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S. HRG. 106–399, Pt. 1

[ERRATA] CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

JUNE 13, JULY 13, JULY 29, SEPTEMBER 14, OCTOBER 7, OCTOBER 26, AND NOVEMBER 10, 1999

Part 1B

Serial No. J–106–33

Printed for the use of the Committee on the Judiciary

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U.S. GOVERNMENT PRINTING OFFICE

98–240 WASHINGTON : 2005

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

[ERRATA]

[FOR COMMITTEE USE ONLY]

On page XIII of the Contents add the following new section:

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SENATE COMMITTEE ON THE JUDICIARY
BIOGRAPHICAL INFORMATION

1. **Full name (include any former names used.)**
Sterling Johnson, Jr.

2. **Address: List current place of residence and office address(es)**
Douglaston, New York 11362 **(Residence)**

U.S. Courthouse - Eastern District of New York
225 Cadman Plaza East, Brooklyn, NY 11201 **(Business)**

3. **Date and Place of Birth:**
5-14-34 Brooklyn, New York

4. **Marital Status: (Include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**
Married - Barbara Jackson (Housewife)

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

Brooklyn College	1955-63	[B.A. - 1963]
Brooklyn Law School	1963-66	[LL.B - 1966]

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

New York City Police Department - Detective Sergeant	1956-67
U.S. Attorney's Office (Southern District of New York) Assistant U.S. Attorney	1967-70
New York City Police Department - Executive Director Civilian Complaint Review Board	1970-74
Drug Enforcement Administration - Executive Liaison Officer	1974-75
Special Narcotics Prosecutor for New York City	1975-91
United States District Court - Eastern District of New York - Judge	1991-Present

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

United States Marine Corp.	- Corporal	- 1303171	- Honorable Discharge	1952-55
U.S. Naval Reserve	- Captain	- ICR		1975-91

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be a member and give the titles and dates of any offices which you have held in such groups.**

None.

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

American Bar Association
National Bar Association

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

American Bar Association
National Bar Association
(These associations occasionally lobby Congress on Judicial and Criminal Justice Matters)

Police Athletic League.

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

New York State	1967
United States Supreme Court	1968
2nd Circuit Court of Appeals	1968
U.S. District Court - Southern District of New York	1968
U.S. District Court - Eastern District of New York	1968
U.S. Court of International Trade	1978
U.S. Court of Military Appeals	1978

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

None. However, I frequently speak to civic, community and youth groups.

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

Good - 1998

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

New York City Police Department - Detective Sergeant	1956-67
U.S. Attorney's Office (Southern District of New York) Assistant U.S. Attorney	1967-70
New York City Police Department - Executive Director Civilian Complaint Review Board	1970-74
Drug Enforcement Administration - Executive Liaison Officer	1974-75
Special Narcotics Prosecutor for New York City	1975-91
United States District Court - Eastern District of New York - Judge	1991-Present

15. **Legal Career:**

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

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

ANSWER: I never served as a clerk to a Judge.

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

ANSWER: I never practiced alone.

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

ANSWER:

New York City Police Department - Detective Sergeant 1956-67
One Police Plaza, New York, New York

U.S. Attorney's Office (Southern District of New York) 1967-70
Assistant U.S. Attorney
One St. Andrews Plaza, New York, New York

New York City Police Department - Executive Director 1970-74
Civilian Complaint Review Board
One Police Plaza, New York, New York

Drug Enforcement Administration - 1974-75
Executive Liaison Officer
99 Tenth Avenue, New York, New York

Special Narcotics Prosecutor for New York City 1975-91
80 Centre Street, New York, New York

United States District Court - 1991-Present
Eastern District of New York - Judge
225 Cadman Plaza East, Brooklyn, New York

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

ANSWER: Since law school my practice has been mainly criminal or administrative.

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

ANSWER: My clients were either the Federal government or the State of New York.

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

ANSWER: As an Assistant United States Attorney I was in court daily. As the Executive Director of the Civilian Complaint Review Board and an official of the Drug Enforcement Administration I never appeared in Court. As the Special Narcotics Prosecutor I only appeared in Court to observe some of my Assistants or to do a bail application in an important case.

2. What percentage of these appearances was in:

(a) federal courts;
As an Assistant United States Attorney - 100%

(b) state courts of record;
As the Special Narcotics Prosecutor - 100%

(c) other courts - N/A

3. What percentage of your litigation was:
(a) civil;
As a Judge - 20-30%/civil

(b) criminal.
As an Assistant United States Attorney and the Special Narcotics Prosecutor - 100% criminal. As a Judge 70-80% criminal.

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

ANSWER: As an Assistant United States Attorney I tried 40-50 cases to verdict. I was sole counsel on the majority of those cases.

5. What percentage of these trials was:

(a) jury;

ANSWER: 99%

(b) non-jury.

ANSWER: 1% or less.

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

I have not tried a case since I left the United States Attorney's Office in 1970. While there, I tried 40-50 jury and non-jury cases. I tried cases before Judge Pollack, Judge Cooper, Judge Wyatt and other Judges who are deceased. See attachment of some of the significant cases tried by my office when I was the Special Narcotics Prosecutor.

(a) the date of representation;

ANSWER: I have not tried a case since 1970 when I was an Assistant United States Attorney.

(b) The name of the court and the name of the judge or judges before whom the case was litigated; and

ANSWER: I tried cases in the United States District Court (Southern District of New York). The last case I tried was in 1970. All of the Judges are deceased except Judge Pollack, who is on Senior Status.

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

ANSWER: Some of the attorney's I tried cases against as an Assistant United States Attorney are for the defendants are:

H. Elliot Wales
488 Madison Avenue
New York, New York 10022-5702

John Curley
52 Duane Street, 10th Floor
New York, New York 10007

Larry Kessler
Hofstra University Law School
Hempstead, New York 11550

16d. **LITIGATION:** As a Judge I do not advocate. However, the following is a list of people who can attest to my professional ability.

CHARLES P. SIFTON, CHIEF JUDGE
UNITED STATES DISTRICT COURT - EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA EAST, BROOKLYN, NY 11201 - (718-260-2300)

JACK WEINSTEIN, SENIOR JUDGE
UNITED STATES DISTRICT COURT - EASTERN DISTRICT OF NEW YORK
225 CADMAN PLAZA EAST, BROOKLYN, NY 11201 - (718-260-2520)

JOANNA SEYBERT, JUDGE
UNITED STATES DISTRICT COURT - EASTERN DISTRICT OF NEW YORK
UNIONDALE, NY 11553- (516-485-6773)

ZACHARY CARTER - FORMER U.S. ATTORNEY (Eastern District of N.Y.)
ONE PIERREPONT PLAZA, Brooklyn, N.Y. 11201 - (718-254-7000)

MARY JO WHITE - UNITED STATES ATTORNEY (Southern District of N.Y.)
ONE ST. ANDREWS PLAZA, NEW YORK, NY 10007 - (212-791-0058)

ROBERT M. MORGENTHAU, DISTRICT ATTORNEY (New York County)
ONE HOGAN PLACE, NEW YORK, NY 10013 - (212-335-9813)

WAYNE BUDD, PRESIDENT
NYNEX - 185 FRANKLIN STREET
BOSTON, MA 02107

MICHAEL ARMSTRONG
KIRKPATRICK & LOCKHART
1251 AVENUE OF THE AMERICAS, NEW YORK, NY 10020-1104

RONALD GARNETT, ESQ.
299 BROADWAY, SUITE 1601, NEW YORK, NY 10007 - (212-587-3867)

JANET LENNON, ESQ.
299 BROADWAY, NEW YORK, NY 10007 - (212-587-5159)

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

Some of the significant sentences I have handled as a Judge have been:

U.S. -v- POLANCO - The defendant was convicted of racketeering and murder. He was sentenced to five consecutive life sentences those terms to run consecutive to 1,440 months.

U.S. -v- WARREN - Defendant was convicted of murder, attempted robbery and the use of a firearm to commit a violent crime. He was sentenced to life imprisonment and a consecutive term of 1,800 months.

U.S. -v- DANDENY MUNOZ-MOSQUERA
Defendant was convicted of causing a bomb to be placed aboard an airplane. The plane exploded in the air killing all on board. He was also convicted of bombing the American Embassy in Medellin, and conspiracy to import cocaine into the United States. He was sentenced to life 10 times, the terms to run consecutive and 540 months, the terms to run consecutive with the life terms.

U.S. -v- VIOLA - Defendant was convicted of racketeering, conspiracy, importation of a controlled substance, robbery and the use of a firearm during the course of drug trafficking. He was sentenced to life imprisonment, and to 60 months, to run consecutive to the life term.

U.S. -v- HENDRICKSON - Defendant was convicted of the sale of a controlled substance and possession of a firearm during this activity. He was sentenced to 293 months.

U.S. -v- FREEMAN - Defendant was convicted of murder, conspiracy to distribute crack and the use of a firearm to commit a crime of violence. He was sentenced to two terms of life imprisonment, the terms to run consecutive and 60 months to run consecutive to the life terms.

U.S. -v- RAGUSA - Defendant was convicted of racketeering and the use of a firearm during the crime of violence. He was sentenced to 228 months.

U.S. -v- VELASQUEZ - Defendant was convicted of a continuing criminal enterprise. He was sentenced to life imprisonment.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stocks, 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 interests.

   None. However as a former New York City employee I receive a City pension. As a Judge I will receive a pension when I take Senior Status. I also have a Thrift Savings account as a Judge and a Deferred Income plan from my former position as the Special Narcotics Prosecutor.

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

   I see no potential conflicts of interests at this time since my only source of income will be my salary and my pension. I will follow guidelines of the Judicial Conference if there is a conflict. I would also consult with the Sentencing Commission's Ethics Officer.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated.
   No.

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

   See Attached AO-10.

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

   See attachment.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.
   No.

III. GENERAL (PUBLIC)

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

   I have school children visit Chambers and the Court on Fridays to view sentences. After the sentencing of defendants we discuss why the defendant received the sentence he/she received.

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

   No.

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	32,000	00	Notes payable to banks—secured	NONE	
U.S. Government securities—add schedule	NONE		Notes payable to banks—unsecured	NONE	
Listed securities—add schedule	NONE		Notes payable to relatives	NONE	
Unlisted securities—add schedule	NONE		Notes payable to others	NONE	
Accounts and notes receivable:	NONE		Accounts and bills due	NONE	
Due from relatives and friends			Unpaid income tax	NONE	
Due from others			Other unpaid tax and interest	NONE	
Doubtful			Real estate mortgages payable—add schedule	290,000	00
Real estate owned—add schedule	485,000	00	Chattel mortgages and other liens payable	NONE	
Real estate mortgages receivable	NONE		Other debts—itemize:		
Autos and other personal property	25,000	00	AUTO(NAVY FED. CRIDIT UNION)	25,000	00
Cash value—life insurance	380,000	00			
Other assets—itemize:	NONE				
	122,000	00			
			Total liabilities	315,000	00
			Net worth	729,000	00
Total assets	1,044,00	00	Total liabilities and net worth	1,044,000	00

CONTINGENT LIABILITIES			GENERAL INFORMATION	
As endorser, comaker or guarantor	19,000	00	Are any assets pledged? (Add schedule.)	NO
On leases or contracts	NONE		Are you defendant in any suits or legal actions?	NO
Legal Claims	NONE		Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	NONE			
Other special debt	NONE			
	NONE			

ASSETS - SCHEDULE I

Real Estate Owned - Residence
Douglaston, N.Y. 11362
(Market Value - $400,000) - Mortgage $250,000

Undeveloped Property (3.24 Acres)
St. Helenas Island
Beaufort, South carolina
(Market Value - $85,000)
***(I am one of five partners. My interest is $25,000)**

Virginia Beach, VA 23456
(Market Value - $60,000) - Mortgage $40,000

LIABILITIES - SCHEDULE II

Mortgages - Bank of America
Capstead, Inc.

AO-10
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1998

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, 101-112)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
JOHNSON, STERLING JR.	UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK	4-1-99

4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	5. Report Type (check appropriate type)	6. Reporting Period
DISTRICT COURT JUDGE (ACTIVE)	___ Nomination, Date _____ ___ Initial X Annual ___ Final	1/1/98 - 12/31/98

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.
UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK 225 CADMAN PLAZA EAST, RM. 432 BROOKLYN, N.Y. 11201	Reviewing Officer _____ Date _____

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	NONE (No reportable positions.)	
1	DIRECTOR	POLICE ATHLETIC LEAGUE
2		
3		

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

	DATE	PARTIES AND TERMS
☐	NONE (No reportable agreements.)	
1		
2	PENSION	AS A FORMER NEW YORK CITY EMPLOYEE I RECEIVE A CITY PENSION.
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐	NONE (No reportable non-investment income.)		
1			
2	PENSION	NEW YORK CITY	$60,800
3			$
4			$
5			$
			$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
STERLING JOHNSON, JR.	4-1-99

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
	NONE (No such reportable reimbursements.)	(T/TRANSPORTATION-L/LODGING)
1		
2	AMERICAN BAR ASSOCIATION (T/L)	NASHVILLE, TENN. - MIDYEAR MEETING - 1/98
3	HARVARD LAW SCHOOL (T/L)	CAMBRIDGE, MASS. - MOOT COURT - 11/98
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
	NONE (No such reportable gifts.)		
1			$
2	JUST THE BEGINNING FOUNDATION (T/L)	DETROIT, MICH. - (SCHOLARSHIP DINNER DANCE)	$ 785.00
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children; indicate, where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
	NONE (No reportable liabilities.)		
1			
2	N.F.C.U.	REAL ESTATE IN SOUTH CAROLINA	J
3	CAPSTEAD BANK	REAL ESTATE IN VIRGINIA BEACH	K
4	AMERICAN EXPRESS	CREDIT CARD	J
5	VISA	CREDIT CARD	J
6			

*Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
STERLING JOHNSON, JR.	4-1-99

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets) *Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code3 (Q-W)	D. Transactions during reporting period (1) Type (e.g. buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
1 GREAT WESTERN BANK	E	INT.	K	T					
2 BEAUFORT, REAL ESTATE - S.C.	E	NONE	K	W					
3 NYC MUNICIPAL BOND	A	INT.	J	T					
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	STERLING JOHNSON, JR.	4-1-99

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

VI. In 1998 I had a mortgage (Roosevelt Bank) on rental property in Virginia Beach. I sold this property in September '98.

VII. I have been reporting non-rental real property in Virginia Beach under this section. Since this property is non-rental and for my own use I wish to discontinue reporting it as an investment or trust. However, I will continue reporting it as a liability (mortgage) under Section VI.

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activitie and to the best of my knowledge after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covere by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcom of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) i accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it m 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 i compliance with the provisions of 5 U.S.C. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Sterling Johnson Jr. Date 4/1/99

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. 4, § 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

SENATE JUDICIAL QUESTIONNAIRE

PART I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

My name is Adalberto Jose Jordan. My nicknames are Bert and Bertie.

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

I reside in Miami, Florida. My office address is:

U.S. Attorney's Office
Southern District of Florida
99 N.E. 4th Street
5th Floor
Miami, Florida 33132

3. **Date and Place of Birth.**

I was born on December 7, 1961, in Havana, Cuba, and became a naturalized citizen on September 17, 1984, in Miami, Florida.

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

On December 21, 1984, I married Lazara Esther Castillo (now Lazara Esther Jordan). My wife is a high school teacher at St. Brendan High School, 2950 S.W. 87th Avenue, Miami, Florida 33165.

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

University of Miami School of Law, Coral Gables, Florida (1984-1987)
Juris Doctor Degree, *Summa Cum Laude* (May 1987)

University of Miami, Coral Gables, Florida (1980-1984)
Bachelor of Arts Degree, *Magna Cum Laude* (Politics & Public Affairs Major) (May 1984)

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

January 1982-May 1985: Sun Bank (now SunTrust Bank), 1300 Ponce De Leon Blvd., Coral Gables, Florida 33134 (Bank Teller) (branch is no longer in existence at that address)

June 1985-August 1985: Judge Daniel T.K. Hurley (now a federal district judge in the Southern District of Florida), Florida 4th District Court of Appeal, 1525 Palm Beach Lakes Blvd., West Palm Beach, Florida 33402 (Unpaid Intern)

June 1985-August 1985: Professor Mary Coombs, University of Miami School of Law, 1311 Miller Drive, Coral Gables, Florida 33124 (Paid Research Assistant)

September 1985-June 1986: Greenberg Traurig et al., 1401 Brickell Avenue, Miami, Florida 33131 (Law Clerk)

June 1986-July 1986: Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036 (Law Clerk)

July 1986-July 1987: Steel Hector & Davis, 200 South Biscayne Blvd., Suite 4000 (4000 First Union Financial Center), Miami, Florida 33131 (Law Clerk)

August 1987-August 1988: Judge Thomas Clark, United States Court of Appeals for the Eleventh Circuit, 56 Forsyth Street, N.W., Atlanta, Georgia 30303 (Law Clerk)

August 1988-July 1989: Justice Sandra Day O'Connor, United States Supreme Court, Washington, D.C. 20543 (Law Clerk)

August 1989-August 1994: Steel Hector & Davis, 200 South Biscayne Blvd., Suite 4000 (4000 First Union Financial Center), Miami, Florida 33131 (Litigation Associate [1989-1993] and Partner [January 1994-August 1994])

January 1990-present: University of Miami School of Law, 1311 Miller Drive, Coral Gables, Florida 33124 (Adjunct Professor of Law)

August 1994-present: U.S. Attorney's Office, Southern District of Florida, 99 N.E. 4th Street, Miami, Florida 33132 (Assistant U.S. Attorney [August 1994-September 1996], Deputy Chief of the Appellate Division [October 1996-January 1998], and Chief of the Appellate Division [January 1998-present])

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

I have not had any military service.

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

• Bachelor of Arts Degree, *Magna Cum Laude,* from the University of Miami (1984)

• Annual Honors Award from the Politics and Public Affairs Department at the University of Miami (1984)

• Articles and Comments Editor for the Law Review at the University of Miami School of Law (1986-87)

• University of Miami's Iron Arrow Honor Society (inducted in 1987)

• Juris Doctor Degree, *Summa Cum Laude,* from the University of Miami School of Law (1987)

• Annual Pro Bono Award from the "Put Something Back Program" (a joint pro bono project of the Eleventh Judicial Circuit and the Dade County Bar Association) for the representation of abused and neglected children in termination and dependency proceedings (1993)

• Pro Bono Service Award from the "Put Something Back Program" for the representation of a minor mother at a domestic abuse permanent injunction hearing and in subsequent civil proceedings (1996)

• Department of Justice Employee Volunteer Service Award for Pro Bono Work (1998)

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

•American Bar Association

•Florida Bar

•Dade County Bar Association-Since 1992, I have been a member of the Dade County Bar Association's Judicial Campaign Practices Commission. The Commission receives complaints concerning electoral practices during races for Dade County judgeships (circuit and county), and issues advisory opinions on the complaints after receiving submissions from the interested parties.

•The Peter T. Fay American Inn of Court at St. Thomas University School of Law

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

Aside from the American Bar Association and the Florida Bar, which I believe may engage in such lobbying, I do not belong to any other organizations which lobby before public bodies.

I belong to the University of Miami's George Smathers Student Wellness Center, 1241 Dickinson Drive, Coral Gables, Florida 33146. Membership in the Center is available only to individuals who are in some way affiliated with the University of Miami (e.g., students, employees, staff, alumni, faculty) and their families.

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

I became a member of the Florida Bar on December 18, 1987 (Florida Bar No. 726877), and am admitted to practice in the following courts:

• United States Supreme Court (October 13, 1992)

• United States Court of Appeals for the Eleventh Circuit (September 11, 1989)

• United States Court of Appeals for the Sixth Circuit (September 15, 1992)

• United States District Court for the Southern District of Florida (February 14, 1990)

• United States District Court for the Middle District of Florida (September 18, 1990)

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

a. As a law student at the University of Miami School of Law, I wrote one student note and co-wrote another for the University of Miami Law Review. I also was the co-editor of a student symposium on immigration legislation in the Review. These publications are listed below.

• A. Jordan, *Imagery, Humor, and the Judicial Opinion*, 41 U. Miami L. Rev. 693 (1987)

• G. Gerena & A. Jordan, *United States v. Doe and its Progeny: A Re-evaluation of the Fifth Amendment's Application to Custodians of Corporate Records*, 40 U. Miami L. Rev. 793 (1986)

• Selected Comments on 1986 Immigration Reforms, 41 U. Miami L. Rev. 997-1116 (1987) (editors A. Jordan & S. Naturman)

b. At times during 1997, 1998, and 1999, I have acted as the spokesperson for the U.S. Attorney's Office during the absence of the Office's regular spokesperson. In that capacity, I have spoken to the media (radio, television, and newspaper) on matters being handled by the Office. I have also been the Office's point of contact with the media on litigation of issues arising from a Tenth Circuit panel decision excluding the testimony of witnesses who had entered into cooperation plea agreements with the government. *See* M. Hladky, "Prosecutors Eager to Fight Exclusion of Testimony Derived from Leniency," *Miami Daily Business Review*, July 30, 1998, at A1; L. Lebowitz, "Plea Deals Handed a Setback," *Ft. Lauderdale Sun Sentinel*, July 24, 1998, at 1A.

c. Since 1989, I have spoken at various schools in the Miami area, usually during career week, concerning the legal profession. These schools include St. Thomas University School of Law, University of Miami School of Law, South Dade High School, Norland High School, St. Brendan High School, Coral Gables High School, W.R. Thomas Middle School, Drew Middle School, Annunciation Elementary School, and St. Agatha Elementary School. I did not use prepared texts or speeches.

d. Since 1990 I have taught a 2-credit capital punishment seminar during the Spring semester at the University of Miami School of Law. A copy of the most recent syllabus for the seminar is attached. On February 26, 1994, I (along with other attorneys) spoke to law students about capital punishment at the University of Miami School of Law during Law Day. I do not think I used a prepared text for my remarks, and do not have any documents concerning that event.

e. On September 14, 1990, I appeared before the Florida Supreme Court's Racial and Ethnic Bias Study Commission (at the invitation of the Commission's Chair, Frank Scruggs) in Orlando, Florida, and discussed legal developments in the area of affirmative action. I believe I used an outline to discuss recent cases, but I do not have a copy of that outline.

f. On September 12, 1990, I spoke to the Rotary Club in Homestead, Florida, on behalf of Talbot "Sandy" D'Alemberte (a partner I worked for at Steel Hector & Davis), who was unavailable. I do not recall the subject of my remarks, and I do not have copies of any materials that I might have used for my remarks.

g. On October 8, 1998, I appeared (along with several other attorneys) on a public access cable call-in program called "You be the Judge." The program, which was sponsored by the Florida Association of Criminal Defense Lawyers and was broadcast by WLRN, concerned the Fourth Amendment. I appeared on the program in place of John Schlessinger (Special Counsel for Public Affairs at the U.S. Attorney's Office in the Southern District of Florida), who could not attend. I spoke in my personal capacity as a prosecutor, and not on behalf of the U.S. Attorney's Office.

h. As noted in the response to Question 9, I have been a member of the Dade County Bar Association's Judicial Campaign Practices Commission since 1992. The Commission issues advisory opinions concerning complaints made by candidates for judicial office in Dade County, Florida. As a member of the Commission, I have written advisory opinions in several matters. *See Dubitsky v. Levenson* (Sept. 21, 1992); *Capua v. Weiner* (Aug. 3, 1993); *Fallon v. Ballman* (Aug. 24, 1994); *Glazer v. Adderly* (Aug. 27, 1998); *Vazquez v. Harnage* (Aug. 28, 1998); *Vazquez v. Harnage* (Sept. 2, 1998). Copies of these opinions are attached.

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

My health is excellent, and my last physical examination was on January 18, 1999.

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 any judicial office.

15. **Citations: If you are or have been a judge, provide (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

I have never held any judicial office.

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

Aside from my clerkships with Judge Clark (1987-88) and Justice O'Connor (1988-89), and my position as an Assistant U.S. Attorney (1994-present), I have not held public office.

17. **Legal Career.**

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

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

• Clerk to Circuit Judge Thomas Clark, United States Court of Appeals for the Eleventh Circuit, Atlanta, Georgia (1987-88)

• Clerk to Supreme Court Justice Sandra Day O'Connor, United States Supreme Court, Washington, D.C. (1988-89)

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

I have never practiced alone.

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

August 1989 to August 1994

Steel Hector & Davis
200 S. Biscayne Blvd., Suite 4000
Miami, Florida 33131

•Partner / Litigation Department (January 1994 to August 1994)
•Associate / Litigation Department (August 1989 to December 1993)

January 1990 to Present

University of Miami School of Law
1311 Miller Drive
Coral Gables, Florida 33124

•Adjunct Professor of Law (teaching 2-credit seminar on capital punishment)

August 1994-Present

U.S. Attorney's Office
Southern District of Florida
99 N.E. 4th Street
5th Floor
Miami, Florida 33132

•Chief, Appellate Division (January 1998 to present)
•Special Counsel to the U.S. Attorney on Legal Policy (October 1997 to present)
•Chairperson of Hiring Committee (October 1997 to present)
•Deputy Chief, Appellate Division (October 1996 to January 1998)
•Assistant U.S. Attorney, Appellate Division (August 1994 to September 1996)

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

1989-94

After clerking in the Eleventh Circuit and in the Supreme Court, I joined Steel Hector & Davis' litigation department. At SH&D, I initially handled First Amendment matters and commercial litigation cases. With respect to First Amendment matters, I worked on defamation (libel and slander) and media access cases as well as contempt proceedings against media clients. In the commercial setting, I worked on business disputes that had resulted in litigation. The substantive areas of law included ERISA, insurance, contracts, attorney malpractice, civil rights, banking, zoning, products liability, foreclosures, personal injury, and wrongful death. The majority of my work in commercial litigation was on behalf of civil defendants.

Following my first several years at SH&D, I began to specialize in appellate practice, writing briefs and presenting oral arguments in the federal and state appellate courts. My appellate work was on behalf of both appellants and appellees. In addition, I handled numerous pro bono cases while at SH&D, including the appellate representation of abused and neglected children (through the Guardian Ad Litem Program) in state dependency/termination proceedings, the appellate representation of a death row inmate in a habeas corpus appeal in the Eleventh Circuit, the representation at trial of an inmate suing Dade County under 42 U.S.C. § 1983 for injuries sustained at the Dade County Jail, and the representation of an individual who alleged that he had been beaten by correctional officers in St. Lucie County.

1994-Present

Since August of 1994, I have been an Assistant U.S. Attorney in the Appellate Division of the U.S. Attorney's Office and have worked mainly on civil and criminal appeals involving the government. I became the Deputy Chief of the Appellate Division in October of 1996, and became the Chief of the Division in January of 1998. All of my work (except for pro bono cases) is in the federal system. Approximately 80-90% of my current work is in substantive and procedural criminal law (including the constitutional issues raised in criminal proceedings); the remaining 10-20% involves civil and asset forfeiture matters. I handle civil and criminal matters from all of the different trial sections in the U.S. Attorney's Office (e.g., Public Corruption, Organized Crime, Economic Crimes, Narcotics, Major Crimes, Environmental Crimes, Civil, and Asset Forfeiture).

In October of 1997, the U.S. Attorney, Thomas Scott, gave me additional duties. He named me his Special Counsel on Legal Policy and appointed me Chairperson of the Hiring Committee. As Special Counsel, I provide advice to Mr. Scott on legal and policy issues, including those arising in pending criminal matters and investigations. I also work on special projects he assigns to me.

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

Typical Clients

Since 1994, my only client (except for pro bono cases) has been the United States. While I was at SH&D (from 1989 to 1994), the clients for whom I did work were mainly mid- to large-sized corporations. The media/entertainment clients included *The St. Petersburg Times, The Miami Herald, The Palm Beach Post*, Turner Network Television, CNN, Cowles Media, Barbour-Langley Productions, and Post-Newsweek Stations. Other clients included Prudential Securities, Mass Mutual, Mitsubishi, Dupont, Espirito Santo Bank, Atlantic Gulf, Transportes Aereos de Honduras, Provident Insurance Company, Southeast Bank, Reedy Creek Improvement District (Walt Disney World's governmental arm), Paramount Pictures, Peat Marwick, Telesat, John Hancock, Florida Power & Light, and Goodyear Tire Company.

Areas of Specialization

As mentioned above, I did First Amendment work during my first several years at SH&D. This work mainly involved the representation of media clients in defamation (libel and slander) and access cases, as well as contempt proceedings.

Since my first couple of years at SH&D, I have specialized in appellate litigation. I have written over 125 appellate briefs (in both civil and criminal cases) in the federal and state courts, and have had 36 appellate oral arguments.

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

I have regularly appeared in court on behalf of clients. The frequency of my federal court appearances has increased since August of 1994, when I joined the U.S. Attorney's Office.

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

Approximately 65% of my court appearances have been in the federal courts, with the remaining 35% in the state courts.

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

In my 5 years at SH&D, I worked mainly on civil cases. In my 4 years at the U.S. Attorney's Office, I have worked mainly on criminal cases. Overall, about 55% of my litigation experience has been in civil cases and the remaining 45% in criminal cases.

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

I have tried 7 cases to judgment, including 2 preliminary injunction evidentiary hearings that resulted in final judgments. The cases were *Ocean Bio-Chem, Inc. v. Turner Network Television, Inc.*, No. 90-6044-Civ-Ryskamp (S.D. Fla. March 20, 1990); *Dawson Construction Co. v. Travelers Indemnity Co.*, No. 90-0752-Civ-Highsmith (S.D. Fla. April 16-17, 1992); *United States v. Walter Browne*, No. 92-6101-Cr-Ryskamp (S.D. Fla. Feb. 1-3, 1993); *Steve Ivory v. Dade County*, No. 88-2321-Civ-Marcus (Sorrentino) (S.D. Fla. Feb. 22-24, 1993); *United States v. Adrian Pielago et al.*, No. 93-594-Cr-Hurley (S.D. Fla. March 13-23, 1995); *Eyra Caldera v. Nazir Ali*, No. 95-10134-FC-04 (Florida 11th Jud. Cir. May 22, 1995) (pro bono case); *United States v. Gerardo Franco-Lozada*, No. 95-483-Cr-Nesbitt (Davis) (S.D. Fla. October 23-24, 1995).

Of the 7 cases, 6 were in federal district court, and the other was in state circuit court. I was sole counsel in 1 case (*Caldera*), lead counsel in 1 case (*Franco-Lozada*), and associate counsel (i.e., second chair) in the other 5 cases (*Ocean Bio-Chem, Travelers Indemnity, Browne, Ivory,* and *Pielago*).

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

Of the 7 cases listed above, 4 (57%) were jury trials, and 3 (43%) were non-jury.

18. **Litigation: Describe the 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 the 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 chronological order, these are the 10 most significant legal matters that I have handled.

1. *Ocean Bio-Chem, Inc. v. Turner Network Television, Inc.*, 741 F.Supp. 1546 (S.D. Fla. 1990) (representation of Turner Network Television, Inc., the defendant).

a. Date of Preliminary Injunction Evidentiary Hearing: March 20, 1990

b. Court: United States District Court for the Southern District of Florida

Judge: District Judge Kenneth Ryskamp

c. Opposing Counsel:

John Oltman / 915 Middle River Drive, Suite 415, Ft. Lauderdale, Florida 33304 / (954) 563-4814

Co-Counsel:

Thomas Julin and Norman Davis / Steel Hector & Davis, 200 S. Biscayne Blvd., Suite 4000, Miami, Florida 33131 / (305) 577-7000

In December of 1989, Turner Network Television (TNT) broadcast a fictional made-for-television movie entitled "Incident at Dark River." The movie portrayed the anguish of a father over his daughter's death, which had been caused by the river pollution of a company called "Starbrite Batteries." Ocean Bio-Chem, a company which marketed numerous products under the Starbrite name, filed suit against TNT, asserting federal and state trademark infringement and dilution claims. I was associate counsel (with Tom Julin of SH&D) on behalf of TNT. I handled portions of an evidentiary hearing held on Ocean Bio-Chem's request for a preliminary injunction and drafted (together with Mr. Julin) TNT's legal memoranda. The evidentiary hearing resulted in a final summary judgment in favor of TNT. Judge Ryskamp issued a lengthy published opinion on First Amendment protections and federal trademark law. *See Ocean Bio-Chem, Inc. v. Turner Network Television, Inc.*, 741 F.Supp. 1546 (S.D. Fla. 1990).

2. *Anna Rue Camp and John Venn, Trustee v. St. Paul Fire and Marine Insurance Company*, 127 B.R. 879 (N.D. Fla. 1991); 958 F.2d 340 (11th Cir. 1992); 616 So.2d 12 (Fla. 1993); 989 F.2d 428 (11th Cir.1993) (representation of Anna Camp and John Venn, the plaintiffs-appellants).

a. Date of Oral Argument: November 18, 1991

b. Court: United States Court of Appeals for the Eleventh Circuit

Judges: Circuit Judges Phyllis Kravitch, Lanier Anderson, and Stanley Birch

c. Opposing Counsel:

Elmo Hoffman / Brownlee Hoffman & Jacobs, P.O. Box 991, Orlando, Florida 32802 / (407) 872-6416

Gus Small, Jr. / 2970 Peachtree Road, N.W., Suite 400, Atlanta, Georgia 30355 / (404) 237-0071

J. Dixon Bridgers, III / 121 Palafox Place, Suite A, Pensacola, Florida 32501 / (904) 432-6484

Co-Counsel:

Talbot "Sandy" D'Alemberte, President, Florida State University / 211 Wescott Building, Tallahassee, Florida 32306 / (904) 644-1085

Jonathan Sjostrom / Steel Hector & Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301 / (904) 222-2300

George Estess and Robert Kerrigan / Kerrigan Estess et al., 400 East Govt. Street, Pensacola, Florida 32501 / (904) 444-4444

Lefferts Mabie, III / Levin Middlebrooks et al., P.O. Box 12308, Pensacola, Florida 32581 / (904) 435-7000

Joel Perwin / Podhurst, Orseck, Josefsberg et al., 25 W. Flagler Street, Suite 800, Miami, Florida 33130 / (305) 358-2800

In 1989, soon after starting at SH&D, I began working with Talbot "Sandy" D'Alemberte on this matter, a bad faith contingency fee case pending in federal district court in Pensacola. Our co-counsel, George Estess and Robert Kerrigan, had filed the suit, but could not handle

the litigation alone because they thought they might have to testify. I worked on that case throughout my 5 years at SH&D. Only recently, after 5 published opinions by the federal and state courts, did the litigation come to a successful end for our client.

The case arose as follows. In 1984, a neurosurgeon named Farris Kimbell performed several surgical procedures on Anna Rue Camp. At the time, Dr. Kimbell was insured for $250,000 by St. Paul Fire and Marine Insurance Co. for medical malpractice. The policy contained a clause which provided that "if the protected person or his or her estate goes bankrupt or becomes insolvent, we'll still be obligated under this policy." After the procedures in question, Mrs. Camp's attorney (Mr. Estess) threatened to sue Dr. Kimbell for medical malpractice, and Dr. Kimbell in turn notified St. Paul. Mrs. Camp ultimately filed suit against Dr. Kimbell in late 1984. St. Paul defended Dr. Kimbell in the action.

While Dr. Kimbell was experiencing financial difficulties, Mrs. Camp twice offered to settle the suit for the $250,000 policy limit. St. Paul refused both offers. In July of 1986, Dr. Kimbell filed for bankruptcy. During the pendency of the bankruptcy proceedings, Mrs. Camp again offered to settle for $250,000, but that offer was also rejected. During this time, St. Paul was researching whether Dr. Kimbell's bankruptcy would have an impact on its (St. Paul's) exposure to a potential bad faith action by Mrs. Camp. In late 1986, Dr. Kimbell was given a discharge in bankruptcy court which shielded him from personal liability for, among other things, Mrs. Camp's suit. The bankruptcy court, however, allowed Mrs. Camp to liquidate her claim against Dr. Kimbell even though no judgment would be enforceable against Dr. Kimbell. When St. Paul rejected a fourth offer to settle for the policy limits, the case went to trial, and in June of 1987 Mrs. Camp obtained a verdict of over $3 million. Subsequent to the verdict, the bankruptcy court entered an order allowing the excess judgment (the verdict minus the $250,000 policy limit) as a general, unsecured claim against Dr. Kimbell's bankruptcy estate. In 1988, Mrs. Camp and John Venn, the trustee of Dr. Kimbell's bankruptcy estate, filed a bad faith action against St. Paul in state court. St. Paul then removed the case to federal district court in Pensacola. It was at this stage of the litigation that SH&D became involved in the case.

The district court granted summary judgment in favor of St. Paul, *Camp v. St. Paul Fire and Marine Ins. Co.*, 127 B.R. 879 (N.D. Fla. 1991), and we appealed to the Eleventh Circuit. I drafted about 80% of our initial and reply briefs and presented the oral argument to a panel of Eleventh Circuit judges. The Eleventh Circuit ended up certifying the case to the Florida Supreme Court on state law issues. *See Camp v. St. Paul Fire and Marine Ins. Co.*, 958 F.2d 340 (11th Cir. 1992).

In the Florida Supreme Court, I again drafted about 80% of our appellate briefs. Mr. D'Alemberte handled the oral argument. In 1993, the Florida Supreme Court issued an opinion holding (7-0) that under Florida law a named insured's bankruptcy does not bar a bad faith action by the bankruptcy trustee against the insurer. *See Camp v. St. Paul Fire and Marine Ins. Co.*, 616 So.2d 12 (Fla. 1993). When the case returned to the Eleventh Circuit,

the panel reversed the district court's summary judgment based on the Florida Supreme Court's ruling. *See Camp v. St. Paul Fire and Marine Ins. Co.*, 989 F.2d 428 (11th Cir. 1993). St. Paul sought certiorari, and Jon Sjostrom and I drafted Mr. Venn's response in opposition to St. Paul's petition. The Supreme Court denied certiorari, *see* 510 U.S. 964 (1993), and the case returned to the district court. I continued to be involved in the case, and traveled to Atlanta to take the deposition of St. Paul's bankruptcy expert.

The trial began on July 18, 1994. I did not participate as trial counsel because of the pro bono death penalty case I was handling (see *Routly* case discussed below), which was argued before an Eleventh Circuit panel in Atlanta on July 19, 1994. After the oral argument, I returned to Pensacola to assist the trial team. The jury returned a verdict in favor of Mr. Venn for $2.7 million (the excess amount). Subsequent to my leaving SH&D for the U.S. Attorney's Office, the Eleventh Circuit affirmed the jury verdict, rejected St. Paul's attempts to overturn the prior appellate rulings, and held (in another published opinion) that Mr. Venn was entitled to pre-judgment interest. *See Venn v. St. Paul Fire and Marine Ins. Co.*, 99 F.3d 1058 (11th Cir. 1996).

3. *United States v. Walter Browne*, No. 92-6101-Cr-Ryskamp (representation of Walter Browne, the defendant).

a. Date of Trial: February 1-3, 1993

b. Court: United States District Court for the Southern District of Florida

Judge: District Judge Kenneth Ryskamp

c. Opposing Counsel:

Assistant U.S. Attorneys Jeff Kay and Paul Schwartz / U.S. Attorney's Office, 299 E. Broward Blvd., Ft. Lauderdale, Florida 33301 / (954) 356-7255

Co-Counsel:

Thomas Scott, U.S. Attorney / U. S. Attorney's Office, 99 N.E. 4th Street, Miami, Florida 33132 / (305) 961-9100

Henry Salas / Salas, Peterson, & Lage, 6361 Sunset Drive, South Miami, Florida 33143 / (305) 663-0000

A federal grand jury charged Walter Browne, a Port Everglades Commissioner and union leader, with mail fraud and tax offenses. Thomas Scott (a former federal district judge and now the U.S. Attorney in Miami), Henry Salas, and I represented Mr. Browne. I was responsible for developing our legal theories and for handling the portions of the case relating

to the tax charges. I worked with our tax expert and cross-examined the government's tax witness (Mr. Browne's accountant) at trial. I also presented the Rule 29 acquittal arguments on all of the charges to Judge Ryskamp after the government rested its case. Judge Ryskamp agreed with our arguments and acquitted Mr. Browne without submitting the case to the jury.

4. *Claudia Crow and Tania Flores de Brenes et al. v. Transportes Aereos Nacionales, S.A. et al.*, 625 So.2d 4 (Fla. 3d DCA), *rev. denied,* 632 So.2d 1025 (Fla. 1993), *cert. denied,* 512 U.S. 1232 (1994) (representation of Transportes Aereos Nacionales et al., the defendants-appellants).

a. Date of Oral Argument: January 28, 1993

b. Court: Florida Third District Court of Appeal

Judges: District Judges Alan Schwartz, Wilkie Ferguson, and Mario Goderich

c. Opposing Counsel:

Aaron Podhurst, Joel Eaton, and Victor Diaz / Podhurst, Orseck, Josefsberg et al., 25 W. Flagler Street, Suite 800, Miami, Florida 33130 / (305) 358-2800

Daniel Pearson / Holland & Knight, 701 Brickell Avenue, Miami, Florida 33131 / (305) 374-8500

Co-Counsel:

Thomas Scott, U.S. Attorney / U.S. Attorney's Office, 99 N.E. 4th Street, Miami, Florida 33132 / (305) 961-9100

Desmond Barry, Jr. / Condon & Forsyth, 1251 Avenue of the Americas, New York, New York 10020 / (212) 757-6870

Marilyn O'Mara / Office of the Attorney General, 44 Hawley Street, 17th Floor, Binghamton, New York 13901 / (607) 721-8771

In October of 1989, a Boeing 727 aircraft operated by Transportes Aereos Nacionales, S.A., and Servicios Aereos de Honduras, S.A. ("TAN-SAHSA") crashed near Tegucigalpa, Honduras, killing 127 passengers and 4 crew members and injuring 15 others. Over 30 lawsuits were filed against TAN-SAHSA in Dade County Circuit Court by representatives of Nicaraguan citizens killed in the crash. The parties stipulated that Nicaraguan law governed, and that TAN-SAHSA would not contest liability for compensatory damages recoverable under Nicaraguan law. The parties disagreed, however, about whether or not the plaintiffs could recover "daños morales" ("moral damages" or damages based on non-

economic harm such as pain and suffering) under Nicaraguan law given the facts presented. After an evidentiary hearing, the circuit court ruled that the plaintiffs could recover damages for non-economic harm.

TAN-SAHSA and its New York counsel, Desmond Barry, Jr. of Condon & Forsyth, hired SH&D's Thomas Scott to handle the post-ruling proceedings and the eventual appeal to the Third District in two cases which would control the result in the other filed cases. I worked with Mr. Scott, Mr. Barry, and Marilyn O'Mara of Condon and Forsyth on the matter, and traveled to Nicaragua twice to review relevant materials and meet with our Nicaraguan counsel and our expert witnesses. My fluency in Spanish helped me a great deal; I was able to read the Nicaraguan statutes and cases in Spanish and compare them to the English translations, and I was also able to converse with our Spanish-speaking witnesses and attorneys in their native language.

I drafted TAN-SAHSA's motion for reconsideration and the majority of its initial and reply briefs in the Third District. The appellate briefs focused on whether the circuit court had misapplied Nicaraguan law in its ruling on "moral damages." I also presented the oral argument to the Third District panel on TAN-SAHSA's behalf. In March of 1993, the Third District, in a published opinion by Judge Wilkie Ferguson (now a federal district judge), reversed the circuit court's rulings. The Third District held that under Nicaraguan law TAN-SAHSA was not liable for "moral damages" given the facts presented, and set aside the $2.9 million in "moral damages" in the two cases on appeal. *See Transportes Aereos Nacionales, S.A. v. De Brenes et al.*, 625 So.2d 4 (Fla. 3d DCA), *rev. denied*, 632 So.2d 1025 (Fla. 1993), *cert. denied*, 512 U.S. 1232 (1994). After the Third District issued its ruling, I drafted (together with Mr. Barry and Ms. O'Mara of Condon and Forsyth) TAN-SAHSA's successful (1) memorandum in opposition to the plaintiffs' motion for reconsideration, (2) jurisdictional brief in the Florida Supreme Court, and (3) brief in opposition to the plaintiffs' petition for certiorari in the United States Supreme Court.

5. *Steve Ivory v. Dade County*, No. 88-2321-Civ-Marcus (Sorrentino) (representation of Steve Ivory, the plaintiff).

a. Date of Trial: February 22-24, 1993

b. Court: United States District Court for the Southern District of Florida

Judge: Magistrate Judge Charlene Sorrentino

c. Opposing Counsel:

Assistant County Attorney Roy Wood / Office of the Dade County Attorney, 111 N.W. 1st Street, Suite 2810, Miami, Florida 33132 / (305) 375-5151

Co-Counsel:

Jonathan Sjostrom / Steel Hector & Davis, 215 South Monroe, Suite 601 Tallahassee, Florida 32301 / (850) 222-2300

In 1993, while at SH&D, Jon Sjostrom and I tried, on a pro bono basis, a civil rights action against Dade County under 42 U.S.C. § 1983. We received the case from the Florida Justice Institute, which had filed the suit on behalf of Steve Ivory. In 1986, while a pre-trial detainee at the Dade County Jail, Mr. Ivory had been stabbed multiple times by an inmate with a history of violent attacks on others. The inmate, despite his prior actions, had not been segregated from non-violent inmates and had, in fact, been placed on a general population floor at the Dade County Jail. Our theory of the case was that Dade County was liable under § 1983 because it had a policy, custom, or practice of not maintaining adequate records by which to identify and segregate violent inmates, and because that policy had led to Mr. Ivory's stabbing.

With the consent of the parties, the case was tried before Magistrate Judge Sorrentino. Mr. Sjostrom and I divided the trial work. I handled the jury selection, conducted the direct examination of two officials from the Dade County Corrections Department, and worked on the jury instructions. Mr. Sjostrom made the opening statement, conducted the direct examination of Mr. Ivory and of our expert witness, and presented closing argument. We were able to establish that the Dade County Jail, which was overcrowded, did not have any practical way to compile incident reports on violent inmates so as to segregate them from pre-trial detainees and non-violent inmates. The jury returned a verdict in Mr. Ivory's favor and awarded him $375,000 for his injuries and pain and suffering. Magistrate Judge Sorrentino later remitted (i.e., reduced) the sum awarded by the jury, and we settled the case on Mr. Ivory's behalf for a sum larger than the remittitur but smaller than the jury verdict.

6. *Dan Routly v. Harry K. Singletary*, 33 F.3d 1279 (11th Cir. 1994) (representation of Dan Routly, the habeas corpus petitioner-appellant).

a. Date of Oral Argument: July 19, 1994.

b. Court: United States Court of Appeals for the Eleventh Circuit

Judges: Circuit Judges Gerald Tjoflat, Emmet Cox, and Stanley Birch

c. Opposing Counsel:

Richard Martell, Chief of Capital Appeals / Florida Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399 / (904) 488-0600

Co-Counsel:

Greg Anderson and Lazaro Fernandez / Stack Fernandez Anderson & Harris, 201 S. Biscayne Blvd., Suite 3250, Miami, Florida 33131 / (305) 371-0001

Assistant U.S. Attorney Eduardo Sanchez / U.S. Attorney's Office, 99 N.E. 4th Street, Miami, Florida 33132 / (305) 961-9122

In 1993, Professor Steve Goldstein of the FSU Law School and the Volunteer Lawyers' Resource Center asked me to handle, on a pro bono basis, the Eleventh Circuit habeas corpus appeal of Dan Routly. Mr. Routly had been convicted of murder in Ocala in 1980, and had been sentenced to death by a Florida judge who had overturned the jury's recommendation of life imprisonment. I agreed to take the case, and, with the help of other attorneys and law clerks at SH&D, drafted a 70-page initial brief and a reply brief on behalf of Mr. Routly. My role consisted of deciding what issues we would raise (and how we would argue them) and coordinating the work of the other attorneys involved in the case. I also drafted 5 of the 8 arguments asserted on behalf of Mr. Routly, and edited the other 3 arguments. Among the claims were constitutional challenges to Florida's jury override system in capital cases and an argument that the prosecution had knowingly permitted false testimony and failed to turn over exculpatory evidence.

The record in the case was voluminous and had produced three published opinions in the Florida Supreme Court. *See Routly v. State*, 440 So.2d 1257 (Fla. 1983), *cert. denied*, 468 U.S. 1220 (1984); *Routly v. Wainright*, 502 So.2d 901 (Fla. 1987); *Routly v. State*, 590 So.2d 397 (Fla. 1992). I spent hundreds of hours on the case, including several visits to Mr. Routly at Florida's death row.

The Eleventh Circuit oral argument was held in Atlanta, Georgia, on July 19, 1994. I argued on behalf of Mr. Routly. At argument, the panel requested supplemental briefs on Mr. Routly's challenge to Florida's jury override system, and I prepared and filed Mr. Routly's supplemental brief. Several months later, the Eleventh Circuit issued a published opinion adopting the district court's order and denying Mr. Routly relief. *See Routly v. Singletary*, 33 F.3d 1279 (11th Cir. 1994).

7. *William Arango v. U.S. Department of the Treasury*, 115 F.3d 922 (11th Cir. 1997) (representation of the Department of the Treasury, the appellee).

a. Date of Oral Argument: November 19, 1996

b. Court: United States Court of Appeals for the Eleventh Circuit

Judges: Circuit Judges Gerald Tjoflat and James Edmonson and Senior District Judge Thomas O'Neill

c. Opposing Counsel:

Alan Karten / 1888 N.W. 7th Street, Miami, Florida 33125 / (305) 541-5527

Co-Counsel:

Assistant U.S. Attorney Neal Stephens / U.S. Attorney's Office, 99 N.E. 4th Street, Miami, Florida 33132 / (305) 961-9289

I drafted the government's brief and presented the oral argument in this case, which involved the interpretation and application of a U.S. Customs Service regulation allowing waiver of a cost bond in civil forfeiture matters.

Under the customs laws, property valued at less than $500,000 can be forfeited administratively. To prevent summary forfeiture and obtain a hearing, a claimant must file a claim to the seized property and post a bond. The regulations of the U.S. Customs Service provide that the bond requirement will be waived "upon satisfactory proof of financial inability to post [the] bond." 19 C.F.R. § 162.47(e).

In 1992, U.S. Customs agents seized $476,590 from William Arango's home during an undercover money laundering investigation. When U.S. Customs sought to forfeit the money, Mr. Arango requested that the matter be referred for judicial forfeiture proceedings. He later sought to have the bond requirement waived, and filed a sworn declaration of indigency and a copy of his 1991 joint tax return. Because of discrepancies in the documents submitted by Mr. Arango, U.S. Customs asked him for an interview to clarify his financial status. Mr. Arango, invoking his Fifth Amendment privilege against self-incrimination, declined to submit to the interview. U.S. Customs then informed Mr. Arango that he would have to post the required cost bond. He did not post the bond, and therefore did not obtain a judicial forfeiture hearing.

In late 1994, Mr. Arango filed a civil action in federal district court alleging that U.S. Customs had acted arbitrarily in denying his request for waiver of the cost bond. The district court dismissed the complaint, and Mr. Arango appealed to the Eleventh Circuit. I drafted the government's brief and presented oral argument to an Eleventh Circuit panel which later issued a published opinion affirming the dismissal of Mr. Arango's complaint. *See Arango v. U.S. Department of the Treasury*, 115 F.3d 922 (11th Cir. 1997). The Eleventh Circuit agreed with the government's arguments that Mr. Arango had been provided with due process and that the U.S. Customs Service's application of § 162.47(e) was not arbitrary or capricious under the Administrative Procedure Act. The opinion was the first published federal appellate decision in the United States dealing with the constitutional and administrative implications of § 162.47(e), the bond waiver regulation for civil forfeiture matters.

8. *United States v. Abraham Brand*, 163 F.3d 1268 (11th Cir. 1998) (representation of the United States, the appellee).

a. Date of Oral Argument: March 17, 1998

b. Court: United States Court of Appeals for the Eleventh Circuit

Judges: Circuit Judge Joseph Hatchett and Senior Circuit Judges Paul Roney and Donald Lay

c. Opposing Counsel:

J. David Bogenschutz / 600 South Andrews Avenue, Suite 500, Ft. Lauderdale, Florida 33301 / (954) 764-2500

Co-Counsel:

Assistant U.S. Attorney Dawn Bowen / Executive Office of U.S. Attorneys, U.S. Dept. of Justice, 950 Pennsylvania Avenue, N.W., Room 2261, Washington, D.C. 20530 / (202) 514-1020

This case involved an issue of first impression concerning the restitution provisions of the Child Support Recovery Act of 1992, Pub. L. No. 102-521, § 2, 106 Stat. 3403 (codified at 18 U.S.C. § 228). The CSRA, which criminalizes the willfull failure to pay "a past due support obligation with respect to a child who resides in another state," § 228(a), provides in § 228(c) that "upon conviction . . . the court shall order restitution . . . in an amount equal to the past due support obligation as it exists at the time of sentencing." The term "past due support obligation" is defined in § 228(d)(1)(A) of the CSRA as the amount due "for the support and maintenance of a child or of a child and the parent with whom the child is living." The issue of first impression was whether a defendant convicted of violating the CSRA could be made to pay, as restitution, the full amount set forth in a state court dissolution judgment which ordered the defendant to pay his spouse a lump sum for multiple, interrelated purposes.

The Eleventh Circuit agreed with the arguments set forth in the government's brief, which I drafted, and held that the defendant, Abraham Brand, could be ordered to pay restitution of $4.5 million based on an underlying state court lump sum award. *United States v. Brand*, 163 F.3d 1268 (11th Cir. 1998). Significantly, the Eleventh Circuit rejected Mr. Brand's argument that the CSRA should be interpreted in light of state family law. The Eleventh Circuit also ruled (1) that the underlying state court order was not unconstitutionally vague, (2) that the CSRA does not permit collateral attacks on underlying support judgments, and (3) that due process concerns are not implicated by the refusal to entertain collateral attacks in CSRA cases where the defendant has not sought to challenge, modify, or clarify the underlying state court order. Finally, the Eleventh Circuit noted that the government's

position that restitution under the CSRA was mandatory was "well taken," but said that it did not have to address that argument given its resolution of Mr. Brand's appeal.

9. *United States v. Alfonso Sepe,* 1 F.Supp.2d 1372 (S.D. Fla. 1998), *rev'd,* No. 98-4607,___ F.3d ___ (11th Cir. Jan. 4, 1999) (table) (representation of the United States, the appellant).

a. Date of Oral Argument: December 8, 1998

b. Court: United States Court of Appeals for the Eleventh Circuit

Judges: Circuit Judges Lanier Anderson and Joel Dubina and Senior Circuit Judge Peter Fay

c. Opposing Counsel:

G. Richard Strafer / 2400 S. Dixie Highway, Suite 200, Miami, Florida 33133 / (305) 858-5700

Co-Counsel:

Assistant U.S. Attorney Anne Schultz, 99 N.E. 4th Street, Miami, Florida 33132 / (305) 961-9117

In April of 1998, before the RICO / "Operation Courtbroom" retrial of former state judge Alfonso Sepe, Senior District Judge Norman Roettger issued a ruling excluding the testimony of David Goodhart, Mr. Sepe's convicted co-defendant. Judge Roettger found that the government had engaged in misconduct by, among other things, not being forthright with Mr. Sepe's lawyer about Mr. Goodhart's testifying, and concluded that suppression of Mr. Goodhart's testimony was the appropriate sanction. *See United States v. Sepe,* 1 F.Supp.2d 1372 (S.D. Fla. 1998). The government appealed Judge Roettger's ruling, and I drafted the government's brief, arguing that Judge Roettger's findings were not supported by the record and that the suppression of Mr. Goodhart's testimony was erroneous. I also presented oral argument to a panel of the Eleventh Circuit, which recently reversed Judge Roettger's exclusion of Mr. Goodhart. *See United States v. Sepe,* No. 98-4607, ___F.3d ___ (11th Cir. Jan. 4, 1999) (table).

10. *United States v. Angel Cerceda et al.*, 869 F.Supp. 1574 (S.D. Fla. 1994), *aff'd*, 139 F.3d 847 (11th Cir.), *panel opinion vacated and rehearing en banc granted*, 161 F.3d 652 (11th Cir. 1998) (*en banc*) (over 20 consolidated cases) (representation of the United States, the appellant).

a. Date of Oral Arguments: October 7, 1997 (panel) / January 27, 1999 (*en banc*)

b. Court: United States Court of Appeals for the Eleventh Circuit

Judges: Circuit Judges Gerald Tjoflat and Stanley Birch and Senior Circuit Judge Paul Roney (panel)

Circuit Judges Joseph Hatchett, Gerald Tjoflat, Lanier Anderson, James Edmondson, Emmett Cox, Joel Dubina, Stanley Birch, Susan Black, Edward Carnes, Rosemary Barkett, Frank Hull, and Senior Circuit Judge Paul Roney (*en banc*)

c. Lead Opposing Counsel:

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Roy Black and Howard Srebnick / Black Srebnick et al., 1300 Miami Center, Miami, Florida 33131 / (305) 371-6421

Michael Pasano / Zuckerman Spaeder et al., 201 S. Biscayne Blvd., Suite 900, Miami, Florida 33132 / (305) 579-0110

Co-counsel:

Assistant U.S. Attorney Dawn Bowen / Executive Office of U.S. Attorneys, U.S. Dept. of Justice, 950 Pennsylvania Avenue, N.W., Room 2261, Washington, D.C. 20530 / (202) 514-1020

Assistant U.S. Attorney Evelio Yera / U.S. Attorney's Office, 99 N.E. 4th Street, Miami, Florida 33132 / (305) 961-9125

Linda Collins Hertz / Holland & Knight, 701 Brickell Avenue, 30th Floor, Miami, Florida 33131 / (305) 374-8500

On October 11 and 13, 1993, two Miami newspapers printed articles reporting that District Judge K. Michael Moore of the Southern District of Florida was under investigation by the U.S. Attorney's Office in Brooklyn, New York, for allegedly accepting gratuities worth thousands of dollars from officials of Central Security Systems, Inc. ("CSSI") while he served as Director of the U.S. Marshal's Service. On October 15, 1993, several days after he was notified that he was a "target" of the investigation, Judge Moore entered an order recusing (i.e., disqualifying) himself from all cases in which the United States was a party.

In early 1994, various defendants who had been tried before and/or sentenced by Judge Moore prior to his recusal filed motions for new trials or new sentencing hearings. They argued that the grand jury investigation of Judge Moore had been ongoing since November of 1992, and that Judge Moore should have recused himself at that earlier date pursuant to 28 U.S.C. § 455(a) (requiring that "any justice, judge, or magistrate . . . disqualify himself in any proceeding in which his impartiality might reasonably be questioned"). Ultimately, Eleventh Circuit Chief Judge Gerald Tjoflat appointed District Judge William C. O'Kelley of Atlanta to rule on the new trial motions because judges in the Southern District of Florida had disqualified themselves from the cases. After an evidentiary hearing at which Judge Moore testified, Judge O'Kelley ruled in a published opinion that Judge Moore should have recused himself in November of 1992, when he learned that he was a "subject" in the grand jury investigation. *See United States v. Garrudo*, 869 F.Supp. 1574 (S.D. Fla. 1994). Judge O'Kelley concluded that the average person on the street would believe that a federal judge with "subject" status could not conduct criminal trials impartially, and he explained that across-the-board relief was necessary to remove the perception of bias in the judicial system. As a result, Judge O'Kelley granted new trials and new sentencing hearings in over 20 cases involving over 35 defendants.

The United States appealed Judge O'Kelley's orders, and I was assigned to write the government's brief in the more than 20 consolidated cases. The case presented an issue of first impression in the entire country -- whether a federal district judge who is a "subject" but not a "target" of a federal grand jury investigation is required to recuse himself from all cases in which the United States is a party. The Eleventh Circuit heard oral argument on October 7, 1997, in a proceeding that lasted over 2 hours.

In April of 1998, an Eleventh Circuit panel issued a published opinion affirming Chief Judge O'Kelley's rulings and rejecting the government's arguments. *See United States v. Cerceda*, 139 F.3d 847 (11th Cir. 1998). I drafted and filed the government's suggestion of rehearing *en banc* in June of 1998, and rehearing *en banc* was granted in November of 1998. *United States v. Cerceda*, 161 F.3d 652 (11th Cir. 1998) (*en banc*). I drafted about 90% of the government's initial and reply *en banc* briefs, and represented the government at the *en banc* argument on January 27, 1999, in Atlanta, Georgia. The *en banc* ruling is pending.

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

In no particular order, these are some of the most significant legal activities I have pursued:

1. My clerkships for Judge Clark and Justice O'Connor were and are high points in my legal career. Not only did the clerkships let me see federal appellate practice from the judiciary's perspective, they allowed me to work with two persons who, in addition to being exceptional jurists, are wonderful human beings. The clerkships also gave me exposure to difficult and exciting legal issues.

2. Since 1990, I have taught a 2-credit seminar on capital punishment and habeas corpus for second- and third-year students at the University of Miami School of Law. I greatly enjoy teaching. I meet great students, am able (indeed required) to keep up with all the developments in capital punishment and habeas corpus jurisprudence, and can step back from the pressures of day-to-day litigation and return to more academic themes.

3. In 1989, the United States Supreme Court ruled, in a case involving an ordinance governing the award of local construction contracts, that state and local affirmative action programs had to be supported by a compelling state interest. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989). The *Croson* decision led many state and local government entities to analyze whether their minority-set aside programs passed constitutional muster.

My former firm, SH&D, joined together with the accounting firm of KPMG Peat Marwick, TEM Associates, and other consultants to conduct discrimination studies for state and local government entities and to make recommendations concerning their programs. I worked on the legal aspects of the studies together with two then-SH&D partners, Frank Scruggs and Sam Dubbin. My job on these studies consisted of taking the data assembled by other components of the team and analyzing it to see if the affirmative action program at issue was constitutional under *Croson* and its progeny. We conducted studies for the State of Florida (two studies -- one for the Department of Transportation and the other for the remaining state agencies), the City of Miami, and the West Coast Regional Water Supply Authority. My work on these various studies allowed me to meet and work with government officials at the state and local levels, and permitted me to merge legal analysis with the public policy and planning involved in administering affirmative action programs.

4. In 1992, I drafted (along with Martin Reeder and Wifredo Ferrer of SH&D) an *amicus curiae* brief in the United States Supreme Court. The brief was submitted on behalf of *The Palm Beach Post* and *The Miami Herald,* and was in support of a petition for a writ of certiorari filed by Tim Roche, a reporter for *The Stuart News* who had been found guilty of criminal contempt for not revealing his sources for a story concerning an HRS proceeding to terminate the parental rights of a mother. The trial court's contempt adjudication had been upheld on appeal against a First Amendment challenge, and the Florida Supreme Court had denied review. *See In re Investigation: Florida Statute 27.04, Subpoena of Tim Roche*, 589 So.2d 978 (Fla. 4th DCA 1991), *rev. denied*, 599 So.2d 1279 (Fla. 1992). The United States Supreme Court ultimately denied certiorari.

5. In late 1994, the U.S. Attorney's Office in Miami initiated a pilot pro bono program for Assistant U.S. Attorneys through the "Put Something Back Program." Through this program, federa; prosecutors could represent victims of domestic violence in permanent injunction hearings in Florida circuit court. I represented an unmarried minor mother who was seeking a permanent injunction against the father of her child, and helped her obtain the injunction after an evidentiary hearing. When the father sought to obtain custody and visitation rights through an independent civil action, I represented the mother for almost a year until she was able to secure counsel. I received a pro bono award from the "Put Something Back Program" for my representation.

PART II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   There are no such anticipated receipts from my work at Steel Hector & Davis. As an Assistant U.S. Attorney, I participate in the Thrift Savings Plan (TSP) and am covered by the Federal Employees Retirement System (FERS). I will roll over the funds in my TSP account into an IRA. Benefits under FERS are not available until retirement.

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

   The only financial matters that I can foresee causing conflicts of interest are my shares of stock in 6 public companies. I will give a list of the companies to the clerk's office, my secretary, my courtroom deputy, and my law clerks. Together, we can ensure that cases involving those companies will be identified immediately so that I can take the action required by the Code of Judicial Conduct and the federal statutes governing disqualification and recusal.

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

   I am currently teaching a 2-credit seminar on capital punishment at the University of Miami School of Law, for which I am paid an honorarium of $1,600. The semester finishes in May of 1999. I do not have any commitment to teach that seminar (or any other seminar) next year, but I would like to remain an adjunct professor at the School of Law and continue teaching (either with or without compensation).

4. **List all 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. (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 financial disclosure report.

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

Please see attached net worth statement.

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

I have not held a position or played a role in a political campaign.

AO-10 (w)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Jordan, Adalberto J.	U.S. District Court - S.D. Fla.	03/18/1999

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check type)	6. Reporting Period
U.S. District Judge (Nominee)	X Nomination, Date 03/15/1999 Initial Annual Final	01/01/1997 to 03/15/1999

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.
U.S. Attorney's Office 99 N.E. 4th Street, 5th Floor Miami, Florida 33132	Reviewing Officer _____ Date _____

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

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

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Adjunct Professor of Law (1997)	University of Miami School of Law
2	Adjunct Professor of Law (1998)	University of Miami School of Law
3	Adjunct Professor of Law (1999)	University of Miami School of Law

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

☑ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	None	
2		
3		

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

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	1999	St. Brendan High School (S)	
2	1998	St. Brendan High School (S)	
3	1997	St. Brendan High School (S)	
4	1999	University of Miami School of Law - Death Penalty Seminar	$ 1,600.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Jordan, Adalberto J.	03/18/1999

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
1	Florida Prepaid College Tuition Program	College Tuition Programs for Daughters	J
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Jordan, Adalberto J.	03/18/1999

VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income,assets, or transactions.)									
1 First Union Bank (MM) (J)	A	Interest	K	T	Exempt				
2 Walt Disney Stock (J)	A	Dividend	J	T	Exempt				
3 General Electric Stock (J)	A	Dividend	J	T	Exempt				
4 Sotheby's Class A Stock (J)	A	Dividend	J	T	Exempt				
5 Watson Pharmaceuticals Stock (J)		None	J	T	Exempt				
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									

1 Inc/Gain Codes: (Col. B1, D4)	A=$1,000 or less	B=$1,001-$2,500	C=$2,501-$5,000	D=$5,001-$15,000	E=$15,001-$50,000
	F=$50,001-$100,000	G=$100,001-$1,000,000	H1=$1,000,001-$5,000,000	H2=$5,000,001 or more	
2 Val Codes: (Col. C1, D3)	J=$15,000 or less	K=$15,001-$50,000	L=$50,001-$100,000	M=$100,001-$250,000	N=$250,001-$500,000
	O=$500,001-$1,000,000	P1=$1,000,001-$5,000,000	P2=$5,000,001-$25,000,000	P3=$25,000,001-$50,000,000	P4=$50,000,001 or more
3 Val Mth Codes: (Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market	
	U=Book Value	V=Other	W=Estimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Jordan, Adalberto J.	03/18/1999

SECTION HEADING. *(Indicate part of report.)*

Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	1998	University of Miami School of Law - Death Penalty Seminar	$ 1,600.00
6	1997	University of Miami School of Law - Death Penalty Seminar	$ 1,600.00
7	1997	Sum received from former client (Don Dunlop)	$ 10,000.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Jordan, Adalberto J.	03/18/1999

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

Part III. While at Steel Hector & Davis, I worked on a case which Don Dunlop and his company, Fuels Management, wanted the firm to handle. SH&D ultimately decided not to take the case, and referred the matter (through the partner I was working for) to another firm. When Mr. Dunlop subsequently obtained a settlement, he gave me $10,000.00 for the work I had done on the case while at SH&D. I reported the sum on my income tax return and listed it on my Executive Branch Public Financial Disclosure Report (SF-278) for calendar year 1997.

Part VII. My father-in-law, Lorenzo Castillo, and I held the stocks listed in Part VII in a joint brokerage account until his death in August of 1998. The brokerage account is now held jointly by my wife and me.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Jordan, Adalberto J.	03/18/1999

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Adalberto Jordan Date 3-18-99

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

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

FINANCIAL STATEMENT
(March 15, 1999)

This Financial Statement should be completed and placed at the end of an application. Provide complete, current information, in dollars, adding schedules as necessary, for yourself, spouse and other immediate members of your household. This is the Financial Statement as requested by the Senate Committee on the Judiciary.

ASSETS			LIABILITIES		
Cash on hand and in banks	27,663	85	Notes payable to banks -- secured		
U.S. Government securities -- add schedule			Notes payable to banks -- unsecured		
			Notes payable to relatives		
Listed securities -- add schedule	24,399	47	Notes payable to others		
Unlisted securities -- add schedule			Accounts and bills due	500	00
Accounts and notes receivable:			Unpaid income tax		
Due from relatives and friends			Other unpaid tax and interest		
Due from others			Real estate mortgages payable -- add schedule	139,514	00
Doubtful					
Real estate owned -- add schedule	234,000	00	Chattel mortgages and other liens payable		
Real estate mortgages receivable					
Autos and other personal property	90,000	00	Other debts -- itemize:		
Cast value -- life insurance			Vehicle Lease ('98 Voyager)	5,605	19
Other Assets -- itemize:			Vehicle Lease ('99 Jetta)	10,456	84
Govt. Thrift Savings Plan	57,839	50	Prepaid College Program	11,447	56
			Total liabilities	167,523	59
			Net worth	267,379	23
Total assets	434,902	82	Total liabilities and net worth	434,902	82
CONTINGENT LIABILITIES			**GENERAL INFORMATION**		
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	no	
On leases or contracts					
Legal Claims			Are you defendant in any suits or legal actions?	no	
Provision for Federal Income Tax					
Other special debt			Have you ever taken bankruptcy?	no	

Adalberto Jose Jordan (261-73-4298)

FINANCIAL SCHEDULE FOR ADALBERTO JOSE JORDAN

I. Assets

A. Listed Securities (valued as of 2-28-99):

1. 1 share of Viacom, Inc. Class B ($88.37)
2. 300 shares of Sotheby's Holdings Class A ($8,400.00)
3. 150 shares of Walt Disney ($5,278.20)
4. 114 shares of Watson Pharmaceuticals, Inc. ($5,514.75)
5. 500 shares of Int'l Taurus Resources ($102.50)
6. 50 shares of General Electric ($5015.65)

B. Real Estate Owned: My wife and I own a single-family home in Miami, Florida. It was appraised at $235,000 when we purchased it in late 1998.

C. The Government Thrift Savings Plan Account with $57,839.50 is valued as of 2-28-99 (phone balance).

II. Liabilities

A. Real Estate Mortgage Payable: The principal on the mortgage for our home in Miami, Florida, is $139,514.00.

B. Other Debts (Explanations):

1. The total lease amount for the 1998 Plymouth Voyager Minivan is based on 19 remaining monthly payments of $295.01. The total lease amount for the 1999 Volkswagen Jetta is based on 38 remaining monthly payments of $275.18.

2. The Florida Prepaid College Tuition Program includes 4-year tuition contracts (paid monthly) for both daughters. As of 1-1-99, we owe $4055.56 for Diana and $7392.00 for Elizabeth.

PART III. GENERAL (PUBLIC)

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

Since 1989, when I began practicing at SH&D, I have regularly engaged in pro bono legal representation. I received pro bono awards in 1993, 1996, and 1998 (listed above) for my representation of individuals through the "Put Something Back Program" in Dade County, Florida. My pro bono work has included the following matters:

• Representation of R.M.S., a teacher wrongly accused by the Florida Department of Health and Rehabilitative Services (now the Department of Children and Families) of fondling students by bouncing them on his knee (1990-91).

• Representation of David Delap, a Florida death row inmate, in federal habeas corpus proceedings (1990-91).

• Guardian Ad Litem representation of A.F., a child who was the subject of a dependency proceeding (1991-92).

• Representation of Anthony Difrancesco in a civil rights action against St. Lucie County and certain correctional officers (1991-94).

• Guardian Ad Litem representation of J.K., a child who was the subject of a dependency proceeding (1992).

• Guardian Ad Litem representation of M.R. and J.R., children who were the subjects of a proceeding to terminate their mother's parental rights due to abuse and neglect (1992-93).

• Representation of various individuals and families who had lost their homes and/or suffered property losses during Hurricane Andrew (1992-93).

• Representation of Steve Ivory, a pretrial detainee who had been stabbed by another inmate while awaiting trial at the Dade County Jail, in a civil rights action (1992-93).

• Representation of Dan Routly, a Florida death row inmate, in federal habeas corpus proceedings (1993-94).

• Representation of Eyra Caldera, a minor mother seeking to obtain a domestic abuse/violence injunction against the father of her child (1995-96).

• Representation of the Guardian Ad Litem Program in litigation between Dade County and HRS over the payment of expert witness fees in dependency/termination proceedings (1996-97).

• Representation of JoAnne Varence in a proceeding to obtain a domestic violence injunction against her husband (1998).

• Guardian Ad Litem representation of J.P. and G.P., children who are the subjects of a proceeding to terminate the parental rights of their mother and their unknown father(s) (1998-99).

In addition to my pro bono legal work, I judge moot court competitions at the University of Miami School of Law, and regularly speak at schools concerning the practice of law and legal issues of interest. The schools include St. Thomas University School of Law, University of Miami School of Law, South Dade High School, Norland High School, St. Brendan High School, Coral Gables High School, W.R. Thomas Middle School, Drew Middle School, Annunciation Elementary School, and St. Agatha Elementary School.

I am also a volunteer soccer coach for one of the under-10 girls' teams at West Kendall Optimist in Miami. The team, which has 12 players (including my oldest daughter), practiced once or twice at week at night, and had a 12-game season. The season ended in late February, and I am now helping coach a new team made up of girls from the two previous under-10 teams.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list with dates of membership. What have you done to try to change these policies?**

At some time prior to my induction, the University of Miami's Iron Arrow Honor Society did not permit women to join. Iron Arrow has had male and female members for years now.

3. **Is there a selection committee in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

My jurisdiction has a judicial nominating committee (made up of approximately 15 members) which recommends candidates to Senator Bob Graham. The chairman of the committee is Thomas Schultz, who was formerly in charge of a similar judicial nominating committee for Senator Connie Mack.

I first applied to the committee in December of 1997 for the district court vacancy created when Judge Stanley Marcus was appointed to the Eleventh Circuit. I was one of 10 applicants who were selected for an interview before the committee. The interview took place on February 26, 1998, lasted about 30 minutes, and covered several areas, including recent legal developments, my change in 1994 from the private to the public sector, my experiences while clerking, and my job at the U.S. Attorney's Office. I was not one of the 3 applicants whose names were forwarded to Senator Graham by the committee.

I applied again in August of 1998 for the district court vacancy created when Judge Lenore Nesbitt took senior status. I interviewed with the committee on August 31, 1998, and was one of 3 applicants whose names were forwarded to Senator Graham by the committee. I interviewed with Senator Graham the following month. Senator Graham subsequently recommended me to the President for the district court vacancy.

Since Senator Graham's recommendation, I have interviewed with the Department of Justice, the FBI, and the American Bar Association.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such a case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the federal judiciary within the federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. a tendency by the judiciary toward problem-solution rather than grievance resolution;

b. a tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. a tendency by the judiciary to impose broad, affirmative duties upon government and society;

d. a tendency by the judiciary towards loosening jurisdictional requirements such as standing and ripeness;

e. a tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Federal courts have a limited, though crucial, role in our tripartite system of government. The judiciary's role is constrained by several factors, including the Constitution's inherent separation of powers, which allocates certain matters to the different branches, and Article III, which gives federal courts the authority to hear and decide concrete cases and controversies.

Consistent with this limited role, federal judges should decide cases based on the disputes that litigants bring before them, and base their rulings on narrow, rather than broad, grounds. In addition, they must keep in mind that legal principles do not arise in a vacuum, and that the extension of a principle to a different setting requires justification. The preference for narrow legal rulings also extends to remedies. Judges should tailor the remedies they prescribe to the legal disputes before them, keeping in mind that even narrowly-tailored remedies are likely to have a significant impact if imposed on governmental bodies or large institutions.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (list any former names used and dates used):**
Robert Allen Katzmann

2. **Address: List current place of residence and office address(es)**
Residence: 2737 Devonshire Place, N.W. #424
Washington, D.C. 20008

Office: Brookings Institution
1775 Massachusetts Ave., N.W.
Room 633
Washington, D.C. 20036

(From July 1, 1998 - August 25, 1999, on leave from Georgetown University, and not in residence)

3. **Date and place of birth.**
April 22, 1953, New York City.

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

Single

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

Columbia College, 9/70 - 6/73, A.B. (6/73)
Harvard University, 9/73 - 6/77, A.M. (6/76), Ph.D. (6/78)
Yale Law School, 9/77 - 6/80, J.D. (6/80)

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

6/1973 - 8/1973	Social Security Administration (clerk/typist)
1975 - 1977	Harvard College (Teaching Fellow in Government and General Education)
6/1978 - 8/1978	Research Assistant to Professor James Q. Wilson, Harvard University
6/1979 - 8/1979	Unpaid Intern, Criminal Division, Department of Justice, Washington, D.C. (6 weeks)
9/1980 - 8/1981	Law Clerk, U.S. Court of Appeals for the First Circuit
1981 - 1986	Brookings Institution (Research Associate, Senior Fellow)
1984 - 1989	Georgetown University Law Center (adjunct professor)
1987 - present	Visiting Fellow, Brookings Institution (unpaid)
1987 - 1992	Georgetown University Public Policy Program (adjunct professor)
1986 - present	Governance Institute (president)
1986 - 1987	Federal Judicial Center (Special Assistant to Director) (parttime)
1990 - 1992	UCLA (Washington D.C. Program)(Visiting Professor)
1992 - 1998	Board of Directors, American Judicature Society (unpaid)
1992	University of Oregon (Visitor, Fall Term) (Wayne Morse Chair in Law and Politics)
12/92 (2 weeks)	FTC Transition Team (co-chair)(unpaid)
1992 - present	Georgetown University (Walsh Professor of Government, Professor of Law, and Professor of Public Policy)
Summer 1993	Special Counsel to Senator Moynihan and to Ruth Bader Ginsburg in the latter's Supreme Court confirmation proceedings (pro bono)
1995 - 1997	Special Counsel to Senator Moynihan relating to the National Commission on Protecting and Reducing Secrecy in Government (pro bono)
1994 - 1995	Public Member, Administrative Conference of the United States (unpaid)
1/98 - 6/30/98	Brookings Institution (Acting Program Director, Governmental Studies Program)

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

I have never had military service.

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

A.B., summa cum laude

Phi Beta Kappa

Article and Book Review Editor, Yale Law Journal

Walsh Professor of Government, Professor of Law, and Professor of Public Policy, Georgetown University, January 1993 - present

Wayne Morse Professor of Law and Politics (university chair), University of Oregon, fall semester 1992

Sigma Alpha Nu (Teaching award -- Jesuit Honor Society, 1995)

Who's Who in America

Who's Who in American Law

Who's Who in the East

Who's Who Among Emerging Leaders

Harvard University Fellowship (1973-75)

Awarded Harry J. Carman Fellowship: given by the Office of the Dean of Columbia College, upon nomination by the department to a graduating senior for study in one of the Graduate Faculties (declined)

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

Member, Judicial Advisory Screening Committee, Senator Daniel Patrick Moynihan, 1987 - present

Member, American Bar Association, 1983-1995
Vice-Chair, Committee on Government Operations and Separation of Powers, ABA Section on Administrative Law, 1991-94

Board of Directors, American Judicature Society, 1992-98
chair, Committee on State Resources, 1995-98

Public Member, Administrative Conference of the United States, 1994-95

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

I am not a member of any organization that lobbies before public bodies. I am a member of the District of Columbia Jewish Community Center, the National Building Museum in Washington, D.C., the National Capital Area Political Science Association (Washington, D.C.), the Supreme Court Historical Society.

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

Supreme Court of the United States (8/8/98)
District of Columbia (6/15/84)
Massachusetts (12/80/82)
U.S. Court of Appeals for the First Circuit (12/13/83)
U.S. District Court of Massachusetts (12/4/84)
New York, Appellate Division of the Supreme Court, Third Judicial Department (7/21/98)

I have never had a lapse of membership.

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

available to you, please supply them.

(Sets of books are provided in enclosed cartons; articles and speeches can be found in expanding wallet folder, also in enclosed cartons.)

BOOKS

Courts and Congress (Brookings/Governance, 1997)

Daniel Patrick Moynihan: The Intellectual in Public Life (editor and contributing author, Wilson Center/Johns Hopkins, 1998)

The Law Firm and the Public Good (project director/editor and contributing author, Governance Institute/Brookings, 1995)

Judges and Legislators: Toward Institutional Comity (editor and contributing author) (Brookings Institution, 1988)

Institutional Disability: The Saga of Transportation Policy For the Disabled (Brookings Institution, 1986)

Regulatory Bureaucracy: The Federal Trade Commission and Antitrust Policy (MIT Press, 1980)

Managing Appeals in Federal Court (co-editor) (Federal Judicial Center, GPO; 1988)

ARTICLES:

"An Experiment in Statutory Communication Between Courts and Congress: A Progress Report," (with Stephanie M. Herseth), 85 Georgetown Law Journal 2189 (1997)

"Making Sense of Congressional Intent: Statutory Interpretation and Welfare Policy," 104 Yale Law Journal 2345 (1995)

"Explaining Agency Decisionmaking: The Federal Trade Commission and Antitrust Policy in the Reagan Era," in Handbook of Regulation and Administrative Law, Rosenbloom and Schwartz, editors (Marcel Dekker, 1994)

"Wayne Morse Lecture -- Have We Lost the Ability to Govern? The Challenge of Making Public Policy," 72 Oregon Law Review 229 (1993)

"Bridging the Statutory Gulf Between Courts and Congress: A Challenge for Positive Political Theorists," 80 Georgetown Law Journal 653 (1992)

"Fostering Communication Between Judges and Legislators," (edited transcript), 75 Judicature 167-175 (1991)

"Building Bridges: Courts, Congress, and Guidelines for Communications," The Brookings Review, spring 1991, pp. 42-50

"Focus: Project Seeks to Improve Communications Between Courts and Legislators," (with Russell Wheeler), Judicature, vol. 75/no. 1, June-July 1991, pp. 45-47

"Transportation," in The Americans With Disabilities Act: From Policy to Practice, Jane West, editor (Milbank Memorial Fund, 1991)

"A Primer in Judicial-Congressional Relations," in Understanding Congress: Research Perspectives, Roger H. Davidson and Richard Sachs, editors (Congressional Research Service, 1991)

"War Powers: Toward A New Accommodation," in A Question of Balance: The President, The Congress, and Foreign Policy, Thomas E. Mann, editor (Brookings, 1990)

"The American Legislative Process as a Signal," Journal of Public Policy, vol. 9, no. 3, pp. 287-305 (1990)

"The New Capture Theory of Regulation: A Comment," Journal of Law, Economics, and Organization, volume 6, special issue, pp. 199-202 (1990)

"Congress and the Judiciary: An Inquiry Into the Problems of Statutory Construction and Revision," Remarks by Robert A. Katzmann Before the Proceedings of the Forty-Ninth Judicial Conference of the District of Columbia Circuit, May 24, 1988, reprinted in 124 Federal Rules of Decision 312-336 (1989)

"Approaching the Bench: Judicial Confirmation in Perspective," The Brookings Review, spring 1988, vol. 6, no. 2, pp. 42-46

"The Federal Trade Commission," in The Politics of Regulation, James Q. Wilson, editor (Basic Books, 1980)

"Judicial Intervention and Organization Theory: Changing Bureaucratic Behavior and Policy," Note, 89 Yale Law Journal 513-537 (1980)

"The President and the Federal Courts," in Critical Choices (Brookings Institution, 1988) pp. 131-33 (also published in The Brookings Review," winter 1988/1989, vol. 7, no. 1, p. 38)

"Letter," excerpted in Gellhorn, Byse, Strauss, Rakoff, and Schotland, Administrative Law: Cases and Comments (eighth edition, Foundation Press, 1987), pp. 136-37

"Judge Greene's Decision Spurs Hill to Act on Gulf," with Thomas E. Mann, Roll Call, January 10, 1991, Editorial Page, p. 4

"Book Review: Southern Divisions: The Second Battle of New Orleans, The Washington Post, (Education Review), July 28, 1996, pp. 20-21

"A Symposium on Bureaucracy," (with John DiIulio, Jr., Steven Kelman, Christopher H. Foreman, Jr., and Pietro S. Nivola), Public Administration Review, May/June 1991, vol. 51, no. 3, pp. 193-201

"Pro Bono Work Good for the Law Firm As Well as the Poor," April 19, 1996, p. N-7

"New Disability Protections Have Method in Murkiness," The Los Angeles Times, August 7, 1990, Editorial Page, p. B7

"Book Review of Richard Posner's 'The Problems of Jurisprudence,'" The Christian Science Monitor, August 17, 1990, p. 13

"The War Powers Resolution," The Atlanta Journal-Constitution, Opinion Section, September 9, 1990, pp. G1, G3

"Needed: Congress-Judiciary Dialogue," The New York Times, October 10, 1987, Editorial Page, p. 31

"No Fixed Standards on Court Confirmation," The Atlanta Journal-Constitution, November 15, 1987, section D, p. 1

"Capitol Hill's Current Attack Against the FTC," The Wall Street Journal, Wednesday, May 7, 1980, Editorial Page, p. 26, col. 3

"Justice Breyer: A Rival for Scalia on the Hill's

Intent," Roll Call, May 30, 1994

"Developing Confirmation Guidelines," Brookings Review, Fall 1993, p. 47

"The Judicial Confirmation Process," Brookings Review, Winter 1992, p. 5

"Questions that Demand Answers," Christian Science Monitor, October 24, 1991, p. 7

"Guns, the Comerce Clause and the Court, Brookings Review, summer 1995, p. 52

"Comments on the Judicial Connection," in The Interest Group Connection (Paul Herrnson, Ronald Shaiko and Clyde Wilcox, eds.)(Chatham House, 1998), pp. 321-24.

"The Attenuation of Antitrust," Brookings Review, summer 1984, pp. 23-27.

"Will Veto Role Backfire?," National Law Journal, Monday, June 28, 1982, p. 15

"War Powers Resolution", Encyclopedia of the U.S.Congress, Roger Davidson, Morton Keller, eds.) (Simon & Schuster, 1995)

"Legislative Intent," Encyclopedia of the U.S. Congress, (Roger Davidson, Morton Keller, eds.) (Simon & Schuster, 1995)

"Judiciary and Congress," Encyclopedia of the U.S. Congress (Roger Davidson, Morton Keller, eds.) (Simon & Schuster, 1995)

"Review of Going by the Book: The Problem of Regulatory Unreasonableness," Political Science Quarterly, 1983-84, vol. 98, no. 4. pp. 697-98

"Review of The Political Economy of Regulation," Political Science Quarterly, 1981, vol. 96, no. 2., pp. 347-48

TALKS/SPEECHES/TESTIMONY ABOUT LEGAL POLICY

The list below consists of talks, remarks and testimony that I can recall and that a search of my files has uncovered. I believe that the list is complete. Should I retrieve any other presentations, I will provide them.

(a) Remarks Before the National Conference on State Legislative/Judicial Relations, October 1-3, 1989, Denver, Colorado (no text avaiiable, but gist of remarks summarized by Judge Frank M. Coffin in his "Communication among the three branches: Can the Bar Serve as a Catalyst?"; Judge Coffin's remarks are provided)

(b) Testimony before the Subcommittee on Courts of the House Judiciary Committee, April 19, 1990, published in Hearing on Statutory Interpretation and the Uses of Legislative History, GPO, 1990, pp. 132-139

(c) Remarks Before the New Hampshire Bar Association Conference on Interbranch Relations, May 2-3, 1991 (no formal text, but summary report provided)

(d) Ground Rules for Interbranch Communication: An In-State Workshop, September 6, 1991, Raleigh, North Carolina (Summarized in Legislative-Judicial Relations: Seeking a New Partnership, State Justice Institute, 1992)

(e) Testimony Before the Joint Committee on the Organization of Congress, June 29, 1993, published in Hearings on Interbranch Relations, GPO, 1993, p. 90

(f) Remarks before the Ninth Circuit Judicial Conference, August 18, 1993, Santa Barbara, California (transcript)

(g) Remarks at Inauguration of Marver H. Bernstein Lecture, Georgetown University, March 29, 1994

(h) Testimony before the U.S. Judicial Conference Committee on Long-Range Planning, December 4, 1994, Washington, D.C.

(i) Remarks before the Middle Atlantic State-Federal Judicial Relationships Conference, November 14 -15, 1994, Williamsburg, Virginia (summarized in 162 FRD 201-202 (1995)

(j) Remarks at Marver Bernstein Lecture, Georgetown University, April 26, 1995, Washington, D.C.

(k) Faciliator of discussion among Federal Appellate Judges at Conference on "The Community of Courts: The Compleat Appellate Judge," Washington, D.C. March 29, 1996 (outline of questions provided)

(l) Introduction of Alice Rivlin at Georgetown

University Bernstein Lecture, April 1996 (no text available)

(m) Testimony Before the ABA Commission on Judicial Independence, December 6, 1996, Washington, D.C.

(n) Introduction of Senator Daniel Patrick Moynihan, Marver H. Bernstein Lecture, Georgetown University, March 3, 1997, Washington, D.C.

(o) Remarks before the Organization of the Supreme Courts of the Americas, January 28-31, 1998, Washington, D.C.

(p) Remarks at the conference on The Courts and Community, Judicial College of the Supreme Court of Ohio, September 10, 1996 (drew upon text of Testimony before the ABA Commission on Judicial Independence, cited above)

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

My health is excellent. My last physical examination was on August 11, 1998.

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

I have not held any judicial office.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

I have not been a judge.

16. **Public Office: State (chronologically) any public offices you have held other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any**

unsuccessful candidacies for elective public office.

I have never sought nor held public office.

17. Legal Career

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

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

I was a law clerk to Judge Hugh H. Bownes on the U.S. Court of Appeals for the First Circuit from September 1980 to August 31, 1981 .

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

I have never practiced alone.

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

My career has been spent in universities, research institutions, and in a variety of public service activities. Below is my employment history.

1992 - present **Georgetown University (Walsh Professor of Government, Professor of Law, and Professor of Public Policy)** Washington, D.C. (Prior to joining the fulltime faculty in 1992, I was an adjunct professor from 1985-92).

Addresses: Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001

Georgetown University
681 ICC Building
Washington, D.C. 20057

1986 - present	**Governance Institute (president)**
Address:	2737 Devonshire Place, N.W. #424 Washington, D.C. 20008
1981 - present	**Brookings Institution**
Address:	1775 Massachuetts Avenue, N.W. Washington, D.C. 20036
1/98 - 6/30/98	Acting Program Director, Governmental Studies Program
1987 - present	Visiting Fellow, Governmental Studies Program
9/81 - 6/30/86	Senior Fellow, Research Associate, Governmental Studies Program
Fall 1992	**University of Oregon (Visitor, Fall Semester)(Wayne Morse Chair in Law and Politics), Eugene, Oregon**
Address:	University of Oregon Law School 1101 Kincaid Street Eugene, Oregon 97403

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

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

My professional career in the law has not been as a courtroom lawyer, but as a scholar/practitioner with a long and deep immersion in the life of the federal judiciary, and as a professor who has taught about federal courts, administrative law, legislation, and constitutional law. A principal thrust of my career has been a concern with practical aspects of the legal system, with an eye towards workability.

Over two decades, I have produced a variety of books and articles on the federal judiciary, judicial-congressional relations, the administrative process, the legal profession, and disability policy. At the core of that work is an effort to bridge the gap in our understanding about the relation between law, the functioning of institutions, and policy results. My focus is on applied rather than pure academic scholarship. A citation to my work commented that it "strives to make a 'real world' difference, both in how policy is formulated and in its content." I have sought to bring a mindset of balance and due deliberation, and would strive to do the same in discharging my judicial responsibilities, were I to have the privilege.

Throughout my career, I have done work that is responsive to the needs of governmental institutions. My own interest in the appellate process, begun when I was a law clerk, deepened when I was asked by the Federal Judicial Center -- the research arm of the federal judiciary -- to bring to fruition a project on managing appeals in federal court. The result was Managing Appeals in Federal Court, an examination of the mounting appellate caseload and approaches to meeting its challenges. As a student of the federal courts, I have been much concerned with and written about judicial interpretation of statutes, work that has been cited by judges and Justices. (As the chair-elect of the Section on Legislation of the American Association of Law Schools, I am organizing a session for law teachers on statutory interpretation). I have been intimately involved for many years with federal judges and legislators, directing a major project that has sought to improve understanding between the two branches. As an example, I was asked by U.S. Circuit Court Judges Deanell R. Tacha and Diarmuid O'Scannlain to lead a discussion of appellate judges at the ABA's national conference, "The Compleat Appellate Judge."

I think that my substantive work is directly relevant to federal appellate court decisionmaking. An ever-increasing dimension of the appellate workload is the interpretation of statutes. And thus, a major concern of mine has been with improving communication between the branches, ascertaining how Congress can better signal its meaning to the courts, and how the courts can make the legislature more cognizant of its decisions interpreting statutes.

In Courts & Congress, I offered reflections on matters bearing upon the judicial interpretation of statutes. Illustrative of that effort is a program I largely designed in which opinions identifying perceived problems in statutes are routed from the courts of appeal to Congress for its review. Time is spent reading and analyzing statutory opinions of the courts of appeal, ascertaining whether the decision meets the

criteria for referral. The project -- "statutory housekeeping" as Justice Ginsburg refers to it -- holds the promise of enhancing mutual understanding of each branch's work ways. Congress will have a better conception of how the judiciary interprets its legislation; the judiciary will have a better sense of how Congress views the courts' interpretation of statutes. From this work, we may over time see improvements in the drafting, interpretation, and revision of statutes.

That effort began with the U.S. Court of Appeals for the D.C. Circuit. (For judicial references to this work, see, for example, Ruth Bader Ginsburg, "Informing the Public About the U.S. Supreme Court's Work," 29 Loyola University Chicago Law Journal 282 n.32 (1998); Judge James L. Buckley, "The Perspective of a Judge and Former Legislator," 85 The Georgetown Law Journal 2224 (1997); and Abner J. Mikva, "Why Judges Should Not be Advicegivers: A Response to Professor Neal Katyal," 50 Stan. L. Rev. 1825, 1828 (1998)). Chief Justice Rehnquist referred to the effort in his 1992 State of the Judiciary address. In 1992, the project secured the bipartisan endorsement of the leadership of the both the House and Senate. Later, I moved to secure the approval of the full Judicial Conference for the extension of the project to all circuits. I have been working with Michael O'Neill of Senator Hatch's staff, following the approval of Senator Hatch, to facilitate broadening of circuit court participation.

My various studies on the federal courts have enjoyed broad support across the spectrum. I have worked closely over the years with (indeed, at the invitation of) the U.S. Judicial Conference Committee on the Judicial Branch (particularly with chairs Judge Frank M. Coffin of Maine and Judge Deanell R. Tacha of Kansas, and with committee members Judge David Hansen of Iowa and Judge Michael Mihm of Illinois); the Federal Judicial Center; as well as various congressional committees (including organizing a hearing on interbranch relations for the Joint Committee on the Organization of Congress). I have been invited to speak at various circuit judicial conference meetings and was a representative of the federal judiciary at the January 1998 conference of the Organization of the Supreme Courts of the Americas in Panama.

Other major interests have been administrative law and its processes -- work that began under the direction of my graduate school thesis advisor, Professor James Q. Wilson. To that end, I authored Regulatory Bureaucracy, a book on antitrust decisionmaking in the Federal Trade Commission. Another book, Institutional Disability, has been well-cited in administrative law books. My work has been reprinted in administrative law texts. As a student of administrative law, I served as a Public

Member of the Administrative Conference (1994-95), and also as a vice chair of the Committee on Separation of Powers and Regulation of the ABA's Section on Administrative Law.

