Spain. He was a fugitive, having been convicted in a state court for cigarette tax violations. The fugitive witness would have provided testimony to discredit the Government's chief witness whom the trial judge said was "devoid of credibility." The trial judge denied the motion because the witness was a fugitive. The defendants were not responsible for his flight.

The Third Circuit reversed the convictions and held it was permissible to take the deposition under Federal Rule of Criminal Procedure 15(a), which provides for taking depositions in exceptional circumstances. 601 F.2d 95 (1979). Given the serious credibility issues in the case, the jury should have been permitted to hear all the evidence regardless of its controversial nature. I researched and prepared the brief on appeal and argued the case before the Third Circuit. The Government decided not to try the case a third time and the charges were dismissed.

The prosecutor at trial was Robert E. Courtney, III, Chief Assistant U.S. Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, telephone number (215) 861-8668. The prosecutors on appeal were Michael J. Keane and Barry A. Friedman. They no longer work for the U.S. Department of Justice and I could not locate them. Co-counsel representing another defendant was Edward Reif, Esquire, 1760 Market Street, Suite 1100, Philadelphia, PA 19103, telephone number (215) 561-3333.

9. United States v. Pojilenko; United States District Court for the Eastern District of Pennsylvania (Criminal No. 02-254-RBS-2); Appeal to the United States Court of Appeals for the Third Circuit.

Defendant Pojilenko was convicted by a jury of multiple counts of RICO and related offenses. I did not represent him at trial. I represented him on his appeal to the Third Circuit Court of Appeals. The critical issue on appeal dealt with a matter of first impression in the Third Circuit under the United States Sentencing Guidelines. In the course of this conspiracy, a minor, age 16, was used to broker a sale of controlled substances. There was no evidence at trial that Appellant Pojilenko directed, procured, counseled or solicited the minor. Despite this evidence, the district court judge enhanced Mr. Pojilenko's sentencing guidelines under the "Role In the Offense" guidelines for use of a minor in the offense. U.S.S.G. Section 3B1.4. Another co-conspirator did use the minor in the offense and the issue before the Third Circuit was whether a co-conspirator's reasonably foreseeable use of a minor can be attributed to other members of the conspiracy for the purposes of applying the enhancement under Section 3B1.4. The Court held that it cannot. 416 F.3d 243 (2005)

The Court vacated the sentence and Mr. Pojilenko was resentenced. I represented Mr. Pojilenko at his resentencing and on another appeal to the Third Circuit Court of Appeals. In addition, a Writ of Certiorari was filed in the Supreme Court of the United States. I prepared a sentencing memorandum in the district court, researched and prepared the briefs, argued the first appeal and researched and prepared the Petition for a Writ of Certiorari.

Counsel representing the Government on appeal were Andrea Foulkes, Esquire, Assistant U.S. Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, telephone number (215) 861-8685, and Mark Ehlers, Esquire, Kroll & Associates, Inc., 1628 John F. Kennedy Boulevard, Suite 1600, Philadelphia, PA 19103, telephone number (215) 568-8305.

10. United States v. Herman Bloom; United States District Court for the Eastern District of Pennsylvania (Criminal No. 86-00451-18 and 86-00451-19); Pretrial Motion to Suppress Taped Recorded Conversations in 1988 before the Honorable Marvin Katz.

Herbert Fisher and Herman Bloom, my client, were two lawyers who visited a union headquarters to discuss various matters with officials of the union. At the time of the visit the Government had in place in the ceiling of an office a court-authorized device to intercept conversations of the union officials and others in which criminal activity was discussed. Both Defendants Bloom and Fisher were intercepted talking to a union official and members of the union. They were subsequently indicted and essentially charged with paying a kickback to a union official.

My co-counsel and I prepared and filed a motion to suppress the conversations, alleging that they were seized in violation of the attorney-client privilege. The District Court Judge reviewed each conversation in light of the factual circumstances and the requirements of the attorney-client privilege and denied the motion because the privileged nature of the communications was not established. United States v. Fisher, 692 F. Supp. 488 (1988). The filing of the motion helped the defense and the government focus on the pertinent portions of the conversations. Many portions were excluded by agreement of the parties. At a trial at which I represented Defendant Bloom, the jury acquitted him on some counts and convicted him on others.

Counsel representing the Government was Richard L. Scheff, Esquire, Montgomery, McCracken, Walker & Rhoads, LLP, 123 South Broad Street, Philadelphia, PA 19109, telephone number 215-772-7502. Counsel representing co-defendant Herbert Fisher was William J. Winning, Esquire, Cozen & O'Connor, 1900 Market Street, Philadelphia, PA 19103, telephone number 215-665-2093.

20. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organization(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I do not perform lobbying activities on behalf of clients.

I have been a trial lawyer for a large part of my career and the cases described in answer to Question 19 typically represent my most significant litigation and legal matters whether or not the matter went to trial.

In addition, I have devoted considerable time to bar association activities. My efforts were directed not only to improving the system of justice in our courts, but also to enhancing the professionalism of the bar. To achieve these results, I served on Boards, planning committees and publications.

21. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

On one occasion, I participated as a faculty member of the National Institute of Trial Advocacy.

On one occasion, I was a guest "judge" at an advocacy class at Rutgers Law School. After the "mock trial", I critiqued the performance of the students. On two occasions, I went to the University of Pennsylvania Law School to demonstrate to an advocacy class techniques in cross-examination and closing arguments and to critique the performance of the students.

I do not have a syllabus for the above matters.

22. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None, other than retirement accounts my wife and I have and a potential fee in a case in which I am court-appointed to represent a defendant on appeal in the Third Circuit Court of Appeals.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

24. **Sources of Income** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other

items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report

25. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

The parties, categories of litigation, and financial arrangements that may present potential conflicts-of-interest during my initial service in the position to which I have been nominated would include cases involving family members, close friends and former clients as well as cases which involved, in any way, my financial assets.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I will follow the Code of Conduct for United States Judges and applicable policies and procedures of the court.

27. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

First, knowing the vital nature of the right to counsel and the need for competent counsel to represent persons accused of crimes, I began and funded in 1996 the "Gideon Award" which is presented to a graduating senior at Temple University School of Law who excels academically and is hired by the Defender Association of Philadelphia. I intend to fund this award annually unless I am otherwise precluded from doing so.

I have also made financial contributions to legal service organizations which represent persons who cannot afford to hire counsel to insure that everyone has equal access to the courts, regardless of wealth or status in life. I am a member of the Andrew Hamilton Circle of the Philadelphia Bar Foundation, the charitable arm of the Philadelphia Bar

Association. A member of the Hamilton Circle pledges to make a minimum financial contribution to the Foundation for a ten-year period. I have fulfilled my commitment.

Finally, I have accepted court appointments in criminal cases at reduced fees so that defendants could receive adequate representation. In cases in which I was not court appointed, I have represented at reduced fees clients who could not otherwise afford a standard fee. Over the years I have served on committees whose primary functions were to make policy decisions to improve the criminal justice system. I have dedicated a large amount of time over the years to pro bono activities.

28. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

I have been interested in a federal judgeship for many years and have appeared many times before the Federal Judicial Nominating Commission established by the U.S. Senators in Pennsylvania. I was recommended for this nomination and was interviewed at the White House on March 12, 2008. I was contacted by the White House and Department of Justice about my potential nomination moving forward the week of May 12, 2008. I have had subsequent conversations with staff from the Department of Justice. My nomination was forwarded to the Senate on July 24, 2008.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

No.

AO 10  
Rev. 1/2007

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

1. Person Reporting (last name, first, middle initial) Slomsky, Joel H	2. Court or Organization U.S.D.C.-P.A.E.	3. Date of Report 7/25/2008
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge-Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 7/24/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2007 to 6/30/2008
7. Chambers or Office Address 30 South 17th St., 12th Floor Philadelphia, PA 19103-4196	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
<b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of instructions.)

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. sole proprietor	Joel Harvey Slomsky, Esquire
2.	
3.	
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of instructions.)

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 2007	Joel Harvey Slomsky, Esquire, 401(k) Profit Sharing Plan, control
2. 2007	Joel Harvey Slomsky, Esquire, 401(k) Profit Sharing Plan, control

**FINANCIAL DISCLOSURE REPORT**  
Page 2 of 11

<b>Name of Person Reporting</b> Slomsky, Joel H	<b>Date of Report</b> 7/25/2008
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**III. NON-INVESTMENT INCOME.** *(Reporting individual and spouse; see pp. 17-24 of instructions.)*

**A. Filer's Non-Investment Income**

NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1. 2006	Joel Harvey Slomsky, Esquire-Law Firm	\$ 245,762
2. 2007	Joel Harvey Slomsky, Esquire-Law Firm	\$ 270,250
3. 2008	Joel Harvey Slomsky, Esquire-Law Firm	\$ 188,325
4.		
5.		

**B. Spouse's Non-Investment Income** - *If you were married during any portion of the reporting year, complete this section.*  
*(Dollar amount not required except for honoraria.)*

NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2007	Northeast Community Center for Mental Health/Mental Retardation-Salary
2. 2008	Northeast Community Center for Mental Health/Mental Retardation-Salary
3.	
4.	
5.	

**IV. REIMBURSEMENTS** - *transportation, lodging, food, entertainment.*  
*(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)*

NONE *(No reportable reimbursements.)*

<u>SOURCE</u>	<u>DESCRIPTION</u>
1.	
2.	
3.	
4.	
5.	

**FINANCIAL DISCLOSURE REPORT**  
Page 3 of 11

Name of Person Reporting Stomsky, Joel H	Date of Report 7/25/2008
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**V. GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-33 of instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
Page 4 of 11

<b>Name of Person Reporting</b> Stomsky, Joel H	<b>Date of Report</b> 7/25/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. IRA #1	E	Dividend	M	T	Exempt				
2. --Vanguard Wellington Fund									
3. --Vanguard Star Fund									
4. IRA #2	C	Interest	K	T					
5. --E-Trade-Cash Account									
6. --E-Trade (CD)									
7. --E-Trade (CD)									
8. 401(k) Profit Sharing Plan	G	Int./Div.	P1	T					
9. --American Fund-Capital Income Builder									
10. --Ivy Asset Strategy Fund									
11. --Vanguard Wellington Fund									
12. --Vanguard Star Fund									
13. --U.S. Treasury Strip									
14. --Israel State Bond									
15. --American Back to D...									
16. Hahn - Personal ...									
17. Hahn - Personal ...									

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Slomsky, Joel H	<b>Date of Report</b> 7/25/2008
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "XY" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date- Month- Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. --Banco Popular (CD)									
19. --Bank of the Ozarks (CD)									
20. --Cleveland State Bank (CD)									
21. --Discover Bank (CD)									
22. --Discover Bank (CD)									
23. --East West Bank (CD)									
24. --Farmers and Merchants Bank (CD)									
25. --Foundations Bank (CD)									
26. --First National Bank (CD)									
27. --LaSalle Bank NA (CD)									
28. --Magnet Bank (CD)									
29. --Paragon National Bank (CD)									
30. --Select Bank (CD)									
31. --Washington Mutual Bank (CD)									
32. --Citizens Bank (CD)									
33. --First National Bank (CD)									
34. --First National Bank (CD)									

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Slomsky, Joel H	<b>Date of Report</b> 7/25/2008
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. --Main Street Bank (CD)									
36. --FirstBank Puerto Rico (CD)									
37. --FirstBank Puerto Rico (CD)									
38. --Columbian Bank & Trust Company (CD)									
39. --Washington Mutual Bank (CD)									
40. --Lehman Brothers Bank (CD)									
41. --GMAC Bank (CD)									
42. --Flagstar Bank (CD)									
43. --Lord Albert Mid-Cap Value Fund									
44. --Alger Mid-Cap Growth Fund									
45. --Federated Market Opportunity Fund									
46. --Federal National Mortgage Association Bond									
47. --Federal National Mortgage Association Bond									
48. --Federal Home Loan Mortgage Corp. Bond									
49. --Citizens Bank (CD)									
50. --Citizens Bank (CD)									
51. --Citizens Bank (CD)									
52. --Citizens Bank (CD)									
53. --Citizens Bank (CD)									
54. --Citizens Bank (CD)									
55. --Citizens Bank (CD)									
56. --Citizens Bank (CD)									
57. --Citizens Bank (CD)									
58. --Citizens Bank (CD)									
59. --Citizens Bank (CD)									
60. --Citizens Bank (CD)									
61. --Citizens Bank (CD)									
62. --Citizens Bank (CD)									
63. --Citizens Bank (CD)									
64. --Citizens Bank (CD)									
65. --Citizens Bank (CD)									
66. --Citizens Bank (CD)									
67. --Citizens Bank (CD)									
68. --Citizens Bank (CD)									
69. --Citizens Bank (CD)									
70. --Citizens Bank (CD)									
71. --Citizens Bank (CD)									
72. --Citizens Bank (CD)									
73. --Citizens Bank (CD)									
74. --Citizens Bank (CD)									
75. --Citizens Bank (CD)									
76. --Citizens Bank (CD)									
77. --Citizens Bank (CD)									
78. --Citizens Bank (CD)									
79. --Citizens Bank (CD)									
80. --Citizens Bank (CD)									
81. --Citizens Bank (CD)									
82. --Citizens Bank (CD)									
83. --Citizens Bank (CD)									
84. --Citizens Bank (CD)									
85. --Citizens Bank (CD)									
86. --Citizens Bank (CD)									
87. --Citizens Bank (CD)									
88. --Citizens Bank (CD)									
89. --Citizens Bank (CD)									
90. --Citizens Bank (CD)									

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Slomsky, Joel II	<b>Date of Report</b> 7/25/2008
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**VII. INVESTMENTS and TRUSTS** – income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. --Vanguard Intermediate Bond Index Fund									
53. Defined Benefit Pension Plan	G	Int./Div.	N	T					
54. --Century Bank (CD)									
55. --Concord Bank (CD)									
56. --Cowlitz Bank (CD)									
57. --Discover Bank (CD)									
58. --Discover Bank (CD)									
59. --First National Bank (CD)									
60. --Magnet Bank (CD)									
61. --Merrill Lynch Bank (CD)									
62. --Fidelity Money Market Account									
63. --GMAC Automotive Bank (CD)									
64. --Western Bank (CD)									
65. --Bank of Baroda NY (CD)									
66. --Lehman Brothers Bank (CD)									

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Slomsky, Joel H	<b>Date of Report</b> 7/25/2008
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
69. --Bank North (CD)									
70. --Mercantile Bank (CD)									
71. Flexible Annuity Plan	E	Int./Div.	L	T					
72. --Mutual of America Conservative Allocation Fund									
73. --Mutual of America Moderate Allocation Fund									
74. --Mutual of America General Account									
75. --Mutual of America Composite Fund									
76. --Mutual of America Money Market Fund									
77. Taxed Deferred Annuity	F	Int./Div.	N	T					
78. --Mutual of America Conservative Allocation Fund									
79. --Mutual of America Moderate Allocation Fund									
80. --Mutual of America Interest Accumulation Account									
81. --Mutual of America Composite Fund									
82. --Mutual of America Money Market Fund									
83. PNC Bank Money Market Account									
84. ... Bank ... Market Account									
85. ... Bank ... Market Account									

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b> Slomsky, Joel H	<b>Date of Report</b> 7/25/2008
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
86. Citizens Bank Money Market Account	B	Interest							
87. PNC Bank Money Market Account	B	Interest							
88. PNC Bank Money Market IOLTA Account-See VIII									

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Slomsky, Joel H	7/25/2008

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of Report.)*

Pages 4 to 8: Many listed certificates of deposit (CD) matured and were redeemed during the reporting period. The funds were reinvested in other listed financial assets including certificates of deposit. Some listed bonds also matured and were redeemed during the reporting period and the funds were reinvested in other listed financial assets. Some listed mutual funds were sold during the reporting period and the funds were reinvested in other listed financial assets. Some listed money market accounts were closed during the reporting period and the funds were transferred to other listed money market accounts. The information on numerous transactions is not provided in Section D because of the exemption.

Page 8: An IOLTA (Interest On Lawyers Trust Account) is an interest bearing trust account. Under Rules of the Pennsylvania Supreme Court, lawyers are required to participate in the IOLTA program and all interest earned is sent by the bank directly to the IOLTA Board which distributes the funds for pro bono efforts.