Another example of the blending of scholarship and the real world are my experiences in the judicial nomination and confirmation processes, as a long-time member of Senator Moynihan's advisory judicial screening committees for federal district judges in N.Y., and as special counsel to Senator Moynihan and Ruth Bader Ginsburg during the latter's confirmation proceedings.

I was also an unpaid consultant to the Federal Courts Study Committee and served as a member of a Three-Branch Roundtable Working Group on Federal-State Cooperation, convened under the auspices of Attorney General Janet Reno.

Concerned with responsibilities of the legal profession, I directed a project designed to secure increased support by law firms for pro bono -- resulting in The Law Firm and the Public Good.

I believe that my career in teaching is worthy preparation for the appellate bench. Justice Ginsburg (who I was honored to serve as special counsel in her Supreme Court confirmation proceedings) has written approvingly that "law teaching and appellate judging are more alike than any two other ways of working in the law," 83 Va. L. Rev. 829, 831 (1997). In that context, she makes note of the many judges whose previous lives had been based in academia. The workways of the judge and of law teacher bear striking similarities. A distinguishing feature of appellate decisionmaking is the written opinion -- forged in a painstaking fashion. Appellate judging is a process of graduated sequential decisionmaking -- a reliance on a closed lower court record; review of prior decisions; the presentation (written and oral) of the adversaries; the restraint of established rules and conventions; collegial testing of the views of the other judges; and the discipline of justifying a decision in writing. Teaching law involves a probing analysis of the appellate opinion, an examination of the process by which judgment is reached, its rationale, tone and direction -- in short, the kind of exercise which occupies the judge.

My professional life, in sum, has been a varied one. It has been devoted to combining scholarship with practical application, with forging consensus among diverse interests to improve the workings of government, especially the federal judiciary.

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

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

3. What percentage of your litigation was:

(a) civil;
(b) criminal.

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

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

Please see reponse to question 17(b).

18. Litigation: Describe the ten most significantly 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 parties.

Please see responses to questions 17 and 19.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please

omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

(a) N.Y. Judicial Selection Committee. For more than a decade (summer 1987 - present), I have been involved in New York as a member of Senator Moynihan's federal district judge selection advisory committee. In that activity, I have given much thought to judging.

(b) Special Counsel to Justice Ginsburg in 1993 Confirmation Process. I worked with Justice Ginsburg as she prepared for her hearings.

(c) Federal Court Activity. In 1984, I began work, at the invitation of the U.S. Judicial Conference Committee on the Judicial Branch, on a major on-going project on problems of judicial/legislative relations. Under the auspices of the Governance Institute, products have included books and articles. In this effort, I have worked with Judges Frank M. Coffin (First Circuit, Maine), David Hansen (Eighth Circuit - Iowa), Deanell Tacha (Tenth Circuit - Kansas), and Michael Mihm (District Court -- Central District of Illinois).

I brought to fruition a project of the Federal Judicial Center on "managing appeals in federal court," resulting in a book by that name. I also advised the Federal Courts Study Committee on administration of justice matters. At the invitation of the Long Range Planning Committee of the United States Judicial Conference, I testified and proposed adoption of a statutory housekeeping project for the courts of appeal (and was successful in securing approval). Among the judges I have worked with on the statutory housekeeping project are Judge James L. Buckley (D.C. Circuit), Justice Ruth Bader Ginsburg, and Abner Mikva (then chief judge of the D.C. Circuit). At the invitation of the D.C. Circuit Judicial Conference and the Ninth Circuit Judicial Conference, I have participated in panels relating to courts and the legislative branch. I also took part in the Attorney General's Working Group to Improve Federal-State Relations.

(d) State Court Activity. As chair of the State Court Resources Committee of the American Judicature Society, I examined the funding problems of state courts. At the invitation of the Midatlantic Judicial Conference, bringing together federal and state judges, I explored the uses of judicial impact statements. I also discussed issues of interbranch communications in a talk before New Hampshire state judges and legislators, and

a similar talk before North Carolina state judges and legislators.

(e)Administrative Law Committees.
(i) Public Member of the Administrative Conference of the U.S. (1994 - 95). The Administrative Conference brought together judges, academics and general counsels of administrative agencies to examine how to improve the functioning of administrative agencies.

(ii) Vice-Chair, Committee on Government Operations and Separation of Powers, ABA Section on Administrative Law, 1991-94.

(f) Legal Profession. I directed a project, involving prominent lawyers from across the country, exploring the responsibilities of large law firms to pro bono. That resulted in a book, The Law Firm and the Public Good, which was recently cited by Justice O'Connor.

(g) Special Counsel Pro Bono, Commission on Protecting and Reducing Secrecy in Government, 1995-97. In that role, I advised Senator Moynihan and the Commission on administrative procedure.

(h) Teaching. I have taught courses on the federal judiciary, administrative law and constitutional law. I am currently Chair-Elect, Section on Legislation, American Association of Law Schools. In that capacity, I hope to organize a session of judges and law teachers on statutes.

II. FINANCIAL DATA AND CONFLICT OF INTEREST

(PUBLIC)

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

   None, but I have a TIAA-CREF and Vanguard pension plan that has vested, and which I would keep.

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

   If I am confirmed, I would follow all the requirements of the Code of Conduct for United States Judges, the Ethics Reform Act of 1989, 28 U.S.C. sec. 455, and cases interpreting those statutes.

   To the best of my knowledge, there are no categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with our without compensation, during your service with the court? If so, explain.**

   At present, I have no plans to do so, but if it were consistent with my obligations as judge, I would like from time to time to continue to write and teach.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, 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 Form)

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

(See attached financial net worth statement).

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

In 1976, as an untitled volunteer, I undertook various research tasks for the campaign of Daniel Patrick Moynihan for the United States Senate.

In 1992, the research unit of the Clinton/Gore campaign solicited my views about regulatory policy. I had no role in the campaign.

AO-10
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1997 - 1998/99

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, 101-112)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Katzmann Robert A.	U.S. Court of Appeals, 2nd Circuit	3/5/99

4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)*	5. ReportType (check appropriate type)	6. Reporting Period
U.S. Circuit Judge Nominee	X Nomination, Date _____ ___ Initial ___ Annual ___ Final	1/1/97

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.
1775 Massachusetts Ave., N.W. #633 Washington, D.C. 20036 (office address)	Reviewing Officer _____ Date _____

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	NONE (No reportable positions.)	
1	Professor	Georgetown University
2	President	The Goverance Institute
3	Acting Director, Governmental Studies Program (1/1/98 - 6/30/98)	The Brookings Institution

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

	DATE	PARTIES AND TERMS
X	NONE (No reportable agreements.)	
1		
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐	NONE (No reportable non-investment income.)		
1	1997	Georgetown University	$ 82919.52
2	1998 -3/1/99	Georgetown University	$ 117365.25
3	1997	The Goverance Institute	$ 39000.00
4	1998	The Governance Institute	$ 21000.00
5	1998	The Brookings Institution	$ 30000.00

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Katzmann Robert A.

Date of Report: 3/5/99

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	EXEMPT		$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children; indicate, where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

*Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Katzmann Robert A.	3/5/99

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets) *Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amt. Code1 (A-H)	B. (2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	C. (2) Value Method Code3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	D. If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)					EXEMPT				
1 TIAA/CREF Pension		None	M	T					
2 TIAA/CREF SRA		None	K	T					
3 Vanguard Pension 403(b)(7)		None	M	T					
4 Crestar Bank	D	Interest	L	T					
5 Solomon Smith Barney IRA Mutual Fund		None	K	T					
6 Chevy Chase Bank	D	Inter-est	None	T					
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									

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

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Katzmann Robert A.	3/5/99

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

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities and to the best of my knowledge after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

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 meets 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. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Robert A. Katzmann Date 3/5/99

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. 4, § 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	94	225		Notes payable to banks–secured	00	00	
U.S. Government securities--add schedule	00	00		Notes payable to banks–unsecured	00	00	
Listed securities–add schedule	00	00		Notes payable to relatives	00	00	
Unlisted securities--add schedule A		429		Notes payable to others	00	00	
Accounts and notes receivable:	00	00		Accounts and bills due	00	00	
Due from relatives and friends				Unpaid income tax	00	00	
Due from others				Other unpaid tax and interest	00	00	
Doubtful				Real estate mortgages payable–add schedule	185	894	99
Real estate owned–add schedule B	247	500		Chattel mortgages and other liens payable	00	000	
Real estate mortgages receivable	00	00		Other debts–itemize:	00	00	
Autos and other personal property	00	00					
Cash value–life insurance	00	00					
Other assets–itemize: See Schedule C	466	690	16				
				Total Liabilities	185	894	99
				Net Worth	622	949	17
Total Assets	808	844	16	Total liabilities and net worth	808	844	16
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	00	00		Are any assets pledged? (Add schedule.) NO			
On leases or contracts	00	00		Are you defendant in any suits or legal actions? NO			
Legal Claims	00	00		Have you ever taken bankruptcy? NO			
Provision for Federal Income Tax	00	00					
Other special debt	00	00					

Schedule A
Unlisted Securities

Salomon Smith Barney Mutual Fund	$429.00

Schedule B
Real Estate Owned

Condominium Owned (personal residence)	$247,500 gross market value

Schedule C
Other Assets

Pension	
TIAA-CREF Retirement Accounts (including SRA)	$235681.00
Vanguard	$202694.16
IRA	
Salomon Smith Barney	$ 28315.00

Schedule D
Real Estate Mortgage Payable

Mortgage on residence condominium apartment Sovereign Bank holds the mortgage.	$185894.99

III. GENERAL (PUBLIC)

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

For several years, I directed a major project, designed to stimulate law firm efforts to support pro bono work. The result of that work was The Law Firm and the Public Good -- a book that has been well-received across the political and philosophical spectrum. It was the subject of a national conference of lawyers, which was televised. Another pro bono activity was service as special counsel to Senator Moynihan and the Commission on Protecting and Reducing Secrecy in Government.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. To your knowledge, do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, please give particulars, including dates of membership. What have you done, if anything, to try to change these policies?**

I have never belonged to any organization that discriminates on the basis of race, sex, or religion.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

Senator Moynihan, who I have known since I was his graduate student and teaching assistant at Harvard, recommended my name to the President. I was interviewed on November 13, 1998 by the Office of White House Counsel and the Department of Justice. On January 12, 1999, I was told that the FBI and ABA review would begin. On March 5,

1999, I was told that I would be nominated.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as how you would rule on such case, issue, or, question? If so, please explain fully.

No one involved in the judicial selection process has discussed any case or legal issue with me in a manner that could reasonably be interpreted as how I would rule on such case, issue, or question.

5. Please discuss your view on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of the other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Judges have the responsibility of resolving disputes that come before them through application of the relevant law -- constitutional law, common law, statutes, regulations -- to the facts of the specific cases. With such responsibility, it is useful for judges to be reminded to approach their task with due caution and humility, with proper respect for the prerogatives of the elected branches. After all, the Constitution, our charter of nationhood, gives attention first to those elected branches in Article One and Article Two. In a representative democracy, fundamental policy questions should be addressed by elected officials. Moreover, a legislature or executive generally has greater access to information and the resources needed to make broad policy decisions.

In deciding cases and determining remedies, a judge should be mindful of Judge Learned Hand's view that the "spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias."

When the law has been violated, courts have the sensitive task of determining an appropriate judicial remedy. When judges do so, it should be with an awareness that courts are generally not well-equipped to administer large-scale institutional change. In resolving disputes, consistent with our constitutional framework, judges should adjudicate the case before them, without overreaching to cover cases not yet before them.

UNITED STATED SENATE
COMMITTEE ON THE JUDICIARY
QUESTIONNAIRE FOR NON JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Answer: Elton Joe Kendall

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

   Answer: 1100 Commerce St.
   16th Floor
   Dallas, Texas 75242

3. Date and place of birth.

   Answer: January 12, 1954
   Dallas, Dallas County, Texas

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

   Answer: Veronica Jean Zajdl Kendall; Homemaker

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

   Answer: Dallas Baptist College, 1972-1974 (Transfer)
   Eastfield Jr. College, 1974 (Summer Session) (Transfer)
   Southern Methodist University, 1974-1977, B.B.A., 1977
   Baylor University School of Law, 1978-1980, J.D., 1980

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

Answer: 1970-1972: At age 16 I began working part time in the mailing room of the Dallas Morning News doing common labor.

1972-1978: In 1972, one week after high school graduation, I went to work for the Dallas Police Department and was employed as a Dallas Police Officer.

1978-1980: During this time I was a full time student at Baylor University School of Law.

1980-1982: I was employed as an Assistant District Attorney for Dallas County, Texas.

1982-1986: I was employed in the private practice of law in Dallas, Texas, under the name of Joe Kendall, Attorney at Law. For a period of one year I opened a satellite law office in Rockwall, Texas (a small town near Dallas) in association with Ms. Nancy Woodall, Esq., under the name of Kendall and Woodall.

1987-1992: In 1986 I was elected Judge of the 195th District Court of Dallas County, Texas and took the bench January 1, 1987. I was re-elected, without opposition to another four year term in 1990. I resigned in May of 1992 upon my appointment to the Federal bench by President Bush.

1992-Present: I am a United States District Judge for the Northern District of Texas, currently assigned to the Dallas Division.

1977-1978: In 1977 and 1978 I sold real estate part time, for Wanda Case Realtors in Dallas, Texas. I owned an interest in Petrochemical Development Corporation, which is no longer in business. This Sub-S corporation provided a negligible amount of income from 1981 to 1989 and its only asset was a fractional interest in one gas well, which was sold in 1989. In 1988 I worked part time for my brother, Kent Kendall, who at that time owned a business

buying and selling used construction equipment. The above activities provided very little income and were not my "employment" as such during the periods indicated.

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

Answer: I have never been in the military.

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

Answer: There are none.

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

Answer: The American Bar Association
The State Bar of Texas
The Dallas County Bar Association
1) Criminal Justice Section
2) Judicial Investiture Committee, Vice-Chairman, 1991
3) New Laws and Constitutional Amendments Committee, Vice-Chairman, 1991
4) "Cameras in the Courtroom" subcommittee
College of the State Bar of Texas
Texas County and District Attorney's Association
Texas Association of Board Certified Criminal Law Specialists
Dallas County Criminal Bar Association
Texas Criminal Defense Lawyer's Association
National Association of Metropolitan Courts
Federal Judges Association

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

Answer: I am not a member of any such organization.

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

Answer: All State Courts, State of Texas - November 24, 1980.
U.S. District Court,
Northern District of Texas - December 16, 1981.
U.S. Court of Appeals, 5th Circuit - March 5, 1990.
U.S. Supreme Court - June 3, 1991.

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

Answer: (1) Sidebar, In Camera, August 1997.

(2) Sidebar, In Camera, April 1999.

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

Answer: Excellent. August 13, 1991.

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

Answer: I have never been appointed or elected to any

office other than a judicial office.

15. Legal Career:

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

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

Answer: I have never clerked for a Judge.

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

Answer: In 1982 I went into the private practice of law and established a Dallas office at 2250 South Tower, Plaza of the Americas and a satellite office at 106 Ridge Road, Rockwall, Texas in 1985. In the Rockwall office I was associated with Nancy Woodall for one year. I had a general practice but engaged primarily in criminal defense. I did "farmed out" civil litigation from several large civil firms, as well as handled referrals from them when they would have a conflict. I did this until the end of 1986.

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

Answer: Upon graduation from law school I went to work as an Assistant District Attorney for District Attorney Henry Wade of Dallas County, 133 N. Industrial, Dallas, Texas. I was assigned to the trial division when I went to work there in September 1980. I prosecuted until 1982. I rose up through the ranks and was assigned to the Career Criminal division where I prosecuted nothing but aggravated rape, armed robbery and murder. I was the lead prosecutor in over 100 jury trials and picked over 100 juries for other lawyers.

I never lost a felony jury trial, no jury ever gave probation to anyone I prosecuted for a felony, and my average sentence from juries was 44 years.

From January 1, 1987 until May, 1992 I was Judge of the 195th District Court, which by statute gives preference to criminal cases. I disposed of (as a judge) approximately 8000 felony indictments, presided over about 200 jury trials (including one death penalty case resulting in a verdict of death), 375 bench trials, as well as numerous motions, extradition, bail, competency and other assorted hearings.

Since May of 1992 I have been a U.S. District Judge in the Northern District of Texas. I have disposed of and tried numerous criminal and civil cases.

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

Answer: 1980-1982: Assistant District Attorney in Dallas, Texas assigned to the Trial Section. I was in jury trial weekly throughout this entire time. I prosecuted all types of offenses and ended with the District Attorney's office prosecuting in the Career Criminal Division prosecuting nothing but rapes, robberies and murders.

1982-1986: Private law practice, with the majority being criminal defense litigation with a small amount of civil litigation as well.

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

Answer: With the District Attorney's office my "client" was usually the victims of crime, although technically the actions ran in the name of the State. In private practice probably 80 to 90%

of my practice was criminal defense. Of the people I represented about half were indigent persons charged with a crime where I was appointed to represent the defendant by a Judge (during that time the Dallas County Criminal Justice System had no Public Defender, and lawyers were appointed to represent indigent defendants on an "ad hoc" basis by Judges).

The majority of these poor people were minorities. I represented hundreds of such individuals during these five years, charged with everything from murder on down. One might argue that I was s de facto semi-Public Defender.

The other half of my criminal business was a retained clientele, and they weren't all that "typical", although it seems they were often the children of people with money who got into trouble.

The civil work I did was either divorce (a small amount) or farmed out civil litigation from large firms who had a conflict.

In 1985 I became Board Certified in Criminal Law.

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

Answer: Since 1980 when I was licensed, as a prosecutor, defense lawyer and now as a trial judge, I have appeared in court daily.

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

Answer:

(a)	federal courts	10%
(b)	state courts of record	90%
(c)	other courts	0%

3. What percentage of your litigation was:
   (a) Civil;
   (b) Criminal.

Answer:
   (a) Civil 10%
   (b) Criminal 90%

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

Answer:

Sole Counsel:	Jury Trials	- 22
	Bench Trials	- 58
Chief Counsel:	Jury Trials	- 85+
	Bench Trials	- 125+
Associate Counsel:	Jury Trials	- 85+
	Bench Trials	- 100+

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

Answer:
   (a) jury 41%
   (b) non-jury 59%

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

   (a) the date of 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.

Answer: {1.} The State of Texas vs. Leroy Spencer, Cause #F84-77309, was a murder case tried to a jury. I represented Mr. Spencer and was his

only lawyer. The case was tried in Criminal District Court of Dallas County before the Honorable Ron Chapman in February 1985. The case lasted about a week. The prosecutor was Mark Nichols, who is currently an Assistant U.S. Attorney in Amarillo, Texas.

His address and telephone number are:

Mark Nichols, Assistant U.S. Attorney
U.S. Attorney's Office
500 South Taylor, Lobby Box 238
Amarillo, Texas 79101
(806) 324-2356

The verdict was rendered February 27, 1985.

This case was a week long murder case that involved a 65 year old man who killed his wife during a domestic disturbance. It was an emotional trial that resulted in the defendant being convicted and receiving a 20 year sentence. The defendant was indigent and I was appointed by the Court.

{2.} The State of Texas vs. John Charles Alexander, Cause #F82-90143, was a murder case tried to a jury. I alone represented Mr. Alexander. The case was tried in the 291st District Court of Dallas County, Texas, before the Honorable Gerry Holden-Meier in February, 1983 and the case lasted a week.

The prosecutor was Janice Warder, who is now a State District Judge in Dallas County, Texas.

Her address and telephone number are:

Honorable Janice Warder
Judge, Criminal District Court No. 1
6th Floor, Frank Crowley Courts Bldg.
133 N. Industrial, L.B. 38
Dallas, Texas 75207-4399
(214) 653-5900

The verdict was rendered February 14, 1983.

This murder case involved a shotgun slaying by

my client, an ex-convict, of another ex-convict in a dispute over a woman. The defense was self-defense. The jury was out several hours and it appeared (from notes sent by the jury) that they may be a "hung jury". The prosecutor, who had never lost a felony trial, offered my client ten years instead of the fifty (50) she had previously offered while the jury was still deliberating.

Against my advice he changed his plea to guilty and took the ten years. The defendant was indigent and I was appointed by the Court to represent the defendant.

{3.} The State of Texas vs. Roman N. Ross, Cause #F80-872, was a retrial of a murder case that had been reversed on appeal because of error by the prosecutor in calling the defendant's wife to testify in front of the jury. I alone represented Mr. Ross during this week long murder trial.

The Court was Criminal District Court of Dallas County, and the judge was the Honorable Ron Chapman. The case was tried the first week in May, 1982. The prosecutor was Paul Macaluso, who is currently an Assistant U.S. Attorney.

His address and phone number are:

Paul Macaluso, Assistant U.S. Attorney
U.S. Attorney's Office
1100 Commerce, Third Floor
Dallas, Texas 75242-1699
(214) 659-8600

The verdict was rendered on May 6, 1982.

This murder case involved a defendant security guard who came home at 4:00 o'clock a.m. and caught his wife with another man. He killed the man and wounded his wife. The jury found the defendant not guilty of the murder charge, but convicted him of voluntary manslaughter (killing under the influence of sudden passion). The defendant was sentenced by the

judge to the maximum of twenty (20) years. The defendant was indigent and I was appointed by the Court to represent him.

{4.} The State of Texas vs. Ricky R. Erving, Cause Numbers F82-83352 and F83-89243. These were two of the defendant's twenty plus burglary cases. I represented Mr. Erving and was his only lawyer. The cases were tried in the 292nd District Court of Dallas County and the judge was the Honorable Michael Keasler. The trials lasted several days and one jury trial ended in a mistrial and the other in a conviction resulting in a ten year sentence. They were tried in August of 1983 and the conviction date was August 15, 1983. The prosecutor was Denver McCarty.

His address and phone number are:

Denver McCarty
Assistant District Attorney
1450 East McKinney
Denton, Texas 76201
(940) 565-8556

The cases were tried to a jury. The defendant was addicted to drugs and had numerous cases. The State's offer was something like thirty or forty years, and after trial, ten years or less on all cases.

The defendant was indigent and I was appointed by the Court to conduct his jury trials.

{5.} The State of Texas vs. Michael Cross. Cause Number F82-86644 was an attempted burglary case tried to a jury in July of 1982. The verdict date was July 29, 1982. The trial lasted a week. I alone represented the defendant.

The prosecutors were Jane Jackson, currently a U.S. Magistrate for the Northern District of Texas and Steve Miller.

Their addresses and phone numbers are as follows:

Jane Jackson Boyle, U.S. Magistrate
1100 Commerce Street, Room 13E16
Dallas, Texas 75242
(214) 753-2393

Steve Miller
1410 Avenue G
Plano, Texas 75074
(972) 578-7097

The Court was the 283rd District Court of Dallas County and the Judge was the Honorable Jack Hampton.

This was a jury trial of several days resulting in the conviction of the defendant and a sentence of three years. Again, although the defendant was convicted (He had a forensically matched screwdriver in his back pocket at 3:00 a.m. while walking down the street in an industrial district) the punishment assessed was significantly less than what was suggested by the State.

The defendant was indigent and I was appointed by the Court to conduct his jury trial.

{6.} Linda Butterfield vs. Michael Flanery, Cause No. 82-6258-E. This civil case was tried to a jury on October 10-11, 1983. The plaintiff was represented by Paul Carnes. I represented the defendant.

His address and phone number are:

Paul Carnes, Esq.
Beal Bank Center II
15660 Dallas Parkway
Suite 103, L.B.31
Dallas, Texas 75248
(972) 239-0283

The Honorable Craig T. Enoch, Judge of the 101st District Court presided over the trial. Judge Enoch is now a Justice on the Texas Supreme Court.

His address and phone number are:

Justice Craig T. Enoch
The Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711-2248
(512) 463-1340

This was a suit on a note and for breach of contract with $200,000.00 in controversy. I represented the defendant, lost a 10-2 jury verdict, but then had a new trial granted. I then settled the case for $17,000 before the second jury trial was to begin.

NOTE: The above six cases are representative of what I did as a practicing trial lawyer week in and week out. I did not include any of my prosecutions because I do not have detailed records going back to 1980 and 1981 to fully answer the question.

The below four cases are cases I handled as the presiding trial judge.

{7.} The "Carter/Hillcrest High School Robbery Cases", 195th District Court - September 22, 1989, Honorable Joe Kendall presiding. Styles and Cause Numbers, as well as disposition of all twelve defendants are as follows:

Defendant	Cause No.	Sentence
Keith Devlin Campbell	F89-85157-LN	25 years TDC
	F89-85154-LN	25 years TDC
	F89-85160-LN	25 years TDC
	F89-85107-MN	25 years TDC
Jimmy Lee Edwards	F89-85158-LN	16 years TDC
	F89-85161-LN	16 years TDC
	F89-84515-MN	16 years TDC
Patrick Keith Williams	F89-85158-LN	14 years TDC
	F89-85152-LN	14 years TDC
	F89-85162-LN	14 years TDC
Carlos Dwayne Allen	F89-85156-LN	13 years TDC

	F89-85159-LN	13 years TDC
	F89-84514-MN	13 years TDC
Norbert Lamont Rogers	F89-85108-MN	10 years TDC
Ronald Keith Edwards	F89-85793-MN	5 years TDC
Aric Todd Andrews	F89-85153-LN	10 years Deferred Adjudication
James Eric Lusk	F89-85132-LIN	12 years TDC
	F89-85432-IN	12 years TDC
	F89-85032-NIN	12 years TDC
Keith Ray Bryant	F89-85610-LIN	2 years TDC
	F89-85644-MIN	10 years Deferred Adjudication
Keiland Demond McClanahan	F89-97726-N	10 years S.A.I.P. (Boot Camp)
	F89-85765-IN	10 years Deferred Adjudication
Derric Damon Evans	F89-84999-N	20 years TDC
	F89-92119-VN	20 years TDC
	F89-92120-VN	20 years TDC
	F89-69336-N	20 years TDC
Gary Bernard Edwards	F89-84998-N	16 years TDC
	F89-92117-VN	16 years TDC
	F89-92118-VN	16 years TDC

The names, addresses and telephone numbers of all counsel are as follows:

For the State:

Honorable Marshall Gandy
801 Cherry Street, Suite 1900
Ft. Worth, Texas 76102
(817) 978-3821

For the Defendant Keith D. Campbell

George A. Ashford III, Esq.
714 Jackson Street, Suite 310
Dallas, Texas 75202
(214) 741-5120

For the Defendant Jimmy Lee Edwards, Jr.
Esther Eggleston Hayward
(Moved to Italy, no current
address available)

For the Defendant Patrick Keith Williams
George White, Esq.
123 West Irving Blvd.
Irving, Texas 75060
(972) 252-7565

For the Defendant Carlos Dwayne Allen
Ted Calisi, Esq.
6333 Forest Park, Suite 216
Dallas, Texas 75235
(214) 689-4600

For the Defendant Norbert Lamont Rogers
Balon Bradley, Esq.
11520 N. Central Expressway, Suite 212
Dallas, Texas 75243
(972) 991-1582

For the Defendant Ronald Keith Edwards
Julius Whittier, Esq.
705 Ross Avenue
Dallas, Texas 75202
(214) 741-9048

For the Defendant Aric Todd Andrews
Honorable Sam Hudson
2730 Stemmons Freeway
1000 Stemmons Tower West
10th Floor
Dallas, Texas 75207
(214) 638-7501

For the Defendant Derric Damon Evans
Honorable John Creuzot
Judge, Criminal District Court No. 4

6th Floor, Frank Crowley Courts Bldg.
133 N. Industrial Blvd.
Dallas, Texas 75207
(214) 653-5930

For the Defendant Gary Bernard Edwards
Royce West, Esq.
Bank of America, Oak Cliff Tower
400 South Zang Blvd., Suite 600
Dallas, Texas 75208
(214) 941-1881

For the Defendant James Eric Lusk
J. Russell Ormesher, Esq.
1401 Elm Street, Suite 4585
Dallas, Texas 75202
(214) 752-0400

For the Defendant Keith Ray Bryant
Stephen Bankhead, Esq.
8111 Preston Road, Suite 500
Dallas, Texas 75225
(214) 750-8555

For the Defendant Keiland Demond McClanahan
Wayne Huff, Esq.
6780 Abrams Road
P.O. Box 103-128
Dallas, Texas 75231-7170
(214) 358-5572

The cases involved a string of 22 armed robberies by a number of star athletes from a state championship football team. They pled guilty and chose me to hear evidence and decide their punishment. The cases received intense publicity, including national coverage. Most defendants were sent to prison.

The cases are important for this inquiry because the public record (news reports) show something of my judicial philosophy, temperament, sense of justice and how I react and perform judicial duties under pressure, as well as my views on sentencing in a non-guideline environment.

{8.} State of Texas vs. Daniel Alvis Wood, Cause No.

F88-88345-N, 195th District court, Honorable Joe Kendall presiding. This case was tried on January 12, 1989.

The name, address and telephone number of counsel involved in this case are as follows:

For the State
Mike Gillette
Assistant District Attorney
104 South Main
Belton, Texas 76513
(254) 933-5215

For the Defendant Daniel Alvis Wood
Lawrence G. Boyd, Esq.
5630 Yale Blvd.
Dallas, Texas 75206
(214) 691-5630

This was the first "Hate-Crime" criminal prosecution in Texas of a Nazi-Racist "Skinhead" for acts of violence and vandalism against Jews and African Americans. The defendant pled guilty and chose me to hear the evidence and assess punishment.

I determined he was dangerous and not remorseful, and gave him 10 years and a $5,000 fine, the maximum allowed by law.

{9.} State of Texas vs. Domingo Cantu, Cause No. F88-95689-N, 195th District Court, Honorable Joe Kendall presiding. This case was begun on October 24, 1988.

The name, address and telephone number of counsel involved in this case are as follows:

For the State
Honorable Marshall Gandy
801 Cherry Street, Suite 1900
Ft. Worth, Texas 76102
(817) 978-3821

Jerri Sims
Assistant U.S. Attorney
1100 Commerce Street, Third Floor

Dallas, Texas 75242-1699
(214) 659-8600

Andy Beach
307 West 7th , Suite 1100
Fort Worth, Texas 76102
(817) 332-2351

For the Defendant
Matthew Fry, Esq.
5956 Sherry Lane, Suite 1000
Dallas, Texas 75225
(214) 760-8444

Brad Lollar, Esq
311 N. Market, Suite 300
Dallas, Texas 75202
(214) 672-9333

This was a death penalty case. I presided over the individual voir dire examination and the trial, as well as all pretrial, including a challenge to the racial makeup and accused nepotistic makeup of the indicting grand jury.

The defendant received the death penalty for the sodomy, rape, and murder of a 94 year old woman at the end of a month long trial.

{10.} State of Texas vs. James C. Stewart, Cause No. F87-94036-N, 195th District Court, Honorable Joe Kendall presiding. This case was tried October 26, 1997. This case is reported at 767 SW 2d 455.

The name, address and telephone number of counsel involved in this case are as follows:

For the State
Jerri Sims
Assistant U.S. Attorney
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699
(214) 659-8600

For the Defendant
Professor Ken Houp

700 Lavaca Street, Suite 1550
Austin, Texas 78701
(512) 477-4434

This was a week long double-murder trial. The murders occurred in 1981 but could not be prosecuted until the Texas Criminal Rules of Evidence were adopted in 1986 allowing certain types of spousal testimony previously prohibited by case law. The defendant's ex-wife was the main witness against him. He was convicted of both murders and received two life sentences.

I have an easily obtainable record contained in public data bases of cases I have handled as a federal judge, many of which I am ethically prohibited from commenting on.

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. Described the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Answer: In 1989 I, as Chairman of the Dallas County Judiciary Legislative Committee, worked with County Judge Lee Jackson and the Dallas County Commissioners Court, to get the Texas Legislature to reform the law covering the Dallas County Juvenile Board, which has responsibility for oversight of the Dallas County Juvenile Justice System. The reforms made the Board much more efficient, broadened the viewpoint of this Board by including Commissioner's Court representation, and called for inclusion of members of the general public on the Board to make it more responsive to the community and to the needs of children. I personally drafted the legislation.

In 1991 I served as a member of this nine person Board, by appointment of the Presiding Judge.

As a federal judge I have been active as a speaker/instructor

on criminal law matters for the Federal Judicial Center, both at "New Judge's School" and in criminal case management for experienced federal judges. I have also been active in the Federal Judge's Association and am the associate editor for our publication, *In Camera*.

Since 1997 I have served on the Criminal Pattern Jury Instruction Committee of the 5th Circuit.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   Answer: There are none.

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

   Answer: I own nothing except my residence, a single family rental property and stock in one company, so I do not anticipate any such conflicts. I own no partnership interests. Of course I am disqualified from litigation involving the company I own stock in, but it is in California and litigation before me is highly unlikely. Other than the open issue of handling a criminal docket as an active district judge, I know of no real or potential ethical issues relevant to serving on the U.S. Sentencing Commission.

   If anything ever comes up that would even give the appearance of a conflict of interest, I would on my own motion immediately recuse myself.

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

   Answer: No.

4. List sources and amounts of all income received during the

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

Answer: I have attached a copy of my most recent AO-10 financial disclosure report.

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

Answer: My financial net worth statement is attached.

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

Answer: Other than my own campaign, I have never held any such position.

07/26/99 MON 09:56 FAX
SENT BY: JUDGE_JOE_KENDALL ; 7-22-99 12:52PM; 2147582380 => 202 305 2643; 025

COPY

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1998

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
KENDALL, JOE	United States District Court Northern District of Texas	3/4/99
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
Active United States District Judge	___ Nomination, Date _____ ___ Initial X Annual ___ Final	1/1/98 - 12/31/98
7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
1100 Commerce Street, 16th Floor Dallas, Texas 75242	Reviewing Officer _____ Date _____	

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

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

POSITION — NAME OF ORGANIZATION/ENTITY

[X] NONE (No reportable positions.)

1
2
3

II. AGREEMENTS. *(Reporting individual only; see pp. 14-15 of Instructions.)*

DATE — PARTIES AND TERMS

[X] NONE (No reportable agreements.)

1
2
3

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

DATE — SOURCE AND TYPE — GROSS INCOME (yours, not spouse's)

[X] NONE (No reportable non-investment income.)

1 $
2 $
3 $
4 $
5 $

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: JOE KENDALL

Date of Report: 3/4/99

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
[X]	NONE (No such reportable reimbursements.)	
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
[X]	NONE (No such reportable gifts.)		
2			$
3			$
4			$
			$

VI. LIABILITIES. *(Includes those of spouse and dependent children; indicate, where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
[ ]	NONE (No reportable liabilities.)		
2	(J) Colonial Savings and Loan	Mortgage (VII #1)	K
3	(J) Comerica Bank of Texas	Mortgage (VII #2)	K
4			
5			
6			

*Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more.

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FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
JOE KENDALL	3/4/99

VII. Page 1 INVESTMENTS and TRUSTS — income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Mo. Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Rental Property #1 Dallas County, TX - (J)	D	Rent	L	W					
2 Rental Property #2 Dallas County, TX - (J)	D	Rent	K	W					
3 Rental Property #1 Dallas County, TX - (J)					Sell	8/27	L	D	Angela Perez
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
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-$1,000,000; H=Over $1,000,000.
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; O=$500,001-$1,000,000; P=Over $1,000,000.
3. Value Method Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash Market; U=Book value; V=Other; W=Estimated.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting: JOE KENDALL	Date of Report: 3/4/99

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

IX. CERTIFICATION.

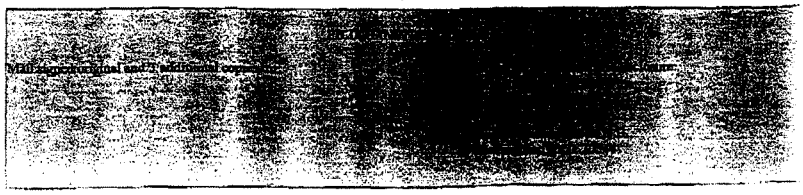
In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activitie and to the best of my knowledge after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covere by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcom of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it m 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 i compliance with the provisions of 5 U.S.C. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Joe Kendall Date March 4, 1999

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. 4, § 104.)



AO-10 Rev. 1/98

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1998

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
KENDALL, JOE	United States District Court Northern District of Texas	9/15/99
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Active United States District Judge	**5. Report Type** (check appropriate type) X Nomination, Date 9/15/99 ___ Initial ___ Annual ___ Final	**6. Reporting Period** 1/1/99 - 9/15/99
7. Chambers or Office Address 1100 Commerce Street, 16th Floor Dallas, Texas 75242	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
X	NONE (No reportable positions.)	
1		
2		
3		

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

	DATE	PARTIES AND TERMS
X	NONE (No reportable agreements.)	
1		
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
X	NONE (No reportable non-investment income.)		
1			$
2			$
3			$
4			$
5			$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: JOE KENDALL

Date of Report: 9/15/99

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
X	NONE (No such reportable reimbursements.)	
1		
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
X	NONE (No such reportable gifts.)		
1			$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children; indicate, where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
	NONE (No reportable liabilities.)		
1	(J) Colonial Savings and Loan	Mortgage (VII #1)	K
2	(J) Comerica Bank of Texas	Mortgage (VII #2)	K
3			
4			
5			
6			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
JOE KENDALL	9/15/99

VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of instructions.)*

Description of Assets (including trust assets)	A. Income during reporting period (1)	A. Income during reporting period (2)	B. Gross value at end of reporting period (1)	B. Gross value at end of reporting period (2)	C. Transactions during reporting period (1)	C. Transactions during reporting period (2)	C. Transactions during reporting period (3)	C. Transactions during reporting period (4)
NONE (No reportable income, assets, or transactions.)								
1 Rental Property Dallas County, TX (J)	D	Rent	K	W				
2 Cidco, Inc. Stock (J)		None	J	T	Buy	7/9	J	
3 Cidco, Inc. Stock (J)		None	J	T	Buy	7/13	J	
4 Cidco, Inc. Stock (J)		None	K	T	Buy	7/14	K	
5 Cidco, Inc. Stock (J)		None	K	T	Sell	8/30	K	D
6 Dell Computer Corp. Stock (J)		None	K	T	Buy	9/9	K	
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								

SENT BY: JUDGE_JOE_KENDALL ; 9-15-99 3:37PM; 2147532360 => 202 305 2643; #5/5
09/15/99 WED 15:02 FAX 2024562148 WHITE HOUSE COUNSEL 005

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
JOE KENDALL	9/15/99

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

IX. CERTIFICATION.

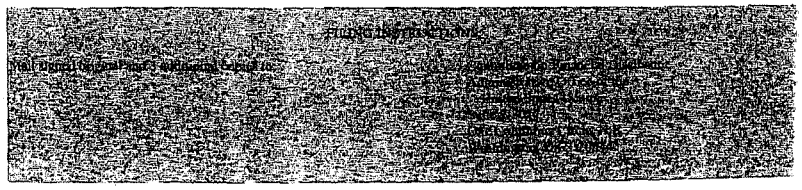
In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

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. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Joe Kendall Date September 15, 1999

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. 4, § 104.)



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FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including ban 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 o your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	5,500	Notes payable to banks—secured	7,000
U.S. Government securities—add schedule	51,500	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 tax and interest	
Doubtful		Real estate mortgages payable—add schedule	317,000
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	50,000		
Cash value—life insurance	16,175	N.Y.L. Policy Loan	16,175
Other assets—itemize:			
		Bank Credit Cards	25,000
		Total liabilities	365,175
		Net worth	198,000
Total assets	563,175	Total liabilities and net worth	563,175
CONTINGENT LIABILITIES	NONE	**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			

SCHEDULES

Listed Securities:
1) 2000 shares of Cidco, Inc.
2) 500 shares Dell Computer Corporation

Real Estate Owned:
1) Homestead - Approx. Value $400,000
2) 2 BR Condo Rental Property, Dallas, Texas
Approx. Value $40,000

Real Estate Mortgages:
1) F.T. Mortgage - $285,000 Approx. Balance
2) Comerica Bank - $ 32,000 Approx. Balance

III. GENERAL (PUBLIC)

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

   Answer: From 1982 until 1986 I represented over one hundred indigent criminal defendants by court appointment from local judges. While I was compensated in part by the courts, the compensation was well below the market rate for similar services provided to retained clients who could afford to pay. At that time Dallas County had no Public Defender, and I functioned as such for these disadvantaged people.

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

   Answer: No. I am not now nor have I ever been a member of any such club or organization.

1602

AFFIDAVIT

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

9-15-99
(DATE)

Joe Kendall
(NAME)

(NOTARY)

Phyllis J. Macon
MY COMMISSION EXPIRES
January 19, 2001

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Richard Linn (name as shown on birth certificate: M. Richard Linn.)

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

Home: **McLean, Virginia**
2nd Home: **Boca Raton, Florida**
Office: **3000 K Street, N.W.**
Suite 500
Washington, D.C. 20007

3. Date and place of birth.

April 13, 1944, Brooklyn, New York.

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

Married. Patricia M. Linn, nee Madden. Homemaker.

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

Rensselaer Polytechnic Institute, Troy, New York.
September 1961 to June 1965.
Bachelor of Electrical Engineering, June 1965.

Georgetown University Law Center, Washington, D.C.
September 1965 to June 1969.
Juris Doctor, June 1969.

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

June 1965 to June 1968
U.S. Patent Office
Group 230
Washington, D.C. 20231
(Patent Examiner)

June 1968 to June 1969
U.S. Naval Research Laboratory
4555 Overlook Avenue, S.W.
Office of Patent Counsel
Code 1104
Washington, D.C. 20375
(Patent Agent)

June 1969 to July 1970
Law Offices of Anthony A. O'Brien
2001 Jefferson Davis Highway, Suite 1007
Arlington, Virginia 22202
(Patent Agent/Associate)

July 1970 to June 1971
Brenner, O'Brien, Guay & Connors
2001 Jefferson Davis Highway, Suite 1007
Arlington, Virginia 22202
(Associate)

June 1971 to April 1972
Office of Naval Research
Naval Air Systems Command
Jefferson Plaza
Arlington, Virginia 22217
(Patent Advisor)

May 1972 to October 1973
Stepno & Neilan
2001 Jefferson Davis Highway, Suite 1103
Arlington, Virginia 22202
(Associate)

October 1973 to May 1974
Stepno, Schwaab & Linn
2001 Jefferson Davis Highway, Suite 1103
Arlington, Virginia 22202
(Partner)

June 1974 to March 1977
Imirie, Smiley & Linn
1329 E Street, N.W., Suite 411
Washington, D.C. 20004
(Partner)

April 1977 to April 1997
Marks & Murase, L.L.P.
(by change of name from Marks, Murase & White;
by change of name from Wender, Murase & White)
2001 L Street, N.W., Suite 750
Washington, D.C. 20036
(Partner)

August 1987 to December 1994
Cobweb Music, Inc.
923 Ridge Drive
McLean, Virginia 22101
(Vice-President/Secretary)

July 1994 to present
Juvenile Diabetes Foundation, Capital Chapter
1400 I Street, N.W.
Suite 500
Washington, D.C. 20005
(Member of Board/Vice-President/President/President Emeritus)

August 1994 to December 1997
Thunder & Lightning Corporation
923 Ridge Drive
McLean, Virginia 22101
(President)

May 1997 to present
Foley & Lardner
3000 K Street, N.W., Suite 500
Washington, D.C. 20007
(Partner/Practice Group Leader)

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

No.

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

Rensselaer Polytechnic Institute, Dean's List
New York State Regent's Scholarship recipient.

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

Virginia State Bar, 1969 to present
Intellectual Property Law Section, member, founding Board of Governors, 1970; Section Chairman, 1975
American Bar Association, 1969 to present
Section of Intellectual Property Law, 1969 to present
American Intellectual Property Law Association, 1969 to present
Electronic and Computer Law Committee, 1998 to present
Patent Law Committee, member, 1998 to present
Trade Secret Law Committee, 1998 to present
District of Columbia Bar Association, 1970 to present
Intellectual Property Law Section, 1970 to present
Federal Circuit Bar Association, 1985 to present
Licensing Executives Society, 1998 to present
The Comparative Intellectual Property American Inn of Court
Master, 1996 to 1998 (group now inactive).

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

a) **Lobbying:**
American Intellectual Property Law Association, 1969 to present
Juvenile Diabetes Foundation International, member, 1983 to present
American Diabetes Association, member, off and on, 1983 to present.

b) **Others:**
Poly Prep Alumni Association, 1961 to present
Zeta Psi Fraternity of North America, 1962 to present
Rensselaer Polytechnic Institute Alumni Association, 1965 to present
Delta Theta Phi, 1965 to present
Georgetown University Law Center Alumni Association, 1969 to present.

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

U.S. Supreme Court (March 28, 1994)
U.S. Court of Customs and Patent Appeals (April 6, 1970)
U.S. Court of Appeals for the District of Columbia Circuit (November 6, 1970)
U.S. Court of Appeals for the Fourth Circuit (September 24, 1979)
U.S. Court of Appeals for the Federal Circuit (October 1, 1982)

U.S. District Court for the Eastern District of Virginia (October 2, 1970)
U.S. District Court for the District of Columbia (October 15, 1970)
District of Columbia Court of Appeals (November 6, 1970)
Superior Court for the District of Columbia (November 6, 1970)
Arlington County Circuit Court (September 17, 1970)
Supreme Court of Appeals of the Commonwealth of Virginia (October 6, 1969).

Registered to practice before the U.S. Patent and Trademark Office as a Patent Agent on June 5, 1969 and as a Patent Attorney on January 2, 1970.

In addition to the foregoing, I have been admitted to a number of U.S. District Courts *pro hac vice*.

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

a) **"New U. S. Trademark Law Opens the Door to Early Nationwide Trademark Priority," *Italian American Business* (March-April 1990);**

b) **I served as moderator and principal speaker at a full-day seminar on "U.S. Patent Infringement Litigation and the *Honeywell v. Minolta* Case," sponsored by Gekkan Kaigaichuzai in 1992, and a bound volume containing an outline of my presentation was distributed at that conference;**

c) **"How to Prepare for the Next Intellectual Property Headache - U.S. Trade Secret Law," *Italian American Business* (November-December 1994);**

d) **"Unraveling the Mysteries of the U.S. Jury System in Patent Infringement Cases," a paper delivered at the 1994 New York annual meeting of the members of the Marks & Murase International Network;**

e) **"U.S. trade secrets - an IP manager's guide," *Managing Intellectual Property,* March 1995;**

f) **"Corporate Intellectual Property Strategy," a paper delivered at a continuing legal education seminar hosted by the Minnesota Institute of Legal Education in May 1995;**

g) **"Avoiding the Trade Secret Tumble," *les Nouvelles* (September 1995);**

h) **"Practical Steps for the Defense of a Patent Infringement Jury Case after *Markman*," *Patent World* (August 1996);**

i) **"Six Steps to the Successful Defense of a Patent Infringement Jury Case After *Markman*," *Intellectual Rights Journal* (September 30, 1996);**

j) **"The History and Operation of the Federal Discovery Rules," a paper delivered at a seminar hosted by the Japan Patent Attorney Association in Nagoya, Osaka and Tokyo, Japan in September and October 1997;**

k) **"The Impact of *State Street Bank* on Patents in the Finance, Insurance, Brokerage and Banking Industries," a paper disseminated to clients and potential clients following the decision of the U.S. Court of Appeals for the Federal Circuit on July 23, 1998 in *State Street Bank & Trust v. Signature Financial Group, Inc.*;**

l) **"The Economic Espionage Act of 1996," a paper delivered at several seminars sponsored by Foley & Lardner for clients and prospective clients in April 1998 in Washington, D.C., in November 1998 in San Francisco, and in March 1999 in London and Paris; and**

m) **"Important Developments and Key Points in Patent Law," a paper delivered at seminars sponsored by Foley & Lardner for clients and prospective clients in March 1999.**

Copies of the foregoing published materials, speeches, and speech outlines are attached.

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

Excellent. January 25, 1999.

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, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with

the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

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

None.

17. Legal Career:

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

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

I did not clerk for a judge.

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

I have not practiced alone.

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

June 1969 to July 1970
Law Offices of Anthony A. O'Brien
2001 Jefferson Davis Highway, Suite 1007
Arlington, Virginia 22202
(Patent Agent/Associate)

July 1970 to June 1971
Brenner, O'Brien, Guay & Connors
2001 Jefferson Davis Highway, Suite 1007
Arlington, Virginia 22202
(Associate)

June 1971 to April 1972
Office of Naval Research
Naval Air Systems Command
Jefferson Plaza
Arlington, Virginia 22217
(Patent Advisor)

May 1972 to October 1973
Stepno & Neilan
2001 Jefferson Davis Highway, Suite 1103
Arlington, Virginia 22202
(Associate)

October 1973 to May 1974
Stepno, Schwaab & Linn
2001 Jefferson Davis Highway, Suite 1103
Arlington, Virginia 22202
(Partner)

June 1974 to March 1977
Imirie, Smiley & Linn
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(Partner)

April 1977 to April 1997
Marks & Murase, L.L.P.
(by change of name from Marks, Murase & White;
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May 1997 to present
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(Partner/Practice Group Leader)

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

The first eight years of my practice dealt primarily with the preparation and prosecution of patent and trademark applications before the U.S. Patent and Trademark Office. In 1977, I was invited to join Wender, Murase & White as a partner to establish an

intellectual property capability in what was essentially a corporate or general business practice firm. At Wender, Murase & White (which later became Marks, Murase & White and then Marks & Murase, L.L.P.), my practice expanded beyond the Patent and Trademark Office to the courts, and I became more involved in the enforcement of intellectual property rights, in the counseling of clients in intellectual property matters, and in the defense of clients charged with violating the intellectual property rights of others. Initially, I counseled the firm's Japanese clients on U.S. patent and trademark law and handled a number of trademark matters before the Trademark Trial and Appeal Board and U.S. District Courts. I also handled a number of patent infringement suits and counterfeit actions, in some cases representing plaintiffs and in others representing defendants. I also represented a Japanese multinational corporation in the defense of a trade secret misappropriation case. Since joining Foley & Lardner in 1997, I have continued to concentrate my practice in counseling clients primarily in patent, trademark, and trade secret law, in developing programs to assist major corporate clients in compliance with intellectual property laws, including specifically compliance with the Economic Espionage Act of 1996, in rendering opinions in patent and trademark matters, in providing strategic guidance to clients in litigation and other *inter partes* matters, in prosecuting patent applications and appeals before the U.S. Patent and Trademark Office, and in managing and overseeing the electronics practice of the firm's intellectual property department.

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

Typical clients include, among others: Höganäs AB, a Swedish company engaged primarily in the manufacture and sale of iron powders for the automotive industry; Schlumberger Limited, a company engaged in oilfield services and automated test equipment for the semiconductor industry; Ingersoll-Rand Corporation, a diversified company engaged in the sale of industrial and consumer products; Rockwell International, a diversified company engaged, among other things, in the manufacture and sale of manufacturing equipment and avionics; Artists Rights Enforcement Corporation, a company engaged in protecting the rights of songwriters and musical artists; Mixpac Systems AG, a Swiss company engaged in the manufacture and sale of a range of products, including principally dispensing and mixing devices used in the field of dentistry; Benz Research & Development Corporation, a company involved in the development and manufacture of materials and equipment used to

make contact lenses; and Facile Holding Co., a company making and selling shielded cable and laminar materials. My practice in the representation of these clients has been concentrated in the intellectual property area but has also included advice on antitrust, contract, customs, and regulatory matters.

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

I did not appear in court at all in the first eight years of my practice. I then appeared in court occasionally over the course of the next 17 years of my practice. I have not appeared in court at all in the last five years.

2. What percentage of these appearances was in:

(a) federal courts; **95%**
(b) state courts of record; **5%**
(c) other courts. **0%.**

3. What percentage of your litigation was:

(a) civil; **100%**
(b) criminal. **0%.**

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

I tried three cases to judgment between 1985 and 1994. I was chief counsel in each of these cases.

5. What percentage of these trials was:

(a) jury; **0%**
(b) non-jury. **100%.**

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

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

1. ***Kabushiki Kaisha Audio-Technica v. Atlantis Sound, Inc. et al.*, 207 USPQ 809 (4th Cir. 1980). This was an appeal from a judgment entered after a bench trial in which two patents were held valid and infringed. I represented the appellants, Atlantis Sound, Inc. and Nippon Atsudenki Kabushiki Kaisha t.a. Japan Piezo Company, Ltd. The case is significant for me in that it was my first appeal in a patent infringement case, and involved a number of interesting issues of "obviousness" under 35 U.S.C. § 103 and "best mode" under 35 U.S.C. § 112. I prepared all of the briefs and argued the appeal before the Fourth Circuit. I was successful in obtaining a reversal of the judgment below, with all of the claims in issue declared invalid.**

(a) **The appeal was argued and decided in 1980.**

(b) **The appeal was argued before Circuit Judges Butzner, Hall, and Sprouse.**

(c) **Co-counsel:**

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Harrison E. McCandlish, Esquire
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or in telephone directory)

2. ***Höganäs AB v. Babcock & Wilcox Company,*** **Civil Action No. 185-240, before the United States District Court for the Southern District of Georgia, Augusta Division (unreported case). This was a patent infringement case tried without a jury. The case involved a range of issues, including, principally, questions of infringement under the doctrine of equivalents. The case also involved the use of videotape demonstrative evidence in which a promotional videotape produced by defendant's marketing department and touting the defendant's product as a revolutionary breakthrough, was replicated by my client's technical expert, using the materials explicitly disclosed in the patent in suit. The two tapes were used to provide a visual portrayal of the equivalence of "function, way and result" between the claimed invention and the alleged infringing product. I represented the plaintiff, Höganäs AB, and acted as chief counsel throughout the course of the litigation and trial. The patent was held valid and infringed in an opinion delivered from the bench shortly following the conclusion of the trial.**

   (a) **The case was filed in 1985, and trial was held June 1-5, 1987.**

   (b) **United States District Court for the Southern District of Georgia, Augusta Division, before the Honorable Dudley H. Bowen, Jr., United States District Judge.**

   (c) **Co-counsel:**

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3. *Gould Inc. v. Mitsui Mining & Smelting Co., Ltd. et al.*, Civil Actions No. C85-3199 and No. 90-3942, before the United States District Court for the Northern District of Ohio, Eastern Division (trial unreported; decisions on motions reported at 825 F.2d 676 (2nd Cir. 1987), 853 F.2d 445 (6th Cir. 1988), 738 F. Supp. 1121 (N.D. Ohio 1990), 750 F. Supp. 838 (N.D. Ohio 1990), 1990 WL 103155 (N.D. Ohio 1990), 139 F.R.D. 244 (D.C.D.C. 1991), and 947 F.2d 218 (6th Cir. 1991).) This was an action for misappropriation by a former employee of plaintiff of trade secrets allegedly received and used by defendants to manufacture copper foil for printed circuits. This case was the largest trade secrets case ever handled by my firm and involved discovery in the United States, France, Germany, Malaysia and Japan. It presented several important issues relating to sovereign immunity and issue preclusion. There were frequent periods in the course of this litigation when depositions were taken simultaneously of different witnesses on different continents. I did not argue this case in court but served as chief legal strategist and principal client contact. I defended the 11-day deposition of the client's senior technical executive who was the key witness in the case. I also coordinated the staffing of the case by the firm's legal team. The case was tried in a bench trial and settled prior to release of the Court's decision.

   (a) The case was filed in 1985 and refiled in 1990, the trial against Mitsui Mining & Smelting Co., Ltd. was held from November 1-24, 1991, and the case was settled in 1992.

   (b) United States District Court for the Northern District of Ohio, Eastern Division, before the Honorable Charles W. Joiner, United States District Judge.

(c) Co-counsel:

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The Honorable Patricia A. Hemann
U.S. Magistrate Judge
Cleveland, Ohio 44114
(216) 522-8343

4. ***Höganäs AB v. A.P. Green Industries Inc.*, 26 USPQ2d 1795 (M.D.Ga. 1992). This case was for infringement of a single U.S. patent and involved issues of claim scope and interpretation, literal infringement,**

infringement under the doctrine of equivalents, prosecution history estoppel, duty of disclosure in reexamination, validity, and damages. I represented the plaintiff, Höganäs AB, as chief counsel. Judgment of non-infringement was entered for defendant and affirmed on appeal (decision on appeal not reported).

(a) **The case was filed in June 1988. A non-jury trial was held January 13-17, 1992.**

(b) **United States District Court for the Middle District of Georgia, before the Honorable Wilbur D. Owens, Jr., United States District Judge.**

(c) Co-counsel:

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5. *Norand Corporation v. Opto Electronics Co., Ltd. and Opticon, Inc.*, Civil Action No. C93-211, before the United States District Court for the Northern District of Iowa (unreported case). This was an action for patent infringement of five U.S. patents relating to hand-held bar code scanners. I represented defendants, Opto Electronics Co., Ltd. and Opticon, Inc. as chief litigation counsel. Defenses of invalidity and non-infringement were asserted, and a counterclaim was filed seeking a declaratory judgment of invalidity and non-infringement of the five patents listed in the complaint as well as 11 additional related patents owned by plaintiff. The case was significant in that all 16 patents were continuations and/or divisions of a single application filed in 1981. Not a single patent in the portfolio was a continuation-in-part, each had virtually the identical specification, and at least one additional application remained pending throughout the course of the litigation. The case is illustrative of the impact of aggressive continuation practice on parties charged with infringement.

(a) This case was filed in 1993. A license agreement was negotiated and entered into late in 1994 in settlement of the case before trial.

(b) United States District Court for the Northern District of Iowa, before the Honorable Edward J. McManus, United States District Judge.

(c) Co-counsel:

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6. *Anthony J. Antonious v. Kamata-Ri Company Limited*, Civil Action No. JH-78-877, before the United States District Court for the District of Maryland, 204 USPQ 110 (D.Md. 1979) (on defendant's motion to dismiss). This was an action for patent infringement of a U.S. patent relating to golf gloves. I represented the defendants as chief litigation counsel. Defenses of invalidity were asserted. The case was significant in that it dealt with the question of jurisdiction of the court over the Japanese defendant, Kamata-Ri Co. Ltd., based on the acts of its wholly-owned subsidiary, Kamata-Ri America Corporation.

(a) This case was filed in 1978 and settled before trial in 1980.

(b) United States District Court for the District of Maryland, before the Honorable Herbert F. Murray, United States District Judge.

(c) Co-counsel:

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7. *Martin G. Reiffin v. Tandy Corporation et al.*, Civil Action No. CV 80-2183, before the United States District Court for the Eastern District of New York (unreported case). This was an action for patent infringement of a U.S. patent relating to direct-current-coupled phase-locked loop amplifiers. I represented one of the defendants, Harman Kardon, Inc., as its chief litigation counsel. Defenses of invalidity were asserted, and a counterclaim was filed seeking a declaratory judgment of invalidity and non-infringement of the patent in suit. The case was significant in that plaintiff claimed to have invented a fundamental and widely used circuit which could have implicated virtually every stereo amplifier made, used and or sold at that time.

(a) The case was filed in 1980 and settled in 1983 for a nominal sum on the eve of trial.

(b) United States District Court for the Eastern District of New York, before the Honorable George C. Pratt, United States District Judge.

(c) Co-counsel for Tandy Corporation:
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or in telephone directory)

8. *In re Dual-Deck Video Cassette Recorder Antitrust Litigation (Go-Video, Inc.) v. Matsushita Electric Industrial Co., Ltd., et al.*, Civil Action No. MDL No. 765 PHX RCB, before the United States District Court for the District of Arizona (1991 WL 425379 (D. Ariz.), 1992-2 Trade Cases P 69,973 (not reported in F.Supp.).) This was an action alleging an agreement, combination or conspiracy not to make or sell to others a dual-deck VCR or sell parts for manufacturing a dual-deck VCR for sale in the United States. The case was significant in that the plaintiff, a small, start-up company with limited resources, no manufacturing capabilities, and no sales, challenged the entire Japanese and Korean videocassette industry and the motion picture industry. Plaintiff contended that the president and founder of plaintiff corporation, who claimed to have been the first to invent a dual-deck video cassette recorder, had been blocked in his efforts to bring his product to the United States marketplace by the concerted actions of the defendants. I represented defendant, Sharp Corporation, in connection with the patent related and antitrust issues in the case. I participated in several key depositions in the case, including that of the president of the plaintiff corporation, the head of the Motion Picture Association of America, and a senior executive of Sharp Corporation. The case was noteworthy in that it gave me an opportunity to deal with interesting issues relating to the interplay between patent and antitrust laws and to work with a number of prominent lawyers retained to represent the large corporations which were defendants in the case.

   (a) The case was filed in 1987 and settled on behalf of my client, Sharp Corporation, in 1993, before trial.

   (b) United States District Court for the District of Arizona, before the Honorable Robert C. Broomfield, United States District Judge.

(c) **Co-counsel:**

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9. *AIL Systems Inc. v. ARGOSystems, Inc.* (a subsidiary of Boeing Corporation), Civil Action No. 97-1286-A, before the United States District Court for the Eastern District of Virginia (unreported case). This was an action for patent infringement of a U.S. patent covering direction-finding assemblies for weapons delivery systems. This case was the private civil side of what had previously been litigated as a government "takings" case based on sales made by the defendant to the U.S. government. The case was settled in a short period of time, without the expenditure of a great deal of resources, for a fraction of the potential liability our client was facing.

(a) The case was filed in 1997 and settled shortly following the filing of the Complaint.

(b) United States District Court for the Eastern District of Virginia; the local rules operative at the time this case was pending provided that specific judges would not be assigned to civil cases until the time of trial and that motions would be heard before whatever judge or magistrate was available on the day the particular motion was set for hearing.

(c) Co-counsel:

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10. *Mary Weiss Stokes et al. v. Fox Entertainment Corporation et al.*, Civil Action No. 88 Civ. 6821, before the United States District Court for

the Southern District of New York (unreported case). This was an action seeking a temporary restraining order, preliminary and permanent injunctions, and damages for trademark infringement asserted on behalf of my clients, the original members of the musical group known as "The Shangri-Las," against a group of performers claiming to be the Shangri-Las and trading on the goodwill associated with and represented by the "Shangri-Las" trademark.

(a) **This case was filed in 1988. A temporary restraining order and a preliminary injunction were granted by the court shortly after the case was filed. The case was tried in October 1989 and was settled prior to the conclusion of the trial.**

(b) **United States District Court for the Southern District of New York, before the Honorable Dudley B. Bonsal, United States District Judge.**

(c) **Co-counsel:**

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

I have spent most of my career counseling clients on the law, litigating intellectual property cases, rendering opinions in patent, trademark, trade secret and unfair competition issues, and preparing and prosecuting patent and trademark applications before the U.S. Patent and Trademark Office. I have served as lead negotiator in several major settlement negotiations in patent and trademark disputes. I have assisted multinational corporations in preparing and implementing guidelines to assure corporate compliance with laws and regulations affecting their businesses and to assure the safeguarding of proprietary corporate know-how and

trade secrets. I have also represented a number of musical groups, artists and songwriters in protecting their rights and in recovering royalties rightfully owing to them. I have participated in the establishment of mentoring programs to help younger attorneys develop the skills necessary for them to become prominent members of the bar and future leaders of our profession. I have also served as the Chairman of the Virginia Bar Intellectual Property Law Section, as a member of several committees of the American Intellectual Property Law Association and the American Bar Association, and as an organizer and program leader for several programs of the Comparative Intellectual Property Law American Inn of Court.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   a) **As a former partner of Marks & Murase, L.L.P., I have a continuing financial interest in my share of unpaid capital, subject to an offset in the amount of my partnership share of whatever financial liability may result from the settlement of residual claims against the firm. My capital interest is scheduled to be paid out to me over the next two years.**

   b) **I have a continuing financial interest in a 401(k) savings plan at Foley & Lardner. This interest would be rolled over to an existing IRA account upon my withdrawal from the firm.**

   c) **I have a continuing financial interest in the Foley & Lardner Defined Contribution Retirement Plan. This interest would be paid out to me upon my withdrawal from the firm.**

   d) **Based on completed legal work, I have an ongoing contingency fee interest in and to future royalty receipts of several musical artists. This interest would be assigned for a lump-sum amount prior to my entering active service on the bench.**

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

   Parties in interest in appeals before the court on which I may serve may be or may have been clients of mine or clients of firms in which I am now or have been a partner. My wife and I may have a financial interest through stocks and bonds held in her or my name in companies which may be identified as parties in interest in appeals before the court on which I may serve. I would recuse myself, as necessary, from any appeal identifying a party in interest which I previously represented or in which my wife and I have any financial interest through ownership of any stocks or bonds. In any event, I would take whatever action was necessary regarding recusal to fully comply with the Code of Judicial Conduct.

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

No.

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

See attached Financial Disclosure Report.

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

See attached Financial Net Worth Statement, with attached Notes and Schedules.

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

In 1994, I co-sponsored a fundraising mailing to members of the intellectual property community in support of Senator Patrick J. Leahy. Although I have not played any formal role in any of Senator Leahy's campaigns, I have attended fundraising events and political rallies for him in Washington and in Vermont. I was one of several co-sponsors of a fundraiser for Jane Harman, candidate for governor of the State of California in 1998.

FINANCIAL NET WORTH STATEMENT AS OF AUGUST 31, 1999

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. **See, in part, attached printout dated 8/27/99.**	$	83	402	Notes payable to banks - secured. **See attached schedule.**	$	48	000
U.S. Government securities - add schedule.			0	Notes payable to banks - unsecured			0
Listed securities -add schedule. **See attached financial disclosure report.**		712	610	Notes payable to relatives			0
Unlisted securities - add schedule			0	Notes payable to others			0
Accounts and notes receivables				Accounts and bills due			
Due from relatives and friends		19	500	Unpaid income tax			0
Due from others **See attached Note 1.**		239	220	Other unpaid tax and interest. **See attached Note 4.**			0
Doubtful			0	Real estate mortgages payable - add schedule. **See attached schedule.**		255	400
Real estate owned - add schedule. **See attached schedule.**	1	000	000	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts - itemize			0
Autos and other personal property		35	000				
Cash value - life insurance			0				
Other assets - itemize							
Fixed assets (bonds). **See Attached financial disclosure report.**		119	257	Marks & Murase contingent liability **See attached Notes 2, 3 and 4.**		24	000
Marks & Murase capital		31	962				
Russian art		91	000				
Jewelry		65	000	Total Liabilities	$	327	400
Furniture and fixtures		165	000	Net Worth	$2	234	551
Total Assets	$2	561	951	Total Liabilities and Net Worth	$2	561	951
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, co-maker or guarantor. **See attached Note 2.**			Yes	Are any assets pledged? (Add schedule.)			No
On leases or contracts. **See attached Note 3.**			Yes	Are you defendant in any suits or legal actions? **See attached Note 4.**			Yes
Legal Claims. **See attached Note 4.**		24	000	Have you ever taken bankruptcy?			No
Provision for Federal Income Tax. **See attached Note 5.**		28	360				
Other special debt			0				

NOTES TO FINANCIAL NET WORTH STATEMENT

Note 1: I have a continuing financial interest in a 401(k) savings plan and a Defined Contribution Retirement Plan at Foley & Lardner. These interests will be rolled over to my IRA account or paid out to me upon my withdrawal from Foley & Lardner. Based on completed legal work, I have a financial interest in certain royalty receipts of several musical artists. These interests will be assigned for a lump-sum amount before entering service on the bench.

Note 2: I am a personal guarantor on a certain lease of office premises at 399 Park Avenue, New York, New York of Marks & Murase, L.L.P.; my liability is limited to my capital interest in the firm as set forth on my financial net worth statement.

Note 3: I have certain contingent liabilities on various leases and contracts in my capacity as a former equity partner of the law firm of Marks & Murase, L.L.P.; with the exception of the liabilities described in Note 4, below, the foregoing liabilities have been assumed by third parties in accordance with the confidential terms and conditions of one or more agreements among Marks & Murase, L.L.P. and such parties.

Note 4: a) As a former partner of Marks & Murase, L.L.P., I may have personal liability in amounts, estimated to be about $24,000 but yet to be finally determined, in connection with certain legal and/or administrative proceedings. In none of these legal proceedings are my actions or conduct in any way involved.

b) As a partner of Foley & Lardner, I may have personal liability in amounts yet to be determined in connection with certain legal proceedings commenced after May 1, 1997. In none of these proceedings are my actions or conduct in any way involved.

Note 5: The amount shown reflects scheduled estimated tax payments due on September 15, 1999 and January 15, 2000 for the tax year 1999.

SCHEDULE TO FINANCIAL NET WORTH STATEMENT

Real estate owned

McLean, Virginia, value: $650,000;

Boca Raton, Florida, value: $350,000.

Mortgages

On McLean, Virginia property: Crestar Mortgage Corporation, P.O. Box 26149, Richmond, Virginia 23260-6149, principal balance: $94,600;

On Boca Raton, Florida property: Bank of America Mortgage, P.O. Box 9001098, Louisville, Kentucky 40290-1098, principal balance: $160,800.

Secured bank note

Home equity loan secured by McLean, Virginia property: Crestar Bank, P.O. Box 85160, Richmond, Virginia 23285-5160, principal balance: $48,000.

III. GENERAL (PUBLIC)

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

   During the last school year, I participated actively in a public education leadership services project of the Washington Lawyers' Committee for Civil Rights and Urban Affairs. As part of this project, my firm, Foley & Lardner, "adopted" the Wilkinson Elementary School in Southeast Washington, D.C. and established a tutoring program for second-grade students. I attended organizational meetings for the program, and participated in meetings to introduce the program to the lawyers and staff members of the firm and to recruit volunteer participation. I also served as a tutor to two second-grade students for about 2½ hours each week throughout the school year. I also participated, with my wife and other members of the firm, in the construction of playground equipment at the school to replace equipment destroyed by vandalism.

   In the past, I have also handled *pro bono* cases on referral from the U.S. District Court for the Eastern District of Virginia (felony drug possession) and the Superior Court for the District of Columbia (child neglect).

   For the past ten years, I have been an active volunteer for the Juvenile Diabetes Foundation. The mission of the Juvenile Diabetes Foundation is to find a cure for diabetes and its complications through the support of research. I am committed to this cause and over the years have contributed not only financially but with my time as well. I have helped organize and sponsor a number of fundraising events, and have participated in many others. I served as a member of the Board in 1994-1996, as vice-president for government relations in 1996-1998, and as president of the Board in 1998-1999. I now serve as president-emeritus. I was also privileged to serve as the chairman of the 28th Annual Conference of the Juvenile Diabetes Foundation International, held in Washington, D.C. on June 3-7, 1998 and attended by over 600 delegates from around the world.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

   No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please described your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

No, but I was evaluated for this nomination in November of 1995 by the Judicial Selection Committee of the American Intellectual Property Law Association ("AIPLA"), which is the largest organization of intellectual property attorneys in the United States. I completed a detailed questionnaire, responded in writing to follow-up questions, and was interviewed personally by two senior members of the intellectual property bar. The AIPLA recommended my nomination and communicated that position to the White House in writing and in person.

I had originally expressed an interest in becoming a member of the judiciary in 1994 at the time of my 25th anniversary as a member of the bar. I became aware of a vacancy on the bench of the U.S. Court of Appeals for the Federal Circuit at about that time and thought about what a great opportunity and challenge it would be if I were ever fortunate enough to serve as a member of that court and to contribute in some small way to the court's jurisprudence based on my experience in practice. I expressed these views to several prominent members of the intellectual property community over the past several years and have been encouraged by their words of support. I was interviewed at the White House by members of the White House staff and the Department of Justice and provided the White House with information about my education, my experience, my personal background, and my qualifications. I have also been interviewed by agents of the FBI and a representative of the ABA.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In my opinion, the function of the Federal Judiciary is to construe the law, not to usurp the functions of the legislative and executive branches, and to protect and safeguard the rights and liberties of the people, as set forth in the Constitution. I do not believe that the Federal Judiciary should entertain cases which are not ripe for resolution. In my view, sound principles of personal jurisdiction, ripeness, and standing should be followed and respected. I also believe strongly in the principle of *stare decisis*. In my view, federal judges have an obligation to focus their decisions on the disputes of the parties in the specific matters before them, and to do so in a timely and clear manner, mindful of the importance of clear precedent and guidance in the rule of law.

REPLY TO QUESTIONNAIRE FOR JUDICIAL NOMINEE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Myron James Lorenz

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

   Residence: Del Mar, CA 92014
   Office: 550 West C Street, 19th Floor, San Diego, CA 92101

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

   October 13, 1935; Pasadena, California

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

   Married
   Maiden Name: Marcia Ann Skibo
   Not employed outside home, homemaker

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

   Pasadena City College, 1953-1954
   University of California, Berkeley, 1954-1957, B.A., Sept. 1957
   California Western School of Law, 1962-1965, J.D., June 1965

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

Sept. 1957 to Dec. 1960	U.S. Marine Corps Rank: Lieutenant Specialty: Infantry
June 1961 to June 1962	Tam O'Shanter Restaurant Lawrence L. Franks Enterprises Address: Los Angeles, CA Assistant Manager

Sept. 1962 to Dec. 1962	California Western University Address: San Diego, CA Graduate Assistant Football Coach Employment During Law School
Sept. 1963 to Dec. 1963	California Western University Address: San Diego, CA Graduate Assistant Football Coach Employment During Law School
June 1964 to Aug. 1964	U.S. Marine Corps Active Duty Address: Camp Pendleton, CA Rank: Captain
Sept. 1964 to Dec. 1964	California Western University Address: San Diego, CA Graduate Assistant Football Coach Employment During Law School
Sept. 1965 to Dec. 1965	California Western University Address: San Diego, CA Graduate Assistant Football Coach
March 1966 to Sept. 1966	U.S. Marine Corps Active Duty Address: HDQ Marine Corps Washington, DC April 1966 to May 1966 Landing Force Training Unit Coronado, CA June 1966 to Sept. 1966 Rank: Captain
Sept. 1966 to Feb. 1978	District Attorney's Office, County of San Diego Address: San Diego, CA Deputy District Attorney
Feb. 1978 to Nov. 1981	United States Attorney's Office Address: San Diego, CA 1st Assistant U.S. Attorney Feb. 1978 to May 1980 United States Attorney May 1980 to Nov. 1981

May 1982 to Dec. 1982	Lorenz Alhadeff Fellmeth Arkin & Multer Address: San Diego, CA Partner
Jan. 1983 to Dec. 1987	Finley Kumble Wagner Heine Underberg Manley Myerson & Casey Address: San Diego, CA Partner
1985 to present	California Western School of Law Board of Trustees Address: San Diego, CA
Jan. 1988 to May 1988	Lorenz Alhadeff Lundin Address: San Diego, CA Partner
May 1988 to Jan. 1992	Lorenz Alhadeff Lundin Oggel Address: San Diego, CA Partner
1988 to present	University of San Diego Paralegal Program Board of Advisors Address: San Diego, CA
Jan. 1992 to Jan. 1993	Lorenz Alhadeff Oggel Address: San Diego, CA Partner
Feb. 1993 to present	Lorenz Alhadeff Cannon & Rose, LLP Address: San Diego, CA Partner
1996 to present	Marine Corps Recruit Depot Museum and Historical Society Board of Advisors Address: San Diego, CA

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

Sept. 1957 to Dec. 1960	U.S. Marine Corps. (Serial Number: 074223) Rank: First Lieutenant. Served 3 years and two months as an infantry officer. Received an honorable discharge from active duty.

1961 to 1962	U.S. Marine Corps Ready Reserve
1962 to 1969	U.S. Marine Corps Active Reserve 4th Tank Bn., San Diego, CA Tank Platoon Leader; Company Commander
June to Aug. 1964	Active Duty, Camp Pendleton, CA Liaison Officer involving the summer training of reserve units in gunnery and tactics.
April to May 1966	HDQ Marine Corps, Washington, D.C. Promotion Board
June to Sept. 1966	Landing Force Training Unit, Coronado, CA Training Officer
1969 to 1977	Navy and Marine Corps Law Units Legal Officer
1977	Resigned from U.S. Marine Corps Reserve at the rank of Major and transferred to Retired Reserve.

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

Received exemplary project award on behalf of San Diego District Attorney Fraud Division for outstanding prosecution of White Collar Crime given by Law Enforcement Assistance Agency (LEAA). 1975.

Received letters of appreciation from Federal Law enforcement agencies for performance as U.S. Attorney. November 1981.

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

California State Bar Association, 1966 to present.

Member Economic Crime Project under LEAA grant, 1973 to 1977.

National District Attorney's Association, 1976 to 1977.

Chairman, State Consumer Protection Counsel, 1976 to 1977.

California State District Attorney's Association, 1976 to 1977.

San Diego Inn of Court, College of Advocacy, 1979 Program.

Federal Law Enforcement Administrator's Committee, 1980 to 1981.

San Diego County Bar Association, 1982 to present.

Delegate to California State Bar Convention, 1983.

Vice President and Director of San Diego Bar Association, 1983 to 1985.

Bench Bar Media Committee, San Diego County Bar Association, 1984.

Kutak Report Subcommittee of Legal Ethics and Unauthorized Practice Committee, San Diego County Bar Association, 1985.

Chairman of volunteer committee of judges and attorneys requested by the San Diego County Board of Supervisors to study and make recommendations on changes to indigent defense system, 1985.

Chairman of Senator Feinstein's San Diego Judicial Screening Committee, 1994 to present.

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

San Diego Crime Commission. The Commission has at times lobbied before the San Diego City Council and San Diego Board of Supervisors in support of legislation and pay increases for police agencies. The Commission has also provided letters of support for law enforcement to various elected state officials on various issues that involve protection of the public.

Other organizations to which I belong:

Board of Trustees, California Western School of Law
Board of Advisors, University of San Diego, Paralegal Program
Board of Advisors, Marine Corps Recruit Depot, Museum & Historical Society
Member of informal group represented by members of the military, business, educational, press and legal community that meets periodically to discuss and assess issues of the community.
Big C, Football Lettermans Club, University of California, Berkeley
University of California Alumni Association

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

1966 California State Courts
1978 U.S. District Court, Southern District of California
1980 U.S. Supreme Court

1981 U.S. Court of Appeals, Ninth Circuit
1985 U.S. District Court, Central District of California
1997 U.S. District Court, District of Hawaii

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

University of San Diego Law Review. "Consumer Fraud and the San Diego District Attorney's Office," Vol. 8, No. 1, Feb. 1971.

Annual Report for the U.S. Attorney Office for the Southern District of California. May 1981.

San Francisco Barrister Law Journal. "Municipal Attorney's Conflict of Interest," Dec. 1986.

San Diego Union, Opinion Page. "Tribute to those who died in the line of duty." May 17, 1988.

San Diego Union, Opinion Page. "Is the Concept of Local Control Over Utilities a Myth?" June 4, 1989.

Public presentations governing investigative and prosecution policy while United States Attorney:

Presentation before the San Diego Crime Control Commission, San Diego, CA, August 18, 1980.

Presentation before Attorney General's Task Force on Violent Crime, Atlanta, GA, Re: Cross-Designation Program, May 20, 1981.

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

Excellent.
Date of Last Exam: January 27, 1999.

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, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

Not applicable.

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

May 1980 to Nov. 1981, United States Attorney, Southern District of California. Judicially appointed.

17. Legal Career:

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

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

I have not served as a clerk to a judge.

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

I have never practiced alone.

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

September 1966 to February 1978
District Attorney's Office, San Diego County, California.
Address: Hall of Justice
330 West Broadway
San Diego, CA 92101

Deputy District Attorney

February 1978 to November 1981, United States Attorney's Office, Southern District of California.

Address: 880 Front St., Room 6293
San Diego, CA 92101-8893

February 1978 to May 1980, First Assistant U.S. Attorney
May 1980 to November 1981, U.S. Attorney (Judicially appointed).

May 1982 to December 1982, a partner with Lorenz Alhadeff Fellmeth Arkin & Multer

Address: 1010 2nd Avenue, Suite 900
San Diego, CA 92101

January 1983 to December 1987, a partner with Finley Kumble Wagner Heine, Underberg, Manley Myerson & Casey, a national firm of over 600 attorneys.

Address: 101 West Broadway, 15th Floor
San Diego, CA 92101

January 1988 to May 1988, Lorenz Alhadeff Lundin
May 1988 to January 1992, Lorenz Alhadeff Lundin Oggel
January 1992 to January 1993, Lorenz Alhadeff Oggel
January 1993 to February 1996, Lorenz Alhadeff Cannon & Rose
March 1996 to Present, Lorenz Alhadeff Cannon & Rose, LLP

Addresses: 101 West Broadway, 15th Floor
San Diego, CA 92101-3540
(December 1987 to January 1991)

550 West C Street, 19th Floor
San Diego, CA 92101-3540
(January 1991 to present)

Partner in the firm with presently 27 attorneys.

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

September 1966 to November 1981

During this period, I was a prosecutor for the County of San Diego, State of California, and U.S. Attorney's Office for the Southern District of California.

September 1966 to February 1978, Deputy District Attorney, San Diego County District Attorney's Office.

Duties:
September 1966 to June 1967, Municipal Court Division
Prosecution of misdemeanor offences and felony preliminary hearings including vehicular manslaughter and driving under the influence cases.
June 1967 to December 1967, Family Support Division
Prosecution of felony Welfare Fraud cases.
December 1967 to May 1968, Appellate Division
Drafting responses to briefs filed with the Superior Court and Court of Appeal, usually on Fourth Amendment search and seizure issues.
May 1968 to June 1969, Superior Court Division
Prosecution of felony street crimes, crimes of violence and narcotics cases.
June 1969 to February 1978, Deputy in Charge of Fraud Division
Initiated the Fraud Division that prosecuted White Collar and Economic Crime. Duties included both administration of the Division and trying felony White Collar Crime cases including Securities Fraud, Real Estate Fraud, Bank Fraud, Health Fraud and Business Fraud, and the prosecution of civil cases against companies for false advertising and unfair business practices.

From February 1978 to November 1981, United States Attorney's Office for the Southern District of California.

Duties:
February 1978 to May 1980, First Assistant U.S. Attorney
May 1980 to November 1981, United States Attorney (Judicially appointed).
As United States Attorney and previously First Assistant for the Southern District of California, I set policy and was responsible for an office of 80 employees including 40 Assistant U.S. Attorneys. This included representing the Government in both civil and criminal matters. In addition to the overseeing of criminal and civil cases as U.S. Attorney, I personally tried a White Collar Crime matter and was co-counsel on another.

1982 to Present

From 1982 to present I have been engaged in the private practice of law. My practice includes litigation in both State and Federal courts involving both civil and criminal matters. The civil cases have involved real estate, labor law, business and commercial transactions, intellectual property, as well as derivative and class action lawsuits, including civil RICO matters. In most cases, I have defended individuals or companies.

My practice is not wholly civil in nature, however. My criminal practice includes the defense of individuals and companies who are under investigation for the commission of white collar crimes by the District Attorney, U.S. Attorney, Dept. of Justice and other agencies of the Federal Government. In addition, I have been appointed five times as a Trustee or examiner of companies that have filed for protection under Chapter 11 of the Bankruptcy Code, usually to investigate whether there has been malfeasance by the principals and to locate assets. I have also conducted an internal investigation in Europe for a U.S. corporation.

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

My practice has two distinct stages. From 1966 through 1981 I was solely a State and Federal prosecutor. Accordingly, during this period, I represented the general public and specialized in criminal litigation, prosecuting crimes against the people and Government, including consumer and business fraud. From 1982 to the present, my practice has involved both civil litigation and criminal defense.

Civil Litigation: My practice has usually been in the defense of companies and individuals in the areas of labor, business, commercial transactions, derivative and class action lawsuits, intellectual property and civil RICO.

Criminal Defense: Approximately 50% of my practice involves criminal white collar defense. My participation usually begins when a company or individual learns of a government subpoena from a federal agency or a Grand Jury subpoena or search warrant by the U.S. Attorney's Office. As I am usually contacted prior to a civil complaint or issuance of an indictment, few of my cases have begun after the arrest of a defendant. The purpose of representation at this stage is not only to defend the company or individual but also to understand the nature of the complaint and present exculpatory evidence, if any, to avoid prosecution or mitigate the circumstances. As most of the defendants I represent are companies or highly placed individuals, trial is often not a viable option. With the debarment provisions that can put a company out of business and with the mandatory penalties of the Federal Sentencing Guidelines, the consequences likely to flow from a conviction are often far more onerous than accepting responsibility under a plea agreement. As a defense counsel, it is often possible to work out pleas of guilty or civil judgments that can serve the interests of justice for all parties.

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

As I have become a senior partner in the firm I have not appeared in court as regularly as I have in the previous years. Routine motions that I used to handle are now generally handled by the firm's associates. However, I still continue to try those cases should they go before a judge or jury on their merits. Moreover, if a matter is sensitive or high profile, I will usually handle all court appearances. However, considering my matters are either civil business cases or civil or criminal white collar crime matters, my time in court is as regular as other senior partners in local and national law firms doing the same type of cases. The reason for less personal court appearances is also due to the fees paid to senior partners compared with associates. If the motions are routine and relating to discovery, case management conferences or regular status hearings, a senior partner is not needed for such matters. I do argue summary judgment motions and other matters that are key to a resolution of the case.

My prior court experience, particularly back to the period of 1966 to 1981, was significantly different. During that time, I was employed as a prosecutor by the District Attorney's Office and United States Attorney's office trying at least 25 cases to verdict or judgment. As a Deputy District Attorney, in the early years I also appeared on preliminary hearings, motions and appeals on almost a daily basis.

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

(a) **Federal courts:**

Federal Court 49%

(b) **State courts of record:**

State Court 49%

(c) **Other courts:**

Less than 2%. NASD Business Conduct Special Hearing Committee one time.

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

(a) **Civil:**

Civil 50%

(b) Criminal:

Criminal 50%

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

Cases tried to verdict or judgment:	36
Jury:	27
Non-Jury:	9
Sole Counsel:	29
Chief Counsel:	5
Co-Counsel:	2

5. What percentage of these trials was:

(a) Jury:

Jury: 75%

(b) Non-Jury:

Jury: 25%

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

a. The date of representation;

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

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

(1) NASD v. Tom Coldicutt, et al. - 1997
NASD District Business Conduct Committee for District 7, Atlanta, Georgia
Special Hearing Committee, May 6, 1997
Special Hearing Subcommittee
Complaint No. CO7950054

Richard V. McGalleard, Chairman of the Panel
Franklin C. Golden, Panel Member
W.L.M. Knox, Jr., Panel Member
NASD Counsel: Brice LaHue, Esq.
Regional Counsel
Address: NASD District 7
One Security Center
Suite 500
3490 Piedmont Road, N.E.
Atlanta, GA 30305
Phone: (404) 239-6111

Case: This matter involved two issues: (i) whether the defendant, my client, was involved in a plan to accept funds from companies in exchange for listing them on the OTC bulletin board; and (ii) whether a rule promulgated by the NASD against accepting fees for listing is enforceable if not first approved by the SEC, as required by the SEC's regulations. Although my client did not prevail before the NASD Committee, an appeal is pending.
Chief Counsel for Defendant Tom Coldicutt.

(2) People v. Eugenia Franco Ortez - 1997
San Diego Municipal Court
Case No. CO 127517/DA# P92810
Judge: Larry Sterling
Deputy District Attorney Sally Penso
Address: San Diego County District Attorney's Office
Juvenile Division
2851 Meadowlark Drive
San Diego, CA 92123
Phone: (619) 694-4250
Chief Trial Deputy : Keith Burt
Chief Deputy District Attorney
Address: San Diego County District Attorney's Office
330 West Broadway, Ste. 1300
San Diego, CA 92101
Phone: (619) 531-4394

Case: In this case, the District Attorney's Office charged my client, a Mexican citizen legally in the United States with a green card, with felony theft of her three children. Nine years before, my client had taken her children to visit their grandparents in Mexico. Soon thereafter, my client's husband filed for divorce in the United States and my client's parents sued for custody of the children (their grandchildren) in a Mexican court. Thus, my client was subject to two conflicting court orders – an order from a State court in the U.S. to return her children to the States and an order from a Mexican court not to remove the children from Mexico pending resolution of the custody dispute. The grandparents subsequently lost

their bid for custody and my client married another American citizen and moved to Oregon with the children. Although my client's first husband knew where the children were in Mexico, once he learned she had moved with her husband and children to Oregon, he filed criminal charges with the D.A.'s Office for theft of the children - 9 years after she had taken the children to Mexico. As expected, the primary issue in the criminal case was whether my client had acted with the requisite intent to steal the children when she was caught between two conflicting court orders. After expert testimony on Mexican law and presentation of the facts for the original taking of the children, the Court dismissed the felony criminal charges. Issues of international law and the applicability of Mexican law in California State Courts played a relevant role in the matter. The matter then settled with a misdemeanor plea with an agreement of no time in custody. The subsequent civil case involving the children was settled and the children were returned to the mother.
Sole Counsel for defendant, Eugenia Franco Ortez.

(3) Mostafa Halim v. Dr. Harvey Rubin - 1996
San Diego Superior Court
Case No. 688370
Jury Trial
Judge: Honorable Philip Sharp
Plaintiff counsel: Can M. Sirin, Esq.
Address: 614 5th Avenue, Ste. B2
San Diego, CA 92101
Phone: (619) 237-5161

Case: This was a jury matter in the San Diego Superior Court in which I defended the owner of a biotech research laboratory who was alleged to have wrongfully terminated his laboratory scientist. The Plaintiff alleged the owner promised him lifetime employment and $100,000 for each research paper he published in a recognized scientific journal. The issues involved the determination of whether the scientist was an employee or an independent contractor, the credibility of the alleged promise to pay for publishing and the legal issue of judicial estoppel regarding Plaintiff's conflicting statements in a prior divorce case. The jury ruled in favor of my client, the owner, after a three week trial on the allegations of lifetime employment. The jury hung on the research paper allegations. However, this remaining allegation was dismissed by the judge after legal motions based on the legal principle of judicial estoppel.
Chief Counsel for defendant, Dr. Rubin.

(4) USA v. Finley Testing Laboratories – 55 F.3d 1410 (1995)
United States Court of Appeal, Ninth Circuit
Case Nos. 94-10106 and 94-10107
Appeal from conviction
Fletcher, Reinhardt and Noonan
AUSA Mark E. Recktenwald
Address: United States Attorney's Office
300 Ala Moana Blvd., Room 6-100
Honolulu, HI 96850-6100
Phone: (808) 541-2850
Counsel for Co-Defendant: John Cleary, Esq.
Address: Cleary & Sevilla
1010 Second Avenue, Ste. 1601
San Diego, CA 92101-4906
Phone: (619) 232-2222

Case: The case was an appeal from a conviction, and the court's ruling was for the Government. However, the case involved unique issues relating to whether a corporation and individual owner, recognized in law as separate persons, can have a conflict of interest when the same attorney represents both. The case also explores whether charging a conspirator under certain circumstances can avoid the statute of limitations.
Sole counsel for Finley Testing Laboratories.

(5) USA v. Pacific Ship Repair and Fabrication, Inc. – 1992
U.S. District Court, Southern District of California Case No. 91-50649
U.S. Court of Appeal, Ninth Circuit
Criminal No. 90-1022-GT
AUSA Bruce Castetter
Address: United States Attorney's Office
880 Front Street, Room 6293
San Diego, CA 92101-8893
Phone: (619) 557-6172
AUSA Melanie K. Person
Address: United States Attorney's Office
880 Front Street, Room 6283
San Diego, CA 92101-8893
Phone: (619) 557-6172

Case: The case was initiated when a company entered into a misdemeanor plea to a Clean Air Act violation arising from asbestos removal. What the company did not know was that its guilty plea would cause its debarment from further Government contracts to repair Navy ships and cause the company of 400 workers to go out of business. Upon my substitution into the case as counsel, I filed a motion to set aside the plea to the Magistrate, which was successful. However, the plea was reinstated by the District Court. I was therefore forced to seek a writ in the U.S. Court of Appeals, Ninth Circuit, where a stay was successful. The subsequent argument

before the Court of Appeals was successful and an arrangement was made with the E.P.A. and U.S. Attorney for the company to remain in business with a plea to another misdemeanor that did not cause the company to be debarred.
Chief Counsel for appellant Pacific Ship Repair.

(6) USA v. National Health Labs Inc. – 1992
U.S. District Court, Southern District of California Case No. 92-1646-G
Judge: Honorable Earl Gilliam
Criminal
AUSA Carol Lam
Address: United States Attorney's Office
880 Front Street, Room 6293
San Diego, CA 92101-8893
Phone: (619) 557-6244
USA William Braniff (now in private practice)
William Braniff, Esq.
Address: Law Office of William Braniff
625 Broadway, Ste. 800
San Diego, CA 92101
Phone: (619) 595-7000

Case: The case involved criminal allegations of Medicare and Medical Fraud. Pre-indictment discussions with AUSA Lam and USA Braniff took place over: (1) whether the acts involved were criminal; (2) issues relating to the investigation; (3) issues of debarment and economic effect; and (4) types of charges to avoid debarment. I was involved in meetings with the United States Attorney's Office, with the Fraud Section of the Department of Justice and concurrent discussions with the assigned attorney from the Civil Division of the Department of Justice regarding a fine and civil judgment. The negotiations took place over a period of one year. The primary goal was to prevent the debarment of a National Stock Exchange company that would follow from an indictment. The case settled with a criminal plea to a Champus Violation that at the time did not require debarment, and a subsequent civil judgment with the Civil Division of Department of Justice for a payment of $100 million.
Chief Criminal Counsel for National Health Labs.

(7) Heitert v. Pacmar - 1992
Superior Court No. 617054
Jury trial
Judge: Honorable Jeffrey Miller
Plaintiff's counsel: Herman Hausline, Esq.
Address: 8279 Caminito Modena
La Jolla, CA 92037
Phone: (619) 234-6812

Case: This matter involved a state jury trial where the Plaintiff alleged that my client sold his ship repair company to the Plaintiff through false representations and fraud in the attempt to avoid a financial obligation to pay all of the purchase price. The jury found for my client with substantial damages assessed on the cross-complaint.
Chief Counsel for Pacmar.

(8) George Hesse v. Air France - 1985
U.S. District Court, Central District of California Case No. CV-81-2385 TJH CJR
Jury trial
Judge: Honorable Terry Hatter, Jr.
Plaintiff's counsel: John Q. Adams, Esq.
Address: 1421 N. Wanda Road, #180
Orange, CA 92867
Phone: (714) 639-8233

Case: This matter was a two-week jury trial in Federal Court and involved the allegations that my client, the airline, wrongfully terminated a 20-year employee who was a baggage handler for allegedly stealing a musical instrument from the baggage area under his control. The plaintiff denied the theft and his termination was retaliation for union activities and denied the theft. Although the jury found in favor of the Plaintiff, after relevant motions and appeal, the matter settled for under $200,000 with no punitive damages.
Chief Counsel for Air France.

(9) Civil Service Commission of the County of San Diego v. Superior Court - 1984
California Court of Appeal, Fourth Appellate District
163 Cal.App.3rd 70
H. Wiener, Presiding; Work, Butler concurring
Respondent: Lloyd Harmon for the County of San Diego, Real Party in Interest
Address and phone of Lloyd Harmon unknown.

Case: This reported decision before the California State 4th District Court of Appeal involved the defense of the Civil Service Commission for a decision that was appealed by the Board of Supervisors because of the reinstatement of certain employees. The issue, however, was whether the County Counsel office that represented the Board could have a member of that office represent the Civil Service Commission, an agency under the Board, at the same time and giving advice on the same case when the Commission and Board were adversaries. The Appeals Court ruled in favor of the Commission and set forth the conflict of interest standard to be applied by State Government attorneys.
Chief Counsel for Civil Service Commission.

(10) USA v. Norman Schwartz, Richard Dickson, Brian Rand - 1980
U.S. District Court, Southern District of California Case No. 80-0171-T
Jury trial
Judge: Honorable Howard Turrentine
Defense counsel: Sam J. Cerniglia, Esq.
Address: Ashley Brady and Cerniglia
7851 Mission Center, Ste. 10
San Diego, CA 92106
Phone: (619) 293-7051
Fred U. Hammett, Jr., Esq.
Address: 2359 Fourth Avenue, Ste. 215
San Diego, CA 92101
Phone: (619) 234-4900
Frank J. Ragen, II, Esq.
Address; 108 Ivy Street
San Diego, CA 92101
Phone: (619) 231-4330

Case: This Federal Court matter was prosecuted when I was the U.S. Attorney. It was alleged that the defendants committed mail fraud by fraudulently accepting investments in limited partnerships for the purchase of land to be held or sold for profit. The case culminated in a three-week jury trial. There were approximately seventy investors, many of whom were Vietnam veterans. Defendants employed a form of Ponzi scheme to defraud the investors. All three defendants were convicted by the jury. Chief Counsel for the U.S. Government.

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

USA v. Charles Keating – 1993. I represented accountants from a national accounting firm who were classified as subjects in the case. My clients were appearing and testifying twice a week for 8 months before the Federal Grand Jury. While Mr. Keating and his savings and loan company were indicted, no charges were brought against my clients.

USA v. National Health Labs Inc. - 1992, Criminal No. 92-1646-G. Case involved an investigation and year-long negotiation with the U.S. Attorney's Office in a (successful) effort to avoid debarment of a New York Stock Exchange Company and settle a related Government civil suit for payment of over 100 million dollars. The Government criminal and civil matters were settled in 1992, but was immediately followed by Bruce G. Murphy v. National Health Labs Inc., San Diego Superior Court Case 659511, a related civil class action and Derivative Security Lawsuit involving the same allegations as were made in the criminal

case. Extensive discovery and motions lasted three years before the case settled in 1995. The stakes were so high that settlement prior to trial in this case was prudent.

Roy Carver - from 1994 to 1996. I represented the former President of a savings and loan. The savings and loan had been taken over by the FDIC and my client was under investigation for fraud. After a year of periodic negotiations with and presentations to the U.S. Attorneys' Office, all of which hinged on extensive bank and real estate documentation, the U.S. Attorney ultimately declined to prosecute.

Coastal Equities – 1982 to 1990. I was appointed by the Bankruptcy Court in the Southern District of California to act as trustee in a real estate investment firm that was in a Chapter 11 bankruptcy. The company had over 200 investors in fractionalized trust deeds and 60 limited partnerships with an alleged value of $60 million. It took over eight years to close the estate. I undertook an investigation of the principals, leading to a prison term for the former president and vice president. With the help of a manager and bankruptcy counsel I hired, I was responsible for operating the company until I was able to find a buyer for a sale of the property for $30 million, returning a percentage to the investors. The legal work was substantial but, as noted above, it also involved actively running a real estate business.

ACI-HDT Supply Company dba Amtel Corporation - 1996, Case No. 95-08253-A11. In 1996, I was appointed an examiner by the U.S. Trustee for the Southern District of California to locate assets of the company that was in Chapter 11 bankruptcy. With the help of an accounting firm, I was able to discover a Ponzi scheme that had led to large losses to investors. My report reflecting the violation of Federal law was referred to the U.S. Attorney's Office and the principals were prosecuted and convicted of criminal violations.

Internal Investigation - 1994. During the summer months of 1994, I conducted an internal investigation of a national company with foreign facilities to determine whether customs laws were violated, violation of which could preclude the company's sale or transfer of its products. The investigation entailed travel to, and investigation at, the company's foreign facility.

Tom Coldicutt, et al., v. Burnett Grey, et al. and related cross-action - 1996, U.S. District Court, Southern District of California Case No. 95-3965-BTM(CGA), civil RICO matter. In this case, Coldicutt had sued a number of persons in a State court fraud action, one of whom filed a RICO cross-complaint. I substituted in as attorney for Coldicutt at this point and removed the case to Federal Court. After briefing the legal issues and moving for dismissal, the District Court Judge dismissed the RICO claims and the case settled.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   a) 401(k) Plan.

   b) San Diego County Employees Retirement Association. I have no other anticipated receipts from deferred income arrangements, stock, stock options, uncompleted contracts and other future benefits which I expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. If appointed, I would withdraw the deferred money from the San Diego County Employees Retirement Association and my 401(k) Plan and roll the money into an IRA.

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

   a) I will resign all interest in my law firm and receive no deferred compensation or otherwise.

   b) I would recuse hearing matters on cases where my former law firm is the firm of record for a reasonable period of time and, in all cases, where the case was of record in the firm when I was a partner.

   c) I would recuse myself from hearing any case where a former client is a party to the case.

   d) I will resign from all memberships in committees or organizations that constitute a conflict.

   e) If I should have a matter assigned where I believe for any reason there may be a perceived conflict, even if not an actual conflict, I would bring the matter to the attention of counsel and recuse myself, if necessary.

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

   No.

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

   Financial Disclosure Report—Schedules attached.

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

   Financial Net Worth—Schedules attached.

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

   Chairman, Re-Election Committee for Ed Miller, San Diego County District Attorney, 1994

   Treasurer, Re-Election Campaign for Ed Miller, San Diego County District Attorney, 1990

AO-10 (w)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
LORENZ, MYRON J.	U.S. District Court California, Southern	03/11/1999

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check type)	6. Reporting Period
US District Judge - Nominee	X Nomination, Date 03/08/1999 Initial Annual Final	01/01/1998 to 02/28/1999

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.
LORENZ ALHADEFF CANNON & ROSE 550 WEST "C" STREET, STE 1900 SAN DIEGO, CA 92101-3540	Reviewing Officer _____ Date _____

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

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

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	GENERAL PARTNER	LORENZ ALHADEFF CANNON & ROSE, LLP
2	TRUSTEE	LORENZ FAMILY TRUST
3	TRUSTEE	CALIFORNIA WESTERN SCHOOL OF LAW

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

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	02/01/93	LORENZ ALHADEFF CANNON & ROSE, LLP PARTNERSHIP AGREEMENT, TERMINATION AMOUNT UNDETERMINED
2	01/01/97	LORENZ ALHADEFF CANNON & ROSE, LLP 401(k) RETIREMENT PLAN, NO DIRECT CONTROL. 401(k) PLAN REPLACED PREVIOUSLY EXISTING KEOGH PLAN.
3		

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

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours; not spouse's)
1	12/31/98	LORENZ ALHADEFF CANNON & ROSE, LLP--DISTRIBUTIVE SHARE OF PARTNERSHIP INCOME	$ 219,587.00
2	02/28/99	LORENZ ALHADEFF CANNON & ROSE, LLP--ESTIMATED DISTRIBUTIVE SHARE OF PARTNERSHIP INCOME TO DATE	$ 36,600.00
3			
4			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	LORENZ, MYRON J.	03/11/1999

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	EXEMPT		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
1	CHASE MANHATTAN MORTGAGE CORPORATION (J)	MORTAGE ON VACATION HOME, 435 LAKEVIEW BLVD., MAMMOTH LAKES, CA 93546 (PT VII, LINE 1)	M
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
LORENZ, MYRON J.	03/11/1999

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions.)									
1 VACATION HOME-MAMMOTH LAKES, CA (1984 $155,200) (J)	A	Rent	M	R	EXEMPT				
2 UNIMPROVED LOT ADJACENT TO PERSONAL RESIDENCE (J)		None	N	W	EXEMPT				
3 SAN DIEGO COUNTY CREDIT UNION a/c #00155360615 (J)	A	Interest	J	T	EXEMPT				
4 SCRIPPS BANK a/c #331346146 (J)	C	Interest	M	T	EXEMPT				
5 WELLS FARGO BANK a/c #0650316292 (J)	A	Interest	J	T	EXEMPT				
6 CHASE VISTA TAX FREE MONEY MKT a/c #CL8-130044 (J)	C	Interest	L	T	EXEMPT				
7 AIM CHARTER FUND A (J)	B	Dividend	L	T	EXEMPT				
8 AIM VALUE FUND B (J)	B	Dividend	K	T	EXEMPT				
9 AIM WEINGARTEN FUND A (J)	C	Dividend	L	T	EXEMPT				
10 MSDW SELECT TEN INDUSTRIAL TRUST 99-1 (J)	A	Dividend	K	T	EXEMPT				
11 MFS EMERGING GROWTH FUND B (J)	A	Dividend	J	T	EXEMPT				
12 MSDW DIVIDEND GROWTH FND B (J)	C	Dividend	K	T	EXEMPT				
13 MSDW EUROPEAN GROWTH FND B (J)	C	Dividend	K	T	EXEMPT				
14 MSDW PRIME INCOME TRUST (J)	C	Dividend	K	T	EXEMPT				
15 MSDW ACTIVE ASSETS TRUST (J)	A	Dividend	J	T	EXEMPT				
16 SELIGMAN COMM & INFO FUND (J)	A	Dividend	K	T	EXEMPT				
17 VAN KAMPEN PRIME RATE INCOME TRUST (J)	B	Dividend	K	T	EXEMPT				

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: LORENZ, MYRON J.

Date of Report: 03/11/1999

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. 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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
18 TRANSAMERICA INDIV RETIREMENT ANNUITY		None	K	T	EXEMPT				
19 SAN DIEGO COUNTY EMPLOYEES' RETIREMENT ASSN.		None	L	T	EXEMPT				
20 MSDW LIQUID ASSET FUND HELD IN NOMINEE'S IRA	A	Dividend	J	T	EXEMPT				
21 FNMA 1994-43 G 6.5% HELD IN NOMINEE'S IRA	C	Dividend	L	T	EXEMPT				
22 MSDW EUROPEAN GROWTH FUND B HELD IN NOMINEE'S IRA	B	Dividend	K	T	EXEMPT				
23 MSDW AMERICAN VALUE FUND B HELD IN NOMINEE'S IRA	A	Dividend	J	T	EXEMPT				
24 TWENTIETH CENTURY ULTRA FUND HELD IN NOMINEE'S 401(k) PLAN	C	Dividend	L	T	EXEMPT				
25 AMERICAN WASHINGTON MUTUAL FND HELD IN NOMINEE'S 401(k) PLAN	C	Dividend	L	T	EXEMPT				
26 MSDW LIQUID ASSET FUND HELD IN SPOUSE'S IRA (S)	A	Dividend	J	T	EXEMPT				
27 FNMA REMIC TR 1993 6.75% HELD IN SPOUSE'S IRA (S)	B	Dividend	K	T	EXEMPT				
28									
29									
30									
31									
32									
33									
34									

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	LORENZ, MYRON J.	03/11/1999

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	LORENZ, MYRON J.	03/11/1999

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	MEMBER	BOARD OF ADVISORS OF UNIVERSITY OF SAN DIEGO PARA LEGAL PROGRAM
5	MEMBER	BOARD OF ADVISORS OF MARINE CORPS RECRUIT DEPOT MUSEUM & HISTORICAL SOCIETY

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	LORENZ, MYRON J.	03/11/1999

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Myron J. Lorenz Date 3/12/99

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

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

GARY L. BARNES & CO.
Certified Public Accountant

MEMBER:
American Institute of CPA's
California Society of CPA's

1792 Circo del Cielo Drive
El Cajon, CA 92020-8109
(619) 233-7469
FAX (619) 233-7444

ACCOUNTANT'S COMPILATION REPORT

M. James Lorenz and
Marcia A. Lorenz
San Diego, California

We have compiled the accompanying personal financial statement of M. James and Marcia A. Lorenz as of February 28, 1999, in the accompanying prescribed form, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.

Our compilation was limited to presenting in the form prescribed by the United States Senate Judiciary Committee information that is the representation of M. James and Marcia A. Lorenz. We have not audited or reviewed the financial statement referred to above and, accordingly, do not express an opinion or any other form of assurance on it.

This financial statement is intended to present the assets of M. James and Marcia A. Lorenz at estimated current values and their liabilities at estimated current amounts.

This financial statement is presented in accordance with the requirements of the United States Senate Judiciary Committee, which differ from generally accepted accounting principles. Accordingly, it is not designed for those who are not informed about such differences.

Gary L. Barnes & Co.

March 11, 1999

M. JAMES LORENZ AND

MARCIA A. LORENZ

FINANCIAL STATEMENT

NET WORTH

AS OF FEBRUARY 28, 1999

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 -Sched 1	199493	Notes payable to banks–secured	
U.S. Government securities–add schedule		Notes payable to banks–unsecured	
Listed securities–add schedule -Sched 2	297026	Notes payable to relatives	
Unlisted securities–add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due H/H a/c's	2000
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable–add schedule Schedule 6	366840
Real estate owned–add schedule Schedule 3	1,000000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts–itemize:	
Autos and other personal property -Sched4	60000	H/O's Assn Dues	
Cash value–life insurance	17270	Mammoth Condo	4468
Other assets–itemize:			
Schedule 5	428551		
		Total liabilities–Rounded	373300
		Net Worth	1,628700
Total Assets -Rounded	2,002000	Total liabilities and net worth	2,002000
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	NONE	Are any assets pledged? (Add schedule.)	No
On leases or contracts	Schedule 7	Are you defendant in any suits or legal actions?	Schedule 8
Legal Claims	Schedule 8	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	NONE		
Other special debt	NONE		

SUPPLEMENTAL INFORMATION

M. JAMES AND MARCIA A. LORENZ

SUPPLEMENTAL SCHEDULES TO
PERSONAL FINANCIAL STATEMENT
AS OF FEBRUARY 28, 1999

Schedule 1--Cash Accounts:

Scripps Bank	$116,200
San Diego County CU	1,557
Wells Fargo Bank	2,000
Chase Vista Tax Free MM	79,736
Total cash accounts	$199,493

Schedule 2--Listed Securities:

3,322 Shs AIM Charter Fund A	$ 50,192
470 Shs AIM Value Fund B	19,073
2,044 Shs AIM Weingarten Fund A	54,145
1,711 Uts MSDW Select Ten Indus Trust	15,796
309 Shs MFS Emerging Growth Fund B	13,113
800 Shs MSDW Dividend Growth Fund B	48,145
1,210 Shs MSDW European Growth Fund B	23,385
3,272 Shs MSDW Prime Income Trust	32,390
588 Shs Seligman Comm & Info Fund	16,947
2,401 Shs VK Amer Cap Prime Rate Inc Trust	23,840
Total listed securities	$297,026

Schedule 3--Real Estate:

Personal Residence, Del Mar, CA	$ 550,000
Adjoining 1.14 Acre Lot	300,000
Condominium, Mammoth Lakes, CA	150,000
Total real estate	$1,000,000

Schedule 4--Autos & Other Pers Prop:

1996 Mercedes-Benz 320E	$35,000
1985 BMW	5,000
Household Furniture, Furnishings, Appliances	20,000
Total autos & other personal property	$60,000

SEE ACCOUNTANT'S COMPILIATION REPORT

SUPPLEMENTAL INFORMATION

M. JAMES AND MARCIA A. LORENZ

SUPPLEMENTAL SCHEDULES TO
PERSONAL FINANCIAL STATEMENT
AS OF FEBRUARY 28, 1999

Schedule 5--Other Assets:

M. James Lorenz:	
Transamerica Indiv Retirement Annuity	$ 48,762
San Diego County Employees' Retire Ass'n	78,123
Individual Retirement Account	95,573
Lorenz Alhadeff Section 401(k) Plan	175,882
Marcia A. Lorenz:	
Individual Retirement Account	30,211
Total other assets	$428,551

Schedule 6--Real Estate Mortgages:

Mtg on Personal Residence; Countrywide Home Loans	$259,840
Mtg on Mammoth Condo; Chase Manhattan Mtg Corp	107,000
Total real estate mortgages	$366,840

Schedule 7--Contingent Liability:

Nominee is contingently liable on an office space lease in his capacity as a partner in Lorenz Alhadeff Cannon & Rose, LLP. Said contingent liability will be absolved via renegotiation of the lease agreement and/or the partnership agreement upon his withdrawal from the partnership.

Schedule 8--Defendant in Legal Actions/Legal Claims:

Nominee is a codefendant in pending legal actions and may be named in subsequent legal claims in his capacity as a partner in Lorenz Alhadeff Cannon & Rose, LLP ("the firm").

Pending legal actions are being defended by the firm's insurance carrier under it's errors and ommissions policy which policy provides sufficient coverage to protect nominee against personal liability.

Nominee will acquire tail insurance to provide protection against personal liability with respect to legal claims that may be brought against the firm subsequent to his withdrawal from the partnership.

SEE ACCOUNTANT'S COMPILATION REPORT

III. GENERAL (PUBLIC)

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

Chairman of Blue Ribbon Commission to Study Indigent Defense Services. In 1985, San Diego County provided legal services to the indigent with funds for counsel through a contract system. It appeared this system was not providing adequate representation as groups that bid the lowest received the contract. The indigent competed with the attorney's paying clients for services, receiving less attention. This appeared to cause a standard of care that fell below the attorneys' ethics obligation. For approximately one year, members of the Commission and I held hearings and undertook interviews to compile information for a report that was drafted by an assigned director and presented to the County Board of Supervisors. The report recommended eliminating the contract system and the result is the present public defender system. I spent about 100 pro-bono hours over a year's period.

As Chairman and former President of the San Diego Crime Commission, I have spent considerable time with staff helping develop programs that include educating senior citizens at senior citizen centers on how to protect themselves from becoming a victim of crimes that target seniors. Many hours have been dedicated to the Commission with approximately 80 hours over the last few years specifically related to educational programs.

Thomas M. Thompson case. I was one of six former prosecutors who support the death penalty that joined in the Brief of Amici Curiae to the U.S. Supreme Court in support of the Petition of Thomas M. Thompson for Consideration of the Issuance of a Writ of Certiorari based on the specific and unusually troubling facts of this case. This was done on a pro bono basis after other former prosecutors asked me to review the facts in this case.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I do not currently nor have I belonged to any organization that discriminates except my undergraduate college fraternity that, at the time, did not accept women, 1954-1957.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to**

end (including the circumstances which led to your nomination and interviews in which you participated).

Senator Boxer's San Diego Judicial Screening Committee consisting of 12 members recommended my nomination. I was first requested to complete an application that included the request for background information, legal experience and references. A form was sent to all parties listed as references and those of opposing attorneys and judges involved in my cases who rated my performance. Subsequent to return of the forms, I attended an interview along with the other candidates. My name was forwarded to the Senator. I do not know what other names, if any, were forwarded for consideration. Subsequent to my nomination by Senator Boxer to the President, I was interviewed by a representative of the Department of Justice, Federal Bureau of Investigation and American Bar Association.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

   No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

   The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels government. Some of the characteristics of this "judicial activism" have been said to include:

   a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

   b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

   c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

   d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

   e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

Response:

The power granted to an Article III Judge is limited and must be exercised with restraint and respect for the system. It is clearly improper to exercise the court's authority to further a social agenda. The Legislative Branch, both in the state and federal systems, enact the laws. The courts interpret the laws, but do so only to resolve the case before them. The doctrine of ripeness, standing and respect for jurisdictional requirements further restrain the scope of judicial review. Federal courts must exercise judicial restraint where possible. Case loads are expanding, at least in the Southern District of California, and the resolution of the issues presented in each case in accordance with the constitution, statutory enactments and precedent is the primary responsibility of the court. Solving the broader problems of society lies with a legislative body.

SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Barbara Michele (nee Golden) Lynn

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

Residence:
Dallas, Texas

Office address:
200 Crescent Court, #1500
Dallas, TX 75201

3. Date and place of birth.

9/19/52, Binghamton, NY

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

Michael Paige Lynn, attorney. Employed by Michael P. Lynn, P.C., which is a partner in Lynn, Stodghill, Melsheimer & Tillotson, L.L.P., at 750 North St. Paul, 14th Floor, Dallas, TX 75201.

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

Miami Dade Community College North, Summer 1971 (took three courses).
University of Virginia, 1970-73, B.A. with highest distinction, received June 3, 1973.
Southern Methodist University School of Law, 1973-76, J.D., summa cum laude, received May 16, 1976.

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

Dade County (Miami, Florida) Clerk of Court, summer 1973 (summer intern).

Carrington, Coleman, Sloman & Blumenthal, L.L.P. (law clerk summer 1974, and one-half summer 1975, full time associate 1976-82; partner 1983-date; firm was formerly known as Carrington, Coleman, Sloman & Blumenthal and Carrington, Coleman, Sloman, Johnson & Blumenthal).

Law Offices of Windle Turley (law clerk; I believe this was the fall of 1974).

Coke & Coke (law clerk, one-half summer of 1975).

Turner, Rodgers, Sailers, Jordan & Calloway (law clerk; I believe this was the fall of 1975 to spring 1976).

I was on the board or an officer of the following bar and community organizations, all as an unpaid volunteer:

American Jewish Congress (since 1983).

Dallas Bar Association (since 1976).

Dallas Association of Young Lawyers (since 1976).

Dallas Association of Defense Counsel (1995-97).

American Bar Association Section of Litigation (since 1976).

Attack Soccer Club (approximately 1995-96).

Committee for a Qualified Judiciary (since approximately 1986).

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

No.

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

Echols Scholar, University of Virginia. Outstanding Graduate in American History (University of Virginia). Partial scholarship to SMU Law School. Graduated first in my class in law school. Ranked second on Texas Bar examination. Phi Beta Kappa. Order of the Coif. Member, Barristers. Fellow, American College of Trial Lawyers. Fellow, American Bar Foundation. Fellow, Texas Bar Foundation. Fellow, Dallas Bar Foundation. Research Fellow, Southwestern Legal Foundation. First recipient of Louise Raggio Award for distinguished service by a Dallas female attorney. Recognized by *National Law Journal* as one of the fifty most influential women attorneys in U.S. (1998). Listed as one of the Best Lawyers in America in Business

Litigation since 1994. Outstanding Young Women of America. "AV" rating in *Martindale Hubbell.* Recognized by SMU Law School as outstanding alumnus (private practice) 1999.

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

Dallas Bar Association: Board member 1985 and 1987-88; Secretary-Treasurer 1986.

Dallas Association of Young Lawyers: President 1985; President-Elect 1984; Vice-President 1983; Treasurer 1982; board member 1978-86.

State Bar of Texas: member since 1976.

Dallas Association of Defense Counsel: President 1997; Vice President 1996; Treasurer 1995.

American Bar Association Section of Litigation: Chair 1998-99; Chair-Elect 1997-98; Vice-Chair 1996-97; member of Council 1993-96; Director of Divisions 1992-93.

Committee for a Qualified Judiciary: Evaluation Committee Chair and Vice President 1992-95; member of board since 1992.

Texas Association of Defense Counsel.

Texas Association of Mexican Academy of International Law.

American Bar Foundation.

Texas Bar Foundation.

Dallas Bar Foundation.

Southwestern Legal Foundation.

American College of Trial Lawyers.

Judge Patrick E. Higginbotham Inn of Court.

NITA Advocates.

Dallas Women Lawyers Association.

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

Of the organizations of which I am a member, I am familiar with the fact that two are engaged in lobbying:

1. **American Jewish Congress.**

2. **American Bar Association.**

I am now a member of the following other organizations, but I am not familiar with their lobbying activities. (Note that I am listing organizations I consider membership organizations, not organizations to which I may have made a contribution, but which may, for their internal purposes, count those who make such contributions as members {*e.g.*, Consumer Union}).

Phi Beta Kappa
American Rivers
Crescent Club
Contemporary Museum of Art (Ft. Worth)
Dallas Arboretum
Dallas Association of Women Lawyers
Dallas Childrens Theatre
Dallas Forum
Dallas Memorial Center for Holocaust Studies
Dallas Museum of Art
Dallas Museum of Natural History
Dallas Zoological Society
Hadassah
Holocaust Museum (Washington, DC)
KERA Channel 13 (public television)
Kimbell Museum of Art
League of Women Voters
Member of Dallas County Community College Procedures Hearing Panel
National Parks Association
National Wildlife Federation
Planned Parenthood
Rails to Trails Conservancy
Simon Wiesenthal Center
SMU Alumni Association
SMU Law School Executive Board
Southern Poverty Law Center
Temple Emanu-El
University of Virginia Alumni Association
Uptown Athletic Club
YMCA

YWCA

Through my daughters, I have been affiliated with the Bluestreaks, Genesis, Attack and Solar soccer clubs.

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

United States District Court for the Northern District of Texas: 10/29/76.
United States District Court for the Eastern District of Texas: 07/30/86.
United States District Court for the Western District of Texas: 02/22/83.
United States District Court for the Southern District of Texas: 03/29/91.
United States Court of Appeals for the Fifth Circuit: 10/28/81.
United States Court of Appeals for the Eleventh Circuit: 10/28/81.
United States Supreme Court: 01/20/87.
Supreme Court of the State of Texas: 10/29/76.

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

I have kept a comprehensive list of my writings since 1989. I have given continuing legal education lectures since a few years after my graduation from law school in 1976, but I do not have a listing of those prior to 1989.

The Occupational Safety & Health Act of 1970: Its Role in Civil Litigation; 28 ***Southwestern Law Journal*** 999 (1974).

Note, Discovery of Experts' Reports in Texas, 28 ***Southwestern Law Journal*** 617 (1974).

Experts in Probate Litigation (South Texas College of Law, 1989).

Fraud and Related Claims (for the University of Houston Law Center Advanced Business Litigation course, 1990) — paper only.

The Hearsay Rule and Its Exceptions (for the University of Houston Law Center, 1990-1993); papers located only for 1990-92.

Hearsay Seminar (Collin County Bar Association, May 1991).

Litigation Against Bank Trust Departments, Suing and Defending Banks: Theories and Tactics For The 1990's (for the American Bar Association, Section of Litigation, 1991, 1992, and 1993).

Texas Discovery (The Rutter Group, approximately 1992); discussion only — no paper and no record of discussion.

Conflicts of Interest Involving Bank Trust Departments (The Review of Banking & Financial Services, Vol. 8, No. 21, December 9, 1992).

Using the Expert Witness (Advanced Probate Seminar, approximately 1992); paper not located.

Preparing for and Taking a Non-Expert Deposition (ABA Litigation Section, Satellite Seminar, 1993).

Bankruptcy's Black Hole: How to Rescue Your Case from the Clutches of Bankruptcy Court (ABA Annual Meeting, August 1993).

Will Contests (for the Wills & Probate Institute, University of Houston Law Foundation, 1993 and 1994).

The Woman Advocate: Preparing for Oral Argument (ABA Litigation Section, 1994); speech only — no paper.

Litigation and Trial Tactics, Presentation of the Case: Defendant's Perspective (for the University of Houston Law Center, July 1994).

Taking and Defending Depositions (Baylor Litigation Institute, September 1994).

Participant in *Deposition Panel* (Women in Litigation Symposium, November 11, 1994); no paper.

Federal Practice 1994 (The Rutter Group, November 15, 1994); speech only — no paper.

Effective Oral Argument (DWLA Luncheon, February 2, 1995); speech only — no paper.

A Guide to the Basics of Law Practice (for Texas Wesleyan University School of Law; sponsored by The Texas Center for Legal Ethics and Professionalism, March 4, 1995); speech only — no paper.

Evidentiary Problems in Will Contests and Fiduciary Litigation (for the 34th Annual Institute on Wills and Probate; sponsored by The Southwestern Legal Foundation's Wills and Probate Institute, May 5, 1995).

Evidence Tactics in Personal Injury Cases (for the State Bar of Texas, February 28, 1996); outline only.

Discovery Practice Conference: Discovery in a New Age (for the South Texas College of Law, November 7, 1996).

Discovery: Opportunities & Obstacles (for the Ninth Baylor Litigation Institute, February 14, 1997).

Participant in Trial Demonstration: *Cross-Examining the Plaintiff in a Sexual Harassment Case* (Woman Advocate Conferences, February 27-28, 1997 and March 20-21, 1997); speech only — no paper.

The Professional at Risk - Avoiding Professional Malpractice in an Estate Planning Practice (for the Estate Planning Council of North Texas, March 19, 1997).

Crafting the Pre-trial Discovery Order -- When to Propose it, What to Put in it, How to Negotiate it (Second Annual Evidence and Discovery Symposium sponsored by the University of Texas, April 3, 1997).

Defense Perspective - Daubert and Robinson Hearing Demonstration (for the South Texas College of Law in Houston, April 24-25, 1997); speech only — no paper.

The Art, Technique, Strategy and Execution of Effective Cross-Examination (Dallas Bar Association One-Day Litigation Super Seminar, September 12, 1997).

Panelist on Conflicts and Ethical Issues for Dallas Association of Defense Counsel, September 29, 1997; speech only — no paper.

CBS/Jury Trial Project (for the American Bar Association Environmental Litigation Committee, Colorado, January 22, 1998); speech only — no paper.

The General Counsel's Forum (for the American Bar Association Corporate Counsel seminar, February 13, 1998); speech only — no paper.

The Attorney as Player in Patent Litigation: What's Protectable and What's Not? (for the State Bar of Texas Advanced Intellectual Property Course, July 23, 1998).

Defending Sexual Harassment Cases -- Investigation Through Trial (Labor and Employment Law Seminar, sponsored by The Southwestern Legal Foundation, October 1, 1998).

Co-author, *Requests for Admissions in Business & Commercial Litigation in Federal Courts* (West 1998).

A Diverse Array of Issues Will Affect Trial Practitioners, The National Law Journal, Volume 20, No. 49.

The Way We Were?, Litigation, Summer 1998, Volume 24, No. 24.

***Stand Firm at the Barricade*, Litigation, Fall 1998, Volume 25, No. 1.**

***The Road Less Traveled*, Litigation, Winter 1999, Volume 25, No. 2.**

***Stand Up and Be Counted*, to be published in Litigation, Spring 1999.**

***Timing and Method of Trying the Case*, Chapter 4 of prospective book on federal practice.**

***Catch Our Web Site*, Litigation Docket, Fall 1998.**

***Mentoring, Economics and Bar Work*, Litigation Docket, Winter 1998.**

***Legal Education — Why Not for Everybody?*, Litigation Docket, Spring 1999.**

I was a member of the Northern District of Texas Advisory Committee from 1995-97. Although I did not draft the reports, the Committee as a whole issued two reports (attached).

In connection with my work in the Section of Litigation, a report was issued by the Task Force on the Civil Justice Reform Act, of which I was a member. A copy is attached (my role was assisting in assembling data).

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

Excellent; February 10, 1999.

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, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

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

None.

17. Legal Career:

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

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

I never served as a law clerk to a judge.

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

I never practiced alone.

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

Carrington, Coleman, Sloman & Blumenthal, L.L.P. 1976-present (firm formerly called Carrington, Coleman, Sloman, Johnson & Blumenthal, and Carrington, Coleman, Sloman & Blumenthal). I was an associate from the time I joined the firm in 1976 until January 1, 1983, when I became a partner, which I have been ever since. The firm was at 3000 One Main Place, Dallas, TX 75201 from 1976-80, at 2500 South Tower, Plaza of the Americas, Dallas, TX 75201 from 1980-86, and at 200 Crescent Court, Suite 1500, Dallas, TX 75201 from 1986-date.

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

Since 1976, I have been engaged in general commercial litigation, primarily representing defendants. During the 1990s, a substantial part of my practice has focused on the defense of labor and employment matters.

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

I have defended many Dallas law firms in cases of legal malpractice or discrimination, Dell Corporation in an employment related matter, Amtech Corporation (now known as Custom Tracks Corporation) in various employment related matters, Pillowtex Corporation and Tecnol Medical Products in patent litigations and

various individuals in will contests, and trusts and small business disputes.

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

I appear in court frequently.

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

My appearances are about 50% in federal court and 50% in state court.

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

My litigation is 99.9% civil, .1% criminal.

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

I have tried roughly 20 cases to verdict or judgment. I was sole counsel in six, chief or equal counsel in nine, and associate counsel in five.

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

75% of the trials were jury and 25% were non-jury.

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

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and

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

My client is starred in the following cases:

1. *California Medical Products, Inc. v. Tecnol Medical Products, Inc.* (*)

Civil Action No. 91-620 (LON), in the United States District Court for the District of Delaware (Chief Judge Joseph Longobardi, (now senior status), U.S. District Court for the District of Delaware, 844 King Street, Wilmington, DE 19801; Telephone: 302/573-6151). Claim of patent infringement. Tried in December 1994.

Co-Counsel: Donald F. Parsons, Jr., Morris, Nichols, Arsht & Tunnell, 1201 N. Market Street, P. O. Box 1347, Wilmington, DE 19899; Telephone: 302/575-7274.

Opposing Counsel: Albert J. Breneisen, Kenyon & Kenyon, One Broadway, New York, New York 10004; Telephone: 212/429-1776. Frank Pietrantonio, Kenyon & Kenyon, 1025 Connecticut Avenue, Washington, DC 20036; Telephone: 202/429-1776. Josy W. Ingersoll, Young, Conaway, Stargatt & Taylor, 11th Floor, Rodney Square North, Wilmington, DE 19801; Telephone: 302/571-6600.

Our client, Tecnol Medical Products, manufactured a cervical collar, which was used to immobilize the neck of an injured patient. California Medical claimed that the collar infringed its patent. This case, the first patent suit I tried, involved very substantial claims of money damages, and a request for injunctive relief. After a lengthy trial, the Court interpreted the claims and found that our client's product did not infringe.

2. *Pam Bowers v. Baylor University* (*), *David Guinn* (*), *and Richard Ellis* (*)

Civil Action No. W-94-CA-154, in the United States District Court for the Western District of Texas, Waco Division (Judge Walter S. Smith, Jr., 800 Franklin Avenue, Waco, TX 76703; Telephone: 254/757-5078). Claims under Title IX and Title VII by womens' basketball coach. Claim settled at mediation prior to trial in 1995.

Co-Counsel: Jane Makela, Carrington, Coleman, Sloman & Blumenthal, L.L.P., 200 Crescent Court, Suite 1500, Dallas, TX 75201; 214/855-3026. Roy L. Barrett and Stuart Smith, Naman, Howell, Smith & Lee, 900 Washington Street, 700 Texas Center, Waco, TX 76701; Telephone: 254/755-4100.

Opposing Counsel: LaNelle McNamara, McNamara & McNamara, 501 Franklin Avenue, Suite 500, Waco, TX 76701; Telephone: 254/754-5456. Diane M. Henson, Law Firm of Diane M. Henson, Suite C, 710 W. 14th Street, Austin, TX 78701-1798; Telephone: 512/476-1984.

In this action, the women's basketball coach at Baylor University sued, claiming that she and the women's program had been discriminated against in violation of Title IX and Title VII. She also sought injunctive relief to prevent her discharge. The initial complaint asserted claims against four individuals, two of whom were dismissed upon motion. Injunctive relief was denied. Prior to the settlement, extensive briefing was done on the scope of Title IX and the coach's standing to assert discrimination claims thereunder.

3. *NCNB Texas National Bank v. J.B. Rogers, Individually and as Trustee of the J.B. Rogers Revocable Trust* (*)

Principal case was Cause No. 88-3724-J, in the 191st Judicial District Court, Dallas County, Texas (Judge David Brooks, now of counsel to Dugan and Rasure, 900 Main Ave., Suite A, Durango, CO 81301; Telephone: 970/259-1770). Representation of the principal defendant in a variety of claims in multiple courts, including two mandamus applications to the Eleventh Circuit (one granted). Cases involved allegations of fraudulent transfer and to collect multi-million dollar debt, which were ultimately settled in 1992.

Co-Counsel: James A. Pardo, Jr., King & Spalding, 191 Peachtree Street, 49th Floor, Atlanta, GA 30303-1763; Telephone: 404/572-4600. R. Todd Lang, Weil, Gotshal & Manges, 767 Fifth Avenue, New York, NY 10153; Telephone: 212/310-8000. John ("Jack") Scarola, Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, FL 33402; Telephone: 407/686-6300. Jack H. Simmons, Berman & Simmons, P.A., 129 Lisbon Street, Lewiston, ME 04240; Telephone: 207/784-3576.

Counsel for related party: Arnold Berman, Shutts & Bowen, The Esperante Building, 222 Lakeview Avenue, Suite 1000, West Palm Beach, FL 33401; Telephone: 407/650-8514. Phillip G. Newcomm, Shutts & Bowen, 1500 Miami Center, 201 South Biscayne Boulevard, Miami, FL 33131; Telephone: 305/358-6300.

Opposing Counsel: Thomas Kurth, Haynes and Boone, LLP, 901 Main Street, Suite 3100, Dallas, TX 75202-3714; Telephone: 214/651-5000.

Our client owed a substantial debt to a federally insured institution. He had made substantial conveyances of his personal assets to his wife. Those conveyances were challenged as alleged fraudulent transfers, and were defended as part of legitimate estate planning. The significant issues in the matter related to the interplay between estate planning and fraudulent transfers and the applicability of the attorney-client privilege in the context of an asserted crime fraud exception. That issue was the subject of the applications for a writ of mandamus.

4. *Irene Risser Miller, et al. v. W. C. Estes* (*), *S. R. Estes* (*), *O.M. Weaver* (*), *W.T. Moody* (*), *Buster Cole* (*), *James Rodgers* (*), *Gene Danner* (*), *et al.*

Cause No. not known, 336th Judicial District Court, Fannin County, Texas (Judge Ray F. Grisham, 101 E. Sam Rayburn, Suite 201, Bonham, TX 75418; Telephone: 903/813-4311). Complex litigation involving alleged breaches of fiduciary duty, fraud and conflicts of interest. Claims against my clients settled during trial. Case tried in approximately 1986.

Co-Counsel: Fletcher L. Yarbrough, Carrington, Coleman, Sloman & Blumenthal, L.L.P., 200 Crescent Court, Suite 1500, Dallas, TX 75201; 214/855-3025. James S. Moss, County Attorney, Room 301, 101 E. Sam Rayburn Drive, Bonham, TX 75418; Telephone: 903/583-7448.

Counsel for other defendants: Louis Bickel, Akin, Gump, Strauss, Hauer & Feld, L.L.P., 4100 First City Center, 1700 Pacific Avenue, Dallas, TX 75201-4618; Telephone: 214/969-2800. John L. Hauer (retired, in nursing home). Mike Byrd, Cohan, Simpson, Cowlishaw & Wulff, L.L.P., 2700 One Dallas Centre, 350 North St. Paul, Dallas, TX 75201-4207; Telephone: 214/754-0100. John Hall (retired; 3534 Caruth, Dallas, TX 75225; Telephone: 214/361-5941). David C. Turner, Jr., Turner, Meshan & Porter, L.L.P., 400 N. Center Street, Bonham, TX 75418-4393; Telephone 903/583-8569.

Opposing counsel: David M. Stagner, Stagner & Corley, 315 S. Crockett Street, Sherman, TX 75090; Telephone: 903/892-1048. Ben Krage, Krage & Janvey, Suite 2700, 2001

Bryan Tower, Dallas, TX 75201-3059; Telephone: 214/969-7500. Ed T. Smith, Smith & Butler, 120 E. Sam Rayburn Drive, Bonham, TX 75418; Telephone: 903/583-2195. Claude R. Miller (now deceased).

The company involved had borrowed money from the lender, which was also the trustee of family trusts which ultimately sold their shares back to the company, allegedly to the personal advantage of its principal stockholders (our clients). Various claims were also asserted against the board members (our clients) for mismanagement, corporate waste, failure to pay dividends, etc. We settled the claims against our clients during trial. The bank continued to defend, ultimately suffering a substantial verdict against it.

5. ***Fireman's Fund Insurance Company (*) v. Irving Savings Association***

Civil Action No. CA3-85-2582-D, in the United States District Court for the Northern District of Texas (Judge Sidney A. Fitzwater, 1100 Commerce Street, Room 15A3, Dallas, TX 75242; Telephone: 214/753-2333). Case tried in 1988. Verdict for Plaintiff Fireman's Fund in the amount of roughly $7,000,000.

Co-counsel: Robert A. Julian, Murphy Sheneman Julian & Rogers, 101 California Street, Suite 3900, San Francisco, CA 94111; Telephone: 415/398-4700.

Opposing counsel: Jeff Hurt and Ann Creighton (formerly Ann C. Kenney), Leonard Hurt Frost & Lilly, 600 North Pearl, Suite 900, Dallas, TX 75201; Telephone: 214/954-6300. Scott Schoenfeld, Jenkens & Gilchrist, Suite 600, 1919 Pennsylvania Avenue, N.W., Washington, DC 20006; Telephone: 202/326-1500.

This was a suit on a contract with defendant's officers who were later convicted of criminal offenses; defense of commercial bribery, and a RICO counterclaim, were asserted. The case was significant not only because of the amount claimed and recovered by our client, but also because of complex evidentiary issues relating to the admissibility of criminal convictions as a means of proving the alleged underlying facts.

6. ***Louisville Bedding Company, a Kentucky Corporation vs. Pillowtex Corporation, a Texas Corporation (*)***

Cause No. C-94-0722-L-S (Magistrate Judge James D. Moyer, Room 208, 601 West Broadway, Louisville, Kentucky 40202; 502/582-5928). This was a patent infringement case which settled at pre-trial conference in 1998.

Opposing Counsel: Hartwell P. Morse, III, Welsh & Katz, Ltd., 120 South Riverside Plaza, 22nd Floor, Chicago, IL 60606; Telephone: 312/655-1500. Janet P. Jakubowicz, Greenebaum Doll & McDonald PLLC, 3300 National City Tower, Louisville, KY 40202; Telephone: 502/589-4200.

Co-Counsel: B. Todd Thompson, Dinsmore & Shohl, LLP, 2000 Meidinger Tower, 462 S. 4th Ave., Louisville, KY 40202; Telephone: 502/585-2450.

This case involved a claim of patent infringement against my client, Pillowtex Corporation, in connection with the manufacture and sale of mattress pads. The plaintiff held a number of patents, as to some of which we obtained summary judgment on behalf of our client. The case involved issues of patent validity and infringement, including claims of alleged willful infringement for which multiple damages were sought. The case featured complex, highly technical information relating to the design and manufacture of bedding products and extremely large claimed damages.

7. *Ted Robbins v. Lewis A. Caldwell, Individually and as Trustee* (*)

Cause No. 94-00240-P, in the Probate Court, Dallas County, Texas (Judge Nikki DeShazo, 2nd floor, Records Building, 500 Main Street, Dallas, TX 75202; 214/653-7236). Probate contest; trial on whether plaintiff had standing to maintain suit. Case tried in 1994.

Co-Counsel: Diane M. Sumoski, Carrington, Coleman, Sloman & Blumenthal, L.L.P., 200 Crescent Court, Suite 1500, Dallas, TX 75201; Telephone: 214/855-3086. Theodore S. Lustig, Law Offices of Theodore S. Lustig, P.C., 13601 Preston Road, Suite 800E, Dallas, TX 75240-4911; Telephone: 972/960-1003.

Opposing Counsel: Harold Berman, 8333 Douglas Avenue, Suite 1200, Dallas, TX 75225; Telephone: 214/369-7779. (Later action by other parties brought by James J. Hartnett, and Jay David Hartnett, The Hartnett Law Firm, 4900 Thanksgiving Tower, 1601 Elm Street, Dallas, TX 75201; Telephone: 214/742-4655).

This matter involved a claimed challenge to a trust created by the decedent in favor of her caregiver, our client. After a trial on standing, it was determined that the plaintiff, the decedent's brother, did not have standing to sue and the case was dismissed. A separate action was brought later by persons with standing.

8. *Andrew J. Pilarcik v. Silicon Systems, Inc.* (*)

Civil Action No. 3:91-CV-1935-D, in the United States District Court for the Northern District of Texas (Judge Sidney A. Fitzwater, 1100 Commerce Street, Room 15A3, Dallas, TX 75242; 214/753-2333).

Tried in June 1993.

Co-Counsel: Diane M. Sumoski, Carrington, Coleman, Sloman & Blumenthal, L.L.P., 200 Crescent Court, Suite 1500, Dallas, TX 75201; 214/855-3086.

Opposing Counsel: Dan Hartsfield, Baker & Botts, L.L.P., 2001 Ross Avenue, 800 Trammell Crow Center, Dallas, TX 75201-2980; Telephone: 214/953-6500.

This case was brought by a former employee of Silicon, alleging breach of contract and fraud arising out of his termination as part of a reduction in force. This was one of my first labor and employment trials, and resulted in a defense victory denying the plaintiff any recovery.

9. *Cynthia A. Hogg v. Educational Testing Service of New Jersey and the College Entrance Examination Board* (*)

Cause No. 94-168-C, in the 68th Judicial District Court, Dallas County, Texas (Judge Gary Hall, George L. Allen, Sr. Courts Building, 600 Commerce Street, 3rd Floor, Dallas, TX 75202; 214/653-7536). Injunction to prevent cancellation of test scores commenced.

Co-Counsel: Bruce M. Berman, Wilmer, Cutler & Pickering, 2445 M Street, N.W., Washington, DC 20037-1435; Telephone: 202/663-6173. Philip L. Graham, Jr. and Henry (Terry) Christensen III, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004; Telephone: 212/558-4000.

Opposing Counsel: Ron White and Kevin Wiggins, White Hill Sims & Wiggins, L.L.P., 1999 Bryan Street, Suite 2300, Dallas, TX 75201; Telephone: 214/954-1700.

This case was brought by a student at Lincoln High School who sought to enjoin the testing services from canceling her test scores due to alleged irregularities in connection with the testing. The case received significant publicity, since the students in plaintiff's class had, as a group, received substantial increases in their test scores. The case settled in 1995.

10. ***Frederick Brodsky v. USMCT, Inc., Jackson Walker, LLP (*), Aaron Johnston, Jr. (*) and Sampson Joint Venture***

Cause No. 96-423-A, in the 14th Judicial District Court, Dallas County, Texas (Judge John Marshall, George L. Allen, Sr. Courts Building, 600 Commerce Street, 3rd Floor, Dallas, TX 75202; 214/653-6000).

Counsel for co-defendants (adverse): Coyt Randal Johnston, Johnston & Tobey, P.C., 710 Founders Square, 900 Jackson Street, Dallas, TX 75202; Telephone: 214/741-6260. Sharon N. Freytag, Haynes and Boone, L.L.P., 901 Main Street, Suite 3100, Dallas, TX 75202; Telephone: 214/651-5000.

Other Counsel: Eddie Vassallo and Charles A. Salazar, Law Offices of Eddie Vassallo, P.C., Regency Plaza, 3710 Rawlins, Suite 1200, Dallas, TX 75219-4217; Telephone: 214/559-7200. James C. Allums, Jr. and Kevin J. Cook, Payne & Blanchard, L.L.P., Plaza of the Americas, 700 North Pearl Street, Suite 500, LB 393, Dallas, TX 75201-7424; Telephone: 214/953-1313.

Opposing Counsel: Keith M. Jensen, P.C., Law Office of Keith M. Jensen, P.C., Third Coast Productions Building, 2929 Morton Street, Suite 100, Fort Worth, TX 76107; Telephone: 817/334-0762. David R. Weiner, Law Offices of David R. Weiner, 7400 N. Central Expressway, Suite 1310, Dallas, TX 75231; Telephone: 214/363-6222.

This was a claim brought by a former client against a Dallas law firm for legal malpractice relating to an alleged joint representation. We obtained a summary judgment in 1997 for the lawyers, arguing that as a matter of law, limitations barred the claims, the plaintiff had no standing on a number of issues, and the claims were moot.

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

I have, during most of my career, represented many of the major Dallas law firms in the defense of legal malpractice or labor related matters. These have typically involved very substantial claims and highly sensitive and confidential firm information. As to all of these matters, the cases ultimately settled or I prevailed on summary judgment. I have also handled highly complex intellectual property matters and very large probate, trust and family dispute matters.

Since I became a lawyer, I have been committed to ensuring professionalism and to improving the practice, and I have worked in bar associations as a way to serve those goals. I began working with the Dallas Association of Young Lawyers. In 1978, I joined the ABA Section of Litigation. I became active in the Commercial & Banking Committee of the Section, attending meetings, assembling materials and speakers for a variety of committee programs, and eventually becoming the chair. In 1992, I participated in a task force which collected and made available to members various federal court plans which were implemented pursuant to the Civil Justice Reform Act (the report is submitted herewith). In 1996, I was the co-chair for the Section's portion of the ABA annual meeting in Orlando, Florida, with responsibility for coordinating the business, continuing legal education and social aspects of the meeting. Along the

way, I also became a Division Director, and then the Director of Divisions, working with the Division Directors and planning leadership meetings.

Having served on the Council since 1993, I am now Chair of the Section of Litigation. In this capacity, my activities are multifaceted. I prepare the agenda for and preside at our five Council meetings. I work with the Chairs of various other ABA Sections on common initiatives. I have led the updating of the Section's website. I have led the Section to sponsor jury trial presentations at state fairs and similar venues, an activity in which the Section was involved many years ago. I have appointed a special task force to assist in drafting procedural rules for the International Criminal Court. I have encouraged the Section to sponsor seminars geared to address particular problems of minority trial lawyers. I was responsible for working with the Budget Officer to prepare the proposed 1998-99 Section budget for presentation to the Council and I chair the Section's reserves committee. I preside at our annual and ABA meetings and work on our substantive programming for those meetings in conjunction with the meeting chairs.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

My capital account at Carrington Coleman is to be repaid to me within 60 days after my resignation. There are no other arrangements of the type described, except for payment of my profit participation determined as of the date I leave the firm, which is also payable within 60 days.

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

I will adhere to the provisions of the Code of Judicial Conduct, 28 U.S.C. § 455, and in that regard, will not hear any cases in which my husband is involved as a lawyer. I will recuse myself from any cases in which my husband's law firm represents a party, since he has a financial interest in such matters, and my disqualification would thus be required under 28 U.S.C. § 455(b)(5)(iii). It is my further intention to recuse myself for several years from cases in which my firm represents a party, so as to avoid any suggestion under 28 U.S.C. § 455(b)(1) that I have any personal bias or prejudice in the matter. I will inquire in every matter whether my firm was involved in the matter, to avoid a violation of the mandatory disqualification under 28 U.S.C. § 455(b)(2). Finally, I would remain familiar with my personal investments and those of family trusts to avoid having a financial interest in the subject matter in controversy, to satisfy the provisions of 28 U.S.C. § 455(b)(4) and (c).

Apart from matters involving my husband's firm and Carrington Coleman, I do not anticipate that there are categories of litigation or financial arrangements that would cause me to be disqualified, as most of my personal investments are in mutual funds.

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

No, except that I would consider teaching part-time at SMU Law School and for continuing legal education providers, including the National Institute of Trial Advocacy, if my work load permitted and if the Chief Judge of the District consented.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest,

gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Form.

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

See net worth statement.

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

I have allowed my name to be used in endorsements for various candidates, I was affiliated with the New Texas 100, established by Ann Richards, and I have contributed to campaigns, but I have not otherwise had a particular role in campaigns.

III. GENERAL (PUBLIC)

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

I have represented the poor and disadvantaged on a pro bono basis principally by handling cases through Legal Services of North Texas. I have also satisfied the Canon through my participation in the ABA Section of Litigation, which has a number of projects designed to benefit and serve the poor and disadvantaged. I have also volunteered for legal work at my synagogue and have volunteered as a hearing examiner for the Dallas Community College District.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates — through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

It is possible that membership in the SMU Association of Women Law Students, of which I was President in about 1974-76, was open only to women. I am not aware of any other organization of which I am now or have been a member that discriminates on the basis of race, gender or religion. I believe that regular membership in the Dallas Association of Young Lawyers, of which I was also president, is open only to lawyers 36 or younger.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes, the Judicial Nominations Committee for the Northern District of Texas, composed of Congressman Martin Frost, Congresswoman Eddie Bernice Johnson and Congressman Charles Stenholm, recommended me to the President. I have since been interviewed and investigated by representatives of the U.S. Department of Justice, the FBI, and the American Bar Association. I have also been interviewed by the advisory group to Senators Gramm and Hutchison.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe that the federal courts should not construe their jurisdictional mandates in a manner more expansive than constitutional history suggests. Concepts of standing and case and controversy should be scrutinized in each case so as to insure that only bona fide disputes brought by persons materially affected occupy our federal courts, and remedies imposed should be no broader than the instant case requires. The principal of separation of powers and limitations on federal jurisdiction, as well as the courts' need to adhere to precedent and concepts of *stare decisis*, provide appropriate checks on the scope of the courts' authority.

AO-10 Rev. 1/98

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1997

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, 101-112)

1. Person Reporting *(Last name, first, middle initial)* Lynn, Barbara M.	2. Court or Organization U.S. District Court Northern District of Texas	3. Date of Report 3-25-99
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* U.S. District Judge -- Nominee	5. Report Type (check appropriate type) X Nomination, Date ____ __ Initial __ Annual __ Final	6. Reporting Period 1/1/97 to 2/28/99
7. Chambers or Office Address Carrington, Coleman, Sloman & Blumenthal, LLP; 200 Crescent Ct. #1500; Dallas, TX 75201	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer ____ Date ____	

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

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

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1	Partner	Carrington, Coleman, Sloman & Blumenthal, LLP
2	Trustee	Lynn Children's Trust
3		

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

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	12/31/98	Carrington, Coleman, Sloman & Blumenthal, LLP Partnership Agreement
2		
3		

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

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	12/31/98	Carrington, Coleman, Sloman & Blumenthal LLP Compensation	$ 390,427
2	12/31/98	Michael P. Lynn, P.C., partner in Lynn, Stodghill, Melsheimer & Tillotson, LLP	$
3	12/31/97	Carrington, Coleman, Sloman & Blumenthal, LLP Compensation	$ 299,422
4	12/31/97	Michael P. Lynn, P.C., partner in Lynn, Stodghill, Melsheimer & Tillotson, LLP	$
5			$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Lynn, Barbara M.	3-25-99

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	EXEMPT		$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children; indicate, where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE
☐	NONE (No reportable liabilities.)		
1	Citibank VISA	VISA credit card (automatically paid monthly from checking account)	J
2			
3			
4			
5			
6			

*Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000
P3=$25,000,001-$50,000,000 P4=$50,000,001 or more*

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Lynn, Barbara M.	03/25/1999

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)					EXEMPT				
1 Schwab Money Market Fund	D	Dividend	K	T					
2 Morgan Grenfell Mutual Fund	C	Dividend	L	T					
3 Vanguard Municipal Bond Mutual Fund	C	Dividend	K	T					
4 Pimco Low Duration Mutual Fund	D	Dividend	L	T					
5 Pimco Foreign Mutual Fund	A	Dividend	J	T					
6 Gateway Mutual Fund	A	Dividend	L	T					
7 Harbor Capital Appreciation Mutual Fund	A	Dividend	K	T					
8 DFA Large Value Mutual Fund	B	Dividend	M	T					
9 PBHG Growth Mutual Fund		None	K	T					
10 DFA 6-10 Value Mutual Fund	B	Dividend	K	T					
11 Vanguard International Growth Mutual Fund	C	Dividend	M	T					
12 Tweedy Browne Global Value Mutual Fund	C	Dividend	L	T					
13 Schwab Money Market Fund(S)	D	Dividend	M	T					
14 Morgan Grenfell Mutual Fund (S)	C	Dividend	L	T					
15 Pimco Low Duration Mutual Fund (S)	D	Dividend	L	T					
16 Vanguard Municipal Bond Mutual Fund (S)	C	Dividend	K	T					
17 Pimco Foreign Mutual Fund (S)	B	Dividend	J	T					

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Lynn, Barbara M.

Date of Report: 03/25/1999

VII. Page 2 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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				
						If not exempt from disclosure			
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)					EXEMPT				
18 T Rowe Price Intl Bond Mutual Fund (S)	A	Dividend	J	T					
19 Gateway Mutual Fund (S)	A	Dividend	L	T					
20 Harbor Capital Appreciation Mutual Fund (S)	B	Dividend	L	T					
21 DFA Large Value Mutual Fund (S)	B	Dividend	M	T					
22 PBHG Growth Mutual Fund (S)		None	K	T					
23 DFA 6-10 Value Mutual Fund (S)	B	Dividend	K	T					
24 Vanguard International Growth Mutual Fund (S)	C	Dividend	M	T					
25 Tweedy Browne Global Value Mutual Fund (S)	D	Dividend	L	T					
26 Schwab Money Market Fund (J)	C	Dividend	J	T					
27 Schwab Brokerage Account-IRA (S)									
28 Schwab Brokerage Account-IRA Rollover (S)									
29 Schwab Brokerage Account-SEP-IRA (S)									
30 Schwab Money Market (IRA)	B	Dividend	J	T					
31 Pimco Total Return Mutual Fund(IRA)	A	Dividend	J	T					
32 Gateway Mutual Fund (IRA)	A	Dividend	J	T					
33 Neuberger Berman Guardian Mutual Fund (IRA)	B	Dividend	K	T					
34 Tweedy Browne Global Value Mutual Fund (IRA)	A	Dividend	J	T					

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting: Lynn, Barbara M.	Date of Report: 03/25/1999

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)					EXEMPT				
35 Bank One Checking Account (J)	B	Interest	L	T					
36 Rental Property #1, Dallas, TX (J)	B	Rent	-0-	W					
37 Carlyle Income L.P. (BMGL Trust)	A	Distribution	J	W					
38 Carlyle XVII L.P. (BMGL Trust)	A	Distribution	J	W					
39 PR Prop 88 (BMGL Trust)	A	Distribution	J	W					
40 PLM Equipment Growth Fund III (BMGL Trust)	A	Distribution	J	W					
41 Rental Property #2, Dallas, TX (J)	D	Rent	L	W					
42 Guaranty Bank Checking Account	B	Interest	L	T					
43 Schwab Money Market Fund (Trustee) (DC)	A	Dividend	J	T					
44 Vanguard Municipal Bond Mutual Fund (Trustee) (DC)	C	Dividend	L	T					
45 Gateway Mutual Fund (Trustee) (DC)	A	Dividend	K	T					
46 Nueberger Berman Guardian Mutual Fund (Trustee) (DC)	B	Dividend	L	T					
47 Vanguard International Growth Mutual Fund (Trustee) (DC)	A	Dividend	L	T					
48 Schwab Money Market Fund (BMGL Trust)	A	Dividend	J	T					
49 Vanguard Municipal Bond Mutual Fund (BMGL Trust)	D	Dividend	L	T					
50 Pimco Total Return Mutual Fund (BMGL Trust)	D	Dividend	K	T					
51 Pimco Foreign Mutual Fund (BMGL Trust)	D	Dividend	K	T					

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting: Lynn, Barbara M.	Date of Report: 03/25/1999

VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)					EXEMPT				
52 Gateway Mutual Fund (BMGL Trust)	A	Dividend	L	T					
53 Neuberger Berman Guardian Mutual Fund (BMGL Trust)	A	Dividend	K	T					
54 Vanguard International Growth Mutual Fund (BMGL Trust)	C	Dividend	L	T					
55 Tweedy Browne Global Value Mutual Fund (BMGL Trust)	A	Dividend	K	T					
56 Schwab Money Market (Whitney R. Lynn Trust) (DC)	A	Dividend	K	T					
57 Pimco Low Duration Mutual Fund (Whitney R. Lynn Trust) (DC)	A	Dividend	J	T					
58 Vanguard Bond Index Fund (Whitney R. Lynn Trust) (DC)	A	Dividend	J	T					
59 Vanguard Interm. Treasury Fund (Whitney R. Lynn Trust) (DC)	C	Dividend	K	T					
60 Pimco Foreign Fund (Whitney R. Lynn Trust) (DC)	C	Dividend	K	T					
61 Janus Fund (Whitney R. Lynn Trust) (DC)	A	Dividend	K	T					
62 DFA Large Value Fund (Whitney R. Lynn Trust) (DC)	B	Dividend	K	T					
63 DFA 6-10 Value Fund (Whitney R. Lynn Trust) (DC)	B	Dividend	J	T					
64 Scudder International Fund (Whitney R. Lynn Trust) (DC)	A	Dividend	K	T					
65 Harbor International Fund (Whitney R. Lynn Trust) (DC)	A	Dividend	K	T					
66 Acorn International Fund (Whitney R. Lynn Trust) (DC)	A	Dividend	J	T					
67 Schwab Money Market (Tara P.Lynn Trust) (DC)	A	Dividend	K	T					
68 Pimco Low Duration Fund (Tara P. Lynn Trust) (DC)	B	Dividend	L	T					

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val Codes: (Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Lynn, Barbara M.

Date of Report: 03/25/1999

VII. Page 5 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)					EXEMPT				
69 Vanguard Bond Index Fund (Tara P. Lynn Trust) (DC)	A	Dividend	J	T					
70 Vanguard Interm. Treasury Fund (Tara P. Lynn Trust) (DC)	B	Dividend	J	T					
71 Pimco Foreign Fund (Tara P. Lynn Trust) (DC)	C	Dividend	K	T					
72 Janus Fund (Tara P. Lynn Trust) (DC)	A	Dividend	J	T					
73 DFA Large Value Fund (Tara P. Lynn Trust) (DC)	B	Dividend	K	T					
74 DFA 6-10 Value Fund (Tara P. Lynn Trust) (DC)	B	Dividend	J	T					
75 Harbor International Fund (Tara P. Lynn Trust) (DC)	A	Dividend	K	T					
76 Acorn International Fund (Tara P. Lynn Trust) (DC)	A	Dividend	J	T					
77 Net One L.P. (J)	A	Distribution	J	W					
78 Dallas Investors (J)		None	J	W					
79									
80									
81									
82									
83									
84									
85									

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

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3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Lynn, Barbara M.	3-25-99

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

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activitie and to the best of my knowledge after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period cover by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcon of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it m 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 i compliance with the provisions of 5 U.S.C. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Barbara M. Lynn Date 3/25/99

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. 4, § 104.)

[redacted]

3/10/99

BARBARA M. G. LYNN
STATEMENT OF PRESENT FINANCIAL CONDITION
December 31, 1998 (except where noted)

ASSETS

Personal Cash Balances (Schedule 1)	$146,747
Investment And Cash Reserves (Schedule 2)	51,428
Marketable Securities (Schedule 3)	653,680
Business Interest (Schedule 4)	53,100
Real Estate Investments (Schedule 5)	80,000
Retirement Plans (Schedule 6)	860,845
Residence & Other Real Estate (Schedule 7)	750,000
Other Assets (Schedule 8)	315,567
TOTAL ASSETS:	**$2,911,367**

LIABILITIES

Due on Real Estate Investments (Schedule 4)	-0-
Due on Residence & Other Real Estate (Schedule 7)	467,903
TOTAL LIABILITIES:	**$467,903**
NET WORTH:	**$2,443,464**

Signature [signature] Date 3-25-99

BARBARA M. G. LYNN
STATEMENT OF PRESENT FINANCIAL CONDITION
December 31, 1998
SCHEDULES
PAGE 2 OF 6

Schedule 1
Cash-Personal Cash Balances

Institution/Type of Deposit	Amount
Bank One (balances as of 3/9/99)	
	61,696
	412
	954
Guaranty Federal Account	83,685
TOTAL:	**$146,747**

Schedule 2
Investment and Cash Reserves

Institution/Type of Deposit	Amount
Charles Schwab & Co. - Cash/Money Market Funds Separate Property Account (as of 12/31/98)	44,869
Charles Schwab & Co. Community Property Account (as of 12/31/98)	6,559
TOTAL:	**$ 51,428**

BARBARA M. G. LYNN
STATEMENT OF PRESENT FINANCIAL CONDITION
December 31, 1998
SCHEDULES
PAGE 3 OF 6

Schedule 3
Marketable Securities

Charles Schwab & Co.
Separate Property Account

Security Description	Quantity	Cost Basis	Market Value as of 12/31/98
Bond Funds			
Morgan Grenfell Municipal Bond Fund	6,940	78,080	78,147
Pimco Foreign Bond Fund	518	5,585	5,450
Pimco Low Duration Bond Fund	5,873	60,179	59,369
Vanguard Municipal Bond Fund	3,186	42,814	42,778
Stock Funds			
DFA US Large Cap Value Fund	4,879	$100,277	$96,413
DFA US Small Cap Value Fund	2,139	34,911	38,360
Gateway Fund	3,024	60,420	63,559
Harbor Capital Appreciation Fund	898	20,718	34,119
PBHG Growth Fund	1,325	29,463	33,840
International Funds			
Tweedy Browne Global Value Fund	3,188	45,059	53,614
Vanguard International Growth Fund	8,469	150,921	148,031
TOTAL:		**$628,427**	**$653,680**

BARBARA M. G. LYNN
STATEMENT OF PRESENT FINANCIAL CONDITION
December 31, 1998
SCHEDULES
PAGE 4 OF 6

Schedule 4
Business Interests

Description	Amount
Carrington, Coleman, Sloman & Blumenthal Capital Account	$53,100
TOTAL:	**$53,100**

Schedule 5
Real Estate Investments

Description	Current Market Value	Current Debt
6052C Averill Way	$80,000	-0-
TOTAL:	**$80,000**	**-0-**

BARBARA M. G. LYNN
STATEMENT OF PRESENT FINANCIAL CONDITION
December 31, 1998
SCHEDULES
PAGE 5 OF 6

Schedule 6
Retirement Plans

Description	Amount
Charles Schwab & Co. Individual Retirement Account	$ 63,538
Carrington, Coleman, Sloman & Blumenthal 401K	$797,307
TOTAL:	**$860,845**

BARBARA M. G. LYNN
STATEMENT OF PRESENT FINANCIAL CONDITION
December 31, 1998
SCHEDULES
PAGE 6 OF 6

Schedule 7
Residence & Other Real Estate

Description	Current Market Value	Current Mortgage Balance
Residence, Dallas, TX	$750,000	$467,903
TOTAL:	**$750,000**	**$467,903**

Schedule 8
Other Assets & Liabilities

Description	Current Market Value	Current Debt
Automobiles (estimates)		
1986 Mercedes 560 SL	$ 15,000	
BMW 52i	$ 17,000	-0-
2 Toyota Camrys (1996 and 1997)	$ 18,000	-0-
Insurance Cash Value	$ 15,567	
Personal Property, Furnishings	$250,000	-0-
TOTAL:	**$315,567**	**-0-**

BY-LAWS

ARTICLE I

NAME AND PURPOSE

The name of this Club shall be The Crescent Club. The Club is owned by the Crescent Court Joint Venture. Subject to the provisions of these By-Laws, members shall be entitled to the use of The Club's facilities, but shall have no vested interest therein.

ARTICLE II

MEMBERSHIP

Section 1. Class and Privileges

Any business or professional person of good character and twenty-one (21) years of age or older is eligible for membership in The Club, which shall initially consist of the following classes of membership:

A. Resident (Individual)

Resident members shall be those business or professional persons who either reside in Dallas County or have their principal office therein. Resident members shall be entitled to all privileges of The Club. Spouses of members shall also be entitled to the privileges of The Club subject to the current house rules.

B. Life/Legacy

Life/Legacy members and their spouses have privileges identical to the privileges granted to resident members, except that life/legacy members are not required to pay monthly dues. A Life/Legacy membership may be passed on to a child of the member at the time of the member's death. At that point, the child will commence paying the monthly dues. The total number of life memberships shall not exceed thirty (30).

C. Non-Resident

Non-Resident members shall be those business or professional persons whose principal residence and principal place of business are located outside a ~~25~~ 35 mile radius from the City Hall of Dallas, Texas, subject to the discretion of the Board of Governors. This membership shall also be further designated as Individual or Corporate. Corporate memberships may be transferred as provided in Article II, Section 1.D. Non-Resident members and their spouses shall have privileges identical to the privileges granted to resident members. Upon application, members must show proof of their non-resident status. In addition, no local address may be utilized for billing, invitations or otherwise. Non-Resident members who move within this ~~25~~ 35 mile radius may, upon written application to the Board of Governors, become resident members.

D. Corporate

1. Corporate memberships shall be designated Resident, Non-Resident, or the like, and shall be issued in the name of the corporation or firm receiving the membership. The rights and privileges of such memberships belong to the corporation or firm and are to be subsequently assigned to a director, officer or executive of the firm. Such privileges of use shall extend to the spouse and children (unmarried, under 23 years of age), living in the home of designee.

2. Each corporate membership may have only one designee. The designee; however, may be changed by the corporation from time to time subject only to the provision that the designee be approved by the Club and the payment of the corporate transfer fee. In the case of a corporate life membership, such membership classification endures for the tenure of the first designee only. Upon the change of designee, the corporate life membership shall be automatically converted to a corporate resident dues paying membership subject to all the rights, privileges and responsibilities applicable to resident members of that time.

3. Additional corporate membership shall be designated Resident or Non-Resident and shall be issued in the name of the corporation or firm receiving the membership, once the first corporate membership has been established. The rights and privileges shall be as outlined for corporately held memberships in Section 1.D.1.

   Each additional Corporate membership may have only one designee. The designee; however, may be changed by the corporation from time to time subject to the provision that the designee be approved by The Club and the payment of the corporate transfer fee.

E. Social

1. Social members and their spouses shall be entitled to restricted privileges in The Club to include, lunch in The Club Bar only, and they may not make dinner reservations in the main dining room for a time earlier than 9:00 p.m. They are entitled to catering privileges in the evening only, with private room luncheon privileges subject to the approval of the Catering Director. Social members may upgrade their membership to that of full by paying the difference between the social membership fee paid and the current initiation fee. The total number of Social members shall not exceed three hundred (300).

F. Rights and Privileges

A member may register annually with the Membership office the name of any unmarried child who is twenty-three (23) years of age or less, residing in member's household or attending a duly accredited college or university. Such registration shall entitle them to the privileges of The Club for the calendar year. Members' children not in the aforementioned age/dependency category may apply for either Resident or Social membership. Children not in the aforementioned category and not in possession of a membership, are subject to the guest card policy as set forth in The Club house rules.

G. Reciprocity Rights

All members of The Club shall be entitled for themselves and their spouses, all rights to reciprocity, subject to the rules and regulations of the visited clubs.

E. Other Types of Membership

The Board of Governors shall have the authority to establish or discontinue any type of membership, such as a Junior, Clergy, Associate, Military, Honorary, Social and such other types as the Board from time to time may determine to be in the best interest of The Club, and to prescribe initiation fees, dues and regulations applicable thereto.

Should the occasion arise, whereby we reach a membership ceiling and are forced to institute a waiting list, the names of individuals wishing to become a member will be placed on a waiting list with priority given to current members wishing to upgrade their membership to include the other club. Priority will also be given to Social members wishing to upgrade their membership or add The Spa.

Section 2. Monthly Dues

Each member, whether individual or corporate, shall pay monthly, in advance, their requisite dues allocated to his or her membership. In the case of a Non-Resident membership, annual dues will apply.

Section 3. Admission

A. The evaluation of membership invitees shall be conducted with the intent and purpose of securing the optimum number of members with concordant social, vocational and professional attainment from all segments of the surrounding business community.

B. The initial roster of membership invitees shall be composed of the names of persons nominated by the members of the Board of Governors of the Club. The subsequent rosters of membership invitees shall be composed of the names of persons nominated by members of the Club and voted upon by the Admissions Committee, whose proceedings thereof shall be confidential and final. If the Admissions Committee has specific reasons for rejection, the prospect may be rejected without giving reason or explanation. An applicant, once refused admission to membership, shall not again be a candidate until a period of twelve (12) months shall have elapsed since the date of the previous application for membership. When applicable, a person who is not a member of the Board of Governors of the Club may be designated to evaluate an organizational roster of business or professional persons nominated for membership in The Club.

C. Invitations to be extended and unsolicited applications will be evaluated on the basis of the following criteria:

1. Interest or potential interest of an invitee or applicant in the use of a Club membership for business promotion and/or social purposes.

2. Financial responsibility and qualification of the invitee or applicant either as an individual or as a corporate entity.

3. Compatibility of an invitee or applicant with Club members, with respect to business and social settings.

Invitations shall be extended on the above criteria without regard to race, sex or religion.

Section 4.

A. All applications for membership shall be accompanied by an initiation fee or transfer fee in an amount, as may from time to time, be designated by the Board of Governors.

Section 5. Termination of Membership

Termination of membership shall result in the loss of the right to use the Club facilities.

A. Resignation

Any member of the Club may resign from membership by thirty (30) day notice in writing to the Club and paying all dues and charges, for which they are liable, to the date of receipt by the Club of such notice of resignation.

B. Death

In the event of a member's death, the surviving spouse, shall thereupon automatically succeed to all the rights and privileges of such membership upon payment of any charge or other fee established for such transfer so long as said spouse remains unmarried. In the event that such member re-marries, membership may be transferred into the name of the new spouse.

C. Expulsion

Any member who, in the opinion of a two-thirds majority vote of the Board of Governors, is guilty of any violation of the By-Laws or rules of The Club, or for conduct unbecoming a Club member, or any conduct which tends to be against the best interest of the good government of the Club, may be expelled or suspended from The Club. A member may also be expelled for failure to pay dues and charges, as provided in Article IV, Section 5.

Section 6. Visitors

Adult resident visitors shall be entitled to the privileges of The Club when accompanied by a member within such limitations as may be prescribed by the Board of Governors by resolution from time to time. The foregoing shall never be interpreted to prevent a member from inviting guests to private events held in The Club's private dining rooms.

Three (3) guest cards shall be extended to members annually to present to business associates or friends for a one-time use anytime the member is not able to be present. The guest card shall be submitted to The Club concierge upon arrival and the guest will be subject to all house rules and regulations of The Club while visiting.

ARTICLE III

BOARD OF GOVERNORS

Section 1. Number and Qualifications

The Board of Governors shall be composed of not more than thirty members. Members of the Board serve without direct monetary compensation and have no financial obligations or liability on behalf of The Club.

Section 2.

The Board of Governors of The Club shall advise and counsel with the designated representatives of the Crescent Court Joint Venture and The Club management on, and all items relevant to, "tailoring" The Club to meet member needs and interests and relating to the conduct of club affairs.

Section 3.

The Crescent Court Joint Venture shall select the Chairman of the Board of Governors.

Section 4.

The Founding Board of Governors' term of office terminates on the Club's first anniversary. At that time, the Crescent Court Joint Venture, with the advice and counsel of the Chairman, shall form the ongoing Board. These Board members, shall serve terms of 1, 2 or 3 years, one third rotating off the Board each year. All subsequent appointments shall be for a three year term. Vacancies occurring on the Board of Governors shall be filled by appointment, by the Crescent Court Joint Venture, with the advice and counsel of the Board.

Section 5.

The Chairman of the Board of Governors for the Club may establish from members of the Board of Governors such committees as he/she may deem reasonable for the orderly conduct of The Club. Other members of The Club, in addition to members of the Board, may also serve on such committees. The function, tenure and number of committee members, shall be at the discretion of the Chairman of the Board of Governors.

Section 6.

Prior to the Club opening, meetings of the Board will be held when necessary. Following The Club opening, meetings shall be held quarterly during the first year, and thereafter, on an as needed basis. The Chairman and any two Board members may call for a meeting if they feel it necessary.

ARTICLE IV

CLUB MANAGEMENT

Section 1. Rules and Regulations

The operation of The Club and the management of The Club property shall be vested in every respect in the Crescent Court Joint Venture acting through its designated representatives. The Crescent Court Joint Venture is authorized and empowered to adopt, promulgate, and enforce rules and regulations governing the use of the clubrooms and other club facilities, and every member is subject thereto and shall abide thereby.

Section 2. Payment of Dues and Charges

All dues and charges billed to members are due and payable in Dallas, Texas. Member's Club accounts are payable upon receipt of the monthly statement. Member's accounts remaining unpaid for 30 days are considered past due, and a late charge equal to 10% of the past due amount (maximum of $10.00), may be added to the member's Club account as an integral charge. If any member's Club account shall remain unpaid for a period of 30 days from the date of first billing, notice thereof may be sent by certified mail to the delinquent members. If such delinquency shall not be remedied within 10 days from the date of such notice, such member may be suspended from all club and hotel privileges. If payment is not received within 10 days from suspension, the matter will be reported to the Chairman of the Board of Governors, who may (without the advice or counsel of the Board of Governors) expel such member or may, in the Chairman's sole discretion, refer the matter to the Board of Governors for other appropriate action. Member's house accounts, as established for all new members, will be subject to the same credit policies and procedures as are extended for members' club accounts.

ARTICLE V

MEMBERSHIP MEETING

Section 1. Notice

Special meetings of the Club membership may be called, at any time, by the Crescent Court Joint Venture. The call of the meeting shall set forth the purpose of the meeting, and a notice thereof shall be mailed, by the secretary, to each member ten (10) days prior to the time of such meeting. No other business than specified in the call or notice shall be considered or transacted.

Section 2. Quorum

Fifty (50) members shall constitute a quorum at any meeting of Club members.

ARTICLE VI

AMENDMENT OF BY-LAWS

These By-Laws may be amended at any time by a two-thirds vote of the Crescent Court Joint Venture with the advice and counsel of the Board of Governors. For purposes of these By Laws, the advice and counsel of the Board of Governors as to any matter may be evidenced by the signature of the Chairman of the Board of Governors, and the signature of the Chairman as to any matter shall be conclusive (without further inquiry) as to the advice and counsel of the Board of Directors.

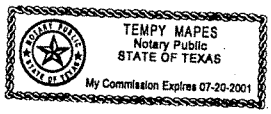
I have been unable to obtain the Bylaws for the Uptown Athletic Club despite my repeated and diligent efforts to do so. I feel confident that the Club does not discriminate in its membership on any basis prohibited by law.

AFFIDAVIT

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

3-25-99
(DATE)

(NAME)



(NOTARY)

SENATE COMMITTEE ON THE JUDICIARY

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Victor Marrero

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

Office:	Residence:
U.S. Mission to the OAS Department of State, Room 6494 Washington, D.C. 20520	New York, NY 10023

3. Date and place of birth.

   September 1, 1941; Santurce, Puerto Rico

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

   Married December 5, 1987 to Veronica M. White
   Senior Vice President, New York City Partnership/ Chamber of Commerce
   17 Battery Park Place, New York, NY

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

   New York University; 1960-64; B.A. 1964 cum laude with Honors in History

   Yale Law School; 1964-66, 1967-68; LL.B. 1968

   University of Sheffield (England) School of Law; 1966-67 (Fulbright Scholarship)

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

   June-August 1965
   Intern
   Office of Senator Robert F. Kennedy
   United States Senate
   Washington, DC

June-August 1966; July-August 1967
Summer Associate
Cravath, Swaine & Moore
New York, NY

1968-70
Assistant to the Mayor
City of New York
Appointed by Mayor John V. Lindsay

1970-73
Assistant Administrator/Neighborhood Director
Model Cities Administration
City of New York
Appointed by Mayor John V. Lindsay

1973-74
Executive Director
Department of City Planning
City of New York
Appointed by Mayor John V. Lindsay

1974-75
Special Counsel to the Comptroller
City of New York
Appointed by Comptroller Harrison J. Goldin

1975-76
First Assistant Counsel to the Governor
State of New York, Executive Chamber
Appointed by Governor Hugh L. Carey

1976-77
Chairman, City Planning Commission
City of New York
Appointed by Mayor Abraham D. Beame

1978-79
Commissioner, State Division of Housing and Community Renewal
Vice Chairman, Housing Finance Agency
State of New York
Appointed by Governor Hugh L. Carey

1979-January 1981
Under Secretary, U.S. Department of Housing and Urban Development
Washington, DC
Appointed by President Jimmy Carter

1981
Self-employed as housing development consultant

1982-85
Partner, Tufo & Zuccotti
New York, NY

1983-84 (part-time)
Member, New York City Conciliations and Appeals Board
City of New York
Appointed by Mayor Edward I. Koch

1986-93
Partner, Brown & Wood (by merger with Tufo & Zuccotti)
New York, NY

1985-87 (part-time)
Visiting Lecturer
Yale Law School
New Haven, CT

1987-93 (part-time)
Director, New York Telephone Company (NYNEX)
New York, NY

1989-93 (part-time)
Trustee, Consolidated Edison Company of New York
New York, NY

1990-92 (part-time)
Member, New York City Rent Guidelines Board
City of New York
Appointed by Mayor David N. Dinkins

1990-93 (part-time)
Visiting Lecturer
Columbia Law School
New York, NY

1993-97
Ambassador, Representative of the United States
on the Economic and Social Council of the United Nations
U.S. Mission to the UN
New York, NY
U.S. Department of State
Appointed by President William J. Clinton

1998-present
Ambassador, Permanent Representative of the United States
to the Organization of American States
U.S. Mission to the OAS
U.S. Department of State, Washington, D.C.
Appointed by President William J. Clinton

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

NONE

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

B.A. degree from New York University cum laude with Honors in History

Phi Beta Kappa

New York University Founders Day Honor Scholar Award

Editor of the Yale Law Journal (elected as an officer, Notes and Comments Editor, but unable to serve because of the year's leave I took in order to pursue studies under a Fulbright Scholarship)

Semi-finalist in the Yale Law School Benjamin N. Cardozo competition for best moot court brief, 1966

Fulbright Scholarship to the University of Sheffield (England) School of Law

New York State Bar Association Root/Stimson Public Service Award (1992)

American Bar Association Pro Bono Publico Award (1993)

Ellis Island Medal of Honor (1999)

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

New York State Bar Association, 1989-93:
Member, House of Delegates (1989-92)

New York County Lawyers Association:
Member, (1988-91)

Association of the Bar of the City of New York
Member, 1983-present

Offices and Committee memberships:
- Vice President of the Association (1992-93)
- Executive Committee (1985-87, 1992-93)
- Judiciary (1991-92)
- Nominating (1990)
- Committee for Modern Courts (1989-93)
- Enhance Professional Opportunities for Minorities (1990-93)
- City Bar Fund (1989-93)
- Legal Education and Admission to the Bar (1984-85)
- Lectures and Continuing Education (1983-84)

Some significant activities in which I participated as a member of the Executive and Judiciary Committees:

- chaired a special subcommittee assigned to study the issue of civil legal services to the poor and the administration of justice;

- reviewed appeals brought to the Executive Committee by candidates for judicial offices who felt aggrieved by the rating of their qualifications by the Judiciary Committee;

- reviewed and rated the qualifications of nominees for appointment or election to federal, State and City courts in New York.

New York State Chief Judge's Committee to Improve the Availability of Legal Services, 1988-90:

Chairman of the Committee

The Committee conducted a comprehensive study of the unmet need for civil legal services to the poor and recommended a program of actions to improve the availability of free legal services, particularly those provided by the legal profession.

New York State Chief Judge's Pro Bono Review Committee, 1990-94:
Co-Chairman of the Committee (with Justin Vigdor, Esq.)

The Committee prepared a follow-up study monitoring over a three-year period the level of voluntary legal services provided by attorneys in New York State on matters relating to the legal needs of poor people.

Hispanic Bar Association:
Member, 1997-present

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

a. No memberships in organizations lobbying public bodies

b. New York Public Library (Trustee)
American Museum of Natural History (dues member)
Metropolitan Museum of Art (dues member)

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

Supreme Court of the State of New York, First Judicial Department, January 1982-present

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

A. Published Materials

Section 5 of the Clayton Act and the Nolo Contendere Plea, 75 Yale Law Journal 845 (1966)

Committee to Improve The Availability of Legal Services, Final Report to the Chief Judge of the State of New York, 19 Hofstra Law Review 755 (1991)

Final Report of the Pro Bono Review Committee to the Chief Judge of the State of New York (April 1994)

Curriculum and Table of Content of cases and materials I prepared, edited and organized in connection with the seminar I taught (with Paul Selver) on land use and development law and practice at Columbia Law School 1990-93 (the materials were available for use only by students of the course.)

Official Reports and Statements of the New York City Planning Commission on Matters Decided in 1976 and 1977 as Published in the Proceedings of the New York City Board of Estimate

B. Speeches

Date	Forum/Audience	Topic
05-12-99	OAS Permanent Council	Strengthening Representative Democracy
04-20-99	OAS Hemispheric Security Committee	Improvements of Hemispheric Security in the Americas
04-16-99	Saint Peter's College, New Jersey Conference on Human Rights	From the Wall to Web: Opportunities for Human Rights

04-1-99	Southwestern Social Science Assoc. & St. Mary's University, San Antonio Texas	The Americas in a Changing World
03-31-99	OAS Permanent Council	The OAS and Disaster Management
03-24-99	OAS Permanent Council	Murder of Paraguayan Vice-President Argana and the Protection of Democracy
01-11-99	Inter-American Defense College Washington, DC	Hemispheric Integration and the Summit of Americas
09-11-98	Greater Ibero-American Chamber Of Commerce, Washington, DC	"Washington's Growing Hispanic Power: A Gateway To The Americas."
10-15-98	Casa de America, Madrid, Spain	"U.S.-Latin American Relations in the Post-Cold War Period"
10-06-98	OAS Committee on Hemispheric Security	"The Need and Benefits of an OAS Convention on Transparency in Arms Acquisition"
10-01-98	Hispanic Leadership Conference, Chicago, Il	Social, Economic and Political Implications of Globalization
07-22-98	OAS Permanent Council	Development OAS Conference Facilities and The Museum of the Americas
05-06-98	OAS Permanent Council	Civil Society in the OAS
04-22-98	OAS Permanent Council	Reintegration of Cuba into the Inter-American System
03-25-98	OAS Council for Integral Development	Reform of OAS Technical Cooperation Programs
03-12-98	OAS Juridical and Political Committee	Freedom of Expression
01-30-98	OAS General Assembly Preparatory Committee	Reforms of the General Assembly Format
01-21-98	OAS Permanent Council	Perspective of the OAS
11-14-97	National Puerto Rican Coalition New York, NY	Community Development

11-05-97	UN General Assembly, Plenary	Explanation of vote on the Cuba Resolution
10-13-97	UN General Assembly, Economic Committee	Issues for the Committee Agenda
09-10-97	UN Economic and Social Council	Civil Society
06-20-97	Boricua College, NY	Commencement: The Broader Horizons
06-20-97	UN General Assembly, Plenary	Adoption of the Agenda for Development
06-17-97	UN General Assembly, Budget Committee	Proposed Program Budget for 1998-1999
05-27-97	Hostos Community College, NY	Commencement: "Celebrating Excellence in the South Bronx"
03-04-97	UN General Assembly High-Level Working Group	Financial Situation of the United Nations
12-16-96	UN General Assembly, Plenary	Declaration Against Corruption and Bribery in International Commercial Transactions
11-4-96	UN Pledging Conference	1996 U.S. Pledge for the UN Food Program
10-11-96	UN General Assembly, Plenary	Secretary General's Report on the Work of the Organization
10-14-96	UN General Assembly, Economic Committee	Sustainable Development
09-17-96	UN General Assembly, Plenary	New Agenda for the Development of Africa
06-24-96	UN Economic and Social Council	Enhancing External Fund Raising for Development
07-25-96	UN Economic and Social Council	Non-Governmental Organizations
07-19-96	UN Economic and Social Council	Humanitarian Issues
07-15-96	UN Economic and Social Council	Corruption and Bribery in International Commercial Transactions
05-22-96	UN Commission on Social Development	Summit on Social Development

05-03-96	UN Economic and Social Council	Accreditation for Habitat Conference
01-10-96	Association of the Bar of the City of New York Panel Discussion	"Beyond Beijing: A Call to Action"
12-08-95	UN General Assembly, Plenary	World Summit for Social Development
11-17-95	UN General Assembly, Economic Committee	Business and Development
11-17-95	UN General Assembly, Plenary	Reform of the Economical Social Council
11-17-95	UN General Assembly, Plenary	UN High Commissioner for Refugees
11-10-95	UN General Assembly, Plenary	Support to New or Restored Democracies
11-02-95	UN General Assembly, Plenary	U.S. Embargo against Cuba
10-02-95	UN General Assembly, Conference	Least Developed Countries
06-06-95	Foundation for Hellenic Culture	Hellenic Culture Statement
05-30-95	UN General Assembly, Committee on Relations with the Host Country	Diplomatic Indebtedness
04-21-95	UN General Assembly, Plenary	Observer Status for the European Community Under the Rules of Procedure
04-06-95	UN Commission on the Status of Women	Accreditation of NGO's to the 4th World Conference on the Status of Women
04-05-95	UN General Assembly, Committee on Relations with the Host Country	Violent Demonstration Near the Mission of Cuba
02-07-95	UN Development Programme	Tribute to Bradford Morse
12-23-94	UN Economic and Social Council	Implementation of the UN New Agenda for Development of Africa in the 1990's
12-09-94	UN General Assembly, Social Committee	Strengthening the Role of UN in Enhancing the Effectiveness of Periodic and Genuine Elections and the Promotion of Democratization
12-05-94	UN General Assembly, Plenary	Restructuring and Revitalization of the UN in the Economic, Social and Related Fields

11-28-94	UN General Assembly, Social Committee	Human Rights Situations and Reports of Special Rapporteurs
11-23-94	UN General Assembly, Plenary	Strengthening of the Coordination of Humanitarian and Disaster Relief Assistance
11-22-94	UN General Assembly, Plenary	The Agenda for Development
11-18-94	UN General Assembly, Plenary	Follow-Up to the International Conference for Population and Development
11-11-94	UN Pledging Conference	1995 U.S. Contributions to the UN High Commissioner for Refugees
10-26-94	UN General Assembly, Plenary	U.S. Embargo Against Cuba
10-25-94	UN, General Assembly, Economic Committee	Assistance in Mine Clearance
10-17-94	UN General Assembly, Social Committee	Racial Discrimination and Self-Determination
09-16-94	UN Economic and Social Council	Consultative Status of ILGA
08-25-94	UN General Assembly, Social Summit Preparatory Committee	World Social Summit Declaration
06-17-94	UN General Assembly, Committee on Relations with the Host Country	Diplomatic Indebtedness
04-26-94	UNICEF, Executive Board	Human Rights in Myanmar
03-18-94	UN Commission on the Status of Women	Jerusalem Status
02-14-94	UN General Assembly, Plenary	Appointment of the High Commissioner for Human Rights
02-09-94	UN Commission on Social Development	International Cooperation Role of UN Agencies in Social Development
12-20-93	UN General Assembly, Plenary	Situation of Human Rights in Iran
12-20-93	UN General Assembly, Plenary	Establishment of the Office of UN High Commissioner for Human Rights

12-10-93	UN General Assembly, Plenary	45th Anniversary of Universal Declaration of Human Rights
12-08-93	UN General Assembly, Committee on Relations with the Host Country	Parking Violations and Traffic Enforcement in the Diplomatic Community
12-06-93	UN General Assembly, Social Committee	Human Rights Situation in Myanmar
11-24-93	UN General Assembly, Social Committee	Human Rights: Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms
11-24-93	UN General Assembly, Economic Committee	Environment, Desertification and Drought
11-23-93	UN General Assembly, Social Committee	Human Rights Situations and Reports of Special Rapporteurs
11-12-93	UN General Assembly, Social Committee	High Commissioner for Human Rights
11-04-93	UN General Assembly, Economic Committee	Population and Development
11-04-93	UN General Assembly, Social Committee	Refugees, Returnees, and Displaced Persons and Humanitarian Questions
11-03-93	UN General Assembly, Plenary	U.S. Embargo Against Cuba
10-19-93	New York Lawyers for the Public Interest, New York	Justice for All, All for Justice
10-22-93	UN General Assembly, Plenary	Aftermath of the War in Nicaragua and Natural Disasters
10-15-93	UN General Assembly, Committee on Relations with the Host Country	Diplomatic Indebtedness
10-11-93	UN General Assembly, Social Committee	Racism and Self- Determination
10-08-93	UN General Assembly, Economic Committee	Post-Cold War Development Agenda
06-28-93	UN Economic and Social Council	1995 World Summit for Social Development

06-18-93	UN Development Programme, Governing Council	Reform Issues for the UNDP Agenda

C. Other Materials

Planning studies and reports prepared and published by the New York City Department of City Planning (NYC DCP), 1976-77 and by the New York State Division of Housing and Community Renewal (NYS DHCR), 1978-79

NYS DHCR

Attitudes of Elderly Public Housing Residents Towards Elderly-Only Buildings (1978)

Study of Conversion of Buildings in Public Housing to Elderly-Only Buildings (1978)

NYC DCP

Light Rail Transit and the 42nd Street Corridor (Dec. 1977)

Sidewalk Cafes (Dec. 1977)

Brooklyn Waterfront Rail Plan (Dec. 1977)

Conference Proceedings, A New Zoning for New York City (Dec. 1977)

The South Bronx, A Plan for Revitalization (Dec. 1977)

Far Rockaway, Beach 20th Street Revitalization (Dec. 1977)

Residential Re-Use of Non-Residential Buildings in Manhattan (Dec. 1977)

Pupil Mobility (December 1977)

Transition Report (Nov. 1977)

The South Bronx, St. Mary's Park Area (Oct. 1977)

Business and Construction Guide to New York City Agencies (Oct. 1977)

Public School Enrollment Trends, New York City 1970-1980 (Aug. 1977)

South Street Seaport, A Development Proposal (July 1977)

Blackout Commercial Damage Survey (July 1977)

A New Zoning for New York City (July 1977)

New York City's Visitors Industry (June 1977)

Kingsbridge Marble Hill, The State of the Community (June 77)

South Bronx HUB Study (June 1977)

Proposal for the American Stock Exchange: Expansion in Lower Manhattan (May 1977)

Surplus School Space, Some Facts About Re-use (June1977)

Trees for New York City (May 1977)

A Bronx Housing Strategy (May 1977)

A National Program for Local Comprehensive Planning (Apr. 1977)

Capital Needs and Priorities for the City of New York (Mar. 1977)

Sunset Park (Jan. 1977)

Uniform Land Use Review Procedure (Jan. 1977)

Review by the City of New York of the Draft General Management Plan for
Gateway National Recreation Area (Jan. 1977)

The City Budgets (Jan 1977)

Little Italy, Special District (Dec. 1976)

A Comprehensive Program for Community Board Assistance and Charter Implementation (Nov. 1976)

Newkirk Plaza Revitalization (Oct. 1976)

Lincoln Square and Its Waterfront (Oct. 1976)

Towards an Effective National Housing policy (Oct.1976)

Plazas for People (Sept. 1976)

Recommendations for A Preliminary Community District Map (Sept. 1976)

A Playground for all Children (Aug. 1976)

City Island, Proposal for An Island Community (July 1976)

New Dwelling Units Completed in 1975 ((June 1976)

Chinatown, Street Revitalization (May 1976)

Montague Street, Revitalization (Mar. 1976)

A Playground for all Children (Jan. 1976)

Union Square, Street Revitalization (Jan 1976)

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

The state of my health is excellent. My last physical exam was on April 16, 1999.

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, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

NOT APPLICABLE

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

a. I have held public office as follows:

June-August 1965
Intern
Office of Senator Robert F. Kennedy
United States Senate
Washington, DC

1968-70
Assistant to the Mayor
City of New York
Appointed by Mayor John V. Lindsay

1970-73
Assistant Administrator/Neighborhood Director
Model Cities Administration
City of New York

Appointed by Mayor John V. Lindsay

1973-74
Executive Director
Department of City Planning
City of New York
Appointed by Mayor John V. Lindsay

1974-75
Special Counsel to the Comptroller
City of New York
Appointed by Comptroller Harrison J. Goldin

1975-76
First Assistant Counsel to the Governor
State of New York, Executive Chamber
Appointed by Governor Hugh L. Carey
1976-77
Chairman, City Planning Commission
City of New York
Appointed by Mayor Abraham D. Beame

1978-79
Commissioner, State Division of Housing and Community Renewal
Vice Chairman, Housing Finance Agency
State of New York
Appointed by Governor Hugh L. Carey

1979-January 1981
Under Secretary, U.S. Department of Housing and Urban Development
Washington, DC
Appointed by President Jimmy Carter

1983-84 (part-time)
Member, New York City Conciliations and Appeals Board
City of New York
Appointed by Mayor Edward I. Koch

1985-93 (part-time)
Trustee, State University of New York
SUNY Plaza, Albany
Appointed by Governor Mario M. Cuomo

1990-92 (part-time)
Member, New York City Rent Guidelines Board
City of New York
Appointed by Mayor David N. Dinkins

1993-97
Ambassador, Representative of the United States
on the Economic and Social Council of the United Nations
U.S. Mission to the UN
U.S. Department of State
New York, NY
Appointed by President William J. Clinton

1998-present
Ambassador, Permanent Representative of the United States
to the Organization of American States
U.S. Mission to the OAS
U.S. Department of State, Washington, D.C.
Appointed by President William J. Clinton

b. I was an unsuccessful candidate in the primary election for nomination as the Democratic Party candidate for Borough President of The Bronx, New York, in a special election held in September, 1979.