**FINANCIAL DISCLOSURE REPORT**  
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<b>Name of Person Reporting</b>	<b>Date of Report</b>
Slomsky, Joel H	7/25/2008

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature

*Joel H. Slomsky*

Date

*7/25/2008*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

**FILING INSTRUCTIONS**

Mail signed original and 3 additional copies to:

 Committee on Financial Disclosure  
 Administrative Office of the United States Courts  
 Suite 2-301  
 One Columbus Circle, N E  
 Washington, D C 20544



FINANCIAL STATEMENT  
NET WORTH SCHEDULES

<u>Real Estate Owned</u>	
Personal residence	\$ 675,000
New Jersey Condominium	450,000
New York Cooperative Apartment	670,000
Total Real Estate Owned	<u>\$ 1,795,000</u>

Contingent Liabilities:

Guarantor on month-to-month residential lease for family member - \$1330 per month.

\$7306 – auto leases and parking spot lease balance

AFFIDAVIT

I, Joel H. Slomsky, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

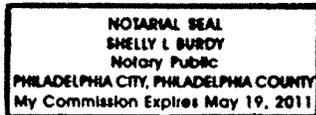
July 25, 2008  
(DATE)

Joel H. Slomsky  
(NAME)

Commonwealth of Pennsylvania  
County of Philadelphia

Subscribed and sworn to before me  
this 25<sup>th</sup> day of July, 2008.

Shelly L. Purdy  
(NOTARY)



Chairman LEAHY. Thank you very much.

The last one will be Eric Melgren, who's currently the U.S. Attorney for the District of Kansas, a position he's held since 2002. He graduated magna cum laude from Wichita State University, was student body president, has a law degree from Washburn, graduating cum laude.

**STATEMENT OF ERIC F. MELGREN, NOMINEE TO BE DISTRICT  
JUDGE FOR THE DISTRICT OF KANSAS**

Mr. Melgren, I understand that with the short notice, you do not have family here with you. Is that correct?

Mr. MELGREN. That's correct, Mr. Chairman.

Chairman LEAHY. Thank you.

Mr. MELGREN. They're very supportive, but in absence.

Chairman LEAHY. No, I understand. We could have waited a couple of weeks to give them a chance, but I don't think you wanted to do that.

Mr. MELGREN. We're much happier with the way it is. I would join the remarks. I'm very grateful to you for scheduling this hearing, Mr. Chairman.

[The biographical information follows.]

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** Full name (include any former names used).

Eric Franklin Melgren  
name used is Eric F. Melgren

2. **Position:** State the position for which you have been nominated.

United States District Judge for the District of Kansas

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

United States Attorney's Office  
301 N. Main, Suite 1200  
Wichita, Kansas 67202

4. **Birthplace:** State year and place of birth.

1956; Minneola, Kansas

5. **Marital Status:** (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

I am married to Denise Jo (nee Warfield) Melgren. She is employed as the Interim Worship and Music Director, West Evangelical Free Church; 1161 N. Maize Road  
Wichita, Kansas 67212

We have four dependent children.

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1982 – 1985, Washburn University School of Law; J.D. awarded 1985

1974 – 1979, Wichita State University, B.A. awarded 1979

7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Employment:

2002-present  
U.S. Attorney's Office  
301 N. Main; Suite 1200  
Wichita, Kansas 67202  
United States Attorney for the District of Kansas

1987 - 2002  
Foulston Siefkin LLP (f/k/a Foulston, Siefkin, Powers & Eberhardt)  
100 N. Broadway, Suite 700  
Wichita, Kansas 67202  
Currently located at:  
1551 N. Waterfront Parkway; Suite 100  
Wichita, Kansas 67206  
associate attorney 1987-1992  
partner 1992-2002

1/95 – 4/95  
Congressman Sam Brownback, 104th Congress  
1313 Longworth House Office Building  
Washington, DC  
Legislative Assistant – Employment was part time, on leave from my law firm

1985 – 1987  
Hon. Frank G. Theis  
United States District Court  
District of Kansas  
401 N. Market  
Wichita, Kansas 67202  
Law clerk

1984 – 1985  
KMG Main Hurdman CPAs  
Merchant's National Bank Building  
8th & Jackson  
Topeka, Kansas  
Research law clerk, part time

1979-1984

Andler Corporation (f/k/a Penn State Industries)  
323 E. 13th Street  
Topeka, Kansas

General Manager, Hess Chemical Co. 1981-1984  
401 E. 13th Street  
Topeka, Kansas

Assistant to the President, Penn State Chemical Company 1980-1981  
General Sales Manager, Penn State Chemical Company 1980  
Sales Representative 1979-1980

Other affiliations:

Midwest HIDTA, Director 2002-2008

Wichita State University Alumni Association: Board 1993-1999; VP Finance 1994-1996;  
President 1997-1998

United Way of the Plains: Board 2000-2002; Chairman 2001

Wichita Christian Legal Aid, Inc.: Director 2001-2002

Rotary Club of West Wichita: Board and Secretary, 2000-2001

Live Free Ministries, Inc.: Board 1998-2002

West Evangelical Free Church: Board 1991-1995, 2000-2005; Chairman 1993-1996,  
2003-2005

Leadership Wichita: Board 1994-1997; Chairman 1996

Mental Health Association of South Central Kansas: Board 1988-1994; Chairman 1990-  
1991

Capitol Civitan Club (Topeka): President 1984-1985

8. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

I did not serve in the military.

9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

National Aeronautics and Space Administration, presentation in recognition of the outstanding leadership and significant contributions to public service by ensuring the preservation of America's space program artifacts, January 2006

National Alliance Mentally Ill, Kansas, Prosecutor of the Year, 2006

Presented *Certificate of Achievement* from the Boeing Company, 1997, for achievement in a case

Martindale Hubbell "AV" rating

Graduate of the Leadership Wichita (f/k/a Leadership 2000) program

Civitan Clubs International Distinguished Presidential Award, 1985

Graduated *cum laude* from Washburn Law School, in top 5% of class

Member of the Washburn Law Journal

Received Kansas Bankers Association Estate Planning Award

Recipient of Coffman Scholarship my junior and senior year (which I believe was the largest single scholarship at the time)

Graduated *magna cum laude* from Wichita State University

Graduate of the Emory Lindquist Honors Program

Senior Honor Man (top 5 outstanding seniors)

Student Body President

Omicron Delta Kappa National Leader of the Year (Province VIII)

National Collegiate Honors Council Washington, D.C. Honors Colloquium Semester 1976

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association: Member 1985-2002

Kansas Bar Association: Member 1985 to present

Task Force on the State Board of Tax Appeals 1983-1994

Legislative Committee 1996-2002

Judicial Resources Task Force 1999-2000

Wichita Bar Association: Member 1986 to present

Legislative Relations Committee 1989-2002

Chairman 1995-1996  
Nominating Committee 2001  
Law Day Committee/Public Relations Committee (committee renamed) 1999-2004  
Chairman 2004  
Hosted Cheryl Brown Henderson for 50<sup>th</sup> Anniversary of Brown v. Board of Education Law Day address, with student symposium  
Co-Producer – “Ask-a-Lawyer” Television Program (KPTS) 2000, 2001  
Law in Education Committee 1988, 1993  
Public Relations Committee 1987

Christian Legal Society  
Kansas state membership director 1989-1994  
Wichita CLS Chapter (unincorporated), Director 1992-2002  
Wichita Christian Legal Aid, Inc. 2001-2002  
Incorporator, Board of Directors & Volunteer

**11. Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

State of Kansas - September 20, 1985  
There have been no lapses in membership

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Kansas State courts, 1985  
United States District Court for District of Kansas, 1985  
United States Court of Appeals for the Tenth Circuit, 1987  
United States Tax Court, 1988  
Supreme Court of the United States, 1996  
There have been no lapses in membership

**12. Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly

participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Midwest HIDTA, Director 2002-2008

Wichita State University Alumni Association: Board 1993-1999; VP Finance 1994-1996; President 1997-1998

United Way of the Plains: Board 2000-2002; Chairman 2001

Wichita Christian Legal Aid, Inc.: Director 2001-2002

Rotary Club of West Wichita: Board and Secretary, 2000-2001

Live Free ministries, Inc.: Board 1998-2002

West Evangelical Free Church: Board 1991-1995, 2000-2005; Chairman 1993-1996, 2003-2005

Kansas Republican Party (State Executive committee 1997-2002; State Delegate 1997-2002; 4<sup>th</sup> District Delegate 2001-2002)

Leadership Wichita: Board 1994-1997; Chairman 1996

Dave Shank for School Board, Chairman 1997

Mark Vining for Judge, Campaign Steering Committee 1994

Mental Health Association of South Central Kansas: Board 1998-1994; Chairman 1990-1991

Capitol Civitan Club (Topeka) 1980-1985: President 1984-1985

Other organizations to which I have belonged but in which I have held no office or significant position are:

Washburn University School of Law Alumni Association, c1985-2005

Wichita Area Chamber of Commerce, c1992-2002

The University Club c1988-1998 (a now defunct dining club)

The Petroleum Club c1994-2002 (a luncheon club)

Wichita Lawyers Club c1986-1988

Federalist Society, 2002-present

Big Brothers Big Sisters "Bigs in Schools" Volunteer, 2002-2003

Maize School District (USD 266) Board Committee, Co-Chair 2000

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Please indicate whether any of these organizations listed in response to 12a above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the entities or organizations listed discriminate on the basis of race, sex or religion, formally or in practice, currently or in the past, save for West Evangelical Free Church, Christian Legal Society, and Wichita Lawyers Club. West Evangelical Free Church and the Christian Legal Society require an agreement with a religious statement of faith as a condition of membership. The Wichita Lawyers Club was an old and prestigious society which granted membership only by secret vote and restricted membership to only a certain percentage of Wichita lawyers. The rules of the organization denied membership to anyone who received 3 negative votes. I was voted into membership in approximately 1986. Although the organization did not formally bar females from its membership, the effect of the 3 blackball vote rule had historically been to deny membership to women. Several of us promoted some female membership (including the first female judge in the county), but all proposed female members were voted down. Therefore, I resigned from the organization in approximately 1988. I am unsure if the organization even exists today.

13. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

“[Drug] Legalization Would be a Mistake”  
*Wichita Eagle* (op ed) January 26, 2007

“Preventing Children from Being Victims”  
*Kansas Prosecutor* Vol. IV, No. 1 (Winter 2007)

“Turning the Tables on Child Predators”  
*Kansas Prosecutor* Vol. II, No. 3 (Winter 2005)

“Sentencing Guidelines”  
Wichita Bar-o-Meter October 2005

“Patriot Act’s Tools Still Needed to Fight Terror”  
*Wichita Eagle* (op ed) July 21, 2005

“Crime’s Decline Due to Tougher Laws”  
*Wichita Eagle* (op ed) November 12, 2004

“Columnist Misrepresented Patriot Act’s Powers”  
*University Daily Kansan* (letter to editor) September 30, 2004

“The U.S. Attorney’s Office, District of Kansas, and the KCDA”  
*Kansas Prosecutor* Vol.1, No. 1 (Summer 2004)

“No Mere Yeoman: Incorporating the Family Farm”  
*24 Washburn Law Journal* 546 (1985)  
republished : *Law Review Digest* Vol. 34, No. 6, p. 13

- b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None

- c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

In 2003 I gave testimony to the Kansas legislature joint committee on homeland security as U.S. Attorney regarding the Patriot Act. No written testimony or statement was presented.

I gave testimony regarding state tax disputed issues on behalf of the Kansas Bar Association in the 1990’s, for which I have no files or records.

- d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

October 3, 2006; Ethics Seminar for Corporate Counsel; "Ethical Issues Involving Document Gathering and Retention, Attorney-Client Privilege, and Reporting to the Government in an Investigation" (panel)

October 7, 2004; Kansas Ethics Seminar for Corporate Counsel; Panel Discussion of Ethical Scenarios

July 15, 2004; Kansas Women's Attorney's Association; PATRIOT Act Debate

July 14, 2004; Church Law Seminar; "Tax Exempt Entities - Involvement in Political Elections"

May 3, 2004; Kansas City Association of Financial Professionals; "Requirements of the PATRIOT Act"

February 5, 2003; Johnson County Bar Association; "Litigating Civil Cases with the Federal Government"

June 29, 2000; "Kansas Nonprofits: Tax and Business Answers"; National Business Institute

June 22, 2000; "Kansas Property Tax"; Lorman Business Institute

May 15, 2000; "Formation and Operational Issues in Nonprofit Entities"; Kansas Society of Certified Public Accountants

June 25, 1999; "Kansas Property Tax"; Lorman Business Center

May 10, 1999; "Issues from the IRS Restructuring & Reform Act of 1998: Accountant's Privilege and Shifting Burden of Proof"; Kansas Society of Certified Public Accountants

May 11, 1998; "When the Audit Goes Bad: Preparing for and Managing Tax Litigation"; Kansas Society of Certified Public Accountants

February 27, 1998; "Choice of Business Entity"; Wichita Bar Association

November 22, 1996; "Agricultural and Operational Considerations of Limited Liability Companies"; Kansas Livestock Association

November 14, 1996; "Sales & Property Taxes"; "Taxpayer Bill of Rights"; Credit Card Affinity Programs"; Kansas Tax Exempt Organizations

May 15, 1996; "Limited Liability Companies"; National Business Institute

May 13, 1996; "The 100%Penalty-How an Employer's Unpaid Tax Becomes Your Liability"; Kansas Society of Certified Public Accountant's

July 14, 1995; "Ad Valorem Tax Appeals"; Petroleum Appraisal Institute

May 12, 1995; "Avoiding and Defending Supplemental Tax Assessments"; Kansas Society of CPA's

May 12, 1995; "Personal Property Tax Exemptions"; Commercial Property Owners Association of Kansas

December 9, 1994; Panel Discussion on Handling Property Tax Disputes; Commercial Property Owners Association of Kansas

November 16, 1993; "State and Local Tax Issues"; Institute of Management Accountants

January 8, 1993; "Kansas State Tax Overview"; Boeing legislative briefing

May 22, 1990; "Homeowner's Property Rights"; Botanica Education Series

September 30, 1989; "Medical/Legal Concepts"; Sedgwick County EMT-EMICT Recertification Seminar

1989; "Kansas Property Taxes"; Wichita Claims Associates

#### Community Speeches

May 14, 2008; Horace Mann Magnet School; U.S. Constitution

April 22, 2008; LEC Conference Opening Remarks

April 15, 2008; USD 259; "Project Safe Childhood"

April 9, 2008; FBI Citizen's Academy; USAO Overview

March 27, 2008; Retired Professional & Businessmen's Club; USAO Overview

March 9, 2008; Tabernacle Baptist Church; "Project Safe Childhood"

March 4, 2008; KWCH Channel 12 Television; Wichita Citizen's Academy

February 23, 2008; Dwight D. Eisenhower Excellence in Public Service Series; "Project Safe Childhood"

February 9, 2008; Pure & Simple Lifestyle Project/Abstinence; Project Safe Childhood-Internet Predators

February 6, 2008; Kansas Gang Investigator's Conference; USAO Overview

January 8, 2008; KLETC Training; Opening Remarks

December 18, 2007; McIntosh Report - KNSS Radio; United States Attorney's Office Update

October 24, 2007; FBI Citizen's Academy; USAO Overview

October 10, 2007; Drug Endangered Children; "Protecting Our Children" (opening remarks)

September 27, 2007; Sedgwick County Young Republicans; United States Attorney's Office Overview

September 27, 2007; Stucky Middle School; "The United States Constitution"

September 11, 2007; Wichita Area Law Enforcement; United States Attorney's Office Overview

July 25, 2007; Wichita East Rotary; "Project Safe Childhood and Internet Predators"

June 25, 2007; Wichita Prayer Breakfast; Personal remarks

June 15, 2007; Sedgwick County Sheriff's Training Graduation; "Cooperative Law Enforcement"

May 11, 2007; Kansas Association Legal Assistants; "Project Safe Childhood"

May 9, 2007; Money Laundering Conference; "Federal Investigations" (opening remarks)

May 7, 2007; First Responders Response To Terrorism Conference; "Importance of Preparedness" (opening remarks)

May 7, 2007; Northwest High School; Law Day - Rule of Law

April 17, 2007; Boy Scouts of America; "Obligations of U.S. Citizenship"

April 4, 2007; FBI Citizen's Academy; USAO Overview

February 20, 2007; West Wichita Rotary; "Project Safe Childhood"

February 17, 2007; Dwight D. Eisenhower Excellence in Public Service Series; "Project Safe Childhood"

January 23, 2007; Wichita State University Political Science; Legalization of marijuana debate

October 17, 2006; Bel Plaine Lions Club; United States Attorney's Office Overview

October 16, 2006; WSU Distinguished Alumni Breakfast Series; "The Job of the United States Attorney"

September 14, 2006; Protect our Children Regional Conference; "Protect Our Children" (opening Remarks)

August 23, 2006; Drug Endangered Children State Conference; "Protect Our Children" (opening remarks)

May 3, 2006; Maize High School; Law Day - Rule of Law

April 25, 2006; McIntosh Report - KNSS Radio; Immigration; USAO overview

March 17, 2006; Pachyderm Club; United States Attorney's Office Overview

February 22, 2006; Federalist Society; "National Security Act Intercepts"

February 8, 2006; Newton Bar Association; United States Attorney's Office Overview

February 7, 2006; KINT Radio-Independence; "Fighting Child Internet Porn"

December 21, 2005; McIntosh Report - KNSS Radio; USAO High Profile Cases & Upcoming Trends

October 6, 2005; Institute of Internal Auditors; "White Collar Crime"

October 1, 2005; Kansas Student Leadership Forum; "Leadership Principles from the Words of Jesus"

September 8, 2005; West Sedgwick County Sunrise Rotary; United States Attorney's Office Overview

September 7, 2005; Wichita Claims Association; United States Attorney's Office Overview

July 11, 2005; Dodge City Rotary Club; "The PATRIOT Act"

June 17, 2005; Retired School Personnel; USAO Overview and Social Security Fraud

June 7, 2005; West Wichita Rotary; United States Attorney's Office Overview

April 27, 2005; Goddard High School; Law Day - Rule of Law

April 25, 2005; Great Bend, Kansas Rotary Club; "The PATRIOT Act"

March 16, 2005; East Wichita Rotary Club; "The PATRIOT Act"

March 8, 2005; Wichita Bar Association; "The United States Attorney's Office"

February 24, 2005; Sedgwick County Young Republicans; United States Attorney's Office Overview

February 11, 2005; Derby High School; "The Job of the U.S. Attorney"

December 16, 2004; Kansas Law Enforcement Training Center; "The Function of the U. S. Attorney's Office"

October 4, 2004; Wichita Civitan Club; "Role of the U.S. Attorney & USAO Overview"

August 19, 2004; Physical/Emotional Survivability Conference – LECC; "Protecting the Protector"

July 13, 2004; West Wichita Optimists Club; "The PATRIOT Act"

June 7, 2004; Agricultural Terrorism Conference; "Protecting our Food Supply" (opening remarks)

May 15, 2004; Minneola High School; Commencement Remarks

May 14, 2004; Pachyderm Club; "The United States Attorney's Office"

May 11, 2004; ACLU Forum; "The PATRIOT Act"

May 6, 2004; Identity Theft Conference: Train the Trainer; Opening remarks

April 30, 2004; Butler County Law Day; "The PATRIOT Act"

April 23, 2004; Shawnee County Sheriff's Office; Graduation Remarks

April 13, 2004; East Wichita Shepherd's Center; "The PATRIOT Act"

April 5, 2004; Washburn Pre-Law Association; "The PATRIOT Act"

April 1, 2004; Kansas Library Association Tri-Conference; "The PATRIOT Act"

March 11, 2004; Univ. of Kansas Law School Federalist Society; "The PATRIOT Act"

March 8, 2004; North Newton City Council; Defense of the PATRIOT Act

March 4, 2004; Sam A. Crow Inns of Court; "The PATRIOT Act"

January 21, 2004; LECC Conference Awards Lunch; "The PATRIOT Act"

November 12, 2003; Wichita Downtown Lions Club; United States Attorney's Office Overview

November 11, 2003; Butler County Community College Business Law Class; United States Attorney's Office Overview

November 10, 2003; WSU Political Science Forum; United States Attorney's Office Overview

November 10, 2003; WSU Distinguished Alumni Breakfast Series; "From WSU to the U. S. Attorney's Office"

November 4, 2003; Manhattan League of Women Voters; "Defense of The PATRIOT Act"

November 4, 2003; Kansas Association of Legal Assistants; United States Attorney's Office Overview

October 26, 2003; Interfaith Alliance-Pittsburg State University; "Defense of The PATRIOT Act"

October 25, 2003; Ks American Association of University Women; "Defense of The PATRIOT Act"

October 14, 2003; Wichita Chartered Property Casualty Underwriters; "Defense of The PATRIOT Act"

October 9, 2003; Public Broadcasting Service – Taping; "Defense of The PATRIOT Act"

September 22, 2003; Wichita Downtown Rotary; "Defense of The PATRIOT Act"

September 11, 2003; Topeka Rotary; "Defense of The PATRIOT Act"

August 12, 2003; Identify Theft Conference; "Attacking Identity Theft" (opening remarks)

July 23, 2003; Irving Show Community Based Programs-KSJM; Wichita Weed & Seed

July 22, 2003; McIntosh Report - KNSS Radio; Internet Crimes Against Children  
May 23, 2003; Kansas Law Enforcement Training Center; "Law Enforcement, Ethics & Professionalism" (graduation remarks)

May 7, 2003; Drug Endangered Children Training-KHP; "Protecting our Children" (opening remarks)

April 20, 2003; Wichita North High School; Law Day - Rule of Law

April 17, 2003; DARE-Maize East Middle School; Just Say No (graduation remarks)

March 11, 2003; Earl E. O'Connor Inns of Court; Terrorism and DOJ / USA response

February 21, 2003; Testimony to Kansas Legislature; PATRIOT Act - Terrorism Issues

January 24, 2003; YMCA Men's Club; "United States Attorney's Office Overview"

January 16, 2003; Southern Ks./Northern Ok. Peace Officers; "Project Safe Neighborhoods Overview"

December 13, 2002; Johnson County Police Academy; Graduation Remarks

December 11, 2002; LECC Conference; "Mission of Law Enforcement (opening remarks)

November 20, 2002; Women Attorney's Association of Topeka; "United States Attorney's Office Overview"

October 24, 2002; Retired Business & Professional Men's Club; "United States Attorney's Office Overview"

October 17, 2002; Leadership Wichita 2002; "Liberty vs Security"

October 15, 2002; Johnson County Police & Sheriff's Association; Current issues of concern (informal roundtable)

September 14, 2002; League of Women Voters; "Liberty vs Security"

August 26, 2002; Meth Investigative Workshop; "Meth: A Growing problem in Kansas (opening remarks)"

August 16, 2002; Wichita Kiwanis Club; "Project Safe Neighborhoods Overview"

May 23, 2002; Kansas Highway Patrol Academy (Salina); Graduation Remarks

April 11, 2002; FBI Academy Alumni; "USAO Overview, New U.S. Attorney Priorities"

July 21, 1995; Wichita Downtown Kiwanis Club; "The First 100 Days"

- e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

As U.S. Attorney, I frequently hold press conferences or respond to media inquiries regarding specific cases or activities of the U.S. Attorney's office, but those are announcements rather than interviews and so are not included in this response.

I was interviewed by the Wichita Business Journal for a profile piece which was published in its June 6, 2003 edition, at page 4.

I have given interviews to the McIntosh Report on KNSS radio which were about the activities of the U.S. Attorney's office, but were not limited to a specific case or event. They are as follows (The dates listed are the dates I was interviewed; the interview itself may have aired on one or more different dates, but I do not have records of when that would have been. I also have no transcripts or clips of these interviews):

December 18, 2007; United States Attorney's Office Update

April 25, 2006; Immigration; USAO Overview

December 21, 2005; USAO High Profile Cases & Upcoming Trends

July 22, 2003; Internet Crimes Against Children

On February 7, 2006 I also gave an interview to KINT Radio-Independence, Kansas on Fighting Child Internet Porn. I do not have a transcript or clip of this interview.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held a judicial office.

15. **Citations:** If you are or have been a judge, please provide:
- a. citations for all opinions you have written (including concurrences and dissents);
  - b. a list of cases in which certiorari has been requested or granted;
  - c. a short summary of and citations for all appellate opinions or orders where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
  - d. a list of and copies of any of your unpublished opinions that were reversed on appeal or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;
  - e. a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored; and
  - f. citations to all cases in which you were a panel member in which you did not issue an opinion.

I have not served as a judge.

16. **Recusal:** If you are or have been a judge, please provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest, or for any other apparent reason, or in which you recused yourself sua sponte. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Please identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
  - b. a brief description of the asserted conflict of interest or other ground for recusal;
  - c. the procedure you followed in determining whether or not to recuse yourself;

- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

**17. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

On March, 17 2002, I was appointed United States Attorney for the District of Kansas by President George W. Bush, after confirmation by the United States Senate.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Brownback for U.S. Senate  
Fourth District Chairman 1998  
Sedgwick County Chairman 1996, 1998

Kansas State Republican Party  
Executive Committee 1997 - 2002

Kansas Delegate – Republican National Convention 2000

Republican Fourth District Delegate 2001 - 2002

Republican Precinct Committeeman, Sedgwick County, 1998- 2002

Republican Precinct Committeeman, Shawnee County, 1982 - 1985

Chairman, Dave Shank for Maize School Board, 1997

Mark Vining for Judge Campaign Steering Committee, 1994

In 1996 and 1997 I raised money for Congressman Todd Tiahrt, 4<sup>th</sup> District, Kansas, in his campaign informally.

I assisted the unsuccessful gubernatorial campaign of Tim Shallenberger in 2002 (prior to my appointment as U.S. Attorney).

I have helped some state legislative candidates, but all in an informal role without a title or formal authority.

I have also helped with some political mailings, yard signs, parades and precinct walking for Republican party candidates generally.

18. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a clerk to the Honorable Frank G. Theis, United States District Court, District of Kansas, 1985-1987

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

2002-present  
U.S. Attorney's Office  
301 N. Main; Suite 1200  
Wichita, Kansas 67202  
United States Attorney for the District of Kansas

1987 - 2002  
Foulston Siefkin LLP (f/k/a Foulston, Siefkin, Powers & Eberhardt)  
100 N. Broadway, Suite 700  
Wichita, Kansas 67202  
Currently located at:  
1551 N. Waterfront Parkway; Suite 100  
Wichita, Kansas 67206  
associate attorney 1987-1992  
partner 1992-2002

1/95 – 4/95

Congressman Sam Brownback, 104th Congress

1313 Longworth House Office Building

Washington, DC

Legislative Assistant – Employment was part time, on leave from my law firm

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

The United States Attorney's office prosecutes federal crimes which primarily include fighting terrorism, prosecuting gang crimes, violent crime offenders, gun crimes, drug trafficking, crimes against our children, corporate fraud and public corruption, housing discrimination, cybercrimes and immigration offenses. Our civil division is primarily involved in bankruptcy, social security appeals, asset forfeiture, collections, prisoner litigation, affirmative fraud, medical malpractice defense, employment discrimination defense and foreclosures. My job is principal supervisor of a staff of almost 100 employees in three offices who carry out these roles.

At Foulston Siefkin LLP my practice was generally a business and tax practice, including an emphasis on litigation of contested federal, state and local tax matters in court and before administrative tribunals, and negotiating and finalizing various business transactional matters such as acquisitions, financing, and corporate governance. This practice occasionally involved litigation in connection with business interests. My practice also included an estate planning and probate component, with an emphasis on contested probate matters.

- ii. your typical clients and the areas, if any, in which you have specialized.

As the United States Attorney my client is the United States of America.

At Foulston Siefkin LLP my typical clients were individuals with business related issues; various land and property owners, small to mid-sized businesses, and a few large (over 500 employees) businesses in healthcare and manufacturing. As mentioned above, my principal area of specialty was handling contested tax matters.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As the United States Attorney I appear in court occasionally both prosecuting cases at trial level (less than once a year) or arguing appeals to the 10<sup>th</sup> Circuit (at least once a year). As a private practice attorney I appeared in courts, and in quasi-judicial forums, frequently.

i. Indicate the percentage of your practice in:

- |                            |     |
|----------------------------|-----|
| 1. federal courts:         | 35% |
| 2. state courts of record: | 15% |
| 3. other courts:           | 50% |

ii. Indicate the percentage of your practice in:

- |                          |     |
|--------------------------|-----|
| 1. civil proceedings:    | 80% |
| 2. criminal proceedings: | 20% |

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried 28 cases to verdict or judgment - 16 cases as sole counsel; 7 cases as chief counsel; and 5 cases as assistant counsel;

i. What percentage of these trials were:

- |              |     |
|--------------|-----|
| 1. jury:     | 14% |
| 2. non-jury: | 86% |

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have had no cases before the Supreme Court of the United States

19. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- the date of representation;
- the name of the court and the name of the judge or judges before whom the case was litigated; and
- the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *United States of America v. Max Ary*

Citations: United States District Court (D. Kan) Case Number: 05-10053-01-JTM;  
Circuit Court Case Number: 06-3383; Circuit Court opinion reported at 581 F.3d  
775 (10<sup>th</sup> Cir. 2008)

Summary: Max Ary was the director of the Kansas Cosmosphere and Space Center, located in Hutchinson, Kansas. The Cosmosphere, as it is commonly called, was founded in the 1960s as a planetarium. Mr. Ary was hired as its manager and director in 1976, and under his leadership the Cosmosphere developed into a museum of space exploration with a collection of U.S. space artifacts second only to that of the Smithsonian's Air and Space Museum in Washington D.C., and with the largest collection of Soviet space artifacts outside of Moscow, Russia. This collection was assimilated in various ways, but principally by purchase of excess governmental property by the nonprofit museum, donations of space artifacts by astronauts to the museum, and loans of numerous artifacts to it by the Smithsonian, NASA, and the U.S. Air Force. Although the Cosmosphere was not the only entity receiving such loans of government-owned space artifacts, it had the largest collection of such loaned items by far. As director and CEO, Mr. Ary had direct access and control of the museum's collection, and was universally viewed as the individual with the most detailed knowledge of the collection. On a periodic basis, the Cosmosphere was required by the various governmental entities to certify that it still possessed the numerous artifacts on loan to it, and was otherwise complying with the requirement of the loan agreement. Mr. Ary always personally made these certifications. After Mr. Ary left the Cosmosphere in 2003, it was discovered that numerous government owned items included on those verifications, along with other property which the museum had purchased or received as donations, had been sold by him at various auctions from 1999 through 2001. Most (though not all) of those sales had been for his own financial benefit. Additionally, a search warrant executed at Mr. Ary's new residence disclosed several boxes of Cosmosphere-owned property in his possession. The matter was investigated principally by NASA's OIG, with assistance from the FBI. NASA devoted significant resources to the investigation in the interests of protecting the integrity of U.S. owned space artifacts. Mr. Ary went to trial in the fall of 2005 on a 19 count superseding indictment charging wire fraud, mail fraud, theft of government property, honest services fraud, interstate transportation of stolen property, money laundering, and criminal forfeiture. Three counts of honest services fraud were plead in the alternative. Following a 3 week trial, the jury returned guilty verdicts on all counts except one count of interstate transportation of stolen property and one count of money laundering. The convictions were affirmed on appeal.

Party Represented: we represented the United States of America

Participation: I played an active supervisory role during the investigation phase, which was lead by AUSA Debra Barnett with assistance by AUSA Annette Gurney. I joined the trial team as a full participant several months before trial, handling opening statement, and one-third or more of the witnesses at trial. My co-counsel would have referred to me as chief counsel, but in reality I viewed

AUSA Barnett as lead counsel. On appeal, AUSAs Barnett, Gurney, and myself each wrote portions of the brief, and I argued the appeal.

Final Disposition: found guilty in part; found not guilty in part

Dates of representation: 2004-2007

Name of court and judge: United States District Court; Honorable J. Thomas Marten  
Appealed to the United States Court of Appeals, 10<sup>th</sup> Circuit. I briefed and argued the appeal.

Name and address of co-counsel and defense counsel:

Co-Counsel:

AUSA Debra Barnett, 301 N. Main, Suite 1200, Wichita, Kansas

AUSA Annette Gurney, co-counsel, 301 N. Main, Suite 1200, Wichita, Kansas

Defense Counsel:

Lee Thompson, Occidental Plaza, 106 E. 2<sup>nd</sup> Street, Wichita, Kansas

Stephen Joseph, Joseph & Hollander PA, 500 North Market, Wichita, Kansas

2. *United States of America v. Ayad Abo-Seba*

Citations: 06-20055-01-DW-JTM

Summary: Mr. Ayad Abo-Seba appeared in federal district court for the District of Kansas for sentencing (in a different case) in December of 2005. At the conclusion of the proceeding, Mr. Abo-Seba attacked U.S. Probation Officer Michelle Caples in the courtroom, stabbing at her with an ink pen. He was indicted by a federal Grand Jury in the District of Kansas on one count of assault of a governmental employee with a deadly weapon. Federal judges in the district of Kansas recused themselves, and the matter was assigned to Judge Dean Whipple of the Western District of Missouri. Because the victim was a member of the "court family" I prosecuted this case myself, with assistance from AUSA Alan Metzger. Following a one and half day trial to a jury, a guilty verdict was returned. No appeal from the conviction was taken.