17. Legal Career:

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

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

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

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

I did not clerk for a judge. I never practiced alone. I had law practice and legal and other relevant experience with law firms, government agencies and teaching as follows:

LAW FIRMS

Brown & Wood (by merger with Tufo & Zuccotti)
New York, NY
Partner, Jan. 1986-June 1993

Tufo & Zuccotti
New York, NY

Partner, March 1982-Dec. 1985

Cravath, Swaine & Moore
New York, NY
Summer Associate, June-Aug. 1966; July-Aug. 1967

PUBLIC AGENCIES

Department of State
U.S. Mission to the OAS
Washington, D.C. 20520
Ambassador, Permanent Representative of the United States
to the Organization of American States
January 1998 – present

Department of State
U.S. Mission to the UN
New York, NY
Ambassador, Representative of the United States
on the Economic and Social Council of the United Nations, June 1993-97

New York City Rent Guidelines Board
New York, NY
Member of the Board (part-time), 1990-93

New York City Conciliation and Appeals Board
New York, NY
Member of the Board, 1983-84 (part-time)

U.S. Department of Housing and Urban Development (HUD)
Washington, D.C.
Under Secretary, 1979-Jan 1981

New York State Division of Housing and Community Renewal
New York, NY
Commissioner, 1978-79

City Planning Commission
New York, NY
Chairman of the Commission, 1976-77

Office of the Governor
Executive Chamber
Albany, NY
First Assistant Counsel
to the Governor, 1975-76

Office of the Comptroller
New York, NY
Special Counsel to the Comptroller, 1974-75

Department of City Planning
New York, NY
Executive Director, 1973-74

Model Cities Administration
New York, NY
Assistant Administrator/Neighborhood Director, 1970-73

Office of the Mayor
New York, NY
Assistant to the Mayor, 1968-70
TEACHING

Yale Law School
Visiting Lecturer, 1985-87
New Haven, CT

I taught a seminar on substantive, procedural and strategy issues associated with organizing, financing and carrying out large scale real estate transactions. The seminar traced every major step of an actual large real estate development in New York, from the acquisition of the land, structuring of financing and administrative approvals to the defense of resulting litigations.

Columbia Law School
Visiting Lecturer, 1990-93
New York, NY

I taught a seminar on the historical evolution, theory and practice of land use and environmental regulation in regards their application to the use and development of property.

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

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

My practice of law and legal work has included both private practice with the law firms and public service with the government agencies listed in response to Question 16 above. Some of my public offices entailed direct legal work or significant involvement with public law and public policy issues decided within a formal legal framework. Other parts of this public experience were primarily executive and administrative but included direct and regular involvement with substantial legal issues. The character of this legal work is described in these three parts below.

LAW FIRMS

Tufo & Zuccotti and Brown & Wood:

I practiced law as a partner of Tufo & Zuccotti and Brown & Wood (by merger in 1986) from 1982-93. My practice encompassed administrative law and procedures before public agencies and officials of city, state and federal governments. From 1990-93 I headed the firm's real estate, land use and environment law practice group. My work entailed advising private, institutional and public clients on matters relating to land use and environmental laws and regulations and on the structuring and financing of real estate transactions. Typical clients included: (1) corporate--United Parcel Service; Olympia & York Properties; Barney's New York; Starrett Housing Corporation; Nederlander Theaters; (2) institutional--Rockefeller University; Columbia University; Trinity Church; Presbyterian Hospital; (3) public—United States Postal Service.

Substantively, these matters entailed laws and regulations pertaining to zoning, environment, landmarks, building codes, real estate finance and taxation, mortgage insurance, property tax exemptions and tax-exempt borrowings. This practice included:

- Preparing, filing and processing petitions for amendments and permits pursuant to zoning ordinances, environmental laws, landmark statutes and building codes;

- Seeking variances and pursuing administrative appeals from application of zoning, environmental and other land use controls, and from the granting or denial of public permits and certifications;

- Appearing in opposition to petitions and appeals to which my clients objected;

- Appearing before public agencies and officials to present the client's case, preparing arguments and written submissions for the public record; arranging for the testimony of experts and other interested persons and the order of their presentations in support of or opposition to the matter; appearing at all stages of the various statutory public hearings to present the arguments for or against the petition or appeal and arranging for other support;

- Negotiating agreements relating to the purchase and long-term leasing and financing of property for development.

On occasion the matters I handled subsequently were the subject of legal proceedings in court, initiated either by my clients or others challenging the final administrative decisions on the matter. In these instances, particularly those in which my firm also handled the litigation, I participated in the drafting, review and editing of court submissions and advising on strategy prepared by litigators. On some occasions, in connection with matters that my firm did not handle, I was retained by other trial attorneys to serve as special counsel to advise on the substance of the law and/or was called to appear at trials as an expert witness.

Cravath Swaine & Moore

I worked as a summer associate in 1966 and 1967 in the firm's litigation department doing legal research and writing memoranda and drafting court filings on commercial litigation cases, including anti-trust, bankruptcy, banking, securities and contracts.

PUBLIC AGENCIES LEGAL WORK

A. Public International Law and Policy

Ambassador, Permanent Representative of the United States to the Organization of American States (OAS) (Jan 1998 – present):

By Presidential appointment (President Clinton), I serve as principal delegate of the United States to the OAS and Chief of Mission of the U.S. Mission to the OAS. I am responsible for representing the U.S. at the OAS and for management of the Mission and staff of approximately 20 Foreign Service and Civil Service officers. Functions of this office entail representing U.S. interests and communicating foreign policy of the U.S. on matters before the OAS, including negotiation of intergovernmental resolutions, declarations, conventions and other agreements with moral or binding obligations under international law. Some subjects involved in negotiations and discussions of such instruments and agreements have included: corruption and bribery in international commercial transactions; illicit traffic in small weapons and firearms; control of illegal drugs; human rights; international environmental issues such as climate change and biodiversity; administration of justice; cooperation for international development; international trade; humanitarian assistance; population; and terrorism and international crimes.

Ambassador, Representative of the United States on the Economic and Social Council of the United Nations (ECOSOC) (1993-1997), and Representative of the United States for United Nations Management and Reform (1996-97):

By Presidential appointment (President Clinton), I served as principal delegate of the United States to the ECOSOC and as head of the Economic and Social and the Resources Management Sections of the U.S. Mission to the UN. I was responsible for representing the U.S. at the ECOSOC and for management of U.S. Mission staff of approximately 30 full-time Foreign Service and Civil Service officers. Functions of this office entailed communicating foreign policy of the U.S. and representing U.S. interests on economic and social matters before the United Nations' various bodies, including, in addition to the ECOSOC, the General Assembly and its various Main Committees; UNICEF; the UN Development Programme; the UN Population Programme. In this regard I participated in negotiations and discussions of intergovernmental resolutions, declarations, conventions and other agreements on subjects listed above relating to my current office.

B. Public Administrative Law and Policy

I have held other high public offices which have entailed extensive experience in legal policy and law-related matters decided by government agencies which had administrative, regulatory, quasi-judicial or quasi-legislative functions and authority. Proceedings in these bodies were formal, entailing established

rules and procedures, mandatory due process protections of notice, public hearings and opportunity for interested parties to appear in person or by counsel, written record of proceedings, findings of fact and published decisions, votes in public meetings, higher administrative review and appeals directly to court. Within this kind of professional experience are:

Chairman, New York City Planning Commission (1976-77)

The Commission is an agency of the City. During my tenure, it consisted of seven members appointed by the Mayor (Abraham D. Beame), six of them part-time professionals who served for fixed terms and who were not otherwise employed of the City, and a full-time Chairman who served at the pleasure of the Mayor. The Chairman functioned simultaneously as the head of the Department of City Planning, which then employed approximately 400 full-time staff.

The Commission is entrusted by City Charter and State law with formulation of development policy and land use regulation for the entire City. It administers the City's zoning ordinance and the City map, both of which the Commission is authorized to amend either on its own initiative or upon formal petition by other public agencies, property owners or interested persons with requisite legal standing. The Commission is also empowered, subject to making specified findings of fact satisfying substantive standards, to grant authorizations, waivers, certifications, and special permits. All proceedings of the Commission are formal and open to the public. Applications for any action by the Commission must be in writing. Legal notice and an opportunity to be heard must be given to the public and to property owners and other interested parties. The Commission's decisions are made following the required public hearings, and must be reached by public vote of the members, a majority of which is required for adoption of the action. The Commission's decisions are accompanied by a written record of the entire proceedings, the Commission's findings, considerations and majority and dissenting opinions. (Examples of decisions and opinions of the Commission rendered during my tenure as Chairman are attached in response to Question 12)

The Commission's decisions are subject to approval, disapproval, or modification (except for major substantive changes and zoning map amendments) by the City's legislative body (during my tenure, the City's Board of Estimate). The Chairman of the Commission is ultimately responsible for all policy, programs, legal, legislative and public affairs, and executive management of all the functions of the Commission and the Department. As regards legal matters, for example, these duties include:

- Overseeing the agency's compliance with due process requirements, including the preparation of the Commission's meeting agenda and publication of its public hearing calendar;
- Presiding over and managing the conduct of all public hearings and executive sessions of the Commission;
- Providing guidance to the staff with regard to preparation of zoning ordinance amendments and reviewing draft texts;
- Providing guidance to staff for the preparation of the Commission's findings of fact and compliance with substantive standards and the content of majority decisions and opinions; reviewing and editing the staff's drafts; approving and, in some instances, substantially writing the majority opinion;

- On contested proceedings, meeting with the applicants and with opponents to hear conflicting arguments and attempt to narrow differences prior to final decision;

- Rendering legal opinions on interpretations of the zoning statutes and expressing the intent of Commission decisions;

- Appearing at public hearings of the Board of Estimate to present matters approved by the Commission, explain and, as appropriate, defend and/or advocate for the Commission's decision;

- Appearing at proceedings of the Board of Standards and Appeals to object to petitions for actions deemed not consistent with the Commission's intent or to convey the Commission's interpretations of the zoning ordinance;

- With regard to major judicial appeals of Commission decisions, offering guidance and assisting in the preparation of litigation papers and appellate strategy.

Commissioner, New York State Division of Housing and Community Renewal (DHCR)/ Vice Chairman, State Housing Finance Agency (HFA) (1978-79):

I served as Commissioner of DHCR and simultaneously as Vice Chairman of HFA by appointment of Governor Hugh L. Carey. Among statutory duties of the DHCR Commissioner is the regulation of rents charged in state-subsidized housing (so-called Mitchell-Lama) developments and the administration of the State's rent control laws (during my tenure, those which applied to cities other than New York). The Commissioner has final authority to rule on petitions by owners for increases in rents and to pass upon complaints and protests by tenants to rent relief actions and requests by owners. The rent proceedings entailed written petitions and public hearings, in which typically both sides were represented by counsel. The Commissioner issued his decisions as written orders. On occasion, the Commissioner's rent rulings and other legal determinations were the subject of direct court challenges. Ordinarily, the Commissioner's rulings in these judicial proceedings were sustained.

Member, New York City Conciliation and Appeals Board (part-time, 1983-84):

The Board was a free-standing administrative body of the City established by State law. It consisted of seven members appointed by the Mayor for fixed terms. The Chair served full-time as a public member. The other six members served part-time, three designated as tenant representatives, and three as owner representatives. I was appointed by Mayor Edward I. Koch as one of the owner representatives. The Board was created to remove from the calendar of the State courts and to resolve administratively the adjudication of thousands of petitions and complaints arising from administration of the City's rent regulation system and the oversight of compliance with the State Rent Stabilization Laws. These matters included landlord-tenant disputes over renewal of leases, legal rents charged on new and renewal leases, removal of units from rent regulation, primary legal residence of tenants, rent adjustments for capital improvements and relief for owners for other undue hardships.

The Board acted on formal written applications and complaints. The parties typically were represented by counsel. The cases were presented to the Board by the Board's counsel and staff. The Board decided

each case individually by majority vote and issued written decisions setting forth its considerations. Decisions of the Board were appealable directly to the State courts. The Board adjudications relieved the court system of a substantial volume of litigation that otherwise would have ended up as judicial proceedings.

Member, New York City Rent Guidelines Board (part-time, 1990-1993):

The Board was established by the State law as a free-standing administrative body of the City. It consisted of seven members appointed by the Mayor for fixed terms, all serving part-time. Two members were designated as representing the tenants, two representing owners and two were public members. The Chair was not identified with any interest group. I was appointed by Mayor David N. Dinkins as one of the public members. The Board is authorized to establish the legal limits owners could charge for new and renewal leases on apartments covered by the State's Rent Stabilization Laws. The Board's proceedings are conducted in public. It holds annual hearings to gather evidence and opinions from representatives of owners and tenants, from public agencies, from independent experts and from interested civic groups. From this record, the Board formulates and publishes proposed maximum rent guidelines and fixes a series of public hearings to elicit public opinion. Following these hearings, the Board adopts by majority vote at a public meeting the rent guidelines applicable for the subsequent lease period.

Frequently the Board's determinations are challenged in State court, requiring some involvement by some of the Board members, working with the Board's staff and trial attorneys from the City's Corporation Counsel, in preparing aspects of the litigation record.

First Assistant Counsel to the Governor of New York (1975-76):

In this office I served by appointment of Governor Hugh L. Carey as the deputy of the Governor's Counsel (Judah Gribetz). I was involved in all aspects of the Governor's role in the legislative process, including the drafting and review of the Governor's written decisions approving or disapproving legislation and preparing special messages to the Legislature. I also represented the Governor's office in discussions with the Attorney General and Solicitor General on some matters involving legal actions against the State. I reviewed the other Assistant Counsel's work on petitions for extradition, clemency and related matters.

Special Counsel to the Comptroller of the City of New York (1974-75):

I served the Comptroller (Harrison J. Goldin) as policy and legal adviser on all matters pertaining to his City Charter duties as a member of the Board of Estimate. The Board, consisting of the Mayor, the Comptroller, the City Council President and each of the five Borough Presidents, had administrative, regulatory and quasi-legislative powers. Among its principal functions, it gave final approval to all actions approved by the City Planning Commission arising from the zoning ordinance and other laws. It also approved all contracts entered into by the City for private professional services as well as contracts that were not competitively bid. It reviewed and approved, disapproved or settled all contract claims against the City. And it had exclusive jurisdiction over granting and regulating franchises awarded by the City for use of City public streets, generally for transportation, cafes and telecommunications. All its proceedings were conducted in public meetings. It held formal public hearings on all matters on its

calendar. It decided all matters in public and maintained a written public record of its proceedings and decisions.

As Special Counsel, I was the Comptroller's representative to the Board, prepared his written statements in connection with the Board's decisions, and, serving as Acting Comptroller in his absence, cast his vote.

C. Other Public Offices

I also held other public offices which entailed substantial administrative and executive experience often involving significant legal and public policy issues. This experience includes:

Under Secretary, U.S. Department of Housing and Urban Development (HUD) (1979-81):

By Presidential appointment (President Carter), I served as second in command of HUD under the Secretary (Hon. Moon Landrieu). I was responsible for all aspects of policies, programs, management, legislative, regulatory, legal and public affairs of the Department. Some legal functions in which I was involved included review and clearance of the Department's official regulations prior to publication and submission to Congress; review and clearance of major legislative and budget proposals and of major claims and settlements.

Executive Director, New York City Department of City Planning (1973):

By appointment of the Mayor (John V. Lindsay), I served as second in command of the Department under the Chairman of the City Planning Commission (John E. Zuccotti). I was responsible for all aspects of policies, programs, management, legislative, legal and public affairs of the Department.

Assistant Administrator/Neighborhood Director, New York Model Cities Administration (1970-73):

By appointment of the Mayor (John V. Lindsay), I served under the Administrator (Hon. Joseph B. Williams) as the executive in charge of the agency's programs and operations in the South Bronx, including policy, planning, budgeting, administration and legal affairs.

Assistant to the Mayor (Hon. John V. Lindsay) (1968-70):

I served as a member of the Mayor's executive staff assigned as liaison to City agencies, officials and issues relating to environmental protection and regulations; labor relations; consumer affairs; and the City's legislative program at the State Legislature. For example, I worked on coordinating the City's efforts to implement compliance with the City's air pollution control law.

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

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

(c) other courts.

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

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

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

My legal experience entailed private and public administrative law practice and public law experience in government office. My private practice encompassed administrative law and procedures before public agencies and officials of city, state and federal governments on matters relating to land use and environmental laws and regulations and on the structuring and financing of real estate transactions. In the course of this practice, I appeared in court occasionally as either special counsel and/or expert witness retained by trial attorneys to assist in the preparation and litigation of cases within my areas of practice specialty. I regularly appeared before public administrative bodies on my clients' behalf to argue for petitions or appeals or to oppose applications for public actions. Among these administrative bodies were:

STATE:

Department of Environmental Conservation
Urban Development Corporation
Division of Housing and Community Renewal
Housing Finance Agency
Mortgage Agency
Job Development Authority
Metropolitan Transportation Authority
Battery Park City Authority
Port Authority of New York and New Jersey

CITY:

City Planning Commission
Board of Estimate
City Council
Board of Standards and Appeals
Landmarks Preservation Commission
Department of Buildings
Department of Environmental Protection
Department of Housing Preservation and Development
Department of Finance
Tax Commission

FEDERAL:

Department of Housing and Urban Development
Environmental Protection Administration
Department of the Interior

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

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

Some examples of significant legal matters I personally handled for the client indicated during my practice of law which entailed experience equivalent to litigation work include:

1. Cartier: Court action (Cartier Inc. v. Olympic Tower Associates, Supreme Court, New York County) by Cartier against the owners of the building (Olympic Tower) adjoining Cartier's store on Fifth Avenue, Manhattan, to resolve a dispute regarding development rights remaining to Cartier under an agreement pursuant to which the lots on which both buildings were located were merged for development purposes. I was brought into the matter as special counsel to obtain administrative determinations and building permits from the City, to assist Cartier's litigating attorneys in the preparation of the case and to appear in court as an expert witness on substantive issues. The legal issues disputed were whether Cartier had retained and possessed sufficient development rights within its building property to allow it to proceed with an alteration of the store and whether the adjacent owner could withhold its consent to Cartier's application for construction permits required for the alterations. The court ruled in favor of Cartier. (Unreported decision rendered June 27, 1989 affirmed at 544 NYS 2d 404 (N.Y.A.D. 1st Dept. 1989)). The trial judge was Justice Beatrice Shainswit (212-374-8398). Cartier's trial counsel was James Shanman (212-756-0273), Edwards & Angel, 750 Lexington Avenue, New York, NY 10022. Defendant's trial attorney was Edward R. Siegel (212-431-1300), Borah, Goldstein, Altschuler & Schwartz, 377 Broadway, New York, NY.

2. College Point Associates: Administrative proceedings and court actions commenced by the State Department of Environmental Conservation (Department of Environmental Conservation (DEC) v. College Point Associates, Supreme Court, Queens County) to impose fines and compel removal of several acres of landfill placed in designated coastal areas and wetlands without proper authorizations from the City and State. I negotiated a settlement of the actions by consent order under which the respondents agreed not to develop the land without DEC approval, to dedicate portions of the newly created coastal land to public space and to finance its development for those purposes. The State was

represented by Assistant Attorney General C. Michael Bryce (718-990-6600), St Johns University, School of Law, 8000 Utopia Parkway, Jamaica, NY 11439.

3. Royal Bank of Canada: Petition to the Board of Standards and Appeals (Calendar No. 282-90BZ, June 11, 1991, Hon. Roger Bennett (212-725-2727), Chairman, presiding) for certain zoning ordinance administrative waivers in connection with the development of a New York headquarters building for the Bank in Lower Manhattan. The action was contested in the Board's proceedings by an adjacent property owner represented by Howard Goldman (212-909-9509), Watchtel & Mazur, 110 East 59th Street, 27 floor, New York, NY 10022. The application was approved. (The Board is the administrative agency, consisting of five appointed full-time members, empowered by the City Charter to grant property owners relief from the strict application of zoning laws. The Board can act only upon making required legal findings of hardship and other specified conditions. It conducts all its proceedings in open meetings, is required to hold public hearings and to give legal notice of all matters it considers.)

4. Nederlander Organization, Jujamcyn Theaters and Shubert Organization: I represented three private business organizations which together owned almost all of the legitimate theaters in Manhattan's Broadway Theater District in proceedings commenced by the City's Landmarks Preservation Commission (see, e.g., Majestic Theater, Calendar No. LP 1356, D. List No.197, Dec. 8, 1987, Hon. Eugene Norman, Chairman, presiding) to designate all of the Broadway legitimate theater buildings as landmarks under the City's Landmarks Law. In a separate but related matter, the City Planning Commission commenced amendments of the zoning ordinance under which certain major improvements of legitimate theater properties would require special permits from the Planning Commission. I represented the theater owners in this proceeding as well. The theaters owners opposed these actions. They contended that wholesale designation of all theater properties as an industry, effectively requiring owners to preserve the buildings for use as legitimate theaters in perpetuity whether or not there was sufficient demand for theater production, and constraining the theater owners' flexibility to alter the interior spaces as required by production demands, unreasonably interfered with artistic expression, destroyed the value of the theater properties for other purposes and therefore was tantamount to an unlawful "taking" of property. After extensive negotiations with the owners, the Landmarks Commission approved the landmark designations but also prepared and published a set of standards to guide interior changes of the theater spaces necessary for production purposes, and the City undertook to enhance the theater owners' ability to transfer unused development rights from legitimate theater properties designated as landmarks. In a court case handled by other attorneys, the theater owners challenged the City's actions in State Supreme Court, which upheld the City in Shubert Organization v. Landmarks Preservation Commission, 570 NYS2d 504 (N.Y.A.D. 1st Dept. 1991); 575 NYS 2d 456 (1991). The City was represented in the Landmarks Commission actions by Hon. Eugene Norman, (718-365-5160) Chairman, 7 Fordam Hill Oval, Bronx, NY, and Dorothy Miner, Esq. (212-866-4912), General Counsel, 400 Riverside Drive, New York, NY.

5. Starrett Housing Corporation: Several public agency actions and approvals in connection with the development of a large scale residential building on Roosevelt Island, Manhattan. These included negotiation of a Memorandum of Understanding, Letter of Intent and long-term ground lease from the New York State Urban Development Corporation; applications for required development permits from the Corporation and the City; financing through State Housing Finance Agency tax-exempt bonds and rent subsidies from the U.S. Department of Housing and Urban Development for a portion of the development. All of the approvals were granted. The actions were opposed by residents of Roosevelt Island and other neighborhood groups throughout the proceedings at the Urban Development

Corporation and subsequently in court action alleging flaws legal deficiencies in the environmental and construction approvals. The approvals were upheld in court in Roosevelt Island Residents Assn. NY State Urban Development Corp., 512 NYS 2d 650 (N.Y.A.D. 1st Dept. 1987).

As Senior Partner in charge of the matter, I played a significant role in the preparation of strategy, agreements, legal opinions, documents and legal filings related to every aspect of the development, taking the lead role in some parts of the matter and working closely with or supervising the work of other attorneys on others. In the ensuing litigation I worked with the trial attorneys on the substantive law and assisted in the preparation of documents. Co-counsel with me from my firm was John Kelly, (212-856-7000) Battle Fowler, 75 East 55 Street, New York, NY 10022.

6. Olympia & York Properties: I represented Olympia & York in connection with various government regulatory approvals, environmental land use reviews, design permits and public access and utility easement agreements required from the City of New York, the Battery Park City Authority, the Port Authority of New York and New Jersey and the U.S. Government for the development of the four buildings and plazas of the World Financial Center at Battery Park City, including formal agreements with the Port Authority, the City and Battery Park Authority for public bridge access connection over the West Side Highway, linking the World Financial Center with the World Trade Center through the U.S. Customs Court Building. All of the approvals and agreements were obtained and the development was constructed. Co-counsel from my firm on aspects of these matters was John E. Zuccotti (212-750-0516), 767 Fifth Ave., New York, NY.

7. United Parcel Service: Petition to the City Planning Commission (Calendar No. 43, June 27, 1990, C 890570 ZSM, Hon. Richard Schaffer, presiding) for an amendment of the zoning ordinance, de-mapping of a volume of space over a public street and special permits and waivers in connection with the development of a trucking distribution facility in Lower Manhattan. The application was opposed in the Commission's proceedings by residents of nearby buildings and other community groups. The actions were approved by the Commission and the Board of Estimate. Representing the Commission on this matter were Hon. Richard Schaffer (212-870-3483), former Chairman, Columbia University, School of Architecture and Planning, New York, NY and William Valletta (617-621-3186), Esq., General Counsel, P.O. Box 426116, Cambridge, MA 02142.

8. Columbia University: Petitions to the City Planning Commission (Calendar No. 46, June 27, 1990, C 890662 ZMM, Hon. Richard Schaffer, presiding) for zoning ordinance amendments and special permits for development of a biomedical research center at the site of the former Audubon Ballroom in Manhattan. The applications were approved by the Commission and the Board of Estimate, though challenged during its proceedings by neighborhood groups and residents. Representing the Commission on the matter were Hon. Richard Schaffer (212-870-3483), former Chairman, Columbia University, School of Architecture and Planning, New York, NY and William Valletta (617-621-3186), General Counsel, P.O. Box 426116, Cambridge, MA 02142.

9. Rockefeller University: Applications to the City Planning Commission (Calendar No. C 880671 ZSM, Oct 18, 1989, Hon.Sylvia Deutsch, Chairperson, presiding) for various permits, approvals and agreements required in connection with the development of a medical research laboratory building in air space over the FDR Drive, Manhattan. Approvals for these projects required negotiation of certain public amenity agreements with the City that included the adjacent institutions of New York Hospital and the Hospital for Special Surgery. In these matters, the City was represented by Hon. Sylvia Deutsch

(718-680-9848), Chair, 3130 Brighton, Shore Road, Brooklyn, NY and William Valletta, Esq. (617-621-3186), General Counsel of the Commission,. P.O. Box 426116, Cambridge, MA 02142 and the Hospitals by Rosenman & Colin, Howard Zipser (212-822-2232), 850 3rd Ave., New York, NY.

10. Olympia & York Properties: Negotiation of an agreement with the City of New York's Department of Finance permitting the readjustment of the payment schedule of real estate taxes for numerous major properties in Olympia & York's Manhattan portfolio in order to prevent triggering an event of default under various mortgages and financing arrangements while the Company was in bankruptcy reorganization. Counsel for Olympia & York on other aspects of these financial transactions Corrine Ball, Esq., (212-310-8000) Weil, Gotschal & Manges, 767 Fifth Avenue, New York, NY. The City was represented by Simon Salas, Esq. (210-527-9790), General Counsel, and Devora Cohn (718-403-3671), Deputy General Counsel of the Department of Finance.

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

Ambassador, Permanent Representative of the United States to the Organization of American States (OAS) (Jan 1998 – present):

In my current office, I serve as principal delegate of the United States to the OAS and Chief of Mission of the U.S. Mission to the OAS. Functions of this office entail representing U.S. interests and communicating foreign policy of the U.S. on matters before the OAS, including negotiation of intergovernmental resolutions, declarations, conventions and other agreements with moral or binding obligations under international law. Some subjects involved in negotiations and discussions of such instruments and agreements have included: corruption and bribery in international commercial transactions; illicit traffic in small weapons and firearms; control of illegal drugs; human rights; international environmental issues such as climate change and biodiversity; administration of justice; cooperation for international development; international trade; humanitarian assistance; population; and terrorism and international crimes.

For example, I led negotiations on the drafting of a proposed OAS Declaration on Freedom of Expression, a Convention on Transparency in Conventional Weapons Acquisitions, a Declaration on the Rights of Indigenous Populations, and a resolution to establish an agency for cooperation on regional development. I served recently as alternate head of the U.S. delegation (behind Attorney General Janet Reno) to the Second Meeting of Ministers of Justice and Attorneys General of the Americas, held in Lima, Perú. In preparation for and at this conference, I participated in discussions and negotiations of proposals for hemispheric cooperation on the establishment of a Justice Studies Center for the Americas; improving laws and processes relating to extradition and seizure and forfeiture of assets of crime; defining and combating cyber-crime; and strengthening legal protections for intellectual property.

A substantial part of this work entails public international law. For example, it requires me to review, comment on and approve materials submitted in connection with cases filed against the United States under the Inter-American Declaration on the Rights and Duties of Man in the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights. And because the meetings of the Organization's various committees and subsidiary bodies in which I represent the U.S. are conducted

under formal rules and procedures, I am frequently required to apply, interpret and formulate the procedural framework of these meetings.

Ambassador, Representative of the United States on the Economic and Social Council of the United Nations (ECOSOC) (1993-1997), and Representative of the United States for United Nations Management and Reform (1996-97):

I served as principal delegate of the United States to the ECOSOC and as head of the Economic and Social and the Resources Management Sections of the U.S. Mission to the UN. Functions of this office entailed communicating foreign policy of the U.S. and representing U.S. interests on economic and social matters before the United Nations' various bodies, including, in addition to the ECOSOC, the General Assembly and its various Main Committees; UNICEF; the UN Development Programme; the UN Population Programme. In this regard I participated in negotiations and discussions of intergovernmental resolutions, declarations, conventions and other agreements on subjects listed above relating to my current office. I was a senior adviser on the U.S. delegation to the United Nations international conferences on: Human Rights (Vienna, 1993); Population (Cairo, 1994); Social Development (Copenhagen, 1995); Women (Beijing, 1995); Human Settlements (Istanbul 1996); Environment and Development (General Assembly Special Session, New York, 1997). I was the chief U.S. negotiator on the UN General Assembly resolutions establishing the Office of High Commissioner for Human Rights, the Office of Internal Oversight (Inspector General), the Declaration on the Occasion of the 50th Anniversary of the United Nations, and the UN Declaration Against Corruption and Bribery in International Commercial Transactions.

In addition, I was the Mission's principal representative with regard to the U.S. government's treaty obligations under international agreements as Host Country to the UN headquarters. In this connection, I was in charge of handling and responding to legal issues, inquiries and claims raised by the UN Legal Adviser, by other governments and foreign diplomats relating to U.S. Host Country legal obligations. Frequent among these were matters involving assertions of or requests for waivers of diplomatic immunity in connection with alleged criminal conduct by diplomats.

Chairman, New York City Planning Commission (1976-77)

The New York City Planning Commission is entrusted by City Charter and State law with formulation of development policy and land use regulation for the entire City. It administers the City's zoning ordinance and the City map, both of which the Commission is authorized to amend either on its own initiative or upon formal petition by other public agencies, property owners or interested persons with requisite legal standing. The Commission is also empowered, subject to making specified findings of fact satisfying substantive standards, to grant authorizations, waivers, certifications, and special permits. The Commission's decisions are made following required public hearings, and must be reached by public vote of the members, a majority of which is required for adoption of the action.

During my tenure as Chairman of the Commission, I was primarily responsible for or participated extensively in the Commission's decisions in many significant legal matters. Among them were:

1. As entrusted to the Commission by the 1977 amendments of the City Charter, adoption of a Uniform Land Use Review Procedure (ULURP). These regulations codified the formal rules, public process and

timetables governing the consideration of all applications for land use approvals by the Commission and the Board of Estimate pursuant to the zoning ordinance and other applicable laws.

2. Also in accordance with the 1977 Charter amendments, directed the Department's work in the preparation of a City map of boundaries for the City's new Community Districts, which were required by law to be compact, contiguous and coterminous with the boundaries of certain municipal services and to contain relatively similar population levels. The new Community Districts were intended as the basis for the appointment of Community Board members and the participation of citizens in land use matters and local City services.

3. Preparation and adoption of the City's Environmental Quality Review (CEQR) procedures. This action, taken pursuant to the State's environmental quality laws, established certain substantive standards and the administrative process regulating the preparation and public review of environmental impact statements required in connection with land use controls, approvals and other public actions to which the State laws applied. The City's procedures designated the City Planning Commission as co-lead agency in the process.

4. Regulations to improve the design of and public use of plazas, sidewalk cafes and open spaces;

5. Urban renewal plans for the development of publicly assisted housing in various parts of the City;

6. Zoning text legislation and mappings of special district development controls to encourage the preservation of landmarks and historic properties and neighborhoods with unique economic, esthetic or cultural significance to the City, including Carnegie Hall, Little Italy, City Island and Union Square;

7. Amendment to the zoning statute restricting the location of pornographic uses to specified zoning districts and prohibiting their concentration. (The amendments were adopted by the Commission but the Board of Estimate was unable to agree on an acceptable regulation within the time limit for its action);

8. Approvals of zoning amendments and accompanying permits in connection with numerous major development projects, including:

- The headquarters building for IBM on Madison Avenue and 57th Street;
- The expansion of the Museum of Modern Art;
- The Helmsley Palace Hotel and renovations of the Villard Houses on Madison Avenue and 50th Street;
- The residential building on Fifth Avenue and 62nd Street.

Commissioner, New York State Division of Housing and Community Renewal (DHCR)/ Vice Chairman, State Housing Finance Agency (HFA) (1978-79):

I served as Commissioner of DHCR and simultaneously as Vice Chairman of HFA by appointment of Governor Hugh L. Carey. Among statutory duties I performed as the DHCR Commissioner was the regulation of rents charged in state-subsidized housing (so-called Mitchell-Lama) developments and the administration of the State's rent control laws (during my tenure, those which applied to cities other than New York). The Commissioner has final authority to rule on petitions by owners for increases in rents and to pass upon complaints and protests by tenants to rent relief actions and requests by owners.

Among other major legal matters in which I had significant involvement as DHCR Commissioner were:

Co-op City: Negotiation of an understanding to settle a dispute between the Riverbay Corporation, the Co-op City ownership entity for the entire 15,000 unit complex, and the State of New York. The matter concerned major defects in the construction of the development, issues of who bore the legal responsibility for financing the necessary repairs of the defects and the extent to which the liability for the defects on the part of the residents mitigated their obligations to repay under the development's underlying mortgages financed by the State.

Starrett City: Negotiation of an agreement settling a contract dispute between Starrett Housing corporation, builders of the development, and the State of New York. It related to a substantial cost overrun in the construction of the 6,000-unit complex.

Starrett City: Claims by African-American residents and other community leaders and the U.S. Justice Department alleging that a goal established by agreement between the State and the owner of the development at the time the project was approved, under which the housing company undertook to maintain tenancy of the development at a racial mix of 70% white and 30% others, unconstitutionally discriminated against blacks and other minorities. The dispute ultimately resulted in litigation filed in Federal Court against the State shortly before my departure as Commissioner. It originally listed me as named defendant in my official capacity. The case ended in the Supreme Court, which ruled against the housing company and the State.

Member, New York City Conciliation and Appeals Board (part-time, 1983-84):

The Board was a free-standing administrative body of the City established by State law to remove from the calendar of the State courts and to resolve administratively the adjudication of thousands of petitions and complaints arising from administration of the City's rent regulation system and the oversight of compliance with the State Rent Stabilization Laws. These matters included landlord-tenant disputes over renewal of leases, legal rents charged on new and renewal leases, removal of units from rent regulation, primary legal residence of tenants, rent adjustments for capital improvements and relief for owners for other undue hardships. The Board decided each case individually by majority vote and issued written decisions setting forth its considerations. Decisions of the Board were appealable directly to the State courts. During my tenure, I participated in Board adjudications that relieved the court system of a substantial volume of litigation that otherwise would have ended up as judicial proceedings.

Member, New York City Rent Guidelines Board (part-time, 1990-1993):

The Board was established by the State law as a free-standing administrative body of the City authorized to establish the legal limits owners could charge for new and renewal leases on apartments covered by the State's Rent Stabilization Laws. During my service, I participated in the Board's annual public hearings to gather evidence and opinions from representatives of owners and tenants, from public agencies, from independent experts and from interested civic groups. I also participated in the formulation of the Board's proposed maximum rent guidelines and subsequently in the majority vote adoption of the legal rent guidelines applicable for the subsequent lease period.

First Assistant Counsel to the Governor of New York (1975):

In this office I served by appointment of Governor Hugh L. Carey as the deputy of the Governor's Counsel (Judah Gribetz). I was involved in all aspects of the Governor's role in the legislative process, including the drafting and review of the Governor's written decisions approving or disapproving legislation and preparing special messages to the Legislature. I also represented the Governor's office in discussions with the Attorney General and Solicitor General on some matters involving legal actions against the State. I reviewed the other Assistant Counsel's work on petitions for extradition, clemency and related matters.

The most significant legal matters that occupied the bulk of my service in this Office were those that arose out of the 1975 fiscal crisis of the State and City of New York. At that time, private financial markets closed to bonds of the City. The State had to rescue the City and the State Urban Development Corporation from default on their bonds. I was involved in the preparation of proposals for the Governor's emergency legislation at two Special Sessions of the Legislature. The laws enacted declared a moratorium on payment of the City's bond debt, authorized a program of financing from funds held by State agencies and created an Emergency Financial Control Board to assume responsibility for the City's finances. I was also the State's principal representative in discussions in the U.S. Congress for legislation authorizing federal guarantees of bonds issued by the City. The moratorium on the City debt payments was challenged by bondholders. The case rose to the State's Court of Appeals, which invalidated the moratorium on State constitutional grounds.

Special Counsel to the Comptroller of the City of New York (1974-75):

I served the Comptroller (Harrison J. Goldin) as policy and legal adviser on all matters pertaining to his City Charter duties as a member of the Board of Estimate. The Board, consisting of the Mayor, the Comptroller, the City Council President and each of the five Borough Presidents, had administrative, regulatory and quasi-legislative powers. Among its principal functions, the Board gave final approval to all actions approved by the City Planning Commission arising from the zoning ordinance and other laws. It also approved all contracts entered into by the City for private professional services as well as contracts that were not competitively bid. It reviewed and approved, disapproved or settled contract claims against the City. And it had exclusive jurisdiction over granting and regulating franchises awarded by the City for use of City public streets, generally for transportation, cafes and telecommunications.

As Special Counsel, I was the Comptroller's representative to the Board, prepared his written statements in connection with the Board's decisions, and, serving as Acting Comptroller in his absence, cast his vote. Among significant legal matters that came to the Board during my service were:

The Third City Tunnel: Settlement of a major contract claim involving the cost of construction of the City's third water terminal.

Westway: The Board of Estimate granted various zoning permits and other City approvals necessary for construction of the new West Side Highway. The project was challenged in Federal Court on the basis of the alleged insufficiency of the Army Corps of Engineers' environmental impact statements, which the Federal Court ultimately ruled legally deficient.

Cable TV: The Board prepared guidelines pertaining to cable television operations and bidding on franchises. Action on these guidelines was stayed pending a legal controversy over whether the federal government had exclusive jurisdiction over the matter.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   As a former Director of the New York Telephone Company, I am entitled to receive at age 65 a pension determined by a formula based on the number of years of service and a percentage of total annual compensation from the Company.

   I have three retirement accounts established during my law practice as a partner of Tufo & Zuccotti and Brown & Wood. The proceeds are invested in 401(k) and IRA mutual funds and annuities managed by financial institutions independently of the firms.

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

   I would resolve any potential conflict by public disclosure, divestment and/or recusal in accordance with guidelines of the Code of Judicial Conduct.

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

   I have no plans, commitments or agreements to pursue outside employment during my service but, if authorized to do so, may remain as a Trustee of the New York Public Library.

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

   Financial Disclosure Report attached under Tab 1.

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

   Net Worth Statement attached under Tab 2.

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

I have not held a position or played a role in the management of a political campaign, but I have served as a member of the organizing committee for fund raising events in New York in the political campaigns of the following candidates:

Hugh L. Carey, Governor of New York, 1974
Jimmy Carter, President of the United States, 1980
Edward I. Koch, Mayor of New York City, 1985, 1989
Mario M. Cuomo, Governor of New York, 1984, 1988, 1992
David N. Dinkins, Mayor of New York City, 1989, 1993
Michael Dukakis, President of the United States, 1988
William J. Clinton, President of the United States, 1992

AO-10
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1997

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, 101-112)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
MARRERO, VICTOR	U.S. District Court Southern District of New York	April 30, 1999
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* U.S. District Judge-Nominee	**5. Report Type (check appropriate type)** X Nomination, Date _____ ___ Initial ___ Annual ___ Final	**6. Reporting Period** Jan.1, 1997-April 30, 1999
7. Chambers or Office Address U.S. Mission to the OAS Department of State, Suite 6494 Washington, DC 20520	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.** Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	NONE (No reportable positions.)	
1	Trustee	New York Public Library
2	Director (ex-officio)	Pan American Development Foundation
3		

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

	DATE	PARTIES AND TERMS
☐	NONE (No reportable agreements.)	
1		New York Telephone Company pension for former Directors payable beginning at age 65.
2		Brown & Wood Retirement Accounts independently managed with no remaining
3		connection with the firm.

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐	NONE (No reportable non-investment income.)		
1	1997-present	NY City Partnership/Chamber of Commerce (S)	$
2			$
3			$
4			$
5			$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
MARRERO, VICTOR	April 30, 1999

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
[ ]	NONE (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
[ ]	NONE (No such reportable gifts.)		
1	EXEMPT		$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children; indicate, where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
[X]	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

*Value Codes: J=$15,000 or less K=$15,001-$50,000 L=$50,001-$100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000
P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
MARRERO, VICTOR	April 30, 1999

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A Description of Assets (including trust assets) Block 16 if none was held	B Income during reporting period (1) Amount (Code A-H)	(2) Type	C Gross value at end of reporting period (1) Value (Code J-P)	(2) Value Method (Code Q-W)	D Transactions during reporting period (1) Type (Code P, S, E)	(2) Date (Month, Day)	(3) Value (Code J-P)	(4) Gain (Code A-H)	(5) Identity of buyer/seller (If private transaction)
NONE (No reportable income, assets, or transactions.)						E X E M P T			
1 Brown & Wood Profit Sharing Plan managed by Fidelity:									
2 Fidelity Puritan	E	Div.	N	T					
3 Fidelity Magellan	F	Div.	N	T					
4 Fidelity Retirement MM	A	Int.	K	T					
5 Fidelity Contrafund	B	Div.	L	T					
6 Fidelity Managed Income	A	Div.	K	T					
7 Citibank Keogh Account:									
8 CD's	B	Int.	K	T					
9 Annuity	B	Int.	K	T					
10 Putman Retirement IRA	B	Int.	K	T					
11 SunAmerica IRA:									
12 SunAmerica Balanced	B	Div.	K	T					
13 SunAmerica Goldman Sachs	B	Div.	K	T					
14 Dreyfus NY Tax Exempt Bond	E	Div.	N	T					
15									
16									
17									
18									

Income: (A) None or $200 or less (B) $201-$1,000 (C) $1,001-$2,500 (D) $2,501-$5,000 (E) $5,001-$15,000 (F) $15,001-$50,000 (G) $50,001-$100,000 (H) $100,001-$1,000,000 (I) $1,000,001-$5,000,000 (J) Over $5,000,000	Value: (J) $15,000 or less (K) $15,001-$50,000 (L) $50,001-$100,000 (M) $100,001-$250,000 (N) $250,001-$500,000 (O) $500,001-$1,000,000 (P1) $1,000,001-$5,000,000 (P2) $5,000,001-$25,000,000 (P3) Over $25,000,000	Type: (P) Partnership (S) S Corporation (E) Estate (T) Trust	Value Method: (Q) Appraisal (R) Cost (real estate only) (S) Assessment (T) Cash Market (U) Book Value (V) Other (W) Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	MARRERO, VICTOR	April 30, 1999

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

	D. Description of Assets (including trust assets)	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
		(1) Amt Code1 (A-H)	(2) Type (Cash, dividend, rent or int.)	(1) Value Code2 (J-P)	(2) Value Method Code3 (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	(2) Date Month Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions.)							E X	E M	P T
1	Consolidated Edison--common stock	B	Div.	K	T					
2	Chase Manhattan Money Market Acct (J)	A	Int	J	T					
3										
4	Putman IRA (S)	A	Div.	J	T					
5										
6	Diversified Investments Retirement Plan (S)	D	Div.	L	T					
7										
8	Calcraf Assoc. Tax Shelter limited partnership interest		None	K	T					
9	property in office building in Long Beach, CA									
10										
11	Vista Properties Tax Shelter limited partnership interest		None	J	W					
12	property in New York, NY									
13										
14	NY State Tuition Savings Plan	A	Div.	J	T					
15										
16										
17										
18										

Income/Gain 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 Col. B1, 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
Value Code: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000
(See Col. C1, D3): N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000
P3=$25,000,001-$50,000,000; P4=More than $50,000,000
Value Method Code: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(See Col. C2): U=Book value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	MARRERO, VICTOR	April 30, 1999

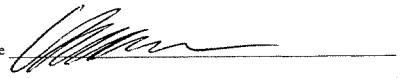
VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

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. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature  Date April 30, 1999

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. 4, § 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

VICTOR MARRERO
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	00	Notes payable to banks-secured		
U.S. Government securities-add schedule					
Listed securities-add schedule	(1) 326,280	00	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	5,000	00	Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable-add schedule	(4) 212,000	00
Real estate owned-add schedule	(2) 2,000,000	00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property					
Cash value-life insurance					
Other assets-itemize: Retirement Accounts	(3) 1,054,775	00			
Security Deposit	1,700	00			
TOTAL ASSETS	3,392,755	00	TOTAL LIABILITIES	212,000	00
			NET WORTH	3,180,755	00
			TOTAL LIABILITIES AND NET WORTH	3,392,755	00

CONTINGENT LIABILITIES	0		GENERAL INFORMATION		
As endorser, co-maker	0		Are any assets pledge? (Add schedule)	(4)	
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				

(1) Market value as of 3/31/99
Dreyffus NY Tax Exempt Bond Fund - 285,000
Con Edison - Common Stock - 41,280

(2) Estimate of Primary residence cooperative apartment in New York, NY

(3) Market Value as of 3/31/99
NY State Tuition Savings 2,000
Fidelity 823,000
Putnam 33,275
Sun America 47,720
Diversified Inv. 51,995
Citicorp 56,785

(3) (cont'd)
Calcraf Assoc. Ltd. Part. 40,000

(4) Mortgage and equity source loans from Citibank secured by primary residence in New York, NY

III. GENERAL (PUBLIC)

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

Both during my public service career and during my law practice I devoted considerable time working as a volunteer as a director /trustee, member or adviser on behalf of numerous organizations whose principal purposes included serving the disadvantaged or promoting public issues and activities described below. Much of my government service and professional activities have also involved significant participation in matters serving the disadvantaged. In recognition of this experience I was the recipient of the New York State Bar Association's Root/Stimson Public Service Award (1992), the American Bar Association's Pro Bono Publico Award (1993) and the Ellis Island Medal of Honor (1999).

a. I have served as a member or Director/Trustee of:

New York Public Library, 1990-present
Vice Chairman of the Board (1998 – present)
Chairman, Real Estate Committee (1991-93)

Cooper Union for the Advancement of Science and Art, 1989-93
Chairman, Properties, Buildings and Facilities Committee

State University of New York, 1985-93
Appointed by Governor Mario M. Cuomo
Chairman, Committee on Tuition and Revenue Policy

State University of New York Construction Fund, 1990-93
Appointed by Governor Mario M. Cuomo

Mayor's Management Advisory Task Force, 1991-92
Chair, Working Group on Interagency Consolidation
Appointed by Mayor David N. Dinkins

Board of Regents Committee on New York City Public Schools, 1989
Appointed by the Chancellor of the New York State Board of Regents, Hon. Martin Burrell

Independent Commission on the Future of SUNY, 1984-85
Appointed by SUNY Chancellor Clifton Wharton, Jr.

State Education Commissioner's Task Force on New York City Schools, 1988
Chairman of the Task Force
Appointed by the State Commissioner of Education

New York City Board of Education's Chancellor Search Committee, 1987-89
Appointed by the Chairman of the Board of Education, Hon. Robert F. Wagner, Jr.

Governor's Task Force on Judicial Diversity, 1991-92
Appointed by Governor Mario M. Cuomo

Governor's Task Force on Bias-Related Violence, 1987
Appointed by Governor Mario M. Cuomo

Mayor's Panel on Parks and the Constitution, 1988-89
Appointed by Mayor Edward I. Koch

Mayor's Commission on the Homeless, 1991-92
Appointed by Mayor David N. Dinkins

b. I have served as a member, director/trustee of the following charitable, civic and educational organizations:

Puerto Rican Legal Defense and Education Fund (PRLDEF), 1972-76; 1981-84; 1986-93
Founder, First Chairman of the Board; Treasurer; Chairman, Nominating Committee
Community advocacy organization whose certificate of incorporation was approved by the Appellate Division of the New York State Supreme Court authorizing it to practice public interest law promoting, through the legal system, the civil rights of Puerto Ricans and other Hispanics and to promote legal education and admission to the Bar.

Lawyers Committee for the Public Interest Law Center, 1990-92, Chairman
Committee of lawyers organized to raise funds from the legal community for use by three public interest law organizations (the National Association of Women, the Chinese American Legal Defense Fund and the Puerto Rican Legal Defense Fund) to help finance the purchase of the leased space each occupied at the Public Interest Law Center building in lower Manhattan.

New York Lawyers for the Public Interest, 1988-91
Organization established by the Association of the Bar of the City of New York to coordinate and serve as a clearing house of pro bono legal services provided by New York law firms to other community organizations. Members of the Board undertook to support the activities of the organization by facilitating acceptance of cases by the law firms they represented.

Fund for New York City Public Education, 1990-93
Educational organization formed to promote pedagogical improvements in New York City public schools.

Coro Foundation, 1989-93
Educational organization formed to provide public and corporate service fellowships to outstanding young professionals.

New York City Partnership, 1989-93
Organization of major New York businesses forming the operational and public advocacy arm of the New York City Chamber of Commerce.

Educational Broadcasting Corporation (WNET/Channel Thirteen), 1981-85
The educational television channel of New York.

Central Park Conservancy, 1981-88
Organization formed to raise funds for and manage capital improvement projects in Central Park, Manhattan.

Phoenix House Foundation, 1978-84
Residential drug addiction rehabilitation and treatment organization in Manhattan.

Citizens Housing and Planning Council, 1983-85
Organization to promote planning and housing development issues in New York.

Regional Plan Association, 1981-85
Organization to promote a regional planning for the New York Metropolitan Region.

Committee for the Study of Incarceration, 1973-75
Blue Ribbon Committee of private citizens formed and financed with private foundation grants to study incarceration and its role in criminal justice.

Citizens Inquiry on Parole and Criminal Justice, 1973-74
Blue Ribbon Committee of private citizens formed and financed with private foundation grants to study the administration of the New York State Parole System.

South Bronx Community Housing Corporation, 1972-73
Founder and First Chairman of the Board
Organization formed and publicly financed as part of New York City Model Cities Program in the South Bronx to implement the Program's housing development activities.

South Bronx Overall Economic Development Corp., 1972-73
Organization formed to promote, finance and carry out, under a federal area designation, economic development activities in the South Bronx.

Aspira of New York, 1969-70
Organization formed to promote education in New York's Puerto Rican community and assist students achieve and remain in school.

Boricua College, 1969-70
College accredited by the New York State Board of Regents to offer higher education primarily to adults of the Hispanic community.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex or religion. Do you currently belong, or have you belonged to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so list, with dates of membership. What you have done to try to change these policies?

I do not now belong, nor have ever belonged, to any organization which invidiously discriminates.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so did it recommend your nominations? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

I have not appeared before a selection commission in my jurisdiction in connection with this nomination. I appeared before individual members of a committee-in-formation being organized by Senator Charles Schumer to recommend candidates for federal judicial office. My name was suggested to members of this preliminary committee by people familiar with my professional career and qualifications. In the process to date, I have been interviewed by representatives of the ABA, the FBI, the Department of Justice and the White House Counsel's Office.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No one involved in the nominating process has discussed with me any specific case, legal issue or question of any kind.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped, many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness, and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

During my long career in government service, I held office in various executive agencies and had some experience with the legislative branch, primarily working closely with it in its relationship with the executive, and also briefly as a member of a legislative staff. This experience provided me opportunities not only to gain extensive knowledge of the workings, proper functions, powers and limitations of these two branches of government, but also to develop a healthy respect for the prerogatives of each and appreciation of the vital relationships and checks and balances between them. It enabled me as well to understand the imperative of the separation of power of the judicial branch to its proper sphere. As a public administrator and regulator, I was subjected to the various political pressures, the economic pushes and pulls, the social sensitivities and countless other complexities and subtleties that are part of the day-to-day demands encountered in the management of an executive agency.

A removed outsider who is not daily on the line and subject to these processes and pressures cannot fully grasp them in their totality. Any attempt to second guess the executive or legislator from the distance is bound to be frustrating, even unproductive. For these reasons, I believe that the judicial branch should remain within the proper bounds of its jurisdiction. It should, for example, avoid the temptation to supplant administrators and legislators in solving broad problems, or to substitute its judgment for theirs, especially on political, administrative or operational matters. Judges must limit their function to interpreting and applying the pertinent law and adjudicating the cases and controversies properly brought by the parties invoking their court's authority. They should narrowly tailor orders so as to resolve only the particular case or controversy before them, where at all possible avoiding sweeping issues and constitutional questions not ripe or relevant for decision. A trial court must adhere to applicable binding precedent. In order to maintain and promote predictability of the law, judges must respect the doctrine of *stare decisis*, in deciding the matters before them relying on and applying as much as possible the rules and principles that flow logically from the Constitution, germane statutes and case law.

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Frank (Francis) H. (Hugh) McCarthy

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

   Residence:
   Tulsa, Oklahoma

   Office:
   United States District Courthouse
   333 West 4th Street
   Tulsa, Oklahoma 74103

3. Date and place of birth.

   October 10, 1952, Scranton, Pennsylvania

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

   Married: Teresa Rene' Norman
   Spouse's occupation: Registered Dietitian, not presently employed

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

University of Scranton	**1970 - 1974**	**B.S., 1974**
University of Tulsa	**1974 - 1977**	**J.D., 1977**

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

1975	**Tioga Industries (Factory Worker)** **(no longer in business)**
1976	**Fifteenth Street Wine & Spirits (Sales Clerk)** **1522 E. 15th Street** **Tulsa, OK 74120**

1976 **Attorney Dale J. Briggs (Law Clerk)**
1717 E. 15th Street
Tulsa, OK 74120

1980 **Langston University (Part-time Teacher)**
P.O. Box 867
Langston, OK 73059

1976-1985 **Tulsa County Public Defender's Office (Legal Intern / Assistant Public Defender / Deputy Chief Public Defender)**
423 S. Boulder, Suite 300
Tulsa, OK 74103

1985-1987 **U.S. Dept. of Justice, U.S. Attorney's Office, Northern District of Oklahoma (Assistant United States Attorney/Senior Litigation Counsel)**
333 West 4th Street
Tulsa, OK 74103

1987-1995 **Barkley, Rodolf & McCarthy (Partner)**
(now Barkley & Rodolf)
401 S. Boston Avenue, Suite 2700
Tulsa, OK 74103

1995 - pres **United States District Court for the Northern District of Oklahoma (U.S. Magistrate Judge)**
333 West 4th Street
Tulsa, OK 74103

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

No.

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

Academic Honors at Law School:
Class Rank: Top 10%
3.25 Cumulative Grade Point Average

Dean's Honor Roll Each Semester
University of Tulsa Law Journal
Order of the Curule Chair
Award Winner for Top Paper in Jurisprudence
American Jurisprudence Award: Real Property
Justice of Student Honor Court

Scholarships Awarded:

Farmers Insurance Scholarship
University of Tulsa Institutional Scholarship

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

Oklahoma Bar Association
American Bar Association
Tulsa County Bar Association
U.S. District Court Northern District of Oklahoma Criminal Justice Act Panel Selection Committee
Oklahoma Criminal Defense Lawyers Association
American Inns of Court, Hudson-Hall-Wheaton Chapter, President (1997-98)

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

Federal Magistrate Judges Association (Lobbying)

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

Supreme Court of Pennsylvania, 1977 (inactive status)
(I passed the Bar Examination, but never practiced in Pennsylvania.)
Supreme Court of Oklahoma, 1977, (no lapse)
United States District Court, Northern District of Oklahoma, 1978, (no lapse)
Supreme Court of the United States of America, 1981 (no lapse)
United States Court of Appeals, Tenth Circuit, 1985 (no lapse)

United States District Court, Eastern District of Oklahoma, 1987 (no lapse)
United States District Court, Western District of Oklahoma, 1987 (no lapse)

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

Products Liability -- Doctrine of Unavoidably Unsafe Products Applied to Manufacturer of Polio Vaccine
***Cunningham v. Charles Pfizer & Co.*, 532 P.2d 1377 (Okla. 1974)**
Tulsa Law Journal Vol. 11, Number 2, page 296 (1975)

Oklahoma Bar Association-Continuing Legal Education Seminar
Federal Practice in the Northern District, 12-1-95
"Professionalism in the Northern District"

Oklahoma Bar Association-Continuing Legal Education Seminar
Federal Practice in the Northern District, 11-8-96
"The Court's Philosophical Approach to Protective Orders"

Oklahoma Bar Association-Continuing Legal Education Seminar
Handling Claims for Social Security Disability, 11-20-97
"Social Security Appeals before the U.S. District Court"

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

Excellent, September 1998

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.

U.S. Magistrate Judge
U.S. District Court for the Northern District of Oklahoma, 1995.

The jurisdiction of a magistrate judge is statutorily defined. 28 U.S.C. § 636(c)(1) & (3). When the parties consent to the jurisdiction of a magistrate judge, the magistrate judge becomes the trial judge in the case. The

magistrate judge then handles all judicial work in the case. In the "consent" cases on my docket, I schedule the case, handle discovery disputes, resolve jurisdictional and dispositive motions, conduct bench or jury trials and entertain post-trial motions. A large percentage of the "consent" cases on my docket consist of social security disability appeals in which I serve as an appellate court and conduct a review of the disability determination made by an administrative law judge within the Social Security Administration.

"Non-consent" cases in my jurisdiction are referred to me by the district judges. Matters handled are: discovery disputes; requests for injunctive relief; appeals from bankruptcy court decisions; motions to dismiss and motions for summary judgment; petitions for writ of habeas corpus; prisoner civil rights issues; evidentiary hearings and other hearings as needed. Detailed findings of fact, conclusions of law and recommendations to the district judge for disposition of referred non-consent matters are issued.

On a randomly rotating basis with the other two magistrate judges, I am assigned the criminal docket for a month at a time. This entails: considering and issuing, or refusing to issue, search and arrest warrants; conducting hearings on initial appearances for those charged with federal crimes by complaint or indictment; and determining whether the accused will be detained pending trial or released on conditions or bond. I conduct bench trials for those accused of committing statutorily specified federal misdemeanors and petty offenses.

Other matters which arise in the course of handling the criminal docket include: upon consent of the accused, taking pleas and imposing sentences upon those arrested in this district but charged with crimes committed in another district; conducting removal proceedings and issuing warrants of removal for those persons arrested in this district for crimes allegedly committed in another district; entering bond forfeitures, remissions and judgment on bond forfeitures and exoneration of bonds; conducting extradition proceedings; and conducting proceedings pursuant to letters rogatory.

I also conduct settlement conferences. In the Northern District of Oklahoma, most litigants are required to participate in court sponsored alternative dispute resolution. I preside over approximately four settlement conferences per month involving all types of civil cases brought in federal court.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or

where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) citation and summary of 10 most significant opinions I have written, copies of unpublished opinions provided:

1. Andrews v. Town of Skiatook, Oklahoma, 95-CV-57-M (N.D. Okla. 1996); affirmed 123 F.3d 1327 (10th Cir. 1997).

2. Brown v. Champion, 93-CV-609-K (N.D. Okla. 1997). Report and Recommendation entered 5/20/97; adopted by District Court 11/10/97; affirmed Tenth Circuit Court of Appeals Case No. 97-5230; 1998 WL 838839.

3. Zink v. Zinkco, et al., 85-CV-292-K (M) (N.D. Okla. 1998). Report and Recommendation entered February 19, 1998; affirmed in part by District Court 2/23/99.

4. Damaj v. Farmers Insurance Company, 164 F.R.D. 559 (N.D. Okla. 1995).

5. BS&B Safety Systems, Inc. v. Continental Disc Corporation, 94-CV-1027-H (N.D. Okla. 1995). Report and Recommendation entered 10/23/95; adopted by District Court 11/21/95;
and
BS&B Safety Systems, Inc. v. Continental Disc Corporation, 94-CV-1027-H (N.D. Okla. 1996). Report and Recommendation entered 5/28/96; adopted by District Court 7/21/96.

6. El Paso Natural Gas Co. v. Windward Energy, 92-CV-649-H (N.D. Okla. 1996). Report and Recommendation entered 3/29/96; adopted by District Court 9/20/96.

7. Whitehead v. Oklahoma Gas & Electric, 94-CV-682-H (N.D. Okla. 1997). Report and Recommendation entered 9/8/97; adopted by District Court 11/13/97.

8. In re Samuel L. Bewley, 96-CV-279-K (N.D. Okla. 1996). Report and Recommendation entered 12/6/96; adopted by District Court 8/11/97.

9. Stephens v. Callahan, 971 F.Supp. 1388 (N.D. Okla. 1997).

10. U.S.A. v. James D. Viefhaus, Jr., 97-CR-5-BU (N.D. Okla. 1996).

(2) summary of and citations for all appellate opinions where my decisions were reversed or where judgment was affirmed with significant criticism of substantive or procedural rulings:

The only cases where my decisions have been reversed have been Social Security disability appeals. These cases are highly fact intensive and the reversals generally reflect a differing view of the facts rather than error in the application of the law in this area.

Franco v. Chater, 94-CV-486-M (N.D. Okla. 1995); 96-5027 (10th Cir. 1996). I affirmed the denial of Social Security disability benefits on the basis that the record reflected that claimant's part-time employment constituted substantive gainful work activity which disqualified him from eligibility for disability benefits. On de novo review, the Tenth Circuit reversed, finding that the record contained evidence suggesting that claimant's work might have been performed under special accommodations that were not addressed by the Social Security Administrative Law Judge. Opinion not reported, copy attached.

Tate v. Chater, 94-CV-576-M (N.D. Okla. 1995); 95-5265 (10th Cir. 1996). I affirmed the denial of Social Security disability benefits. On de novo review, the Tenth Circuit reversed, finding the ALJ should have included claimant's hearing loss and vision problems in the hypothetical question posed to a vocational expert. Opinion not reported, copy attached.

St. Clair v. Chater, 94-CV-244-M (N.D. Okla. 1995); 95-5278 (10th Cir. 1996). I affirmed the administrative denial of Social Security disability benefits, finding that the record supported the ALJ's decision. Conducting a de novo review, the Tenth Circuit reversed, finding that the ALJ failed to specifically identify transferable skills as required by a Social Security Ruling. Opinion not reported, copy attached.

Snead v. Chater, 95-CV-645-M (N.D. Okla. 1996); 96-5216 (10th Cir. 1997). I affirmed the administrative denial of Social Security disability benefits. On de novo review the Tenth Circuit reversed, taking a different view of the evidence of record and disagreeing with my determination that the errors committed at the administrative level were harmless. Opinion not reported, copy attached.

Lovelace v. Chater, 94-CV-497-M (N.D. Okla. 1995); 96-5002 (10th Cir. 1996). I affirmed the administrative denial of Social Security disability benefits, based, in part on the treating physician's opinion that the claimant had been only temporarily disabled and the fact that subsequent medical treatment records did not indicate continual problems with the allegedly disabling condition. On de novo review the Tenth Circuit reversed because the record lacked a finding by the Administrative Law Judge that the period of temporary disability had ended. Opinion not reported, copy attached.

Lantow v. Chater, 94-CV-404-M (N.D. Okla. 1995); 95-5262 (10th Cir. 1996). I affirmed the administrative denial of Social Security disability benefits. On de novo review, the Tenth Circuit reversed based on medical records not before the Administrative Law Judge and found that new medical records submitted to the Social Security Appeals Council reflecting a diagnosis of a new condition, fibromyalgia, should be considered by the ALJ to determine whether the claimant is disabled within the meaning of the Social Security Act. Opinion not reported, copy attached.

Roy A. Smith v. Callahan, 96-C-481-M (N.D. Okla. 1997); *rev'd sub nom.* Smith v. Apfel, 97-5173 (10th Cir. 1998). I found that under Social Security regulations, the claimant was entitled to a closed period of disability during the time period his treating physicians found him to be temporarily totally disabled for Oklahoma Workers Compensation purposes. I affirmed the finding of no disability after October 3, 1991, when claimant's physician issued a report recommending that he seek work which would permit him to sit 50% of the work day. I found that the Social Security Administrative Law Judge appropriately applied the medical-vocational guidelines ("grids") found in the Social Security Regulations to determine that work existed in the economy which claimant could perform. On de novo review, the Tenth Circuit reversed that part of my order which approved denial of benefits after October,3, 1991, finding that the Administrative Law Judge failed to perform an adequate analysis of the claimant's credibility and erroneously relied on the grids. Opinion not reported, copy attached.

Mack v. Callahan, 96-CV-503-M (N.D. Okla. 1998); *rev'd sub nom.* Mack v. Apfel, 97-5204 (10th Cir. 1998). I affirmed the denial of Social Security disability benefits. On de novo review, the Tenth Circuit reversed and remanded the case for further development, finding that the Administrative Law Judge failed to sufficiently explain his findings. Opinion not reported, copy attached.

Hayman v. Callahan, 95-CV-1239-M (N.D. Okla. 1997); ***rev'd sub nom.*** Hayman v. Apfel, 97-5165 (10th Cir. 1998). I affirmed the denial of Social Security disability benefits. On de novo review, the Tenth Circuit reversed and remanded the case for an award of benefits, finding that the physicians opinions supported a finding of disability. Opinion not reported, copy attached.

Daniels v. Apfel, 96-CV-784-M (N.D. Okla. 1997); 154 F.3d 1129 (10th Cir. 1998). I affirmed the denial of Social Security disability benefits. On de novo review, the Tenth Circuit reversed and published its opinion, ***Daniels v. Apfel,*** 154 F.3d 1129 (10th Cir. 1998).

The Tenth Circuit found that the Social Security Administrative Law Judge had mechanically applied the vocational-medical guidelines ("grids"), in that he failed to consider that claimant was a borderline case, only 65 days from a break in grid categories which would dictate a finding of disability given his age, education, work experience and capacity for work. The Tenth Circuit's opinion provided specific guidance to the Social Security Administration, claimants and district courts concerning grid application in borderline situations where there was previously no such guidance. Opinion reported, copy attached.

Carl C. Smith v. Chater, 96-CV-262-M (N.D. Okla. 1997); ***rev'd sub nom.*** Smith v. Apfel, 97-5099 (10th Cir. 1998). I affirmed the denial of Social Security disability benefits. On de novo review, the Tenth Circuit reversed finding that the Social Security Administrative Law Judge's analysis of the claimant's credibility was flawed. Opinion not reported, copy attached.

Pearlie M. Smith v. Apfel, 96-CV-806-M (N.D. Okla. 1997); 98-5015 (10th Cir. 1998). I affirmed the Commissioner's decision to terminate disability benefits. I found that the record was adequately developed although it was clear that the Social Security Administrative Law Judge did not have medical records from all of claimant's treating physicians. Claimant was given several opportunities to submit those records, but did not. The Tenth Circuit reversed, finding that because the Commissioner bears the burden of proof in a termination case, the claimant had no obligation to obtain and submit the records. Opinion not reported, copy attached.

Duncan v. Callahan, 96-C-782-C(M) (N.D. Okla. 1997); 98-5002 (10th Cir. 1998). I recommended that the district court affirm the denial of Social Security disability benefits. The district court adopted the recommendation.

On de novo review, the Tenth Circuit took a differing view of the facts related to the Administrative Law Judge's analysis of claimant's credibility concerning her claims of disabling pain. Opinion not reported, copy attached.

Kapitan v. Apfel, 96-CV-1095-M (N.D. Okla. 1998); 98-5124 (10th Cir. 1999). I affirmed the denial of Social Security disability benefits. On de novo review, the Tenth Circuit took a differing view of the evidence and reversed, finding that the medical evidence supported a finding of disability. Opinion not reported, copy attached.

(3) citations for significant opinions on federal or state constitutional issues, copies provided:

Brown v. Champion, 93-CV-609-K (N.D. Okla. 1997). Report and Recommendation entered 5/20/97; adopted by District court 11/10/97; affirmed Tenth Circuit Court of Appeals Case No. 97-5230; 1998 WL 838839

U.S.A. v. James D. Viefhaus, Jr., 97-CR-5-BU (N.D. Okla. 1996).

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

None.

17. Legal Career:

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

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

I have not served as a clerk to a judge.

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

I have not practiced alone.

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

1976-1985, Tulsa County Public Defender's Office
423 S. Boulder, Suite 300
Tulsa, Oklahoma 74103
Legal Intern / Assistant Public Defender / Deputy Chief Public Defender

1985-1987, U.S. Department of Justice
U.S. Attorney's Office
Northern District of Oklahoma
U.S. Courthouse
333 West 4th Street
Tulsa, Oklahoma 74103
Assistant United States Attorney / Senior Litigation Counsel

1987-1995, Barkley, Rodolf & McCarthy
401 South Boston, Suite 2700
Tulsa, Oklahoma 74103
Partner

1995-present, U.S. District Court for the Northern District of Oklahoma
U.S. Courthouse
333 West 4th Street
Tulsa, Oklahoma 74103
U.S. Magistrate Judge

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

1976-1985, Deputy Chief Tulsa County Public Defender. My practice consisted of defending indigent individuals accused of crime. I maintained a very heavy felony case load, including capital murder cases. All aspects of criminal defense work including client counseling, plea negotiations, pre-

trial and trial practice and appellate work were involved. Additionally, as Deputy Chief, I supervised a staff of 3 to 7 legal interns.

1985-1987, Senior Litigation Counsel in the U.S. Attorney's Office. My practice consisted of the prosecution of sophisticated white collar crimes. This involved coordination of the Grand Jury investigation with the FBI and other investigating agencies; trial of those indicted; and representation of the United States on appeal.

1987-1995, Barkley, Rodolf & McCarthy.
My practice consisted of a fairly general civil practice with a limited criminal defense practice. A substantial portion of my practice consisted of defending medical centers/hospitals in malpractice actions and also representing them in credentialing and peer review matters. Another substantial aspect of the practice was the defense of a financial institution in an MDL class action securities fraud action.

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

1976-1985, Chief Deputy Public Defender
My clients were indigent individuals accused of crimes. I specialized in felony and capital murder defense.

1985-1987, Assistant U.S. Attorney
I represented the United States of America, specializing in the prosecution of white collar crime.

1987-1995, Barkley, Rodolf & McCarthy
My clients were typically medical centers, financial institutions, and brokerage firms.
I specialized in the defense of doctors and hospitals in medical malpractice cases and in internal hospital peer review and credentialing issues. I also

engaged in a limited federal criminal defense practice.

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

As Public Defender and Assistant U.S. Attorney, daily

At Barkley, Rodolf & McCarthy, several times per week

2. What percentage of these appearances was in:

(a) federal courts;

Public Defender - 0%
U.S. Attorney - 100%
Barkley, Rodolf & McCarthy - 50%

(b) state courts of record;

Public Defender - 100%
U.S. Attorney - 0%
Barkley, Rodolf & McCarthy - 50%

(c) other courts.

Public Defender - 0%
U.S. Attorney - 0%
Barkley, Rodolf & McCarthy - 0%

3. What percentage of your litigation was:

(a) civil;

Public Defender - 0%
U.S. Attorney - 0%
Barkley, Rodolf & McCarthy - 90%

(b) criminal.

Public Defender - 100%
U.S. Attorney - 100%
Barkley, Rodolf & McCarthy - 10%

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

A fair estimate of the number of cases I tried to verdict is between 75 and 100. Only an estimate can be provided because of the large number of cases I tried while working in the Public Defender's Office and the fact that their record keeping system cannot access this information.

In the Public Defender's Office I was sole counsel in all cases except capital cases which had two attorneys assigned for trial. In the U.S. Attorney's Office and in private practice I was always assisted by co-counsel.

5. What percentage of these trials was:
(a) jury; **100%**
(b) non-jury. **0%**

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

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

1) **The United States of America v. Finis W. Smith and Doris L. Smith**
U. S. District Court for the Northern District of Oklahoma

Case No. 84-CR-60
The Honorable H. Dale Cook, Chief Judge
Jury Trial: 9/16/85 to 11/14/85
Type of Case: Criminal

Charges: Conspiracy to Defraud the United States and to Willfully Fail to Disclose Financial Interests in Foreign Bank Accounts; Willfully Making and Subscribing False Individual Income Tax Returns and False Corporate Tax Returns; Aiding and Assisting the Preparation of a False Corporate Tax Return; Income Tax Evasion; Willful Failure to Disclose Financial Interest In or Signature Authority Over a Foreign Bank Account; Mail Fraud.

Capsule Summary: I represented the United States as co-counsel with U.S. Attorney Layn R. Phillips. The defendants were represented by Carl Hughes and E. J. Bail.

This case concerned the prosecution of the former President Pro Tempore of the Oklahoma State Senate, Finis W. Smith and his wife, Doris L. Smith, who had been appointed to serve as the vehicle licensing agent ("tag agent") for Tulsa County. It was alleged that, while he was a State Senator, Defendant Smith manipulated the tag system and secured the appointment of various tag agents in such a way as to defraud the tag system, thereby increasing his family income. The defendants were also alleged to have failed to report the increased income on their personal and corporate tax returns and failed to disclose to the government that they had money on deposit in Mexico.

This case is significant because Finis Smith had been the most powerful State Senator in this area of the state for many years. His wife controlled the tag agency business in Tulsa County which generated large sums of money for the Smith family. The Smith's illegal financial entanglements were complicated considerably by their unreported transfers of money to Mexico.

At the conclusion of the trial, the jury returned verdicts of "guilty" on each count of the eighteen count indictment against both defendants. The trial judge sentenced both defendants to custody and no appeal of their conviction was taken.

Counsel involved:

Co-counsel:

Layn R. Phillips
Attorney At Law
Irell & Manella
840 Newport Center Drive
Suite 500
Newport Beach, California 92660
(714) 760-0991

Opposing counsel:

Carl Hughes
5801 North Broadway Extension
Suite 302
Oklahoma City, Oklahoma 73118
(405) 848-0111

E.J. Ball
EJ Ball Plaza, Suite 700
112 West Center
P.O. Box 1948
Fayetteville, Arkansas 72702-1948
(501) 442-6213

2) The United States of America v. Wesley R. McKinney
U. S. Dist. Court for the Northern District of Oklahoma
(Tried in Western District of Oklahoma due to change of venue)
Case No. 85-CR-69-B
The Honorable Thomas R. Brett, District Judge
Jury Trial: 12/2/85 to 12/16/85
Type of Case: Criminal
Charges: Conspiracy; Thirty Counts of Misapplication of Federally Insured Bank Funds; Causing False Representations to be made to the Federal Deposit Insurance Corporation.

Capsule Summary: I represented the United States as co-counsel with United States Attorney Layn R. Phillips. Mr. McKinney was represented by Gary Richardson and Greg Meier.

This case concerned the prosecution of Mr. McKinney, a prominent banking and energy related company executive, for a sophisticated "check kiting" scheme. The "check kite" involved numerous financial

institutions and accounts with false balances totaling in excess of $300,000,000.

The jury returned verdicts of "guilty" on all counts. The Defendant was sentenced to custody. The judgment was affirmed on appeal.

This litigation is significant because of the vast economic damage which this scheme could have inflicted upon the community. In addition, the scheme was perpetrated by a prominent businessman who enjoyed a very good reputation in the community.

Counsel Involved:

Co-counsel:

Layn R. Phillips
Attorney At Law
Irell & Manella
840 Newport Center Drive
Suite 500
Newport Beach, California 92660
(714) 760-0991

Opposing counsel:

Gary L. Richardson
Suite 200
6846 S. Canton Avenue
Tulsa, Oklahoma 74136
(918) 492-7674

Gregory G. Meier
Meier, Cole & O'Dell
1524 South Denver Avenue
Tulsa, Oklahoma 74119-3829
(918) 584-1212

3) Jean Carnes v. Ron Parker, et al.
U. S. Dist. Court for the Eastern District of Oklahoma
Case No. CIV-88-092-C
The Honorable Frank Seay, Chief Judge
Jury Trial: 1/3/89 to 1/5/89
Type of Case: Civil Rights, 42 U.S.C. § 1983

Capsule Summary: I represented each of the defendants as co-counsel with Mike Barkley. Mrs. Carnes was represented by David Graven.

The case concerned Mrs. Carnes's termination as an employee of Choctaw Memorial Hospital for her failure to follow her supervisor's directions. Defendant's Motion For Summary Judgment asserted, among other issues, that plaintiff had no property interest in her continued employment with Choctaw Memorial Hospital, and, therefore, could state no constitutional deprivation to support her §1983 claim. The jury found in favor of the plaintiff and judgment was entered accordingly. On appeal, the Tenth Circuit Court of Appeals found that plaintiff did not have a property interest in her continued employment and, therefore, failed to state a claim for a violation of § 1983. *Carnes v. Parker*, 922 F.2d 1506 (10th Cir. 1991).

The significance of this case is that Oklahoma is an "employment-at-will" state and any expansion of the doctrine of entitlement to future employment by the federal courts would have substantially eroded the state's interest in defining the terms of employment between employers and employees in Oklahoma.

Counsel involved:

Co-counsel:

Mike Barkley
401 South Boston, Suite 2700
Tulsa, Oklahoma 74103
(918) 599-9991

Opposing counsel:

David L. Graven
Suite 301, 5101 North Classen Blvd.
P.O. Box 54408
Oklahoma City, Oklahoma 73154
(405) 840-9668

4) <u>Alexander v. St. John Medical Center, et al.</u>
District Court of Tulsa County, State of Oklahoma
Case No. CJ-87-6028
The Honorable David Peterson
Jury Trial: 1/6/92 to 1/24/92

Type of Case: Medical Negligence

Capsule Summary: I represented St. John Medical Center. The plaintiff was represented by Ted Vogle and the various defendants were represented by Fred Gipson, Joseph Sharp, James Secrest, II, Joe Glass, Inona Harness and Joe Best.

The case concerned Plaintiff's allegation that the medical personnel mismanaged her labor resulting in deprivation of oxygen to the fetus during delivery, causing catastrophic brain injury to her child. The child developed as a spastic quadriplegic who required constant care. The issues presented during the trial were the alleged failure of the medical personnel to monitor the progress of her delivery, to properly monitor the development of the child, and to recognize the development of hydrocephalus in the child.

At the conclusion of the plaintiff's evidence, the trial court sustained the Motion for Judgment as a Matter of Law on behalf of my client, St. John Medical Center, concluding that the plaintiff had failed to present sufficient evidence to submit the issue of my client's liability to the jury. The jury subsequently found in favor of the plaintiff against some of the remaining defendants, rendering a substantial judgment in favor of the plaintiff.

This case was significant because of the complicated medical evidence, obvious catastrophic injury to a child, and the substantial potential for a verdict to be returned against my client.

Counsel involved:

Counsel for co-defendants:

Fred Gipson
60 Parrington Oval
Room 213
Norman, Oklahoma 73019
(405) 325-4124

Joseph M. Best
Joseph A. Sharp
Best & Sharp
Suite 808, Oneok Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103-4225
(918) 582-1234

Inona Jane Harness
Pierce, Couch, Hendrickson, Baysinger & Green
1109 North Francis
P.O. Box 26350
Oklahoma City, Oklahoma 73126-0350
(405) 235-1611

James K. Secrest, II
7134 S. Yale Avenue
Tulsa, Oklahoma 74136-6342
(918) 494-5905

Joseph F. Glass
Atkinson, Haskins, Nellis, Boudreaux, Holeman, Phipps
1500 ParkCentre
525 South Main Street
Tulsa, Oklahoma 74103-4524
(918) 582-8877

Opposing counsel:

Ted G. Vogle
Suite 640, 406 South Boulder St.
Tulsa, Oklahoma 74103-3825
(918) 587-8500

5) John Gandy v. Grant Corporation
District Court of Tulsa County, State of Oklahoma
Case No. CJ-86-7279
The Honorable Jane Wiseman, District Judge
Jury Trial: 9/22/89 to 9/24/89
Type of Case: Breach of Contract

Capsule Summary: I represented the plaintiff with co-counsel John Clayman. The defendant corporation was represented by Joel Wohlgemuth and Tom Ladner.

The case concerned breach of a deferred compensation agreement by the defendant. The jury returned a verdict for the plaintiff in excess of $700,000. The parties subsequently settled the matter.

This case is significant because it required the organization and presentation of fairly complicated contractual and financial issues to the jury.

Counsel involved:

Co-counsel:

John D. Clayman
Tilley & Associates
2 West 2nd Street, Suite 2220
Tulsa, Oklahoma 74103
(918) 583-8868

Opposing counsel:
Joel L. Wohlgemuth
Thomas M. Ladner
Norman & Wohlgemuth
Suite 2900
401 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 583-7571

6) The State of Oklahoma v. Benjamin Brewer
District Court of Tulsa County, State of Oklahoma
Case No. CRF 78-2137
The Honorable Raymond Graham, District Judge (first trial)
The Honorable Joe Jennings, District judge (second trial)
Jury Trial: 9/4/79 to 9/14/79 (first trial)
9/27/83 to 10/6/83 (second trial)
Type of Case: Criminal
Charge: Murder in the First Degree (Capital)

Capsule Summary: I represented the defendant as co-counsel with Thomas Burns (deceased). The State was represented by the District Attorney for Tulsa County, S.M. Fallis, Jr., assisted by Assistant District Attorney, Jerry E. Truster.

Mr. Brewer was prosecuted for the brutal slaying of a young woman in her apartment. She was stabbed 21 times and there was evidence indicating that she had been sexually assaulted. I conducted the majority of the cross-examination of the State's witnesses and presented most of the defense evidence. The jury returned a "guilty" verdict, and, after the second stage proceedings, sentenced Mr. Brewer to death.

Acting as co-counsel, I appealed the judgment and sentence to the Court of Criminal Appeals of the State of Oklahoma, the highest court

in the State of Oklahoma for criminal cases, and was successful in obtaining a reversal of the judgment and sentence. ***Benjamin Brewer v. The State of Oklahoma,*** 650 P.2d 54 (Okla. Crim. App. 1982).

At the retrial the State was represented by Assistant District Attorneys F.L. Dunn and Gary McCurty. Mr. Brewer was once again convicted and sentenced to death. I participated as co-counsel in that appeal. However, the Court of Criminal Appeals affirmed this judgment and sentence on April 18, 1986, 718 P.2d 354 (Okla. Crim. App. 1986). After lengthy post-conviction and federal habeas corpus proceedings, in which I did not participate other than as a witness at an evidentiary hearing, Mr. Brewer was put to death by the State of Oklahoma.

While all capital cases are significant, the particular significance of this litigation was that it was my first capital case and one of the first capital cases tried in Oklahoma after the Supreme Court reinstated the death penalty. We were faced with new procedures which had not been previously applied and were presented with numerous statutory and constitutional issues.

Counsel involved:

Opposing counsel:

S.M. Fallis, Jr.
124 East 4th Street
Tulsa, Oklahoma 73103
(918) 584-5182

Jerry E. Truster
500 S. Denver
Tulsa, Oklahoma 74103
(918) 596-4805

F.L. Dunn
403 S. Cheyenne Ave.
P.O. Box 1424
Tulsa, Ok 74101-1424
(918) 584-5478

Gary D. McCurdy
Canadian County District Attorney's Office
303 North Choctaw Street
El Reno, Oklahoma 73036
(405) 262-1070

7) The State of Oklahoma v. Charles Troy Coleman
District Court of Tulsa County, State of Oklahoma
CRF 79-2176
The Honorable Jay Dalton, District Judge
Jury Trial: 2/4/80 to 2/7/80
Type of Case: Criminal
Charge: Murder in the First Degree (Capital).

Capsule Summary: I served as co-counsel with Chief Public Defender, Leslie R. Earl. The State was represented by S.M. Fallis, the District Attorney for Tulsa County and Ron Shaffer, then Assistant District Attorney.

Mr. Coleman was charged with first degree murder committed while he was an escapee from Muskogee County, Oklahoma, where he had been held pending trial on an un-related first degree murder charge. My participation in the trial consisted mainly of pre-trial motions and preserving the trial record for appeal. After a short trial, the jury returned a verdict of "guilty" and, after the second stage proceedings, sentenced Mr. Coleman to death. The Court of Criminal Appeals reversed Mr. Coleman's conviction. 670 P.2d 596 (Okla. Crim. App. 1983). On remand, I was successful in urging the trial court to dismiss the case against Mr. Coleman for failure of the State to diligently prosecute the action.

This case was significant because it was a capital case and because Mr. Coleman was an intensely unpopular and unsympathetic defendant.

Counsel involved:

Co-counsel:
Leslie R. Earl, Jr.
Suite 100-A
3223 E. 31st Street
Tulsa, Oklahoma 74105
(918) 742-0874

Johnie R. O'Neal
5021 E. 4th Street
Tulsa, Oklahoma 74112
(918) 834-1376

Opposing counsel:

S.M. Fallis, Jr.
124 East 4th Street
Tulsa, Oklahoma 73103
(918) 584-5182

Ronald L. Shaffer
District Judge, Tulsa County
Room 605, Tulsa County Courthouse
500 South Denver Avenue
Tulsa, Oklahoma 74103
(918) 596-5330

8) The State of Oklahoma v. James Alvin Moore
District Court of Tulsa County, State of Oklahoma
Case No: CRF 80-4124; 4155; 4156; 4157; 4158; 4159; 4163
The Honorable Joe Jennings, District Judge
Jury Trial: 6/23/81 to 6/25/81
Type of Case: Criminal
Charges: First Degree Rape, Carrying a Firearm after Former Conviction of a Felony, First Degree Rape, Burglary in the First Degree, Burglary in the First Degree, Rape in the First Degree, Assault with a Deadly Weapon, Burglary in the First Degree.

Capsule Summary: I represented Mr. Moore. The State was represented by William J. Musseman.

The Tulsa community had been terrorized by a series of highly publicized violent "signature" rapes. The perpetrator would break into houses, violently rape the victim and then force her to shower. The news media dubbed the perpetrator "The Shower Stall Rapist." Mr. Moore was charged with a number of these offenses and, although the trial court severed the trials of the separate incidents, the Court denied a change of venue. The prejudicial pre-trial publicity was demonstrated when, on voir dire, all of the jurors stated that the only person they recognized in the courtroom was the "shower stall rapist" (Mr. Moore). Despite the voir dire responses, the court again denied a

change of venue. After a brief trial, Mr. Moore was convicted. He subsequently pled guilty to the remaining charges and no appeal was taken.

This case was significant to me because it demonstrated the effect extensive media coverage within a community can have on the litigation process.

Counsel involved:

Opposing counsel:

William J. Musseman
Office of Hearings & Appeals
605 N. Saginaw
Flint, MI 40502
(810) 257-0509

9) The State of Oklahoma v. Robert L. Doss
District Court of Tulsa County, State of Oklahoma
Case No. CRF 83-1341
The Honorable Jay Dalton, District Judge
Jury Trial: 4/2/84 to 4/6/84
Type of Case: Criminal
Charge: Conspiracy to Commit Murder, Murder in the First Degree.

Capsule Summary: I acted as co-counsel along with Pete Silva, Jr. and Martin G. Hart. The State was represented by David W. Lee.

Mr. Doss, a former Tulsa Police Officer, and a number of co-defendants, the majority of whom were Tulsa Police Officers, were charged with murder and conspiracy to murder Mr. Doss's ex-wife. Mrs. Doss was killed by a "bolt" (arrow) fired from a cross-bow. There had been a very acrimonious divorce and custody battle between Mr. Doss and his ex-wife, with Mr. Doss alleging abuse of their child by his ex-wife.

After a lengthy investigation, which did not result in charges being brought against any Tulsa Police Officers, the Tulsa County District Attorney disqualified himself and the Attorney General stepped in and impaneled a grand jury to investigate the matter. The use of the grand jury in this manner is extremely rare in Oklahoma. Mr. Doss was indicted by the grand jury and, due to his financial condition, the Public

Defender's Office was appointed to represent him. Mr. Silva acted as lead counsel in the case. My role was limited to the examination of a select number of witnesses and participation in closing argument. The trial resulted in a "not guilty" verdict.

This case is significant because of the unusual situation presented by the Public Defender's Office defending a former member of the Tulsa Police Department as the relationship between those offices is often understandably strained.

Counsel involved:

Co-counsel:

Pete Silva, Jr., Tulsa County Public Defender
423 S. Boulder, Suite 300
Tulsa, Oklahoma 74103
(918) 596-5530

Martin G. Hart
Suite 200, 1850 South Boulder Avenue
Tulsa, Oklahoma 74119
(918) 582-5888

Opposing counsel:

David W. Lee
6011 North Robinson Avenue
Oklahoma City, Oklahoma 73118-7425
(405) 848-1983

10) The State of Oklahoma v. Allen Wayne Archanbo,
District Court of Tulsa County, State of Oklahoma
Case No. CRF 81-258
The Honorable Joe Jennings, District Judge
Jury Trial: 9/28/81 to 10/2/81
Type of Case: Criminal
Charge: Murder in the First Degree (Capital), Robbery with Firearms.

Capsule Summary: I represented Mr. Archanbo and the State of Oklahoma was represented by David K. Robertson.

Mr. Archanbo and three co-defendants were charged with the robbery and murder of a local jeweler. While this was a fairly routine murder

trial, if that can be said of any murder trial, it is significant because I was personally convinced that Mr. Archanbo was innocent of these crimes. That is a statement that I can make with regard to only one other client during my eight years in the Public Defender's Office. With the State seeking the death penalty and Mr. Archanbo's lengthy criminal record effectively precluding him from testifying, this was a very significant case to me. Fortunately, the jury returned a verdict of "not guilty" on both counts.

Counsel involved:

Opposing counsel:
David K. Robertson
500 S. Denver
Tulsa, Oklahoma 74103
(918) 596-4805

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

In re: Siscorp, Western District of Oklahoma, MDL: 718. In this Multi-District litigation, I was lead counsel for State Federal Savings & Loan Association which was one of numerous defendants charged with a myriad of securities law violations relating to the issuance of over $120 million worth of bonds for the construction or reconstruction of numerous buildings throughout the United States. While there was no question that the plaintiffs had been defrauded by individuals who were ultimately criminally prosecuted by the United States government, in these suits, plaintiffs sought to ascribe liability to numerous corporate defendants in an effort to recoup their losses. After protracted discovery over a period of several years, I was successful in negotiating a deminimous settlement on behalf of my client.

Peer-Review/Credentialing: In addition to litigating disputes before courts of record, I was very active in advising medical centers/hospitals regarding the proper procedure to ensure that the doctors, and other medical professionals, who practiced at their facilities were competent. The process of allowing a medical professional to be on staff and utilize the facilities of the medical center/hospital is called "credentialing." The process of monitoring the quality of the care provided to patients is called "peer review." In both

situations, the medical center's/hospital's goals are to ensure quality medical care is provided to the patient while appropriately avoiding engaging in anti-trust or non-competitive business practices.

To accomplish these goals, each medical center and hospital has detailed by-laws which set forth the procedures to be followed in the granting or denying of medical staff privileges along with procedures for the withdrawal of privileges. The by-laws provide for a hearing before a committee of the hospital staff which is usually conducted by an attorney on behalf of the medical center or hospital. I conducted numerous such hearings wherein the hospital or medical center was seeking to deny a doctor or a health care professional, the privilege of practicing at the institution.

Although trying these "cases" questioning the competency of medical professionals before other medical professionals was challenging, I found it to be extremely rewarding because the medical centers, hospitals and doctors were almost uniformly concerned only with the quality of care of the patient.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

None

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

I presently have no potential conflicts of interest for service in the position of United States District Court Judge. For resolution of any conflict of interest that may arise, I would continue to follow the Code of Conduct for United States Judges, Canons 1 through 7, Guide to Judiciary Policies and Procedures, Vol. II, (1992).

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

No.

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

A copy of my 1998 Financial Disclosure Report is attached.

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

Attached.

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

No.

[illegible] NO.001 P.02

AO-10 (w)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
McCarthy, Frank H.	Northern Dist. of Oklahoma	05/04/1999
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Nominee: District Judge Active	**5. Report Type (check type)** X Nomination, Date 04/30/1999 Initial Annual Final	**6. Reporting Period** 01/01/1997 to 04/30/1999
7. Chambers or Office Address U.S. Courthouse 333 West 4th Street Tulsa, OK 74103	**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 section where you have no reportable information. Sign on the last page.

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

	POSITION	NAME OF ORGANIZATION / ENTITY
[X]	NONE (No reportable positions.)	
1		
2		
3		

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

	DATE	PARTIES AND TERMS
[X]	NONE (No reportable agreements.)	
1		
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
[X]	NONE (No reportable non-investment income.)		
1			
2			
3			
4			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	McCarthy, Frank H.	05/04/1999

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
[X]	NONE (No such reportable reimbursements.)	
1		
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
[X]	NONE (No such reportable gifts.)		
1			
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
[X]	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: McCarthy, Frank H. | Date of Report: 05/04/1999

VII. Page 1 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for sep. estate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Pot[illegible]onal eCo. Sunoco Inc. Tul.OK formerly Northridge Energ	B	Royalty	J	W					
2 U.S.Govt. Series E Bond (S)	A	Interest			sold	11/10	J	B	U.S. Govt.
3 F&M Bank, Tulsa OK (2 accts: Money Mkt/Checking) (J)	A	Interest	J	T					
4 Bank One (formerly Liberty Bank), Tulsa, OK (J)	A	Interest	J	T					
5 Am. Ex. New Dimensions Class B (IRA)	D	Dividend	K	T					
6 Am. Ex. Growth Class B (IRA)	D	Dividend	K	T					
7 Am. Ex. Managed Retirement Class B (IRA)	B	Dividend	K	T					
8 Am. Ex. Equity Value Class B (IRA) (S)	B	Dividend	J	T					
9 Am. Ex. Diversified Equity Income Class B (IRA)(S)	B	Dividend	J	T					
10 IDS Life Protection Plus Insurance	D	Interest	L	T					
11									
12									
13									
14									
15									
16									
17									

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W= Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	McCarthy, Frank H.	05/04/1999

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

ID:

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	McCarthy, Frank H.	05/04/1999

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Frank H. McCarthy Date 5-4-99

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

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

FINANCIAL STATEMENT
NET WORTH

ASSETS				LIABILITIES			
Cash on hand and in banks	$5,000			Notes payable to banks -- secured	-0-		
U.S. Government securities -- add schedule	-0-			Notes payable to banks -- unsecured	-0-		
Listed securities -- add schedule	-0-			Notes payable to relatives	-0-		
Unlisted securities -- add schedule	-0-			Notes payable to others	-0-		
Accounts and notes receivable:	-0-			Accounts and bills due	-0-		
Due from relatives and friends	-0-			Unpaid income tax	-0-		
Due from others	-0-			Other unpaid tax and interest	-0-		
Doubtful	-0-			Real estate mortgages payable -- add schedule (Arvest Mortgage Co.)	$172,843.16 (Residence)		
Real estate owned -- add schedule	$250,000 Residence			Chattel mortgages and other liens payable	$4,849.28 (auto loan)		
Real estate mortgages receivable	-0-			Other debts -- itemize			
Autos and other personal property	$65,000			Credit card	$1000		
Cash value -- life insurance	$70,818.81						
Other assets -- itemize							
Sun Refining & Marketing Co. (oil & gas royalties)	$5,000						
IRA Mutual Funds American Express Financial Advisors	$101,258.26						
				Total Liabilities	$178,692.44		
				Net Worth	$318,184.43		
Total Assets	$496,876.87			Total Liabilities and net worth	$496,876.87		
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	No			Are any assets pledged? (Add schedule) Residence Mortgage	Yes		
On leases or contracts	No			Are you defendant in any suits or legal actions?	No		
Legal Claims	None			Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	None						
Other special debt	None						

Also see Financial Disclosure Report, Nomination Report

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Associations'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 consider my eight years of work in the Public Defender's Office to be full time work serving the disadvantaged. As Senior Litigation Counsel in the United States Attorney's Office, I was precluded from legal work for anyone other than the United States Government. During my time with Barkley, Rodolf & McCarthy, while I didn't personally handle the cases, the firm donated its resources, through the pro bono efforts of our younger associates, to the legal aid association in our community.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation to membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

Because I have been advised of concerns regarding judicial nominees' association with organizations having restrictive practices in areas other than membership, I would advise that I was a member of Southern Hills Country Club from May 1997 to April 1999. Southern Hills does not discriminate on the basis of race, sex or religion. It does set aside specific times on the golf course and tennis courts when use is restricted by gender. Further, in addition to several dining areas open to all members, there is a separate eating area for men adjacent to the mens' locker room.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts: If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

A selection committee composed of nine members was jointly appointed by U.S. Senators Don Nickles, James M. Inhofe, and Oklahoma Attorney General W.A.