Party represented: we represented the United States of America

Participation: Lead counsel. I assigned this case to myself from the beginning, for the reasons above noted. Ultimately, AUSA Metzger was assigned to assist. We split trial duties.

Final disposition: found guilty

Date of representation: April 2006 to April 2007

Name of court and judge:

United States District Court, Western District of Missouri; Honorable Dean Whipple, sitting by designation

Name and address of co-counsel and defense counsel:

Co-Counsel:

AUSA Alan Metzger, 301 N. Main, Suite 1200, Wichita, Kansas

Defense Counsel:

Jay D. DeHardt, McQuain, DeHardt & Rosenbloom, P.C., 4505 Madison Avenue, Kansas City, Missouri

3. *Litwin v. United States of America*

Citations: United States District Court Case Number: 89-1072-C; Circuit Court opinion reported at 983 F.2d 997 (10<sup>th</sup> Cir. 1993)

Summary: The case involved the tax characterization of losses which Mr. Litwin had incurred as a result of guarantying loans to his corporation. Loss treatment turned upon the factual determination of whether his motive for making the loan was to protect his investment, or to protect his employment. We introduced factual testimony demonstrating his employment-related objective. The District Court held that Mr. Litwin was so motivated, and therefore that the tax refund prayed for should be paid. The Circuit Court affirmed.

Party Represented: Mr. Litwin, the taxpayer

Participation: My senior partner Mr. Sawatsky assisted and supervised the discovery and trial preparation which I principally handled. We both participated at the trial. I briefed and argued the appeal.

Final Disposition: Tax refund awarded to Mr. Litwin; affirmed by Circuit Court

Dates of representation: 1989 through 1993

Name of court and judge: United States District Court; Honorable Sam Crow;

Appealed to the United States Court of Appeals, 10<sup>th</sup> Circuit. I briefed and argued the appeal.

Name and address of co-counsel and defense counsel:

Co-Counsel:

Gerald Sawatsky, co-counsel, Foulston & Siefkin, 100 N. Broadway, Suite 700, Wichita, Kansas

Defense Counsel:

Christine Grant, United States Department of Justice, Tax Division, Washington, DC

4. *In re Estate of Robert Sheldon Coleman/In re Sheldon Coleman Investment Trust*

Citations: United States Tax Court Case Number: 23402-91 to 23404-91

Summary: Sheldon Coleman was the patriarch of the Coleman Company. His family controlled the company, but owned less than half of the stock. They began working with investment bankers to launch a leveraged buyout of the publicly held stock. Shortly before the LBO was ready to be offered to the stockholders, Mr. Coleman died. The LBO was later launched, and as a result the company was put into play. Ultimately, an outsider's offer was accepted, and the stock (including the stock in Mr. Coleman's trust) was sold. The capital gains tax to be reported on the sale was dependent upon the trust's basis in the stock which under estate tax rules was "stepped-up" to fair market value as of the date of death. The dispute over the fair market value of the stock was unusual, in that the stock was publicly traded, and in a reversal of traditional roles, the Coleman estate was arguing for a higher basis, and the United States for a lower basis. Due to the unusual facts that an LBO was nearly ready to be announced at the time of the death of Mr. Coleman, the largest single shareholder of the company, the estate argued that his block of stock had a higher fair market value than the traded price.

The issue before the United States Tax Court was, simply, a factual determination of the basis of the relevant stock.

Party Represented: the Estate of Sheldon Coleman

Participation: I worked closely with my senior partner, Mr. Robert Foulston, on discovery, expert preparation, and location and preparation of witnesses, until his death. My senior partner Mr. Mikel Stout then assumed Mr. Foulston's role. I continued as before, and assisted Mr. Stout in the trial of the case (he was lead trial attorney). Due to an extraordinary event on the fourth day of trial (the courtroom flooded, destroying all of the exhibits, attorneys' notes, and court reporter's record), the Judge ordered us to settle the case, which we did.

Final Disposition: Case settled during trial

Dates of representation: 1991 through 1993

Name of court and judge: United States Tax Court; Judge Fay

Name and address of co-counsel and defense counsel:

Co-Counsel:

Robert Foulston, Senior Partner, Foulston & Siefkin, 100 N. Broadway, Suite 700, Wichita, Kansas

Mikel Stout, Senior Partner, Foulston & Siefkin, 100 N. Broadway, Suite 700, Wichita, Kansas

Defense Counsel:

Frederick J. Lockhart, Internal Revenue Service, 1244 Speer Blvd, Denver, Colorado

5. *The Boeing Company v. Oaklawn Improvement District/In re Protests and Appeal of the Boeing Company*

Citations: Sedgwick county District Court Case Number: 91 C 3147. Supreme Court decision reported at 255 Kan. 848, 877 P.2d 967 (1994); Board of Tax Appeals Docket Numbers: 92-3944-PR, 92-16882-PR, 93-1098-PR; Sedgwick County District Court Case Number (on appeal): 95 C 1603; Kansas Court of Appeals Case Number: 95-75702-A; Supreme Court decision reported at 261 Kan. 508, 930 P.2d 1366.

Summary: The Oaklawn Improvement District was an improvement district created under state law to provide sewer service to a small neighborhood of older homes. Several large, undeveloped tracts of adjacent land had been annexed into the improvement district, with the intent of obtaining sewer service for development. However, the tracts were instead acquired by the Boeing Company, to which they were also adjacent. The Boeing Company expanded its large industrial manufacturing plant onto the acquired tracts, and provided sewer service to them through its own system. Because the tracts remained in the improvement district, it levied ad valorem taxes against them. Due to the nature of Boeing's improvements upon these tracts, Boeing paid 75 to 80% of all ad valorem taxes levied by the improvement district, even though it obtained no services from the improvement district. Boeing sought an injunction against the taxes, arguing that the improvement district could not tax it when it received no benefits from the improvement district. The district court granted the injunction, finding the improvement district act under which the taxes were levied unconstitutional as

applied. The Supreme Court reversed, holding that Boeing was required to exhaust administrative remedies through the State Board of Tax Appeals. The case was tried to the Board of Tax Appeals, where Boeing again argued that the lack of any benefits from the improvement district prevented it from assessing Boeing property. The Board of Tax Appeals denied relief to Boeing, which under the state's procedural law filed an appeal to the Sedgwick County District Court. That Court reversed, and held that the taxes which had been paid by Boeing were unlawful and should be refunded. The Supreme Court reversed the District Court and affirmed the Board of Tax Appeals, holding that Boeing obtained sufficient indirect benefits to permit assessment under the improvement district act.

**Party Represented:** The Boeing Company

**Participation:** In the first round of cases (the injunction action), I joined the case a few weeks before the trial to the district court, to assist Mr. Darrell Warta. I did final pre-trial preparation, and assisted him at trial (principally handling the legal arguments). I wrote the brief on appeal, which he argued. Although Mr. Warta remained involved in the second round of cases (the tax appeal), I did all of the pre-trial work and handled the trial to the Board of Tax Appeals, as well as writing the brief for both appeals and arguing both appeals (to the District Court and the Supreme Court).

**Final Disposition:** Taxes assessed

**Dates of representation:** 1991 through 1997

**Name of court and judge:** Sedgwick County District Court, Judge C. Robert Bell, and the Kansas State Board of Tax Appeals. The case was appealed to the Kansas Supreme Court twice, once after an administrative appeal to the Sedgwick County District Court, Judge Keith Anderson, and an appeal to the Kansas Court of Appeals.

**Name and address of co-counsel and defense counsel:**

**Co-Counsel:**

Darrell Warta, Partner, Foulston & Siefkin, 100 N. Broadway, Suite 700,  
Wichita, Kansas

**Defense Counsel:**

Counsel for Sedgwick County in the District Court case and appeal was Tom  
Powell and Roger Theis, Hinkle, Eberhart & Elkouri, 301 N. Main, Suite  
2000, Wichita, Kansas

Counsel for Sedgwick County in the Board of Tax Appeals case and appeal  
was Patricia Parker, Assistant County Counselor, Sedgwick County  
Courthouse, 525 N. Main, Wichita, Kansas

6. *Haven O'More, et al. v. Bank IV Wichita, N.A., Trustee, et al*

**Citations:** Sedgwick County District Court Case Number: 91 C 3106; Kansas Court of Appeals Case Number 93-69398-A.

**Summary:** Rev. Moore, a widower, bequeathed his entire estate to three Christian publishing houses to republish specified 18<sup>th</sup> century theological works. His son and daughter, who were omitted entirely from the revocable trust and will, challenged the same alleging they were the product of an insane delusion. The evidence showed that Rev. Moore was eccentric, a devoted student of old

theological writers (having amassed a large collection of their works), and estranged from his children, particularly his son (who was eccentric himself, having changed his name from Richard Moore to Haven O'More). The case was tried to the bench. The judge found the trust and will valid and upheld their provisions.

**Party Represented:** Beneficiaries of the Estate: Kregel Publications, Baker Book House, and the Baptist Standard Bearer.

**Participation:** I was aligned with counsel for the Estate, Mr. William Tretbar. He took the lead in discovery and trial, on behalf of the estate, but I actively participated in discovery and the trial of the case, including putting on the testimony of my own witnesses during trial. On appeal, the Trust and the beneficiaries filed a joint brief, the preparation of which Mr. Tretbar took the lead. He also argued the case on appeal; I did not appear or make argument.

**Final Disposition:** Provisions of the will and trust were upheld

**Dates of representation:** 1991 through 1994

**Name of court and judge:** Sedgwick County District Court, Judge William Rustin; Kansas Court of Appeals

**Name and address of co-counsel and defense counsel:**

**Co-Counsel:**

William Tretbar, Fleeson, Goong, Coulson & Kitch, 125 N. Market, Suite 1600, Wichita, Kansas

**Defense Counsel:**

Jerry Bogle, Young, Bogle, McCausland, 106 W. Douglas, Suite 923, Wichita, Kansas

7. *In re Application of American Restaurant Operations*

**Citations:** Sedgwick County District Court Case Numbers 92 C 514 (injunction action) and 92 C 653 (interlocutory review); Board of Tax Appeals Docket Numbers: 91-12236-TG through 91-12261-TG, 91-11740-TG through 91-11745-TG, 92-14113-TG, and 91-13522-PR through 91-13527-PR; Sedgwick County District Court Case (on appeal) Case Number: 93 C 512; Supreme Court decision reported at 264 Kan. 518, 957 P.2d 473 (1998).

**Summary:** American Restaurant Operations and related parties owned several **Grandy's** restaurants, which were managed by Restaurant Management Company (both names, and other entities' names, appear a various times in these proceedings). The Sedgwick County appraiser audited the personal property tax returns of the restaurants, and assessed substantial additional tax. Substantively, these related cases challenged the factual accuracy of the personal property tax audit. However, the majority of the litigation involved a variety of legal issues involving interpretation of the relevant tax statutes and related procedural and discovery statutes. The restaurants filed an injunction action against the additional assessments, and also filed proceedings before the State Board of Tax Appeals. The cases were substantively prosecuted initially before the Board of Tax Appeals. The factual matters were settled or resolved, save a dispute regarding the legal effect of Sedgwick County's purported interim abatement of taxes. Principally, the case proceeded regarding the effect of legislative action

shortening the period during which assessments for prior years could be made, the dates from which the relevant periods for assessment were measured, the effect and amount of penalties assigned to the value of non-reported property, and the appropriateness of discovery sanctions imposed against the county appraiser's office. These matters were largely resolved in the taxpayer's favor, at the Board of Tax Appeals, on appeal to the District Court, and on appeal to the Supreme Court. The courts' decisions were noteworthy principally for their resolution of these various legal issues relating to personal property tax audits.

**Party Represented:** the various restaurant entities

**Participation:** although I was assisted at various stages by various of my partners, I essentially had sole responsibility for the case.

**Final Disposition:** Settled or resolved

**Dates of representation:** 1991 through 1998

**Name of court and judge:** Various aspects of this case were brought to the Kansas State Board of Tax Appeals, on appeal (and, collaterally, on injunction and interlocutory review) to the Sedgwick County District Court, Judge William Rustin, and to the Kansas Supreme Court.

**Name and address of co-counsel and defense counsel:**

**Defense Counsel:**

Clarence Holeman, Assistant County Counselor, Sedgwick County  
Courthouse, 525 N. Main, Wichita, Kansas

Thomas Docking, Morris, Laing, Evans, Brock & Kennedy, 200 W. Douglas,  
4<sup>th</sup> Floor, Wichita, Kansas

8. *In re Application for Exemption of Hays Medical Center*

**Citations:** Board of Tax Appeals Docket No: 1999-1875-TX

**Summary:** Hays Medical Center is a tax-exempt hospital. It had built an addition to its main medical campus, virtually doubling the size, which contained both traditional hospital functions as well as a variety of medical offices. Ostensibly, this case regarded the qualification of that expansion for property tax exemption. In reality, however, the case involved the evolving role of what constitutes a "hospital" in rural areas. To be exempt under Kansas law, the expansion must be used exclusively for "hospital purposes." The Medical Center contended that, in rural areas with declining medical services, it falls upon the hospitals to not only provide traditional hospital services, but also to recruit and retain physicians and specialists to adequately provide a broad array of medical services. The Medical Center, various state health care agencies, and the Kansas Hospital Association offered evidence and testimony of what a rural hospital was required to do in order to successfully recruit and retain such physicians and specialists. The medical offices in the expansion were proffered as being used, in this context, for (rural) hospital purposes. In what has become a widely quoted decision, the Board of Tax Appeals recognized the expanded scope required of rural hospitals in these times, found the entire facility to be used exclusively for hospital services, and granted the exemption.

**Party Represented:** Hays Medical Center

**Participation:** My partner and co-counsel, Mr. Stanley Andeel, was the Medical Center's principal outside counsel, but he relied on me almost entirely to prepare the case; and although he was present when it was tried, he did not participate in the presentation of our case.

**Final Disposition:** Exemption granted

**Dates of representation:** 1998 through 1999

**Name of court and judge:** Kansas State Board of Tax Appeals

**Name and address of co-counsel and defense counsel:**

**Co-Counsel:**

Stanley G. Andeel, Senior Partner, Foulston & Siefkin, 100 N. Broadway,  
Suite 700, Wichita, Kansas 67202

**Defense Counsel:**

William Jeter, Counsel for Ellis County, P.O. Box 128, Hays, Kansas  
H. Phillip Elwood, Counsel for amicus curiae the Kansas Hospital  
Association, Goodell, Stratton, Edmonds and Palmer, 515 S. Kansas Avenue,  
Topeka, Kansas

9. *In re Tax Appeal of Curtis Machine*

**Citations:** Board of Tax Appeals Docket Numbers: 94-3901-TG to 94-3909-TG; 94-7221-PR to 94-7237-PR; 94-10091 PR to 94-10099PR; Ford County District Court Case No: 96 C 14; Kansas Supreme Court Mandamus Number: 96-76643-S; Kansas Court of Appeals Decision reported at 26 Kan. App.2d 395, 985 P.2d 725 (1999); review denied (by the Kansas Supreme Court), December 21, 1999, Docket Number 1997-80114-AS.

**Summary:** Curtis Machine was a manufacturer which struggled with insolvency throughout much of the 1980s. Its property taxes were not paid during that period of time. It recovered, and in the early 1990s paid its past due property taxes. Under Kansas law, property taxes must be protested (as to the value) when paid, or they may not be challenged. Curtis Machine paid its delinquent property taxes under protest. Ford County, Kansas, challenged its ability to do so, arguing that earlier court orders foreclosing the delinquent property taxes, which orders had become final, precluded any further court proceedings on the subject matter of the taxes. The issue regarding whether foreclosed taxes could later, upon payment, be challenged as to amount had never been addressed clearly in Kansas law, and the litigation through the district court and the states' appellate courts were solely regarding this jurisdictional question. The published Court of Appeals decision held that, since the foreclosure court's order did not address the subject matter of the value of the taxed property, that order could not be a bar to subsequent valuation challenges. The cases were remanded for trial on their factual issues. In 2002 the parties settled the remaining issues.

**Party Represented:** Curtis Machine Company

**Participation:** Although I was assisted in the preparation of my appeal briefs, principally by my partner James Oliver of Foulston & Siefkin, I otherwise was sole counsel in this case.