"Drew" Edmondson. The committee accepted applications from all interested parties and thereafter determined which applicants would be interviewed. I was selected as one of the persons to be interviewed and a personal interview with the entire committee was conducted. After the interview process, the committee recommended four individuals for consideration by Senators Nickles and Inhofe and Attorney General Edmondson. Thereafter, personal individual interviews were conducted by Senators Nickles and Inhofe and Attorney General Edmondson. At the conclusion of that interview process, Senators Nickles and Inhofe and Attorney General Edmondson submitted three individuals for consideration by President Clinton.

I have also communicated with representatives of the White House Counsel's Office, the Department of Justice, the Federal Bureau of Investigation, and the American Bar Association Standing Committee on Federal Judiciary.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

If a court engages in the conduct outlined in this question, it has ceased functioning within the role established for the judiciary by the Constitution. Litigation is intended to resolve the concrete case and controversy before the court. It is not intended to resolve broad policy issues. Separation of powers requires that such policy issues be debated and resolved by the elected representatives of the people. The federal judiciary was not intended to be, and should not assume the role of a super-legislature or super-administrative office.

UNITED STATES SENATE
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Carlos Murguia (a/k/a Charlie Murguia and Charles Murguia)

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

   Office: Wyandotte County Courthouse
   710 North 7th Street
   Kansas City, KS 66101

   Home: Kansas City, KS

3. Date and place of birth.

   September 21, 1957, Kansas City, KS

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

   Married. **Ann Marie Brandau.**
   Probation-Parole Officer
   State of Missouri
   Department of Corrections
   405 East 13th Street, Fifth Floor
   Kansas City, MO 64106

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

University of Kansas
August, 1975 through May, 1979
Degree: B.S. Journalism awarded May, 1979

University of Kansas, School of Law
August, 1979 through May, 1982
Degree: J.D. awarded May, 1982

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

06/79 to 08/79	**City of Kansas City, Kansas**
06/80 to 08/80	**Position: Summer Intern**
06/81 to 08/81	
09/79 to 05/80	**University of Kansas, School of Journalism**
09/80 to 05/81	**Lawrence, Kansas**
09/81 to 05/82	**Position: Library Assistant**
09/82 to 12/85	**Zeigler Legal Services, Chrtd., Kansas City, KS**
Position:	**Private practice attorney**
12/84 to 05/90	**Wyandotte County District Court, Kansas City, KS**
Positions:	**Part-time Small Claims Court Judge**
	Part-time Judge pro tem
05/85 to 05/90	**El Centro, Inc., Kansas City, KS**
Position:	**Coordinator of Immigration Amnesty Program**

05/90 to 09/90	**Wyandotte County District Court, Kansas City, KS**
Position:	**Full-time Hearing Officer**
09/90 to present	**Wyandotte County District Court, Kansas City, KS**
Position:	**District Court Judge**
1990 to present	**Wyandotte County Board of Trustees, Kansas City, KS**
Position:	**Board of Trustees**
1993 to 1996	**University of Kansas School of Law, Lawrence, KS**
Position:	**Board of Governors**
1983 to 1984	**El Centro, Inc., Kansas City, KS**
1990 to 1996	
Position:	**Board of Directors**
1985 to 1995	**Leadership 2000, Kansas City, KS**
Position:	**Board of Directors**
1993 to 1999	**United Way of Wyandotte County, Kansas City, KS**
Position:	**Board of Directors**
1991 to 1995	**National Conference of Christians and Jews, Kansas City, MO**
Position:	**Board of Directors**
1997 to present	**Wonderscope Children's Museum, Shawnee, KS**
Position:	**Board of Directors**

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

No.

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

I have received various certificates of appreciation or awards based on my professional and community service over the past several years. I received the U.S. Law Week Award in my third year at law school. In April of 1997 I was given the University of Kansas Law School Minority in Law award (along with my brother Ramon and sisters Mary Helen and Janet).

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

Kansas Bar Association	**1982 to present**
Children and Family Law Committee	**(1993-1994)**
Wyandotte County Bar Association	**1982 to present**
Bench and Bar Committee	**(1996-1997)**
Wyandotte County Board of Trustees	**1990 to present**
President	**(1994 , 1995)**
American Bar Association	**1990 to present**
Hispanic National Bar Association	**1991 to 1992**
	1997 to present
Kansas Inn of Court	**1993 to 1995**
Wyandotte County Bar Foundation	**1993 to 1996**
University of Kansas School of Law	
Board of Governors	**1993 to 1996**

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

Part 1 — Advocacy and Lobbying Organizations

American Bar Association, Chicago, IL
Kansas District Judge Association, Topeka, KS
Hispanic National Bar Association, Washington, D.C.

Part 2 — All Other Organizations

Greater Kansas City Hispanic Scholarship Fund Selection Committee	**1986 to present**
Wonderscope Children's Museum Board of Directors	**1997 to present**

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

Kansas Supreme Court 09/24/82
United States District Court for the District of Kansas 09/24/82

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

Silver City Record newspaper articles:
When I began practicing law in September 1982, I contacted the local community newspaper, the Silver City Record (3414 Strong Ave., Kansas City, KS 66106, (913) 362-1988), and asked them if they would be interested in publishing a series of articles on general areas of the law. From December 1982 through March 1983, I wrote 14 articles drawing largely from general legal materials available to me. The articles were entitled: From the Legal Viewpoint - Introducing your Lawyer, Parts I and II; The Automobile Accident, Parts I and II; Marriage and Divorce, Parts I and II; Checkpoints before buying a Home, Parts I, II and III; What's so important about a Will, Parts I and II; and Juror-Your Rights and Duties, Parts I, II and III. See Addendum A for copies of articles.

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

Very good. December 1, 1998.

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.

District Court Judge, State of Kansas
29th Judicial District 1990 to present

I was appointed in September 1990 by Governor Mike Hayden to complete the unexpired term of a judge who had passed away. I was elected in partisan elections in 1992 and 1996, each time for a four-year term.
General district court jurisdiction is as follows:
DISTRICT COURT (K.S.A. 20-301)

The District Court is a court of record and has general original jurisdiction of all matters, both civil and criminal, unless otherwise provided by law, and also has appellate jurisdiction as provided by law. The district court hears civil and criminal cases, civil and criminal jury trials, criminal pleas and sentencings, domestic cases, mandamus and quo warranto, injunction, real estate cases, habeas corpus, and class action cases.

Judge Pro Tem/ Hearing Officer
29th Judicial District 1985 to 1990

I was appointed by Judge Leo J. Moroney in December 1984 to be the small claims judge for Wyandotte County. Judge Moroney and Court Administrator William Burns also assigned me additional dockets in subsequent years. I presided in the Small Claims Court, Motion to Stay Income Withholding Court, Motion to Enforce Child Visitation Court, Habitual Traffic Violators Court and Protection from Abuse Court. The jurisdictions of those courts are as follows:

MOTION TO STAY INCOME WITHHOLDING ORDER (K.S.A. 23-4,105)
The court decides whether or not an income withholding order should issue based on a court-ordered support obligation. The statute sets out the legal requirements for granting or denying the Motion to Stay. At a hearing , the movant, through an attorney, offers evidence in support of the motion. Generally, the State, or the county court trustee, argues for the imposition of the income withholding order. Upon review of the evidence and the law, the Court makes findings and conclusions. The Court may either grant or deny the Motion to Stay.

MOTION TO ENFORCE VISITATION (K.S.A. 23-701)
The court provides an expedited proceeding for a pro se parent who has been granted court-ordered visitation rights , and such rights are denied or interfered with by the other parent. At a hearing, the parties, either pro se or with counsel, present their evidence. If the court finds that the visitation rights of one parent have been unreasonably denied or interfered with by the other parent, the court may enter an order providing for one or more of the following: a specific visitation schedule; compensating visitation time; posting of a bond; assessment of reasonable attorney fees or mediation costs; attendance at counseling sessions; supervised visitation; or any other appropriate remedy.

HABITUAL VIOLATOR (K.S.A. 8-284)
The district attorney prosecutes "habitual violators" by filing a petition. A "habitual violator" is an individual who has been convicted three or more times within the past five years of a particular felony or misdemeanor motor vehicle offense A summons is issued, and at the hearing, the court determines the identity of the accused and the accuracy of the driving abstract of such person's convictions. If the court finds that the accused is the same person named in the certified abstract, the court finds the person guilty of being a "habitual violator" of the motor vehicle laws and directs such person not to operate a motor vehicle for three years on the public highways in the state.

PROTECTION FROM ABUSE (K.S.A. 60-3101)
The court is empowered to grant any of the following orders: restraining orders; orders granting possession of residence to a party; suitable alternative housing orders; temporary custody and visitation orders; eviction orders; support orders; orders awarding costs and attorney fees; possession of personal property orders; and counseling orders.

SMALL CLAIMS COURT (K.S.A. 61-2701)
The Small Claims Court provides a forum for the speedy trial of claims for the recovery of money or personal property, where the amount claimed or the value of the property sought does not exceed a jurisdictional amount. In the small claims court, parties are not represented by counsel (except under certain circumstances). An appeal may be taken from any judgment and tried de novo before a district judge.

HEARING OFFICER (KANSAS SUPREME COURT RULE 172)
The forum provides an expedited judicial process which will increase effectiveness in support, visitation, and parentage proceedings as they relate to the establishment, modification, or enforcement of support orders; and the enforcement of parental visitation rights. The hearing officer is authorized to: take testimony and prepare written findings of fact and conclusions of law, evaluate evidence and establish or enforce court orders, accept voluntary acknowledgments of support liability and parentage, and enter orders as necessary. Hearing officer decisions are subject to review by a district court judge.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where judgment was affirmed with significant criticism of your substantive of procedural rulings; and (3) constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Ten most significant opinions written:

1. **Paul A. Garcia v. Air Parts Inc., et al.**
   Case no. 94C 05267
   Plaintiff's Attorney: **Donald T. Taylor**
   827 Armstrong Avenue
   Kansas City, KS 66101
   (913) 321-9600
   Defendant's Attorney: **Michael K. Seck**
   210 United Missouri Bank Bldg.
   11050 Roe Avenue
   Overland Park, KS 66211
   (913) 339-6757

2. **Dwight L. Elliott et al. v. Robert Gardner et al.**
   Case no. 95C 01910
   Plaintiff's Attorney: **Reid F. Holbrook**
   757 Armstrong Avenue
   P.O. Box 171927
   Kansas City, KS 66117-0927
   (913) 342-2500
   Defendant's Attorney: **R. Jeff Fendorf**
   El Centro Inc.
   1333 South 27th St.
   Kansas City, KS 66106
   (913) 677-0100

Appellate review: **Kansas Court of Appeals, Case no. 96-76647, filed 11/21/97. Affirmed.**

3. Dennis Been et al., v. K. C. Southern Railway Co.
Case no. 95C 05073

Plaintiff's Attorney:	**Brian C. Fries** **800 W. 4th Street, Suite 515** **Kansas City, MO 64112** **(816) 931-1400**
Defendant's Attorney:	**Daniel F. Church** **707 Minnesota Avenue, Suite 400** **Kansas City, KS 66101** **(913) 371-3838**

4. Marshall Dominguez v. Paul Davidson et al.
Case no. 96C 00424

Plaintiff's Attorneys:	**Barry R. Grissom** **7270 W. 98th Terrace** **Building 7, Suite 220** **Overland Park, KS 66212** **(913) 341-6616** **David M. Bryan** **7270 W. 98th Terrace** **Building 7, Suite 220** **Overland Park, KS 66212** **(913) 341-6616**
Defendants' Attorneys:	**Tedrick A. Housh III** **Commerce Trust Building** **922 Walnut, Suite 1500** **Kansas City, MO 64106-1848** **(816) 842-6100** **Lynn W. Hursh** **2345 Grand Blvd., Suite 2000** **Kansas City, MO 64108** **(816) 221-3420**

Appellate review: Kansas Supreme Court, Case no. 80,175, filed 3/5/99.
Affirmed.

5. Lonnie R. Tennyson et al., v. Shoney's Inc., et al.
Case no. 96C 00531

Plaintiff's Attorneys:	**David E. Herron II** **P.O. Box 3342** **Kansas City, KS 66103** **(913) 371-3121**
	Vance C. Preman **4330 Belleview, Suite 200** **Kansas City, MO 64111** **(816) 756-2323**
Defendant's Attorneys:	**Curtis O. Roggow** **40 Corporate Woods, Suite 1200** **9401 Indian Creek Parkway** **Overland Park, KS 66210** **(913) 696-7000**
	James D. Griffin **9401 Indian Creek Parkway** **Overland Park, KS 66210** **(913) 696-7000**

6. Ellen Paulsen et al., v. Board of Education Unified School District #500
Case no. 96 C 03001

Plaintiff's Attorney:	**Brent C. Moerer** **534 S. Kansas Avenue, Suite 810** **Topeka, KS 66603-3436** **(785) 233-1082**
Defendant's Attorney:	**Deryl W. Wynn** **707 Minnesota Avenue, 4th Fl.** **P.O. Box 1300** **Kansas City, KS 66117** **(913) 371-3838**

Appellate review: Kansas Supreme Court, Case no. 97-78934, filed 5/29/98.
Constitutional issues involved.
Affirmed as modified and remanded.

7. The Estate of Evalena Farmer v. Marsha E. Rogers

Case no. 96C 04047

Plaintiff's Attorney: **James Farmer (*Suspended)***
5419 Leavenworth Road
Kansas City, KS 66104
(913) 287-4011

Defendant's Attorney: **Sally H. Harris**
10111 Santa Fe Drive
P.O. Box 12290
Overland Park, KS 66212
(913) 888-1000

Appellate review: Kansas Court of Appeals, Case no. 97- 80075, filed 12/24/98. Appeal dismissed.

8.&9. State of Kansas v. John Cheek

Case no. 94CR2118

Plaintiff's Attorney: **Nick A. Tomasic**
District Attorney
710 N. 7th Street
Kansas City, KS 66101
(913) 573-2851

Defendant's Attorneys: **James R. Hobbs**
1300 Mercantile Tower
1100 Walnut
Kansas City, MO 64106
(816) 221-0080

Cheryl A. Pilate
1300 Mercantile Tower
1100 Walnut
Kansas City, MO 64106
(816) 221-0080

10. Levier v. Koppenheffer

Case no. 19 Kan.App. 2d 971, 879 P.2d 40 (1994)

Appellee's attorney: **John F. Stites**
620 Humboldt St.
P.O. Box 369
Manhattan, KS 66505
(785) 776-9288

Appellant's attorneys: **Ronald D. Heck and David N. Tulbert**
4848 Southwest 21st Street
Topeka, KS 66604
(785) 271-1082

(2) Appellate opinion decisions reversed or judgment affirmed with significant criticism of rulings:

Reversed

1. **Freight Rate Service Co. V. Williams et al.,**
Case no. 95 C 00752
Plaintiff's Attorneys: **Jayne A. Pearman**
9229 Ward Parkway, Suite 107
Kansas City, MO 64114-3311
(816)444-0003
Steven B. Moore
4218 Roanoke Road, Suite 200
Kansas City, MO 64106
(816) 960-1611

Defendant's Attorney: **Mark J. Sachse**
748 Ann Avenue
Kansas City, KS 66101
(913) 371-1930

Appellate review: Kansas Court of Appeals, Case no. 97-78408, filed 12/4/98. Affirmed in part, reversed in part and remanded.

2. **Kimberly Ann Burbank v. Gerald Don Burbank**
Case no. 87 D 03488
Intervenor's Attorney: **David W. Boal**
748 Ann Avenue
Kansas City, KS 66101
(913) 371-1930

Respondent's Attorney: **David A. Reed**
3137 State Avenue
Kansas City, KS 66102
(913) 342-7200

Appellate review: Kansas Court of Appeals, Case no. 96-76874, filed 2/28/97. Reversed.

3. Michael R. Elkins v. Tammy Wilcox Elkins
Case no. 95 D 00213
Petitioner's Attorney: **Barbara Weians**
816 Ann Avenue
Kansas City, KS 66101
(913) 371-0046

Respondent's Attorney: **Thomas DeCoursey**
753 State Avenue, Suite 102
Kansas City, KS 66101
(913) 371-6711

Appellate Review: Kansas Court of Appeals, Case no. 95-74118, filed 5/3/96.
Reversed and remanded.

4. State of Kansas v. Michael D. Brazel
Case no. 93 CR 02442
Plaintiff's Attorney: **Terra D. Morehead**
Assistant District Attorney
Criminal Justice Complex
710 N. 7th Street
Kansas City, KS 66101
(913) 573-2851

Defendant's Attorney: **Carl E. Cornwell**
6900 College Blvd., Suite 1020
Overland Park, KS 66211
(913) 451-2611

Appellate review: Kansas Court of Appeals, Case no. 95-73433, filed 10/3/95.
Defendant's sentence vacated, reversed and remanded.

5. State of Kansas v. Jon M. Heberlin
Case no. 94 CR 2234A
Plaintiff's Attorney: **D. Paul Theroff**
Assistant District Attorney
Criminal Justice Complex
710 N. 7th Street
Kansas City, KS 66101
(913) 573-2851

Defendant's Attorney: **Debera A. Erickson**
816 No. 9th Street
P.O. Box 1216
Kansas City, KS 66117
(913) 371-8383

Appellate review: Kansas Court of Appeals, Case no. 95-75422, filed 7/1/96.
Joint motion for summary reversal granted.

6. State of Kansas v. Michael Sullivan
Case no. 96 CR 00589
Plaintiff's Attorney: **Terra D. Morehead**
Assistant District Attorney
Criminal Justice Complex
710 N. 7th Street
Kansas City, KS 66101
(913) 573-2851

Defendant's Attorney: **Gerald N. Jeserich**
748 Ann Avenue
Kansas City, KS 66101
(913) 371-1930

Appellate review: Kansas Court of Appeals, Case no. 97-78792, filed 8/7/98.
Sentence vacated and remanded.

Affirmed

7. State of Kansas v. Ray A. Harris
Case no. 93 CR 01586
Plaintiff's Attorney: **Terra D. Morehead**
Assistant District Attorney
Criminal Justice Complex
710 N. 7th Street
Kansas City, KS 66101
(913) 573-2851

Defendant's Attorney: **Charles Dixon (Inactive)**
419 N. 6th Street
Kansas City, KS. 66101
(913) 621-1233

Appellate review: Kansas Supreme Court, Case no. 96-77569, filed 7/11/97.
Affirmed.

8. State of Kansas v. Dewayne Brake
Case no. 94 CR 02008
Plaintiff's Attorney: **John R. Emerson**
Assistant District Attorney
Criminal Justice Complex
710 N. 7th Street
Kansas City, KS 66101
(913) 573-2851

Defendant's Attorney: **Gary W. Long (Disbarred)**
400 N. 6th Street
P.O. Box 171032
Kansas City, KS 66117
(913) 788-7838

Appellate review: Kansas Court of Appeals, Case no. 97-78765, filed 10/9/98. Affirmed.

(3) Opinions involving constitutional issues

1. Ellen Paulsen et. al., v. Board of Education Unified School District #500
(See item (1) above.)

See Addendum B for copies of opinions.

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

None.

9. Legal Career:
   a. Describe chronologically your law practice and experience after graduation from law school including:
      1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
      I did not clerk for a judge.

2. whether you practiced alone, and if so, the addresses and dates;
When I left the offices of Zeigler Legal Services in December 1985, I went to work as the Coordinator for the Immigration Amnesty Program at El Centro, Inc. From approximately January 1986 through March 1990, with permission of El Centro, I handled a few legal matters on my own working out of my El Centro office (1333 So. 27th St., Kansas City, KS) and my home (1344 So. 27th St., Kansas City, KS).

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

09/82 to 12/85	**Zeigler Legal Services, Chrtd.** **304 South Clairborne Road, Olathe, KS 66062**
Position:	**Private practice attorney**
12/84 to 05/90	**Wyandotte County District Court** **Wyandotte County Courthouse** **710 North 7th Street** **Kansas City, KS 66101**
Positions:	**Part-time Small Claims Court Judge** **Part-time Judge pro tem**
05/85 to 05/90	**El Centro, Inc.** **1333 South 27th Street, Kansas City, KS 66106**
Position:	**Coordinator of Immigration Amnesty Program**
05/90 to 09/90	**Wyandotte County District Court** **Wyandotte County Courthouse** **710 North 7th Street** **Kansas City, KS 66101**
Position:	**Full-time Hearing Officer**

09/90 to present Wyandotte County District Court, Kansas City, KS
Wyandotte County District Court
710 North 7th Street
Kansas City, KS 66101

Position: District Court Judge

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

From 1982 to 1985, my practice consisted of general civil and criminal cases. My civil cases involved domestic relations matters (divorces, child support and child custody/visitation); probate matters (wills, guardianships, trust and mental hearings); and limited actions (consumer cases and landlord-tenant cases). My criminal cases consisted of traffic violations and arraignments, preliminary hearings, guilty plea hearings, sentencing hearings and post-sentencing motions. I also handled work for the City of Kansas City, Kansas as a contract right-of-way attorney in condemnation and other real property matters from approximately 1983 to 1984.

From 1985 to 1990, my legal practice became concentrated in the area of immigration. In 1985, I became the coordinator of the Immigration Amnesty Program at El Centro, Inc. a non-profit social service agency in Kansas City, Kansas. I assisted applicants in reviewing their status, explained the application process, assisted in completion of the application forms and accompanied them to their interviews with the Immigration and Naturalization Service. I also assisted individuals with their application for United States Citizenship and United States Permanent Residency status. During this time, I continued to handle private legal cases with the permission of El Centro.

In 1985, I also began hearing cases for the Wyandotte County District Court. I started as a Judge pro tem and heard small claims cases, motions to modify child support orders, motions to enforce child visitation, prosecution of habitual traffic violators, and protection order cases. From 1985 to 1990, I decided hundreds of cases each year involving the above matters.

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

While in private practice from 1982 to 1990, my typical clients were residents of my neighborhood in which I practiced law. I practiced law in the Argentine District of Kansas City, Kansas. Primarily, an urban, middle to low income population area, Argentine is a diverse community. While working for the El Centro Immigration Amnesty Program, 98% of my clients were Latino and Spanish-speaking.

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

From 1982 to 1990, while in private practice, I appeared in court occasionally. My court appearances in domestic, probate and limited action cases were for the purpose of arguing motions or in connection with final hearings. For my criminal cases, I appeared in traffic cases, arraignments, preliminary hearings, plea hearings, sentencings, and post-sentencing motions. There were motion dockets every month. From 1985 to 1990, I appeared in front of the immigration court a few times.

2. What percentage of these appearances was in:
(a) federal courts; **2%**
(b) state courts of record; **98%**
(c) other courts.

3. What percentage of your litigations was:
(a) civil; **50%**
(b) criminal. **50%**

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

To the best of my recollection, I was sole counsel in one jury trial and one bench trial. I was co-counsel in one immigration case.

5. What percentage of these trials was:
(a) jury; **33%**
(b) non-jury. **67%**

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party of 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 dates 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.

During the time I was in private practice, I was involved primarily in a general legal practice with few cases actually going to trial. I have compiled the following list of cases that I was involved in during that time period:

1) State of Kansas v. Rodney Pierce
Case No. 82 CR 474 and 82 CR 1020
Opposing Counsel: **Assistant District Attorney Wesley Griffin**
Municipal Court Judge - Unified Government
701 North 7th Street
Kansas City, KS 66101
(913) 573-5200
Wyandotte County District Court
Judges Philip Sieve (plea) and Matthew Podrebarac (sentencing)
Dates 10/82 thru 4/84
Appointed

This was my first criminal case and first criminal appointment. The defendant had been charged with harassment by telephone. He pled guilty as charged and was sentenced to probation on the condition he seek mental health treatment . A motion to revoke his probation was filed. There was a question about his mental competency throughout his proceedings. After meeting with him, the probation officer, the assistant district attorney and mental health experts, the motion to revoke was dismissed subject to the defendant participating in mental health counseling.

2) State of Kansas v. Steve Kalnasi
Case No. 82 CR 1321 and 83 CR 62
Opposing Counsel: **Assistant District Attorney David Brake**
P.O. Box 667
Chanute, KS 66720
(316) 431-2600
Wyandotte District Court
Judges Phillip Sieve (plea) and Robert Foster (sentencing)
Dates 1/83 thru 7/83
Appointed

The defendant was charged with interference with custody of a committed person and theft of over $100. We entered a plea of guilty as charged. He was sentenced to a term of not less than 2 years nor more than 5 years imprisonment on the theft conviction, 1 year on the interference conviction, with both sentences to run concurrent with each other. Based on his prior criminal convictions, his application for probation was denied.

3) **State of Kansas v. Leland Roebuck**
Case No. 83 CR 1115
Opposing Counsel: **Assistant District Attorney Kenneth Moore**
Assistant City Attorney - Unified Government
701 North 7th Street
Kansas City, KS 66101
(913) 573-5060
Wyandotte County District Court
Judges Leo Moroney (plea) and Dean Smith (sentencing)
Dates 2/83 thru 3/85
Appointed

The defendant was a young man charged with Forgery. My recollection is that it was his first adult charge. We entered a guilty plea to an amended charge of attempted forgery. At his sentencing, he was granted probation. A motion to revoke his probation was filed. At a hearing, his probation was allowed to continue on condition he pay restitution and costs.

4) **State of Kansas v. Dorothy Lane**
Case No. 83 CR 962
Opposing Counsel: **Assistant District Attorney Ted Baird**
Assistant Dist. Atty. - Johnson County, Kansas
P.O. Box 728
Olathe, KS 66051-0728
(913) 764-8484
Wyandotte County District Court
Judges Matthew Podrebarac (plea) and Lawrence Zukel (sentencing)
Dates 9/83 thru 10/83
Appointed

The defendant was known as the "Cat Lady." She was an older lady with limited financial means and limited mental faculties. She was charged with 2 counts of failure to remove a nuisance. She had over 40 cats living in her home. She had a name for each one of her cats. I worked very closely with her (and her cats). As part of her plea, I helped her to transport some of her cats to a local veterinarian hospital. She pled guilty to 1 count of failure to remove a nuisance and was fined $100 and granted bench parole and limited to 6 cats.

5) **State of Kansas v. Thomas Dysart**
Case No. 83 CR 1295
Opposing Counsel: **Assistant District Attorney Kenneth Moore**
Assistant City Attorney - Unified Government
701 North 7th Street
Kansas City, KS 66101
(913) 573-5060
Wyandotte County District Court
Judges Leo Moroney (plea) and David Mikesic (sentencing)
Dates 12/83 thru 5/84
Appointed

The defendant was charged with burglary and theft over $100. We entered a guilty plea to the burglary charge and the theft charge was dismissed. At his sentencing, he was sentenced to a term of not less than 3 years and not more than 5 years. His application for probation was denied. He had been on felony parole when he committed this new offense.

6) **Maurice Harris v. State of Kansas**
Case No. 83 CR 2919
Opposing Counsel: **District Attorney Nick Tomasic**
District Attorney - 29th Judicial District
Criminal Justice Complex
710 North 7th Street
Kansas City, KS 66101
(913) 573-2851
Wyandotte County District Court
Judge Leo J. Moroney
Dates 10/93 thru 12/83
Appointed

This was a post-trial motion (K.S.A. 60-1507) by the defendant attacking his conviction in case no. 82 CR 407 for second-degree murder. He claimed that his guilty plea had been involuntary and he had been coerced into entering it. I represented him at the 60-1507 hearing, at which I called his original attorney to testify. The court denied the defendant's 60-1507 motion.

7) **Juanita Fernandez v. Joseph Escott**
Case No. 83 C 2010
Opposing Counsel: **Paul P. Hasty, Jr.**
10111 West 87th Street
P.O. Box 12290
Overland Park, KS 66282
(913) 888-1000
Wyandotte County District Court
Judge Cordell Meeks
Dates 7/83 thru 8/84
Retained

This was my first civil lawsuit, and it involved an automobile accident case. The plaintiff was a school classmate, and long-time friend of mine. After discovery had taken place, a settlement was reached, and the lawsuit was dismissed.

8) **Wilbur D. Bruner and Nancy Bruner v. City of Kansas City, Kansas**
Case No. 83 C 1875
Opposing Counsel: **Michael A. Preston**
6310 Lamar Avenue, Suite 220
Overland Park, KS 66202
(913) 831-6900
Wyandotte County District Court
Judge Lawrence Zukel
Dates 7/83 thru 10/84
Contract attorney

This was an appeal of a condemnation award. The plaintiff property owner filed a lawsuit against the defendant contesting the amount of the award. After discovery was completed, a jury trial was held. The jury found for the plaintiff and awarded a judgment against the defendant. This case turned out to be my first, and only, jury trial while in private practice.

9) **In re: Jose Maria Machado-Apalucho**
Case No. A 26544218
Co-counsel: **Howard Eisberg**
708 W. 17th
Kansas City, Mo. 64108
(816) 221-5007
Opposing Counsel: **Bernard W. Braun, Immigration Trial Attorney for the United States**
6216 West 126th Street
Shawnee Mission, KS 66202
(913) 345-8830
United States Immigration Court
Immigration Judge O. John Brahos
Dates 9/85 thru 10/88
Coordinator for Immigration Amnesty Program

This was a case of a petitioner who made an application for political asylum. The petitioner was from El Salvador and his application had been on file for several years when I began representing him. I represented him at his hearing along with co-counsel Mr. Eisberg. The court denied the application for political asylum. A notice of appeal was filed and I withdrew from the case in October 1988.

10) **Various immigration cases**
Case numbers (Unknown)
Opposing Counsel: **Bernard W. Braun, Immigration Trial Attorney for the United States**
6216 West 126th Street
Shawnee Mission, KS 66202
(913) 345-8830
United States Immigration Court
Immigration Judge O. John Brahos
Dates 1985-1989 (approximate)
Coordinator for Immigration Amnesty Program

In addition to the immigration case described in case number 9, I also appeared in the immigration court on at least a couple of other occasions. I believe I represented an El Salvardorian applicant for political asylum, a Nicaraguan applicant for political asylum or suspension of deportation, and a Mexican applicant for suspension of deportation. To the best of my recollection, the El Salvadorian applicant

did not appear for his hearing, the court granted the Nicaraguan's application and also granted the Mexican application. I am unable to provide any more information about the cases because I left the files at El Centro in 1990 and the files were destroyed in a flood in 1993.

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

As a state trial court judge for the past eight years, I have heard hundreds of cases, including jury and bench trials. I have observed trial attorneys prepare and present their cases. Trial attorneys conduct a thorough review of the facts and law in their case. I recognize the importance of trial experience, but I also believe that as a private attorney, I was able to resolve the great majority of my cases only after engaging in the preparation necessary for trial, which required a thorough review of the facts and law in my cases. In representing my clients, I had to engage in discovery, file pleadings and motions, and communicate in an informed manner with opposing counsel and the court.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   As a state of Kansas employee, I have accumulated retirement benefits in the Kansas Public Employees Retirement System. As of 12/31/97, the outstanding balance in my retirement account was $44,651.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflict-of-interest during your initial service in the position to which you have been nominated.
   I will make myself aware of all potential conflicts of interest based on my financial status. If any conflict of interest should arise, I will resolve the conflict by complying with the Code of Judicial Conduct.

   The only financial arrangements I presently have involve my ownership of State of Kansas Municipal Bonds, my retirement benefits in the Kansas Public Employees Retirement System, my son's trust account with Aetna Fund Mutual and depository accounts at local banks.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.
   No.

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

   Financial Disclosure Report is attached. (Addendum C)

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

   The net worth statement is attached. (Addendum D)

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

   Yes. My campaign for District Court Judge in 1992 and 1996. This is a partisan elective position. Other than those two campaigns, I have not held a position or played a role in a political campaign.

III. GENERAL (PUBLIC)

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

I volunteer my time by sitting on various civic and charitable non-profit boards of directors and committees. I devote approximately three to five hours each month in service on these boards. The following is a listing of the non-profit boards of directors, and committees, on which I serve or have served:

El Centro, Inc. Board of Directors	**1983 to 1984, 1990 to 1996**
Greater Kansas City Hispanic Scholarship Fund Selection Committee	**1986 to present**
Leadership 2000 Board of Directors	**1985 to 1995**
Partnership for Children Steering Committee	**1991 to 1999**
United Way of Wyandotte County Board of Directors	**1993 to 1999**
National Conference of Christians and Jews Board of Directors	**1991 to 1995**
Wonderscope Children's Museum Board of Directors	**1997 to present**
National Association for the Advancement of Colored People General Membership	**1991 to 1996**

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates --- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?
No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).
There is no selection commission in my jurisdiction. In 1997, I became aware of a vacancy on the federal bench in Kansas. I wrote a letter of interest to the Department of Justice. The Department of Justice requested that I complete an initial set of applications and questionnaires. In January 1998, I was interviewed by representatives from the Department of Justice. In December 1998, I was contacted by the White House and asked to submit a personal data questionnaire to the American Bar Association and the SF 86 questionnaire to the Federal Bureau of Investigation. In February 1999, I was interviewed by agents of the Federal Bureau of Investigation and in March 1999, I was interviewed by a member of the American Bar Association Standing Committee on Federal Judiciary. I was nominated on March 24, 1999.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue of question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully. **No.**

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
d. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I took an oath to uphold the Constitutions of the United States and the State of Kansas. As a judge, I apply the law in each case to the facts before me with that oath in mind. The role of a judge is not to make laws but to enforce and interpret the Constitution and appropriate statutes.

Our system of government was founded on the principle of separation of powers. The three separate branches of government are each dependent on the other to function according to their proper constitutional role. Our legal system has thrived because of the balance of powers and the faith placed in the judiciary by the American people.

FINANCIAL STATEMENT

NET WORTH

CARLOS MURGUIA & ANN MARIE BRANDAU
MARCH 24, 1999

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	9,300.00	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	
Listed securities—add schedule KS BONDS	25,000.00	Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due CR CARDS	3,500.00
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	21,074.00
Real estate owned—add schedule	25,700.00	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property 87 Chevy	5,000.00	USA Student Loan	36,621.00
Cash value—life insurance		Chela Student Loan	2,352.00
Other assets—itemize:			
HOME FURNITURE	15,000.00		
		Total liabilities	63,547.00
		Net Worth	16,453.00
Total Assets	80,000.00	Total liabilities and net worth	80,000.00
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule.)	NO
On leases or contracts 98 Expedition	NO	Are you defendant in any suits or legal actions?	NO
Legal Claims	NONE	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	NONE		
Other special debt	NONE		

SCHEDULE

FINANCIAL STATEMENT

NET WORTH

Carlos Murguia and Ann Marie Brandau
March 24, 1999

ASSETS

Listed Securities

State of Kansas, Department of Transportation Highway Revenue Bonds	$20,000
State of Kansas, Department of Transportation Highway Revenue Bonds	$ 5,000

Real Estate owned

Primary residence in Kansas City, KS	$25,700

LIABILITIES

Real Estate Mortgage payable

Argentine Savings and Loan, Kansas City, KS	$21,074

UNITED STATES SENATE
QUESTIONNAIRE FOR NONJUDICIAL NOMINEE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Diana E. Murphy
(maiden name Diana E. Kuske)

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

Home: Minneapolis, MN 55405

Office: 11E U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

3. Date and place of birth.

January 4, 1934. Faribault, Minnesota.

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

Married to Joseph E. Murphy, Jr.; retired business executive, author.

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

University of Minnesota, Minneapolis, MN, 1950-1954 - B.A. 1954.

Johannes Gutenberg University, Mainz, Germany, 1954-1955 (Fulbright Scholarship).

University of Minnesota Graduate School (history), 1955-1958 (completed course work for Ph.D. but realized in the process that I did not want to be a professional historian).

University of Minnesota Law School, 1971-1974 - J.D. 1974.

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

University of Minnesota
Resident dormitory counselor, 1955-1956
Teaching assistant, Department of History, 1955-1958.

Minneapolis Commission on Human Relations
Temporary substitute for Executive Director, 1965.

Lindquist & Vennum Law Firm, Minneapolis, MN
Law clerk, 1973
Associate, 1974-1976.

Hennepin County Municipal Judge, 1976-1978.

Minnesota District Court Judge, 1978-1980.

U.S. District Judge for the District of Minnesota, 1980-1994; Chief Judge, 1992-1994.

U.S. Circuit Court Judge for the Eighth Circuit, 1994-present.

The following are nonprofit organizations in which I have served as an officer or director in addition to those listed in answer to questions 9 and 10:

Junior Women's Association of Minnesota Symphony Orchestra
Board of Directors, c. 1965-67

Minneapolis Urban Coalition
Board of Directors, 1969-71

Minneapolis League of Women Voters
Board of Directors, 1965-72
President, 1969-71

Woman's Club of Minneapolis
Board of Directors, 1969-70 (President of Junior Group)

Operation De Novo
Board of Directors, 1971-76
Chair, 1974-75

Amicus
Board of Directors, 1976-80

Minnesota Civil Liberties Union
Board of Directors, c. 1974-76

University of Minnesota Alumni Association
Board of Directors, 1975-83
National President, 1981-82

Spring Hill Conference Center
Board of Directors, 1978-84

Twin Cities Public Television
Board of Trustees, 1985-94
Chair of Board, 1990-92

Science Museum of Minnesota
Board of Directors, 1988-94
Vice Chair, 1991-94

Georgetown University Journal on Courts, Health Sciences and the Law,
Board of Editors, 1989-92

National Association for Public Interest Law
Fellowships for Equal Justice
Board of Directors, 1992-95

University of Minnesota Law School Alumni Board and
Board of Visitors, 1991-97

St. John's University
Board of Regents, 1978-87, 1988-98
Chair of Board, 1995-98
Vice Chair, 1985-87

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

No military service.

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

Phi Beta Kappa

B.A. magna cum laude

J.D. magna cum laude

Editor, Minnesota Law Review

Order of the Coif

Fulbright scholarship for study in Germany

National Association of Women Judges Award for Leadership of Judges and Judicial Administration, 1998

Minnesota Women Lawyers Myra Bradwell Award, 1996

Distinguished Citizen Award, Alpha Gamma Delta, 1985

University of Minnesota Outstanding Achievement Award, 1983

YWCA Outstanding Achievement Award, 1981

Fellow, American Bar Foundation

Amicus Founders Award, 1980

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

American Bar Association since 1974
- Chair, Judges Advisory Committee on Ethics and Professional Responsibility, 1997-present; member 1981-1988
- Executive Committee, Appellate Judges Conference, 1996-1999
- Standing Committee on Federal Judicial Improvements, 1994-1997
- Standing Committee on Judicial Selection, Tenure and Compensation, 1991-1994.

Federal Bar Association since 1980

Minnesota State Bar Association
- Board of Governors, 1977-1981

Hennepin County Bar Association
- Governing Council, 1976-1981
- Co-Chair, Program Committee 1978-1979
- Chair, Election Committee 1978

Hennepin County Bar Foundation
- Board of Directors, 1981-84
- President, 1983-84

Federal Judges Association
- Board of Directors since 1982
- President, 1989-1991

Vice President, 1984-1989
Membership chair, 1983-1987
Chair, National Network, 1987-1989
Chair, Goals and Priorities Committee, 1993-1994

Federal Judicial Center
Board of Directors 1990-1994
Chair of Education Committee, 1992-1994
Director Search Committee, 1994

U.S. Judicial Conference Committee on Court Administration and Case Management, 1994-present

Eighth Circuit Judicial Council 1992-1994; 1997-present
Chair, Gender Fairness Implementation Committee
Bankruptcy Committee
Personnel Committee
Tribal Court Committee

Eighth Circuit Judicial Conference
Co-chair, 1997 Conference
Program and Arrangements Committee

Eighth Circuit Historical Society
Board of Directors, 1988-1991

Constituted and appointed Eighth Circuit Gender Bias Task Force, 1993

American Judicature Society since 1970
Board of Directors, 1982-1993
Chair of Board, 1989-1991
Vice President, 1985-1988
Treasurer, 1988-1989
Chair, Nominating Committee
Chair, Awards Committee

American Law Institute, elected member

National Association of Women Judges

Minnesota District Judges Association, 1978-1980

Hennepin County Municipal Judges Association, 1976-1978,
Treasurer

Minnesota Women Lawyers

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

In today's world almost any organization may occasionally be involved in lobbying public bodies on some issue. The only organization for which I have participated in communications with public bodies is the Federal Judges Association. One of the purposes of that Association is to engage in dialogue with the other branches of government about issues affecting the federal judiciary.

The following are other organizations to which I belong in addition to those listed in answer to question 9:

United Way of Minneapolis Area
Board of Directors, 1985-present
Chair, Board of Directors, 1997-1998
Vice-Chair, 1996-1997
Treasurer, 1990-1994

Bush Foundation
Board of Directors, 1982-present
Chair of Board, 1986-1991

Saint John's University School of Theology
Board of Overseers, 1998-present

University of Minnesota Foundation
Board of Trustees, 1990-present
Treasurer, 1992-1998

University of St. Thomas
Board of Trustees, 1991-present
Executive Committee, 1994-present

Association of Governing Boards of Universities and Colleges

Board of Directors, 1998-present

Minnesota Opera
Board of Directors, 1998-present

International Women's Forum

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

Minnesota and United States District Court, District of Minnesota - 1974

U.S. Supreme Court - 1980

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

Copies are attached for those items marked with an asterisk.

"Bringing Scientific and Technical Expertise into the Courtroom: A Judicial Challenge", paper presented at Conference on Science, Technology and the Courts: The Use of Court-Appointed Experts, Washington, DC, November 5, 1993.*

"A Tribute to U.S. Magistrate Bernard P. Becker", 17 Wm. Mitchell L. Rev. 395 (1991).

"Unified and Consolidated Complaints in Multidistrict Litigation", 132 F.R.D. 597 (1990).*

"Leading the Federal Judges Association into the 1990s", 22 Third Branch (Oct. 1990).

"The Judicial Improvements Act of 1990: The Concerns of Federal Judges", 74 Judicature 112 (Aug.-Sep. 1990).*

"Impeaching Federal Judges: Where Are We and Where Are We Going?", 72 Judicature 359 (Apr.- May 1989) (with Professor Victor Rosenblum, Senate Counsel Michael Davidson, Honorable Sherman Finesilver, and Professor Ronald Rotunda).*

"Women and the Constitution: Introductory Remarks", 6 Law & Ineq. J. 1 (May 1988).*

"An Effort to Revise the Minnesota Bill of Rights", 58 Minn. L. Rev. 157 (1973).

"Report of Bill of Rights Committee", Minnesota Constitutional Study Commission (1973).

Case Comment, 57 Minn. L. Rev. 603 (1973).

"Minneapolis Works for Equal Opportunity", Report of Minneapolis League of Women Voters (1965).

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

Good. May 19, 1999.

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

Minority Group Housing Committee for the City of Minneapolis, 1965-1968 (appointed by Mayor).

Minnesota Constitutional Study Commission, 1971-1973 (appointed by Governor)
Secretary and member of Executive Committee
Chairman, Bill of Rights Committee
Member, Reapportionment Committee.

Human Resources Task Force of Capital Long Range Improvements Committee, 1971-1973 (appointed by Minneapolis City Council).

Minneapolis Charter Commission, 1973-1976 (appointed by Chief Judge of District Court); elected chairman, 1974-1976 (period of significant charter change; resigned when appointed to bench).

Minnesota Coordinating Committee for Minnesota Women's Meeting in 1977 (appointed by U.S. Department of State pursuant to Observance of International Women's Year).

Minnesota Bicentennial Commission, 1987-1988 (appointed by Chief Justice of the Minnesota Supreme Court).

15. Legal Career:

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

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

I did not serve as clerk to a judge.

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

I did not practice alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with

which you have been connected, and the nature of your connection with each;

Lindquist & Vennum
4200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Law Clerk, 1973
Associate, 1974-1976.

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

Litigation.

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

Typical clients included individuals, corporate entities, and labor unions. I represented both plaintiffs and defendants. In addition to civil litigation, I was regularly involved in regulatory hearings related to transportation authority and rates.

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

Frequently.

2. What percentage of these appearances was in:

(a) federal courts 25%

(b) state courts of record 25%

(c) other courts 50%

3. What percentage of your litigation was:

(a) civil 95%

(b) criminal 5%

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

30 (20 as sole counsel; 10 as associate counsel).

5. What percentage of these trials was:

(a) jury 5%

(b) non-jury 95%

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

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

Since I have been a trial judge for some 24 years, this question is difficult to answer with the detail required. Listed below is information supplied in 1979 when my work as a lawyer was more recent; I have attempted to update addresses and telephone numbers.

(1) John W. Anderson, et al. v. Werner Continental, Inc., et al., Civ. 4-74-343, United States District Court (D. Minn.). This action was brought under federal securities laws by 122 named plaintiffs asserting individual, class and derivative claims against multiple defendants. Plaintiffs were shareholders and former shareholders of Werner Continental, Inc. seeking to share in alleged premium which Harvey L. Werner received for selling controlling interest in Werner Continental, Inc. to John N. Hall, officer and controlling shareholder in Hall's Motor Transit Company.

Robert V. Atmore, 4200 IDS Center, Minneapolis, MN 55402 (612-371-3211)and I represented the defendants. Plaintiffs' counsel was James Malcolm Williams, 212 West Franklin Avenue Minneapolis, MN 55404 (612-871-8885). I worked on 1975 discovery motions (before Magistrate J. Earl Cudd) and 1976 motions to dismiss class action and derivative action claims, the request for punitive damages, and particular plaintiffs and defendants (before Judge Donald D. Alsop), as well as discovery and general trial preparation. Defendants prevailed on motions which significantly narrowed the scope of the litigation. There had been no final disposition at time I went on the bench.

Case represents an early and successful application of Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975), and other theories to defeat a proposed class action at a time when most of the federal cases favored certification of securities class actions brought by shareholders.

(2) Tampa Bay Area NFL Football, Inc., et al. v. National Football League Players Association, et al., 76-146 Civ-JE, United States District Court (S.D. Florida); January and February, 1976. Plaintiffs had been awarded NFL franchises in Tampa and Seattle. They filed a class action for declaratory and injunctive relief. They sought a declaration that assignment of veteran players' contracts to

the new clubs through an expansion draft would not violate antitrust laws. They also sought to enjoin the defendants from interference. Judge Joe Eaton granted defendants' motion to dismiss the case.

Edward M. Glennon and Mark R. Johnson, 4200 IDS Center, Minneapolis, MN 55402 (612-371-3211) and I were of counsel to Miami attorneys and represented the defendants. I did all of the research and briefing to assert lack of a justiciable controversy and failure to meet other jurisdictional requisites of federal courts (cause of action not arising under the laws of the United States; incomplete diversity).

Work on this case gave me an in-depth opportunity to apply some of the jurisdictional doctrines peculiar to the federal courts and to appreciate the significance of Article III of the Constitution.

(3) Petition of Purolator Courier Corporation for Irregular Route Common Carrier Authority, Minnesota Public Service Commission; extensive hearings throughout 1975 before state hearing examiner Rich DeLong and the Commission; I represented petitioner; opposing counsel were Douglas Skor, Briggs & Morgan, W-2200 First National Bank Building, St. Paul, MN, 55101 (651-291-1215) and Val Higgins 1000 First National Bank Building, Minneapolis, MN 55402 (612-333-1341).

Case represents attempt by carrier, offering an innovative and needed statewide courier service, to obtain economical and efficient operating authority to serve the public in a regulated industry characterized by statutory restrictions; involved technological considerations, rulemaking and legislative alternatives to litigation, as well as evidentiary hearings and review proceedings. Authority denied.

(4) Mark Mechtel, et al. v. Soo Line Railroad Co., Ramsey County District Court (1974); Garry Woodbridge v. Minnesota Dakota Western Railroad, District Court, Koochiching County (1975); Harold Fread v. Soo Line Railroad Co., District Court, Douglas County (1975) - series of actions for damages

arising out of railroad operations (freight car jumping and crossing accidents).

I worked with lead counsel Edward M. Glennon, 4200 IDS Center, Minneapolis, MN 55402 (612-371-3211) on all cases, representing the plaintiff in the Woodbridge case and defendant Soo Line Railroad in the others. There was a final disposition favorable to our clients in each case (including a directed verdict in the Fread case). On each matter I prepared trial briefs, memoranda for favorable evidentiary rulings and jury instructions.

In the Mechtel case I also handled discovery depositions, pretrial investigation and preparation of witnesses, and appeared at trial in November of 1974 before Judge Ronald E. Hachey; case settled; opposing counsel was Stewart E. Perry 1625 Park Avenue, Minneapolis, MN 55404 (612-336-8611).

Cases were significant to my development as an effective advocate in that they all dealt with the standards of liability for railroads, but required application of such standards to the special facts of each case and to the benefit of both the person injured (Woodbridge case) and the operating railroad (Mechtel and Fread cases).

(5) Potlach Corporation, Northwest Paper Division v. Public Service Commission, et al., District Court, Carlton County, Judge Donald E. Anderson - appeal of Order of Public Service Commission granting petition of Northern Lines Committee to establish maximum absorption of switching charges on pulpwood shipments.

We represented Potlach Corporation which protested the petition of the Northern Lines Committee. We had participated in the evidentiary hearing before the Minnesota Public Service Commission and then appealed the order of the Commission to the state district court. Hearings were held in the district court in May and December of 1975.

Co-counsel was William E. Fox, 4200 IDS Center, Minneapolis, MN 55402 (612-371-3211). I assisted in preparing witness for direct examination and aided lead counsel in planning

cross-examination. I wrote the hearing brief and the appellate memoranda.

Case involved complexities of railroad rate system, economics of transporting bulky unprocessed raw material, and the interplay between carrier and processor. It was significant in my development as an advocate in demonstrating how important it is to develop the evidence fully at the initial stage of litigation.

(6) In the Matter of Dr. Alan S. Briskin, January, 1975. Dr. Briskin filed a complaint before the University of Minnesota Senate Judicial Committee appealing his termination as assistant professor. The case was settled favorably to my client after discovery and preparation for litigation.

I represented the complainant, Dr. Briskin. The University of Minnesota was represented by Thomas W. Tinkham, Dorsey & Whitney, 220 South Sixth Street, Suite 2200, Minneapolis, MN (612-340-2829). I developed facts, located witnesses and discovered documents which made a favorable settlement possible for my client who was offered another position in the University as a result.

I learned in this case how important it is to become thoroughly familiar with the client's environment, not only to be able to present his case effectively, but also to be able to develop a settlement strategy.

(7) Petition of Harold Dickerson for operating rights for movement of trailers, Public Service Commission hearing in Hibbing, MN, for two days in December of 1975, before state hearing examiner George Deretich.

I represented Morgan Drive Away, a carrier with authority to transport trailer homes, in opposition to the requested authority, and put on a case in chief and cross-examined witnesses. Issues involved public need and the extent to which it could be met by authorized carriers. Opposing counsel were Edward J. Matonich, P.O. Box 127, Hibbing, MN 55746, (213-261-8881); James S. Holmes, 200 South Sixth

Street, Suite 470, Minneapolis, MN 55402 (612/371-3900); and J. P. Dosland, Box 100, Moorhead, MN 56560 (218-233-2744)

Case heard in an outstate Minnesota community experiencing a construction boom related to taconite mining. While client would have liked to defeat the petition completely, it was pleased to have authority restricted to movement to and from the Hibbing area.

(8) Dorothy A. Park v. Willis B. Park, Hennepin County District Court, Judge Eugene Minenko, - divorce action in late 1975 in which the significant legal issue was the validity and effect of an antenuptial agreement.

Co-counsel was William P. Mortenson, 8200 Normandale Boulevard, Suite 323, Minneapolis, MN 55436 (612-831-1757); we represented the defendant, Willis Park; opposing counsel was Ronald Schumeister, 4921 Trillium Lane, Minneapolis, MN 55435 (612-922-0515). I assisted in preparation of evidence and researched and wrote the trial brief arguing that the antenuptial agreement should control the property division. The case settled with a favorable result for our client on the day of trial after lengthy arguments in chambers.

An antenuptial agreement such as the one in this case is a valid and enforceable contract favored by public policy, and my experience in this case convinced me of the great value of such agreements for certain clients.

(9) The First National Bank of Chicago v. Larson Industries, Inc., Hennepin County District Court; settlement advantageous to our client Larson Industries was achieved subsequent to favorable pre-trial decision by Judge A. Paul Lommen early in 1976.

Co-counsel was Edward J. Parker, Minnesota Court of Appeals, 25 Constitution Avenue-#313, St. Paul, MN 55155 (651-297-1007); opposing counsel was Stephen H. Cohen, 33 South Fifth Street, Minneapolis, MN 55402 (612-339-4911).

Plaintiff bank sued in Minnesota district court for injunctive relief against Larson Industries, a Minnesota corporation, based on the parties' loan agreement. Larson

then served a multi-million dollar counterclaim containing contract and tort claims and demanded a jury trial. The bank attempted to appear specially on the counterclaim to seek its dismissal on several grounds, arguing that jurisdiction over it was properly in the federal bankruptcy court and that claims can only be brought against a national bank in the district of its principal place of business. The court ruled in favor of our client and against the bank, necessitating its litigating the counterclaim in what it saw as an undesirable forum for those issues.

(10) Griswold & Rauma, Architects v. Aesculapius Corp., 301 Minn. 121, 221 N.W.2d 556 (1974); action for fee for architectural services; Supreme Court reversed trial court; Norman L. Newhall, 4200 IDS Center, Minneapolis, MN 55402 (612-371-3211) tried the case and appeared at oral argument on appeal; as a law clerk, I prepared the appeal, researched and developed the issues, and wrote the appellant's brief for the architects.

Our client sought to foreclose a lien for unpaid architectural services, but the trial court instead ordered that fees already received be returned. The Supreme Court reversed because there was no maximum cost guarantee and no large cost override, the architect's client had approved substantial changes to the plan, and the architect was prepared to reduce costs if desired.

Case is significant because it established a new rule in Minnesota for factors to be considered in determining the effect on the compensation of an architect or building contractor when the cost of construction exceeds an agreed maximum cost figure. Supreme Court opinion closely followed the analysis and factors I developed in appellant's brief.

Because I have been a judge since May 1976, my work as a lawyer was long ago. You may want to know of individuals who have more current knowledge about my work and reputation. Some names follow:

Honorable Roger L. Wollman, Chief Judge
U.S. Court of Appeals for the Eighth Circuit
311 U.S. Courthouse
400 South Phillips Avenue
Sioux Falls, SD 57104-6851
(605-330-4411)

Honorable Pasco M. Bowman II (former Chief Judge)
U.S. Court of Appeals for the Eighth Circuit
10-50 Charles Evans Whittaker U.S. Courthouse
400 East Ninth Street
Kansas City, MO 64106
(816-512-5800)

Honorable Richard S. Arnold (former Chief Judge)
U.S. Court of Appeals for the Eighth Circuit
208 U.S. Post Office & Courthouse
600 West Capitol Avenue
Little Rock, AR 72201-3336
(501-324-5521)

Ms. Millie B. Adams
Circuit Executive
United States Court of Appeals
611 U.S. Court and Custom House
1114 Market Street
St. Louis, MO 63101
(314-539-6219)

Honorable J. Harvie Wilkinson III, Chief Judge
U.S. Court of Appeals for the Fourth Circuit
230 United States Courthouse
255 West Main Street
Charlottesville, VA 22902
(804-296-7063)

Honorable Ralph K. Winter, Jr., Chief Judge
U.S. Court of Appeals for the Second Circuit
Richard C. Lee United States Courthouse
141 Church Street
New Haven, CT 06510
(203-782-3682)

Honorable Edward R. Becker, Chief Judge
U.S. Court of Appeals for the Third Circuit
19613 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1782
(215-597-9642)

Honorable Patricia M. Wald
U.S. Court of Appeals for the D.C. Circuit
3832 E. Barrett Prettyman Courthouse
333 Constitution Avenue, N.W.
Washington, DC 20001-2866
(202-216-7320)

Mark G. Arnold, Esq.
Husch & Eppenberger
Suite 1300, 100 North Broadway
St. Louis, MO 63102-2789
(314-421-4800)

Marvin Borman, Esq.
Maslon Edelman Borman & Brand
90 South 7th Street, #3300
Minneapolis, MN 55402-4140
(612-672-8200)

Margaret H. Chutich
Assistant Attorney General
State of Minnesota
NCL Tower
445 Minnesota Street
St. Paul, MN 55101-2190
(651-282-9937)

John D. French, Esq.
Faegre & Benson
90 South 7th Street, #2200
Minneapolis, MN 55402-3901
(612-336-3000)

Earl P. Gray, Esq.
Gray & Malacko
1030 Minnesota Building
46 E. 4th Street
St. Paul, MN 55101-1121
(612-223-5175)

Daniel E. Gustafson, Esq.
Heins, Mills & Olson, PLC
Northstar East-Suite 700
608 Second Avenue South
Minneapolis, MN 55402-1915
(612-338-4605)

B. Todd Jones, Esq.
U.S. Attorney
600 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415
(612-664-5604)

Eric J. Magnuson, Esq.
Rider Bennett Egan & Arundel
333 South 7th Street, #2000
Minneapolis, MN 55402
(612-340-7951)

Lawrence S. Okinaga, Esq
Carlsmith Ball
Pacific Tower, #2200
1001 Bishop Street
Honolulu, Hawaii 96809
(808-523-2500)

Thomas W. Tinkham, Esq.
Dorsey & Whitney
200 South 6th Street
Minneapolis, MN 55402-1498
(612-340-2600)

Thomas C. Walsh, Esq.
Bryan Cave, LLP
1 Metropolitan Square

211 North Broadway
St. Louis, MO 63102-2733
(314-259-2000)

E. Thomas Sullivan
Dean and William S. Pattee Professor of Law
University of Minnesota
Law School
381 Law Center
229 19th Avenue South
Minneapolis, MN 55455
(612-625-4841)

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

The most significant legal activities I have pursued have been as a judge on the U.S. District Court and the U.S. Court of Appeals.

I have had a variety of experience that is relevant to the work of the United States Sentencing Commission. I have ruled on issues relating to the Sentencing Guidelines from the time they went into effect in 1987. I have applied the guidelines in sentencing defendants as a trial judge and I have reviewed many sentencing issues as an appellate judge. I have also had considerable experience working with judges and lawyers to achieve common ends and in communicating with members of Congress and their staffs.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   None.

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

   I will be bound by the Code of Judicial Conduct and, if in doubt, contact the Judicial Conference Conduct Committee for advice.

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

   I will continue to serve as a judge on the U.S. Court of Appeals.

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

1998 Financial Disclosure Report attached.

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

Financial net worth statement follows (with schedules).

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

No.

Senate Nonjudicial Nominee Questionnaire
Diana E. Murphy
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Financial Statement
Net Worth

ASSETS

Cash on hand and in checking accounts		13,500
Norwest money market funds (tax exempt funds)		2,729,924
mine	262,118	
spouse	2,467,806	
Piper Jaffray money market funds (tax exempt funds)		8,325
mine	2,633	
spouse	5,692	
Government notes and municipal bonds (schedules attached)		20,604,646
mine	2,583,537	
spouse	18,021,109	
Municipal bonds not yet with custodian		500,000
mine	100,000	
(Maple Grove, MN)		
spouse	400,000	
(Maple Grove, Minneapolis, Hennepin County, MSP Airport)		
Real Estate (assessed value)		1,118,800
Mpls homestead	610,400	
Cook Co. lake cabin	508,400	
Spouse's interest in Ann Hynes Murphy trust (trust assets consist of municipal bonds)		6,291,670
Individual Retirement Accounts		231,204
mine		
Robt. W. Baird & Co.	35,927	
Norwest Bank	8,557	
spouse		
Robt. W. Baird & Co.	178,163	
Norwest Bank	8,557	
Autos		15,000

Other Personal Property	175,000
Total Assets	31,688,069
LIABILITIES	0
Net Worth	$31,688,069
Total Liabilities and Net Worth	$31,688,069

CONTINGENT LIABILITIES

As endorser, comaker or guarantor	0
On leases or contracts	0
Legal claims	0
Provision for Federal Income Tax	0
Other special debt	0

GENERAL INFORMATION

Are any assets pledged?	No
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

III. GENERAL (PUBLIC)

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

National Association for Public Interest Law Fellowships for Equal Justice
Board of Directors, 1992-1995
Committee to select fellowship winners, 1992-1995.

Organized program to provide counsel for pro se plaintiffs in constitutional and civil rights cases in federal district court in Minnesota.

Chair, Eighth Circuit Gender Fairness Implementation Committee, 1997-1998.

Organized Eighth Circuit Gender Bias Task Force, 1993; served as a special consultant to the task force through 1997.

Judges Association representative to Urban Coalition Task Force on Sentencing Disparities, 1976-1977 (concerned with sentencing disparities affecting minority defendants).

Amicus (organization works with prisoners to prevent recidivism)
Board of Directors, 1976-80.

Executive Advisory Board Victims Crisis Centers, 1977.

Harriet Tubman Battered Women's Shelter Board of Directors.

Operation de Novo (Hennepin County Pre-Trial Diversion Program)
Board of Directors, 1971-1976
Chair of Board, 1974-75.

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

No.

SENATE COMMITTEE ON THE JUDICIARY

I. Biographical Information

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

Michael Edmund O'Neill

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

Home:

Chevy Chase, MD 20815
(301) 657-0659

George Mason University
School of Law
3401 North Fairfax Drive
Arlington, VA 22201
(703) 993-8035

3. Date and place of birth.

DOB: 03/05/62
Place of Birth: Baldwin, WI, USA
Citizenship: US

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

Spouse: Margaret Reba Stevens O'Neill
Citizenship: US
Occupation: Physician (dermatologist)
Current Employer: Dr. Richard Castiello, 5530 Wisconsin Avenue (Suite 1418), Chevy Chase, MD 20815 (301) 986-1880.

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

Osseo-Fairchild Highschool: 1976-80 HS Diploma
Brigham Young University: 1980-81, 1985-87 (I served a mission for the LDS Church in the break) BA, *summa cum laude*
Yale Law School: 1987-90 JD

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

See attached resume.

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

I have not served in the military, but am registered for the draft.

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

During college and law school, I was awarded numerous scholarships and memberships in various honors societies; none of which will likely be of interest to the Committee.

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

ABA, Supreme Court Bar; Supreme Court Historical Society; Federalist Society (Criminal Procedure Group); ATLA; Wisconsin State Barr Assn.; Washington, DC Bar Assn.; Courts of Appeals for the DC, 2, 3, 4, 5, 6, 7, 8, 9, & 10th Circuits.

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

ABA; ATLA lobby. Federalist Society; Supreme Court Historical Society, non-lobbying.

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

Supreme Court Bar (1997); Wisconsin State Barr (1991); Washington, DC Bar (1991); Courts of Appeals for the DC, 2, 3, 4, 5, 6, 7, 8, 9, & 10th Circuits (I became a member of each of these bars between 1991-1993). None of these memberships have lapsed, to my knowledge. Nor have I ever been disciplined or had a license suspended by any bar or professional organization.

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

On Reforming the Statutory Writ of Habeas Corpus, 26 **Seton Hall Law Journal** 1493 (1997)

Article III and the Process Due a Connecticut Yankee Before King Arthur's Court, 76 **Marquette Law Review** 1 (1994)

A Two-Pronged Standard of Appellate Review for Pretrial Bail Determinations, 99 **Yale Law Journal** 885 (1990)

The Bill of Rights in Congress: The Privilege Against Self-Incrimination (Draft in preparation).

Private Vengeance and the Public Good (Draft in preparation).

Juvenile Crime and the Salience of Religious Belief and Activity

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

Excellent. I have not had a recent physical exam. My wife is a physician and keeps me on track.

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

None.

15. Legal Career:

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

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

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

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

1998-present Assistant Professor, George Mason University School of Law.

1997-98 Adjunct Professor, George Mason University School of Law.

1994-96 General Counsel, Senate Committee on the Judiciary.

1996–97 Supreme Court of the United States. Law clerk for the Honorable Clarence Thomas. OT 1996.

1991-94 United States Department of Justice Honors Program. During this time I was also detailed to the Senate Judiciary Committee as a special counsel.

1993 United States Attorney's Office for the District of Columbia, Special Assistant United States Attorney. Participated in all facets of trial litigation, including investigations, witness conferences, motions practice, and sentencing hearings.

1990-91 United States Court of Appeals for the District of Columbia Circuit. Law clerk for the Honorable David B. Sentelle.

1990 Covington & Burling, Washington, D.C. (Summer following graduation).

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My practice can be divided into three areas: law clerk (Supreme Court and D.C. Circuit), litigator (trial and appellate) and policy advisor (during my time working in the Senate). Most recently, I have joined the ranks of academia.

My practice, outside of clerking and working for the Senate, has involved exclusively criminal litigation, both in the trial and appellate courts. My "client" has always been the federal government, in one form or another, except for a brief summer stint at Covington and Burling following law school.

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

While at the Department of Justice, I appeared in court frequently. While at the U.S. Attorney's Office, for example, I appeared in court virtually every day. In the Criminal Division, Appellate Section, I appeared in court roughly one to two times each month for oral argument.

d.
2. What percentage of these appearances was in:
(a) federal courts;

(b) state courts of record;
(c) other courts.

One hundred percent of my time has been spent in federal court, and it was exclusively a criminal (prosecutorial) practice.

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

One hundred percent of my practice was criminal.

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

I tried 12 cases to jury verdict and three additional cases before a judge as lead counsel (misdemeanor/felony court) in the U.S. Attorney's Office. I am unsure of the number of criminal trials I "second chaired."

I have also argued roughly 17 appeals in the various United States Courts of Appeals, and have filed too many petitions for and against certiorari review in the United States Supreme Court to easily recall. In each of these cases, however, I was representing the United States.

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

See answer to number 4 above.

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

United States v. Post, 25 F.3d 599 (CA8 1994). In the 8th Circuit before Judges

McMillian, Magill, and Beam (March 8, 1994), I successfully argued on behalf of the United States that a sentencing enhancement for an abuse of trust under U.S.S.G. 3B1.3 was warranted in this case because the defendant was a licensed attorney. Opposing counsel was Eddie N. Christian, Fort Smith, AR.

United States v. Wright, 16 F.3d 1429 (CA6 1994). In the 6th Circuit before Judges Kennedy, Milburn, and Guy (January 15, 1994), I successfully argued on behalf of the United States that federal law, not Tennessee law governed the Fourth Amendment suppression issue, that the police officers' warrantless search of the defendant's automobile and the subsequent warrantless arrest of defendant were supported by probable cause, and that the evidence was sufficient to support the defendant's narcotics-related conviction. I also successfully demonstrated that evidence of the defendant's previously uncharged drug-related conduct was admissible. Opposing counsel was N. Reese Bagwell or Bagwell, Bagwell, Parker, and Riggins, Clarksville, TN.

Alexander v. United States, 509 U.S. (1993). Before the Supreme Court, I successfully argued (with Ken Starr as oralist on January 12, 1993) that forfeiture of the defendant's property, which consisted of pornographic (but not obscene) materials, as the result of a criminal conviction did not violate his First Amendment rights. In addition, the forfeiture did not constitute an "excessive fine" for purposes of the Eighth Amendment. Opposing counsel was John Weston of Beverly Hills, CA.

Crosby v. United States, 506 U.S. 255 (1993). Before the Supreme Court, I unsuccessfully argued (with Richard Seamon as oralist on November 9, 1992) that Federal Rule of Criminal Procedure 43 did not prevent the trial in absentia of the defendant, who fled shortly before trial commenced. Opposing counsel was Mark Nyvold of St. Paul MN.

United States v. King & Burdex, 990 F.2d 1552 (CA10 1993). In the 10th Circuit before Judges Logan, Anderson, and Baldock (January 15, 1994), I won the legal war, but lost the immediate battle! In that case (a government appeal), the issue was whether the defendant was "seized" for Fourth Amendment purposes and whether the arresting officer acted reasonably. Although the court adopted our construction of reasonableness in the face of a threat to police safety, the court did not find that the district court had "clearly erred" in suppressing the evidence. Opposing counsel was Teresa Storch, Albuquerque, NM.

United States v. Kelly, 973 F.2d 1145 (CA5 1992). In the 5th Circuit before Judges Wisdom, Smith, and Garza, (September 16, 1992), I successfully argued that the defendant's Sixth Amendment confrontation rights were not violated by the admission of certain recorded conversations, that the Bank Bribery Act was not unconstitutionally vague, and that there was no undue prejudice shown against the defendant. Opposing counsel was Robert Duffey of San Antonio, TX.

United States v. Stockstill, 26 F.3d 492 (CA4 1994). In the 4th Circuit before Judges

Russell, Michael, and Sprouse, (March 10, 1994), I successfully argued that the evidence supported the defendant's firearms conviction, but that his ineffective assistance of counsel claim should not be addressed by the court on direct appeal, but rather via a habeas petition. The court determined that the evidence supporting the conviction was sufficient and agreed that the ineffective assistance claim could only be raised on habeas, where there would be an opportunity fully to develop the record. Opposing counsel was Paul Victor Jorgenson of Middletown, MD.

United States v. Little, 37 F.3d 1496 (CA4 1994). In the 4th Circuit before Judges Wilkinson, Niemeyer, and Sprouse, (July 6, 1994), I successfully argued that the superceding indictment with which the defendant was charged did not run afoul of the Speedy Trial Act. Opposing counsel was Murray Silver of Atlanta, GA.

United States v. Ramsey, 53 F.3d 341 (CA9 1995). In the 9th Circuit, I argued before Judges Skopil, Hall, and Wiggins (February 7, 1995), that the district court properly denied defendant's motion to suppress; properly refused to disclose the identity of a citizen informant; and appropriately gave the defendant a two-level enhancement for his participation as an organizer of the conspiracy. I further argued (on cross-appeal) that the court erred, however, in refusing to use certain marijuana plants seized from defendant's home in calculating the base offense level at sentencing. The court affirmed the defendant's convictions, and remanded to the district court for re-sentencing to include the seized marijuana plants. Opposing counsel was Christine Schleuss of Anchorage, Alaska.

Markoff v. *United States*, No. 93-1863 (United States Supreme Court 1994) (Brief in Opposition to Certiorari). In this brief (which I include not because of its importance, but because it is archetypal of the numerous briefs I filed for and against certiorari during my time in the Appellate Section), I successfully argued that no legal issues existed requiring Supreme Court review. In particular, that an association between two legal entities could constitute an "enterprise" for RICO purposes, and that the defendant's Sixth Amendment rights were not violated.

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

I have an interesting perspective to bring to the Commission in that I have seen the guidelines function from four quite different angles. First, as a litigator, I have had the opportunity to witness application of the guidelines to individual criminal defendants. I understand the minutia of the pre-sentencing report and have a practical knowledge of the sentencing hearing.

In my role as a policy advisor, I had the opportunity to view Congress' relation to sentencing in general, and to recommend various sentencing guidelines policies and

enhancements. In particular, I gained an insight into the theory undergirding the guidelines and am familiar with the issues Congress confronted in deciding to adopt a mandatory guidelines scheme. I was an instrumental staffer in the drafting (and subsequent enactment) of the Anti-Terrorism and Effective Death Penally Act, which (in addition to containing guidance to the Commission), also resulted in a dramatic revision to federal habeas corpus practice.

As a law clerk, I had the opportunity to examine the application of the guidelines and to scrutinize the functionality of the guidelines from a judicial perspective. This was quite interesting as I clerked for an appellate judge who was familiar with the pre-guidelines world as a both a district court judge and a former U.S. Attorney. I then clerked for a Supreme Court Justice who had little previous experience with the criminal law and was therefore familiar with criminal law only since the adoption of the sentencing guidelines.

Finally, as a criminal law scholar, I have had the opportunity most recently to analyze the guidelines from an academic's perspective; namely, have the guidelines achieved Congress' goal of creating sentencing fairness by mandating sentencing uniformity. As a criminal law/procedure instructor, I have been able to assess the guidelines' operation from the perspectives of efficiency and fairness. I hope to devote a substantial portion of my academic career to reviewing and understanding the guidelines' function.

II. Financial Data and Conflict of Interest

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm members, 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 401(k) plan through the University of Virginia (George Mason) and have a separate IRA from my Thrift Savings Plan.

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

I don't anticipate having any such conflicts, but if such should arise, I will follow the rules applicable to Sentencing Commissioners promulgated by the Administrative Office for the United States Courts. I would consult with the ethics official for the Sentencing Commission should any potential conflicts arise.

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

As my position on the Sentencing Commission is only part time, I plan to retain my academic appointment at George Mason University.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or m ore (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 forms.

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

Please see attached forms.

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

responsibilities.

Although I have never held a position or played much of a role in any political campaign, in 1996, I did some minor volunteer work for the "Dole for President" Campaign (Bob Dole, that is). I held no title with the campaign, however, nor could my participation be construed in any way as meaningful, as I was constrained by various government regulations. I have also done some minor consultation on both the Hatch and Bush presidential bids.

III. **General Questions**

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

My work as a prosecutor for the federal government largely prevented me from performing any *legal* services for the disadvantaged. Nevertheless, through my church, I was involved in providing *social services* work and support for the indigent. From 1992-1996, I spent no fewer than 20 hours per week providing church welfare services for the needy. The specific instances are far too numerous to recount. But they range from providing food and clothing to the poor, to removing children from dangerous homes, to counseling for the drug addicted. Since 1996, as my role in the church has changed, I have done less work in terms of social services. This past year, however, (since becoming an academic) I committed to reviewing a murder case, *pro bono*, for a couple who believes their son (James Galreath) was falsely convicted of the Maderia School murder. I have always been active in charity work and hope to continue my efforts following my confirmation.

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

I do not currently belong to any organization that discriminates on the basis of race, sex, religion, or creed, nor have I, to my knowledge, ever belonged to such an organization.

MICHAEL EDMUND O'NEILL
6814 Meadow Lane
Chevy Chase, MD 20815
(703) 993-8035
moneill3@gmu.edu

Education

Yale Law School: J.D., 1990
Brigham Young University: B.A., *summa cum laude*, 1987

Activities & Honors

Yale Law School:
- **Yale Law Journal**, Articles (faculty comments) and Book Reviews Editor
- **Yale Journal on Regulation**, Articles Editor

Brigham Young University:
- E.S. Hinckley/BYU Presidential Scholar
- Phi Kappa Phi, National Honor Society
- Pi Sigma Alpha, Political Science Honor Society

Professional Associations:
- District of Columbia Bar Association
- Wisconsin Bar Association
- Supreme Court Bar
- Various United States Courts of Appeals
- Supreme Court Historical Society
- American Bar Association

Publications

- *On Reforming the Statutory Writ of Habeas Corpus*, 26 **Seton Hall Law Journal** 1493 (1997)
- *Article III and the Process Due a Connecticut Yankee Before King Arthur's Court*, 76 **Marquette Law Review** 1 (1994)
- *A Two-Pronged Standard of Appellate Review for Pretrial Bail Determinations*, 99 **Yale Law Journal** 885 (1990)
- *Private Vengeance & the Public Good: the History of Private Prosecutions (draft in preparation)*
- *Self-Reported Religious Activity and Its Affect on Juvenile Crime Rates: An Empirical Investigation (research design submitted)*
- *Common Law Privileges Before Congress (draft in preparation)*

Employment Experience

1998-	Assistant Professor, George Mason University School of Law. Teach criminal law & procedure and constitutional law.
1997-98	Adjunct Professor, George Mason University School of Law. Taught criminal procedure in both Fall and Spring terms.
1994-96 1997-98	General Counsel, Senate Committee on the Judiciary. Handled constitutional, criminal justice, and terrorism issues. Drafted anti-terrorism, habeas corpus reform, and prison litigation reform legislation. Coordinated oversight and legislative hearings and dealt with judicial and executive branch nominations.
1996–97	Supreme Court of the United States. Law clerk for the Honorable Clarence Thomas. OT 1996.
1991-94	United States Department of Justice Honors Program, Criminal Division, Appellate Section. Researched, wrote, and argued government briefs in the Courts of Appeals. Drafted briefs and certiorari petitions in criminal cases before the Supreme Court.
1993	United States Attorney's Office for the District of Columbia, Special Assistant United States Attorney. Participated in all facets of trial litigation, including investigations, witness conferences, motions practice, and sentencing hearings.
1990-91	United States Court of Appeals for the District of Columbia Circuit. Law clerk for the Honorable David B. Sentelle.
1990	Covington & Burling, Washington, D.C. (Summer Associate). Drafted a death penalty appeal and worked on FCC cases and an NFL labor dispute.
1989	Sidley & Austin, Washington, D.C. (Summer Associate). Assisted appellate litigation group. Drafted a Supreme Court brief and several certiorari petitions.
1988	Office of the Connecticut State's Attorney. Prepared legal memoranda on various criminal law issues and assisted the State's Attorney in conducting criminal jury trials. Prosecuted traffic offenses under the State's Attorney's supervision.
1987	Wisconsin State Public Defender's Office. Interned with an assistant state public defender in preparing criminal cases for jury trial.

JUL-12-1999 10:18 202 305 2643 P.07

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	60,000	00		Notes payable to banks—secured	0		
U.S. Government securities—add schedule	0			Notes payable to banks—unsecured	35,000	00	
Listed securities—add schedule	46,000	00		Notes payable to relatives	0		
Unlisted securities—add schedule	0			Notes payable to others	0		
Accounts and notes receivable:				Accounts and bills due	0		
Due from relatives and friends	0			Unpaid income tax	0		
Due from others	0			Other unpaid tax and interest	0		
Doubtful	0			Real estate mortgages payable—add schedule	527,000	00	
Real estate owned—add schedule	880,000			Chattel mortgages and other liens payable	0		
Real estate mortgages receivable	0			Other debts—itemize:	0		
Autos and other personal property	30,000						
Cash value—life insurance	0						
Other assets—itemize:	0						
				Total liabilities	562,000	00	
				Net worth	834,000	00	
Total assets	816,000	00		Total liabilities and net worth	816,000	00	

See SF 278

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						

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Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Calendar Year Covered by Report	Termination Date (If Applicable) (Month, Day, Year)	Agency Use Only
	☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer			

	Last Name	First Name and Middle Initial	OGE Use Only
Reporting Individual's Name	O'Neill	Michael E.	
Position for Which Filing	**Title of Position**	**Department or Agency (If Applicable)**	
	Sentencing Commissioner	Sentencing Commission	
Location of Present Office (or forwarding address)	**Address (Number, Street, City, State, and ZIP Code)**	**Telephone No. (Include Area Code)**	
	3401 N. Fairfax Dr. Arlington, VA 22201	703-993-8035	
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**		
	General Counsel, Senate Committee on the Judiciary		
Presidential Nominees Subject to Senate Confirmation	**Name of Congressional Committee Considering Nomination**	**Do You Intend to Create a Qualified Diversified Trust?**	
	Senate Judiciary	☐ Yes ☐ No	

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Michael E. O'Neill	3/24/99
Other Review (If desired by agency)	**Signature of Other Reviewer**	**Date (Month, Day, Year)**
Agency Ethics Official's Opinion	**Signature of Designated Agency Ethics Official/Reviewing Official**	**Date (Month, Day, Year)**
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).		
Office of Government Ethics Use Only	**Signature**	**Date (Month, Day, Year)**

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

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

Fee for Late Filing

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

Reporting Periods

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

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

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

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

Schedule B--Not applicable.

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

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

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

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Reporting Individual's Name	SCHEDULE A	Page Number
Michael E. O'Neill		

Assets and Income (BLOCK A)

Identify each asset held by you, your spouse, or dependent children for the production of income which had a fair market value exceeding $1,000 at the close of the reporting period.

Identify each asset or source of income held by you, your spouse, or dependent children which generated over $200 in income during the reporting period.

None ☐

Valuation of Assets at close of reporting period (BLOCK B)

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

	Assets and Income	Valuation of Assets: None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Income Type: Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	Income Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000	Actual Amount (Only if "Other" specified)	Date (Mo., Day, Yr.) (Only if Honoraria)
Examples	Central Airlines Common			X						X										X								
	Doe Jones & Smith, Hometown, State			X													Law Partnership Income										$130,000	
	Kempstone Equity Fund					X								X							X							
	IRA: Heartland 500 Index Fund	X						X						X								X						
1	George Mason University				X												Law School Teaching Salary										72,500 12,000	
2	Jaffe + O'Neill PA					X											Spouse's Salary										125,000	
3	Thrift Savings Plan Waterhouse IRA (rollover)		X											X					X									
4	VA State Retirement Plan		X											X							X							
5	CMF Money Market				X							X		X					X									
6	Caterpillar Inc.		X							X								X										

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Reporting Individual's Name: Michael E. O'Neill

SCHEDULE A continued

Page Number

Block A — Assets and Income

Identify each asset held for the production of income which had a fair market value exceeding $1,000 at the close of the reporting period.

Identify each asset or source of income which generated over $200 in income during the reporting period.

Block B — Valuation of Assets

Block C — Income: Type / Amount

#	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000	Actual Amount (Only if "Other" specified)	Date (Mo., Day, Yr.) (Only if Honoraria)
1	Salton Inc.		X							X								X										
2	Scansource Inc.		X							X								X										
3	Service Experts Inc.		X							X								X										
4	Silverleaf Resorts		X							X								X										
5	USANA, Inc.		X							X								X										
6	Oakmark Fund		X											X				X										
7	Profunds UltraOtc		X											X				X										
8	Corning, Inc.	X	X										X				sold	X										6-9-98
9	Chris-Craft Ind.	X	X										X				sold	X										6-9-98

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Reporting Individual's Name	SCHEDULE A continued	Page Number

#	Block A: Assets and Income	Block B: Valuation of Assets: None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Block C: Income: Type: Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000	Actual Amount Only if "Other" specified	Date (Mo., Day, Yr.) Only if Honoraria
	Identify each asset held for the production of income which had a fair market value exceeding $1,000 at the close of the reporting period. Identify each asset or source of income which generated over $200 in income during the reporting period.																											
1	Liberty Financial Co	X											X				Sold	X										6-9-98
2	Staten Island Bankcorp	X											X				Sold	X										6-9-98
3	Austin Global Fund	X											X				Sold			X								6-9-98
4	Seattle Fed. Credit Union		X									X							X									
5	DOJ Fed. Credit Union	X										X						X										
6	Spouse's 401(K) Plan		X											X						X								
7																												
8																												
9																												

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Reporting Individual's Name: Michael E. O'Neill

SCHEDULE A continued

Page Number

Block A: Assets and Income — Identify each asset held for the production of income which had a fair market value exceeding $1,000 at the close of the reporting period. Identify each asset or source of income which generated over $200 in income during the reporting period.	Block B: Valuation of Assets — None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Block C: Income: Type — Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	Amount — None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000	Actual Amount Only if "Other" specified	Date (Mo., Day, Yr.) Only if Honoraria
1 KTI Incorporated		X							X								X										
2 Madeco SA		X							X								X										
3 3 M corp.		X							X								X										
4 Mobil Corp		X							X								X										
5 Navacare Employee		X							X								X										
6 Personnel Group of AM.		X							X								X										
7 Pfizer Inc.		X							X								X										
8 Recoton Corp		X							X								X										
9 Rent Way Inc		X							X								X										

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Reporting Individual's Name: Michael E. O'Neill

SCHEDULE A continued

Page Number: 1873

Block A: Assets and Income Identify each asset held for the production of income which had a fair market value exceeding $1,000 at the close of the reporting period. Identify each asset or source of income which generated over $200 in income during the reporting period.	Block B: Valuation of Assets							Block C: Income: Type							Block C: Amount									
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000	Actual Amount Only if "Other" specified	Date (Mo., Day, Yr.) Only if Honoraria
1 FERS Federal Retirement Plan		X											X						X							
2 Coach USA		X							X								X									
3 Cotelligent Inc		X							X								X									
4 Execustay	X											X				sold		X								
5 Gene Logic Inc		X							X								X									
6 International Paper		X							X								X									
7 JP Morgan		X							X								X									
8 Keystone Automotive		X							X								X									
9 Kos Pharmaceuticals		X							X								X									

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

Reporting Individual's Name	SCHEDULE B	Page Number
Michael E. O'Neill		

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)								Certificate of Divestiture
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000		
	Example: Central Airlines Common	x			2/1/91			x						
1	Nominee - Not applicable													
2														
3														
4														
5														

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling $250 or more; and (2) travel-related cash reimbursements received from one source totaling $250 or more. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. Exclude anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $100 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Example:	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/90 (personal activity unrelated to duty)	$500
Example:	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1	Nominee - Not applicable		
2			
3			
4			
5			

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Reporting Individual's Name	SCHEDULE C	Page Number
Michael E. O'Neill		

Part I: Liabilities

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

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000
Examples:	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1981	13%	25 yrs.			x				
	John Jones, 123 J St., Washington, DC	Promissory note	1989	10%	on demand					x		
1	Student Loan Servicing Center	Law School Loan	1991	9%	25 yrs		X					
2	P.O. Box 2461, Harrisburg, PA 17105											
3												
4												
5												

Part II: Agreements or Arrangements

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

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 11/91.	Doe Jones & Smith, Hometown, State	7/85
1	As a part-time Commissioner - I will continue to receive salary	George Mason University	
2	and benefits		
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
Michael E. O'Neill		

Part I: Positions Held Outside U.S. Government

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

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Example:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/88	11/91
1	George Mason University School of Law 3401 N. Fairfax Dr. Arlington, VA 22201	University	Employee Assistant Professor	8/98	Present
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 non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

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

None ☐

	Source (Name and Address)	Brief Description of Duties
Example:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	George Mason University School of Law 3401 N. Fairfax Drive Arlington, VA 22201	Employee - Assistant Professor of Law
2		
3		
4		
5		
6		

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AO-10
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1998

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
O'Neill, Michael E.	U.S. Sentencing Commission	9-15-99
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. Report Type** (check appropriate type)	**6. Reporting Period**
Commissioner	___ Nomination, Date _____ ___ Initial ___ Annual ___ Final	1-1-98 12-31-98
7. Chambers or Office Address	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
George Mason U. School of Law 3401 N. Fairfax Dr., Arlington, VA	Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	NONE (No reportable positions.)	
1	Assistant Professor	George Mason U. School of Law
2		
3		

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

	DATE	PARTIES AND TERMS
☐	NONE (No reportable agreements.)	
1		
2	1998	University Retirement Plan
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐	NONE (No reportable non-investment income.)		
1			
2	1998	Medical Practice	$ (S)
3	1998	Salary as Assistant Professor	$ 72,500
4	1998	Summer Research Budget from University	$ 12,500
5			$
			$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: O'Neill, Michael E.

Date of Report:

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
	☐ NONE (No such reportable reimbursements.)	
1		
2	George Mason University	Travel to Amer. Assoc. of Law Schools Mtg.
3	Medical Practice (S)	Travel to Amer. Dermatological Assoc. Mtg.
4	George Mason University	Miscellaneous office Expenses
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
	☒ NONE (No such reportable gifts.)		
1			$
2			$
3			$
4			$

VI. LIABILITIES. *(Includes those of spouse and dependent children; indicate, where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
	☐ NONE (No reportable liabilities.)		
1			
2	Student Loan Servicing Co.	Law School Loans	P3
3			
4			
5			
6			

*Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more.

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
O'Neill, Michael E	

VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

	A. Description of Assets (including trust assets) *Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amt. Code1 (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	(2) Value Method Code3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions.)									
1	KTI Incorporated	A	Int	J	T					
2	Madeco SA	A	Int	J	T					
3	3M corp	A	Div	J	T					
4	Mobil	A	Div	J	T					
5	Nova Care Emp	A	Div	J	T					
6	Personnel Group	A	Div	J	T					
7	Pfizer	B	Div	J	T					
8	Recoton	A	Div	J	T					
9	Rent Way Inc	A	Div	J	T					
10	Salton	A	Div	J	T					
11	Scan Source	A	Div	J	T					
12	Service Experts	A	Div	J	T					
13	Silver Leaf Res	A	Div	J	T					
14	USANA, Inc	A	Div	J	T					
15	Oak Mark Fund	A	Div	J	T					
16	Profunds Ultra OTC	B	Div	J	T					
17	Corning Inc	A	Capgain	J	T	Sell	6/4/98	J	A	
18	Chris Craft Ind	A	Capgain	J	T	Sell	6/4/98	J	A	

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
O'Neill Michael E	9-18-99

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

	A. Description of Assets (including trust assets) *Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amt. Code1 (A-H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J-P)	(2) Value Method Code3 (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	NONE (No reportable income, assets, or transactions.)									
1	Liberty Financial	A	Cap	J	T	Sell	6/4/98	J	A	
2	Staten Island Bank	A	Cap	J	T	Sell	6/4/98	J	A	
3	Austin Global Fund	B	Cap	J	T	Sell	6/4/98	J	C	
4	Spouse's 401K Plan	D	Cap	J	T					
5	VA State Retirement Plan	A	Cap	J	T					
6	CMF Money Market	B	Int	L	T					
7	Caterpillar	A	Div	J	T					
8	Coach, USA	A	Div	J	T					
9	Cointelligent	A	Div	J	T					
10	Execustay	A	Div	J	T					
11	Gene Logic	A	Div	J	T					
12	Intl Paper	A	Div	J	T					
13	JP Morgan	A	Div	J	T					
14	Key Stone	A	Div	J	T					
15	Kosp Pharm.	A	Div	J	T					
16										
17										
18										

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

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
O'Neill, Michael E.	

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

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

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. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Michael E. O'Neill Date 9-15-99

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. 4, § 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

JUL-12-1999 10:19 202 305 2643 99% P.10
TOTAL P.10

AFFIDAVIT

I, Michael E O'Neill, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

9-20-99
(DATE)

(NAME)

Patricia J Hupalo
(NOTARY)

City of Arlington VA
20th day
of September 99 ... and official seal.

Patricia J Hupalo Notary Public

Commission Expires
My Commission Expires Jan 31, 2001
PATRICIA J. HUPALO

SENATE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

CHARLES ADAM PANNELL, JR.

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

Residence: **Chatsworth, Georgia 30705**

Office: **Third Floor - Whitfield County Courthouse**
Post Office Box 596
Dalton, Georgia 30722-0596

3. Date and place of birth:

January 24, 1946 - Emory Hospital, DeKalb County, Georgia.

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

Married **Kate Thompson Williams Pannell**
Personnel Director - Murray County School System
Chestnut Street
Chatsworth, Georgia 30705

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

University of Georgia:	**1963 - 1967**	**B.A. Degree (1967)**
University of Georgia Law School:	**1967 - 1970**	**J.D. Degree (1970)**

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

Graduation from College:	**June, 1967**
U.S. Army ROTC Cadet Summer Camp Fort Bragg, North Carolina	**June, 1967 - August, 1967**
Southwestern Company Nashville, Tennessee (Sold Books)	**June, 1967 - September, 1967**
Georgia Power 4404 North Shallowford Road Chamblee, Georgia (Summer Job)	**June, 1968 - September, 1968**
Barney Elrod Construction Company Chatsworth, Georgia (Summer Job)	**June, 1968 - September, 1969**
Buster's Deli 5290 Roswell Road, N.W. Atlanta, Georgia (Part-Time Clerk for Two Weeks)	**July, 1970 - August, 1970**
U.S. Army Military Police O.B. Course Fort Gordon, Georgia	**August, 1970 - November, 1970**
U.S. Army Reserves (Active) 213th Military Law Center 2385 Chamblee-Tucker Road Chamblee, Georgia	**January, 1971 - March, 1997**
Atlanta Public Schools Northside High School Atlanta, Georgia (Substitute Teaching)	**February, 1971 - March, 1971**
Assistant U.S. Attorney, Northern District of Georgia U.S. Department of Justice (with assignments To Organized Crime Strike Force)	**March, 1971 - September, 1972**

Associate, Pittman & Kinney Law Firm Dalton, Georgia	September, 1972 - August, 1975
Partner, Pittman & Kinney Law Firm Dalton, Georgia	August, 1975 - December, 1976
District Attorney, Conasauga Judicial Circuit State of Georgia (elected)	January, 1977 - September, 1979
Judge, Superior Court, Conasauga Judicial Circuit, State of Georgia	September, 1979 - Present
United Way of Northwest Georgia Dalton, Georgia, Board of Directors	1984 - 1990
Boy Scouts of America, Northwest Georgia Council, Executive Board	1995 - Present
Troop Chairman	1989 - Present
District Chairman	1996 - 1999
First United Methodist Church of Chatsworth, Georgia	
Administrative Council	Present
Pastor-Parish Relations	Present
Boy Scout Representative	Present
Horseshoe Bend Club, Inc. Columbus, Georgia	
Secretary	1989 - Present
U.S. Army Reserves (Inactive) U.S. Army Reserve Personnel Command 9700 Page Avenue St. Louis, Missouri 63132-5200	1997 - Present
Co-Executor of the Estate of Charles A. Pannell, Sr.	1997 - Present
Operator, Family Farm, Livestock and Hay	1973 - Present
Council of Superior Court Judges Secretary/Treasurer, State of Georgia	1998 - Present

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

(a) Dates of Service:	
March, 1969	Army ROTC - Commissioned Lieutenant Military Police Corps, University of Georgia Serial Number 260720256; placed in delay entry status to complete Law School.
Aug.-Nov., 1970	Active Duty - Officer's Basic Course, M.P. Corps, Ft. Gordon, Georgia; After entry on active duty; placed in A.D.T. Program and transferred to Active Reserves.
Jan. 1971-1997	Active U.S. Army Reserves Colonel, Judge Advocate General's Corps presently assigned to the Inactive Reserves, St. Louis.
Graduated From:	Military Police Officers' Basic Course Judge Advocate General's Basic Course Judge Advocate Generals Advance Course Command and General Staff School U.S. Army War College Course U.S. Army Military Judge Course
(b) Branch of Service:	U.S. Army, Judge Advocate General's Corps
(c) Rank at Time of Discharge:	Colonel
(d) Type of Discharge:	Presently assigned to Inactive Reserves
(e) Awards/Citations:	Army Meritorious Service Medal Army Commendation Medal (One Oak Leaf Cluster) Army Achievement Medal (One Oak Leaf Cluster) Army Reserve Components Achievement Medal (3rd Oak Leaf Cluster) National Defense Service Medal (2nd Award) Armed Forces Reserve Medal (3rd Award)

Army Service Ribbon
Army Reserve Overseas Deployment Medal
(3rd Award)

(f) Other: **Security Clearance: Top Secret (Expired May, 1997)**
1986: Overseas Deployment, Italy and Turkey, Battlebook Exercise
1990: Overseas Deployment for two weeks to Germany to mobilize VII Corps for Desert Shield
1991: Overseas Deployment for two weeks to Germany for Operation Homeward Bound

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

Boy Scouts of America - Award of Merit (1998)
Silver Beaver (1999)

Cross and Flame Award (National Methodist Church Recognition for Work With Youth)

Family of the Year (1997), N.W. Georgia Council on Child Abuse

Jaycees Outstanding Young Men - State of Georgia (1980)

Adopt-a-School Program Award

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

State Bar of Georgia (present)
Conasauga Bar Association (present)
Federal Bar Association (past)
American Bar Association (present)
Georgia and National D.A.'s Association (past)
Georgia Trial Lawyer's Association (past)
Judicial Council of Georgia (past and present)
Uniform Rules Committee, Member and Chairman (past)
Council of Superior Court Judges (present)
9th District Administrative Judge (past)

Committee on Court Reporting Rules and Fees (past)
Committee to Revise Case Count (past)
Clerk of Superior Court Training Committee (past)
Education Program Committee (past)
Legislative Committee (present)
Chairman, Compensation and Retirement Committee (present)
Secretary/Treasurer (present)

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

A. Active in Lobbying:

Association of U.S. Army
Reserve Officers' Association
American Legion
Wilderness Society
Georgia Conservancy
Dalton-Whitfield Chamber of Commerce
Murray County Chamber of Commerce

B. Other:

First United Methodist Church of Chatsworth
Masons
Audubon Society
9 O'Clocks - Dinner/Social Club, Dalton, Georgia (letter attached)
Benedicts of Dalton - Dinner/Social Club, Dalton, Georgia (By-laws attached)
Horseshoe Bend Club, Inc., Secretary (Articles of Incorporation Attached)
Boy Scouts of America

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

Superior Court of Georgia	**10/22/70**
Georgia Court of Appeals	**01/06/71**
Georgia Supreme Court	**01/06/71**
U.S. District Court, Northern District of Georgia	**03/29/71**
U.S. Court of Appeals, Fifth Circuit	**03/30/71**
U.S. Court of Military Review	**06/23/89**

U.S. Court of Military Appeals	**02/09/91**
U.S. Court of Appeals, 11th Circuit	**05/25/99**

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

1. **Warrant Track System . . . Whitfield County**

   This is a manual John Shope (District Court Administrator) and I put together in 1982 to describe a warrant track system then in place in the Conasauga Circuit. It was distributed in Georgia and copies were sent to the library at the National Judicial College.

2. **How to Try a Case**

   Outline of presentation to Georgia Prosecuting Attorney's Conference for new assistants in 1978 and 1982.

3. **Conspiracy**

   Outline of presentation and handout at seminar for District Attorneys in 1979 and 1982.

4. **Third Judge, Conasauga Circuit**

   Outline and copies of some overhead slides used at civic club presentations in 1980 and 1981 are attached.

5. **Press in the Courtroom**

   Outline of speech I gave about five times to journalist meetings from1983 - 1988 is attached, with an editorial in Rome, Georgia newspaper.

6. **Vittles & Views Breakfast**

For several years in the 1980's, I participated as master of ceremonies at Dalton/Whitfield Chamber of Commerce breakfasts. Attached is the only surviving outline (May 25, 1989) that I can locate. It is typical of the programs I participated in.

7. **Professionalism**

Attached is an outline of a speech on professionalism in 1990 at the Georgia Trial Lawyer's Seminar.

8. **Uniform Court Rules**

Outline of comments to Clerk of Superior Court Association in 1990 is attached.

9. **Ethics**

Notes and program outline for Georgia Trial Lawyer's Seminar in 1991 are attached.

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

My health is excellent. Update physical, April 28, 1999.
Last full physical, October, 1998.

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) **Judge, Superior Court, Conasauga Judicial Circuit (Murray County and Whitfield County), State of Georgia. I was appointed to unexpired term of Robert L. Vining, Jr., 1979. I was elected: 1980, 1984, 1988, 1992, and 1996. General Jurisdiction.**

(b) **Military Judge, U.S. Army Reserves. As a Lieutenant Colonel, I was assigned to a Military Judge position from September, 1993 to September, 1996, under the supervision of the U.S. Army Trial Judiciary.**

(c) **Senior Military Judge, U.S. Army Reserves. As a Colonel, I was assigned to a Senior Military Judge position from September 1996 to March, 1997, under the supervision of the U.S. Army Trial Judiciary.**

15. Citations: If you are or have been a judge provide:
(1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural ruling; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to the appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

15. (1) Ten Opinions:

(a) **Aetna Business Credit, Inc. v. Walter E. Heller & Co., Civil Action File Number 14,961, Superior Court of Whitfield County, Georgia; affirmed, 158 Ga. App. 249, 280 S.E.2d 144 (1981);**

(b) **Gary Parker, d/b/a Paperdolls v. Whitfield County, Georgia, Civil Action File Number 56,199, Superior Court of Whitfield County, Georgia; affirmed, 265 Ga. 829, 463 S.E.2d 116 (1995);**

(c) **Clara Bunch v. Cohutta Mills, Inc., Civil Action File Number 81-3274, Superior Court of Murray County, Georgia; affirmed, 166 Ga. App. 395, 304 S.E.2d 431 (1983);**

(d) **Frances Ridley, et al. v. The City of Tunnel Hill, Georgia, Civil Action File Number 32,597, Superior Court of Whitfield County, Georgia; affirmed, 183 Ga. App. 486, 359 S.E.2d 184 (1987);**

(e) **The Home Insurance Company v. Sunrise Carpet Industries, Inc., Civil Action File Number 94-CI-930, Superior Court of Murray County, Georgia; affirmed, 229 Ga. App. 268, 493 S.E.2d 641 (1997);**

(f) **Kim Elizabeth Wilson Newman v. Bruce Wayne Wright, Civil Action File Number 59,448, Superior Court of Whitfield County, Georgia; affirmed, 266 Ga. 519, 467 S.E.2d 533 (1996);**

(g) **V. DeForrest Parrott, III v. Middleton, et al., Civil Action File Number 72,148, Superior Court of Whitfield County, Georgia; application for discretionary appeal denied, A99D-0254 (1999);**

(h) Citizens & Southern National Bank v. Delta Diversified, Inc., et al., Civil Action File Number 21,851, Superior Court of Whitfield County, Georgia; reversed in part, 171 Ga. App. 625, 320 S.E.2d 767 (1984);

(i) NationsBank of Tennessee v. Hardwick Carpets International, Inc. and Georgia Carpet Finishers, Inc., Civil Action File Number 63,477-P, Superior Court of Whitfield County, Georgia; reversed, 233 Ga. App. 894, 506 S.E.2d 174 (1998); and

(j) Davis v. Shavers, et al., Civil Action File Numbers 93-CV-26,372, 93-CV-26,371 and 93-CV-368, Superior Court of Catoosa County, Georgia; affirmed, 263 Ga. 785, 439 S.E.2d 650 (1994).

15. (2) Reversals:

(a) Wimpey v. Pope, Civil Action File Number 80-2524, Superior Court of Murray County, Georgia, *reversed in part*, 246 Ga. 545, 272 S.E.2d 278 (1980) (reversing trial court's decision forcing Wimpey to pay child's psychologist bills in order to purge himself of contempt because the divorce agreement covered medical bills, but not expenses of a psychologist).

(b) Jorges v. Griffin, Civil Action File Number 18,124, Superior Court of Whitfield County, Georgia, *reversed in part*, 161 Ga. App. 439, 288 S.E.2d 425 (1982) (reversing the trial court's grant of summary judgment as to the Jorges stock because there was a dispute in the proof offered as to whether there was more than one transaction of a like character).

(c) State of Georgia v. Crane, Criminal Action File Number 14,859, Superior Court of Whitfield County, Georgia, *reversed*, 164 Ga. App. 638, 298 S.E.2d 619 (1982) (reversing the trial court's actions in offering to stop the trial to allow defendant to take a polygraph test).

(d) American Spacers, Ltd., et al. v. Ross, et al., Civil Action File Number 79-1890, Superior Court of Murray County, Georgia, *reversed sub nom.*, C.C. Financial v. Ross, et al., 250 Ga. 832, 301 S.E.2d 262 (1983) (reversing the trial court's holding that Ross may not rely on the standard of commercial reasonableness embodied in O.C.G.A. §11-9-502(2), but must look to the terms of the factoring agreement); *on remand* American Spacers, Ltd. v. Ross, 166 Ga. App. 829, 305 S.E.2d 659 (1983) (using Georgia Supreme Court's analysis to find that trial court erred in not granting C.C. Financial's motion for directed verdict).

(e) The Citizens & Southern National Bank v. Delta Diversified, Inc., Civil Action File Number 21,851, Superior Court of Whitfield County, Georgia, *reversed in part*, 171 Ga. App. 625, 320 S.E.2d 767 (1984) (finding that the trial court erred

in denying CSNB's summary judgment against the cross-appellees' bad faith discharge defense).

(f) State of Georgia v. Richard Nations, Criminal Action File Number 84-2105, Superior Court of Murray County, Georgia, *reversed*, 177 Ga. App. 801, 341 S.E.2d 482 (1986) (reversing the defendant's conviction because there was no evidence that he occupied the bedroom where the cocaine was found and other persons living in the residence had equal access to the bedroom).

(g) Smith, et al. v. Dalton City Bd. Of Edu., et al., Civil Action File Number 35,438, Superior Court of Whitfield County, Georgia, *reversed*, 256 Ga. 394, 349 S.E.2d 459 (1986) (reversing the trial court's decision granting petitioner's writ of mandamus because they did not establish any right to a school board hearing under O.C.G.A. §20-2-1160).

(h) Land v. Whitfield County, Department of Transp.,et al., Civil Action File Number 33,295, Superior Court of Whitfield County, Georgia, *reversed*, 257 Ga. 657, 362 S.E.2d 372 (1987) (reversing the trial court's dismissal of D.O.T. as a named party since the insurance coverage extended to employees of D.O.T.).

(i) Ludy v. Giddens, et al., Civil Action File Number 33,069, Superior Court of Whitfield County, Georgia, *reversed*, 182 Ga. App. 111, 354 S.E.2d 703 (1987) (reversing the trial court's dismissal of the action because the record shows no personal service of the suggestion of death upon the non-party representative of [William Ludy's] estate).

(j) Ellis-Adams v. Whitfield County Bd. of Education, Civil Action File Number 34,382, Superior Court of Whitfield County, Georgia, *reversed*, 182 Ga. App. 463, 356 S.E.2d 219 (1987) (reversing the decision of the trial court that technically a demotion had not occurred because the appellant had suffered a salary freeze and did not get the normal pay increase, and therefore, is entitled to a hearing as provided in the Georgia Fair Dismissal Law).

(k) State of Georgia v. David Eugene Brown, Criminal Action File Number 21, 738, Superior Court of Whitfield County, Georgia, *reversed*, 188 Ga. App. 184, 372 S.E.2d 514 (1988) (reversing the denial of the motion to suppress finding that there was no significant lapse of time between the unlawful detention and the consent, that no intervening circumstances dissipated the effect of the unlawful detention and that the deputy's conduct had no arguable legal basis).

(l) Hall & Sosebee Trucking Co., Inc. v. Smith, Civil Action File Number 90-CI-8973, Superior Court of Murray County, Georgia, *reversed*, 201 Ga. App. 282,

410 S.E.2d 784 (1991) (reversing the trial court's order granting the motion to dismiss because it did not appear with certainty that appellant would not be able to prove facts entitling it to the relief sought).

(m) State of Georgia v. Thomas, Criminal Action File Number 91-CR-4023, Superior Court of Murray County, Georgia, *reversed*, 203 Ga. App. 623, 417 S.E.2d 328 (1992) (reversing the trial court's order granting the motion to suppress finding there was no probable cause to believe that the marijuana would be found at the premises described in the warrant).

(n) State of Georgia v. Byers, Criminal Action File Number 28,034, Superior Court of Whitfield County, Georgia, *reversed*, 204 Ga. App. 552, 420 S.E.2d 23 (1992) (reversing the conviction because the circumstantial evidence with respect to Byers was not sufficient to exclude every other reasonable hypothesis save that of the guilt of the accused).

State of Georgia v. Dunsmore, Criminal Action File Number 28,034, Superior Court of Whitfield County, Georgia, *reversed in part*, 204 Ga. App. 552, 420 S.E.2d 23 (1992) (reversing the conviction for trafficking in cocaine because of insufficient evidence, remanding with direction that a conviction and sentence be entered for possession of cocaine because there was sufficient evidence to connect Dunsmore to the cocaine seized in the adjacent building).

State of Georgia v. Hester, Criminal Action File Number 28,034, Superior Court of Whitfield County, Georgia, *reversed in part*, 204 Ga. App. 552, 420 S.E.2d 23 (1992) (reversing the conviction for trafficking in cocaine because of insufficient evidence, remanding with direction that a conviction and sentence be entered for possession of cocaine because the circumstantial evidence was sufficient to enable a rational trier of fact to conclude, beyond a reasonable doubt, that Hester had constructive possession of the cocaine seized from the adjacent building).

(o) Guthrie v. Dalton City School Dist., et al., Civil Action File Number 56,591, Superior Court of Whitfield County, Georgia, *reversed*, 213 Ga. App. 849, 446 S.E.2d 526 (1994) (reversing the trial court's denial of the plaintiff's motion for partial summary judgment on the issue of the existence and enforceability of the settlement agreement and reversing the trial court's order granting the defendants' motion for partial summary judgment).

(p) Hughes v. Conquest Carpet Mills, et al., Civil Action File Number 58,593, Superior Court of Whitfield County, Georgia, *reversed*, 215 Ga. App. 400, 450 S.E.2d 865 (1994) (reversing the trial court's decision reversing the award of the workers' compensation board because the superior court's review must be

limited to an analysis of whether there was "any evidence" to authorize a finding in accordance with the contentions of the prevailing party).

(q) Lance v. G.I.R. Systems, Inc., Civil Action File Number 59,892, Superior Court of Whitfield County, Georgia, *reversed in part*, 219 Ga. App. 829, 466 S.E.2d 597 (1995) (reversing a portion of the trial court's order requiring that G.I.R. share with Lance the cost of having his accountant review the G.I.R. records specified by the court).

(r) Pritchett v. Graphic Arts Mut. Ins. Co., Civil Action File Number 93-CI-11490, Superior Court of Murray County, Georgia, *reversed*, 220 Ga. App. 430, 469 S.E.2d 199 (1995) (reversing the trial court because the company relied on no policy language to void the Pritchett policy).

(s) Lance v. G.I.R. Systems, Inc., Civil Action File Number 65,761, Superior Court of Whitfield County, Georgia, *reversed in part*, 228 Ga. App. 429, 491 S.E.2d 530 (1997) (reversing the trial court's decision finding G.I.R. in contempt of its prior order because the language in the order was not sufficiently certain to allow the court to find G.I.R. in contempt for refusing to allow the inspection of equipment).

(t) Walker v. Virtual Packaging, L.L.C., Civil Action File Number 63,629, Superior Court of Whitfield County, Georgia, *reversed in part*, 229 Ga. App. 124, 493 S.E.2d 551 (1997) (reversing the trial court's order granting summary judgment to the defendants to the extent that it includes a ruling on the Walker plaintiffs' breach of fiduciary duty claims because the issue was not properly raised).

(u) NationsBank of Tennessee, N.A. v. Hardwick Carpets Intern., Inc., Civil Action File Number 63,477, Superior Court of Whitfield County, Georgia, *reversed*, 233 Ga. App. 894, 506 S.E.2d 174 (1998) (reversing the trial court's decision because NationsBank's security interest takes priority over Georgia Carpet Finisher's mechanic's lien).

(v) In Re: R.U., Juvenile Action Number 95-00715, Juvenile County of Whitfield County, Georgia, *vacated*, 223 Ga. App. 440, 477 S.E.2d 864 (1996) (vacating the trial court's decision terminating parental rights due to the staleness of the evidence of parental misconduct and the absence of clear and convincing evidence that the deprivation is likely to continue).

(w) Eaton v. Ledbetter, et al., Civil Action File Number 33,553, Superior Court of Whitfield County, Georgia, *reversed*, Motion Docket No. 065, Georgia Court of Appeals (1986) unreported (court reversed on procedural question).

(x) State of Georgia v. Janice Buttram, Criminal Action File Number 14,029, Superior Court of Whitfield County, *affirmed*, 249 Ga. 652, 293 S.E.2d 334 (1982), *reversed in part sub nom.*, Buttram v. Black, 721 F.Supp. 1268 (N.D. Ga. 1989) (the district court denied habeas corpus relief from Buttram's conviction for murder and granted relief from her sentence of death. The court held: (1) that admission of Christopher Busby's statement prejudiced Buttram in the sentencing phase (2) that the trial court violated Buttram's due process rights by denying Buttram's request for funds for further psychiatric examinations, (3) that Buttram's Fifth and Sixth Amendment rights were violated by the admission of Dr. Adams' testimony, (4) that the trial court's exclusion of certain mitigating testimony violated Buttram's Eighth Amendment right to a fair sentencing hearing, (5) that remarks of the prosecutor during closing argument violated her Eighth Amendment rights).

15. (3) Constitutional Issues:

(a) Gary Parker, d/b/a Paperdolls v. Whitfield County, Superior Court of Whitfield County, Georgia, Case No. 56,199, affirmed 265 Ga. 829, 463 S.E.2d 116 (1995) (affirming the trial court's decision finding zoning ordinance regulating adult entertainment establishment is not overbroad, is a valid exercise of police power and is not unreasonable).

(b) Davis v. Shavers, et al., Civil Action File Numbers 93-CV-26, 372; 93-CV-26,371; and 93-CV-26,368, Superior Court of Catoosa County, Geogia, affirmed, *263* Ga. App 786 (1994). The constitutionality of Georgia election statutes was challenged. This was an election contest in another circuit where I was called in as a visiting judge. Recall petitions were filed against elected officials of the City of Ft. Oglethorpe. The issues involved were (1) whether the recall applications were sufficient, and (2) whether certain Georgia statutes were constitutional.

(c) State of Georgia v. Janice Buttram, Criminal Action File Number 14,029, Superior Court of Whitfield County, affirmed, 249 Ga. 652, 293 S.E.2d 334 (1982), reversed in part sub nom., Buttram v. Black, 721 F.Supp. 1268 (N.D. Ga. 1989) (the district court denied habeas corpus relief from Buttram's conviction for murder and granted relief from her sentence of death. The court held: (1) that admission of Christopher Busby's statement prejudiced Buttram in the sentencing phase (2) that the trial court violated Buttram's due process rights by denying Buttram's request for funds for further psychiatric examinations, (3) that Buttram's Fifth and Sixth Amendment rights were violated by the admission of Dr. Adams' testimony, (4) that the trial court's exclusion of certain mitigating testimony violated Buttram's Eighth Amendment right to a fair sentencing hearing, (5) that remarks of the prosecutor during closing argument violated her Eighth Amendment rights).

The following list of cases involve constitutional issues raised by various defendants concerning drug related activities. Many of these cases were the result of Operation Nighthawk, a program sponsored by the Federal Drug Enforcement Agency, to educate state and local law enforcement about drug related activities. This training including circumstances or characteristics to watch for when officers are making traffic stops, loosely referred to as a drug courier "profile." Simply stated, "Operation Nighthawk" adopted by the Georgia State Patrol, utilized officers with traffic violation duties to identify offenders and through traffic violations, consents to search, and other means to develop legal opportunities to arrest drug couriers and seize contraband.

(d) O'Keefe v. State, 189 Ga. App. 519, 376 S.E.2d 406 (1988);

(e) Brown v. State, 188 Ga.App. 184, 372 S.E.2d 514 (1988);

(f) Williams v. State, 187 Ga. App. 409, 370 S.E.2d 497 (1988);

(g) Garcia v. State, 187 Ga. App. 166, 369 S.E.2d 776 (1988);

(h) Beguiristain v. State, 187 Ga. App. 164, 369 S.E.2d 774 (1988);

(i) Hester v. State, 187 Ga.App. 46, 369 S.E.2d 278 (1988);

(j) Coop v. State, 186 Ga. App. 578, 367 S.E.2d 836 (1988); and

(k) Mendez v. State, 185 Ga. App. 1, 363 S.E.2d 262 (1987).

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

Assistant U.S. Attorney, Northern District of Georgia 1971 - 1972
U.S. Department of Justice (Appointed)

Special Assistant Attorney General, State of Georgia 1974 - 1976
(Department of Family & Children Services' cases
In Juvenile Court) (Appointed)

District Attorney, Conasauga Judicial Circuit 1977 - 1979
State of Georgia (Elected)

Georgia Democratic Convention - Delegate and Chairman 1978
54th Senatorial Delegation (Elected by Delegates)

I have had no unsuccessful candidacies for elective public office.

17. Legal Career:

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

1. Whether your 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 law clerk.

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

I have not practiced alone.

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

August, 1970 - November, 1970: U.S. Army, active duty, Officer's Basic Course, Military Police Corps, Ft. Gordon, Georgia, Second Lieutenant.

March, 1971 - September, 1972: U.S. Attorney, Northern District of Georgia, Atlanta, Georgia; Assistant U.S. Attorney, Trial Attorney, Criminal Division; special assignments to Organized Crime Strike Force and Civil Pollution Litigation.

September, 1972 - December, 1976: Associate and partner of Pittman, Kinney, Kemp, Pickell & Avrett Law Firm, Post Office Box 398, Dalton, Georgia 30722-0398; plaintiff and defense trial practice with some business litigation, e.g., suits on account, disputes over leases, and defective products.

1974 - 1976 (approximately): Special Assistant Attorney General, Law Department, State of Georgia (part-time). Represented Department of Human Resources in Juvenile Court.

January, 1977 - September, 1979: District Attorney (elected), Conasauga Judicial Circuit, Whitfield County Courthouse, Dalton, Georgia 30720.

1971 - 1997: U.S. Army Active Reserves. I began as a Lieutenant in the Military Police. From 1971 - 1997, I served as a JAG officer in the active reserves in each rank from Lieutenant to Colonel, and had many different assignments which included service as a military judge. In 1997, I was transferred to the inactive reserves.

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

August, 1970 - November, 1970: U.S. Army, active duty, Officer's Basic Course, Military Police Corps, Ft. Gordon, Georgia, Second Lieutenant.

March, 1971 - September, 1972: U.S. Attorney, Northern District of Georgia, Atlanta, Georgia; Assistant U.S. Attorney, Trial Attorney, Criminal Division; special assignments to Organized Crime Strike Force and Civil Pollution Litigation.

September, 1972 - December, 1976: Associate and partner of Pittman, Kinney, Kemp, Pickell & Avrett Law Firm, Post Office Box 398, Dalton, Georgia 30722-0398; plaintiff and defense trial practice with some business litigation, e.g., suits on account, disputes over leases, and defective products.

1974 - 1976 (approximately): Special Assistant Attorney General, Law Department, State of Georgia (part-time). Represented Department of Human Resources in Juvenile Court.

January, 1977 - September, 1979: District Attorney (elected), Conasauga Judicial Circuit, Whitfield County Courthouse, Dalton, Georgia 30720.

1971 - 1997: U.S. Army Active Reserves. I began as a Lieutenant in the Military Police. From 1971 - 1997, I served as a JAG officer in the active reserves in each rank from Lieutenant to Colonel, and had many different assignments which included service as a military judge. In 1997, I was transferred to the inactive reserves.

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

When I served as an Assistant U.S. Attorney and an elected District Attorney, my clients were the government. My specialization was criminal prosecution with some civil litigation.

During my practice with the law firm, my typical former clients were insurance companies (primarily automobile collisions), parties in divorce cases, appointed and hired criminal defendants and general small town walk-in clientele. I represented some corporations in business disputes.

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

I appeared frequently.

2. What percentage of these appearances was in:

(a)	**Federal courts**	**15%**
(b)	**State courts of record**	**75%**
(c)	**Other courts**	**10%**

3. What percentage of your litigation was:

(a)	**Civil**	**50%**
(b)	**Criminal**	**50%**

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

(a)	**Cases tried to verdict:**	**200**
(b)	**Sole Counsel:**	**140**
	Chief Counsel:	**40**
	Associate Counsel:	**20**

5. What percentage of these trials was:

(a)	**Jury:**	**40%;**
(b)	**Non-jury:**	**60%.**

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

1. The date of representation;
2. The name of the court and the name of the judge or judges before whom the case was litigated; and
3. The individual name, address and telephone numbers of co-counsel and of principal counsel for each for the other parties.

1. **State v. William Rollins, Criminal Case No. 12485, Superior Court of Whitfield County, Georgia, affirmed, 154 Ga. App. 585, 269 S.E.2d 81 (1980).**

   This case involved a conspiracy, a large number of armed robberies, one kidnaping and one shooting. It was probably the hardest case I tried while I was the District Attorney, and it presented tough legal questions concerning the corroboration of the co-conspirator's testimony. A co-defendant who had been released on bond came to my house to kill me before trial. We did not learn of this attempt until after the trial. After a complicated trial, the jury returned a guilty verdict, which ultimately resulted in a lengthy prison sentence for the defendant.

   A final note about this case concerns an interesting merger question that I handled on appeal. The defendant argued that his conviction of attempted armed robbery and aggravated battery merged. The Georgia Court of Appeals rejected this argument, citing Bins v. United States, 331 F.2d 390, 393 (5th Cir. 1964), for the proposition that mere proximity in time between the commission of two distinct offenses does not result in factual merger.

   1. **1979**

   2. **Superior Court of Whitfield County, Georgia.**
      Judge Robert L. Vining, Jr. (retired)

   3. **Defense Counsel:**
      Robert B. Adams
      Post Office Box 488
      Dalton, Georgia 30722-0488
      706/278-0525

2. **State v. James Colvin and Michael Law, Criminal Case No. 12321, Superior Court of Whitfield County, Georgia, affirmed, 155 Ga. App. 736, 272 S.E.2d 516 (1980).**

I prosecuted two defendants for murder which resulted in a conviction of manslaughter for each defendant. It involved bizarre factual circumstances that I saw often as District Attorney. The defendants and victim were known to each other, while the victim's ex-wife dated one of the defendants.

I also handled this case on appeal. One of the defendants argued that undercover police officers questioned him about the murder and forbade him to tell his attorney. The Georgia Court of Appeals recognized that, if true, these allegations would be a violation of the defendant's constitutional rights which would warrant a reversal. However, the court found no evidence to support his claim.

1. March, 1979

2. Superior Court of Whitfield County, Georgia
Judge Coy H. Temples

3. Defense Counsel for Colvin:
E. Neil Wester
Post Office Box 668
Dalton, Georgia 30722-0668
(O) 706/278-2040

Defense Counsel for Law:
William E. Glisson
321 East Wilson Street
Batavia, Illinois 60510
(O) 708/879-1300

3. State v. Kevin Ely, Criminal Case No. 79-1279, Superior Court of Murray County, Georgia, affirmed, 244 Ga. 432, 260 S.E.2d 345 (1979).

This was another murder case that I tried while I was District Attorney. The defendant was a young boy who had run away from home and hitched a ride with the victim. After drinking with the victim in a deserted cabin, the defendant and his girlfriend decided to rob the victim. This robbery resulted in the defendant killing the victim and stealing his truck. He was convicted of murder.

1. 1978

2. Superior Court of Murray County, Georgia
Judge Robert L. Vining, Jr.

3. Defense Counsel:
W. W. (Bill) Keith, III
Post Office Box 1385
Chatsworth, Georgia 30705-1385
(O) 706/695-4511

4. State v. Thomas Prater, Criminal Nos. 11,516; 11,517; 11,518; 11,519, Superior Court of Whitfield County, Georgia, affirmed, 148 Ga. App. 831, 253 S.E.2d 223 (1979).

I was the District Attorney. This was a series of armed robberies where the victims were robbed in their homes of expensive jewelry and cash. During the extradition proceedings, the defendant paid bribes to Tennessee officials. Pressure from Georgia began the unraveling of many illegal payoffs. The Governor of Tennessee was indicted and imprisoned for accepting bribes. Meanwhile, the key witness in the Georgia cases against the defendant mysteriously committed suicide. Finally, after the extradition and a difficult trial, the defendant was convicted and sentenced to prison. Peter Maas wrote a book, Marie, A True Story, about the Tennessee case that was later made into a movie.

1. 1978

2. Superior Court of Whitfield County, Georgia
Judge Coy H. Temples

3. Co-Counsel:
(Then) Assistant District Attorney Jim Bethel
(Now) Vice President, J & J Industries, Inc.
Post Office Box 1287
Dalton, Georgia 30722-1287
(O) 706/278-4454

Special Prosecutor:
H. Erwin Mitchell
Post Office Box 668
Dalton, Georgia 30722-0668
(O) 706/278-2040

Defense Counsel:
Bobby Lee Cook
Post Office Box 370
Summerville, Georgia 30747
(O) 706/857-3421

5. State v. Hubert Mullins, Criminal Case No. 77-896, Superior Court of Murray County, Georgia, and Criminal Case No. 11,549, Superior Court of Whitfield County, Georgia, affirmed, 147 Ga. App. 330, 248 S.E.2d 706 (1978), affirmed, 147 Ga. App. 337, 248 S.E.2d 706 (1978).

There were two armed robbery cases against Mr. Mullins. Both were tried before juries. In both cases, the defendant insisted on his right to represent himself, but he was assigned a lawyer as co-counsel. This made the case tricky, since as District Attorney, I might be perceived as taking advantage of the defendant. Assistant District Attorney Jim Bethel handled one case, I handled the other. Defendant was convicted and received sentences exceeding 20 years. An interesting thing about the case was, after I became judge, upon defendant's release and later absconding from parole, defendant turned himself in to me and later had me perform his wedding ceremony. The defendant is now deceased.

1. 1977

2. Superior Court of Whitfield County, Georgia
Superior Court of Murray County, Georgia
Judge Coy H. Temples
Judge Robert L. Vining, Jr.

3. Assistant District Attorney:
Jim Bethel
Post Office Box 1287
Dalton, Georgia 30722-1287
(O) 706/278-4454

Defense Attorney:
Dean Donehoo (now teaches school, Murray County High School, Chatsworth, Georgia)
(O) 706/695-1414

Michael S. Moldaven
328 Margo Trail, S.E.
Rome, Georgia 30161-9424
706/234-9153

6. Pannell v. Continental Can Corporation, Civil Case No. CV-174-25, United States District Court, Southern District of Georgia, Augusta Division, affirmed, 554 F.2d 216 (5th Cir. 1977).

Co-Counsel John Avrett and I represented N.B. Pannell (retired Army Colonel and my cousin) in this action to recover real estate in which he had a remainder interest. The life tenant's interest had been levied on and sold at a tax sale years earlier. This case involved a number of different issues such as adverse possession, title transferred at tax sale, and the tolling of a statute by the Soldiers' and Sailors' Civil Relief Act. The jury returned a verdict in favor of Continental Can and we appealed. I also prepared the brief and argued the case before the Fifth Circuit. While the Soldiers' and Sailors' Civil Relief Act was a minor and unnecessary part of our case, the Appellate Court ruled that the Act did not apply to a career service man such as the plaintiff. The decision has had some notoriety. The U.S. Department of Navy encouraged us to appeal to the U.S. Supreme Court; however, the Georgia Supreme Court had virtually eliminated our legal claim in the companion case, Pannell v. Moore, 237 Ga. 761 (1976).

1. 1975-1977

2. U.S. District Court, Southern District of Georgia,
Augusta, Division
Judge Anthony A. Alaimo (retired)

3. Co-Counsel:
John T. Avrett (deceased)

Opposing Counsel:
Spencer Connerat, Jr.
Post Office Box 8667
Savannah, Georgia 31412-8667
(O) 912/651-2180

7. Blaylock, as Administratrix for Donald Welch v. Refrigerated Transport Co., Inc., Fireman's Fund Insurance Co., Brown Transport Corp., Nationwide Insurance Co. and William Richmond, Civil Action No. 106 (1974); Superior Court of Murray County, Georgia. No appeal.

John Avrett and I represented Refrigerated Transport Company and Fireman's Fund Insurance Company. This was a difficult car collision case involving the death of the plaintiff's husband. We had to overcome some evidentiary problems to show the deceased's history of grand mal

seizures and our theory of another truck which ran the deceased off the road. The jury delivered a defendant's verdict and the case was then settled during the motion for a new trial.

1. 1974

2. Superior Court of Murray County, Georgia
Judge Robert L. Vining, Jr. (now retired federal judge)

3. Co-Counsel:
John T. Avrett (deceased) - Refrigerated Transport Co. and Fireman's Fund Insurance Co.

Counsel for Brown Transport Corp. and Nationwide Insurance Co.
Lowell Fine
Marquis I, 4th Floor
245 Peachtree Center Avenue
Atlanta, Georgia
(O) 404/688-8800

Robert Whitley
Suite 2150
Five Concourse Parkway, N.E.
Atlanta, Georgia 30328-5350
(O) 770/804-8000

Plaintiff's Counsel:
(Now) Judge William T. Boyett
Post Office Box 2582
Dalton, Georgia 30722-2582
(O) 706/278-3340

8. State v. Donald Wilkins, Criminal Case No. 7301, Superior Court of Whitfield County, Georgia.

In 1973, I was appointed to defend a particularly brutal murder and robbery of an elderly couple. My client had confessed and the evidence was overwhelming. The Georgia death penalty statute had been declared unconstitutional and the District Attorney wanted to delay the case until after the passage of the new statute. I advised my client that any new statute could not be applied retroactively. For other reasons, the case plead and a life sentence was imposed. My client later filed a habeas corpus action alleging co-counsel and I were incompetent. He lost. Wilkins v. Hopper, 232 Ga. 796, 209 S.E.2d 147 (1974). My client

then filed in federal court and lost. Case No. C-73-493A, United States District Court for the Northern District of Georgia.

1. 1973

2. Superior Court of Whitfield County, Georgia
Judge Robert L. Vining, Jr. (retired)

3. District Attorney:
Sam Brantley
Last known address:
Post Office Box 1150
Fayetteville, Georgia 30214
(O) 770/460-1991

Co-Counsel:
Maurice M. Sponcler, Jr.
Post Office Box 398
Dalton, Georgia 30722-0398
(O) 706/278-5211

9. U.S. v. Q.C. Plott, United States District Court for the Northern District of Georgia, transferred to Savannah, United States District Court for the Southern District of Georgia, Criminal Nos. 18372 and 18564.

I was the Assistant U.S. Attorney in charge of prosecuting a portion of a huge conspiracy that centered on Q.C. Plott of Atlanta. He bought and sold over 125,000 illegal alligator hides from poachers in the southeast and shipped them illegally internationally. Alligators were on the endangered species list. Without Mr. Plott, the poachers had no market. He controlled the market. An undercover agent spent months identifying the poachers. When Mr. Plott's operation was stopped and he was indicted, illegal alligator hunting virtually stopped. The investigation was done by the U.S. Fish and Wildlife. Retired agent Bill Frazier, 3160 Flamingo Drive, Decatur, Georgia 30033, telephone number 404/292-9255, was involved in the case. Parts of the case were indicted in Atlanta, Savannah and New York. The criminal cases were consolidated in Savannah before Judge Alex Lawrence. The case was disposed of after a motion by a plea. The species made a recovery and was later taken off the endangered list.

1. 1971-1972

2. U.S. District Court, Northern District of Georgia
Judge Newell Edenfield (deceased)
U.S. District Court, Southern District of Georgia
Judge Alex Lawrence (deceased)

3. U.S. Attorney:
(present address):
John W. Stokes, Jr.
148 South Clayton Street
Lawrenceville, Georgia 30045
(O) 770/277-0771

Defense Counsel:
G. Bertrand Hester
Post Office Box 20369
St. Simons Island, Georgia 31522
(O) 912/638-0730

10. United States v. Martin Sklaroff, et al., United States District Court for the Northern District of Georgia, Indictment No. 26,335, affirmed, 506 F.2d 837 (5th Cir. 1975).

This case involved the first wiretap under a new wiretapping statute. FBI agents conducted the investigation in several different cities around the country where the Sklaroffs would call to lay off bets from their operation at the Miami Airport. I was a new Assistant U.S. Attorney assigned to the Organized Crime Strike Force to assist Mr. J. Robert Sparks, the prosecutor who was in charge. The Atlanta case involved the Sklaroffs and some professional bookmakers in Atlanta. It was my first jury trial and it lasted five days. At one point, three witnesses for the government were on the stand at the same time. Just before trial, there was a motion to suppress the wiretap because of improper conduct by the government in the wiretap authorization. While the motion was denied in this case, many other wiretaps around the country were found to be illegal. I presented one day's entire witness list and part of the government's closing argument.

1. Summer, 1971

2. United States District Court for the Northern District of Georgia
Judge Newell Edenfield (deceased)

3. **J. Robert Sparks (deceased), U.S. Organized Crime Strike Force**

U.S. Attorney:
John W. Stokes, Jr.
(present address):
148 South Clayton Street
Lawrenceville, Georgia 30045
(O) 770/277-0771

Defense Attorneys:

1. **James J. Hogan**
Hogan, Greer & Shapiro
Suite 200
2400 South Dixie Highway
Miami, Florida 33133
(O) 305/854-8989

2. **Ms. Victoria D. Little**
217 N. McDonough Street
Decatur, Georgia 30030-3319
(O) 404/378-4893

3. **Joe Salem (may be deceased)**
Atlanta, Georgia

Supplement to Question 18:

The cases listed above are older than five years, since I have been a Superior Court Judge for over nineteen years. Listed below are members of the legal community who have had recent contact with me.

(1) **Chief Judge Coy H. Temples**
Whitfield County Courthouse
Post Office Box 732
Dalton, Georgia 30722-0732
(O) 706/278-0047

(2) **Judge William T. Boyett**
Whitfield County Courthouse
Post Office Box 2582
Dalton, Georgia 30722-2582
(O) 706/278-3340

(3) **Judge Jack O. Partain**
Whitfield County Courthouse
Post Office Box 2535
Dalton, Georgia 30722-2535
(O) 706/278-6713

(4) **Juvenile Court Judge Connie Blaylock**
301 West Crawford Street
Dalton, Georgia 30720
(O) 706/278-6558

(5) **Judge Robert L. Vining, Jr.**
United States District Court
Post Office Box 6226
Rome, Georgia 30162-6226
(O) 706/291-5671

(6) **Justice George H. Carley**
Georgia Supreme Court
536 State Judicial Building
Atlanta, Georgia 30334
(O) 404/656-3471

(7) **Judge Marion T. Pope, Jr.**
Georgia Court of Appeals
407 State Judicial Building
Atlanta, Georgia 30334
(O) 404/656-3455

(8) **Judge Frank M. Eldridge**
Georgia Court of Appeals
431 State Judicial Building
Atlanta, Georgia 30334
(O) 404/657-9405

(9) **H. Erwin Mitchell (former Congressman)**
Attorney
Post Office Box 668
Dalton, Georgia 30722-0668
(O) 706/278-2040

(10) **Warren N. Coppedge, Jr.**
Attorney
508 South Thornton Avenue
Dalton, Georgia 30720
(O) 706/226-0040

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

(a) **I served as Chairman of the Uniform Rules Committee for Georgia Superior Courts for three years. This committee was responsible for recommending rules which had the effect of law. The rules were designed to improve the efficient operation of the Court and provide fairness to litigants.**

(b) **I am serving on the Long-Range Planning Committee of Council of Superior Court Judges of the State of Georgia. This committee attempts to visualize future Court duties, reorganization and technology to meet future challenges efficiently.**

(c) **I am serving on the Legislative and Compensation Committees of Council of Superior Court Judges of Georgia. These committees monitor and propose legislation in Georgia to improve the functioning of the Courts and the compensation system.**

(d) **Presently, I am serving as the Secretary/Treasurer of the Council of Superior Court Judges and will move to the office of President-elect in July, 1999.**

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

I have no financial arrangements, present or future, with any law firms, previous clients, customers or businesses to receive any income in the future. My wife and I do have some investments and I have an interest in my family's farm and timberland. We also have the following retirement accounts:

(a) Charles A. Pannell, Jr., Georgia Judicial Retirement System and the Whitfield County Employees Retirement.

(b) Charles A. Pannell, Jr., Georgia Deferred Compensation, 457 and 401(k) Plans.

(c) Kate Pannell, Georgia Teachers Retirement System.

(d) Kate Pannell, Valic Deferred Compensation.

(e) Charles A. Pannell, Jr., U.S. Army Reserve Retirement.

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

The Code of Conduct for United States Judges and any local rules of the District Court will be used to resolve any conflict. Public disclosure, divestment and recusal are all methods I plan to use. I cannot think of any categories or financial arrangements of mine that will cause any conflict.

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

None, other than family farm, timberland and personal investments.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees,

dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See Attached Financial Disclosure Statement.

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

See Attached Financial Net Worth Statement.

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

I have been a candidate for elected office: District Attorney, 1976; Judge, Superior Court, 1980, 1984, 1988, 1992 and 1996. I have never participated in another candidate's campaign except for donations to individuals seeking office.

AO 10 (w)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Pannell Jr., Charles A.	Northern District of Georgia	07 15 /99
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. Report Type (check type)**	**6. Reporting Period**
U.S. District Judge - Nominee	X Nomination, Date / / Initial Annual Final	01/01/1998 to 07/01/1999
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.**	
P.O. Box 596 Dalton, Georgia 30722-0596	**Reviewing Officer** _____ **Date** _____	

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

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

☐ **NONE** (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Judge	Superior Court, Conasauga Circuit, State of Georgia
2	Colonel	U.S. Army Reserves
3	Co-executor	Estate of Charles A. Pannell, Sr.

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

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

	DATE	PARTIES AND TERMS
1	1999	State of Georgia, employee compensation, benefits and retirement, no control
2	1999	Whitfield County, Georgia, employees retirement, no control
3		

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

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	1997-98	'97: Judge, Superior Court, State of Georgia $86,638. '98: Judge, Superior Court $90,099.	$ 176,737.
2	1997-98	'97: Judge, Superior Court, Whitfield County Salary $7,540. '98: Judge, Superior Court, Whitfield County Salary $7,540.	$ 15,080.
3	1997-98	'97: Murray County Georgia School System ($) '98: Murray County Georgia School System ($).	
4	1999	Judge, Superior Court, State of Georgia	$ 46,386.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Pannell Jr., Charles A.	07 / 15 / 99

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	**NONE** (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	**NONE** (No such reportable gifts.)		
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children: indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	**NONE** (No reportable liabilities.)		
1	First National Bank of Chatsworth	Note to Purchase Rental Property, #1 Murray County Georgia	J
2	Farmers State Bank, Richland, Georgia	Mortgage on property (17 Acres), Chattahoochee County, Georgia (jointly owned with friend)	K
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Pannell Jr., Charles A.

Date of Report: 07 /15/ 99

VII. Page 1 INVESTMENTS and TRUSTS– income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income,assets, or transactions.)									
1 Timberland, McDuffie County, Georgia, 1/3 Interest	A	Timber Sale	M	W	Exempt				
2 Rental Property, #1 Murray County, Georgia	C	Rent	K	R	Exempt				
3 Property (17 Acres)(1/2 Interest) Chattahoochee Co. GA		None	J	R	Exempt				
4 USAA International Fund	A	Cap. Gain	none	T	Exempt				
5 USAA Money Market	A	Dividend	none	T	Exempt				
6 Estate of Charles A. Pannell, Sr. Farm, Murray County, GA		None			Exempt				
7 Georgia Judicial Retirement System	E	Interest	M	T	Exempt				
8 Community Bank (IRA) Bank Stock	A	Div/Int	L	T	Exempt				
9 Community Bank (IRA) (S) Bank Stock	A	Div/Int	K	T	Exempt				
10 Georgia Teachers Retirement System (S)	C	Interest	K	T	Exempt				
11 Valic-Deferred Compensation Fixed Account (S)	C	Div/Int	K	T	Exempt				
12 Valic-Deferred Compensation AGSPC Mutual Fund (S)		None	K	T	Exempt				
13 Fidelity Investments - Roth IRA LSI Stock	A	Div/Int	J	T	Exempt				
14 Fidelity Investments - Roth IRA (S)	A	Div/Int	J	T	Exempt				
15 First National Bank of Chatsworth CD and Account	B	Interest	J	T	Exempt				
16 Franklin Life Insurance (Whole Life Policies)	C	Div/Int	K	T	Exempt				
17 Murray County Federal Credit Union (S)	A	Interest	J	T	Exempt				

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Fannell Jr., Charles A.

Date of Report: 07 /15/ 99

VII. Page 2 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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				
						If not exempt from disclosure			
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income,assets, or transactions.)									
18 Fidelity Investments Money Market	B	Div/Int	J	T	Exempt				
19 General Electric Common Stock	A	Dividend	J	T	Exempt				
20 MCI World Com, Common Stock		None	J	T	Exempt				
21 Mindspring, Common Stock		None	J	T	Exempt				
22 Pointe Com, Common Stock		None	J	T	Exempt				
23 Shaw, Common Stock	A	Dividend	none	T	Exempt				
24 Synovus, Common Stock	A	Dividend	K	T	Exempt				
25 STI - Money Market	A	Dividend	J	T	Exempt				
26 Georgia Tax Exempt Bond Fund (STI)	B	Dividend	none	T	Exempt				
27 Putnam Money Market	C	Dividend	K	T	Exempt				
28 Putnam Capital Appreciation	A	Div/Cap. Gn	J	T	Exempt				
29 Putnam Europe Growth	A	Div/Cap. Gn	J	T	Exempt				
30 Putnam Growth & Income	B	Div/Cap. Gn	K	T	Exempt				
31 Putnam Growth Opportunities		None	J	T	Exempt				
32 Putnam Health Sciences	A	Div/Cap. Gn	J	T	Exempt				
33 Putnam International Growth	A	Div/Cap. Gn	J	T	Exempt				
34 Putnam Voyager Fund	A	Cap. Gain	J	T	Exempt				

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Pannell Jr., Charles A.

Date of Report: 07 /15/ 99

VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. 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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income,assets, or transactions.)									
35 State of Georgia 401K Deferred Compensation Agg. Growth Fund		None	J	T	Exempt				
36 State of GA (457)-United International Growth	B	Dividend	K	T	Exempt				
37 State of GA (457)- Fidelity Magellan Fund	B	Dividend	K	T	Exempt				
38 State of GA (457) - Fidelity OTC Portfolio	A	Dividend	K	T	Exempt				
39 State of GA (457) - Vanguard Institutional Index	A	Dividend	J	T	Exempt				
40 State of GA (457) - Vanguard Windsor II	B	Dividend	K	T	Exempt				
41 State of GA (457) - Vanguard Wellesley	B	Dividend	K	T	Exempt				
42 State of GA (457) - Georgia Fixed Income	B	Interest	K	T	Exempt				
43									
44									
45									
46									
47									
48									
49									
50									
51									

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Pannell Jr., Charles A.	07/15/99

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

I. POSITIONS, Answer No 7: "Operator"

This is a one-man operation on family owned property. I have had cattle. During reporting period, I kept horses and cut hay on shares with 3rd party.

VII. INVESTMENTS AND TRUSTS, Item No. 6: "Estate of Charles A. Pannell, Sr. Farm, Murray County, Georgia"

I own vested interest in some real estate that is now in my father's estate. It will not be transferred to me until after the death of mother. I cannot determine a present value to me.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Pannell Jr., Charles A.	07/15/99

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Secretary/Treasurer	Council of Superior Court Judges, State of Georgia
5	Secretary	Horseshoe Bend Club, Inc.
6	Executive Board, Troop Chairman, District Chairman	Boy Scouts of America, N.W. Georgia Council
7	Operator	Pannell Farm, Eton, Georgia

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	1999	Murray County Georgia School System (S)	$ 0.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Pannell Jr., Charles A.	07/15/99

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Charles A. Pannell Jr. Date June 15, 1999

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
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	995		Notes payable to banks-secured	13	205	
U.S. Government securities - add schedule				Notes payable to banks-unsecured	4	883	
Listed securities - add schedule	135	082		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	20	000		Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable - add schedule	26	500	
Real estate owned - add schedule	139	000		Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts - itemize:			
Autos and other personal property	45	000		Loans on Life Ins.	8	412	
Cash value - life insurance	32	435					
Other assets - itemize:							
Farm Equipment & Livestock	10	000					
Household Furnishings	20	000					
Retirement Accounts	518	865		Total Liabilities	53	000	
				Net Worth	877	377	
Total Assets	930	377		Total Liabilities and net worth	930	377	
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor Joint Note-Property Chat. Co.	11	500		Are any assets pledged? (Add schedule.)	NO		
On leases or contracts	N/A			Are you defendant in any suits or legal actions?	NO		
Legal claims	N/A			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	N/A						
Other special debt	N/A						

CHARLES A. & KATE T. PANNELL
JULY 1, 1999

CHECKING & SAVINGS ACCOUNTS:			
FIRST NATIONAL BANK OF CHATSWORTH		5,900	
COHUTTA BANK OF CHATSWORTH		2,579	
WACHOVIA BANK OF SAVANNAH		910	
MURRAY COUNTY FEDERAL CREDIT UNION		300	
COHUTTA BANK - SAVINGS ACCOUNT		306	
TOTAL CASH IN BANKS			**9,995**
LISTED SECURITIES:			
MUTUAL FUNDS & STOCKS:			
PUTNAM INVESTMENTS		71,235	
FIDELITY INVESTMENTS		28,125	
SUNTRUST SECURITIES		35,722	
TOTAL LISTED SECURITIES			**135,082**

REAL ESTATE OWNED:	FMV	DEBT
1/3 INTEREST 800+ ACRES MCDUFFIE COUNTY, GA	100,000	
1/2 INTEREST 17 ACRES WOODLAND - CHATTAHOOCHEE COUNTY - FINANCED AT FARMERS STATE BANK	15,000	11,500
RENTAL HOUSE & 3 ACRES - CHATSWORTH GA FINANCED AT 1st NATIONAL OF CHATS	24,000	15,000
TOTAL REAL ESTATE OWNED	**139,000**	**26,500**

OTHER REAL ESTATE INTEREST:
1) 50 ACRES & RESIDENCE, CHATSWORTH, GA. - HELD IN THE ESTATE OF CHARLES A. PANNELL, SR. - VALUE UNDETERMINED
2) PARTIAL INTEREST IN 450+/- ACRES IN CHATSWORTH, GA - HELD IN THE ESTATE OF CHARLES A. PANNELL, SR. - VALUE UNDETERMINED

AUTOMOBILES:			
LINCOLN TOWN CAR		12,000	
NISSAN PATHFINDER		12,000	
BMW - 300 SERIES		15,000	
FORD BRONCO		5,000	
FORD P/U TRUCK		1,000	
TOTAL AUTOMOBILES			**45,000**
RETIREMENT ACCOUNTS			
GEORGIA JUDICIAL RETIREMENT SYSTEM	CAP	191,941	
TEACHERS RETIREMENT SYSTEM	KTP	39,779	
IRA - COMMUNITY BANK, DALLAS, GEORGIA	CAP	50,892	
IRA - COMMUNITY BANK, DALLAS, GEORGIA	KTP	17,027	
ROTH IRA - FIDELITY INVESTMENTS	CAP	2,350	
ROTH IRA - FIDELITY INVESTMENTS	KTP	2,014	
VALIC - DEFERRED COMPENSATION	KTP	67,723	
GA DEFERRED COMPENSATION - 457	CAP	138,923	
GA DEFERRED COMPENSATION - 401k	CAP	8,216	
TOTAL RETIREMENT ACCOUNTS			**518,865**

CHARLES A. & KATE T. PANNELL
JULY 1, 1999

NOTES PAYABLE SECURED:			
MURRAY COUNTY FEDERAL CREDIT UNION	AUTO	2,511	
MURRAY COUNTY FEDERAL CREDIT UNION	AUTO	10,694	
TOTAL SECURED NOTES PAYABLE			**13,205**
NOTES PAYABLE UNSECURED:			
CAPITAL ONE VISA	KTP	3,173	
VISA CARD - COHUTTA BANK		1,710	
TOTAL UNSECURED NOTES PAYABLE			**4,883**

III. GENERAL (PUBLIC)

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

I did some pro bono work when I worked at Pittman, Kinney, Kemp, Pickell & Avrett law firm from 1972 to 1976. There was no formal program back then and no records were kept. Since becoming District Attorney and Judge, I have been prevented by law from doing any pro bono legal work.

I have been involved in community service activities as outlined below:

Boy Scouts of America. I have participated as an adult for over fifteen years as Cub Leader, Troop Chairman, District Chairman, Adult Advisor; Philmont Treks: 1990, 1995, 1997; Canoe Base, 1991; Sea Base, 1992. We have boys on reduced school lunches and welfare in the Troop. I have worked and contributed monies to make sure any disadvantaged boy has a full opportunity to participate.

Little League Coach (Assistant): 1983 - 1985.

United Way of Dalton, Georgia. I have served on several committees and the Board over the years.

Worked with youth and MYF of First United Methodist Church of Chatsworth, particularly when my children were teenagers.

I received the Cross and Flame Award (National Award) from the Methodist Church for work with youth. I have recently received the Silver Beaver Award from the Boy Scouts of America.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies.

To my knowledge, I do not and have not belonged to any organization that invidiously discriminates.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There have been three vacancies since Senator Cleland took office in 1997. For each vacancy, a new committee was appointed. A completed questionnaire and interview was required each time. I made the short list submitted to Senator Cleland, and was interviewed by Senator Cleland each time. After my interview on April 19, 1999, I was notified that Senator Cleland had selected my name for submission to the White House. In addition, I have completed the required forms and investigation by the American Bar Association, the Federal Bureau of Investigation, and the Department of Justice.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution, rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose, broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The exercise of judicial power involves profound responsibility and judgment. U.S. District Courts have a limited jurisdiction which should not be expanded by a judge. A trial court must always be aware of the decisions of higher courts which often control or at least bear upon the question immediately before the trial court. A judge must be able to demonstrate that he begins from recognized constitutional and legal principles when there is no clear legal precedent. The trial judge must attempt to decide the matter following similar holdings from higher courts. On cases of first impression, a trial court must consider the arguments of counsel and the reasoning of other jurisdictions. Decisions should be made based upon the law and facts of the individual case. Judicial power requires restraint, not to be overreaching, but at the same time to find an appropriate level of action. Following the Constitution, statutory law, legislative intent, and the doctrine of stare decisis to adhere to legal precedent is an obligation of any judge. I have found being a trial judge is much easier if you simply follow the law.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

I. BIOGRAPHICAL INFORMATION

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

Marsha Jean Pechman

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

Residence	Office
Seattle WA	C-203 King County Courthouse Third & James Street Seattle WA 98104

3. Date and place of birth.

Born February 6, 1951 in Salem, Oregon.

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

Married May 30, 1976 to William Edward Fitzharris, Jr. Bill is a lawyer with the firm of Peery, Hiscock, Pierson, Kingman and Peabody located at 505 Madison Street, Suite 300, Seattle WA 98104.

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

Cornell University	1969-1973	B.A.	June 1973
Boston University	1973-1976	J.D.	June 1976

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

Position	Employer	Dates
Office Assistant	Cornell University Career Center	6/73 - 9/73
Research Assistant	Boston University, Center for Law and Health Sciences	9/73 - 12/74
Law Clerk	Office of the Attorney General State of Washington Consumer Protection Division	6/75 - 9/75

Law Clerk/Limited Practice Intern	Greater Boston Legal Services	9/75 - 6/76
Legal Intern	King County Prosecutor's Office Criminal Division	8/76 - 11/76
Deputy Prosecutor	King County Prosecutor's Office Criminal Division	11/76 - 1/79
Instructor/Staff Attorney	University of Washington School of Law	1/79 - 6/81
Associate	Levinson, Friedman, Vhugen, Duggan, Bland & Horowitz	6/81 - 12/86
Partner	Levinson, Friedman, Vhugen, Duggan, Bland & Horowitz	1/87 - 8/88
Adjunct Faculty	University of Washington School of Law	9/83 - 5/87
Visiting Clinical Professor	University of Puget Sound (now Seattle University) School of Law	9/86 - 9/87
Clinical Professor and Director of the Law Practice Clinic	University of Puget Sound (now Seattle University) School of Law	9/87 - 12/87
Superior Court Judge	King County Superior Court	1/88 - present

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

No.

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

None.

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

Washington State Bar Association 1976 - present

Superior Court Judges' Association	1988 - present
• Judicial College for WA State Superior Court Judges	
Assistant Dean	1991
Dean	1992
Instructor	1992 - present
• Judicial Education Committee	1988 - 1996
• Superior Court Judges' Representative to the State Ethics Advisory Committee	1991 - 1992, 1994 - 1995
• Ethics Committee Chair	1996 - 1997
• Family and Juvenile Court Committee	1998 - present
Seattle-King County Bar Association	1976 - 1988 (1988 - present: judicial member)
• Trustee	1986 - 1987
• Young Lawyers Division Trustee	1983-1985
• Judicial Evaluation Task Force	1985
• Co-Chair Indigent Defense Services Task Force	1984
• Medical Legal Committee	1983 - 1984
• Bridging the Gap Committee	1982
Washington Women Lawyers	1978 - 1988
• Board of Trustees	1979 - 1981
• State Vice President	1981
Washington State Trial Lawyers Association	1981 - 1987
King County Superior Court Committees:	
• Individual Calendaring Project Chair	1990, 1991, 1992, 1994
• Mental Illness Committee Chair	1990
• Executive Committee	1993 - 1994
• Education Committee	1990 - present
• Juvenile Court Committee	1995
• Family Law Committee	1998 - present
• Unified Family Court Education Oversight Committee	1997 - 1998
• Unified Family Court Implementation Judge	1997 - 1998

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

Lobby: Superior Court Judges' Association
Washington State Bar Association

Other: My family belongs to the Sand Point Country Club, College Club and the Seattle Athletic Club (bylaws attached).

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

Supreme Court of the State of Washington	1976
United States District Court, Western District of Washington	1976

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

- "The Struck Jury System: How it Works and How to Work It," Trial News, December 1991.
- A Primer for Working Up the Plaintiff's Personal Injury Claim for Settlement or Trial (Continuing Legal Education Article) (Professional Education Systems, Inc.), 1987.
- Subrogation, or the Right to be Paid Back (Continuing Legal Education Article) (Professional Education Systems, Inc.), 1987.
- Seattle-King County Bar Association, Indigent Defense Services Task Force Report, 1982.
- Unified Family Court Project Overview, July 1997 (with sample orders).

Publications attached.

The following are speeches that I have given for various organizations. To my knowledge, none is reported and none touched on Constitutional law issues.

May 1998: Unified Family Court/The King County Experience
ABA Summit on Unified Family Court, Philadelphia PA

January 22, 1998: Unified Family Court Program, Kent WA
King County Bar Association Continuing Legal Education Seminar
This presentation was given to various groups of attorneys, social workers, judges, and lawyers approximately twelve times throughout 1998.

October 13 and 14, 1996: Moving to IC (Individual Calendaring System)/The Debate
Spokane Judges' Retreat, Coeur d'Alene ID

June 1993: Speech to Honor Rebecca Roe, Lawyer of the Year
Seattle-King County Bar Association, Seattle WA

November 5, 1992: Preparation and Presentation of Jury Instructions/Making Life Easier for the Judge
Washington State Trial Lawyers Association Continuing Legal Education Seminar, Seattle WA

July 22, 1992: Speech to Honor Judge Laura Inveen
King County Superior Court, Seattle WA

June 22, 1992: Voir Dire
Seattle-King County Bar Association Continuing Legal Education Seminar, Seattle WA

May 30, 1992: Voir Dire
Washington Defense Trial Lawyers Continuing Legal Education Seminar, Vancouver Canada

May 13, 1992: What You Didn't Get in Law School/Civil Trial Scheduling and the Clerk's Office
King County Bar Association Continuing Legal Education Seminar, Seattle WA

April 30, 1992: The Struck Jury Selection System
Inns of Court, Seattle WA

January 22, 1992: The Art of Persuading a Jury in the 1990's
King County Bar Association Continuing Legal Education Seminar, Seattle WA

November 16, 1991: Making and Meeting Objections/One Judge's Evidentiary Awakening
University of WA Continuing Legal Education Seminar, Seattle WA

March 29, 1990: Witness Preparation
University of Washington Trial Advocacy Program, Seattle WA

March 21, 1990: National Honor Society Ceremony
Sumner High School, Sumner WA

November 17, 1989: Professionalism and Proper Demeanor in the Courtroom
Washington State Trial Lawyers Association Continuing Legal Education Seminar, Seattle WA

September 20, 1989: Involuntary Treatment and the Judge's Role
Downtown Emergency Service Center, Seattle WA

July 11, 1989: Judicial Appointments/Discussion Panel
Washington Women Lawyers, Seattle WA

June 22 and 23, 1989: "Jury Instructions," Third Edition of Washington Pattern Instructions - Civil
Washington State Trial Lawyers Association Continuing Legal Education Seminar, Seattle WA

June 1989: What I Know Now That I Wish I Knew Then
Speech given three times at:

* Washington Defense Trial Lawyers Association Continuing Legal Education Seminar, Seattle WA
* Preston Gates & Ellis Law Firm, Seattle WA
* Washington State Trial Lawyers Association Continuing Legal Education Seminar, Seattle WA

November 4, 1988: A View From the Bench/Laying Foundations
Washington State Trial Lawyers Association Continuing Legal Education Seminar, Seattle WA

June 7, 1988: Women in the Courtroom
National Association of Women in Construction, Seattle WA

March 18, 1988: Special Problems and Opportunities for Women Attorneys
National Lawyer's Guild Continuing Legal Education Seminar, Seattle WA

March 5, 1988: Prosecutorial Ethics
King County Prosecutor's Office, Seattle WA

March 26, 1987: Maritime Claims
Maritime Adjusters, Seattle WA

March 1987: Legal Issues for Medical Records Librarians
Tacoma Community College, Tacoma WA

October 18, 1984: Jury Instructions/Expert Witnesses
Washington State Trial Lawyers Association Continuing Legal Education Seminar, Seattle WA

May 30, 1984: Legal Interviewing and Counseling
The Public Defender, Seattle WA

September 1983: The Client Interview
Washington State Trial Lawyers Association Continuing Legal Education Seminar, Seattle WA

In November 1998, I taught a course on Effective Trial Management to the Maricopa County (Phoenix, Arizona) Superior Court judges.

From 1990 through 1998, I have taught Continuing Judicial Education seminars at the annual Superior Court Judges Association conference. The topics have included Jury Selection; Effective Trial Management; Unified Family Court; and Complex Litigation. From 1990 through 1998 I have also taught "Jury Trial Problems" at the Washington State Judicial College.

From 1980 to the present I have taught seminars for the National Institute for Trial Advocacy (NITA) in Colorado, Alaska, California, Washington and Minnesota, using the published materials and teaching notes provided by NITA. I have also participated in the making of an educational film series on the examination of experts in trial, jointly produced by the American Bar Association and the National Institute for Trial Advocacy.

In the Fall of 1987, I taught Professional Responsibility at the University of Puget Sound (now Seattle University) School of Law. Each class was three hours and there were fourteen sessions. I used the Socratic Method of teaching, along with class discussions and lectures. I have the notes used to prepare these sessions.

In the Winter of 1980, I taught Negotiations and Dispute Settlement at the University of Washington School of Law. I have teaching notes from these sessions.

From 1979 to 1981, I worked with students in the Criminal Clinical Program at the University of Washington. I developed ten problems for students to role play while being videotaped. Their performances were then reviewed. I have the problem sets for each of these sessions.

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

My health is good. My last general examination was December 17, 1998.

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 am a Superior Court judge for the State of Washington for the County of King. This is the highest level of trial court for the State of Washington. It has general jurisdiction with no limitation over civil, criminal, juvenile, family law, involuntary

commitments, and probate. It also hears appeals from state agencies and courts of limited jurisdiction.

I was appointed on January 1, 1988 by Governor Booth Gardner. I have stood for election without opposition in 1988, 1992 and 1996.

15. Citations: If you are or have been a judge, provide (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

1) 10 Most Significant cases

Please note: The practice in this jurisdiction is for the court to rule orally. The prevailing party prepares the corresponding order, which is then reviewed and signed by the court. The orders therefore do not generally represent my original writing, although they do reflect my oral rulings.

1) Pannell v. Food Services of America, 61 Wn. App. 418 (1991). King County Cause Number 87-2-07728-4. Appeal from a judgment entered on May 4, 1989 and August 7, 1989 in favor of the plaintiffs. Affirmed in part and reversed in part at 61 Wn. App. 418 (reconsideration denied Aug. 29, 1991). Case was remanded for reduction due to a duplicative award on the issue of lost business opportunity.

2) Patterson v. City of Seattle, King County Cause No. 90-2-04999-0. Appeal from judgments entered Nov. 15, 1991 and Jan. 10, 1992. Affirmed at 70 Wn. App. 1070 (1993), review denied, 123 Wn. 2d 1017 (1994). Clerk's office unable to locate underlying orders.

3) Christiansen v. Munson, King County Cause No. 89-2-22475-5. Appeal from judgment entered on July 19, 1991. Affirmed at 123 Wash. 2d 234 (1994).

4) Wlasiuk v. Whirlpool Corp., King County Cause No. 91-2-25960-7. Cross appeals filed from judgments entered July 30, 1993, Sept. 21, 1993, Sept. 24, 1993 and Oct. 20, 1993. Affirmed at 81 Wn. App. 163 (1996).

5) State of Washington v. Clarence Arby Daniels, King County Cause No. 87-1-05137-1. Appeal from judgment and sentence entered on July 22, 1988. Affirmed at 56 Wn. App. 646 (1990), review denied, 114 Wn. 2d 1015 (1990).

6) Weyerhaeuser Co. v. Aetna Cas. & Sur. Co., King County Cause No. 92-2-05214-8. Appeal from summary judgment entered in favor of the insurers with respect to 15 environmental cleanup sites. Reversed and remanded for further proceedings at 123 Wn. 2d 891 (1994). After remand I tried the issues in this case, which included ruling on over 200 summary judgments, 300 motions and two jury trials. The case is currently on appeal. Court of Appeals Cause No. 42024-1-I.

7) State of Washington v. Williard Carl Jimerson, King County Cause No. 94-8-02254-9 SEA. Appeal from an order declining jurisdiction on 6/2/94 after conviction on King County Cause No. 94-1-03582-3 SEA. Judgment and decline affirmed by unpublished opinion, Case No. 35725-5-1, consolidated with Case No. 35788-3-1. I was the judge for the issue of whether the Juvenile Court would retain or transfer jurisdiction to the adult court (decline hearing) only. A copy of the unpublished opinion is attached.

8) Riss v. Angel, King County Cause No. 93-2-04355-4. Appeal from Findings of Fact and judgment entered on May 31, 1994. Affirmed at 80 Wn. App. 553 (1996). Affirmed but remanded to determine the issue of joint and several liability for individual members of the association. 131 Wn. 2d 612 (1997)

9) Robinson v. City of Seattle, King County Cause No. 88-2-09850-6. Reversed at 119 Wn. 2d 34 (1992). Bench trial following remand. Findings of Fact and Conclusions of Law entered Feb. 24, 1994 (attached). No appeal taken.

10) In re Dependency of E.S., King County Cause No. 93-7-00621-5 and 94-7-00658-2. Appeal from the court's Findings of Fact and Conclusions of Law and order terminating parental rights. Affirmed at 92 Wn. App. 762 (1998). Underlying orders sealed and not attached.

11) Washington Association of Churches v. Munro, King County Cause No. 94-2-04173-8. Although I do not consider this one of my ten most significant cases, and my involvement was limited to ruling on a Temporary Restraining Order, I include it because of the media attention it received. No formal order was signed. Clerk's minute entry attached.

2) Cases Reversed or Affirmed with Criticism:

1) Rainier Title Co., Inc. et al. v. Allbright, King County Cause No. 85-2-10990-2. Court of Appeals No. 22634-7-I. Ruling dismissing a third-party complaint on a Civil Rule 12(b)(6) motion was reversed. Unpublished opinion.

2) MacKinnon v. Complete Abrasive Blasting, King County Cause No. 84-2-12256-1. Court of Appeals No. 24126-5-I. The case was remanded for the trial court to modify the judgment to make one of the parties jointly and severally liable for attorney fees. Unpublished opinion and underlying order attached.

3) Cameron v. Smith, King County Cause No. 89-2-24048-3. Court of Appeals No. 27204-7-I. Interpretation of a real estate contract. The court's decision that the contract was unambiguous and that appellants' misunderstanding as to the closing date was a unilateral mistake was reversed. Unpublished opinion and underlying order attached.

4) Meyer v. Meyer, King County Cause No. 88-3-05845-1. Court of Appeals No. 26806-6-I. Dissolution action. Court's decision to include certain property as part of wife's distribution was error, as the property had been transferred to the wife's children prior to the divorce. Unpublished opinion and underlying order attached.

5) Bryant v. Tree, 57 Wn. App. 107 (1990), 119 Wash. 2d 210 (1992). Court of Appeals reversed the trial court's imposition of Rule 11 sanctions. The Washington Supreme Court affirmed the Court of Appeals.

6) Ben L. Corp. v. ARCO, 67 Wn. App. 520 (1993), 122 Wash. 2d 574 (1993). This was an action for alleged violations of the Washington Franchise Investment Protection Act. Appellate court affirmed in part and reversed the trial court's granting of summary judgment on the issue of termination of the franchise agreements. The court of appeals was reversed and the Supreme Court affirmed the trial court's ruling, reinstating the judgment at 122 Wn. 2d 574.

7) Mau Dinh Duong v. Lieu Kim Luong, King County Cause No. 89-2-18053-7. Court of Appeals No. 28292-1-I. This was an action for specific performance of a real estate contract. Case was reversed and remanded to consider a theory not presented at trial. Unpublished opinion attached, but Clerk's office unable to locate underlying order.

8) Marquart v. Bay Decking, King County Cause No. 88-2-16644-7. Court of Appeals No. 27947-5-I. Contract action. Summary judgment granted by the trial court and reversed on appeal. Unpublished opinion.

9) Wilson v. City of Seattle, 122 Wash. 2d 814 (1993). The issue presented was whether the plaintiffs must file a claim for damages prior to bringing suit. The trial court dismissed for failure to file and the appellate court reversed.

10) Culliton v. Vanhoof, 72 Wn. App. 323 (1993). Small Claims action. Appellate court reversed the dismissal of the action by the trial court.

11) Pluta v. United Services Automobile Association, 72 Wn. App. 902 (1994). This was a declaratory judgment action reversing the trial court's decision that there was no coverage under the insurance contract.

12) Weyerhaeuser v. Aetna, 123 Wash. 2d 891 (1994). Declaratory action reversing the trial court's dismissal of certain environmental cleanup sites and holding that the policies do not require that there be an adversarial claim, third-party threat or formal threat of legal action as a prerequisite to coverage.

13) NCF Financial Inc. v. Trainer, King County Cause No. 91-2-00488-9. Court of Appeals No. 32099-8-I. Action for a deficiency judgment on a secured transaction. Affirmed in part, reversed on the trial court's ruling that there was a duty to draw on a letter of credit. Unpublished opinion.

14) State of Washington v. Bonner, King County Cause No. 93-2-15304-0. Court of Appeals No. 33302-0-I. The trial court was reversed after the appellate court changed the applicable law for applying the test for double jeopardy. Unpublished opinion.

15) State of Washington v. M.T., King County Cause No. 95-8-02262-8 SEA. Court of Appeals No. 37114-2-I. Remand of a juvenile court criminal case for additional findings of fact. Unpublished opinion. *Underlying order sealed and not attached.

16) State of Washington v. L.A., 82 Wn. App. 275 (1996). Reversal of a juvenile criminal case on the issue of knowledge that the automobile in question was stolen. *Underlying order sealed and not attached.

17) State of Washington v. M.R.C., King County Cause No. 95-8-01852-3 SEA. Court of Appeals No. 38117-2-I. Trial court reversed in a juvenile criminal case for conversion of community service hours to detention time. Unpublished opinion. *Underlying order sealed and not attached.

18) State of Washington v. J.J.J., King County Cause No. 95-8-02839-1 SEA. Court of Appeals No. 38138-5-I. Trial court reversed in a juvenile criminal case for conversion of community service hours to detention time. Unpublished opinion. *Underlying order sealed and not attached.

19) State of Washington v. Gordon, King County Cause No. 95-1-05345-5 SEA. Court of Appeals No. 39009-1-I. Criminal jury trial reversal for improper

jury instructions. Unpublished opinion. Appeal taken from jury verdict.

20) Easley v. Sea Land Service, Inc., King County Cause No. 95-2-11791-1 SEA. Court of Appeals No. 39543-1-I. Summary judgment reversed, reinstating plaintiff's claim for damage action against his employer. Unpublished opinion.

21) Bray v. CKM Assoc., King County Cause No. 96-2-20367-0 SEA. Court of Appeals No. 39908-0-I. Trial court reversed on the issue of insufficient service of process, relation back of a complaint and CR 12(b)(6) application. Unpublished opinion.

22) State of Washington v. T.R. and D.M. (consolidated cases), King County Cause Nos. 96-8-06518-0 SEA, 96-8-06520-1 SEA. Court of Appeals Nos. 40188-2-I and 40189-1-I. Juvenile criminal case reversed on the issue of sufficiency of the evidence to convict for Robbery in the First Degree remanded for entry of Robbery in the Second Degree. Unpublished opinion. *Opinion and underlying Order not attached to protect the minors' privacy.

23) Veranth v. State of Washington Department of Licensing, King County Cause No. 95-2-04157-4 SEA. Court of Appeals No. 38456-2-I. Licensing case where trial court was reversed on the issue of whether any deficiency in a certified report was jurisdictional. Unpublished opinion.

24) Aponte v. State Department of Social and Health Services, 92 Wn. App. 604 (1998). Trial court reversed on whether the Department had authority to revoke the foster case license of the defendant.

25) State of Washington v. Laik, 62 Wn. App. 734 (1991). Trial court's granting of an exceptional sentence in a criminal case was reversed.

26) State of Washington v. Talley, 122 Wn. 2d 192 (1993). Trial court's ruling that the Washington hate crime statute was unconstitutional was reversed. Underlying order in related cases of State v. Stevens and Myers attached.

27) No Ka Oi Corp. v. National 60 Minute Tune, Inc., 71 Wn. App. 844 (1993). Action by a business against its franchisor. Summary judgment granted to defense on the issue of lost profits. Court of appeals reversed. Review denied at 124 Wash. 2d 1002 (1994).

28) Robinson v. City of Seattle, 119 Wash. 2d 34 (1992). See also answer to 15(1)(9). Trial court's grant of partial summary judgment on the issue of personal liability claims and 42 U.S.C. Sect. 1983 claim against the City was reversed. Trial held judgment in favor of Robinson. No appeal taken.

(29) DiBlasi v. City of Seattle, 85 Wn. App. 514 (1997), 136 Wash. 2d 865 (1998). Water law case concerning damages owed by the City for storm water runoff. Trial court's summary judgment reversed by the court of appeals. Supreme Court reversed the court of appeals.

(30) Colonial Imports v. Carlton Northwest Inc., 66 Wn. App. 1004 (1992), 121 Wash. 2d 726 (1993), 83 Wn. App. 229 (1996). Trial court was reversed by the court of appeals. Appellate court was reversed by the Supreme Court and the case was remanded for reconsideration of the equitable estoppel issue using a clear, cogent and convincing standard. Trial court's judgment affirmed by the court of appeals on the issue of equitable estoppel and suspension of pre-judgment interest.

(31) Calabrese v. Trujillo, King County Cause Number 96-2-29522-1 KNT. Trial court's ruling of improper service reversed by the court of appeals. Unpublished opinion attached.

NOTE: Seattle NW Securities Corp. v. SDG Holding Co., Inc., 61 Wn. App. 725 (1991). This case was not tried by me. I entered an order allowing the case to go up on appeal, because the judge who had ruled had since retired (see Order and docket).

3) Cases with Significant Constitutional Issues:

State v. Talley, 122 Wn. 2d 192 (1993) (see description in 15(2)(26) above).

Robinson v. City of Seattle, 119 Wash. 2d 34 (1992). See also answers to 15(1)(9) and 15(2)(28).

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

None.

17. Legal Career:

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

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

I have never served as a law clerk.

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

I have never practiced alone.

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

From August 1976 through January 1979, I worked as a legal intern and deputy prosecuting attorney for the King County Prosecutor's Office. The address is W-554 King County Courthouse, 3rd and James Street, Seattle WA 98104.

From January 1979 to June 1981, I was an instructor and staff attorney for the law practice clinic at the University of Washington School of Law. The School of Law's address is 1100 NE Campus Parkway, Seattle WA 98105.

From June 1981 to December 1985 I was an associate, and from January 1986 to August 1987 a partner, with the law firm of Levinson, Friedman, Vhugen, Duggan, Bland & Horowitz. The firm's address is 600 University Street, #2900, Seattle WA 98101-4156.

From 1983 to 1987, I was an adjunct faculty member at the University of Washington School of Law. See address above.

From 1986 to 1988, I was a visiting Clinical Professor and Director of the Law Practice Clinic at the University of Puget Sound (now Seattle University) School of Law. The address is Norton Clapp Center, 950 Broadway Plaza, Tacoma WA 98402.

On January 1, 1988, I was appointed to the King County Superior Court Bench. The Superior Court's address is C-203 King County Courthouse, 3rd & James Street, Seattle WA 98104.

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

During my tenure as a deputy prosecuting attorney from 1976 to 1979, my practice was entirely criminal prosecution of both felonies and misdemeanors. The practice included trials in courts of limited jurisdiction (misdemeanor crimes, traffic violations) and Juvenile

Court (primarily felony work), as well as adult felonies in Superior Court. I also served as the supervisor for legal interns while at Juvenile Court.

From 1979 to 1981, I was an instructor and staff attorney at the University of Washington Law Practice Clinic. My duties included supervising third-year law students working in a model law office doing misdemeanor criminal defense work. This included daily appearances in court as well as classroom simulations and instruction. During this period of time I taught one quarter of Negotiations and Dispute Resolution and I was the advisor to the client counseling competition.

During the 1981 to 1986 time period, I was in private practice doing personal injury litigation in state and federal court including medical malpractice, product liability, employment discrimination, highway design and admiralty work. During this same period I was an adjunct faculty member teaching Trial Practice.

In 1986 and 1987, I was again supervising legal interns in a model practice clinic. The clinic included misdemeanor prosecution in the courts of limited jurisdiction and family law in the Superior Court. During this same period I taught corresponding classroom work focusing on trials, presentation, interviewing, client counseling and legal writing. In the Fall of 1987, I became the Director of the Law Practice Clinic, taking on administrative, policy-making and supervisory responsibilities. I held this position until taking the bench in January 1988. I also taught one semester of Legal Ethics.

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

My clients have included the State of Washington while working as a prosecuting attorney. While practicing at the University of Washington, the clients were indigent persons accused of crimes or individuals unable to afford counsel for family matters, including dissolution and child custody. I have supervised approximately one hundred students in the direct practice of law; as a Clinical Professor, I was counsel of record. While in private practice I represented clients from all walks of life, with a wide diversity of economic, racial and ethnic backgrounds. My admiralty specialty included representing fishermen, ferry workers, longshoremen and unions working on open water and the waterfront.

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

From 1976 to 1981, while working as a prosecutor and in the Law Practice Clinic, I appeared in court daily. From 1981 to 1986, while in private civil practice, I appeared for trial or motion practice about 20 days a year. From 1986 to 1988, while again working in the Clinic, I appeared daily. From the time of my judicial appointment in 1988 to the present I have been in court daily.

2. What percentage of these appearances was in:

(a) federal courts; For the years 1981-1987, 15% of my court appearances were federal.

(b) state courts of record; At all other times, 100% of my appearances were in state court.

(c) other courts. None.

3. What percentage of your litigation was:

(a) civil; For the years 1981-1987, 100% civil

(b) criminal. For the years 1976-1981 and 1986-1987, 100% criminal.

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

It is difficult to estimate, but it may be as high as several hundred, including cases where I was the attorney of record but acted in the role of supervisor for law students. During most of my cases while a deputy prosecutor I was sole counsel. During my years of private practice in most significant cases I was co-counsel with other lawyers in my firm.

5. What percentage of these trial was:

(a) jury; 40%

(b) non-jury. 60%

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

(a) the date of representation;

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

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

Between 1976 and 1981, I appeared frequently in court. I asked the King County Prosecutor's Office to search for any record of cases that I tried, but they have informed me that they cannot sort cases according to the deputy prosecutor's name for cases this old. During 1976-1979, a bar number was not used to identify the deputy. I do not recall the names of the parties except those cases that may have been reported. While working at the University of Washington I did criminal defense work and supervised students. These cases were assigned through the Office of Public Defense. There is no record of those files and I do not recall the names of the defendants represented. My years of private practice are also difficult to reconstruct, as my former law firm has destroyed all files older than seven years. I include here reported opinions and what I have been able to recall from my own memory. I have also checked with the Clinic at Seattle University and I have been told that all files from that period have been destroyed.

While I cannot recall ten cases by name, I am able to identify attorneys who litigated against me and judges who presided over cases I tried on multiple occasions. I am also able to identify the names of students whose work I supervised. I have also included the name of a fellow colleague at the Seattle University Clinic.

For years 1976 - 1981:

Attorneys in opposition:

Ron Kessler (now a Superior Court Judge)	(206) 296-9113
Steve Hayne	(425) 451-1995
Vicki Seitz (now a State District Court Judge)	(206) 296-0144

Judges

Judge Gary Utigard (retired State District Court Judge)	(206) 439-9747
Judge Woody Leverette (District Court Judge)	(206) 296-7784

Students

Laura Inveen (now a Superior Court Judge)	(206) 296-9268
Janet Rice	(206) 622-8000

Professor Teaching in the Law Practice Clinic at Seattle University

Betsy Hollingsworth	(253) 591-2278

(1) Miller v. Peterson, 42 Wn. App. 822 (1986). I represented the plaintiff (Miller) in a medical malpractice action. I did all phases of the litigation including the appeal. The case was litigated before Judge James Dore in King County Superior Court. The case represented an issue of first impression:

What is the standard of care applied in a medical negligence case to practitioners of one school of medicine (podiatry) when performing techniques of another school (orthopedic surgery)? It was also significant because it altered the standard rule concerning surprise witnesses and became a frequently cited case concerning discovery abuses. A plaintiff's trial verdict was affirmed on appeal.

Co-counsel for the appeal only
Maria Diamond
600 University Street, #2900
Seattle WA 98101-4156
(206) 624-8844

Counsel for Peterson
Daniel Mullin
1000 Second Avenue #1350
Seattle WA 98104-1046
(206) 622-2295

(2) State v. Vaster, 24 Wn. App. 405 (1979). Prosecution for Burglary in the First and Second Degrees and Possession of Stolen Property. At trial I was co-counsel, taking responsibility for examination and preparation of witnesses working with police officers on aerial photos and diagrams of the scene. On appeal I was sole counsel responsible for writing the State's brief on the issues of search and seizure. The case was tried before Judge Frank J. Eberharter in King County Superior Court. A State's verdict was affirmed on appeal.

Co-counsel at trial
Greg Canova
900 Fourth Avenue #2000
Seattle WA 98164-1001
(206) 464-7744

Opposing Counsel
John Austin
4401 SW Edmunds Street
Seattle 98116-4421
(206) 937-7468

(3) Faller v. Schiller, Snohomish County Case Number 80-2-03462-4 (trial date 5/23/85). I represented plaintiff Faller in a highway design case brought against the State of Washington and the driver of a following car. I was responsible for working up the case and consulting with highway experts and presenting the claim for damages. I examined witnesses and presented closing argument to the jury. The case was tried before Judge Robert C. Bibb in

Snohomish County Superior Court. A plaintiff's trial verdict was affirmed on appeal.

Co-counsel
Donald Horowitz
2033 6th Avenue #800
Seattle WA 98121-2523
(206) 328-2952

Opposing counsel
Roger Gerdes
900 4th Avenue #2000
Seattle WA 98164-1012
(206) 464-7744

James Beecher
1601 5th Avenue #2200
Seattle WA 98101-1625
(206) 624-2200

(4) Bachtel v. Mammoth Bulk Carriers, Ltd., 722 F.2d 744 (9th Cir. 1983), cert. denied, 469 U.S. 821 (1984). I represented the plaintiff, who was injured falling off of a log ship. The issue of law presented turned on whether it was the shipowner's responsibility to rig safety nets. My participation began when the case was remanded for a second trial. I was co-counsel at trial before Judge Jack Tanner in Federal District Court for the Western District of Washington. My involvement was the organization of exhibits, deposition indexing and responding to motions. I was responsible for presentation of the damages and loss of consortium claim. A plaintiff's verdict for $750,000 was appealed to the Ninth Circuit, where it was reversed. I participated in writing the second appeal to the Ninth Circuit and the certiorari petition to the United States Supreme Court, which was denied.

Co-counsel
Robert Duggan
600 University Street, Suite 2900
Seattle WA 98101-4156
(206) 624-8844

78-6980 Kaluna St., Unit 105
Kailua Kona HI 96740
(808) 324-0773

Opposing Counsel
Richard Montgomery (deceased)

(5) Caden v. Zip Truck Lines, Inc., King County Case Number 81-2-15108-6. I was co-counsel in a products liability case that was settled on the eve of trial, in the plaintiff's favor. I represented the plaintiff, who was injured when a

trailer hitch failed, causing a trailer to come uncoupled and cross the center line, striking and injuring my client severely. I was co-counsel responsible for preparation of the damages portion of the case and the organization of all documents and exhibits.

Co-counsel
Donald Horowitz
2033 6th Avenue #800
Seattle WA 98121-2523
(206) 328-2952

Opposing Counsel
Preston Niemi
(no longer practicing due to advanced stages of cancer)
(206) 329-0180

Richard Dunlap
900 4th Avenue #1550
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(206) 682-0902

Richard Buchanan
701 5th Avenue #2500
Seattle WA 98104
(206) 623-4990

David Soderland
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Seattle WA 98164-1001
(206) 682-0902

Robert Dickerson
1215 4th Avenue #1700
Seattle WA 98161-1007
(206) 623-4100

Dale Kremer
1420 5th Avenue, Suite 4100
Seattle WA 98101-2333
(206) 621-6640

James Bauer
2101 4th Avenue #2400
Seattle WA 98121-2320
(206) 615-3221

(6) Huntsman v. ILWU Local 24, Grays Harbor County Case Number 81-2-00407-1. I represented a union being sued for sex discrimination. I conducted extensive investigation of multiple persons in the union. I advised my clients of the outcome of those investigations and participated in the settlement negotiations prior to trial. The case was significant because of its impact on a small community dependent on logging and shipping. The case was settled before trial.

Co-counsel
Robert Duggan
600 University Street, Suite 2900
Seattle WA 98101-4156
(206) 624-8844

78-6980 Kaluna St., Unit 105
Kailia Kona HI 96740
(808) 324-0773

Opposing Counsel
Judge Paula Casey
2000 Lakeridge Drive SE, Building 2
Olympia WA 98504-0947
(360) 709-3201

(7) Vukich v. Phoenix Container Lines, Ltd., King County Cause No. 80-2-17141-1. I represented a longshoreman who was injured while working as an operator in a large crane. The bottom fell out of a freight container while it was being lifted, causing the cab of the crane to whip back and forth, injuring my client. I participated with co-counsel in investigation, expert preparation, brief writing and document organization. The case was settled immediately before trial.

Co-counsel
Donald Horowitz
2033 6th Avenue #800
Seattle WA 98121-2523
(206) 328-2952

Opposing Counsel
Richard Buchanan
701 5th Avenue #2500
Seattle WA 98104
(206) 623-4990

(8) Moore v. Yorioka, Island County Cause No. 14946 (1983). I represented the plaintiff in this medical malpractice action. It was tried to a jury before Judge Richard Pitt in Island County Superior Court. It presented unique issues

surrounding the hearsay rule and the expertise of medical experts from different schools of medicine. Jury returned a defense verdict.

Opposing Counsel
Craig Kastner
2908 228th Avenue SE
Issaquah WA 98029
(425) 391-4000

I have attempted to select a variety of litigators who practiced before me within the past five years in varied areas of the law:

Charles Gordon	1325 4th Avenue, #1800	Seattle, WA 98101	(206) 467-6477
Jeffrey Tilden	1325 4th Avenue, #1800	Seattle, WA 98101	(206) 467-6477
Jon Rosen	705 Second Avenue #1200	Seattle, WA 98104	(206) 682-6711
Deborah Bianco	300 Elliott Ave. W. #550	Seattle, WA 98119	(206) 281-9000
Ralph Maimon	10900 NE 4th Street #850	Bellevue, WA 98004	(425) 455-3900
Ann Carey	1401 E. Jefferson St. #200	Seattle, WA 98122	(206) 322-8400
Joel Cunningham	701 Fifth Avenue #6700	Seattle, WA 98104	(206) 467-6090
Wolfgang Anderson	207 E. Edgar St.	Seattle, WA 98102	(206) 322-2060
Frankie Crain	601 Union St. #4100	Seattle, WA 98111	(206) 628-6600
Carl Forsberg	900 4th Avenue #1700	Seattle, WA 98164	(206) 689-8500
Christopher Brain	700 Fifth Avenue #5600	Seattle, WA 98104	(206) 682-5600
Robert Rohan	600 University St. #1601	Seattle, WA 98101	(206) 223-1600
Donald Madsen	420 W. Harrison, Suite 201	Kent, WA 98032	(253) 520-6509

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

I have spent most of my legal career involved with teaching others the appropriate preparation and presentation of trials. I have been involved continuously with not only teaching lawyers at law schools, CLE programs and national programs like the National Institute for Trial Advocacy, but I have also been involved with the training of judges. I have instructed my judicial colleagues in new methods of jury selection, the effective management of case loads, and the creative handling of complex litigation.

I also have a special interest in legal ethics. In this area I have taught at the law school level, and since becoming a judge I have developed a special area of interest in judicial ethics by serving on various ethics advisory committees.

I have also found myself leading the charge for change to make the courts more effective and efficient. These innovations include: development of a new method of jury

selection, which courts across the state have adopted. This method has reduced by half the time spent in selecting a jury. I also chaired the individual calendaring project. Over the course of approximately five years, the court moved from a master calendaring system to individual case assignments. This involved creating new calendaring systems, policies, rules and procedures, as well as case flow management for an ever-increasing group of judges. We started with six, then gradually moved to twenty-two judges. This involved the changing of practice and culture for both attorneys and judges. This resulted in decreased backlog for the civil cases and more predictable trial dates. In short, it has proven to be a more effective and efficient management system.

My most recent assignment included the implementation of the Unified Family Court concept to our newly-opened Regional Justice Center. This included the coordinated calendaring of causes of action touching children and families, including divorces, parental rights terminations, child abuse and neglect, truancy and youth at risk. The project included implementing policy, procedure, and education in the area of technology, calendaring, pro-se litigant services and an in-house drop-in child care center. This involved community outreach, coordinating bar support, grant-writing and creative solutions to family problems.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

PART II
FINANCIAL DATA AND CONFLICT OF INTEREST

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

As a superior court judge, I participate in the State's deferred compensation plan (Judicial Retirement Account), where 2.5% of my annual salary is put in an account and matched by the State with 2.5%. This is a Section 457 plan under the Internal Revenue Code. This can be transferred to another Section 457 plan, but not to an IRA, 401(k) or other similar plan. The intent of the Plan is to provide additional retirement income. However, upon separation from service, I will be allowed to receive these payments. My plan is to leave these amounts for retirement or use them to pay for my children's college education.

In addition, I have 13.5 years of service in the Public Employees Retirement System pension plan, entitled PERS 1. This is a defined benefit retirement plan that allows an employee to retire and receive benefits based on years of service x 2 as a percentage of highest salary as figured under the plan. This could be withdrawn on separation from service. It is my plan to leave this amount in and utilize the pension benefits that would come into effect at age 65.

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

During my eleven years as a judge I have attempted to arrange my financial and social affairs to avoid conflict. For example, I try not to hold stock in local companies that may appear before me in litigation. On one occasion I discovered that my husband held stock in his 401(k) for a company that had a case pending before me. I disclosed this to all parties and secured their written consent to continue with the case. I have always followed the procedure suggested by the Washington State Ethics Advisory Committee, which requires disclosure and consent on the record in order to continue to preside over the case.

I have always recused myself from cases involving my former law firm and the firm in which my husband practices, cases with which I have had an attorney-client relationship and cases in which close personal friends are involved. I would resolve any conflict by following the appropriate federal rules and guidelines.

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

No.

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

See referenced financial report.

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

See attached.

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

In 1979 I participated in a non-partisan political campaign for the retention of Superior Court Judge Carmen Otero. I acted as the campaign manager, arranging appointments, scheduling appearances, working on mailings and coordinating volunteers. The campaign was ended when Judge Otero received no opposition in the election.

In the early 1980s I hosted a party for friends to meet Bobbe Bridge (now Presiding Judge of the King County Superior Court). She was then a candidate for County Council. Campaign donations were collected by her campaign manager. I provided the hospitality but did not solicit funds.

AO-10 (w)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting *(Last name, first, middle initial)*	2. Court or Organization	3. Date of Report
Pechman, Marsha J.	U.S. District Court - W.D. WA	03/25/1999
4. Title *(Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)* U.S. District Judge - Nominee	**5. Report Type (check type)** X Nomination, Date 03/24/1999 ___ Initial ___ Annual ___ Final	**6. Reporting Period** 01/01/1997 to 03/24/1999
7. Chambers or Office Address King County Courthouse 516 Third Avenue Seattle WA 98104	**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 section where you have no reportable information. Sign on the last page.

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

	POSITION	NAME OF ORGANIZATION / ENTITY
[X]	**NONE** (No reportable positions.)	
1		
2		
3		

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

	DATE	PARTIES AND TERMS
[ ]	**NONE** (No reportable agreements.)	
1	1/1/97	Judicial Retirement Account, State of Washington
2	1/1/98	Public Employees Retirement System, State of Washington (Both plans are retirement benefit plans.)
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
[ ]	**NONE** (No reportable non-investment income.)		
1	12/31/97	State of Washington, King County Superior Court	$ 99,160.00
2	12/31/98	State of Washington, King County Superior Court	$ 100,995.00
3	3/24/99	State of Washington, King County Superior Court	$ 25,249.00
4	12/31/97	Peery, Hiscock, Pierson, Kingman & Peabody (S)	

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Pechman, Marsha J.	03/25/1999

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	Exempt.	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	Exempt.		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
1	Visa	Credit Card (J)	K
2	Children's School Tuition	(J)	J
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Pechman, Marsha J.

Date of Report: 03/25/1999

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. 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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Centennial Money Market Fund (S)	A	Dividend	J	T	exempt				
2 AT&T Corp (S)	A	Dividend	J	T	exempt				
3 IBP Inc. (S)	A	Dividend	J	T	exempt				
4 Lucent Technologies, Inc. (S)	A	Dividend	J	T	exempt				
5 NCR (S)	A	Dividend	J	T	exempt				
6 Franklin Custodian Funds (S)	A	Dividend	J	T	exempt				
7 Templeton Growth Fund (S)	A	Dividend	J	T	exempt				
8 Templeton Global Investment Fund (S)	A	Dividend	J	T	exempt				
9 Washington Mutual Investors Fund	A	Dividend	J	T	exempt				
10 U.S. Treasury Bonds	A		K	T	exempt				
11 Franklin Managed Trust Fund	A	Dividend	J	T	exempt				
12 Kemper Value Securities Fund	A	Dividend	J	T	exempt				
13 Kemper High Yeld Fund	C	Dividend	K	T	exempt				
14 Mutual Series Discovery Fund	A	Dividend	J	T	exempt				
15 Mutual Series Beacon Fund	A	Dividend	J	T	exempt				
16 Templeton Funds	A	Dividend	J	T	exempt				
17 Templeton Global Opportunities Fund	A	Dividend	J	T	exempt				

1 Inc/Gain Codes: (Col. B1, D4) A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val Codes: (Col. C1, D3) J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: (Col. C2) Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Pechman, Marsha J.