**Final Disposition:** remanded for trial on factual issues; remaining issues settled

**Dates of representation:** 1993 through 2002

Name of court and judge: The case was tried to the Kansas State Board of Tax Appeals; appealed to the Ford County District Court, Judge Jay Don Reynolds; appealed to the Kansas Court of Appeals; appealed to the Kansas Supreme Court (seeking writs of prohibition and mandamus); and remanded for retrial.

Name and address of co-counsel and defense counsel:

Co-Counsel:

James Oliver, Foulston & Siefkin, 100 N. Broadway, Suite 700, Wichita, Kansas 67202

Defense Counsel:

Terry Fuller, P.O. Box 314, Kinsley, Kansas  
Glenn Kerbs, P.O. Box 1473, Dodge City, Kansas

10. *In re Tax Protest of Corporate Hills Hotel Associates, L.P.*

Citations: Board of Tax Appeals Docket Number: 96-6307-EQ. Sedgwick County District Court Case Number: 98 C 2178

Summary: Corporate Hills Hotel Associates owned a Marriott hotel in Wichita, Kansas. It filed this case to challenge its ad valorem real estate appraisal. The property was valued based upon the income from operations. The dispute between the parties was how that income was to be segregated between the tangible, taxable real and personal property, and the intangible (and non-taxable) business operations of the hotel. At the time of trial, this issue was receiving a great deal of national attention in the field. Corporate Hills Hotel Associates proffered a methodology of valuing a franchise which was sponsored by the Marriott International Vice President in charge of hotel development. The taxing jurisdiction relied upon a methodology then being used by tax appraisers, which alleged that the franchise value was fully accounted for by deducting franchise fees from the income. Although that approach was met with some skepticism by the triers of fact (and by the taxing authorities own witnesses), the trier of fact also determined that the hotel did not carry its burden of quantifying a franchise value separate from the property values, and so upheld the assessment.

Party Represented: Corporate Hills Hotel Associates

Participation: I essentially had sole responsibility for the case.

Final Disposition: Assessment upheld

Dates of representation: 1996 through 1999

Name of court and judge: Kansas State Board of Tax Appeals, appealed to the Sedgwick County District Court, Judge Karl Friedel

Name and address of co-counsel and defense counsel:

Defense Counsel:

Patricia Parker, Assistant County Counselor, Sedgwick County Courthouse, 525 N. Main, Wichita, Kansas

20. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or

organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

As United States Attorney, the most significant legal activities I have been involved in would include the following:

Review and presentation of several "death-eligible" cases to the Attorney General's Capital Crimes Unit, including two cases in which I personally participated in discussions with the CCU at the Department of Justice, for both of which the Attorney General directed that the death penalty be sought: *U.S. v. Scott Cheever* (defendant charged with the murder of a Kansas sheriff in connection with his operation of a meth lab – for complicated reasons the federal capital trial was declared a mistrial in the midst of jury selection and the defense motion for a several month continuance granted, and the federal case was ultimately dismissed and the case prosecuted in state court with substantial assistance from two Assistant United States Attorneys; the death sentence was imposed); and *U.S. v. Jason Tisdale* (case scheduled for trial in 2009). I also participated in the process in the case of *U.S. v. Demetrius Hargrove* for which the Attorney General also directed that the death penalty be sought (the jury convicted, but recommended life). Although not a trial attorney in these cases, my involvement in the capital consideration issues was substantial.

The most significant corporate fraud case prosecuted by this office is *U.S. v. David Wittig and Douglas Lake*. Mr. Wittig and Mr. Lake were the top officers in the Kansas utility Westar, and were ultimately charged in a multi-count indictment alleging a multi-faceted and complex scheme to loot the company of nearly \$100 million. When the investigation first began, Westar fired the executives, hired the law firm of Debevoise & Plimpton to conduct an independent investigation. The independent investigators consulted with us regarding areas of inquiry, waived any privilege which might attach to their investigation, and spent a full day with my trial team and me reviewing their findings. Although not a member of the trial team, I was heavily involved in the investigation and strategic development of this case from the beginning, and on two separate occasions lead a settlement conference with defense lawyers in unsuccessful attempts to resolve the prosecution.

Mark Spencer was an army veteran who suffered from schizophrenia and had a history of alcohol and drug abuse. He resided in a medical ward at the Fort Leavenworth Veterans Administration hospital. He was arrested one day in the community for acting out, and because he had VA identification on him, the local police took him to the Emergency Room at the VA hospital. There, a doctor advised that he could be incarcerated. While in the jail, he became agitated and was pepper sprayed at least once. He then stepped up onto his bunk and leaped into the wall, rendering himself a quadriplegic. Expert testimony, including our own, opined that the VA doctor deviated from the standard of care by not admitting him for observation but by releasing him for incarceration without any follow-up. Mr. Spencer was in his 30s and would require significant life-time care. He sued (*Spencer v. U.S.*) demanding close to 11 million dollars. The case was expertly handled by two of my civil AUSAs, but we determined

that a settlement of the case for less than a million dollars would not be possible. Due to limitations on settlement authority, plaintiff's counsel required my personal involvement, and I lead lengthy settlement negotiations involving plaintiff's counsel, counsel for the VA, and the Department of Justice Torts branch. Ultimately, I was able to negotiate a structured settlement for far less than the demand amount, which placed much of the settlement in a reversionary medical trust. The trust protected the interests of the United States both by insuring that the plaintiff would not bankrupt himself by prematurely spending all of the money and falling back on the welfare of the United States and the VA, and by ensuring that if plaintiff died earlier than expected with money remaining in the trust the balance would revert to the United States.

AKAL Security, Inc. was awarded a series of U.S. Army contracts to provide security guards for Army posts. Three company employees who worked as AKAL guards at Ft. Riley, Kansas, filed a *qui tam* suit charging that AKAL defrauded the United States by failing to properly train the guards as required and failing to man the security posts as represented, among other items. My office intervened and took over the suit, which grew to include eight military installations. Although all aspects of the charges were vigorously contested by AKAL, and negotiations for settlement overtook the completion of exhaustive investigations at each of the eight posts, we estimated that AKAL's liability (including doubled damages under law) could exceed \$35 million, which was in excess of AKAL's net worth. The position of our client, the Army, was that putting AKAL out of business would create security problems for it (AKAL had largely corrected its deficiencies and was continuing to provide security at the posts). I personally lead settlement negotiations on behalf of all eight U.S. Attorney's offices with AKAL's senior officers and counsel. AKAL's opening settlement offer had been a low seven figure sum. After extensive negotiations, I recommended a much higher settlement to Assistant Attorney General, Civil Division, Peter Keisler. He, and the Associate Attorney General William Mercer instructed that additional negotiations should occur, which were lead by the Civil Section of USDOJ, with assistance from the Eastern District of Kentucky and my office (though with less involvement from me). An ultimate settlement of \$18 million was agreed upon by all parties.

As a private lawyer, I specialized in business and tax related issues, both litigation and transactional. The prior question (Question 19) discusses some of my litigation. Other significant legal activities that I pursued as a private lawyer, during a time frame of 8 to 12 years ago, would include the following (because of the age and the non-public nature of these matters, my descriptions are of necessity briefer and more generalized):

I was the principal attorney for a large machine shop company with facilities in two states which supported the aviation industry prominent in Wichita. During the later years of my representation the company was struggling with its financing arrangements, and during my last years in private practice I re-negotiated a high eight figure credit restructure with its consortium of lenders.

An accounting firm with which I worked a great deal (and whom I also represented) referred an agri-businessman to me to negotiate, document and close the low eight figure

sale and purchase of a regional meat packing facility. I was the sole lawyer on the transaction.

In connection with my legal partners, we represented a developing hotel chain. My principal area of responsibility was monitoring and processing its financial arrangements with its lenders for the construction of each new hotel, including issuing opinion letters required for each such transactional financing. I was not the principal attorney for the hotel chain, but did have primary responsibility for this particular piece of our representation.

In the mid-1990s, I provided testimony to the Kansas legislature on one or two occasions regarding changes to state procedural tax issues on behalf of the Kansas Bar Association. I have no files from that, and do not even have precise dates. I testified as a tax lawyer, and not as a lobbyist. I have never been registered as a lobbyist for anyone, have never lobbied for anyone, and other than this issue had never performing any activities which could be construed as similar to lobbying.

21. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

Other than the professional speeches regarding legal issues, listed above in question 13.d, I have not taught any courses.

22. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have retirement plan accounts which I own and to which (other than my TSP account) I have been the sole contributor, but I have no rights or expectations to any deferred income or future benefits from any third party.

23. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

24. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other

items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

25. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

26. **Potential Conflicts of Interest:**

- a. Identify the parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Other than possible litigation involving close personal friends or family members (none of which is anticipated), and cases from the U.S. Attorney's office immediately after my departure I foresee no conflicts of interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will address all potential conflicts which are brought to my attention or which I detect *sua sponte* in accordance with established law on judicial recusal and in compliance with the Code of Conduct for United States Judges.

27. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I was the incorporator, a director, and a volunteer of the Wichita Christian Legal Aid, Inc. from its inception until my appointment as U.S. Attorney. This organization works with local aid societies (e.g., Union Rescue Mission; World Impact Village) by providing regularly scheduled times to meet with *pro bono* clients at their facilities to provide counsel and legal advice. On one occasion I was requested by a local judge to provide *pro bono* service to an elderly, low income couple with a state tax problem. I have provided legal aid to a few low income individuals from a mission church in an impoverished area of town (this was through an informal program which grew into the Wichita Christian Legal Aid, Inc.). In connection with my volunteer work with nonprofit agencies (e.g., the Mental Health Association) or my own church, I have occasionally provided free legal service to low income individuals referred to me. I have

been asked to mediate a heated dispute between members of an African-American church, for which I only charged expenses (but not my time). The amount of time devoted to these activities has not been consistent but varies widely.

**28. Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Please do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in Kansas for federal judges. In January of 2008 I contacted both Kansas Senators, Sen. Sam Brownback and Sen. Pat Roberts, to express my interest in this position. They jointly recommended me to the President. On March 17, 2008 I interviewed for this position with staff from the White House Counsel's office and the Department of Justice. I had subsequent conversations with staff from the Department of Justice regarding the nomination paperwork. My nomination was forwarded to the Senate on July 23, 2008.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully.

I have had no such discussion with anyone.

AO 10  
Rev. 1/2006

**FINANCIAL DISCLOSURE REPORT  
NOMINATION FILING**

*Report Required by the Ethics  
in Government Act of 1978  
(5 U.S.C. app. §§ 101-111)*

<b>1. Person Reporting (last name, first, middle initial)</b> Melgren, Eric F	<b>2. Court or Organization</b> U.S. District Court, D. Kansas	<b>3. Date of Report</b> 07/24/2008
<b>4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time)</b> District Judge - Nominee	<b>5a. Report Type (check appropriate type)</b> <input checked="" type="checkbox"/> Nomination, Date 07/23/2008 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	<b>6. Reporting Period</b> 01/01/2007 to 06/30/2008
<b>7. Chambers or Office Address</b> United States Attorneys Office 301 N. Main, Ste 1200 Wichita, Kansas 67202	<b>8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.</b> Reviewing Officer _____ Date _____	
<p align="center"><b>IMPORTANT NOTES:</b> The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.</p>		

**I. POSITIONS.** (Reporting individual only; see pp. 9-13 of instructions.)

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1.	
2.	
3.	
4.	
5.	

**II. AGREEMENTS.** (Reporting individual only; see pp. 14-16 of instructions.)

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

**FINANCIAL DISCLOSURE REPORT**  
Page 2 of 6

<b>Name of Person Reporting</b> Melgren, Eric F	<b>Date of Report</b> 07/24/2008
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**III. NON-INVESTMENT INCOME.** (Reporting individual and spouse; see pp. 17-24 of instructions.)

**A. Filer's Non-Investment Income**

NONE (No reportable non-investment income.)

	<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1.	2007	Family farm, sale of wheat	\$ 1,454
2.			
3.			
4.			
5.			

**B. Spouse's Non-Investment Income** - If you were married during any portion of the reporting year, complete this section.  
(Dollar amount not required except for honoraria.)

NONE (No reportable non-investment income.)

	<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	2008	West Evangelical Free Church, salary
2.	2007	West Evangelical Free Church, salary
3.		
4.		
5.		

**IV. REIMBURSEMENTS** - transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children. See pp. 25-27 of instructions.)

NONE (No reportable reimbursements.)

	<u>SOURCE</u>	<u>EXEMPT</u>	<u>DESCRIPTION</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT Page 3 of 6	Name of Person Reporting	Date of Report
	Melgren, Eric F	07/24/2008

**V. GIFTS.** (Includes those to spouse and dependent children. See pp. 28-31 of instructions.)

NONE (No reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	EXEMPT		
2.			
3.			
4.			
5.			

**VI. LIABILITIES.** (Includes those of spouse and dependent children. See pp. 32-34 of instructions.)

NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.	Citi Bank	personal line of credit	J
2.			
3.			
4.			
5.			

**FINANCIAL DISCLOSURE REPORT**  
Page 4 of 6

<b>Name of Person Reporting</b> Melgren, Eric F	<b>Date of Report</b> 07/24/2008
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**VII. INVESTMENTS and TRUSTS** -- income, value, transactions (includes those of the spouse and dependent children. See pp. 34-57 of filing instructions)

NONE (No reportable income, assets, or transactions.)

A. Description of Assets (including trust assets)  Place "OO" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rest, or int.)	(1) Value Code 2 (J-P)	(2) Value, Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Bank of America IRA (cash eqv)	A	Interest	J	T	EXEMPT				
2. Axa Equitable Variable Life Insurance	A	Dividend	J	T					
3. Vanguard Total Bond Market Index Investment	A	Dividend	J	T					
4. Vanguard LifeStrategy Conservative Growth	C	Dividend	K	T					
5. Vanguard Windsor II Fund	B	Dividend	J	T					
6. American Century Value Investments	A	Dividend							
7. Am Funds EuorPac R4	A	Dividend	J	T					
8. Vanguard LifeStrategy Moderate Growth	A	Dividend	K	T					
9. Vanguard LifeStrategy Growth Fund	B	Dividend	L	T					
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

<b>1. Income Gain Codes:</b> (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 E = More than \$5,000,000	B = \$15,001 - \$50,000
<b>2. Value Codes:</b> (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	

**FINANCIAL DISCLOSURE REPORT**  
Page 5 of 6

Name of Person Reporting	Date of Report
Melgren, Eric F	07/24/2008

**VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.** *(Indicate part of Report.)*

III.A. Additional Non-Investment Income was earned during the reporting period as salary from the United States Government.

**FINANCIAL DISCLOSURE REPORT**  
Page 6 of 6

Name of Person Reporting	Date of Report
Melgren, Eric F	07/24/2008

**IX. CERTIFICATION.**

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions pertaining non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. § 501 et. seq., 5 U.S.C. § 7353, and Judicial Conference regulations.

Signature Eric F. Melgren Date 7/24/08

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. app. § 104)

**FILING INSTRUCTIONS**

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the United States Courts  
Suite 2-301  
One Columbus Circle, N.E.  
Washington, D.C. 20544

**FINANCIAL STATEMENT**  
**NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		3	120	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured		15	856
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		97	740
Real estate owned-add schedule		160	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		42	000				
Cash value-life insurance		6	655				
Other assets itemize:							
401(k) Vanguard Group		145	792				
TSP account		163	278				
Bank of America IRA (spouse)		2	530	Total liabilities		113	596
				Net Worth		409	779
<b>Total Assets</b>		<b>523</b>	<b>375</b>	<b>Total liabilities and net worth</b>		<b>523</b>	<b>375</b>
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	YES		
On leases or contracts				Are you defendant in any suits or legal actions?	YES		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT  
NET WORTH SCHEDULES

Real Estate Owned  
Personal residence \$ 160,000

Real Estate Mortgages Payable  
Personal residence \$ 97,740

Assets pledged: My only asset pledged is my home

Lawsuits: Suits have been filed against me in my capacity as U.S. Attorney.

AFFIDAVIT

I, Eric F. Melgren, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

8/5/08  
(DATE)

E F Melgren  
(NAME)



Cindy McKee  
(NOTARY)

Chairman LEAHY. Let me ask sort of a basic question of all of you. Again, both Senator Specter and I have been trial lawyers. Those who have, when you come into a courtroom, you look at the judge and you say, whether on plaintiff, defendant, government, or non-government, no matter who I'm representing, I kind of look at that judge and say, okay, I'm going to get a fair trial. Win, lose or draw, it's going to be a fair trial.

What assurances—and I'm going to ask the same question of each of you—that everybody coming into your courtroom—because we ask this question because you're the only undemocratic branch of our government. You're not elected and it's a lifetime appointment. What assurances that they'll be treated fairly regardless of race, gender, religion, political beliefs, or anything else? Can you point to anything specific in your background that would demonstrate that commitment? I'll start with you, Mr. Trenga.

Mr. TRENGA. Thank you, Mr. Chairman. I can certainly give you that assurance without any reservation or qualification. I've worked with people and have lived in a variety of circumstances that have allowed me to work with a wide diversity of people. Within the community, I have attempted to participate in activities that were dedicated to the proposition of treating people fairly and to address inequalities.

Within my own practice, I have attempted to represent all people of whatever means they may have. My practice has been broad. I've represented plaintiffs, I've represented defendants, I've represented indigent defendants, I've represented defendants of means, plaintiffs of means.

I've represented large corporations, small corporations, employees, managers, and I've not restricted my practice in any way to either plaintiffs or defendants, whether it be securities fraud cases, or employment cases, or personal injury cases. I think it is an enormous—of utmost importance that the process be perceived as credible, and in order to be credible the process has to be—the person involved in the process has to do precisely what you say, and that is treat all people fairly and without regard to station or office.

Chairman LEAHY. I wish to underscore that, because if courts—Federal courts especially—give the impression that they won't treat you fairly, the whole system breaks down. When people lose respect for the courts, it totally breaks down in this country. We are a country of the rule of law. If we can't trust our courts, they get their reputation, then we've all lost. It makes no difference what our political parties are or our position in the country.

Judge Jones, the same question to you. Can you give that assurance? Can you point to things in your own background that would demonstrate commitment to that assurance?

Mr. JONES. Without any equivocation whatsoever, I can make that commitment, Chairman Leahy. Thank you again for the opportunity to be here and participate in this process.

Two things. First, my reputation. I trusted my reputation through all of the reports that have been returned from the endorsements by the various Bar Associations, the questionnaires, the American Bar Association. All of those things combined would demonstrate my reputation for being an individual who has always

been fair and equitable in treatment of all persons who appeared before me, and all entities which appeared before me.

I also know that by reason of my experience many, many years ago as an Assistant Public Defender, I always promised myself, if I was ever able to achieve the level of being a judge, I would treat lawyers and litigants the same way I would want to be treated as a lawyer, and if I ever was a litigant, the same way. I am duty-bound to do that, sir.

Chairman LEAHY. That is important. I remember one thing that Senator Thurmond would say to everybody, and it didn't care who was President. He said, remember your power as a judge. A lot of litigants will only be in a Federal courthouse once. They're not like those of us who may practice law. They're only going to be there once, and their whole view of the criminal justice or the civil justice system of our country is going to be based on that one time. That's an awesome responsibility a judge has, an awesome responsibility of the lawyers as litigants, too, but also for the judge to demonstrate clearly that he's not favoring one side or the other.

Judge Goldberg, how would you answer that question?

Mr. GOLDBERG. First, Senator, you have my word that I will be fair and impartial, and I'll give you an example that I'm very proud of. When I first came to the Court of Common Pleas of Buck's County in the Commonwealth of Pennsylvania, I had previously been an Assistant United States Attorney, a Federal prosecutor for some time, and further back in my career, a State prosecutor. So when I came to the Buck's County Courthouse, as you can imagine, the Public Defender's Office, they were a little bit wary of, what kind of sentencer was I going to be, was I going to be pro-prosecution, pro-defense.

We have proceedings in our courthouse, trials go to certain judges, and then those persons who want to plead guilty go to other judges. Initially, there was a reluctance—I think rightly, because the lawyers and the public defenders didn't know much about me. They were reluctant to plead in front of me.

But shortly after I took the bench, the head of the Public Defender's Office came to our president and judge and said, we have a great comfort level with Judge Goldberg. We know that he is going to—has put aside his prior background as a prosecutor. He's been fair. He's exhibited that fairness and we're comfortable bringing our clients in front of him for plea proceedings. Even as a former State and Federal prosecutor, that was a very high compliment to me.

The other—the second way I'd answer that question, Senator, is I've represented a wide range of litigants, not only as a State and Federal prosecutor, but I've also, in private practice, represented criminal defendants, and in civil practice, small business owners up to large corporations. So, I have the perspective of all kinds of litigants that would come into my courtroom.

Chairman LEAHY. Thank you very, very much, Judge Goldberg. Mr. Slomsky.

Mr. SLOMSKY. Thank you, Mr. Chairman. I can assure you also that I will be very fair and very courteous to all litigants and lawyers that come into my courtroom. I have practiced law for 37 years in our Federal courts. I was a prosecutor, I've been a defense

attorney. I have represented people from practically every socioeconomic level in this country, different ethnic backgrounds. I've interacted with so many people and I've learned the necessity of treating everyone fairly, and not only my clients, but also prosecutors I've interacted with, and fellow lawyers. I can assure you that, based upon my experience, everyone will be treated fairly in my courtroom.

Chairman LEAHY. Thank you.

Mr. Melgren, I might put extra emphasis on the question that Judge Goldberg responded to. You're going to be going, if you're confirmed, from a U.S. Attorney to a judge who will, the way our dockets go today, have to be handling a lot of cases from a U.S. Attorney.

Now, I assume it's easy enough to answer the obvious questions about recusal in cases that you may have been involved with. But how do you demonstrate your impartiality, and what is there in your background that would give credibility to that?

Mr. MELGREN. Well, thank you, Mr. Chairman. And thank you for the question, because I do think the issue of both judicial impartiality and a comfort with the litigants before the jurist that he or she is impartial goes to the heart of the integrity of our process.

It has been my honor to represent the U.S. Government for the last 6 years as a U.S. Attorney, but prior to that in my days of private practice, my practice was characterized principally as a tax litigant. As was noted when I was sworn into this office, in that role I typically was adverse to the U.S. Government, so I actually have probably had more years of suing them than of defending them.

I've been pleased, as this process has progressed along, to have been stopped several times in our courthouse, even by our Federal public defenders, to wish me well and to tell me that they believed and had every confidence that I would be a good judge and they wished me well in the process.

I was pleased to discover in the American Bar Review that several people had made comments, and I was told one that included a longstanding, well-regarded senior attorney in our community, a member of the American College, who I have on many occasions debated various issues with in public forums, Rotary Clubs and such. He told the Bar Review that he and I may be on opposite ends of an ideological spectrum, but he would have no hesitation at all in entrusting a matter to me as a judge and believing he'd be treated fairly.

Chairman LEAHY. I read the Bar Association—you had the highest rating they can give.

Senator SPECTER.

Senator SPECTER. The critical questions which are customarily asked are whether you will interpret the law as opposed to making the law, and whether you will follow the statutory requirements, or if the matter is governed by appellate decisions, will you follow those without regard to your own personal opinions?

Mr. Melgren.

Mr. MELGREN. Thank you, Senator SPECTER. Certainly you and this Committee have my commitment that, if I am confirmed in this as a judge, my commitment is to follow the law. I have great

pride in the fact that we are a Nation of laws and that we are governed by laws, and that as a trial judge it would be our duty to interpret the law as this Congress has passed it and has been signed into law as it is written. It's my commitment that that would be my highest goal and obligation, if I were confirmed.

Senator SPECTER. Mr. Slomsky.

Mr. SLOMSKY. Senator Specter, I certainly concur. I think a judge's job is to apply the law and put aside any personal feelings and to follow the language of the law, and to make sure that it's followed. I will do that. I assure you it will be done, and I will respect the process of the law.

Senator SPECTER. Judge Goldberg.

Mr. GOLDBERG. Senator Specter, I have the greatest respect for the separation of powers. I understand and respect that a judge's role is not to be a policymaker or to legislate. That is the role of the legislature. You have my commitment that I will strictly apply the statutes and the precedent.

Senator SPECTER. Judge Jones.

Mr. JONES. Senator Specter, I concur again with my colleagues here. I also commit that I have demonstrated that same kind of commitment for the last 21 years as a member of the bench in Philadelphia.

Senator SPECTER. Mr. Trenga.

Mr. TRENGA. Senator Specter, you also have my commitment. It is the role of the court to decide cases based on the law in a transparent, principled way. The statutes that we're called upon to interpret reflect the legislative judgments that are entitled to respect and deference, and I give you my commitment that I'll do precisely that.

Senator SPECTER. Judge Goldberg, there was a removal of a polling place in Buck's County where you sat on a three-judge panel to decide the matter. There were some concerns expressed that there was an effort to deprive people of the right to vote by moving it from what I believe was a housing project to a more affluent neighborhood because of concerns that there had been a high incidence of crime at the housing project.

Would you explain what happened there, what your role was and why your decision was made as it was?

Mr. GOLDBERG. Sure. The Board of Elections in Buck's County made a recommendation to move a polling place. I believe the distance was less than one-half a mile. Their recommendation, as I understood it, was based on the fact that there had been high incidence of crime in the one polling place. That decision has to be affirmed by the Commissioners of Buck's County. But it was during an election year, so for obvious reasons they could not stand in and affirm that recommendation.

I believe what occurred then, is the president judge of our court asked myself and two other judges, Judge Lawlor and Judge Mellon, to hear the evidence and decide whether the Board of Elections was acting properly. We heard the evidence. I won't go into great detail here, but it was, as I said, that there had been high incidence of crime, and also that the move was only a half-mile and that would not cause a huge inconvenience to the voters who had to move from one polling place to another.

Given that evidence, I deferred to—and I don't believe technically I was sitting as a judge. I was sitting as a member of the Board of Elections. Given that evidence, I did what I do in all the cases that I sit: I weighed the evidence, I listened carefully, and decided that the Board of Elections was acting properly. That was my vote, and that was the vote of Judge Lawlor and Judge Mellon as well.

Senator SPECTER. I think we have time for one question on the substance.

Chairman LEAHY. Ask all the questions you want.

Senator SPECTER. Well, when they ring the bells and you have 15 minutes to get to vote, there's 5 minutes of grace period. But they haven't rung the bell yet, so I will ask a question which we customarily reserve for Supreme Court nominees. Chairman Leahy and this Committee and I have been engaged in very heavy lifting on the question of the warrantless wire tap program which the President has instituted on his Article 2 powers as Commander in Chief, which is in violation of the Foreign Intelligence Surveillance Act which requires judicial approval.

When the matter came before the District Court Judge in Detroit who declared it unconstitutional, that's a pretty big decision for a District Court judge, when the Congress and the President are battling over expansion of executive authority.

How would you tackle an issue like that, Judge Goldberg?

Mr. GOLDBERG. It's a very complicated issue, obviously, Senator. I would approach it, I think, like I approached all cases, which is to study the statute first, know it backwards and forwards, and then study all of the precedent around that and try to give the truest meaning to the statute.

Senator SPECTER. I've already told you it's a violation of the statute. Now you have to decide whether the President's Article 2 powers are sufficient. That's a judgment call on Al Qaeda, the atmosphere, and all the surrounding circumstances. You don't have a whole lot to go on here. Will you have any hesitancy in declaring it unconstitutional because you're only a District Court judge and you're bucking the President of the United States?

Mr. GOLDBERG. I'd have to read and study the statute, Senator. But after doing that, if I concluded that the statute was unconstitutional, even though the ramifications would be significant, I would do my job.

Senator SPECTER. How about it, Mr. Trenga?

Mr. TRENGA. If I were confirmed as a District Court judge, I, of course, would look for comfort in the case law as best I could find it in the Supreme Court cases, and in the cases of the Fourth Circuit.

Senator SPECTER. You might not find any comfort in the case law, in the Sixth Circuit, or in the Tenth Circuit. Let's see. You're in the Fourth Circuit?

Mr. TRENGA. Fourth Circuit. If there were an absence of guidance, I would, of course, examine what the precise constitutional challenge was. I don't think it's ever an easy matter to invalidate a legislative judgment based on a constitutional challenge. Likewise, I would examine the actions that were being challenged as a violation of the Constitution. If, in fact, I was convinced under

the law that there was in fact a constitutional violation, I would—I would so declare.

Senator SPECTER. A first cousin, Judge Jones, has been the controversy over habeus corpus and the Combat Status Review Board which has been set up by Congress, which involved the abrogation of habeus corpus. When the case came to the Supreme Court, the Miller case—we don't have time to go into great detail on it, but how would you approach an issue like that as to whether the congressional decision to have a review board was sufficient to guarantee the rights of someone in detention to have a reason stated as to why they were held in detention, contrasted with the customary habeus corpus where the Federal judge makes a determination as opposed to a review board?

Mr. JONES. Mr. Senator, I, if confirmed, would first recognize the very, very high bar of congressional legislation, that it is not something that would be taken lightly, recognizing the status of this great body. It would be, as has been discussed, something that would be taken into consideration based upon all of the requisite applications of constitutional dimension as espoused by the U.S. Supreme Court, and certainly thereafter entertaining all the arguments of all sides. Then I would address the issue.

Senator SPECTER. Mr. Slomsky, which one of those two questions would you prefer to answer?

[Laughter.]

Chairman LEAHY. Because you've got to answer one or the other.

Mr. SLOMSKY. Senator Specter, I believe in an independent judiciary. I have been before many independent judges in my career. I think when you have a constitutional question, a judge has to act with restraint, has to study the law very carefully. I agree with Judge Jones, there is a high bar set. I would want to read the precedent, study the Supreme Court decisions on that area and listen to the arguments of counsel and read the submissions, and then make a decision on what I think is the right thing to do. It's never easy for a District Judge, I believe, to declare a statute unconstitutional, or something the President did unconstitutional. I think that power has to be used very judiciously.

Senator SPECTER. Mr. Melgren, do you look forward to being a Federal judge to have an opportunity to weigh these lofty issues?

Mr. MELGREN. Well, certainly, Senator Specter, both of your scenarios raise questions of greatest weight that are vested in a judiciary. I think I would join many of the comments of my colleagues, that I believe when we're reviewing, if I'm confirmed, when a judge—any judge—is reviewing an act of Congress, acting under the broad powers that Article 1 of the Constitution gives the Congress, great respect and deference is due to those actions.

Likewise, I think the President, under Article 2, is given broad powers and respect and deference is due to those as well. But the courts, under Article 3, do have both the authority and the responsibility to uphold and enforce the Constitution. And although those would not be easy decisions nor ones taken lightly, if I were confirmed as a judge and a matter came before me either from a— from either a congressional enactment or a Presidential action, that my study of the law and listening to arguments of counsel con-

vinced me was unconstitutional, I believe it would be my responsibility to so hold.

Senator SPECTER. Mr. Melgren, which is your town in Kansas, your residence?

Mr. MELGREN. Minneola, Senator. It's probably 100, 120 miles south of Russell, population 700. My father farmed there and my mother was a nurse in our little 18-bed hospital.

Senator SPECTER. Well, I knew it was small because I didn't know about it.

[Laughter.]

And where do you have your office?

Mr. MELGREN. As U.S. Attorney?

Senator SPECTER. As U.S. Attorney.

Mr. MELGREN. The District of Kansas is all one district, but there are three Federal courthouses: Wichita, Topeka, and Kansas City. My principal office is in Wichita—hat's the headquarters office of U.S. Attorneys—but we have Assistant U.S. Attorneys at all three courthouse locations.

Senator SPECTER. I will conclude by a short Senator Thurmond story. Senator Thurmond left the Senate 1 month after his 100th birthday. He still casts a long shadow over our proceedings. The Chairman has quoted him, and I will quote him as well.

On one of the early hearings that I attended on this Committee, Senator Thurmond, in his inimitable voice, said, "Do you promise to be courteous", which is interpreted to be "do you promise to be courteous?"

[Laughter.]

And then he said, "The more power a person has, the more courteous a person should be." The more power a person has, the more courteous the person should be.

In Senator Thurmond's absence, I always—or whenever I can—repeat that admonition, because it's like Chairman Leahy's point about impartiality. Judges wear black robes. Fortunately, as Mr. Slomsky talked about, judicial independence is the hallmark of the system. Those of us who have to run for elected office are envious of those of you who enjoy lifetime appointments. Not sufficiently envious so we'd give up the Senate to become a judge.

[Laughter.]

Chairman LEAHY. I was going to say, I have, three times, turned down the possibility of being a judge.

Senator SPECTER. But nonetheless, envious. But when you put on that black robe and you get up in the morning and things haven't gone exactly your way, there's a real temptation to not be courteous, a real temptation not to be courteous. Nominees have come to me years after these hearings and have said, I remember what Senator Thurmond said. Keep it in mind.