Date of Report: 03/25/1999

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18 Bristol Myers Squibb (S)		Dividend	J	T	exempt				
19 Cascade Natural Gas Corp. (S)		Dividend	J	T	exempt				
20 Dayton Hudson Corp. (S)		Dividend	K	T	exempt				
21 Exxon Corp. (S)		Dividend	J	T	exempt				
22 GTE Corp. (S)		Dividend	K	T	exempt				
23 Ingersoll Rand Co. (S)		Dividend	J	T	exempt				
24 Microsoft Corp. (S)		Dividend	M	T	exempt				
25 Motorola Inc. (S)		Dividend	J	T	exempt				
26 Pacificorp (S)		Dividend	J	T	exempt				
27 Wells Fargo & Co. (S)		Dividend	J	T	exempt				
28 Oppenheimer Main Inc. & Growth (S)	A	Dividend	K	T	exempt				
29 Putnam Fund for Growth & Income (S)	A	Dividend	J	T	exempt				
30 Seligman Frontier Fund (S)	A	Dividend	J	T	exempt				
31 U.S. Coupon Treasury Strips (S)			K	T	exempt				
32 First American Gov't Obligations (S)	B	Dividend	K	T	exempt				
33									
34									

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Pechman, Marsha J.	03/25/1999

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Pechman, Marsha J.	03/25/1999

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	12/31/98	Peery, Hiscock, Pierson, Kingman & Peabody (S)	$ 0.00
6	12/31/97	Hallmark Keating Abbott (S)	$ 0.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Pechman, Marsha J.	03/25/1999

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Marsha J. Pechman Date 3/25/99

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
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	16	500	00	Notes payable to banks – secured			
U.S. Government securities – add schedule				Notes payable to banks – unsecured			
Listed securities – add schedule	162	053	00	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 tax and interest			
Doubtful				Real estate mortgages payable – add schedule	227	652	00
Real estate owned – add schedule	537	500	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts – itemize			
Autos and other personal property	82	000	00	Real estate contract	1	500	00
Cash value – life insurance	36	000	00	Visa	10	000	00
Other assets – itemize				Mastercard	5	000	00
WA State PERS I Retirement	85	000	00	School Tuition Contract school year 1989-99	10	500	00
WA State Judicial Retirement	55	000	00				
Husband's 401(k)	297	898	00	Total liabilities	254	652	00
				Net Worth	1017	299	00
Total Assets	1271	951	00	Total liabilities and net worth	1271	951	00
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, co-maker or guarantor	none			Are any assets pledged? (Add schedule.)	no		
On leases or contracts	none			Are you defendant in any suits or legal actions?	no		
Legal Claims	none			Have you ever taken bankruptcy?	no		
Provision for Federal Income Tax	none						
Other special debt	none						

1959

FINANCIAL STATEMENT OF
MARSHA J. PECHMAN AND WILLIAM E. FITZHARRIS, JR.

SCHEDULE OF REAL ESTATE

A.	Residence	Seattle WA		
	Date Purchased:	8/1/83		
	Purchase Price:	$182,000		
	Present Market Value:	$500,000 (est.)		
	Lienholder:	Washington Mutual $227,652		
			TOTAL	**$500,000**
B.	Recreational Property	Index, WA		
	Ownership Interest	25%		
	Type: Riverfront cabin plus three contiguous undeveloped lots			
	Date Purchased:	7/7/82		
	Purchase Price:	$58,000		
	Present Market Value	$150,000 (gross)		
			TOTAL	**$37,500**

SCHEDULE OF OTHER ASSETS

A.	Bank Accounts	Balance		
	Washington Mutual	$2,000		
	Seattle WA 98101	2,000		
		9,000		
	SeaFirst Bank	3,500		
	Seattle WA 98104			
			TOTAL	**$16,500**
B.	Stocks and Bonds	Value		
	AG Edwards & Sons	$117,180.07		
		44,873.40		
			TOTAL	**$162,053.47**

C. Life Insurance

Northwestern Mutual
Face Amount: $200,000 Cash Value: $35,000

Lutheran Brotherhood
Face Amount: $2,500 Cash Value: $ 1,000

TOTAL $36,000

D. Retirement Plans

Wash. State Public Employees
Retirement System
Employee: Marsha J. Pechman Value: $85,000 (est.)
Dept. of Retirement Systems
Olympia WA 98504-2511

Wash. Judicial Retirement Account Value: $55,000 (est.)
Employee: Marsha J. Pechman
Committee for Deferred Compensation
Olympia WA 98504-6711

Peery Hiscock Pierson Kingman & Peabody, P.S.
Money Purchase Pension Plan Value: $297,897.73

TOTAL $437,897.73

E. Automobiles	Est. Value
1985 Volvo	$ 2,000
1993 Toyota	$15,000

TOTAL $17,000

F. Other Personal Assets	Est. Value
Household Furnishings	$50,000
Jewelry	15,000

TOTAL $65,000

TOTAL OF ALL ASSETS $1,271,951.20

SCHEDULE OF LIABILITIES

A. Loans

Creditor (Acct. No.)	Monthly Payment (Term)	Balance (Security)
Wash. Mutual Savings Seattle WA 98101	$2,675.57 9 years remaining Paid off Oct. 2008	$227,652 (residence first mortgage)

B. Credit Cards

Creditor	Balance
VISA (Seafirst Bank)	$10,000
Mastercard	5,000

C. Other

Real Estate Contract to purchase fourth lot for Recreational property in Index, WA. 25% interest paid to Milda and Donald Boursaw.	1,500
Tuition for children	10,500/year
TOTAL LIABILITIES	**$254,652**
NET WORTH	**$ 1,017,299.20**

FINANCIAL STATEMENT OF
MARSHA J. PECHMAN AND WILLIAM E. FITZHARRIS, JR.

DETAIL OF "SCHEDULE OF OTHER ASSETS - B. Stocks and Bonds"

IRA Account Summary for Marsha Pechman (as of 12/31/98)

Taxable Bonds	
U.S. Treasury Bonds	$36,943.21
Mutual Funds	
Franklin Managed Trust Fund	8,946.78
Kemper Value Securities Fund	12,339.38
Kemper High Yield Fund	28,701.77
Mutual Series Discovery Fund	8,056.68
Mutual Series Beacon Fund	7,995.01
Templeton Funds	6,478.35
Templeton Global Opportunites Fund	7,737.78
	$117,198.96
minus cash owed to fund	-18.89
TOTAL	$117,180.07

IRA Account Summary for William Fitzharris (as of 12/31/98)

Cash and Money Fund	
Centennial Money Market Fund	$1,026.88
Equities	
AT&T Corp	7,575.00
IBP Inc.	5,825.00
Lucent Technologies, Inc.	7,036.03
NCR Corp.	250.50
Mutual Funds	
Franklin Custodian Funds	5,675.40
Templeton Growth Fund	4,983.98
Templeton Global Investment Fund	3,575.22
Washington Mutual Investors Fund	8,925.39
TOTAL	$44,873.40

DETAIL OF "SCHEDULE OF OTHER ASSETS - D. Retirement Plans"

401(k) Account Summary for William Fitzharris (through Peery Hiscock Pierson Kingman & Peabody, P.S.) (as of 12/31/98)

Stocks	
Bristol Myers Squibb	$13,381.20
Cascade Natural Gas Corp.	5,437.50
Dayton Hudson Corp	21,157.50
Exxon Corp.	14,625.00
GTE Corp.	16,250.00
Ingersoll Rand Co.	10,631.25
Microsoft Corp.	105,402.12
Motorola Inc.	7,327.44
Pacificorp	1,053.10
Wells Fargo & Co.	7,987.40
Mutual Funds	
Oppenheimer Main Inc. & Growth	25,441.83
Putnam Fund for Growth & Income	7,655.56
Seligman Frontier Fund	10,057.89
Fixed Income	
U.S. Coupon Treasury Strips	24,623.20
Cash Balance & Money Market Funds	
First American Gov't Obligations	26,866.74
TOTAL	$297,897.73

1964

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

PART III
GENERAL

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

While working at the University of Washington, I had the privilege of training numerous law students who have gone on to be lawyers for indigent defense agencies as well as legal services for the poor. While in private practice, I was the firm organizer and administrator for our pro bono program through the King County Bar Association. During this time frame, my firm won an award on two occasions for the most significant contribution to pro bono services for those years. I also volunteered at the neighborhood legal clinics run by the King County Bar Association. I served as a trustee for the Seattle Children's Museum and during my tenure the board worked on programs to bring the museum to and make it affordable for children of low income families. I have also engaged in community service with my children by volunteering for the Red Cross disaster relief, clothing drives and "adopt a family" programs. Recently I participated in a "blitz" build through Habitat for Humanity, constructing five homes for low income families. In addition, I was a co-leader for Camp Fire Boys and Girls Club.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I do not currently belong to any organization that discriminates.

While in college I belonged for one year (1974-1975) to a campus sorority (Pi Beta Phi). This sorority only admitted women. I lived in the sorority house for one school year.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

A judicial selection committee to fill this position was created by Senators Patti Murray and Slade Gorton. The committee was co-chaired by Michael McKay (former U.S. Attorney for the Western District of Washington) and attorney Jenny Durkan. A total of twelve prominent members of the bar and non-lawyers with interest in the judiciary were chosen to sit on this committee (six Republicans and six Democrats). Each applicant was asked to fill out an extensive questionnaire and background checks were done by members of the committee. The committee then conducted in-person interviews of selected candidates. Three names were then forwarded to the Senators, who conducted a joint interview with each of the three candidates. From this process I was selected.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

I have always maintained the philosophy that it is my job to try the case before me, applying the legal principles currently in existence. I do not view my job as the place to make public policy, but rather one where public policy, written by the legislative branch, is interpreted and applied to the case before me. I view my role as being responsible for an effective and efficient place where grievances may be heard and resolved.

1966

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

William Allen Pepper, Jr.

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

Residence: Cleveland, Mississippi

Office: Post Office Box 187, Cleveland, Mississippi 38732

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

July 20, 1941, Greenwood, Mississippi

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

Married. Wife's maiden name: Virginia Nell Brown
Date of Marriage: August 24, 1967
Wife's employer: W. Allen Pepper, Jr., Attorney at Law, Post Office Box 187, Cleveland, Mississippi 38732

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

University of Mississippi 1959 - 1963 Bachelor of Arts Degree received May 26, 1963

Millsaps College, Jackson, Mississippi 1961 (summer school)

University of Mississippi School of Law 1966 - 1968 Juris Doctor received August 18, 1868

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

May 1963 - November 1963: W. A. Pepper Farm, Belzoni, Mississippi
December 1963 - February 1964: Pennsylvania Life Insurance Company, Jackson, Mississippi - salesman

1967

March 1964 - March 1966: United States Army Active Duty
September 1968 - June 1972: Smith & O'Hare Law Firm as associate, Cleveland, Mississippi
July 1972 - Present: Solo practice as an attorney, Cleveland, Mississippi
July 1972 - June 1998: Part-time Public Defender, Municipal Court, Cleveland, Mississippi
1976-1988 Member, Bolivar County Mississippi Elections Commission, Chairman 1984-1988
Cleveland Noon Lions Club (President 1985-1986)
Margaret Green Junior High School Parent, Teachers, Students Association (President 1993)
Delta State University Booster Club (Director 1998-1998)
Cross Tie Arts Council (President 1972)
Presbyterian Day School (Board of Trustees President 1990)
Cleveland-Bolivar County Mississippi Chamber of Commerce and Industrial Development Foundation (Vice President 990)
American Cancer Society (President Bolivar County Chapter 1980)

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

United States Army, Active Duty, March 11, 1964 - March 9, 1966; rank 0-2, serial number 05318776; discharged: honorable

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

N/A

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

University of Mississippi Law School
Alumni Board of Directors, 1987-1992
Lamar Order (Chairman 1993-1994) (Fund raising arm of University of Mississippi School of Law)

Civil Justice Reform Advisory Group, U. S. District Court, Northern District of Mississippi (Member 1995)

1968

Mississippi State Bar Member (Director, Young Lawyers Section, 1973; 1975)
Lawyer Referral Committee Member 1979-1980)
Admission Study Committee (Vice-chairman 1980)
Complaints Committee (Member 1981-1984)
Disciplinary Review Committee (1983)
Nomination Committee (1984-1985)
Legislation Committee (1987-1989)
Law Office Management Committee (1987-1989)
Complaints Tribunal (1988-1992)

American Bar Association

Mississippi Trial Lawyers Association
(Secretary, 1976-1978; 1981-1982; Vice President, 1982-1983; President-elect, 1983-1984; President, 1984-1985)
Board of Governors (1976)
CLE Chairman (1990-1991)

The Association of Trial Lawyers of America

American Board of Trial Advocates

Mississippi Bar Foundation
(Fellow 1976-1999; Trustee 1992-1993
President 1994-1995)

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

I have held membership in and positions of authority with the following organizations as indicated:

AARP
Delta State University Foundation
University of Mississippi Alumni Association
Delta Council

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

Supreme Court, State of Mississippi, 1968
United States District Court, Northern District of Mississippi, 1968
United States District Court, Southern District of Mississippi, 1994
United States Court of Appeals, Fifth Circuit 1993
Supreme Court of the United States of America 1983

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

VOIR DIRE (Publication of the Mississippi Trial Lawyer's Association):
1) August 1984 - "The President Speaks"
2) October 1984 - "The President Speaks"
3) December 1984 - "The President Speaks"
4) May 1985 - "The President Speaks"

Foundation Focus (Publication of Mississippi Bar Foundation):
1) Fall 1994 - "President's Message"
2) Spring 1995 - "President's Message"
3) Summer 1995 - "President's Message"

Annual Report, Mississippi Bar Foundation 1995

Seminar Outline: "Civil Procedure Update", Mississippi Trial Lawyers Association Essential Elements Seminar, September 19, 1997

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

Excellent. July, 1998

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, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where you judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

Not applicable.

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

I was elected to office for three terms as an elections commissioner for Bolivar County, Mississippi, the last four years serving as chairman of that commission. My term in office ran from 1976 through 1988. I was unsuccessful for my bid for reelection in 1988.

17. Legal Career:

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

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

I have never clerked for a judge.

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

Solo practice, July 1972 through the present

July 1, 1972 - November, 1974: 103 South Court Street, Cleveland, Mississippi

November, 1974 - November 1982: 213 North Pearman Avenue, Cleveland, Mississippi

November, 1982 - Present: 301-C West Sunflower Road, Cleveland, Mississippi

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

I practiced as an associate with the law firm of Smith & O'Hare, 125 South Court Street, Cleveland, Mississippi, from September 1968 through June 1972, Cleveland, Mississippi.

Beginning in July 1972, I served as the Public Defender for the Municipal Court, 301 South Sharpe Avenue, Cleveland, Mississippi. I kept this part-time position until June, 1998.

b.

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

Beginning in 1968 I started an active trial practice. I tried my first murder case less than a year after being admitted to the bar, and my first wrongful death case in Federal District Court within two years. Beginning in 1972, I was appointed a public defender for the City of Cleveland, Mississippi, and held that position until July, 1998. In 1972 and continuing for approximately three or four years, I was a public defender for the Circuit Court here in Bolivar County, Mississippi, which handles felonies. During that period of time, I represented indigent defendants in felony cases, as well as maintaining an active civil practice. I tried automobile negligence cases and other tort claims. I also filed several workers compensations claims which resulted in hearings before the administrative judges and the full commission, as well as appeals to the Circuit Court. It was during this period of time that I made my first of several appearances to the Supreme Court of the State of Mississippi, primarily on criminal defense cases. Real estate closings and domestic cases, i.e., divorce and custody matters also played a prominent part in my practice.

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

During the 1970s, many of my clients were indigent defendants whom I represented both in felony cases and in misdemeanors. The majority of my other clients were middle class individuals living in the immediate geographical area of Cleveland, Mississippi. During the 1980s, the number of clients increased significantly, again consisting primarily of middle class individuals living in the Mississippi Delta.

From 1990 to the present, while I continue to represent poor and middle class clients, I have also represented banks, corporations and businesses, primarily located in the Mississippi Delta area.

While my practice has primarily been plaintiff oriented, I have on several occasions been associated by defense counsel to assist in trying cases.

Over a period of years, generally the type of clients that I have represented has remained consistent; i.e., low income, middle income, and some affluent clients. The number of each category has increased substantially over my thirty year practice.

c.

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

   Frequently. I am not making as many court appearances as I did in earlier years primarily due to the fact that I am not currently accepting contested domestic relations matters, and automobile negligence claims are less frequent.

2. **What percentage of these appearances was in:**
   (a) federal courts 10%
   (b) state courts of record 90%
   (c) other courts

3. **What percentage of your litigation was:**
   (a) civil 75%
   (b) criminal 25%

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

   Approximately one hundred, with all but less than a dozen being as chief or sole counsel

5. **What percentage of these trials was:**
   (a) jury 10%
   (b) non-jury 90%

18. **Litigation: Describe the ten most significant litigation 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 each 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, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1)
CASE: James Roy Hawkins and West Implement Company v Federated Mutual Insurance Company and John Deere Insurance Company, No. 2:95CV109-B-A (1995)

COURT: United States District Court, Northern District of Mississippi

JUDGE: Honorable S. Allan Alexander, United States Magistrate Judge, Post Office Box 608, Oxford, Mississippi 38655, telephone number (601) 234-3114.

COUNSEL OPPOSITE: Attorney for defendant John Deere Insurance Company Richard E. Circeo, Holcomb Dunbar, Post Office Box 190, Southaven, Mississippi 38671-0190, telephone number (601) 342-6806. Attorney for Federated Insurance Company John B. Gillis, Luckett Law Firm, Post Office Box 1000, Clarksdale, Mississippi 38614-1000, telephone number (601) 624-2591

I filed suit on behalf of both the farm implement dealer and the purchaser where a combine was destroyed by fire after the sale, but prior to delivery to the farmer. There was an insurance coverage dispute between the dealer's stock coverage and the credit company's coverage as to when risk of loss passed. After discovery, all parties agreed this was a case which should be disposed of by summary judgment and such was submitted to the trial judge for decision, which ultimately resulted in defendant Federated Insurance Company bearing the loss.

2)
CASE: Melissa Ann Taylor, A Minor, By and Through Her Father and Next Friend, James R. Taylor, Jr., vs. United States Fidelity & Guaranty Company, a Corporation, Number 2:92CV066-B-0 (1993)

COURT: United States District Court for the Northern District of Mississippi

JUDGE: Honorable J. David Orlansky, 1789 Camellia, Greenville, Mississippi 38702; telephone number (601) 335-9214

COUNSEL OPPOSITE: Honorable Gerald H. Jacks, Post Office Box 1209, Cleveland, Mississippi 38732; telephone number (601) 843-6171

I represented a nineteen-year-old female who was riding as a passenger in one of the cars in which a collision resulted in the death of the two drivers. The services of an accident reconstruction expert were needed to prove liability, and suit was brought for underinsured motorists benefits, which, with the stacking of coverages, provided adequate sums to compensate my client for loss of a spleen and other injuries. The case was settled after discovery and a final pre-trial conference.

3)
CASE: Myron Batts v Tow-Motor Forklift Company and Caterpillar Industrial, Inc. (1991), Number DC-88-71-D.D

COURT: United States District Court, Northern District of Mississippi

JUDGE: Honorable Glen H. Davidson, United States District Judge, Post Office Box 767, Aberdeen, Mississippi 38730, telephone number (601) 369-6486.

CO-COUNSEL: Honorable Charles M. Merkel, Jr., Merkel & Cocke, Post Office Box 138, Clarksdale, Mississippi 38614-1388, telephone number (601) 627-9641

COUNSEL OPPOSITE: Honorable John Corlew, Watkins & Eagar, Post Office Box 650, Jackson, Mississippi 39205-0650, telephone number (601) 948-6470

LENGTH OF TRIAL: Five days

I was requested by John Corlew of Watkins & Eagar, attorneys for the defendant, to assist in the trial of this case. It dealt with the design of a forklift wherein it was alleged that the manufacturer's failure to install an alarm which would have warned of the forklift's backward movement created a inherently dangerous and defective product, and which alarm, if it had been installed, would have prevented the accident and injury to Plaintiff, the amputation of his left leg. My role consisted of cross examination of experts, and after a week long trial a verdict for the defendant was rendered.

4)
CASE: Thomas B. Coleman, Plaintiff, vs. Independent Fire Insurance Company and Stan Bennett, Defendants; Civil Action No. DC87-7-B-0

COURT: United States District Court for the Northern District of Mississippi (1988)

JUDGE: Honorable William C. Keady

CO-COUNSEL: Honorable William C. Walker, Jr., Post Office Box 1115, Oxford, Mississippi 38655, telephone number (601) 234-8074

COUNSEL OPPOSITE: Honorable Robert S. Crump, III, Meador & Crump, Post Office Box 1319, Cleveland, Mississippi 38732-1319, telephone number (601) 846-0405

In late 1995, the Plaintiff purchased a fire insurance policy which provided for $6,000.00 coverage on Plaintiff's mobile home and $3,000.00 coverage on contents. Initially, Plaintiff paid the premium for three month's coverage, but the agent altered the copy of the application so as to show only one month's premium paid. The agent did not inform the Plaintiff of this alteration, and during the period in which coverage would have been paid for, the unit was completely destroyed by fire. The agent was instrumental in initiating arson charges against the insured, and after a jury acquittal on criminal charges, a bad faith claim was filed against the insurance company and its agent. After extensive discovery, settlement was reached at $35,000.00. Co-Counsel and I shared responsibility in discovery and trial preparation.

5)
CASE: United States Fidelity & Guaranty Company and Estate of Clyde Lucille Brinton vs. Sunburst Bank, Number 24,601 (1991)

COURT: Bolivar County, Mississippi, Chancery Court, Second Judicial District

JUDGE: . Honorable Jon M. Barnwell, Post Office Box 1579, Greenwood, Mississippi 38930, telephone number (601) 453-1432.

COUNSEL OPPOSITE: Attorneys for USF&G: Honorable Roy D. Campbell, Jr., Campbell & DeLong, Post Office Box 1856, Greenville, Mississippi 38702-1856, telephone number (601) 335-6011. Attorney for Brinton Estate: Honorable Barry H. Powell; Alston, Rutherford & Van Slyke, Post Office Drawer 1532, Jackson, Mississippi, telephone number (601) 948-6882

LENGTH OF TRIAL: Three days

I defended a bank in an action wherein negligence was claimed in processing allegedly altered checks by an attorney who misappropriated trust account funds from an estate, the attorney shortly after the event committing suicide. The trial court, after hearing expert testimony from handwriting experts, determined that there was no unauthorized alteration in the checks and entered a verdict completely absolving the bank of any responsibility.

6)
CASE: State of Mississippi vs. Mary Ann Jones, et al., Number 6669 (1986)

COURT: Bolivar County, Mississippi, Circuit Court

JUDGE: Honorable John L Pearson, Post Office Box 579, Rosedale, Mississippi 38769-0579, telephone number (601) 843-3346

PROSECUTING ATTORNEY: Honorable Laurence Y. Mellen, District Attorney, Post Office Box 848, Cleveland, Mississippi 38732, telephone number (601) 843-8000

LENGTH OF TRIAL: Six days

I defended a twenty-one-year-old African-American female in a conspiracy and jury tampering case which arose out of defendants, in an unrelated felony prosecution for robbery, attempting to contact and influence jurors. Following a full week of trial, the jury returned a verdict of not guilty for my client.

7)
CASE: State of Mississippi vs. Mike Hendricks and Thomas Coleman, Number 6747 (1986)

COURT: Bolivar County, Mississippi, Circuit Court, Second Judicial District

JUDGE: Honorable Elzy Smith, Post Office Box 998, Clarksdale, Mississippi 38614-0998, telephone number (601) 624-3017.

PROSECUTING ATTORNEY: Honorable Laurence Y. Mellen, District Attorney, Post Office Box 848, Cleveland, Mississippi 38732, telephone number (601) 843-8000

LENGTH OF TRIAL: Five days

I represented two defendants charged with the arson of a mobile home. Conflicting expert testimony was presented as to the cause of the fire and a jury verdict of not guilty was rendered in favor of both of my clients. This is the criminal case which gave rise to the civil litigation listed as Case No. 4 previously.

8)
CASE: Jo Ann Frazier, et al. vs. Mississippi Power & Light Company, et al., Number 10135 (1985)

COURT: Washington County, Mississippi, Circuit Court

JUDGE: Honorable Arthur B. Clark, now deceased

CO-COUNSEL: Honorable Murray Akers, Post Office Box 1076, Greenville, Mississippi, 38702-1076, telephone number (601) 378-2131

COUNSEL OPPOSITE: Honorable Roy D. Campbell, Jr., Campbell & DeLong, Post Office Box 1856, Greenville, Mississippi 38702-1856, telephone number (601) 335-6011; and Natie P. Caraway, Wise, Carter, Child & Caraway, Post Office Box 651, Jackson, Mississippi 39205-0651, telephone number (601) 968-5500.

LENGTH OF TRIAL: Five days

Co-Counsel and I represented a widow and surviving daughters in an electrocution case wherein a farm manager, who was also a volunteer fireman, was killed at a fire scene. The utility company, after notice of fire, failed to shut off the current, and a crane on the rear of a truck came into contact with a power line, electrocuting the fireman. The plaintiffs were awarded a 3.2 million dollar verdict, which was the same amount requested in final argument and which, at that time, was the largest wrongful death verdict rendered in the state courts of Mississippi. The trial court reduced the verdict to $980,000.00.

9)
CASE: Keith Pruitt vs. City of Rosedale, 421 So. 2nd 1046 (Miss. 1982)

COURT: Bolivar County, County and Circuit Courts
Mississippi Supreme Court

JUDGE: Honorable John Hatcher, Post Office Box 478, Cleveland, Mississippi 38732, telephone number (601) 843-3346.

COUNSEL OPPOSITE: Trial level: Honorable John W. Land, Post Office Box 18109, Hattiesburg, Mississippi 38904-8109, telephone number (601) 261-4100; Appellate level: Honorable Tyree Irving, Post Office Box 1906, Greenwood, Mississippi 38930-1906, telephone number (601) 455-2732

I represented the Plaintiff in a matter at both the trial and the appellate level wherein the Mississippi Supreme Court ultimately abolished the doctrine of sovereign immunity. After almost one hundred years of rejecting such attempts, the Court allowed tort actions to be brought against the State of Mississippi and its political subdivisions, and which ultimately

resulted in the adoption of the Tort Claims Act governing suits by and against the State and its political subdivisions in the State of Mississippi.

10)
CASE: Denman Pelletts, Inc. vs. Kent Haney, d/b/a Haney Flying Service, No. 11,442 (1982)

COURT: Sunflower County, Mississippi, Circuit Court

JUDGE: Honorable Gray S. Evans, Post Office Box 1953, Greenwood, Mississippi 38930, telephone number (601) 455-7959

COUNSEL OPPOSITE: Honorable Richard G. Noble, Post Office Box 29, Indianola, Mississippi 38751-0029, telephone number (601) 887-3412

LENGTH OF TRIAL: Five days

This crop damage case involved a very difficult evidentiary chain and direct and cross examination of forty witnesses at trial, which I conducted by myself for the Plaintiff. An aerial application of a broadleaf herbicide intended of rice drifted onto a cotton crop, seriously damaging the plants and drastically reducing the yield.

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

During my presidency of the Mississippi Trial Lawyers Association in 1984-1985, I was instrumental in working in cooperation with officers of the Mississippi Bar Association to establish annual continuing legal education requirements for any attorney practicing law in the State of Mississippi, and also proposals for adoption of the Mississippi Uniform Rules of Evidence. Both mandatory continuing legal education and the Mississippi Rules of Evidence were approved as Rules of Practice by the Mississippi Supreme Court.

As president of the Mississippi Bar Foundation from 1994-1995, I urged the Mississippi Supreme Court to amend its rules on trust accounts which lawyers maintain. This "opt-out" procedure, when adopted, caused the number of participating firms in the Interest On Lawyers Trust Accounts (IOLTA) program to increase from two hundred (200) to over four hundred sixty (460), and an increase in revenues of over fifty (50) percent, which was used to support legal services for the poor.

I served as Chairman of the Lamar Order, which is the fundraising arm for the University of Mississippi School of Law. During my 1993-1994 term, the association reached a

record total of 500 members and an endowment of nearly $1,000,000.00. These funds are used by the Law School primarily for faculty recruitment and development, law library expenditures, scholarships, and to generally enhance the quality of the Law School's programs by providing additional funding.

QUESTIONNAIRE FOR JUDICIAL NOMINEES

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

Structured settlement with Safeco Life Insurance Company pays me $305.25 per month for personal injury case--for lifetime of client.

I have begun to associate counsel who will assume responsibility for my case-load if I am confirmed. We are in the process of determining what compensation I will receive for my participation in these matters.

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

I keep an accurate record of clients and former clients to avoid a conflict of interest and such will be preserved to determine any conflict of interest, should I be appointed as judge. I see no categories of litigation or financial arrangements that will present potential conflicts; in all matters I would follow the Code of Judicial Conduct.

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

No.

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

   See Attached Financial Statement

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

   See Attached Net Worth Statement

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

   Bolivar County Mississippi Chairman, Bill Waller for Governor Campaign 1971

AO-10 (w)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Pepper, William A.	US DISTRICT COURT NORTHERN MS	03/08/1999
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. Report Type (check type)**	**6. Reporting Period**
NOMINEE, JUDGE, DISTRICT COURT	X Nomination, Date 03/08/1999 Initial Annual Final	01/01/1997 to 02/28/1999
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.**	
Post Office Box 187 Cleveland MS 38732	Reviewing Officer _____ Date _____	

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

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

[X] NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1		
2		
3		

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

[ ] NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	02-05-96	SAFECO ASSIGNED BENEFITS SERVICE COMPANY FOR PAYMENT OF LEGAL FEES. PAYMENTS ARE INCLUDED IN INCOME IN PART III.
2		
3		

II. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of Instructions.)

[ ] NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	1997	W. Allen Pepper, Jr. PA; salary	$ 61,200.00
2	1997	W. Allen Pepper, Jr. PA earnings from S corp	$ 170,408.00
3	1997	W. Allen Pepper, Jr. PA; Salary (S)	
4	1998	W. Allen Pepper, Jr. PA Salary	$ 63,420.00

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Pepper, William A.	03/08/1999

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	EXEMPT		
2			
3			

VI. LIABILITIES

Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Pepper, William A. | Date of Report: 03/08/1999

VII. Page 1 INVESTMENTS and TRUSTS– income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
1 50% interest in Pepper & Cossar - farm land Humphreys Co	F	Rent	O	W	exempt				
2 Langston Nowell & Pepper rental real estate Cleveland MS	D	Rent	L	W	exempt				
3 UNION PLANTERS BANK CLEVELAND MS (S CORP ACCTS)	C	Interest	L	T	EXEMPT				
4 UNION PLANTERS BANK ATTORNEY'S TRUST ACCT, CLEVELAND MS		None	J	T	EXEMPT				
5 UNION PLANTERS BANK COMMON (J)	A	Dividend	J	T	EXEMPT				
6 UNION PLANTERS BANK CLEVELAND (PERSONAL ACCTS) (J)			J		exempt				
7 First National Bank; Rosdale MS (J)	D	Interest	L	T	exempt				
8 Planters Bank & Trust, Cleveland MS	C	Interest	L	T	exempt				
9 CLEVELAND STATE BANK, CLEVELAND MS (J)	B	Interest	J	T	EXEMPT				
10 Cleveland State Bank, Cleveland MS (S)	B	Interest	K	T	exempt				
11 CLEVELAND COMMUNITY BANK, CLEVELAND MS (S)	D	Interest	M	T	EXEMPT				
12 CAPITAL WORLD GROWTH & INCOME FUND (S)	D	Dividend	K	T	EXEMPT				
13 FEDERATED AMERICAN LEADERS FUND (S)	D	Dividend	K	T	EXEMPT				
14 GOLDMAN SACHS GROWTH & INCOME FUND (S)	D	Dividend	K	T	EXEMPT				
15 LORD ABBETT AFFILIATED FUND (S)	B	Dividend	K	T	EXEMPT				
16 LORD ABBETT DEVELOPING GROWTH FUND (S)	A	Dividend	J	T	EXEMPT				
17 NEW ECONOMY FUND SBI (S)	D	Dividend	K	T	EXEMPT				

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Pepper, William A.

Date of Report: 03/08/1999

VII. Page 2 INVESTMENTS and TRUSTS– income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *(Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18 PUTNAM VISTA FUND (S)	D	Dividend	K	T	EXEMPT				
19 PUTNAM VOYAGER FUND (S)	C	DIVIDENDS	K	T	EXEMPT				
20 SMALLCAP WORLD FUND (S)	C	Dividend	K	T	EXEMPT				
21 WASHINGTON NMUTUAL INVESTORS (S)	D	Dividend	K	T	EXEMPT				
22 IRIDIUM WORLD COMMUNICATIONS LTD-CL A (J)		Dividend	J	T	EXEMPT				
23 TELEFONOS DE MEXICO SA DE CV-SPONS (J)		Dividend	J	T	EXEMPT				
24 OUTBACK STEAKHOUSE (J)		Dividend	J	T	EXEMPT				
25 AMCAP FUND INC (J)	D	Dividend	K	T	EXEMPT				
26 GROWTH FUND OF AMERICA (J)	D	Dividend	K	T	EXEMPT				
27 NEW PERSPECTIVE FUND (J)	D	Dividend	K	T	EXEMPT				
28 PUTNAM INTL NEW OPPORTUNITIES FUND-CL A (J)	A	Dividend	J	T	EXEMPT				
29 EVEREGREEN BLUE CHIP FND B (S)	B	Dividend	J	W	EXEMPT				
30 MFS LARGE CAP GROWTH FUND (S)	D	Dividend	K	T	EXEMPT				
31 MASS INVESTORS GROWTH FUND A (S)	D	Dividend	M	T	EXEMPT				
32 MFS MONEY MARKET FUND (S)	C	Dividend		T	EXEMPT				
33 FRANKLIN EQUITY FUND II (S)	C	Dividend	K	T	EXEMPT				
34 FRANKLIN MONEY FUND (S)	A	Dividend	J	T					

Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Pepper, William A.

Date of Report: 03/08/1999

VII. Page 3 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
35 TEMPLETON FOREIGN FUND (S)	C	Dividend	K	T	EXEMPT				
36 TEMPLETON DEVELOPING MKTS (S)	A	Dividend	J	T	EXEMPT				
37 FRANKLIN TEMPLETON MONEY FUND II (S)	B	Dividend			EXEMPT				
38 PUTNAM FD FOR GROWTH AND INCOME CL B SHS (J)	E	Dividend	M	T	EXEMPT				
39 DELCAP FUND (DC)	D	Dividend	L	T	EXEMPT				
40 DELAWARE CASH RESERVE (DC)	B	Dividend		T	EXEMPT				
41 DELAWARE LIMITED GOV (DC)	D	Dividend			EXEMPT				
42 DELAWARE DECATUR (DC)	C	Dividend	K	T	EXEMPT				
43 DELAWARE TREND FND (DC) -	B	Dividend	J	T	EXEMPT				
44 DELAWARE AGGRESSIVE FND (DC)	A	Dividend	J	T	EXEMPT				
45 NEW PERSPECTIVE FUND (DC)	C	Dividend	K	T	EXEMPT				
46 CENDANT (DC)		Dividend	J	T	EXEMPT				
47 CTS PRIME CASH SERIES (DC)	A	Dividend	J	T	EXEMPT				
48 DECATUR INCOME A (DC)	C	Dividend	K	T	exempt				
49 MANULIFE FINANCIAL MONEY MKT ACCT (PROFIT SHARING PLAN)	D	Interest	M	T	EXEMPT				
50 INVESTMENT CO OF AMERICA IRA	E	Dividend	L	T	EXEMPT				
51 GOLDMAN SACHS GROWTH & INCOME (PROFIT SHARING)	A	Dividend	J	T	EXEMPT				

Inc/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
Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

Val 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
Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Pepper, William A.

Date of Report: 03/08/1999

VII. Page 4 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
52 GOLDMAN SACHS MID CAP EQUITY (PROFIT SHARING PLAN)	A	Dividend	J	T	EXEMPT				
53 GOLDMAN SACHS SMALL CAP VAL FND (PROFIT SHARING PLAN)	A	Dividend	J	T	EXEMPT				
54 COMMERCIAL UNION LIFE (IRA) (S)	B	Interest	K	T	EXEMPT				
55 CASH HERITAGE TRUST IRA	A	Interest	J	T	exempt				
56 US TREAS SECURITIES SERIES P IRA	A	Interest	J	T	exempt				
57 NEW ENGLAND LIFE LTD PTNRSHIPS IRA	A	Dividend	J	T	exempt				
58									
59									
60									
61									
62									
63									
64									
65									
66									
67									
68									

Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

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(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Pepper, William A.	03/08/1999

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

III.1-9: Net income from legal fees is included in salaries and earnings from S corporation.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Pepper, William A.	03/08/1999

SECTION HEADING. (Indicate part of report.)

nformation continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	1998	W. Allen Pepper, Jr. PA earnings from S corp	$ 19,681.00
6	1998	W. Allen Pepper, Jr. PA salary (S)	$ 0.00
7	1997	City of Cleveland, salary, Public Defender	$ 4,963.92
8	1998	City of Cleveland, salary, Public Defender	$ 2,943.60
9	1998	Public Employees Retirement System of Mississippi, retirement income	$ 4,391.52
10	7-21-98	Harold Baker, mineral lease	$ 992.50
11	1999	W. Allen Pepper, Jr., PA; salary	$ 10,200.00
12	1999	W. Allen Pepper Jr. PA Salary (s)	$ 0.00

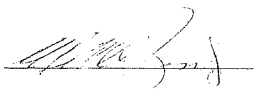
FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Pepper, William A.	03/08/1999

X. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature  Date 3-11-99

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

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

1989

W. ALLEN AND VIRGINIA B. PEPPER
STATEMENT OF FINANCIAL CONDITION

February 28, 1999

Assets

Cash	$ 346,074
Accounts receivable - income tax refunds due	37,257
Real estate	928,333
Automobiles and other personal property	187,850
Investments:	
Listed Securities	1,062,925
Unlisted Stocks	63,889
Retirement Accounts	287,153
Total assets	$2,913,481

Liabilities and Net Worth

Liabilities:	
Accounts payable	$ 3,502
Notes payable	11,811
Total liabilities	15,313
Net worth	2,898,168
Total liabilities and net worth	$2,913,481

1990

W. Allen and Virginia B. Pepper
February 28, 1999

Cash in banks and on hand:	
Union Planters Bank, Cleveland MS	$49,471
Planters Bank, Cleveland MS	53,750
Cleveland State Bank, Cleveland MS	45,310
Cleveland Community Bank, Cleveland MS	101,092
First National Bank, Rosedale	96,311
Sterne, Agee, Jackson MS cash/money market funds	140
Union Planters Bank, Cleveland MS, Mississppi Bar Foundation	
IOLTA Trust Account - Balance Feb 28, 1999 $17,364; 100% client funds	
	346,074
Retirement accounts:	
IRA-	
Investment Company of America	75,484
Commercial Union Insurance	24,635
Raymond James/IMR	27,821
W. Allen Pepper Profit Sharing Plan-	
Goldman Sachs Growth & Income Fund	9,503
Goldman Sachs Small Cap Value Fund	4,286
Goldman Sachs Mid Cap Equity Fund	5,093
Manuacturers Venture Annuity	140,331
	287,153
Real Estate Owned:	
Residence, Cleveland MS	250,000
Farm land, Belzoni MS 39038, 1/2 interest	595,000
Office building, Cleveland MS, 1/3 interest	83,333
	928,333
Autos and other personal property:	
1995 Chevrolet Suburban	21,250
1997 Chevrolet Camaro	16,000
1970 International pickup	600
Household and other personal property	150,000
	187,850
Unlisted stocks:	
Capital stock in W. Allen Pepper, Jr. PA, at book value as of December 31, 1998	63,889
Accounts payable: current accounts less than $1,000 each	3,502
Notes payable:	
Union Planters Bank, Clarksdale MS, auto loan	11,811

1991

W. Allen and Virginia B. Pepper
February 28, 1999

Listed Securities:	
Joint-	
Putnam Growth & Income	$116,131
AMCAP Fund	42,295
Growth Fund of America	45,878
New Perspective Fund	41,102
Putnam Int'l New Opportunities Fund	6,217
Iridium World Communications	645
Outback Steakhouse	13,163
Telefonos de Mexico SA DE	5,719
Walmart	30,125
Union Planters Bank	13,384
Spouse-	
Capital World Growth and Income Fund	32,436
Federated American Leaders Fund	40,586
Goldman Sachs Growth & Income Fund	30,232
Lord Abbett Affiliated Fund CL A	38,390
Lord Abbett Developing Growth Fund	7,258
New Economy Fund	38,276
Putnam Vista Fund	42,979
Putnam Voyager Fund	40,901
Smallcap World Fund	27,702
Washington Mutual Investors Fund	38,461
Evergreen Blue Chip Fund	11,767
MFS Large Cap Growth	58,675
Mass Investors Growth Stock	134,229
Templeton Foreign Fund	18,921
Templeton Developing Markets	8,767
Franklin Equity Fund II	23,040
Dependent Child-	
Delcap Fund	60,211
CTS prime series	6,887
Delaware Decatur	26,196
Delaware Trend	13,135
Delaware Aggressive Growth Fund	13,446
New Perspective	32,878
Cendant	2,893
	1,062,925

W. Allen and Virginia B. Pepper
February 28, 1999

CONTINGENT LIABILITIES:	none
As endorser, comaker or guarantor	none
On leases or contracts	none
Legal claims	none
Provision for federal income tax (refund due for 1998 taxes)	none
Other special debt	
GENERAL INFORMATION:	no
Are any assets pledged?	no
Defendant in any suits or legal actions?	no
Ever taken bankruptcy	no

QUESTIONNAIRE FOR JUDICIAL NOMINEES

III. GENERAL (PUBLIC)

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

I have served with the Pro Bono Project of the Mississippi Bar Association. I have served as a trustee and president of the Mississippi Bar Foundation, which largely funds legal services to the poor in our state. I have served as a public defender for twenty-six years, representing indigent defendants in Cleveland, Mississippi, in both felony and misdemeanor cases.

I have served as a guardian ad litem in the Bolivar County Youth Court. I have served as a scout master for a cub scout troop at the First United Methodist Church. I have served on the District Committee for the Boy Scouts of America. I have worked with Habitat for Humanity. I have sponsored a little league baseball team, ages 8 to 10. I have participated in basic eye screening for the local Lions Club. If problems were noticed, referrals were made to ophthalmologists or other qualified medical personnel.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

No.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is no selection committee. Senator Trent Lott recommended my name to fill the vacancy created by the taking of senior status by Judge L. T. Senter of the Northern District of Mississippi.

I have been interviewed by representatives of the Department of Justice, the American Bar Association and the Federal Bureau of Investigation.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe that the role of the Federal Judiciary is to interpret existing law and not make or assume the role of making new law.

There is too much litigation in our present day society. Courts cannot solve every problem that exists in life today. Many grievances and disputes are based largely on a failure to communicate and understand various parties' true positions and many cases which currently clog the docket in both federal and state courts could best be solved through informal mediation or, at best, binding arbitration. I am a firm believer in the

separation of powers and the system of checks and balances that exists among our branches of government. Our Federal Judiciary at this time is in a near state of crisis due to the work load and number of cases which are filed. It is my belief that the Federal Judiciary should, when at all possible, restrain itself and refrain from taking an active role in matters which do not clearly fall within its jurisdiction.

1995

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION

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

Virginia Anne Phillips. My maiden name was Virginia Anne Ettinger.

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

Residence: Riverside, California

Office: United States District Court, 312 N. Spring Street, Los Angeles, California 90012

3. Date and place of birth.

February 14, 1957; Orange, California.

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

I was married May 25, 1980 to John Allen Phillips. My husband died January 14, 1998. He was employed as a Professor of History at the University of California, Riverside.

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

University of California, Berkeley (Boalt Hall School of Law); August 1979 to May 1982. Degree received: Juris Doctor, May 1982.

Notre Dame University/London School of Economics, Summer Program in Law; June to July 1980. No degree received; Summer Program only.

University of California, Riverside; September 1975 to June 1979. Degree received: Bachelor of Arts, magna cum laude, June 1979.

California State University, San Luis Obispo; March 1975 to June 1975. No degree received; transferred to University of California, Riverside.

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

BUSINESS OR GOVERNMENTAL ENTITIES BY WHOM I HAVE BEEN EMPLOYED:

1995 - present:	United States District Court, Central District of California. I was appointed as a United States Magistrate Judge on February 24, 1995.
1991 - 1995:	Riverside Superior Court, Riverside, California. I was appointed by the Superior Court judges as a Superior Court Commissioner on March 1, 1991, and presided over civil and criminal cases.
1982 - 1991:	Best, Best & Krieger; Riverside, California. I joined the law firm as an associate upon graduation from law school in 1982, and was elected to the partnership in 1988. I worked as a summer law clerk at the firm in the summer of 1981.
1983 - present:	University of California, Riverside; Program in Law & Society/Department of Philosophy. Visiting Lecturer (intermittent courses).
8/1981 - 12/1981:	University of California, Berkeley; Department of Political Science. Teaching assistant for Professor Philip Johnson for an undergraduate political science course.
9/1980 - 11/1980:	University of California, Berkeley; Boalt Hall School of Law, Law Library. I worked as a part-time filing/clerical assistant in the law library during part of my second year in law school.
6/1979 - 8/1979:	University of California, Riverside. I had part-time clerical positions in the Departments of Statistics, Biochemistry and History.

NONPROFIT AND COMMUNITY ORGANIZATIONS WITH WHICH I HAVE BEEN AFFILIATED:

1997 - present:	Survive Food Bank of Riverside & San Bernardino Counties. I am a member of the Board of Directors of the Survive Food Bank of Riverside & San Bernardino Counties, a local nonprofit agency serving local church and charitable organizations.
1996 - present:	I am a member of my area's Neighborhood Watch organization.
1989 - 1998:	I served on the Board of Directors of the Riverside Youth Service Center, a local nonprofit agency providing child abuse, substance abuse and other counseling and education services to low and middle income families. I served two terms as Board President (1993 and 1994), and held other officer positions before and after my terms as President.
1994 - 1996:	I served on the Board of Directors of the Riverside Area Rape Crisis Center, a local nonprofit agency providing educational, prevention and victim-assistance programs.
1988 - 1991:	I served on the City of Riverside Human Relations Commission, which works to promote harmonious relations among the community's racial, ethnic, religious and other groups. From 1988 until 1991, I served on the City's Law Enforcement Policy Advisory Committee ("LEPAC"). I was chair of LEPAC from 1988 to 1990. LEPAC acts as a liaison between community members and the City's Police Department.

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

I have never served in the armed forces.

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

Recognition as "Woman of Achievement" by Inland Business magazine, 1993.

Degree of Bachelor of Arts awarded magna cum laude.

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

Member, Board of Directors, Federal Bar Association (Inland Empire Chapter), 1996 - Present.

Judicial Master, American Inns of Court, Leo A. Deegan Inn of Court, Riverside, California, 1992 - Present. Founding member of the Inn, and served as the Inn's Counselor, 1994-95. Currently Chairperson of the Inn's Membership Committee and Member of the Executive Committee.

Member, Riverside County Bar Association, 1982-1991.

Member, Riverside Superior Court/Riverside Country Bar Association Judicial Arbitration Administration Committee (1989-1995), serving on a committee responsible for enlarging and revamping the court's judicial arbitration program, and continuing to oversee its operations.

Member, Riverside County Barristers (Young Lawyers Association), 1982-1989. Vice-President, 1986-87.

Member, California Women Lawyers, 1993 - Present.

Member, American Bar Association, 1982-1992.

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

a. From 1997 to the present, I have served on the Board of Directors of the Survive Food Bank of Riverside & San Bernardino Counties, a local nonprofit agency serving local church and charitable organizations.

b. From 1989 to January 1998, I served on the Board of Directors of the Riverside Youth Service Center, a local nonprofit agency providing child abuse, substance abuse and other counseling and education services to low and middle income families. I served two terms as Board President (1993 and 1994), and held other officer positions before and after my terms as President.

Neither of these organizations undertakes lobbying before public bodies, except to the extent they seek funding from local government entities.

c. From 1996 to the present, I have been a member of my local Neighborhood Watch organization. We undertake no lobbying.

d. From 1990 to the present, I have been a member of the homeowners' association of the condominium complex in San Diego where I am owner of one of the condominium units. The association undertakes no lobbying.

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

All Courts of the State of California: December 1982. I was an active member of the State Bar from my admission until I joined the Riverside County Superior Court bench in 1991, at which time my status became "inactive."

United States District Court for the Central District of California: April 22, 1983.

United States Court of Appeal, Ninth Circuit: December 29, 1983.

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

(A) I wrote a monthly book review column in Riverside Lawyer, the official publication of the Riverside County Bar Association, from June 1993 until February 1998, reviewing books of interest to the legal community. A list of the book reviews follows, copies are attached.

February 1998: A CERTAIN JUSTICE, by P.D. James

January 1998: ECHO HOUSE, by Ward Just

December 1997: THE DEFENSE: A Legal Thriller, by D.W. Buffa

October 1997: THE DEATH OF INNOCENTS: A TRUE STORY OF MEDICINE, MURDER AND HIGH-STAKES SCIENCE, by Richard Firstman & Jamie Talan

June 1997: THE HOLLOW-EYED ANGEL, by Janwillem Van De Vettering

May 1997:	**THE CLUB DUMAS**, by Arturo Perez-Reverte
April 1997:	**INTO THE WILD**, by John Krakauer
February 1997:	**THE WORLD AT NIGHT (PARIS 1940)**, by Alan Furst
January 1997:	**MISS MANNERS RESCUES CIVILIZATION FROM SEXUAL HARASSMENT, FRIVOLOUS LAWSUITS, DISSING AND OTHER LAPSES IN CIVILITY**, by Judith Martin
December 1996:	**THE STATEMENT**, by Brian Moore
November 1996:	**IN MY FATHER'S NAME: A Family, a Town, a Murder**, by Mark Arax
July/Aug. 1996:	**ROSE**, by Martin Cruz Smith
May 1996:	**THE DARK ROOM**, by Minette Walters
March 1996:	**CRIMINALS**, by Margot Livesey
February 1996:	**A WRONGFUL DEATH: A Medical Tragedy**, by Sandra M. Gilbert
January 1996:	**MOCKERY OF JUSTICE: The True Story of the Sheppard Murder Case**, by Cynthia L. Cooper & Sam Reese Sheppard
November 1995:	**SNOW FALLING ON CEDARS**, by David Guterson
October 1995:	**A CIVIL ACTION**, by Jonathan Harr
September 1995:	**BETRAYAL: The Story of Aldrich Ames, An American Spy**, by Tim Weiner, David Johnston & Neil A. Lewis
August 1995:	**PRIORITY MAIL: The Investigation and Trial of a Mail Bomber Obsessed with Destroying our Justice System**, by Mark Winne
June 1995:	**FATAL JUSTICE: Reinvestigating the MacDonald Murders**, by Jerry Allen Potter & Fred Bost
April 1995:	**OUR GAME**, by John LeCarre

March 1995:	**ORIGINAL SIN**, by P.D. James
January 1995:	**JANET RENO: Doing the Right Thing**, by Paul Anderson
December 1994:	**MISSISSIPPI MUD**, by Edward Humes
November 1994:	**THE JURY**, by Stephen J. Adler
October 1994:	A Random Sampling: (1) **CHILD OF SILENCE**, by Abigail Padgett; (2) **UNTIL THE TWELFTH OF NEVER: The Deadly Divorce of Dan and Betty Broderick**, by Della Stumbo; (3) **SHADOW OF A DOUBT**, by William Coughlin; and (4) **KAT'S CRADLE**, by Karen Kijewski
June 1994:	**REMEMBERING SATAN: A Case of Recovered Memory and the Shattering of an American Family**, by Lawrence Wright
May 1994:	**MIDNIGHT IN THE GARDEN OF GOOD AND EVIL**, by John Berendt
March 1994:	**PROCEDURA**, by Salvatore Manuzzu, translated from the Italian by John Shepley
February 1994:	**SWIFT JUSTICE**, by Harry Farrell
December 1993:	**PLEADING GUILTY**, by Scott Turow
November 1993:	**SMILLA'S SENSE OF SNOW**, by Peter Hoeg, translated from the Danish by Tina Nunnally
October 1993:	**THE JOURNEYMAN TAILOR**, by Gerald Seymour
September 1993:	**ONCE UPON A TIME: The True Story of Memory, Murder and the Law**, by Harry N. Maclean
July/Aug. 1993:	**TAMING THE STORM: The Life and Times of Judge Frank M. Johnson, Jr. and the South's Fight Over Civil Rights**, by Jack Bass
June 1993:	**UNDUE INFLUENCE**, by David Margolick

OTHER PUBLICATIONS:

"*In Memoriam*: Richard Schulz," Riverside Lawyer, May 1992.

"1997 Ninth Circuit Conference," Federal Bar Association - Inland Empire Chapter Newsletter, Fall 1997.

Copies of these publications are attached.

(B) I have taught the following courses for Mandatory Continuing Legal Education credit:

"Criminal Practice in Federal Court," (Federal Bar Association), June 1997.

"*Pro se*" Litigation in State and Federal Courts," (Riverside County Bar Association Civil Litigation Section), November 1996
"Law & Motion and Pretrial Proceedings in U.S. District Court," (Riverside County Bar Association Lake Arrowhead Civil Litigation Conference), 1995

"Law & Motion Practice in Federal Court," (Riverside County Bar Association), November 1995.

"Discovery Practice in Federal and State Courts," Bridging the Gap (Orientation program for new lawyers), January 1996.

"Civil Law & Motion Practice," (four-week series for the Riverside County Bar Association), July 1991 and July 1993.

"Civil Law & Motion Practice," Bridging the Gap; multiple courses since 1991.

"Discovery Motions," (Riverside County Bar Association Lake Arrowhead Civil Litigation Conference); 1992 and 1994.

Civil Trial Procedure (Riverside County Bar Association Lake Arrowhead Civil Litigation Conference); 1993 and 1995.

Copies of my course outlines and handouts are attached.

(C) I have taught an undergraduate course at the University of California, Riverside once a year intermittently since 1983. It is a seminar offered through the Department of Philosophy/Law & Society Program.

Copies of my course syllabus and handouts are attached.

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

I am in good health. My last physical examination was in April, 1998.

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.

February 24, 1995 to the present: U.S. Magistrate Judge in the United States District Court for the Central District of California

I was appointed to my position as U.S. Magistrate Judge by the United States District Judges of the Central District of California. As a Magistrate Judge, I perform a variety of duties in civil and criminal cases, including trials in civil cases with the consent of all parties, law and motion matters, settlement conferences and appeals from administrative decisions, such as Social Security appeals. In criminal cases, I hear pretrial matters such as arraignments and detention hearings, as well as the entry of guilty pleas and sentencing in misdemeanor cases. I also handle petitions for writs of habeas corpus filed by state and federal prisoners, writing recommended decisions for review and possible adoption by a District Judge.

March 1, 1991 to February 23, 1995: Superior Court Commissioner, Riverside Superior Court.

During the period when I sat on the court, the Superior Court of Riverside County had jurisdiction over felony criminal cases, and over all civil cases where the amount in controversy exceeded $25,000.00. (The Superior and Municipal Courts of Riverside County have since consolidated for all purposes.) I was appointed to the Court by all of the sitting Superior Court Judges. I was not subject to election or re-election.

As a Superior Court Commissioner, I was empowered to hear any civil or criminal matter where the parties stipulated to me, i.e., were willing that I sit as a judge on the entire case or any proceeding in it. My initial assignment at the Superior Court was to hear the civil "law and motion" calendar, consisting of most pretrial matters in civil cases. The attorneys who appeared in front of me were willing to stipulate that I hear not only the pretrial motions, but their trial matters as well, and during the four years I spent on the Superior Court I presided over approximately 100 trials, the large majority of them jury trials.

During the last eighteen months I served on the Superior Court, I was assigned a "direct calendar" civil trial department, where I was fully responsible for a caseload of civil

matters for all phases, including trial. Although I was assigned to a civil department during my entire stint on the Superior Court, I presided over approximately a dozen felony jury trials when called to do so because of the press of the court's criminal caseload.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions were not officially reported, please provide copies of the opinions.**

(1) SIGNIFICANT OPINIONS AUTHORED

(a) In the Matter of the Extradition of Joachim Luethi, U.S. District Court Case No. CV95-2459 ABC(VAP)

(b) Ralph C. Palmer v. K.W. Prunty, U.S. District Court Case No. EDCV 95-213 RT(VAP)

Affirmed on Appeal in unpublished opinion: 106 F.3d 408 (9th Cir. 1997); No. 96-55429, 1997 WL 30338 (9th Cir. Jan. 23, 1997).

(c) Louis Lujan Bonillas v. D.R. Hill, U.S. District Court Case No. CV96-6021 WMB(VAP)

- Affirmed on Appeal: 134 F.3d 1414 (9th Cir. 1998).

(d) Andre Boston v. E. Roe, Warden, U.S. District Case No. CV 95-2480-ABC(VAP)

Affirmed on Appeal in unpublished opinion: No. 96-56-91, 1997 WL 559450 (9th Cir. Sept. 3, 1997).

(e) Jimmie Stephens v. K.W. Prunty, Warden, U.S. District Case No. CV-94-8341-HLH(VAP)

Affirmed on Appeal in unpublished opinion: 91 F.3d 155; No. 95-56431, 1996 WL 416297 (9th Cir. July 24, 1996), cert. denied, 117 S.Ct. 775, 136 L.Ed.2d 719 (1997).

(f) Jack E. Kelley Jr. v. Jean Bredelis, Superior Court Case No. 204036

Affirmed on Appeal: 45 Cal. App. 4th 1819, 53 Cal. Rptr. 2d 536 (1996)

(g) Cheng Ning Hsu v. Glen Avon Heights Development Co., Riverside Superior Court Case No. 190387

(h) Floyd Loew & Muriel Loew v. Robert J. Lucas, Riverside Superior Court Case No. 207190

Affirmed on Appeal in unpublished opinion: Court of Appeal Case No. E012352

(i) Little Professor Book Center v. William & Suzanne Condray, Riverside Superior Court Case No. 226330

(j) Vana v. Vista Hospital, Riverside Superior Court Case No. 233623

My written decision in this case is cited in full text in Westlaw at 1993 WL 597402 (Nov. 15, 1993).

Copies of all unpublished opinions are attached.

(2) REVERSALS

(a) Fink v. Gomez, No. 97-55716, 1998 WL 80371 (9th Cir. Feb. 23, 1998) (unpublished).

In this state habeas corpus proceeding, the petitioner challenged a prison disciplinary hearing decision, in which the hearing officer found the petitioner guilty of assaulting a correctional officer, and assessed a loss of good time credits as a penalty. As a Magistrate Judge, I prepared and submitted to the District Judge a Report and Recommendation concluding that any error in the disciplinary hearing procedures was harmless, and thus recommended denying the petition for habeas corpus relief. The District Court adopted my Report and Recommendation. The Ninth Circuit reversed, concluding that the error was not harmless, and remanded the case to the district court for issuance of a writ of habeas corpus upon such conditions as the district court deems appropriate.

AO-10 (w)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Phillips, Virginia A.	United States District Court	01/07/1999

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check type)	6. Reporting Period
U.S. District Judge Nominee	X Nomination, Date / / Initial Annual Final	01/01/1997 to 12/31/1998

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.
312 N. Spring Street Los Angeles, CA 90012	Reviewing Officer _____ Date _____

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

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

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Member, Board of Directors	Riverside Youth Service Center (non-profit org.)
2	Visiting Lecturer	University of California, Riverside
3	Member, Board of Directors	Survive Food Bank (non-profit org.)

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

☒ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1		
2		
3		

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

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	1997	U.C. Riverside professorial salary (spouse)	
2	1997	U.C. Riverside, one term teaching position	$ 3,725.00
3	1998	U.C. Riverside professorial salary (spouse)	
	1998	U.C. Riverside, one term teaching position	$ 3,798.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	01/07/1999

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	EXEMPT		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Phillips, Virginia A.

Date of Report: 01/07/1999

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. 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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
1 Wells Fargo Bank, Savings & Checking Accounts	A	Interest	L	T	Exempt				
2 Riv.Cmps.Fed Credit Union, IRA(savngs & checking accts)	A	Interest	J	T	Exempt				
3 UCBenefits:TaxDefrrd403(b)Plan (svngs, equity & bond funds)	E	Interest& Div	L	T	Exempt				
4 PaineWebber IRA Retirement Money Fund	A	Interest	J	T	Exempt				
5 PaineWebber RMA Money Market Portfolio	A	Dividend	K	T	Exempt				
6 PaineWebber Growth&Income FDA (Mutual fund)	B	Dividend	J	T	Exempt				
7 Seligman Henderson Global Smaller Co. CLA (Mutual Fund)	A	Dividend	J	T	Exempt				
8 Seligman Henderson Large Cap Value Fund Class A(Mutual Fund)	A	Dividend	J	T	Exempt				
9 Prudential Stock Index/Annuity Fund (IRA)(S)	A	Interest	J	T	Exempt				
10 Lord Abbott Affiliated Fund (IRA)	B	Dividend	L	T	Exempt				
11 Gov. Sec. Inc. FD GNMA Ser. 12 (IRA)	A	Interest	J	T	Exempt				
12 GNMA Pool 0939 M 7.5% (IRA)	B	Interest	J	T	Exempt				
13 Van Eck Global Hard Assets Fund Class A (Mutual Fund)	A	Dividend	J	T	Exempt				
14 Paine Webber Growth&Income FDB (Mutual Fund)	A	Dividend	L	T	Exempt				
15 Seligman Henderson Large Cap Value Fund Class B(Mutual Fund)	A	Dividend	L	T	Exempt				
16									
17									

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	01/07/1999

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	01/07/1999

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Secretary, Board of Directors	Federal Bar Association, Inland Empire Chapter

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	01/07/1999

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Virginia A. Phillips Date 1/7/99

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

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

Richard F. Broderick
In propria persona
3227 Honeysuckle Avenue
Palmdale, California
93550
Tel.: (805) 538-9613

L000-B
93550

ORIG

FILED
LOS ANGELES SUPERIOR COURT
SEP 10 1998
JOHN A. CLARKE, CLERK
BY M. STUDNICKI, DEPUTY

Richard F. Broderick
as agent for Margaret Elizabeth Broderick
In propria persona
Presently Incarcerated
FMC Carswell RR5
P.O. Box 27137
Fort Worth, Texas 76127
Tel.: (805) 538-9613

On behalf of both of the Plaintiffs in this matter

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, NORTH DISTRICT

HC009999

RICHARD F. BRODERICK and MARGARET ELIZABETH BRODERICK Plaintiffs vs. FRANK GOODROE, CLERK; DICKRAN TEVRIZIAN; NORA M. MANELLA; AARON S. DYER; RICHARD DROOGAN; SHERWOOD M. TRABAJERO; MARTIN JUAREZ; WILLIAM D. KELLER; PAMELA JOHNSTON; ROBERT R. LESTER; ROBERT N. BLOCK; BRIAN T. ROBBINS; VIRGINIA PHILLIPS; ROSALYN CHAPMAN; PHILLIP DEITCH; DAVID EVANS; LISA GREEN; JANET RENO; ANN I. JONES; MARIANNA PFAELZER; ELLIOT KREIGER; BRUCE ZUCKER; ALL IN THEIR INDIVIDUAL AND OFFICIAL CAPACITIES; INTERNAL REVENUE SERVICE; CALIFORNIA STATE FRANCHISE TAX BOARD; LOS ANGELES COUNTY; LOS ANGELES SHERIFF'S DEPARTMENT - LANCASTER STATION; LOS ANGELES COUNTY DISTRICT ATTORNEY, GIL GARCETTI; LANCASTER DISTRICT ATTORNEY, SPILLANE; TOM C. DUTCHER, CAL. DEPT. OF INVESTIGATIONS; JOHN LAYMER; DAVID	CASE NO. STATEMENT OF CLAIM/COMPLAINT

NORTH DISTRICT (LANCASTER)
CP 07 M 96 09/10/98 13:46
TR 007750 6000 192.00
REG OF ACT A

ROODI aka MUHAMED OJAROODI; SANDRA ANN RISPOLI aka IVY WEST aka ANN WHITE; ROGER LUBIENS, CALIFORNIA FRANCHISE TAX BOARD; KATHLEEN CONNELL, CALIFORNIA FRANCHISE TAX BOARD; STEPHEN JENSEN, IRS DISTRICT DIRECTOR; MARTIN JUAREZ, IRS; LUCY CRUZ, IRS; BILL GEPHARDT, CH. 9 TV; JANE VELEZ MITCHELL, CH. 9 TV; KERRY MCBRIDE, CH. 9 TV; HAL FISHMAN, CH. 5 TV; HOLLY WOLCOTT, ANTELOPE VALLEY PRESS; PETER SHAW, CLERK COORDINATOR; DETECTIVE MULDIN, L.A. COUNTY SHERIFFS DEPARTMENT; DEPUTY PENNER, L.A. COUNTY SHERIFFS DEPARTMENT; JIM BENNETT; SHERMAN BLOCK, L.A. COUNTY SHERIFF; MICHAEL D. ANTONIVICH, GLORIA MOLINA, SEV. YAROSKY __, DON KNABBE, YVONNE BURKE, L.A. COUNTY BOARD OF SUPERVISORS; DAN LUNGREN, CALIFORNIA ATTORNEY GENERAL; RUTH HOLLIWELL; RON SMITH; DAVID HERNANDEZ; DOLLY DUARTE aka DOLLY DUCLAS; PAMALA PRINCE; NICK RICARDI, RON WHITE, LOUIS SAHADUN, L.A. TIMES; JOHN GREEN, ANTELOPE VALLEY PRESS; STATE OF CALIFORNIA; ORANGE COUNTY; CLAUDE WHITNEY, ORANGE COUNTY MUNICIPAL COURT JUDGE; W.H. SEIFERT, WARDEN, METROPOLITAN DETENTION CENTRE OF LOS ANGELES; JAMES BROOKS, ORANGE COUNTY MUNICIPAL COURT JUDGE; CITY OF LONG BEACH; MARVIN RUNYON, POSTMASTER GENERAL; WELLS FARGO BANK; PRIMERIT BANK; BANK OF AMERICA; BART SMITH; KATHLEEN HAWK SAWYER, BUREAU OF PRISONS; CARLA M. WOEHRLE, MAGISTRATE IN CIVIL RIGHTS SUIT, CV 96-6816-MRP-CW; SHERRI CARTER, FEDERAL COURT CLERK; DEWITT CLINTON, L.A. COUNTY ATTORNEY; JOE MELENBREZ, PARALEGAL; WILLIAM MATTHEW BYRNE, CHIEF JUDGE, FEDERAL DISTRICT; LEON WEIDMAN, ASSISTANT U.S. ATTORNEY; ELIZABETH CARLSON, IRS ATTORNEY; ROBERT CONTE; PATRICIA BRADLEY; LORETTA ARGRETT; JOHN DOES 1 THROUGH 25.

Defendants

Notice is hereby given of the fact that Richard F. Broderick is filing this Complaint/Statement of Claim on behalf of both

himself, as Plaintiff, and as agent for Margaret Elizabeth Broderick, as the only other Plaintiff.

CLAIM/COMPLAINT

1. The Plaintiff, Margaret Elizabeth Broderick, claims the following damages as against the various Defendants, jointly and severally:

(a) $50,000,000.00 in general damages;

(b) $250,000,000.00 in exemplary damages;

(c) prejudgment interest at a rate in accordance with the prevailing rate available;

(d) postjudgment interest at a rate in accordance with the prevailing rate available;

(e) declaratory relief providing that the Plaintiff, Margaret Elizabeth Broderick, was wrongfully subjected to unlawful search and seizure;

(f) declaratory relief providing that the Plaintiff, Margaret Elizabeth Broderick, was wrongfully apprehended and subsequently detained by, inter alia, members of federal organizations such as the Federal Bureau of Investigation and the Internal Revenue Service;

(g) declaratory relief providing that the Plaintiff, Margaret Elizabeth Broderick, was wrongfully prosecuted in the United States District Court, as said Court lacked jurisdiction over either or both of the Plaintiff, Margaret Elizabeth Broderick, and the subject matter of the proceedings before it;

(h) declaratory relief providing that the Plaintiff, Margaret

Elizabeth Broderick, was wrongfully convicted and sentenced in the United States District Court, as said Court lacked jurisdiction over either or both of the Plaintiff, Margaret Elizabeth Broderick, and the subject matter of the proceedings before it; and

(i) such further and other relief as this Honourable Court deems just.

2. The Plaintiff, Richard F. Broderick, at all material times, resided at 3227 Honeysuckle Avenue, Palmdale, California, 93550-1307.

3. The Plaintiff, Margaret Elizabeth Broderick, at all material times upto and including the morning of April 25, 1996, resided at 3227 Honeysuckle Avenue, Palmdale, California, 93550-1307. Immediately subsequent to the Plaintiff, Margaret Elizabeth Broderick, residing at 3227 Honeysuckle Avenue, Palmdale, California, 93550-1307, she began residing in penal institutions in the United States, as a result of, inter alia, her wrongful prosecution, conviction, sentencing and incarceration.

4. On or about March 25, 1996, approximately fifteen (15) individuals from the Federal Bureau of Investigation, the Internal Revenue Service and the Assistant United States Attorney's office attended at the Plaintiffs' residence, which is municipally known as 3227 Honeysuckle Avenue, Palmdale, California, 93550-1307 ("the Plaintiffs' residence"). Accompanying these above referred to individuals were other individuals, including several Los Angeles County Sheriffs.

5. As at the date of this attendance at the Plaintiff's residence by officials, agents and designees of the above noted governmental organizations, the Plaintiff, Richard F. Broderick ("Mr. Broderick") was present, while the Plaintiff, Margaret Elizabeth Broderick ("Mrs. Broderick") was not present.

6. These above noted individuals, on their above referred to attendance at the Plaintiffs' premises, without having either identified themselves, presented their badges or any other forms of identification, and without making any efforts to alert the occupants of the Plaintiffs' residence of their presence and their clear intentions on entering said residence prior to their entry into said residence, these individuals noted above stormed into the Plaintiffs' residence.

7. At no time prior to their entry into the Plaintiffs' residence did any of these officials, agents and designees of the above noted governmental organizations present any of the occupants of the Plaintiffs' residence, including but not necessarily limited to Mr. Broderick, with any valid search warrant authorizing the searching of said premises.

8. All of these above referred to individuals entered into the Plaintiffs' residence with weapons, including firearms and axes, drawn. Notwithstanding the fact that no valid search warrant was presented to any of the occupants of the Plaintiffs' residence, including but not necessarily limited to Mr. Broderick, authorizing the searching of said premises, these individuals, without authority, then began to indiscriminantly and aimlessly search and

ransack the Plaintiffs' residence, holding the Plaintiff, Mr. Broderick, at gunpoint during the search.

9. During this unlawful search, these individuals seized a tremendous amount of personal property belonging to the Plaintiffs, without ever having produced, prior to, during or subsequent to the search, even the most essential of information and/or documentation, including either a valid search warrant or an inventory list detailing exactly the nature and quantity of the items seized. In fact, neither of the Plaintiffs have ever received any documented information whatsoever, with regards to the items seized, from any of the individuals or agencies involved in the above noted unlawful search and seizure.

10. In addition, even the search warrant that was presented to the Plaintiff, Mr. Broderick, was unexecuted by a Magistrate Judge and the affidavit in support of the search warrant was also unexecuted. In addition, the Plaintiffs state, and the fact is, that the search warrant, albeit defective on its face, was issued on the strength of a financial investigation of Mary and Richard Broderick and NOT Margaret and Richard Broderick.

11. During this above noted violation of the Plaintiffs' constitutional rights, these individuals not only exhibited absolute and reckless disregard for the Plaintiffs' constitutional rights but they also conducted themselves with reckless disregard for the physical safety and integrity of the Plaintiff, Mr. Broderick, as well as for the physical safety and integrity of any of the other occupants of the home at the time of the unlawful

search and seizure.

12. During this above noted violation of the Plaintiffs' constitutional rights, it should have been clear to anybody involved in the unlawful search that Mr. Broderick was a harmless person incapable of harming anyone. Mr. Broderick was sixty-four (64) years of age at the time of this unlawful search and seizure and he was also visibly in poor health.

13. In fact, at the time of this above noted violation of the plaintiffs constitutional rights, both of the Plaintiffs were quite ill and this state of affairs would have become reasonably noticeable by virtually any adult.

14. On or about April 25, 1998, during the very early hours of the morning, various officials, agents and designees of the several Federal governmental organizations arrived at the Plaintiffs' residence and proceeded to apprehend the Plaintiff, Mrs. Broderick, without any authority or grounds to do so.

15. The above noted unlawful search and seizure, along with the subsequent unconscionable apprehension of the Plaintiff, Mrs. Broderick, by these various officials, agents and designees of the several Federal governmental organizations, were effected without any right or authority in law.

16. Since the above noted unlawful search and seizure, along with the subsequent unconscionable apprehension of the Plaintiff, Mrs. Broderick, by these various officials, agents and designees of the several Federal governmental organizations, her health has suffered so significantly that her condition has become life altering to the

point of it being potentially life threatening and it appears to be irreversible.

17. In fact, the Plaintiffs state, and the fact is, that this tremendous degradation of the health and well being of the Plaintiff, Mrs Broderick, can be attributed, virtually exclusively, to the horrendous, sub-human medical facilities and treatment afforded to the Plaintiff, Mrs. Broderick, during her wrongful and continuing stay in the penal institutions of the United States.

18. The Plaintiffs state, and the fact is, that during the Plaintiff, Mrs. Broderick's, wrongful and continuing stay in the penal institutions of the United States, she was denied access to proper and necessary medication, was forced to consume unnecessary and mind numbing/duping medication such as Prozac, was denied reasonable and timely access to proper, necessary and life saving medical procedures, all of which foreseeably could have and did result in jeopardizing her life and general well being.

19. Since the above noted unlawful search and seizure, along with the subsequent unconscionable apprehension of the Plaintiff, Mrs. Broderick, by these various officials, agents and designees of the several Federal governmental organizations, Mr. Broderick's health has suffered so significantly that his condition has become life altering, potentially life threatening and it also appears to be irreversible.

20. The Plaintiff, Mr. Broderick, states, and the fact is, that prior to the above noted unlawful search and seizure, unconscionable apprehension and detention, and wrongful

prosecution, conviction, sentencing and continued incarceration of the Plaintiff, Mrs. Broderick, he avoided excitement and stress in order not to aggravate his troubled health.

21. It was certainly clear to even the least sensitive and perceptive of persons that both of the Plaintiffs were incapable of causing harm to anybody, including, of course, some fifteen (15) presumably trained government officials. Clearly, it was wholly unnecessary for these individuals to use the forceful, threatening, high-handed, oppressive, reckless approach that they did in conducting their search and seizure, which search and seizure was itself unlawful, of the residence of two (2) such harmless people in their elder years, not to mention their unconscionable apprehension of the Plaintiff, Mrs. Broderick.

22. Amongst the many serious consequences arising out of this above noted unlawful search and seizure, the Plaintiff, Mr. Broderick, suffered serious injuries including a contemporaneous stroke, a fractured spine and a series of subsequent strokes. In addition, the Plaintiff, Mr. Broderick, has, from the date of this unlawful search and seizure, to the present date experienced severe, ongoing, irreversible and life altering psychological and physical consequences.

23. The Plaintiffs state, and the fact is, that, at all material times, in regards to the facts and circumstances giving rise to this claim, neither the Federal Government nor its' agencies, employees, officers, agents, etc. had any police power whatsoever in the City of Palmdale, in the State of California.

24. As such, at all material times in the case at hand, both of the Plaintiffs were subjected to the exercise of police powers at the hands of individuals that did not have jurisdiction within which to exercise said powers and who, therefore, with and under proclaimed colour of right and law, conducted themselves in excess of their jurisdiction.

25. In fact, the Plaintiffs state, and the fact is, that, at all material times, if anybody had police power over the City of Palmdale, in the State of California, said power would be vested exclusively in State employees, officers, etc., subject to very few, limited and itemized exceptions. None of these very few, limited and itemized exceptions apply to the facts of the circumstances giving rise to this case.

26. As such, during the unlawful search and seizure of the Plaintiffs' residence, both of the Plaintiffs were constitutionally violated at the hands of Federal employees, agents, officers, etc., since none of these individuals had any jurisdiction to exercise any police power over either of the Plaintiffs in the City of Palmdale, in the State of California, for the offences allegedly committed by the Plaintiff, Mrs. Broderick.

27. In addition, during the unlawful search and seizure of the Plaintiffs' residence, both of the Plaintiffs were constitutionally violated at the hands of local law enforcement employees, agents, officers, etc., since none of these individuals did anything to prohibit the Federal employees, agents, officers, etc. from exercising police power over either of the Plaintiffs in the City

of Palmdale, in the State of California, for the offences allegedly committed by the Plaintiff, Mrs. Broderick, when they clearly knew or should have known that said Federal employees, agents, officers, etc. did not have jurisdiction to do so.

28. The Plaintiffs state, and the fact is, that subsequent to the unlawful apprehension and initial detention of the Plaintiff, Mrs. Broderick, she was wrongfully prosecuted in the United States District Court. Prior to, during and subsequent to this "trial", the Plaintiff, Mrs. Broderick, maintained the position that the United States District Court did not and does not have jurisdiction over the offences allegedly committed by her.

29. In fact, the Plaintiffs state, and the fact is, that the United States District Court does not have jurisdiction over any criminal offences. Rather, the Plaintiffs state, and the fact is, that the district courts of the United States have jurisdiction over the prosecution of criminal offences, including those offences for which the Plaintiffs were wrongfully subjected to an unlawful search and seizure, for which the Plaintiff, Mrs. Broderick, was wrongfully charged and unconscionably apprehended and for which the Plaintiff, Mrs. Broderick, was wrongfully prosecuted, wrongfully convicted, wrongfully sentenced and wrongfully condemned to serve a continued period of incarceration.

30. The Plaintiffs state, and the fact is, that the Plaintiff, Mrs. Broderick, should not have been prosecuted in the United States District Court, since it had no jurisdiction over either Mrs. Broderick or the subject matter of the subject proceedings

before it.

31. In addition, the Plaintiffs state, and the fact is, that the Plaintiff, Mrs. Broderick, was not only wrongfully prosecuted by the United States District Court, a Court without jurisdiction over either herself or the subject matter of the subject proceedings before it, but she, in fact, was wrongfully convicted and wrongfully sentenced, to continued incarceration, in her absence by the same Court, which Court again had no jurisdiction over either herself or the subject matter of the subject proceedings before it.

32. As such, the Plaintiffs state, and the fact is, that, since the Plaintiff, Mrs. Broderick, was wrongfully prosecuted, wrongfully convicted and wrongfully sentenced by a Court without jurisdiction over either herself or the subject matter of the proceedings before it, the United States District Court should not have either prosecuted, convicted or, obviously, sentenced the Plaintiff, Mrs. Broderick. As such, the Plaintiffs state, and the fact is, that the conviction of the Plaintiff, Mrs. Broderick, should be overturned and the sentence extinguished.

33. The Plaintiffs state, and the fact is, that the Plaintiff, Mrs. Broderick, has been incarcerated since April of 1996, as a result of, inter alia, the following:

(a) The Plaintiff, Mrs. Broderick, was wrongfully prosecuted, wrongfully convicted in absentia and wrongfully sentenced in absentia in the United States District Court, which Court did not have jurisdiction over either herself or the subject matter of the subject proceedings before the Court;

(b) The Plaintiff, Mrs. Broderick, was wrongfully apprehended by various officers of, inter alia, federal organizations such as the Federal Bureau of Investigation, U.S. Postal Service and the Internal Revenue Service, although, at all material times, these agencies, their officers, employees, etc., did not have any rights to exercise police power in Palmdale, in the State of California, as at April 25, 1996, the date of the arrest and detention of the Plaintiff, Mrs. Broderick, by these said officers;

(c) The Plaintiff, Mrs. Broderick, was wrongfully apprehended by various officers of, inter alia, federal organizations such as the Federal Bureau of Investigation, U.S. Postal Service and the Internal Revenue Service, although these agencies, their employees, etc., did not have the jurisdiction over the subject offences allegedly committed by the Plaintiff, Mrs. Broderick;

(d) While the Plaintiff, Mrs. Broderick, attempted to make her jurisdictional opposition clearly known to the Judge presiding at the trial, Justice Dickran Tevrizian, said Judge swiftly, arbitrarily, and without allowing the Plaintiff, Mrs. Broderick, sufficient opportunity to address the jurisdictional issues and develop her position, dismissed her concerns and submissions;

(e) The prosecution relied on evidence seized, in whole or in part, by way of searches of the Plaintiffs' residence and offices, which searches were conducted in violation of the

(b) Wilson v. California, Case No. 96-56600, 1998 WL 78687 (9th Cir. Feb. 19, 1998).

In this state habeas corpus proceeding, the petitioner challenged his conviction for violation of state securities laws. As a Magistrate Judge, I prepared and submitted to the District Judge a Report and Recommendation addressing the merits of the petitioner's claims and recommending the Court deny the petition. The District Court adopted my Report and Recommendation, and denied the petition. The Ninth Circuit reversed on the ground that the court lacked personal jurisdiction over the respondent.

(c) In re: Grand Jury Investigation Concerning Solid State Devices, Inc., et al., 130 F.3d 853 (9th Cir. 1997).

Upon application by federal law enforcement agents from the Department of Defense, I issued a search warrant for a variety of items sought in connection with an investigation of alleged fraudulent practices by a defense contractor, SSDI. After the items were seized, SSDI sought their return pursuant to Federal Rule of Criminal Procedure 41(e), and the District Judge assigned the case denied the motion for return of property. On appeal, the Ninth Circuit Court of Appeal reversed and found the warrant too broad in scope.

(d) Singh v. Prunty, ___ F.3d ___, No. 96-56726, 1998 WL 199337 (9th Cir. April 27, 1998)

In this state habeas corpus proceeding, the petitioner challenged his conviction for murdering his wife and stepdaughter. As a Magistrate Judge, I prepared and submitted to the District Judge a Report and Recommendation finding the prosecutor did not suppress material evidence of a key witness's deal with the prosecution in violation of Brady v. Maryland, 373 U.S. 83 (1963). The District Court adopted my Report and Recommendation, and denied the petition. The Ninth Circuit reversed on the ground that the undisclosed evidence was material, and ordered the writ of habeas corpus be issued.

(e) Leverette v. Schoop Electric, Court of Appeal Case No. E015513 (unpublished).

In the trial court, I presided over the jury trial of this personal injury action in 1995. Defendants appealed the Plaintiff's verdict; the parties settled the case while the appeal was pending, and as part of the settlement stipulated

to a reversal and vacation of the judgment. The Court of Appeal did not reach the merits of any issue raised on appeal; there is a "reversal" only because of the terms of the parties' settlement.

(f) Sierra Club, Inc. v. City of Beaumont, Court of Appeal Case No. E015503 (unpublished).

In the trial court, I presided over the hearing for a petition for writ of mandamus in this action, brought under the California Environmental Quality Act (CEQA). I found the defendant City's Environmental Impact Report ("EIR") regarding a proposed development by defendant Lockheed Corporation complied with CEQA. The Court of Appeal reversed my decision, after conducting an independent review and finding that the EIR did not sufficiently address certain concerns with the proposed development project.

(g) Dunlap v. Anderson, Court of Appeal Case No. E013056 (unpublished).

In the trial court, I presided over the nonjury trial of this action for partition of real property, imposition of a constructive trust, and declarative relief. The appellate court affirmed the substantive rulings but reduced the amount of the judgment on the constructive trust claim.

(h) Perkins v. Torres, Court of Appeal Case No. E012812 (unpublished).

In the trial court, I granted Plaintiff's petition to confirm an arbitration award in a dispute between buyer and seller of a house. The Court of Appeal reversed my ruling on the basis that the arbitrator had exceeded his powers in determining the issue of arbitrability of the dispute between the parties.

(i) Laurel Homes Associates - II v. Fidelity National Title Insurance Company, Court of Appeal Case No. E012675 (unpublished).

In the trial court, I granted a motion to sever and abate a cross-complaint filed in an action seeking implied equitable indemnity and contribution. The case arose out a dispute over title to certain real property; another related action was pending between the parties in Orange County Superior Court. The Court of Appeal reversed my ruling on the basis that the actions asserted different causes of actions and therefore the Riverside County cross-complaint should not be abated.

(j) Fremont Financial v. M & A Concrete, Inc., Court of Appeal Case No. E016338 (unpublished).

I presided over a court trial on a case alleging commercial breach of contract and related claims. I awarded judgment to the plaintiff as against two defendants; the Court of Appeal affirmed as to one defendant, but reversed as to the other on the basis that such defendant did not benefit from the services performed by plaintiff and therefore could not recover under a quantum meruit theory.

(k) Building Profit Corporation v. Mortgage and Realty Trust, 36 Cal. App. 4th 683 (1995).

I granted a motion for judgment on the pleadings in the trial court, resulting in a dismissal of the case. The issue presented was a construction lender's obligation to a contractor under the "stop notice" provisions of the California Civil Code. I found that the statute required the plaintiff to record a payment bond in order to recover on its bonded stop notice; the Court of Appeal disagreed and reversed the judgment.

(l) Bhullar v. Tayyab, 46 Cal. App. 4th 582 (1996).

I presided over a court trial in a breach of contract and fraud case between the buyer and the seller of a business. I awarded judgment to the buyer on a fraud claim, but denied his motion for attorney's fees. The Court of Appeal affirmed my substantive rulings, but reversed my ruling on the attorney's fees motion.

Copies of all of the unpublished opinions are attached.

(3) OTHER SIGNIFICANT OPINIONS

In the Matter of the Extradition of Joachim Luethi, U.S. District Court Case No. CV95-2459 ABC(VAP). A copy of this unpublished opinion is attached.

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

None.

17. Legal Career:

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

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

No, I have never served as a law clerk.

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

No, I have never practiced alone.

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

Best, Best & Krieger, 3750 University Ave., Suite 400, Riverside, California 92501.

Upon my graduation from law school in 1982 I joined the firm of Best, Best & Krieger as an associate attorney. I had previously worked at the firm during the summer of 1981 as a summer clerk. I was elevated to partnership in June 1988, and remained there until I left in February 1991 to join the Riverside Superior Court.

b. –

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

I practiced law at Best, Best & Krieger from 1982 to 1991. I joined the firm as an associate and was elected to the partnership in 1988. My litigation practice included employment termination defense work for various clients, including the University of California, representing public entity clients in a variety of disputes, including California Environmental Quality Act, Brown (Open Government) Act, and public contract lawsuits; and representing private clients in construction lawsuits, business disputes and real property matters. I defended the Riverside Press-Enterprise newspaper in several defamation lawsuits. My work for both public and private clients included representation in appellate matters.

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

I represented public entities and private clients, including the Riverside Press-Enterprise newspaper, the Regents of the University of California, the cities of Redlands, La Verne and Corona, and a variety of different types of businesses, including banks, real property developers, and small and family-owned businesses.

c.

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

I appeared in court frequently throughout my practice.

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

Approximately 10% of my practice was in federal court and 90% in state superior and municipal courts.

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

My practice was 100% civil.

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

Approximately one dozen, on half of which I was either lead or sole counsel, and the balance second counsel.

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

One was a jury trial; the balance were nonjury trials.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party of 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) Strelow v. Regents of the University of California, Riverside Superior Court Case No. 193666.

I successfully defended the University and several of its administrators in a wrongful termination jury trial. I was sole counsel for the defense. The plaintiff sued the University, and its current and former chancellors and deans, claiming he had been promised a lifetime position as a researcher in a psychology laboratory. In addition to complicated issues relating to academic employment procedure, the case also involved immigration law issues, as Plaintiff's case alleged violations of public policy and fraud based on the University's role in assisting with Plaintiff's immigration status. I was successful in having some of these claims resolved favorably by summary judgment motion; the remaining causes of action were tried to a jury in January 1991 before the Hon. Ronald Deissler. No appeal was taken.

Address and Telephone Number of Opposing Counsel:

Edward Strelow
Law Offices of Edward Strelow
4333 Orange St.
Riverside, CA 92501
(909) 787-8960

(2) Chavez v. The City of Riverside and Riverside Unified School District, Riverside Superior Court Case No. 208074

I defended a local school district and the City of Riverside in a California Environmental Quality Act ("CEQA") lawsuit. My clients were sued after

they acted to close a street which intersected an elementary school campus. The lawsuit involved CEQA issues, as well as land use and zoning ordinance issues. I was successful at the trial court, where the case was tried before the Hon. Robert Garst in January 1991. Shortly after trial I left practice, and the case was handled on appeal by other lawyers from my firm.

Address and Telephone Number of Opposing Counsel:

Dan McKinney
Reid & Hellyer
3880 Lemon St.
Riverside, CA 92501
(909) 682-1771

(3) William M. Berger v. Riverside Medical Clinic, et al., Riverside Superior Court Case No. 197486

I represented a physicians' group and its professional administrators sued by a former employee (physical therapist) for wrongful termination. The case involved claims of age discrimination and retaliation for "whistle-blowing," as well as claims regarding the law of at-will employment and breach of employment contract. The case settled on the eve of trial after extensive discovery and pre-trial motions. The case was heard in the pre-trial stages before the Hon. Edward Webster.

Address and Telephone Number of Opposing Counsel:

Crystal Russell
1201 S. Alma School Road
Suite 3500
Mesa, AZ 85210
(800) 691-7878

(4) Almaraz v. Big Bear Airport District, San Bernardino Superior Court Case No. BCV 1200

Along with Barton Gaut, another partner in my firm, I successfully defended a local airport sued by approximately 80 neighboring residents for inverse condemnation. I was solely responsible for extensive pretrial discovery of all 80 plaintiffs' claims, as well as all pretrial motions. The case was tried for approximately two weeks in September 1986 before the Hon. Leroy Simmons. The case involved issues of election between

nuisance and condemnation theories of recovery, as well as determination of the applicable statute of limitations. We successfully established the airport's avigational easement, and defeated all plaintiffs' claims of damages.

Address and Telephone Number of Opposing Counsel:

John Schimmenti
Schimmenti & Berberian
426 Main St.
El Segundo, CA 90245
(310) 640-0392

Current Address and Telephone Number of Barton Gaut:

Hon. Barton C. Gaut
Associate Justice, California Court of Appeal
303 W. Fifth St.
San Bernardino, CA 92401
(909) 383-2409

(5) Pueblo Construction v. Oak Ridge Ltd., et al., Orange County Superior Court Case No. X-51-62-38

I defended the owner-developer of a seniors' apartment complex project, who was sued by the original contractor hired to build the project. I was lead counsel for the major defendant in the case. Various parties were named in cross-actions, including architects, lenders and consultants on the project. The lawsuits included claims of defective construction, lender liability, fraud, and unlawful contracting practices. After extensive discovery and trial preparation, the trial court granted my motion for dismissal based on the expiration of the statute of limitations and plaintiff's failure to maintain good standing as a corporation. The case settled shortly thereafter. The case was heard in 1988 and 1989 before the Hon. John Woolley.

Address and Telephone Numbers of Opposing and Co-Counsel:

Michael Hearn
8180 E. Kaiser Blvd.
Anaheim, CA 92808-2213
(714) 282-0800

Larry Boyd
Gibson, Dunn & Crutcher
Four Park Plaza, Jamboree Center
Irvine, CA 92614-8557
(714) 451-3800

Thomas Kirchoff
Reed & Furay
550 N. Brand Blvd., 17th Floor
Glendale, CA 91203
(818) 244-6600

Edwin Paul
232 W. Main Street, Suite 203
Tustin, CA 92780
(714) 838-9211

Andrew Capestro
P.O. Box 1550
1088 Cass Street
Monterey, CA 93940-4509
(408) 649-0330

Linda Lester
Hart, King & Coldren
200 E. Sandpointe, Suite 400
Santa Ana, CA 92707
(714) 432-8700

(6) Walker v. Riverside Press-Enterprise, Riverside Superior Court Case No. 165256

I successfully defended the Riverside Press-Enterprise newspaper in a case with claims of defamation and trespass. The lawsuit involved important issues regarding the extent of certain statutory privileges, including newsworthiness of criminal investigations, and the extent of the application of the California statute on demands for retraction or correction. In addition, one plaintiff was a minor, whose invasion of privacy claim was based on publication of his photograph during a police search, thus raising novel issues regarding the privacy protection afforded to minors in this context. Summary judgment was entered in favor of my client by the Hon. William Mortland in 1986.

Address and Telephone Number of Opposing Counsel:

Michael Torchia
411 W. State Street, Suite C
P.O. Box 8363
Redlands, CA 92375-1563
(909) 307-2645

(7) Lopez v. Riverside Press-Enterprise, Riverside Superior Court Case No. 160166

I successfully defended the Riverside Press-Enterprise newspaper in a defamation case involving a former public official, the director of the Municipal Museum. The case involved important issues regarding the application of the statutory "newsworthiness" privilege to governmental personnel decisions, as well as the extent of the definition of "public officials" or "public figures" enunciated in New York Times v. Sullivan. Summary judgment was entered in favor of my clients by the Hon. J. David Hennigan in 1985, and the decision was upheld on appeal.

Address and Telephone Number of Opposing Counsel:

Ray Lapica
4275 Lemon St., Suite 203
Riverside, CA 92501
(909) 784-3641

(8) Southwest Medical Transport v. Friedman, United States District Court, Central District of California Case No. 84-0130-RMT(JRx)

Along with Barton Gaut, another partner in my firm, I represented the defendants in a civil action brought by a business competitor alleging unfair business practices and antitrust violations. The lawsuit involved complex issues of antitrust law, including allegations of tying arrangements between dialysis services and medical transportation, and refusal to deal with competing medical transportation providers. The case was settled shortly before trial, after extensive discovery and motion practice. The case was heard before the Hon. Robert M. Takasugi in 1983 through 1985.

Address and Telephone Number of Opposing Counsel:

Roderick G. Dorman
Christie, Parker & Hale
350 W. Colorado Blvd., Suite 500
P.O. Box 7068
Pasadena, CA 91109-7068
(818) 795-9900

(9) Gerald Rubin v. Los Angeles Fed. Sav. & Loan Assn., San Bernardino Superior Court Case No. 216082

Along with Barton Gaut, another partner in my firm, I represented the plaintiff in a civil action challenging the enforceability of the due on sale clause in a deed of trust on an apartment building. The case presented a novel issue regarding waiver by the lender of its rights to enforce the provisions in the deed of trust, and was tried to the Hon. John Ingro in 1983, who rendered a verdict in favor of the plaintiff. The verdict was affirmed in a published opinion in Rubin v. Los Angeles Savings & Loan Assn., 159 Cal. App. 3d 292, 205 Cal. Rptr. 455 (1984).

Address and Telephone Number of Opposing Counsel:

Kenneth M. Glazier
Ross, Sacks & Glazier
300 S. Grand Ave., Suite 3900
Los Angeles, CA 90071
(213) 617-2950

(10) McGrath v. Ventura Coastal Corporation, United States District Court, Central District of California Case No. 85-5051-RMT(Tx)

Along with William DeWolfe, another partner in my firm, I represented Ventura Coastal Corporation, a subsidiary of the 7-UP Company, in this class action lawsuit in United States District Court. The plaintiffs alleged various violations of the Federal Perishable Agricultural Commodities Act (PACA), involving the sale and marketing of citrus fruit by a commercial packinghouse. The case involved complex issues regarding the calculation of damages under a "pooling arrangement" set forth in the contract between the class members and the defendant, as well as the remedies available under PACA. The matter was settled shortly before trial, after extensive discovery and pre-trial motions. The case was heard before the Hon. Robert M. Takasugi from 1985 through 1988.