Thank you, Mr. Chairman.

Chairman LEAHY. And I appreciate you doing that. I'm going to turn to Senator Brownback in just a moment, but I feel very much the same way, the courteous—the treating everybody alike. I can't emphasize enough the fact that the people who come in there—there's some lawyers in there all the time. That's fine for them. Most litigants will be in there once in their lifetime, and their

whole view of the third branch of government is going to be based on that.

When the Soviet Union broke up, a group from Duma in Russia came to visit with me. They were trying to study something about the independence of our judiciary. I remember very well, one of them said, is it true that people in your country sometimes sue the government? I said, happens all the time. They said, is it also true that sometimes the government loses? I said, yes, it happens often. And do you then replace the judge?

[Laughter.]

I'm serious. It was almost like a lightbulb went on in the room when I explained, no, we don't. I think what Senator Specter—the questions on the Constitution are very, very important because, in these particular things—and I'm not being partisan in saying it.

I have a great deal of concern. Both Senator Specter and I have made comments about this, on habeus corpus, on wire tapping, and everything else. Without going into all the cases, the fact is, in many of them the changes came about only when the judge had the willingness to stand up and say, no matter how much pressure—political pressure or anything else—is being brought, as I read this statute, as I read what is happening, what is happening is unconstitutional and it must stop.

As a practical matter, once those positions were taken, then changes came about. It's because the Federal judiciary stepped in and showed that kind of courage. Among those who have shown the courage are people who have been both Republican and Democratic judges.

Senator Brownback, did you wish to add something? Then I had one other question.

Senator BROWNBACK. Yes, if I could, just briefly. More, it's just a statement following up. First, congratulations to each of you making it this far. This is something that a number of people aspire to and dream about in law school or other iterations, so it's really quite a compliment to you and to your families as well if this moves on through.

Then just, finally, really is a comment along the lines of what Senator Specter said, just a kind of a mentality approach. When you go on to the bench, that's one of the highest positions that the government—the highest positions in the land, and just to maintain a humility about that, that while you are in one of those vaulted positions and it's a position for life, if you're able to make it all the way through the process, just that humility of what that power brings to it. I would hope you would think about it.

I think about that often in a great Nation and where we are one of 100 in this body, which is a fabulous honor. It's a great blessing, but it's a trusteeship more than anything else. I'm entrusted with a certain level of power and authority that is far beyond me as an individual, and after I'm gone will continue to be there. I need to be as good a trustee as I possibly can with that so that it maintains the dignity of the system, maintains the dignity of the human individual that's in front of me, and it maintains the wisdom of the founders of this country.

You are possibly going to be in one of those vaulted positions, and I just would urge you all to contemplate on that on a fairly

regular basis. If you don't, I would hope your family that's here would remind you about that. Mine regularly does, and it's a nice help that they do.

Thanks, Chairman.

Chairman LEAHY. Thank you.

Judge Goldberg, when your name came up here we had a lot of people raise the Buck's County voting booth place. One thing that occurred to me, would it not have worked just to keep it where it was, but just say we've got to have more law enforcement in there, more law enforcement presence? Was that an option?

Mr. GOLDBERG. I probably, Senator, shouldn't speculate, so I preface this answer with, I'm not sure that this is 100 percent correct. But I believe, under the Pennsylvania Voting Act laws, the Board of Elections cannot order law enforcement to be at the polling places. And because it was such a short distance, I again defer to the wisdom of the Board of Elections.

Chairman LEAHY. Now, every judge has to make a decision when there's a conflict of interest. Some conflicts of interest are very easy and you have to recuse yourself. Chief Justice Rehnquist said many times that the standard for recusal was not subjective, but rather objective. Your brother brings a case before your court, a member of your family is a litigant, that's very easy. You can do that. It's in the gray areas.

I know that in 2004, I remember Senator Lieberman was very critical of Justice Skalia, as was I, for not recusing himself from a case about Vice President Cheney, even though, after he refused to recuse himself, he went on a duck hunting trip with the vice president and rode in his airplane, and everything else, and then wrote a harshly worded opinion in which he said that there's no way "his impartiality might reasonably be questioned." People are still scratching their heads over that.

Without going into the Scalia case, you'll be coming from either private practice or a different judgeship. Do I have the assurance of all of you that you will bend over backward, especially when you first get on the bench, to be prepared to recuse yourself if there is the appearance of conflicts of interest?

Mr. Trenga.

Mr. TRENGA. Thank you, Mr. Chairman. This is an issue that goes to the integrity of the process. You do have my assurance that I would—I would seriously consider any suggestion of conflict and recuse myself in those circumstances.

Chairman LEAHY. Thank you very much.

Judge Jones.

Mr. JONES. Absolutely, I would, Mr. Chairman. In fact, I did just that in a case in Philadelphia involving a Democratic chairman who was also a candidate for mayor not too long ago. I recused my entire bench.

Chairman LEAHY. That's a big recusal.

[Laughter.]

Judge Goldberg.

Mr. GOLDBERG. You have my assurances, Senator. I think you—you honed in on the most important words: the appearance of impropriety. I'm well aware that if I am lucky enough to be confirmed, it's not only do you have a direct conflict, but is there an

appearance of a conflict; how the public views the court and the trust in the court is very important.

Chairman LEAHY. Mr. Slomsky.

Mr. SLOMSKY. You have my assurance, Mr. Chairman. My reverence for institutions is such that any appearance will be completely avoided, and I would recuse myself whenever necessary.

Chairman LEAHY. Thank you.

Mr. Melgren.

Mr. MELGREN. Certainly, Mr. Chairman. Your opening question to this panel went to the trust of the litigants before it, and I believe these issues address not only whether a judge is impartial, but whether he may be reasonably viewed to be impartial by those before him. I take that very seriously. Certainly you and this Committee have my word that, if I am confirmed, I will take those issues seriously and do so to further the trust and integrity of the process of those who appear before us.

Chairman LEAHY. Thank you very much.

Senator SPECTER.

Senator SPECTER. Again, Mr. Chairman, thank you for scheduling and conducting these hearings, and so efficiently as to have concluded them before the vote bell has rung.

Chairman LEAHY. And I want to thank you, of course, and Senators Warner, Brownback, Roberts, Casey and Webb. I know they all had long statements praising all of you, and I normally never cut off any Senator who wants to give a statement. But I did urge them to do that because I was afraid we might not complete these hearings. Obviously the record will stay open for any statement they want to add, or any further statement you want to add, because we also rushed you, too.

With that, we'll stand in recess subject—

Senator SPECTER. Mr. Chairman, I'd just like unanimous consent to put in resumes from each of the nominees.

Chairman LEAHY. Oh, sure. Of course. They will be put in. And if there's anything further that the staff sees has been left out, resumes or anything else, those will be added to the record.

With that, we'll stand in recess, subject to the call of the Chair. Thank you all.

[Whereupon, at 4:11 p.m. the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Eric F. Melgren  
301 N. Main, Suite 1200  
Wichita, Kansas 67202

September 25, 2008

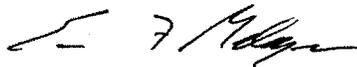
Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Senator Leahy,

Attached please find my responses to written questions from Senator Kennedy forwarded to me by your staff.

Again, allow me to express my appreciation to you for scheduling the Judiciary Committee hearing on my nomination on September 23, 2008.

Respectfully,



Eric F. Melgren

**Questions from Senator Edward M. Kennedy  
to Eric Melgren  
Nominee to the U.S. District Court for the District of Kansas**

1. According to press reports, a former Department of Justice official, Bradley Schlozman, pursued voter fraud prosecutions shortly before the November 2006 elections for political reasons. On November 1, 2006, just days before the elections, Mr. Schlozman announced indictments in connection with improper voter registrations by the Kansas City chapter of the Association of Community Organizations for Reform Now (ACORN), a grass roots organization that supports ballot access. Mr. Schlozman also warned of an ongoing national investigation. These actions contradicted the requirements of the Department's official manual on election fraud prosecution at the time, Federal Prosecution of Election Offenses, which stated that "federal prosecutors . . . should be extremely careful not to conduct overt investigations during the preelection period" to avoid "chilling legitimate voting and campaign activities" and causing "the investigation itself to become a campaign issue." The Department's manual also stated that "most, if not all, investigation of alleged election crime must await the end of the election to which the allegation relates."

- a. Did your office have any role in the investigation or prosecution of ACORN workers for election-related crimes in 2006? If so, please describe that involvement in detail, including the participants from your office and their roles.

Neither the United States Attorney's Office for the District of Kansas nor any of our personnel had any involvement in the ACORN investigation or prosecution.

- b. Did you have any contact with Bradley Schlozman or the U.S. Attorney's Office for the Western District of Missouri regarding plans to combat voter fraud? If so, please describe that contact in detail.

Mr. Schlozman and I had no conversations regarding federal action by our offices or by investigative agencies such as the FBI and others, nor did we have plans to take or initiate any federal action, either separately or together, to combat voter fraud.

2. As U.S. Attorney for the District of Kansas, did you approve voter fraud indictments? If so, please provide the names of any cases filed as a result, and the dates on which they were filed.

While I have been U.S. Attorney, my office has brought only two prosecutions relating in any way to election crimes. In 2004, we indicted Leslie McIntosh on federal vote fraud charges for double voting. The details of this charge are discussed in more detail in response to question number 4 below. In August of 2005 we indicted Adam Taff for wire fraud and for violating the Federal Election Campaign Act arising from the misuse for personal benefit of his campaign funds. Mr. Taff had been the Republican candidate for Congress from the 3<sup>rd</sup> District in

Kansas in 2002, and had again sought that office in 2004 (he lost the general election in 2002 and the primary election in 2004). Investigators discovered that Mr. Taff had improperly used his election account to create the phantom appearance of \$300,000 equity in a home he purchased – cycling funds from his election account through a real estate closing and then back to the his election account (no equity was actually paid into the home purchase; the funds were merely used to create the appearance of such equity at closing to deceive the closing company and the lender). Mr. Taff pleaded guilty and was sentenced to 15 months. Other than these two matters my office has not brought any other indictments related to any election crime.

3. On November 1, 2006, you issued a press release on your office’s plans to monitor the November 2006 elections. Among other things, your press release stated that you “warned that there are criminal penalties under federal law for any efforts to fraudulently influence the outcome of the election . . .” and that the Department had established an initiative to “prosecute those offenses whenever and wherever they occur.” Your press release also stated that FBI agents would be on call to respond to any potential election offenses.

- a. As many civil rights organizations have stated -- and as recognized at the time by the Department’s own manual on prosecution of election offenses -- threats of election-related prosecutions may serve to chill legitimate voting and campaign activities. In particular, many low income voters and minority voters may be deterred from voting if they believe that voters will be subjected to scrutiny by law enforcement officials. In retrospect, do you believe that your November 1, 2006, press release was consistent with the Department’s manual on election prosecutions? Please explain in detail the reasons for your answer.

The Election Crimes Branch of the Public Integrity Section of the Department has requested that announcements similar to these be made in advance of each general election for the general elections held during my tenure as U.S. Attorney, and that during the election we have both Assistant United States Attorneys and FBI Agents available until after the polls have closed to respond to any complaints or allegations of attempted interference with voters’ civil rights and the exercise of their franchise. This request is in accordance with the provisions of the Election Crimes Branch’s Federal Prosecution of Election Offenses Sixth Edition, dated January 1995, which was extant during all general elections held during my tenure as U.S. Attorney (the manual was updated in 2007). The 1995 manual creates election day procedures which include such press releases (page 88).

- b. Do you agree that election-related investigations and prosecutions should not be announced immediately before an election, in order to avoid a chilling effect on voter turnout? Please explain.

The law protects the right of citizens to freely exercise their right to vote according to their choice, and to be free from improper influence, suppression, or intimidation. If such improper efforts were being directed at voters by outsiders, then the voters should know that law enforcement will be on their side to protect their free exercise of their voting rights. I agree that law enforcement must strike a careful balance between protecting the rights of voters from being intimidated by others from freely exercising their voting rights, and making sure that the enforcement itself of voters civil rights to exercise their franchise does not create an intimidation to the voters.

4. On October 22, 2004, the Kansas City Star reported that you and then-U.S. Attorney for Western Missouri Todd Graves publicly announced voter fraud charges against three Kansas City area residents. As noted above, the Department of Justice's long-standing policy at the time was to avoid election-related investigations and prosecutions shortly before an election.

- a. Why did you believe it was important to announce election fraud indictments on the eve of the 2004 elections? Was there a law enforcement reason to publicize these indictments before the election? Please explain in detail the reasons for your answer.

Immediately prior to the 2004 elections the Kansas City Star ran an article reporting on its investigation of dual voting in the metropolitan Kansas City area. Specifically, it reported that several individuals were registered to vote in both Kansas and Missouri, and it identified by name three individuals whom it verified had actually voted in elections in both states in 2002. We limited our federal investigation to simply verifying that the three individuals named in the story had in fact voted in both states. In accordance with the directives of the Federal Prosecution of Election Offenses manual, we then consulted with the Public Integrity Section, Election Crimes Branch, before proceeding to indictment. Two Kansas residents had illegally voted in Missouri, and the Western District of Missouri indicted them; one Missouri resident, Leslie McIntosh, had illegally voted in Kansas and my office indicted him. We announced these indictments before the election to discourage further dilution of honest votes by improper double voting (the Star article had implied that many more than these three were double-registered, and thus could vote in both elections).

- b. When you approved these prosecutions and announced them to the press, did you consider the Department's policy against such actions? Please explain.

Prior to proceeding with this matter, I did consider the Department's policies regarding voter prosecution, and I consulted with the career attorneys in the Election Crimes Branch of the Public Integrity Section of the Department regarding this matter before proceeding.

- c. Before announcing these indictments, did you do anything to determine whether doing so might deter voting by eligible citizens? If so, what actions did you take?

In the press conference I held announcing these, I emphasized that we were only seeking to stop multiple voting, and that those individuals who were properly voting only in the state in which they resided had nothing to fear from this prosecution.

- 5. If you are confirmed, you may have occasion to rule on cases involving voting rights, including claims that voters were improperly intimidated or discouraged from casting a ballot. What assurance can you give the Committee that you are sensitive to the important issues raised by such cases, and that you will consider them impartially?

I can assure the Committee that I recognize that the right of all citizens to freely exercise their rights to vote in accordance with their own will and decisions, free from any improper influence or effect, is foundational to our representative democracy, and that if I am confirmed as a judge I will give the highest concern to the protection of such rights, without any regard to how the citizen exercise such right save that he or she is free to exercise it according to his or her own will.

SUBMISSIONS FOR THE RECORD  
**Introductory Statement of Senator Sam Brownback**  
Hearing on the Nomination of Eric F. Melgren to be U.S. District Judge, D. Kan.

I am pleased and proud to introduce my friend Eric Melgren, who has been nominated to be a district judge in the District of Kansas. First of all, though, I would like to express my appreciation to Chairman Leahy for scheduling this hearing. He and I have frequently discussed the situation we're facing in Kansas on our district court, and I'm thankful for his gracious consideration in including Eric's nomination in today's hearing.

Eric is a Kansas native. He was born in 1956 in the tiny town of Minneola, in southwestern Kansas. He has been married for nearly 30 years to his wife Denise, and he and Denise are the proud parents of four children. He served as student body president as an undergraduate at Wichita State University and graduated *magna cum laude*. He went on to study at Washburn Law School, where he earned a spot on the Washburn Law Journal and graduated in the top five percent of his class. After graduation in 1985, he served for two years as a law clerk to Judge Frank Theis, who sat on the district court to which Eric has now been nominated.

Eric took a job as an associate at the law firm of Foulston Siefkin in Wichita, Kansas, where he specialized in tax law and business litigation. He was admitted

to the partnership at Foulston Siefkin in 1992. In 1995, he briefly left the practice of law to help a certain freshman congressman from Kansas transition to his new position in Washington, and I'm tremendously grateful for his assistance.

Even during his time in private practice, Eric devoted considerable effort to charitable and community work. He served on the board and as chairman of the Mental Health Association of South Central Kansas; on the board and as chairman of Leadership Wichita; on the board and as secretary of the Rotary Club of West Wichita; on the board and as chairman of the United Way of the Plains; as director of Wichita Christian Legal Aid, as a Big Brothers/Big Sisters volunteer; and on the board and as chairman of the board at his church.

In 2002, Eric answered the call to full-time public service, when he became the United States Attorney for the District of Kansas. Eric has already served our state and our nation with distinction as U.S. Attorney over the past six years, and I am confident that he will continue to serve with distinction as a judge on the federal district bench. The American Bar Association evaluated Eric's fitness and qualifications to serve on the District of Kansas and granted him its highest rating: unanimously well-qualified.

Mr. Chairman and fellow members of the Committee, it is my distinct honor and great pleasure to know Eric Melgren, to call him my friend, and to give him my highest recommendation for the position of District Judge for the District of Kansas. Kansas is blessed to have such a wonderful person and outstanding attorney willing to serve as a federal judge. I hope my colleagues on the Judiciary Committee will act swiftly to approve his nomination, and that the full Senate will confirm him as the newest District Judge for the District of Kansas before the 110<sup>th</sup> Congress adjourns. Thank you.

\* \* \* \* \*

Testimony of  
The Honorable Robert P. Casey Jr.  
September 23, 2008

Thank you Chairman Leahy for conducting this hearing at this time. And I especially want to thank my colleague and my fellow senator from Pennsylvania, Senator Specter, with whom I've been very pleased to work on recommending their nominations to the White House. I think a bipartisan relationship as productive as ours is rare in this political environment and I appreciate it very much. I thank the Committee for inviting me here to introduce these nominees and express my strong support for the confirmation of all three to serve on the U.S. District Court for the Eastern District of Pennsylvania.

Joel H. Slomsky has practiced law for 38 years as a federal and state prosecutor, criminal defense attorney, and sole practitioner, and currently practices law in Philadelphia. After graduating from New York Law School, Mr. Slomsky worked with the Criminal Division, Organized Crime Section with the United States Department of Justice in Washington, D.C. and he then transferred to the Philadelphia Strike Force where he worked from 1971-1973.

Mr. Slomsky then moved into private practice, where he has handled civil and criminal matters in state and federal courts. He has also fulfilled his pro bono and public service obligations through contributions to legal education and legal services organizations in the Philadelphia community. He has accepted court appointments in criminal cases at reduced fees, and offered his services without court appointment for reduced fees to ensue that all defendants receive adequate representation in our judicial system. Mr. Slomsky's wife, Paula Beth Slomsky, serves as a clinical social worker and therapist at Northeast Philadelphia Community Center for Mental Health/Mental Retardation and is similarly devoted to the City of Philadelphia.

Mr. Slomsky has worked on a diverse array of civil and criminal matters, and has served in both the public and private sectors. His diverse background, strong legal skills, and ethical integrity makes him strongly qualified to serve as a federal district judge.

Judge Mitchell Steven Goldberg is a judge on the Bucks County Court of Common Pleas, a position he has held since 2003. After graduating from Temple University's School of Law, he served as an Assistant U.S. Attorney for the Eastern District of Pennsylvania, a senior partner with the Philadelphia law firm of Cozen O'Connor, and an Assistant District Attorney for the Philadelphia District Attorney's Office. He was also an Adjunct Professor in Trial Advocacy at Temple Law School. As a trial judge, he has presided over more than 70 jury trials, both civil and criminal in nature. He has handled Family Court cases, included protracted custody matters and complex equitable distribution cases. He is married to Helene Goldberg, a Financial Manager at Heartsine Inc., and they have two children.

His experience as an attorney in both the public and private sectors and his tenure as a judge with the Bucks County Court of Common Pleas should give the Senate great

confidence that Judge Goldberg is well-qualified to serve on the federal bench.

While I am proud to support all three nominees, I am particularly happy to support Judge Jones' elevation to the federal judiciary. My father, Governor Casey, appointed Judge Jones to the Philadelphia Court of Common Pleas in 1987. Judge Jones has risen through the ranks by virtue of his hard work and commitment to the rule of law. Pennsylvanians have twice voted to retain Judge Jones and in 2006, he was elected President Judge by his fellow judges on the Philadelphia Court of Common Pleas. He is a highly respected voice of reason and the federal judicial system will be well-served by his presence on the federal bench.

In his 33 year legal career, Judge Jones has been a common pleas court judge, a state government attorney, a public defender, and a law professor. Prior to becoming a judge, he worked as an Office Assistant at the Citizens Crime Commission. Judge Jones practiced law at the Defender Association of Philadelphia, holding the positions of Chief of the Family Court Division, Assistant Chief of the Family Court Division, Special Defense Unit and Trial Attorney. Judge Jones became the Deputy Chief of the Family Court Division and the Chief of the Family Court Division, where he represented indigent juvenile defendants charged with criminal offenses.

Judge Jones, who is a graduate of The American University's Washington College of Law, has authored over 400 trial court opinions. It is not uncommon for him to preside over five bench trials per day, for three weeks per month. As a result, Judge Jones issues opinions on a constant basis. During his 21 years on the bench, appellate courts have rarely overturned his rulings.

Judge Jones and his wife Evelyn Antonia Jones, formerly Evelyn Antonia Williams, who works in the Capital Habeas Unit of the Defender Association of Philadelphia-Federal Division, have demonstrated a lifetime commitment to our legal system. My father recognized that Judge Jones possesses the intelligence, temperament, and commitment to ethical behavior required of a jurist when he first appointed him 21 years ago. I am very honored to support his confirmation to serve as a U.S. District Judge for the Eastern District of Pennsylvania, and look forward to following what will surely be a distinguished career on the federal bench.

Mr. Chairman, each of the nominees comes to the bench with superior legal experience that will serve them well in their new duties as federal district court judges. Each possesses the judicial temperament, humility and strong sense of ethical responsibility required to interpret the law in a thoughtful, thorough and objective manner. I therefore encourage my colleagues to confirm these well-qualified individuals for service on the U.S. District Court for the Eastern District of Pennsylvania.

Opening Statement of Chairman Patrick Leahy,  
Senate Judiciary Committee,  
Hearing on Nominations  
September 23, 2008

I am holding this exceptional hearing late in a presidential election year as an accommodation to Senator Specter, the Ranking Republican Member of our Committee and a former Chairman. The Thurmond Rule, established and followed by Republicans when there is a Democratic President in the White House, calls for Senate consideration of judicial nominations to stop in the last several months before a presidential election in order to await the outcome of the election. Senator Hatch followed that practice in both 1996 and 2000 when he chaired the Judiciary Committee. In fact, in 1996, no one nominated after June 6 was considered and there were no judicial confirmations after the August recess. In 2000, there were no hearings after July 25.

I have said throughout my chairmanship that I would treat President Bush's nominees better than Republicans treated President Clinton's, and I have done so. This hearing is another example of that. It is the second hearing I have held for judicial nominees in September of this presidential election year. I have already included the five judicial nominees from Utah, California, Florida and Colorado who participated in our September 9 hearing on the Committee's agenda for consideration at our business meeting later this week. Today we hear from five additional nominees for lifetime appointment to the Federal bench in Pennsylvania, Virginia and Kansas.

I have consistently said that by this stage of the year I will be working with the Majority Leader, as well as our Republican counterparts, in order to be able to proceed on consensus nominations. At this late date of a presidential election year, progress on judicial nominees requires consensus and the cooperation of all Senators. I want to thank the Majority Leader, with whom I have consulted, for his willingness to have us proceed with these nominations.

Three of the nominees are included at Senator Specter's request. C. Darnell Jones II, Mitchell S. Goldberg, and Joel H. Slomsky all also have the support of Senator Casey. President Bush did not get around to nominating these men until just before the August recess. At the time I set this hearing last week, we still had not received ABA ratings based on peer reviews of all of them. We are expediting these proceedings as a courtesy to Senator Specter and waiving the one-week notice required by Senate Rules and the rules and practices of our Committee.

I am also happy to accommodate the request of the senior Senator from Virginia that we include the nomination of Anthony J. Trenga to a judicial vacancy in Virginia. Senator Warner is one of our most distinguished members and he is retiring at the end of this Congress. Senator Webb has worked with Senator Warner on nominations and supports this nomination, as well.

The final nominee is Eric Melgren of Kansas. I am accommodating the request of Senator Brownback by including this nomination. I do so despite the Senator's rather constant criticism of my efforts, including his complaining when the Committee worked to provide consideration of long-delayed judicial nominations for Michigan earlier this year, and his having personally delayed Senate consideration of Judge Janet Neff along with a dozen other judicial nominees at the end of the last Congress when the Committee was chaired by Senator Specter.

We have already confirmed more judicial nominations in the 20 months of this Congress than were confirmed during the previous two years when a Republican Senate majority and Republican chairman of this Committee did not have to worry about the Thurmond Rule and an abbreviated session due to a presidential election. Indeed, in the 37 months I have served as Judiciary chairman, the Senate has already confirmed 158 of President Bush's judicial nominees, the same number of President Bush's nominees confirmed in the more than four years the Senate Republicans were in charge. We have cut the judicial vacancies I encountered in the summer of 2001 more than in half. In the prior six years of Senate Republican majority control during the Clinton administration, the pocket filibusters and obstruction of moderate, qualified nominees forced circuit court vacancies to more than double. By contrast, we have cut circuit court vacancies by two-thirds.

We proceed with this hearing at a time when the country is confronting the worst financial crisis we have experienced since the Great Depression, one that has exposed the American taxpayers to trillions in losses. Homeowners and investors are close to panic. The American economy has experienced job losses every month this year and they now total more than 650,000. Even the Republican candidate for President admits that the economy is in recession. We are working with Chairman Dodd and the Senate leadership on those overriding issues and this Committee has reported a number of legislative relief efforts that can help. In addition, just as I held a judicial confirmation hearing two days after the attacks of September 11, I also proceed this afternoon.

Despite our efforts to step away from the tit for tat of the nomination battles of the past, I have yet to hear praise from a single Republican for our fair consideration of this President's nominees. Despite our success in dramatically lowering judicial vacancies by approving the nominees of a President from the other party, those efforts have yet to be acknowledged. Yet despite the persistent difficulties we have had this Congress at gaining Republican cooperation to consider important matters in Committee and in the Senate, including bills with bipartisan support, we proceed with this hearing today.

I intend to continue in this Congress, and with a new President in the next Congress, to work with Senators from both sides of the aisle to ensure that the Federal judiciary remains independent, and able to provide justice to all Americans,

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**Statement by Senator Pat Roberts  
Confirmation Hearing of Eric F. Melgren  
Senate Committee on the Judiciary  
September 23, 2008**

Mr. Chairman, thank you for calling this hearing on judicial nominations. It is important that we deliver solid judges to our court system. With that said, I support President Bush's nomination of Eric F. Melgren as Federal District Judge for the District of Kansas.

I associate my remarks with those of Senator Brownback. Eric Melgren is qualified for this important responsibility. Since 2002, he has been serving as U.S. Attorney for the District of Kansas. Between 2002 and 2003, the District of Kansas had a fourteen percent increase in the number of criminal cases filed in U.S. District and State Courts.

It is necessary that this committee approve and send Eric's nomination to the full Senate for a vote. Due to an increase in caseload, a temporary judgeship was created in the District of Kansas in 1990. Since the temporary judgeship was created, we have seen an increase in the caseload for the District of Kansas.

Currently, Kansas has five active Federal District Judges. With Eric's confirmation, we will have six active judges. However, one of these judgeships is temporary and set to expire on November 21<sup>st</sup> of this year. If the temporary judgeship expires before the Senate confirms Eric and another judge takes senior status this year, the District of Kansas will only have four active judges. Therefore, with the increase in caseload, it is vital that we confirm Eric before the expiration of this temporary judgeship.

The Senate has a duty to confirm Eric. He is a man of integrity and sound judgement. Eric's passion for the law will be of great benefit to the state of Kansas and the rest of the nation.

Again, I urge Eric's confirmation at the committee's earliest convenience. We need Eric Melgren as soon as possible.

**SENATOR WARNER'S STATEMENT TO THE  
SENATE JUDICIARY COMMITTEE ON THE NOMINATION OF  
ANTHONY TRENGA  
TO SERVE AS A U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF  
VIRGINIA  
SEPTEMBER 23, 2008**

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Chairman Leahy, Senator Specter, and my other distinguished colleagues on the Senate Judiciary Committee, I thank you for holding this important confirmation hearing.

Senator Webb and I join together in introducing to the Committee an outstanding nominee, Anthony J. Trenga, who has been nominated by our President to serve on the United States District Court for the Eastern District of Virginia.

Mr. Trenga is supported here today by his family, including: his wife, Rita; his daughter, Elizabeth; his brother, G. Lawrence Trenga; his sister and her husband, Marilyn and Charles Dahl; and his brother-in-law, Colonel Ken Dahl.

In my view, Mr. Trenga's background makes him highly qualified to sit as a jurist on this illustrious court. I note that the American Bar Association and the Virginia State Bar concur in this assessment, as both have given him their highest rating.

Anthony Trenga has been practicing law before federal courts in Virginia for more than thirty years. He has served as lead counsel in more than fifty cases before the federal court in the eastern district of Virginia on a wide range of subject areas. Since 1998, Mr. Trenga has worked at the law firm of Miller and Chevalier, where he specializes in litigation and trial practice. He is a Fellow of the American College of Trial Lawyers and has served as a member of the faculty of the National Trial Advocacy College at the University of Virginia, sponsored by the Virginia CLE Committee of the Virginia Bar Foundation.

Mr. Trenga received his law degree from the University of Virginia School of Law and completed his undergraduate studies at Princeton University. Upon graduation, he was a law clerk to the Honorable Ted Dalton, U.S. District Court for the Western District of Virginia from 1974 to 1975.

From 1982 to 1998, Mr. Trenga was a partner at Sachs, Greenbaum & Tayler in Washington, D.C. and a managing partner at Hazel & Thomas based in Fairfax, Virginia.

Equally impressive to his legal career, though, is that despite the rigors of a busy legal practice, Mr. Trenga has always found time to be actively involved in community affairs. In addition to participating in his firm's *pro bono* program, Mr. Trenga serves as chairman and member of the Alexandria Human Rights Commission, the Board of Directors of the Northern Virginia Urban League, the Board of Trustees of the Alexandria Symphony Orchestra, and the Board of Directors for the Bethesda Center of Excellence.

Clearly, Anthony Trenga is a highly qualified nominee and I am thankful for his willingness to serve as a district court judge. I thank the Committee for holding today's hearing, and I look forward to Senate confirmation.

**Statement of Senator Jim Webb****On the Confirmation of Anthony J. Trenga to be a Judge on the U.S. District Court for the Eastern District of Virginia**

Mr. Chairman, today it is my distinct pleasure to offer my support along with my colleague Senator Warner for the nomination of Anthony J. Trenga to be a judge on the U.S. District Court for the Eastern District of Virginia.

Mr. Trenga has enjoyed a long career in which he has earned the respect of both colleagues and clients. Mr. Trenga received a rating of "highly qualified" by the Virginia Bar Association. He has been described as an attorney of the highest integrity, unbiased, diligent; and one that possesses superlative legal skills. Mr. Trenga's practice has been exclusively litigation, and he has worked primarily in the U.S. District Court in Alexandria to which he seeks appointment.

In 1974, Mr. Trenga served as a law clerk for the Honorable Ted Dalton, who served on the U.S. District Court for the Western District of Virginia. Mr. Trenga then joined the law firm of Sachs, Greenebaum & Tayler in 1975 and became a partner in 1982. Mr. Trenga served as managing partner at Hazel and Tomas, P.C. from 1987-1998. Presently, Mr. Trenga is Chairman of the Litigation Department at Miller & Chevalier Chartered. In addition to a distinguished professional career, Mr. Trenga has received numerous professional and civic awards for community involvement.

Mr. Trenga received his A.B. from Princeton University in 1971, his J.D. from the University of Virginia in 1974, and has taken non-degree graduate law courses at the Georgetown University Law Center. He is married to Rita Marie FlorCruz Trenga and is the father of Elizabeth and Anthony Trenga.

I should note that the U.S. Senate exercises critical oversight in the confirmation of judges to U.S. Courts. I am pleased that Senator Warner and I have been able to work jointly, in a bipartisan way, to help ensure that persons appointed to U.S. courts in the Commonwealth of Virginia take seriously their role in defending the principles of the U.S. Constitution and will serve in a fair and unbiased manner. Mr. Trenga is an outstanding example of our collaboration.

I want to thank you Mr. Chairman for the opportunity to make these remarks about this outstanding Virginian. In particular, Mr. Chairman, I want to express my gratitude for the expeditious way the Senate has moved the nomination of Mr. Trenga through the process during the 110<sup>th</sup> Congress. Again, it is with pride that I join Senator Warner in commending Mr. Trenga to each of my colleagues on this committee.