Address and Telephone Numbers of Opposing Counsel:

Donald B. Engler
1695 W. 24th Street
Yuma, AZ 85364-6205
(602) 344-3000

Noel A. Klebaum
Assistant County Counsel
Ventura County Counsel
800 S. Victoria
Ventura, CA 93009-0001
(805) 654-2580

Current Address and Telephone Number of William DeWolfe:

William DeWolfe
Best, Best & Krieger
3750 University Ave., Suite 400
Riverside, CA 92501
(909)686-1450

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

I have devoted substantial effort to legal education. Since 1991, I have taught numerous continuing education courses for the bar, particularly in the areas of state and federal civil pretrial and trial practice. I am a founding and active member of my community's branch of the American Inns of Court, a bench-bar organization devoted to the promotion of civility and excellence in our profession. When a practicing lawyer, I was an active participant in the Riverside County Bar Association, and as a member of its Professional Education Committee, helped stage an annual civil litigation conference. In addition, for over five years I served on the Riverside Superior Court's Judicial Arbitration Committee, which revamped and supervised the Court's alternative dispute resolution program.

II. FINANCIAL DATA AND CONFLICT OF INTEREST

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

   I have savings invested in the Federal Employees' Thrift Savings Program and in Individual Retirement Accounts. In addition, I am the beneficiary of my late husband's 403(b) savings through the University of California Retirement System. These investments are described in the attached Financial Disclosure Reports.

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

   As I have in the past, I will continue to recuse myself in any matters that come before me in which the University of California is a party. In addition, although I hold no financial interest in Best, Best & Krieger, my former law firm, I will recuse myself from all matters in which the firm represents any party for an appropriate period of time in keeping with the Code of Conduct for United States Judges. I will comply in all respects with the Code of Conduct and all applicable laws and regulations on conflicts of interest.

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

   I may wish to continue teaching one course per year at UCR, as I have done for several years in the past. I have sought and received the necessary approvals from the Chief Judges of the District Court and the Ninth Circuit Court of Appeals for such teaching in the past, and would do so if I decide to continue teaching.

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

   Please see attached Financial Disclosure Reports.

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

Please see attached financial statement.

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

No.

AO-10 (w)
Rev. 8/96

FINANCIAL DISCLOSURE REPORT
Calendar Year 1996

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Phillips, Virginia A.	United States District Court	05/06/1997

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check type)	6. Reporting Period
Full-Time Magistrate Judge	___ Nomination, Date / / ___ Initial X Annual ___ Final	01/01/1996 to 12/31/1996

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.
312 North Spring Street Los Angeles, California 90012	Reviewing Officer _____ Date _____

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

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

	POSITION	NAME OF ORGANIZATION / ENTITY
☐	NONE (No reportable positions.)	
1	Member, Board of Directors	Riverside Youth Service Center (non-profit org.)
2	Visiting Lecturer	University of California, Riverside
3		

II. AGREEMENTS *(Reporting individual only; see pp. 14-17 of Instructions.)*

	DATE	PARTIES AND TERMS
☐	NONE (No reportable agreements.)	
1		
2		
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 18-25 of Instructions.)*

	DATE	PARTIES AND TERMS	GROSS INCOME (yours, not spouse's)
☐	NONE (No reportable non-investment income.)		
1	1996	U.C. Riverside, professorial salary	
2	1996	U.C. Riverside, one term teaching position	$ 3,564.00
3			
4			
5			

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Phillips, Virginia A. | Date of Report: 05/06/1997

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp. 26-29 of Instructions.)

	SOURCE	DESCRIPTION
[ ]	NONE (No such reportable reimbursements or gifts)	
1		
2		
3		
4		
5		
6		
7		

V. OTHER GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp. 30-33 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
[X]	NONE (No such reportable gifts)		
1			
2			
3			
4			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE COD
[X]	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

* VAL CODES J = $15,000 or less K = $15,001-$50,000 L = $50,001 to $100,000 M = $100,001-$250,000 N = $250,001-$500,000
O = $500,001-$1,000,000 P1 = $1,000,001-$5,000,000 P2 = $5,000,001-$25,000,000 P3 = $25,000,001-$50,000,000 P4 = $50,000,001 or more

Name of Person Reporting | Date of Report

FINANCIAL DISCLOSURE REPORT | Phillips, Virginia A. | 05/06/1997

VII. Page 1 INVESTMENTS and TRUSTS -- *income, value, transactions (includes those of spouse and dependent children. See pp. 17-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period (1) Amt. Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (no reportable income, assets, or transactions)									
1 Wells Fargo Bank, savings and checking accounts (J)	A	Interest	J	T					
2 Riv.Cmps.F.Credit Union, IRA, (savings)&checking accts(J)	A	Interest	J	T					
3 Paine Webber Common Stock (J)	A	Dividend	J	T	sell	04/96	J	B	
4 UCBenefits:tax-deferrd403(b)Plan (savngs,equity&bnd funds)(J)	D	Interest & Div	L	T					
5 Paine Webber IRA Retirement Money Fund (J)	A	Interest	J	T					
6 Paine Webber RMA Money Market Portfolio (J)	A	Dividend	J	T	Buy	4/96	J		
7 Paine Webber Growth & Income FDA (Mutual Fund) (J)	A	Dividend	J	T	Buy	4/96	J		
8 Seligman Henderson Global Smaller Co. CLA (Mutual Fund) (J)	A	Dividend	J	T	Buy	4/96	J		
9 Prudential Stock Index/Annuity Fund (IRA) (S)	A	Interest	J	T					
10 Lord Abbett Affiliated Fund (IRA) (J)	A	Dividend	K	T	seeVIII				
11 Govt. Sec. Inc. FD GNMA Ser. 12	C	Interest	K	T	seeVIII				

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting: Phillips, Virginia A.	Date of Report: 05/06/1997

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

☐ NONE (No additional information or explanations.)

Section VII

Item 5 (Paine Webber IRA Retirement Money Fund): On the 1995 Report, this was not ccrrectly broken down into the various components, which include the Lord Abbott Affiliated Fund (now listed as Item 10) and the Government Securities (Ginnie Mae bonds) (now listed as Item 11). Also, on the 1995 Report the amount of income ((B)(1)) as to the Paine Webber IRA Retirement Money Fund was incorrectly reported as (E). The correct reporting code would have been (C).

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting: Phillips, Virginia A.	Date of Report: 05/06/1997

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Virginia A. Phillips Date 5/6/97

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

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

AO-10 (w)
Rev. 8/96

FINANCIAL DISCLOSURE REPORT
Calendar Year 1997

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Phillips, Virginia A.	U.S. District Court	04/13/1998
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. Report Type (check type)**	**6. Reporting Period**
Full-Time Magistrate Judge	___ Nomination, Date / / ___ Initial X Annual ___ Final	01/01/1997 to 12/31/1997
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.**	
312 North Spring Street Los Angeles, CA 90012	Reviewing Officer _____ Date _____	

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

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

[ ] NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Member,Board of Directors	Riverside Youth Service Center (non-profit org.)
2	Visiting Lecturer	University of California, Riverside
3	Member, Board of Directors	Survive Food Bank (non-profit org.)

II. AGREEMENTS *(Reporting individual only; see pp.14-17 of Instructions.)*

[X] NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1		
2		
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 18-25 of Instructions.)*

[ ] NONE (No reportable non-investment income.)

	DATE	PARTIES AND TERMS	GROSS INCOME (yours, not spouse's)
1	1997	U.C. Riverside professorial salary (spouse)	
2	1997	U.C. Riverside, one term teaching position	$ 3,725.04
3			
4			
5			

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	04/13/1998

IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp. 26-29 of Instructions.)

	SOURCE	DESCRIPTION
X	NONE (No such reportable reimbursements or gifts)	
1		
2		
3		
4		
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6		
7		

V. OTHER GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp. 30-33 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
X	NONE (No such reportable gifts)		
1			
2			
3			
4			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 34-36 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
X	NONE (No reportable liabilities)		
1			
2			
3			
4			
5			
6			
7			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Phillips, Virginia A.

Date of Report: 04/13/1998

VII. Page 1 INVESTMENTS and TRUSTS -- *income, value, transactions (includes those of spouse and dependent children. See pp. 37-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. 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) Amt. Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (no reportable income,assets, or transactions)									
1 Wells Fargo Bank, Savings & Checking Accounts (J)	A	Interest	J	T					
2 Riv.Cmps. Fed Credit Union, IRA (savings & checkng accts)(J)	A	Interest	J	T					
3 UCBenefts:TaxDefrrd403(b)Plan (svngs, equity&bnd funds)(J)	E	Intrst&Div.	L	T					
4 PaineWebber IRA Retirement Money Fund (J)	A	Interest	J	T					
5 PaineWebber RMA Money Market Portfolio(J)	A	Dividend	J	T					
6 PaineWebber Growth&Income FDA (Mutual fund)(J)	A	Dividend	J	T					
7 Seligman Henderson Global Smaller Co. CLA (Mutual Fund) (J)	A	Dividend			Sold	9/97	J	A	
8 Seligman Henderson Large Cap Value Fund (Mutual Fund)(J)	A	Dividend	J	T	Buy	9/97	J		
9 Prudential Stock Index/Annuity Fund (IRA)(S)	A	Interest	J	T					
10 Lord Abbott Affiliated Fund (IRA)	B	Dividend	L	T					
11 Gov. Sec. Inc. FD GNMA Ser. 12 (IRA)	A	Interest			Sold	9/97	J	B	See VIII
12 GNMA Pool 0939 M 7.5% (IRA)	B	Interest			Sold	9/97	K	A	See VIII
13 Van Eck Global Hard Assets Fund Class A(Mutual Fund)(J)	A	Dividend	J	T	Buy	9/97	J		

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	04/13/1998

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

☐ NONE (No additional information or explanations.)

Item Nos. 11 and 12: On the 1996 Report these items were not correctly separated between the two types of assets, the GNMA Ser. 12 bonds and the GNMA Pool. These items are now listed separately as Item Nos. 11 and 12, respectively.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	04/13/1998

SECTION HEADING. (Indicate part of report.)

SECTION 1. POSITIONS (cont'd.)

Li. Position	Name of Organization/Entity
4 Member, Board of Directors	Federal Bar Association, Inland Empire Chapter

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	04/13/1998

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Virginia A. Phillips Date 4/13/98

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

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

AO-10 (w)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4 , Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Phillips, Virginia A.	United States District Court	/ /

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check type)	6. Reporting Period
U.S. District Judge Nominee	X Nomination, Date / / Initial Annual Final	01/01/1997 to 04/27/1998

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.
312 N. Spring Street Los Angeles, CA 90012	Reviewing Officer _____ Date _____

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

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

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Member, Board of Directors	Riverside Youth Service Center (non-profit org.)
2	Visiting Lecturer	University of California, Riverside
3	Member, Board of Directors	Survive Food Bank (non-profit org.)

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

☒ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1		
2		
3		

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

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE		GROSS INCOME (yours, not spouse's)
1	1996	U.C. Riverside professorial salary	(spouse)	
2	1996	U.C. Riverside, one term teaching position		$ 3,564.00
3	1997	U.C. Riverside professorial salary	(spouse)	
4	1997	U.C. Riverside, one term teaching position		$ 3,725.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	/ /

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	**NONE** (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	**NONE** (No such reportable gifts.)		
1	EXEMPT		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
X	**NONE** (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Phillips, Virginia A.

Date of Report: / /

VII Page 1 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse. "(S)" for separate ownership by spouse. "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income,assets, or transactions.)									
1 Wells Fargo Bank, Savings & Checking Accounts (J)	A	Interest	J	T	Exempt				
2 Riv.Cmps.Fed Credit Union, IRA(savings & checkng accts)(J)	A	Interest	J	T	Exempt				
3 UCBenefts:TaxDefrrd403(b)Plan (svngs, equity&bnd funds)(J)	E	Intst&Div	L	T	Exempt				
4 PaineWebber IRA Retirement Money Fund (J)	A	Interest	J	T	Exempt				
5 PaineWebber RMA Money Market Portfolio (J)	A	Dividend	K	T	Exempt				
6 PaineWebber Growth&Income FDA (Mutual fund)(J)	A	Dividend	J	T	Exempt				
7 Seligman Henderson Global Smaller Co. CLA (Mutual Fund)(J)	A	Dividend	J	T	Exempt				
8 Seligman Henderson Large Cap Value Fund (Mutual Fund)(J)	A	Dividend	J	T	Exempt				
9 Prudential Stock Index/Annuity Fund (IRA)(S)	A	Interest	J	T	Exempt				
10 Lord Abbott Affiliated Fund (IRA)	B	Dividend	L	T	Exempt				
11 Gov. Sec. Inc. FD GNMA Ser. 12 (IRA)	A	Interest	J	T	Exempt				
12 GNMA Pool 0939 M 7.5% (IRA)	B	Interest	J	T	Exempt				
13 Van Eck Global Hard Assets Fund Class A(Mutual Fund)(J)	A	Dividend	J	T	Exempt				
14									
15									
16									
17									

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
(Col. C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	/ /

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	/ /

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Member, Board of Directors	Federal Bar Association, Inland Empire Chapter

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type		Gross Income
5	1998	U.C. Riverside professorial salary	(spouse)	$ 0.00
6	1998	U.C. Riverside, one term teaching position		$ 3,798.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Phillips, Virginia A.	/ /

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Virginia A. Phillips Date 4/27/93

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. 4, Section 104).

FILING INSTRUCTIONS

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

Virginia A. Phillips

FINANCIAL STATEMENT
NET WORTH

ASSETS		LIABILITIES	
Cash:	7,500	Automobile loan: (Riverside Campus Fed. Credit Union):	$ 28,666
Shares in mutual funds:			
PaineWebber Growth & Income, Fund A	7,619	Bank loan on personal residence (Homeside Lending, Inc.):	81,854
Seligman Large Cap Value Fund	6,351		
VanEck Global Hard Assets Fund	8,365	Bank loan on second residence (Homeside Lending, Inc.):	129,959
Total:	**22,335**		
Personal residence:	170,000	Est. 1998 Federal Income Tax due:	7,500
Second residence:	165,000		
Automobile:	25,000		
IRA (Prudential Indiv. Annuity):	5,394		
IRA (Savings account Riverside Campus Fed. Credit Union):	3,408	**Total Assets:**	**$1,024,670**
		Total Liabilities:	**247,979**
IRA (PaineWebber) Mutual Fund: Lord-Abbott Affil. Fund:	58,603	**Net Worth:**	**$ 776,691**
UC Retirement System Tax-Deferred Savings Plan (401(a) and (403(b)):	123,471		
Federal Employees Thrift Savings Plan Accounts:	29,329		
Personal property (jewelry, coins, stamps, misc. items):	45,500		
Life Insurance Proceeds Payable:	367,000		
Cash Value in Whole Life Ins. Policy (Principal Mutual Life Ins. Company):	2,130		

GENERAL INFORMATION

Are any assets pledged?	No.
Are you a defendant in any suits or legal actions?	Yes, see answer to Question No. IV (10)
Have you ever filed for bankruptcy protection?	No.

III. GENERAL

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

From 1982 to 1988 I volunteered at, and later coordinated, the Legal Clinic at UCR, staffed by volunteers from the Riverside Barristers organization. The Clinic provides free legal counseling to students and staff at UCR; typically, clients sought advice and information on landlord-tenant disputes, traffic violations, and child support collection matters. I volunteered at the clinic no more than one evening per month, and later coordinated the scheduling of the volunteer lawyers.

From 1997 to the present, I have served on the Board of Directors of the Survive Food Bank of Riverside & San Bernardino Counties, a local nonprofit agency serving local church and charitable organizations.

From 1989 to 1997, I served on the Board of Directors of the Riverside Youth Service Center, a local nonprofit agency providing child abuse, substance abuse and other counseling and education services to low and middle income families. I served two terms as Board President (1993 and 1994), and held other officer positions before and after my terms as President.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates — through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

No.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

I submitted an application for consideration to Senator Barbara Boxer's office. I was interviewed in June 1997 by a subcommittee of Senator Boxer's Judicial Selection Committee, and then was interviewed by the entire committee. I was not selected as the person to be recommended for nomination at that time. In November 1997, I resubmitted my application to Senator Boxer. I was scheduled for an interview with her Judicial Selection Committee on January 16, 1998. I was unable to attend the interview on that date, and the Committee decided to waive the interview as I had been interviewed by them earlier in the year. In February 1998 I was interviewed over the telephone by a member of Senator Boxer's staff. I was notified that the Senator had selected me for recommendation to the President on February 10, 1998. I have since been interviewed by representatives of the Federal Bureau of Investigation, the American Bar Association, and the United States Department of Justice.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Federal courts are courts of limited jurisdiction, and are empowered to decide cases only when one of the bases for jurisdiction is satisfied. Both Article III of the Constitution and Congressional enactments set forth these boundaries of federal judicial power. In addition to jurisdictional limitations, the critical principles of justiciability constrain the federal judiciary's power to address disputes, including the requirements that the parties have standing to bring their matter before the court, and that the issues be ripe for decision and not moot.

A judge properly decides cases by applying the legal precedents to the specific facts actually before the court in a fair and impartial manner, and by interpreting legislation according to its plain language. It is not the role of the judicial branch to act as legislators or administrators; rather, the courts are charged with deciding specific issues on the basis of pre-existing precedents.

Finally, the doctrines of separation of powers and federalism affect the distribution of power between the three branches of federal government, and between the federal and state courts. The continued healthy balance of our tripartite system of democratic government depends on the appropriate measure of respect accorded by each branch to the other, co-equal branches.

Broderick, was wrongfully apprehended by various officers of, inter alia, federal organizations such as the Federal Bureau of Investigation, U.S. Postal Service and the Internal Revenue Service, since they knew or ought to have known that, at all material times, these agencies, their employees, etc., did not have the jurisdiction over the subject offences allegedly committed by the Plaintiff, Mrs. Broderick.

37. The Plaintiffs state, and the fact is, that the Defendant, Justice Dickran Tevrizian knew or ought to have known that the Plaintiff, Mrs. Broderick, was entitled to advance her jurisdictional opposition and submissions relating thereto. In addition, the Plaintiffs state, and the fact is, that the Defendant, Justice Dickran Tevrizian knew or ought to have known that the jurisdictional opposition and submissions advanced and to be advanced by the Plaintiff, Mrs. Broderick, were meritorious.

38. The Plaintiffs state, and the fact is, that some or all of the Defendants knew or ought to have known that the evidence relied upon by the prosecution in the above referred to "trial" was unlawfully seized in violation of the Plaintiffs' constitutionally protected rights. In addition, the Plaintiffs state, and the fact is, that some or all of the Defendants knew or ought to have known that the evidence relied upon by the prosecution should have been deemed inadmissible.

39. The Plaintiffs state, and the fact is, that some or all of the Defendants knew or ought to have known that the Plaintiff, Mrs. Broderick, was wrongfully convicted in absentia, as the conviction

was obtained through reliance on what should have been deemed inadmissible evidence unlawfully seized by unauthorized officers acting in excess of their jurisdiction.

40. The Defendants, individually and collectively, at all material times, owe(d) a duty of care to the Plaintiffs to ensure that, inter alia, their rights, constitutional and otherwise, were upheld and equally protected from violation.

41. The Defendants, individually and collectively, breached the above noted duty of care to the Plaintiffs.

42. The Plaintiffs have, individually and collectively, suffered tremendous damages as a result of the negligence of the Defendants.

43. In addition, and in the alternative, partial or otherwise, the Plaintiffs have, individually and collectively, suffered tremendous damages as a result of the Defendants' negligent disregard for the well being, health related and otherwise, and rights, constitutional and otherwise, of the Plaintiffs.

44. In addition, and in the further alternative, partial or otherwise, the Plaintiffs have, individually and collectively, suffered tremendous damages as a result of the Defendants' reckless disregard for the well being, health related and otherwise, and rights, constitutional and otherwise, of the Plaintiffs.

45. In addition, and in the further alternative, partial or otherwise, the Plaintiffs have, individually and collectively, suffered tremendous damages as a result of the Defendants' intentional or wilful disregard for the well being, health related and otherwise, and rights, constitutional and otherwise, of the

Plaintiffs.

46. In addition, and in the further alternative, partial or otherwise, the Plaintiffs have, individually and collectively, suffered tremendous damages as a result of the Defendants' high-handed, malicious, capricious and unconscionable conduct.

47. In addition, and in the further alternative, partial or otherwise, the Plaintiffs have, individually and collectively, suffered tremendous damages as a result of the Defendants' criminal conduct.

48. The Plaintiffs state, and the fact is, that, had the Defendants not failed to discharge their duty to the Plaintiffs, both of the Plaintiffs would be in such better health and the Plaintiff, Mrs. Broderick, would have enjoyed her right to, inter alia, liberty to the present day and, in fact, would never have been deprived of said right, as well as others. Instead, however, the health of both Plaintiffs has suffered tremendously and irreversibly and the Plaintiff, Mrs. Broderick, has been forced to remain wrongfully incarcerated and has been deprived of, inter alia, her rights to liberty.

49. The Plaintiff, Mrs. Broderick, states, and the fact is, that she will never have the days that she has been wrongfully incarcerated back so as to enjoy her liberty with her loved ones, including, but not limited to, the Plaintiff, Mr. Broderick.

50. The Plaintiffs state and the fact is that, in addition to the above, the Defendants have, inter alia, either acted in abuse and in excess of their power, failed to preclude others from acting in

abuse and in excess of their power when they had the power and duty to preclude said conduct, and failed to protect the Plaintiffs from violations of their rights, constitutional and otherwise, when they had the power and the duty to protect same.

51. By way of example, the Plaintiffs state, and the fact is, that Los Angeles County and its' respective officers, agents, employees, etc. have failed to prohibit federal organizations, agencies, employees, officers, etc. from exercising police powers in this matter notwithstanding the fact that said federal organizations, agencies, employees, officers, etc. did not have jurisdiction to exercise said police powers. In addition, the Plaintiffs state, and the fact is, that, at all material times, Los Angeles County and its' respective officers, agents, employees, etc. knew or ought to have known that the federal organizations, agencies, employees, officers, etc. did not have jurisdiction to exercise said police powers. In addition, the Plaintiffs state, and the fact is, that, at all material times, Los Angeles County and its' respective officers, agents, employees, etc. knew or ought to have known that they had the duty to prevent the federal organizations, agencies, employees, officers, etc. from exercising said police powers.

Dated: September 16, 1998

By: Richard F. Broderick

Richard F. Broderick
In propria personae
3227 Honeysuckle Avenue
Palmdale, California
93550

Tel.: (805) 538-9613

And By:

Richard F. Broderick
as agent for Margaret
Elizabeth Broderick
In propria persona
Presently Incarcerated
FMC Carswell RR5
P.O. Box 27137
Fort Worth, Texas 76127

VERIFICATION

The foregoing Claim/Complaint , by the hand Richard F. Brodeick as plaintiff, individually and as agent for plaintiff Margaret Elizabeth Broderick is given subject to the penalties of perjury per Cal. Penal C. § 118.

Dated: September 10, 1998

Richard F. Broderick

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Joel A. Pisano

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

Home: Spring Lake, NJ

Office: Martin Luther King, Jr. Federal Building & Courthouse
50 Walnut Street - PO Box 999
Newark, NJ 07101

3. Date and place of birth.

March 3, 1949 -- Orange, NJ

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

Married to Elizabeth Breckenridge Pisano.

Occupation: Learning Disabilities Teaching Consultant
Village School
601 New Village Road
Princeton Junction, NJ 08550

Employer: West Windsor-Plainsboro Regional School District
505 Village Road West
Princeton Junction, NJ 08550

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

9/67-6/71 - Lafayette College, Easton, PA – B.A. 1971
9/71-1/74 - Seton Hall University School of Law, Newark, NJ – J.D. 1974

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

1971 June-August	Belleville NJ Board of Education
	School Custodian
1972-1974	Lawrence S. Schwartz, Esq. Florham Park, NJ
	Part-Time Law Clerk
1974-1978	State of New Jersey, Office of the Public Defender Newark, NJ
	Essex Trial Region, Assistant Deputy Public Defender
1978-1985	Appointed as member and chairman of the Township of Belleville Board of Adjustment
1978-1991	Schwartz, Pisano, Simon & Edelstein Florham Park, NJ
	Partner - private practice
1991 to Present	U.S. Magistrate Judge, District of New Jersey Newark, NJ

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

No.

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

None.

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

American Bar Association
Fellow of the American Bar Foundation
New Jersey State Bar Association
Essex County Bar Association

Member, Case Management Committee of the U.S. District Court for the District of New Jersey. (1999)
Member, Public Relations and Collegiality Committee of the U.S. District Court for the District of New Jersey. (1999)
Member, U.S. District Court Lawyers' Advisory Committee. (1993-1996)
Member, U.S. District Court Committee on Personnel and E.E.O. (1993-1999)

Chairman, New Jersey Supreme Court Regional Fee Arbitration Committee, pursuant to N.J. Rule 1:20A. (1989-1991)

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

Lafayette College Alumni Association
Forest Hill Field Club (1980-1992; 1999-present)
Spring Lake Golf Club (house member)(1995-present)

None of these organizations are active in lobbying.

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

Supreme Court, New Jersey	1974
Superior Court, New Jersey	1974
U.S. District Court, New Jersey	1974
U.S. District Court SDNY, EDNY	1986
U.S. Court of Appeals, Second Circuit	1987

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

I have not published any books, articles or reports; I have not given any speeches relating to constitutional law or legal policy.

I have served as a judge in the Gibbons Moot Court Competition, Seton Hall University Law School, 1993, 1995, 1997.

I have served as judge for the Rutgers University Law School Trial Advocacy Course, 1992-1999.

I have participated in the annual meetings of the New Jersey State Bar Association by appearing on panel discussions concerning the amendments to Rule 26 of the Federal Rules of Civil Procedure (May 1994) and practice before United States Magistrate Judges (May 1999). I am scheduled to appear as a panelist for the New Jersey Institute of Continuing Legal Education on practicing before United States Magistrate Judges (October 1999).

In each instance my remarks were extemporaneous, and I did not make any notes in preparation.

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

State of health is excellent. Last physical examination was in October, 1998.

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.

United States Magistrate Judge, United States District Court for the District of New Jersey - appointed in 1991.

I conduct status conferences and settlement negotiations; oversee discovery and pretrial case management scheduling; hear and determine pretrial matters before the court. I conduct jury and non-jury trials upon the consent of the parties, and issue opinions and orders resolving dispositive motions upon the consent of the parties.

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

(1) Citations for the ten most significant opinions you have written:

1. Unihealth v. U.S. Healthcare, Inc., 14 F. Supp. 2d 623 (D.N.J. 1998).

2. Expediters Int'l, Inc. v. Direct Line Cargo Management Servs., Inc., 995 F. Supp. 468 (D.N.J. 1998).

3. Zarow-Smith v. New Jersey Transit Rail Operations, 953 F. Supp. 581 (D.N.J. 1997).

4. Holland v. New Jersey Dep't of Corrections, No. 93-1683, slip op. (D.N.J. May 10, 1996) (copy attached).

5. Weinberg v. Sprint Corp., 165 F.R.D. 431 (D.N.J. 1996), appeal dismissed for lack of jurisdiction, No. 96-354, 1996 WL 673501 (D.N.J. May 23, 1996).

6. Woods Corporate Assocs. v. Signet Star Holdings, Inc., 910 F. Supp. 1019 (D.N.J. 1995), affirmed 96 F.3d 1437 (3d Cir. 1996).

7. Dymburt v. Rao, 881 F. Supp. 942 (D.N.J. 1995).

8. Resolution Trust Corp. v. Castellette, 156 F.R.D. 89 (D.N.J. 1994), affirmed No. 92-4635, 1994 WL 411809 (D.N.J. Aug. 2, 1994).

9. Abrams v. Lightolier, Inc., 841 F. Supp. 584 (D.N.J. 1994), affirmed, remanded, 50 F.3d 1204 (3d Cir. 1995) (remanded solely on the issue of plaintiff's award of costs).

10. NL Industries, Inc. v. Commercial Union Ins. Co., 144 F.R.D. 225 (D.N.J. 1992).

(2) A short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings:

1. One Carol Place Co. v. Melnor, Inc., 1999 WL 65993, No. 96-2122 (D.N.J. 1999)

This case involved a claim for damages arising out of property damage to the roof of an industrial building and for the breach of a lease. In deciding issues arising from pretrial discovery, I entered an order precluding discovery as to certain fact questions concerning roof repairs, and permitting the deposition of certain witnesses to the circumstances of the making of the lease agreement. My order followed an order of the district judge deciding various cross motions for

summary judgment. Upon an appeal from my order, the district judge clarified its order deciding the summary judgment motions, and found that the parties were entitled to the discovery on the roof repairs which I had precluded. The district judge affirmed the portion of my order permitting the depositions of witnesses to the entry of the lease agreement.

2. Elizabethtown Water Company v. Hartford Casualty Ins. Co., 18 F. Supp.2d 464 (D.N.J. 1998).

In an opinion in which the district judge granted a motion for certification of an issue for immediate appeal, and denied a motion for reargument of the procedural history of the case, the court reviewed some previous issues which had been decided by me in a previous motion to amend the defendant's counterclaim. In my oral opinion denying the motion to amend the counterclaim, I found that an exclusion to an insurance policy had placed the plaintiff on notice that the defendant intended to raise it as a defense to the action.

Although the district judge, in the cited opinion, did not reverse any order that I had entered, he stated that I had "misinterpreted" the defense.

3. Cohen v. Morton, No. 94-3257 (D.N.J. October 30, 1996) (copy attached)

The district judge had denied the application of the *pro se* plaintiff to amend his complaint. I then, inadvertently, granted the same application, not knowing that the matter had already been decided by the district judge. The district judge then vacated my order.

4. NL Industries, Inc. v. Commercial Union Ins. Co., 828 F. Supp. 1154 (D.N.J. 1993) *reversed and remanded* 65 F.3d 314 (3d Cir. 1995).

In an action for insurance coverage and payment of defense costs in lead paint liability claims, I recommended that summary judgment be granted in favor of the insured, in part, based upon the law of the case doctrine, relying upon the decision of the district judge in a prior motion in the same case. See 1991 U.S. Dist. WL 398678 (D.N.J.). The district judge adopted my report as the opinion of the court.

The defendants appealed and challenged my decision that New Jersey law controlled the outcome of the case. The Court of Appeals for the Third Circuit reversed after concluding that the issues should have been decided under New York law. The case was remanded, and the district judge decided the motions under New York law. See 926 F. Supp. 446 (D.N.J. 1996).

5. Whalen v. W.R. Grace and Co., 56 F.3d 504 (3d Cir. 1995), No. 93-640 (HLS)

Plaintiffs in a claim for age discrimination moved to amend their complaint in

order to add five new plaintiffs to the action. I denied the motion because the five putative plaintiffs had not satisfied the procedural requirement of filing petitions with the EEOC in a timely manner.

In an unreported decision, the district judge reversed, and found that the plaintiffs should have been entitled to join the action.

The Court of Appeals for the Third Circuit reversed the district judge, relying upon the same reasoning in my opinion, and remanded to the district court with instructions that it deny the plaintiff's motion to amend the complaint.

6. Lo Bosco v. Kure Engineering Ltd., 891 F. Supp. 1035 (D.N.J. 1995).

The plaintiff claimed breach of contract and fraud against a company which was controlled by his ex-wife's father. I decided a motion *in limine*, and denied the plaintiff's application to preclude the introduction into evidence of certain letters written by him and his ex-wife, while they were attempting to negotiate the settlement of their divorce case. I concluded that, while the letters were statements made in an effort to reach settlement in the divorce case and protected under F.R.E. 408, they were not inadmissible in the case *sub judice*.

The district judge found that there was a legal basis for my opinion but because he concluded that the breach of contract and the divorce cases were closely related, he vacated that portion of my order which found the letters to be admissible as an admission, and deferred until trial the ultimate decision as to the admissibility of the letters.

7. Abrams v. Lightolier, Inc., 841 F. Supp. 584 (D.N.J. 1994), affirmed, remanded, 50 F.3d 1204 (3d Cir. 1995).

The Court of Appeals for the Third Circuit reviewed rulings that I made in a complex employment discrimination case. The plaintiff made claims based upon the New Jersey Law Against Discrimination ("N.J. LAD") and the federal Age Discrimination In Employment Act ("ADEA"). Following a lengthy jury trial, I decided post-trial motions which upheld the jury's verdict in favor of the plaintiff on the N.J. LAD claim and in favor of the defendant on the ADEA claim, ordered a remittur of the mental distress damages, and assessed costs in favor of the plaintiff. See 841 F. Supp 584.

The Court of Appeals for the Third Circuit affirmed all rulings except the award of costs, which it concluded should have been assessed under New Jersey law.

8. Fishbein Family Partnership v. PPG Industries, Inc., 871 F. Supp. 764 (D.N.J. 1994).

In the opinion cited above, I denied a motion by a third-party plaintiff to amend its complaint. The third-party plaintiff subsequently moved for reconsideration of that order, and in an unreported opinion I granted the motion for reconsideration, on condition that the third-party plaintiff pay counsel fees and costs incurred by the third-party defendant as a result of the delay in the proceedings caused by the third-party plaintiff. See Opinion, August 15, 1995. The third-party plaintiff appealed my order assessing fees and costs to the district judge. The district judge, in an oral opinion, reversed my order assessing fees, and in its place entered an order reducing the amount of the assessment. See Order, June 20, 1996.

9. Olefins Trading, Inc. v. Han Yang Chem. Corp., 813 F. Supp. 310 (D.N.J. 1993), vacated, remanded, 9 F.3d 282 (3d Cir. 1993).

This was a breach of contract action. The U.S. Court of Appeals for the Third Circuit held that, in granting a motion for a new trial, the court misapplied Uniform Commercial Code § 2-207 and remanded the matter for further proceedings.

10. United States v. Rail Union Tech. Assist., Inc., 1993 WL 944583 (D.N.J. 1993).

In connection with an Amtrak investigation into fraud, the United States served subpoenas upon targets of the investigation. When the targets failed to comply with the subpoenas, the United States brought a summary proceeding to enforce the subpoenas. I granted that application. On appeal, the district judge concluded that my order enforcing the subpoenas was a dispositive order. The district judge vacated my order and entered his own order enforcing the same subpoenas.

11. Neorx Corp. v. Immunomedics, Inc., 1993 WL 592531, No. 92-2853 (D.N.J. 1993).

Defendant in a patent infringement case moved to bifurcate the issues of liability, damages, and willfulness, and to stay discovery of its attorneys' opinions. I denied the motion and concluded that the defendant had not presented a showing of prejudice by a unified trial because it had not yet raised the defense of reliance upon advice of counsel. I ordered the defendant to make an election whether it was relying on the advice of counsel defense.

On appeal the district judge reversed, finding that the motion to bifurcate should not have been decided until the court reviewed, in camera, the defendant's

attorney-client communications. The district court did not express an opinion as to the ultimate decision that I should make, once the review had been conducted. The district judge affirmed my decision denying the motion to stay discovery.

12. Delta Tanning Corp. v. Classic Leather Sales Corp., No. 91-3467 (D.N.J. June 19, 1992) (copy attached).

In a commercial case, the plaintiff moved to amend its complaint to include claims of fraud. I denied the motion, finding that the plaintiff had failed to plead its fraud claim with sufficient particularity under Federal Rule of Civil Procedure 9(b). On appeal, the district judge reversed my decision, and concluded that the plaintiff's fraud claim could be based upon allegations of circumstantial evidence and therefore the motion to amend should have been granted.

(3) Citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions:

Braddy v. County of Hudson, No. 98-5253, (D.N.J. August 24, 1998) (copy attached).

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

Appointed as member and chairman of the Township of Belleville Board of Adjustment, 1978-1985.

17. Legal Career:

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

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

I did not clerk for a judge.

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

I have not practiced alone.

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

1974-1978	State of New Jersey, Office of the Public Defender 151 Halsey Street, Newark, NJ 07102
	Essex Trial Region, Assistant Deputy Public Defender
1978-1991	Schwartz, Pisano, Simon & Edelstein Ten James Street, Florham Park, NJ 07932
	Partner - private practice
1991-Present	U.S. Magistrate Judge, District of New Jersey 50 Walnut Street, Newark, NJ 07101

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

1974-1978: When I served as an Assistant Deputy Public Defender, I represented clients charged with State felonies for the Office of the Public Defender. My practice was limited to the trial of criminal cases.

1978-1991: In private practice, I represented clients in a wide variety of legal matters, including the trial of civil and criminal cases in federal and state courts. I supervised and managed the litigation section of a law firm. I negotiated and closed corporate and personal transactional matters. I represented parties in connection with zoning and land use problems. Upon appointment by the U.S. District Court, I acted as a receiver in a citizens' environmental cleanup case. Upon appointment by the U.S. District Court, I served as Special Master in a federal tobacco product liability case.

1991-present: I have served as a United States Magistrate Judge.

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

In private practice, my former clients were generally individuals, and the business entities which they formed. I represented them in criminal and civil litigation (both as plaintiffs and defendants), handled real estate transactions, corporate matters, and zoning and land use applications. I also represented boards of education in litigation and land use cases. I specialized in trial work, zoning and land use, and personal transactional matters.

While I was a public defender, my clients were individuals charged with state crimes.

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

I appeared in court daily, devoting significant portion of my practice to litigation and trial, civil and criminal.

2. What percentage of these appearances was in:

a) Federal courts	30%
b) State courts of record	65%
c) Other courts	5% (administrative courts; municipal courts)

3. What percentage of your litigation was:

a) Civil	60%
b) Criminal	40%

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

I was sole counsel in approximately 100-150 cases, from 1974-1981.

5. What percentage of these trials was:

a) Jury:	80%
b) Non-jury:	20%

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

(a) the date of representation;
(b) the name of the court and the name of the 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. NE Assoc. v. Warren Street Assoc. Superior Court of New Jersey, L-017212-86, Hudson County, Judge Dorothea Wefing. (1988-1991)

I represented plaintiff, NE Associates, a closely held family corporation, in its suit for damages caused by a flood in the building which it leased from the defendant. NE Associates was a furniture warehouse/trucking business, and the malfunction of the sprinkler and alarm systems resulted in the destruction of all property stored in the warehouse. I also made a claim that the value of the business was destroyed.

This case was made complex because discovery materials were lost in the flood giving rise to the claim, and by the need to establish the value of my clients' business through expert accounting testimony. The case remained pending for approximately three years.

The case was settled on the day of trial. Subsequently, and following my involvement in the case, the settlement was vacated, and the matter was tried by new counsel.

Opposing Counsel:

E. Richard Kennedy
PO Box 250
Montville, NJ 07045
(973) 334-1355

John Ronca, Deceased

2. State v. Feeney, Superior Court of New Jersey, Ind No. S1603-8906 Bergen County, Judge Frederick Keuchenmeister. (1990)

This was a criminal case brought by the State Attorney General. A state grand jury indicted my client, Robert Feeney, a Teamsters Union President, and a shop steward on charges that they committed extortion and aggravated assault. Following extensive hearings on the admissibility of electronic and video surveillance materials, both defendants entered into plea agreements.

My client successfully applied for admission into the New Jersey Intensive Supervision Program, and served a reduced term of incarceration at the Jones Farm complex in Trenton, NJ, a working farm operated by the New Jersey Department of Corrections.

Opposing Counsel:

Charles Buckley, Dep. Attorney General (retired)
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(732) 264-5162

Co-Counsel:

Joseph T. Afflitto, Sr.
Afflitto Raimondi & Afflitto
PO Box 3097
Wayne, NJ 07474-3097
(973) 633-8700

3. Andrew Rice v. Ramsey Board of Education, Superior Court of New Jersey, L-40847-88, Bergen County, Judge James Murphy. (1990)

In this civil case, I represented the plaintiff, a high school football player, who suffered a serious knee injury while playing in a varsity interscholastic contest. He injured his knee in a play from scrimmage, sat out the next play, and inserted himself back into the game after a cursory examination by the team doctor. On the very next play, without any contact with another player, he severely damaged his knee by tearing the anterior cruciate ligament. I filed a complaint against the coaches of the plaintiff's school and the Board of Education on theories of negligence and lack of supervision, and against the team doctor for medical malpractice.

The coaches and Board of Education settled with the plaintiff. The doctor refused to settle, and we commenced trial. Following jury selection and opening statements, the parties agreed to a settlement.

Opposing Counsel:

E. Burke Giblin, Jr.
Giblin & Combs, Esqs.
10 Madison Avenue
Morristown, NJ 07960
(973) 829-1500

4. Piatt v. Yurgaitus, Jr., et al, U.S. District Court, (M.D. PA), 3: cv 89-1594, Judge James McClure. (1989)

I represented Dr. and Mrs. Cummings Piatt. This case involved the death of my clients' son, who was a college student in Wilkes Barre, Pennsylvania. He was killed in a motor vehicle accident caused by a drunk driver. The defendant driver was prosecuted for vehicular homicide, and he was convicted. I filed a complaint

against the defendant driver and against several taverns where he had been drinking, alleging "dram-shop" liability.

The principal problem in the case was to identify any assets of the defendants, and, when it appeared that they were impecunious, to determine whether my client's automobile insurance policy provided a remedy. There was a provision in the policy for coverage for losses caused by uninsured or under-insured parties.

Our complaint was filed in the federal court for the Middle District of Pennsylvania under diversity of citizenship jurisdiction. I argued that the conviction of the defendant driver established liability in the civil case as a matter of law, and I successfully brought a motion for summary judgment on liability. I then settled with the tavern defendants, and filed a claim with the clients' insurance carrier under the uninsured/under-insured provisions of their policy. The insurance carrier thereafter paid full policy limits of $300,000.00.

Opposing Counsel:

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Silverblatt & Townsend
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(570) 823-5181

5. Reiner v. State of New Jersey, U.S. District Court, (D.N.J.), Civ. No. 88-1373(NHP) Judge Nicholas H. Politan. (1989)

I represented plaintiff, Elinor Reiner, a female judge in the New Jersey Office of Administrative Law, against her supervising judge and the State of New Jersey. In her complaint, the plaintiff claimed that she was the victim of sexual discrimination and sexual harassment. She had been harassed and embarrassed by her supervisor in the presence of other judges, he demanded *quid pro quo* sexual favors, and, when she refused, he assigned to her a less desirable caseload than those given to other judges. The complaint also asserted discrimination claims based upon the fact that plaintiff, a female, was not being paid the same salary as were male judges.

I did not participate in the case until pretrial discovery had been completed, and the plaintiff retained me as the case was being prepared for trial. I then began to engage in settlement negotiations with the Deputy Attorney General who was defending the State, and eventually we reached an agreement to settle all claims for $200,000.00. This was the first significant case of employment discrimination brought against the State, and it represented by far the largest settlement that the state had ever paid to a plaintiff in an employment context.

Opposing Counsel:

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Co-Counsel: Alice Ballard
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6. Silverman & Braun v. Patco South, et al, Superior Court of New Jersey, Chancery Division, C-54964-89 Monmouth County, Judge Patrick McGann. (1989)

I represented Erika Kozar, an insurance broker. She was a defendant sued by her former employer, when she and her business partners resigned their positions and formed a separate firm. The former employer claimed that she had violated a restrictive covenant and a non-competition agreement.

I argued, in her defense, that the principals of the former employer had committed fraud and conversion of assets, and therefore the restrictive contracts were unenforceable. This was a very contentious case, and involved several applications for injunctive relief.

The case was still pending when I left private practice. I understand the case settled prior to trial.

Opposing Counsel:

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Co-Counsel:

Robert L. Ritter
Schiffman Berger Abraham Kaufman & Ritter, P.C.
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(201) 488-2600

7. U.S. v. Badalamenti, et al, U.S. District Court, SDNY, SS Cr.236 (1985) F. 2d 1141, (2d Cir. 1989), Judge Pierre Leval.

I represented Francesco Polizzi, one of 21 defendants who were indicted in what has become known as "the Pizza Connection" case. The charges against the defendants included drug importation, money laundering, and RICO conspiracy. The government charged that the defendants were members of the Sicilian Mafia and operated an international drug distribution enterprise between Sicily, Italy, South America, and various parts of the United States, from New York to Michigan.

The case commenced with the arrest of my client in 1984. I was not involved in the defense of the case until July or August of 1985, just before jury selection was to begin, when an attorney, who had been retained to prepare pre-trial motions, withdrew. I was retained to assist trial counsel, Michael Querques, in preparation for trial. The case was projected to be a three-month trial, but after it commenced in September of 1985, it became clear that it would take much longer. In February or March of 1986, due to other commitments at my firm, I took a hiatus of about eight months, and returned to the trial in the fall of 1986. I attended daily trial sessions from approximately January of 1987 through the conclusion of the trial in March 1997, and became lead counsel through the sentencing of the defendant. I thereafter participated in the appeal to the U.S. Court of Appeals for the Second Circuit by assisting my client in retaining counsel to file his appeal, and in educating appellate counsel as to the facts and circumstances of the trial.

Following his sentencing, Mr. Polizzi retained new counsel. He filed an application to vacate his conviction on the theory that his right to be present at trial was violated and that he had received ineffective assistance of counsel. I was not involved, or named, in that application. It was denied. See, Polizzi v. United States, 88 Civ. 1631(PNL), 1990 WL 100891 (1990 S.D.N.Y.), aff'd, 926 F 2d 1311 (2d Cir. 1991).

Opposing Counsel:

Hon. Louis J. Freeh, Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001
(202) 324-3000

Co-Counsel:

Michael A. Querques, Esq.
443 Central Avenue
Orange, NJ 07050
(973) 673-1400

Joseph Ryan
EAB Plaza
Fl 14 West
Uniondale, NY 11556
(516) 832-1000

8. State v. Barber, Superior Court of New Jersey, Ind. 3233-10-83, Essex County, Judge Donald Coburn. (1984)

This was a criminal case in which my client, Earl Barber, was indicted for aggravated assault. My client's wife, an alcoholic and drug addict, was caught having sexual relations with the tenant who rented an apartment in the house. My client, her husband, confronted the tenant, a violent fight ensued, and he was arrested. Following my client's indictment, he and his wife entered therapy and eventually reconciled prior to the commencement of trial.

At trial, I successfully argued that my client had acted in self-defense, and he was acquitted.

Opposing Counsel:

Donald A. Ottaunick
Cole, Schotz Meisel Forman & Leonard, P.A.
25 Main Street
Hackensack, NJ 07601
(201) 489-3000

9. Davis v. Gardner Denver, Superior Court of New Jersey, L-1743-81, Essex County, Judge Marilyn Loftus. (1983)

This was a civil case in which I represented the plaintiff, a mechanic, who was injured in a work-place accident when he caught his hand in the blade of a cooling fan of an air compressor manufactured by the defendant. The law of product liability in New Jersey had, at the time of the trial, not yet been made subject to statute, and there was a state of flux in product liability law at the time. There was a significant issue as to the admissibility of the plaintiff's own negligence.

The case was tried twice. At the first trial, the judge permitted, over objection,

an inference by the jury that the accident was caused by the plaintiff's contributory negligence. The jury found for the defendant, and I moved for a new trial. The motion was granted. Defense counsel filed a motion for an interlocutory appeal, which was denied by the Appellate Division of the NJ Superior Court. After a second trial, a verdict was found for the plaintiff.

Opposing Counsel:

John E. Flaherty
McCarter & English
Gateway Four
Newark, NJ 07102
(973) 622-4444

10. Tormasi v. Garden State Elec. Inspection. Servs., Superior Court of New Jersey, L-18823-81, Middlesex County, Judge Stephen Skillman. (1983)

In this civil case, I represented an electrical inspection company which was named as a defendant in a personal injury case. The plaintiff was a licensed electrician who suffered significant burn injuries from electrocution when he altered the power panel suppling electricity to an industrial building. The plaintiff sued several defendants, including the architect of the building, the contractors who built it, the owner, and my client, the company that was responsible for determining whether the electrical contractor had complied with appropriate construction codes.

The case took about one month for trial, and a verdict in favor of my client was returned.

Opposing Counsel: George M. Fieldman
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Co-Counsel: Kenneth R. Rothschild
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Bartholomew Longo
Hoagland, Longo, Moran, Dunst & Doukas
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New Brunswick, NJ 08903-0480
(732) 848-4000

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

In May 1994, I appeared as a panelist at the New Jersey State Bar Association Annual Conference on the recent amendments to Rule 26 of the Federal Rules of Civil Procedure.

In May 1999, I appeared on a panel discussion at the New Jersey State Bar Association Annual Conference. Along with several of my colleagues, we presented a program about practicing before United States Magistrate Judges.

Since 1991, I have served as the judge in mock trials conducted by students in the Rutgers University Law School Trial Advocacy Course. The mock trial is the "final exam" for the course and is conducted in April of each school year.

I have served as a judge in the Gibbons Moot Court Competition at Seton Hall University Law School on three occasions, in 1993, 1995 and 1997. The Gibbons Moot Court is a national appellate competition involving teams from law schools from many parts of the country. I sat as a judge for the semi-final round of the competition on each of the three occasions that I participated.

I have served as a judge in programs sponsored by the Seton Hall University Alumni Inn of Court, from 1992-1996. I have participated in programs sponsored by an Inn of Court dedicated to employment litigation (1995, 1998, and 1999).

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

I am enrolled in the Federal Employee Retirement System Thrift Savings Plan. I also maintain an IRA which was set up while I was in private practice.

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

I am unaware of any category of litigation which would present a potential conflict of interest. In the event of any claim of conflict of interest, I would rely upon the Code of Judicial Conduct (28 U.S.C. 455).

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

No.

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

See attached financial disclosure report.

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

See attached net worth statement.

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

No.

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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.

See attached.

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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	25	000
U.S. Government securities—add schedule			Notes payable to banks—unsecured		-0-
Listed securities—add schedule			Notes payable to relatives		-0-
Unlisted securities—add schedule			Notes payable to others		-0-
Accounts and notes receivable:		-0-	Accounts and bills due		-0-
Due from relatives and friends			Unpaid income tax		-0-
Due from others			Other unpaid tax and interest		-0-
Doubtful			Real estate mortgages payable—add schedule First Union	285	000
Real estate owned—add schedule	700	000	Chattel mortgages and other liens payable		-0-
Real estate mortgages receivable		-0-	Other debts—itemize:		-0-
Autos and other personal property	10	000			
Cash value—life insurance	32	000			
Other assets—itemize:					
IRA"S(total 2 acts,h/w)	90	000			
401(k)US Govt Thrift Plan	105	343			
Merrill Lynch Ind.Inv.Act.	32	000	Total liabilities	310	000
Wife-NJ Teachers Pension & Annuity Fund	25	000	Net Worth	689	343
Total Assets	999	343	Total liabilities and net worth	999	343
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor	None		Are any assets pledged? (Add schedule.)	No	
On leases or contracts	None		Are you defendant in any suits or legal actions?	No	
Legal Claims	None		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	None				
Other special debt	None				

TOTAL P.02

III. GENERAL (PUBLIC)

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

   I have been appointed numerous times to represent indigent defendants in municipal courts of Belleville, Livingston and Newark.

   I was a charter member of the Optimist Club of Belleville, which is an organization dedicated to performing community service. I participated in many club activities including awarding scholarships to deserving graduating high school students, and participating in lunch programs and walk-a-thons on behalf of the Cystic Fibrosis Foundation of New Jersey.

   I regularly serve as an umpire in the Newark Fresh Air Fund softball tournament, in which many local law firms compete for the benefit of the Fund's programs.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership, what you have done to try to change these policies.

   No.

3. Is there selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

   There is no selection commission in the State of New Jersey to recommend candidates for federal judicial appointments.

   It is my understanding that Senator Lautenberg and Senator Torricelli rely upon recommendations from members of the legal community when considering a person for recommendation for nomination to a judicial position. Although I do not know whether panels have been formally constituted, I have submitted

answers to questions which were sent to me from Senator Lautenberg's staff.

On or about June 10, 1999, I received a telephone call from Senator Lautenberg, who told me that he was recommending me to the President to fill a vacancy on the United States District Court. In connection with the present process, I have been interviewed by attorneys in the Office of Policy Development in the Department of Justice, and by a Special Agent in the FBI. I have also been interviewed by an attorney who represented the ABA in its background check. I submitted personal background forms to the FBI and to the American Bar Association. The FBI and the ABA have completed their background checks.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issues, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the Judicial Branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and,

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Article III of the United States Constitution grants limited jurisdiction to the federal judiciary and specifies that the courts may hear only those cases that fall within certain jurisdictional categories. The federal judicial system is further circumscribed in its jurisdictional powers by Articles I and II of the Constitution, which establish the Legislative and Executive branches of the federal government. As a fundamental matter, none of these branches--Legislative, Executive, or Judicial--may rightfully reformulate or extend its own or any other branch's authority.

Under the doctrine of *stare decisis*, a court must give due deference to the binding precedent of cases decided by higher courts. Further, in any case that requires a constitutional analysis, the court must be mindful of the concepts of standing, ripeness and mootness in order to be certain that there is a real dispute, the parties have a stake in the outcome, and only those issues required to resolve the dispute are before the court.

On both philosophical and practical grounds, I oppose the notion that it is the judiciary's function to engage in social problem solving. Rather, the judiciary's proper focus must be on the rights and obligations of individual litigants, which are necessarily limited by the four corners of each case before the court.

AO-10 (w)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
PISANO, JOEL A.	U.S. District Court District of New Jersey	/ /

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check type)	6. Reporting Period
U.S. District Judge - Nominee	X Nomination, Date 9/22/99 Initial Annual Final	1/1/98 to 8/30/99

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.
MLK,Jr. Fed Bldg & Courthouse 50 Walnut Street Newark, NJ 07101	Reviewing Officer _____ Date _____

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

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

	POSITION	NAME OF ORGANIZATION / ENTITY
XX	NONE (No reportable positions.)	
1		
2		
3		

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

	DATE	PARTIES AND TERMS
XX	NONE (No reportable agreements.)	
1		
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
	NONE (No reportable non-investment income.)		
1			
	1998-99	West Windsor Plainsboro Board of Education	(S)
2			
3			
4			

FINANCIAL DISCLOSURE REPORT | , . PISANO, JOEL A. | / /

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	EXEMPT	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
	EXEMPT		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
XX			
1			
2			
3			
4			
5			
6			

*VALUE CODES J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

... DISCLOSURE REPORT

II. Page 1 . INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *...icate where applicable, owner of ... asset by using the parenthetical ...)" for joint ownership of reporting ...ividual and spouse, "(S)" for sep...te ownership by spouse, "(DC)" ... ownership by dependent child.* *...Place "(X)" after each asset ...xempt from prior disclosure.*	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)	EXEMPT								
Capital Investment Properties		None	K	W					
First Fidelity Bank		None	J	T					
Equitable (Incentive Life)	D	Int	K	T					
Equitable (IRA)	E	Int	K	T					
Equitable (IRA) owned by spouse	E	Int	K	T					
Merrill Lynch Ready Asset Trust (X)	E	Int	K	T					
Alliance Govt Bond Fund (X)	D	Div	J	T					
NJ Teacher's Pension & Annuity Fund (owned by spouse)	E	Int	K	T					

...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
...of B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

...al 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
...of C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

...al Mth Codes Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market
...of C2) U=Book Value V=Other W=Estimated

FINANCIAL DISCLOSURE REPORT	PISANO, JOEL A.	/ /

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	PISANO, JOEL A.	/ /

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

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

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

I. BIOGRAPHICAL INFORMATION

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

   William Kenneth Sessions III

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

   Home
   confidential

   Office
   United States District Court
   for the District of Vermont
   11 Elmwood Avenue
   P. O. Box 928
   05401

3. Date and place of birth.

   February 9, 1947; Hartford, Connecticut

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

   Status: married
   Spouse: Abigail Procter Sessions
   Occupation: Teacher
   Employer: Shoreham Elementary School, Shoreham, VT 05770

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

   Middlebury College, Middlebury, Vermont
   Dates of Attendance: September, 1965 - June, 1969
   Degree: B.A.
   Date of Degree: June, 1969

   The National Law Center, George Washington University, Washington, D.C.
   Dates of attendance: September, 1969 - June, 1972
   Degree: J.D.
   Date of Degree: June, 1972.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

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

a. Department of Corrections, District of Columbia, Lorton, Virginia, 1969.

b. Office of General Counsel, United States Bureau of Prisons, U. S. Department of Justice, Washington, D.C. 1970-1972.

c. New England Clock Company, Farmington, Connecticut, Summer, 1970.

d. United States Army, Fort Benning, Columbus, Georgia 1972-1973.

e. Clerk, Judge Hilton Dier, Jr., Addison District Court, Middlebury, Vermont 1973.

f. Executive Director, Addison County Youth Services Bureau, Middlebury, Vermont. 1973-1974.

g. Addison County Public Defender, Middlebury, Vermont. 1974-1978.

h. Adjunct Professor, Vermont Law School, South Royalton, Vermont. 1978-1995.

i. William K. Sessions, III, Law Firm, 1978-1980

j. Sessions and Keiner, Law Firm, 1980-1983

k. Sessions, Keiner, & Dumont, Law Firm, 1983-1988.

l. Sessions, Keiner, Dumont & Barnes, Law Firm, 1988-1991.

m. Sessions, Keiner, Dumont, Barnes & Everitt, Law Firm, 1991-1993.

n. Leahy for U. S. Senate, Campaign Manager, July-November, 1992.

o. Sessions, Keiner, Dumont & Barnes, P.C. 1993-1995.

p. Sessions, Keiner, Dumont & Barnes Real Estate Holding Partnership, 1992-1995.

q. United States District Court Judge for the District of Vermont, August 1995 - present.

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

Military Service: United States Army
R.O.T.C. Middlebury College, 1965-1969
commissioned Second Lieutenant, June, 1969
Branch of Service: Military Intelligence
Active duty: Fort Benning, Georgia, 1972-1973
Rank: First Lieutenant
Inactive Reserve: 1973 (to be supplemented)
Discharge: Honorable. Rank: Captain

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

Juris Doctor Degree with Honors,
George Washington University Law School, 1972

1982 Phi Delta Phi Academic Excellence Award

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

Vermont Bar Association, 1973 - present.

Vermont Bar Association Rule of Law project in Russia, 1992-1995

Vermont Association of Criminal Defense Lawyers, 1991-1995; vice president, 1991-1993

Vermont Bar Association, Representative, Judicial Nominating Board, 1981-1986; Chair, 1985-1986

Vermont Bar Association Representative, Judicial Selection Committee for Judicial Vacancy, United States Court of Appeals, 1993.

Civil Justice Reform Act Advisory Committee, chair, 1991-1994; member, 1994-1995.

Panel, Early Neutral Evaluation, U.S. District Court for the District of Vermont, 1994-1995.

Vermont Law School Board of Trustees 1999-present

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

Active in Lobbying
Vermont Bar Association
Adirondack Mountain Club

Other Organizations
Church-related groups

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

a. District of Columbia, Court of Appeals.
Date of Admission: March 20, 1973.
Date of lapse of Admission: 1973
Reason: Moved to Vermont

b. Vermont Supreme Court.
Date of Admission: December 11, 1973.
No Lapse

c. United States District Court for the District of Vermont.
Date of Admission: December 11, 1973.
No lapse

d. United States Court of Appeals for the Second Circuit.
Date of Admission: September 17, 1975.
No lapse

e. United States Supreme Court.
Date of Admission: March 9, 1992.
No Lapse

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

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

"Tenants' Rights for the District of Columbia," 1972. This was a small pamphlet given to tenants while I was working for the Legal Aid Bureau of George Washington University Law School. The pamphlet is no longer in print, and I do not have a copy.

I taught criminal procedure at Vermont Law School from 1978 to 1985 and have lectured extensively on the Fourth, Fifth and Sixth Amendments to the United States Constitution and on trial techniques to various Vermont Bar Association groups. I have no copies of any of those lectures, and I am not aware of any video-tapes or transcriptions of those lectures. I am also not aware of any press accounts of those lectures.

Since becoming a judge I have continued to speak at bar associations. In addition, I have participated in training sessions for attorneys, including CLE courses and "rookie camp" sessions, training for assistant United States Attorneys, and on panels at Federal Sentencing Commission seminars.

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

Health: Excellent.
Date of last physical examination, May, 1999

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

Cornwall, Vermont, Town Agent: 1974 - 1995 (elected)
Cornwall, Vermont, Planning Commission, Chair: 1979-1980 (Appointed)

I have never run for public office.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

15. Legal Career:

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

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

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

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

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

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

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

2. What percentage of these appearances was in:

(a) federal courts;
(b) state courts of record;
(c) other courts.

3. What percentage of your litigation was:

(a) civil;
(b) criminal.

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

5. What percentage of these trials was:

(a) jury;
(b) non-jury.

a. 1. Clerkship: Judge Hilton H. Dier, 1973.
Address: Painter Hills Road, Middlebury, Vermont. 05753. In Vermont, attorneys must clerk with members of the bar for a period of 6 months prior to admission. I clerked for the Addison County District Court judge. I attended court sessions and assisted in the drafting of opinions.

2. Addison County Youth Services Bureau
Address: Main Street, Middlebury, Vermont (no longer in existence). Executive Director, 1973-1974. Although the focus of my work was to provide educational and counseling services for troubled youth within the county, I also was involved in establishing a court diversion program for youthful offenders.

3. Addison County Public Defender, 1974-1978.
Address: Office of Defender General, 141 Main Street, Montpelier, Vermont 05601. I was assigned to represent indigent persons charged with either misdemeanors or felonies in a one-attorney office. In 1975, a second attorney was added to the office and I was assigned primarily to travel the state to assist other public defenders in representation of persons charged with homicides and other complex criminal litigation. By my retirement in September, 1978, I had represented numerous persons charged with first degree murder.

4. Vermont Law School, 1978- 1995
Address: South Royalton, Vermont 05068. In 1978, I was hired by the Dean of Vermont Law School, to teach the basic course in Criminal Procedure on an interim basis. I replaced a fired full-time faculty member who had taught that course and my original tenure was to be for one year. I was rehired every year until 1995. Through 1985, I continued to teach the Criminal Procedure class until a full-time Criminal Law professor joined the faculty. This class enrollment included approximately 90 students per year and was conducted in a lecture format. After 1985, I taught a course entitled Advanced Criminal Procedure. More recently, I have been instructing in Evidence labs at the law school. My primary contact at the law school was Professor Ken Kreiling.

5. Private Practice. Address: Sessions, Keiner, Dumont & Barnes, 72 Court Street, Middlebury, Vermont 05753. In September, 1978, I established a solo practice in Middlebury, Vermont. It was a general private practice specializing in litigation, both civil and criminal. The practice also involved an extensive family law caseload. In 1980, I joined the then-public defender to form Sessions & Keiner. We contracted with the Defender General's Office to do all of the public defender work. As a part of that contract, I agreed to represent a specified number of persons charged with homicide. I continued to work primarily on private, general practice cases.

Additional employees and then partners were added to the practice. Although I had limited my practice to litigation during almost all of my career, my practice became increasingly specialized. By 1990, my caseload was mostly limited to complex litigation in both the state and federal courts. The majority of my work involved representing persons charged with major crimes. Approximately 75% of my cases were referred by other lawyers.

I became a federal judge in August, 1995.

b. General Character of Practice:

1974-1978: Representation of indigent criminal defendants in the state court system.

1978-1985: (approximately). General practice, including divorce, personal injury, and criminal litigation. Most of this work was within the state court system, although I gradually became involved in an increasing number of criminal matters in federal court.

1985-1990: I gradually stopped representing clients in family court and less complex civil and criminal matters. The percentage of federal criminal matters increased to close to 50% of my practice. The vast majority of those cases were referrals from other attorneys.

1991-1995: Most of the cases involved complex criminal and related civil matters. About 50% of my time was related to federal court litigation, both civil and criminal. A greater percentage of my cases involved allegations of fraud, although I also had three murder trials within the last 2 years. Most of my cases were shared with another attorney and my role was lead counsel. I also

appeared in the United States Court of Appeals for the Second Circuit approximately 10 times during this period.

c. Appearance in Court

I have appeared in court frequently throughout my legal career. In my capacity as public defender from 1974-1978, I was in state court representing persons charged with criminal offenses virtually every day. My practice was exclusively in criminal law. During that period, I occasionally represented persons in federal court as well.

At the beginning of my private practice, the frequency of my appearance in court reduced. My vision at that point was to establish a small town general practice. I accepted almost all types of cases, including real estate, divorce, personal injury, contract, civil litigation and criminal cases. I maintained a small federal criminal caseload during this period. Approximately one-half of my cases were criminal, with 10% of those in federal court. During that period, I would appear in court between 5 and 10 times per week. I was also teaching Criminal Procedure at Vermont Law School during this period.

Gradually, I began to specialize in more complex litigation, especially in the criminal field. The effect of that change was that the amount of time spent in court remained constant, but the nature of those appearances changed. By 1990, I no longer took divorces, real estate or relatively simple civil matters. I also stopped taking misdemeanor cases except on rare occasions. More time was dedicated to trial preparation. Approximately 70% of my cases were criminal matters. Fifty per cent of my time was working on cases in federal court.

I have tried to verdict well over one hundred cases over the course of my career. Ninety per cent of those cases were jury trials. In most of those cases, I was sole counsel. During the last 10 years, I most frequently was chief counsel in matters that required two attorneys. I have never been an associate counsel in a trial.

6. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if

the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties who 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.

STATE OF VERMONT V. SUSAN SHORTSLEEVES, Docket No. S4-77WnCr

Court: Washington Superior Court,
The Honorable Stephen B. Martin presiding

Dates of Representation: 1977-78

Co-Counsel: Richard I. Rubin, Esq.
Rubin, Kidney, Myer & DeWolfe
237 N. Main Street
Barre, VT 05641-4125
802-479-2514

Opposing Counsel: Honorable Paul Hudson (principal)
Rutland District Court
83 Center Street
Rutland, Vermont 05701
802-786-5880

Gregory McNaughton, Esq.
107 N. Main Street
Barre, Vermont 05641-0182
802-479-0183

Citation: None

Susan Shortsleeves was a legal secretary and mother of two charged with homicide in the killing of her husband in 1977. I co-counselled her defense with the public defender from her region of the State. We shared the responsibilities of the trial equally.

Ms. Shortsleeves was an intelligent, sensitive, well-educated woman in her thirties. Her husband had been married four

times before his marriage to the Defendant. In each of those marriages, he exhibited violent and abusive behavior toward his spouse. The pattern was replicated in his relationship with Susan. She was subjected to particularly excessive beatings when he was under the influence of alcohol. Despite that fact, she was clearly committed to the relationship and never considered leaving him.

On the night of his death, Mr. Shortsleeves returned home after drinking. He was verbally abusive and approached Susan in a threatening manner. She picked up a large kitchen knife, attempting to stop his approach. He continued moving at her and was stabbed in the heart.

The trial used what would later be called the battered wife syndrome defense. We combined arguments concerning the battered wife syndrome with the more standard self-defense/accident argument, including a courtroom demonstration with a "break-away" knife. After a lengthy and often emotional trial, she was acquitted.

My studies into the patterns of behavior causing and resulting from spousal abuse left lasting impressions on me. I have been particularly concerned about issues of physical abuse within the home stemming out of my experience in this case. With the aid of hindsight, my representation of Addison County Women in Crisis is just another example of the cases's lasting impressions.[1]

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[1]A book entitled Sweetser was written based upon the transcript and interviews with the witnesses. The book was favorably reviewed in the New York Times Book Review. Robert Redford purchased the movie rights to the story. When hearing of that, my co-counsel and I wrote to him, suggesting that we could play bit parts in the movie. He wrote back saying that he had purchased the movie rights and would notify us if the movie was to be made. That was 17 years ago. We are still waiting.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

LOGAN V. BENNINGTON COLLEGE, Docket No. 5:91-116

Court: United States District Court, District of Vermont
The Honorable Franklin S. Billings, Jr, presiding

Dates of Representation: 1991 to 1995

Co-Counsel: Bonnie Barnes, Esq.
72 Court Street
Middlebury, VT 05753
802-388-4906

Professor Alan Dershowitz
Harvard Law School
Cambridge, MA 02138
617-661-1965

Opposing Counsel: Peter F. Langrock, Esq. (Principal)
Ellen B. Fallon, Esq.
Mitchell Pearl, Esq.
Langrock, Sperry & Wool
South Pleasant Street
Middlebury, Vermont 05753
802-388-6356

Citation: None

I represented Drama Professor Leroy Logan of Bennington College in his suit for wrongful termination of employment. Professor Logan had been a respected instructor at Bennington for nearly 20 years, under a so-called "presumptive tenure" contract renewable every five years. He was accused of sexual harassment of a student while he was leading a College drama program in London. After a perfunctory hearing at the College in 1990, he was fired.

My role in the case was as lead trial counsel, assisted by one of my partners. Professor Alan Dershowitz assisted us with and presented the oral argument of the due process issues prior to trial.

Of special interest was a count in the complaint asserting a breach of the Professor's due process rights under the Federal and Vermont Constitutions. Since Bennington College was a private institution, we attempted to enlarge the state action threshold for application of the due process clause by proving that the Vermont Human Rights Commission had sufficient input into the drafting of the College's sexual harassment policies and procedures to constitute state action. We also raised

breach of contract and good faith and fair dealing claims within the complaint and asked for punitive damages.

The Court granted summary judgment for the College concerning the constitutional issues raised in the complaint. The trial took place in June, 1994. At trial, the Court limited compensatory damages to lost income for 5 years, the length of his current tenure contract. The Court also denied punitive damages. In spite of this, the jury awarded Mr.Logan $500,000, well more than double the amount authorized by the Court's instruction. The Court remitted the damages to $202,000. The College appealed to the United States Court of Appeals for the Second Circuit in docket No. 94-7976L (94-9012). The jury verdict was reversed on appeal.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

UNITED STATES V. RANDOLPH JAKOBETZ

Court: United States District Court, District of Vermont
The Honorable Franklin S. Billings, Jr., presiding

United States Court of Appeals, Second Circuit

Dates of Representation: 1989-1992

Co-Counsel: Bonnie Barnes, Esq.
72 Court Street
Middlebury, VT 05753
802-388-4906

Opposing Counsel: Acting U.S. Attorney Charles Caruso (ret)
P. O. Box 89
W. Rutland, Vermont 05777
(802) 235-2581

Citations: Jakobetz v. U.S., 113 S.Ct. 104 (Mem), 121 L.Ed.2d 63, 61 USLW 3257 (U.S. Vt., Oct 05, 1992) (NO. 91-7921)
U.S. v. Jakobetz, 955 F.2d 786, 60 USLW 2470, 34 Fed.R.Evid.Serv. 876 (2nd Cir. (Vt.), Jan 09, 1992), (NO. 52, 91-1125)
U.S. v. Jakobetz, 747 F.Supp. 250, 59 USLW 2216, 31 Fed. R.Evid.Serv. 1007 (D.Vt., Sep 20, 1990) (NO. CRIM. 89-65) (1990)

Mr. Jakobetz was charged with kidnapping and transporting the victim across state lines for the purpose of committing a sexual assault.

The Jakobetz case marked one major test case for the admissibility of DNA evidence in federal courts. Seminal fluid was recovered from the victim and matched to samples taken from the Defendant. I filed a motion to exclude DNA results as novel scientific evidence not satisfying the Second Circuit relevance standards for admissibility of such evidence. There were eight days of testimony on the reliability of the DNA samples, which included the testimony of 4 experts for each side, most of whom had internationally renowned reputations in their respective fields of study. I spent literally hundreds of hours studying both the FBI protocol for comparing such samples and issues relating to population genetics or the frequency of identified matches of DNA patterns in society.

Judge Billings ruled that DNA evidence was admissible, in a lengthy and well-reasoned opinion which set the standard for similar decisions across the country.

The trial lasted almost two full weeks. Much of the testimony concerned the reliability of DNA evidence. Mr. Jakobetz was convicted of kidnapping and sentenced to a period of incarceration of slightly under 30 years. The case was affirmed by the United States Court of Appeals for the Second Circuit. I filed a petition for a writ of certiorari before the United States Supreme Court which was denied.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

STATE OF VERMONT V. ROBERT MERRIMAN, Docket No. 398-4-93RdCr
Court: Vermont District Court, Rutland Circuit
The Honorable Paul Hudson, presiding

Date of Representation: 1992-1995

Co-Counsel: Bonnie Barnes, Esq.
Sessions, Keiner, Dumont, & Barnes, P.C.
72 Court Street
Middlebury, Vermont 05753
(802) 388-4906

Opposing Counsel: Susanne Young, Esq. (Principal)
William Reynolds, Esq.
Assistant Attorneys General
State Street
Montpelier, Vermont
(802) 828-3171

Citation: None

Robert Merriman was charged with Second Degree Murder in connection with the death of his wife, Bella, a native of Ecuador, in April 1990. Ms. Merriman's body was found in a wooded area on a Sunday morning in April within one-half mile of Interstate U. S. 91 in Connecticut. It was clear from the crime scene that she had been stabbed to death in another location and transported to that location. Her body was nearly frozen, leading the forensic pathologist to conclude that she had died at least 12 hours prior to recovery of her body.

The State developed a theory that Mrs. Merriman was killed by her husband in Vermont on Friday morning over financial matters, that her body was immediately cooled so that lividity and rigor was suspended, that she was transported to Connecticut in the back of the Honda, and placed in the wooded area to be found on Sunday. The State contended that Mr. Merriman then took her vehicle on his car carrier and put it in a lot close to the area.

In addition to the extensive legal issues regarding admissibility of evidence, the case was unique in its level of factual complexity. There were literally hundreds of small pieces of evidence--the setting of a radio dial of her car to a Rutland Vermont station, a single spot of untestable blood and two of the victim's hairs on the Honda trunk carpet, unidentified hairs found on the victim, condition of the body

at time of recovery, observations of the victim and defendant at various relevant times, the victim's and defendant's habits as consistent or inconsistent with facts of evidence, odometer readings on the vehicles, etc. All of those pieces of evidence needed to be investigated and explained, a process made more difficult by the three year delay in the bringing of the charges and the fact that many of the witnesses spoke only Spanish.

The trial lasted into its fourth week with over 60 people testifying. Mr. Merriman was acquitted of all charges.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

STATE OF VERMONT V. GEORGE HOHMAN, Docket No. S1-76BCr
Court: Bennington Superior Court
The Honorable Hilton Dier, Jr., retired, presiding

Date of Representation: 1976-1980

Co-counsel: Donald Graham
Welch, Graham and Manby
White River Junction, Vermont
(802) 295-9347

Opposing Counsel: Raymond Bolton, Esq. (Principal)
Raymond Bolton Law Offices
134 Union Street
Bennington, Vermont 05201
(802) 447-3337

William T. Keefe, Esq., retired
Home: 125 Van Sicklin Ave
Williston, Vermont 05495
(802) 862-1728

Citations: 136 Vt 341 (1978); 392 A.2d 935
138 Vt 502 (1980); 420 A.2d 852

George Hohman was charged with first degree murder for the killing of a high school student in Bennington, Vermont in 1976. The State alleged that Mr. Hohman picked up two high school students who had been drinking off of school grounds during the school day. He dropped off one of the children and took the other to a remote area within the county. He was charged with strangling this high school student while at the remote location.

On the following morning, Mr. Hohman chose to turn himself in to the Bennington Police. While on the street, he waived down a police officer and told him that he had just killed someone. He was taken to the police station and informed of his rights. He indicated that he did not wish to sign a waiver without the advice of counsel. He said that he would give a statement "up to a point". He then identified the location of the body and indicated that he would say nothing until he spoke with a lawyer.

The police made numerous unsuccessful efforts to contact an attorney. They then asked Mr. Hohman if he wished to answer any questions. He said that he would "play it by ear". He subsequently made a full confession and drove the officers to the scene.

The case became significant in Vermont for two reasons. First, the case was used by the Vermont Supreme Court to define "custody" for purposes of the threshold for Miranda warnings. The lower court denied our motion to suppress the confession, indicating in its opinion that the Defendant was not in custody for purposes of Miranda so that any defect in the waiver as inconsequential. The Vermont Supreme Court reversed the first conviction for Second Degree Murder based upon a violation of Miranda. The Court ruled for the first time the test for determining the existence of custody was an objective-subjective one. The question was whether it was reasonable for the defendant to feel that he was not free to leave at the time of the waiver. In the Hohman case, the Supreme Court found that custody attached as soon as he told the police where the body was located. As a result, the Defendant's statements after that point were all suppressed.

The case also helped to clarify the prevailing definitions of insanity and diminished capacity in Vermont. The case presented the first of an increasing number of insanity defenses heard in Vermont court. It was one of two cases which eventually established the model for the insanity instruction. (State v. Richard Smith, another homicide case that I handled, was the other.)

In his first trial, Mr. Hohman used the defense of diminished capacity to successfully reduce the charge from First to Second Degree Murder. In the second trial with much of his confession suppressed, the jury accepted the same defense to return a verdict of guilty of Manslaughter.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

STATE OF VERMONT V. GEORGE SLEEMAN, Docket No. 1517-11-86RCr
Court: Vermont District Court, Rutland Circuit
The Honorable Francis McCaffery, presiding

Date of Representation: 1986-87

Co-Counsel: Bonnie Barnes, Esq.
Sessions, Keiner, Dumont & Barnes
72 Court Street
Middlebury, Vermont 05753
(802) 388-4906

Opposing Counsel: Hon. David Suntag (Principal)
Vermont District Court
225 N. Main Street
Barre, VT 05641
802-479-4252

David Tarter, Esq.
Assistant Attorney General
State Street
Montpelier, Vermont 05602
(802) 828-3171

Citation: 146 Vt 61 (1985); 499 A.2d 422)

State v. Sleeman was the first of my high-profile white collar crime cases. The case involved the holding of a public official personally accountable for actions which arguably led to the loss of significant amounts of public funds. The case also marked a turning point in my career in the direction of representing persons charged with more complex white-collar crimes or involved in more complicated forms of civil litigation.

George Sleeman had been Superintendent of Schools in the Bennington area for many years. Accusations were made that he used his position to do favors for colleagues and friends, including setting up ghost courses through state colleges so that teachers could receive academic credit with little or no effort. Further, charges were made that he used public funds inappropriately, eventually resulting in a deficit of approximately two million dollars.

The Attorney General's Office convened an inquest to investigate Mr. Sleeman's office. He was subpoenaed to testify. The Vermont inquest procedure authorized prosecutors to subpoena targets of investigations to inquests and to require them to answer questions outside the presence of their

attorney. Mr. Sleeman was informed by his prior attorney to appear at the inquest and to answer all questions without the assistance of counsel. He was asked numerous questions about his manner of running the Superintendent's office and his management of the funds of the organization. Based upon his answers, the Attorney General charged him with numerous counts of false swearing or perjury.

My first effort was to declare the inquest procedure unconstitutional in violation of the Fifth and Sixth Amendments to the U. S. Constitution. My thesis was that the procedure resulted in an accused being subjected to custodial interrogation outside the presence of counsel. That argument was rejected by the Court, which found that subjects of the subpoena were not in custody and, even if they were, a holding that the procedure was unconstitutional would not excuse intentional perjury.

The trial lasted for 18 days. Mr. Sleeman was convicted on all counts. He chose eventually to waive his right to appeal and was sentenced to serve two years in the custody of the Commissioner of Corrections.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

PECK V. COUNSELING SERVICE OF ADDISON COUNTY, Docket No. S114-80Ac

Court: Addison Superior Court
The Honorable David A. Jenkins, presiding

Date of representation: 1982-1985

Counsel
for Plaintiff: Charity Downs, Esq.
Conley & Foote
Middlebury, Vermont 05753
(802) 388-4061

Counsel
for Defendant: William K. Sessions, III

Citation: 146 Vt. 61 (1985); 499 A.2d 422

I was hired by the Counseling Service of Addison County to defend them against a civil suit brought by the parents of one of their patients. The case led to the creation of a therapists' duty to warn suspected targets of violent behavior when the therapist has learned in the course of giving therapy to clients that those targets are in danger.

Plaintiffs' son was a long-term patient of the Counseling Service. During a session with one of the therapists, he indicated that he was angry at his parents and indicated that he would like to burn down their barn. The therapist continued to speak with him about the appropriateness of that response and felt reasonably assured that he would not create a risk to his parents. She did not inform anyone of the statements of her client. That night, the son burned down the barn. As he watched the barn burn, he told witnesses that he had discussed his plans with his therapist.

Plaintiffs brought an action to recover their monetary losses stemming out of the burning of the barn. Their theory was that the therapist had a duty to warn them of the threat so that they could take precautionary measures, based on a California case.

The parties stipulated to a trial by court. The Counseling Service argued that a duty to warn did not exist in Vermont. Such a duty would jeopardize the physician-patient privilege and all other forms of privilege within the state. The Court determined that the duty to warn existed and that she was negligent in not informing Plaintiffs of the threat. The Court awarded Plaintiffs monetary damages equal to their losses.

Peck v. Counseling Service was appealed to the Vermont Supreme Court. I both briefed the matter for the Counseling Service and argued the case before the Vermont Supreme Court. The judgement below was affirmed. The Supreme Court found that the duty to warn was in the public interest and that, as a matter of public policy, its value outweighed its deterrent effect upon the physician-patient privilege, in effect creating the duty.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

UNITED STATES V. JOHN MITCHELL, WEBSTERVILLE FIRE DISTRICT, ET. AL, Docket No. 90-78-01

Court: United States District Court, District of Vermont
The Honorable Franklin S. Billings, Jr., presiding
United States Court of Appeals, Second Circuit

Dates of Representation: 1991-92

Defense Counsel: Eric Parker, Esq. for Websterville Fire
Abare, Nicholls & Parker, P.C.
59 N. Main Street
Barre, Vermont 05641

Gabor Rona, Esq. for Gary Brouillette
c/o Rubin, Kidney, Myer & DeWolfe
237 N. Main Street
Barre, Vermont 05641
(802) 479-2514

William. K. Sessions, III, Esq. for John Mitchell

Government: Assistant U. S. Attorney Jean-Claude Charbonneau
United States Attorney's Office
Rutland, Vermont
Tel. (802) 773-0231

Citations: U.S. V. Mitchell,966 F.2d 92, 61 USLW 2015, 34 ERC 2109, 22 Envtl. L. Rep. 21, 291 (2nd Cir.(Vt.), Jun 08, 1992) (NO. 405, 91-1383)
U.S. v. Mitchell, 763 F.Supp. 1262, 33 ERC 1500 (D.Vt., May 15, 1991) (NO. CRIM. A. 90-78-01. CRIM. A. 90-78-02. CRIM. A. 90-78-03) (1991);

The Government brought an indictment against the Websterville Fire District and its two major officers, charging that they falsified reports regarding the taking of samples to determine water quality in this small rural water district.

The Websterville Fire District serviced a limited number of households within one section of the city of Barre, Vermont. The organization was run essentially by volunteers. My client, John Mitchell, received only a small amount of money for long hours of service to the Fire District. He was responsible for providing water to the membership households that came from an open quarry. He also became responsible for implementing all of the EPA regulations designed to ensure that the water was safe, including the taking and analyzing of daily samples to insure that EPA standards were met. A part of his obligations was that he would

record turbidity findings on a daily basis and submit them to EPA.

The Government charged that the reports concerning the turbidity levels of the water were false. Specifically, they charged that daily samples were not being taken at the source of the water and that the reports reflected only an average of intermittent samples. The reports claimed to be false by the Government resulted in a thirty-four count indictment.

The case became important for two reasons. First, Judge Billings was severely critical of EPA investigators in ruling that statements that they elicited from Mr. Mitchell violated the Fifth Amendment. The EPA investigator arrived at Mr. Mitchell's door to question him about the reports without making clear his intention. Mr. Mitchell was a part-time police officer and was very anxious to receive assistance from EPA and cooperated accordingly. Only toward the end of the conversation did it become clear to him that the investigator's purpose was to pursue a criminal investigation rather than to provide technical assistance. Eventually, the Government appealed the Court's granting of the motion to suppress to the Second Circuit and Judge Billings' order was overturned.

The trial was significant for another reason. The issue became whether these individuals intentionally falsified records or whether they did so innocently with no knowledge that they were doing anything improper. The subtler issue related to the purpose of the prosecution. These two individuals were trying as best as they could to comply with these enormous sets of regulations out of a spirit of community goodwill and they ended up the target of a federal indictment. After a week-long trial, the jury determined that each of the individuals involved were innocent of all charges and that the District itself was guilty of only one count. Judge Billings imposed a fine against the District of $1.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

STATE OF VERMONT V. CARLETON SAHM, Docket No. 583-2-93CnCr, 584-2-93CnCr

Court: Vermont District Court, Chittenden County
The Honorable Brian Burgess, presiding

Date of Representation: 1993-94

Co-Counsel: Bonnie Barnes, Esq.
Sessions, Keiner, Dumont & Barnes, P.C.
72 Court Street
Middlebury, Vermont 05753
(802) 388-4906

Opposing Counsel: Phil Danielson, Esq. (Principal)
Joseph Farnham, Esq.
Deputy States Attorneys, Chittenden County
Burlington, Vermont 05402
(802) 863-2865

Citations: none

Mr. Sahm was charged with one count of Murder in the First Degree and one count of Attempted Murder by the Chittenden County States Attorney's Office. The charges stemmed from an early-morning shooting in the Price Chopper parking lot in South Burlington, Vermont.

Mr. Sahm was a 36 year old individual who had never been in trouble with the law until this incident. He had dated the victim of the alleged attempted murder for over two years in Syracuse. Approximately one year before the shooting, she had moved to the Burlington area. After about 6 months of weekend visits, she terminated their romantic connection. According to the State's theory, Mr. Sahm could not accept the loss of the relationship and made threats against her and her new boyfriend. Soon before the incident, he had gotten into a verbal fight with her during which he threatened to kill her.

On the day before the shooting, Mr. Sahm travelled to Vermont in a rented vehicle with a rifle. According to the testimony at trial, the gun was brought because of his fear of the new boyfriend. He testified that his intention in coming to Vermont was just to speak with her.

On the morning of the shooting, Mr. Sahm was getting gas for his vehicle when he saw the victims drive by the station. He followed them to the Price Chopper parking lot while loading his rifle. When their vehicle stopped in the lot, he approached his ex-friend and demanded that she get in the car.

She began to run for the store while her boyfriend exited his vehicle and came after Mr. Sahm. Mr. Sahm's testimony indicated that the victim threatened him verbally and physically. The gun discharged, killing the boyfriend. Mr. Sahm then aimed in the general direction of his ex-girl friend while she ran to the store and fired twice, missing her on both occasions. Mr. Sahm then drove away from the scene, only to call the police later and voluntarily surrender.

The case involved a reconstruction of the shooting to verify the fact that the victim was moving at the defendant when hit. We were able to show from the placement of the body and the path of the bullet that the shooting was defensive. In addition, we successfully suppressed a number of damaging statements made by the Defendant when taken into custody. The most difficult issue, however, related to defusing the emotional reaction to testimony describing Mr. Sahm as possessive, threatening and abusive, as a stalker.

The trial lasted a full two weeks and was televised nationally on Court TV. The jury returned a verdict of guilty on the reduced charge of Voluntary Manslaughter and not guilty on the Attempted Murder Charge. Mr. Sahm was eventually sentenced to nearly the maximum period of imprisonment for manslaughter, 12 to 15 years with twelve years to serve. The verdict was upheld on appeal.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

IN RE: LEE EMERSON, M.D.

Court: Vermont Medical Practices Board
Hearing Officer: Sienna Walton, Esq., Office of Secretary of State

Co-Counsel: Hon. John Wesley
Windham Family Court
Brattleboro, Vermont
(802) 257-2830

Opposing Counsel: Hon. Marilyn Skoglund
Vermont District Court, Orange County
Chelsea, Vermont 05038
Tel. (802) 685-4870

Geoffrey Yudien, Esq.
Assistant Attorney General
Montpelier, Vermont 05602
(802) 828-3171

Citations: None

Dr. Emerson maintained a solo practice of medicine in Brattleboro, Vermont for many years prior to the complaint lodged against him by the Medical Practices Board. He was well-known within the Brattleboro community for being particularly sensitive to his patients and to serving persons from all levels of income. He continued to make house calls to patients unable to travel. A substantial part of his practice was in homes for the elderly. He also took on patients for little or no compensation when they had none to give.

Another part of his practice was to test and treat patients with AIDS. He became particularly sensitive to that disease being spread among the drug-using community through the sharing of needles. By the early 1990's, the epidemic was beginning to spread to the Brattleboro community from urban centers in Massachusetts such as Boston, Holyoke and Springfield.

Current and former heroine addicts began to come to his office for treatment. Dr. Emerson was not aware of federal regulations concerning treatment with methadone. Rather than turn these patients away, knowing that they would continue to participate in risk behaviors, including the sharing of needles with other addicts, he chose to prescribe methadone and monitor its use so that they would gradually be weaned of the drug.

Charges were filed before the Medical Practices Board against Dr. Emerson for malpractice and for violation of federal regulations concerning the prescribing of methadone outside of an approved program. (It is legal, however, to prescribe methadone for other purposes.) His hearing involved over three weeks of testimony. We called a number of physicians whose expertise related to the field of drug addiction and prevention, including the Chief Executive Officer of Beth Israel Hospital in New York. They argued that a physician has a responsibility to treat all patients, and that refusal to treat addicts knowing that they will share needles with others if not treated is a violation of a physician's oath.

The Board of Medical Practices voted to suspend Dr. Emerson's license for a period of time and to require him to undergo a system of supervision when reinstated. Negotiations continued prior to the filing of an appeal. Eventually, Dr. Emerson agreed to the terms required for reinstatement after leaving the State of Vermont.

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

I was elected by members of the Vermont Bar Association to serve on the Vermont State Judicial Nominating Board from 1981 to 1986. The Committee consisted of three representatives of the bar association, three members from both the Vermont Senate and Vermont House of Representative, and two Governor appointees. I served as Chair of the committee for my last two years.

The Judicial Nominating Board screened applicants for judicial vacancies within the Vermont court system. The Governor could only make an appointment from the list of qualified applicants that the committee recommended. The committee encouraged its members to analyze those qualities such as intelligence, sense of fairness, temperament and human understanding essential to making a good judge.

In 1993, I was hired by the Vermont Environmental Board to assess claims of conflict of interest made against it's members and staff. Representatives of Wal-Mart had moved for the recusal of the members of the Board and staff counsel. I was given assurances that my role was to give an opinion independent of the Board that would provide them with a recommendation on how to respond to the motion. I personally interviewed all of the parties and members of the Board and staff and wrote a lengthy opinion released to the parties and press. My recommendations regarding recusal of some of the staff was accepted by the Board and parties and resolved the conflict of interest questions.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

I was an adjunct professor at Vermont Law School from 1978 through 1995. I taught Criminal Proceedure in a lecture format to approximately 90 students per year until 1986. During subsequent years, I taught a seminar class in Advanced Criminal Procedure and Evidence labs. Many of the prosecutors and defenders within the State of Vermont have been my former students. I found the teaching to be extremely challenging and invigorating, and it permitted me to have some impact, albeit indirect, upon the criminal justice system within the state.

Prior to becoming a judge, I practiced in the field of criminal law for over twenty years. Much of my practice was in federal court. I have been involved in applying the federal sentencing guidelines, first as a practitioner and then as a judge, since their inception. I have spoken to numerous groups from local bar associations on guideline application issues. I also have spoken at two annual training seminars in 1998 and 1999 organized by the United States Sentencing Commission to judges, probation officers, U.S. Attorneys and defense lawyers on the guidelines from the perspective of a federal judge. My sense is that sentencing is the most important function of a federal judge, and as a result I have developed a substantial interest and understanding of the guidelines.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   My former law partners owe me a sum of money arising out of the purchase of the real estate used for the business. They make monthly payments and will continue to do so until August, 2000. I have no other applicable expectations of income.

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

   I would not participate in discussions regarding issues which could create the potential for a conflict of interest, although I do not anticipate such a situation arising on the U.S. Sentencing Commission. In the event of a conflict or the appearance of a conflict, I would consult with the ethics officer.

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

   None.

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

   SF 278 attached.

SF 278 (Rev. 6/94)
5 CFR Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Calendar Year Covered by Report	Termination Date (If Applicable) (Month, Day, Year)	Agency Use Only
	☐ Incumbent ☒ New Entrant, Nominee, or Candidate ☐ Termination Filer			

	Last Name	First Name and Middle Initial	OGE Use Only
Reporting Individual's Name	Sessions	William K., III	
Position for Which Filing	Title of Position: Commissioner, Federal Sentencing Commission	Department or Agency (If Applicable)	
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code): U.S. District Court, 11 Elmwood Avenue, Burlington, Vermont 05401	Telephone No. (Include Area Code): 802-951-6350	
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: United States District Judge for the District of Vermont		
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Senate Judiciary Committee	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No	

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	William K. Sessions III	4/8/99
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
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).		
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

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

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

Fee for Late Filing

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

Reporting Periods

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

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

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

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

Schedule B--Not applicable.

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

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

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

SF 278 (Rev.6/91)
5 CFR Part 2634
U.S. Office of Government Ethics

REPORTING PERIOD FOR SCHEDULE A: 1-1-98 through 4-1-99

Reporting Individual's Name	SCHEDULE A	Page Number
William K. Sessions III		1

Assets and Income — BLOCK A

Identify each asset held by you, your spouse, or dependent children for the production of income which had a fair market value exceeding $1,000 at the close of the reporting period.

Identify each asset or source of income held by you, your spouse, or dependent children which generated over $200 in income during the reporting period.

None ☐

Valuation of Assets at close of reporting period — BLOCK B

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

	Assets and Income	Valuation of Assets: None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Type: Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000	Actual Amount (Only if "Other" specified)	Date (Mo., Day, Yr.) (Only if Honoraria)
Examples	Central Airlines Common				x					x										x								
	Doe Jones & Smith, Hometown, State			x													Law Partnership Income										$130,000	
	Kempstone Equity Fund					x								x							x							
	IRA: Heartland 500 Index Fund							x						x								x						
1	IRA's			x																								
2	Mortgage Interest 72 Court Street Middlebury, VT 05753		x																									
3	Ariel Fund Calvert			x																								
4	Sessions Family Partnership Ownership in Florida Condominium			x																								
5	Northwest Mutual Life Insurance Policies		x																									
6	Vt. State Teachers		x																									

1/91 Edition Can Be Used; Editions Prior to 1/91 Cannot Be Used.

SF 278 (Rev. 6/94)
5 CFR Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A continued	Page Number
William K. Sessions III		2

Block A — **Assets and Income**

Identify each asset held for the production of income which had a fair market value exceeding $1,000 at the close of the reporting period.

Identify each asset or source of income which generated over $200 in income during the reporting period.

Block B — **Valuation of Assets**

Block C — **Income: Type** / **Amount**

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

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

Reporting Individual's Name	SCHEDULE B	Page Number
William K. Sessions III		3

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)							
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Certificate of divestiture
	Example: Central Airlines Common	x			2/1/91		x						
1	Nominee--not applicable												
2													
3													
4													
5													

Part II: Gifts, Reimbursements, and Travel Expenses

None ☐

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling $250 or more; and (2) travel-related cash reimbursements received from one source totaling $250 or more. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $100 or less. See instructions for other exclusions.

	Source (Name and Address)	Brief Description	Value
	Examples: Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/00 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1	Nominee--not applicable		
2			
3			
4			
5			

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Reporting Individual's Name	SCHEDULE C	Page Number
William K. Sessions III		1(c)

Part I: Liabilities

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

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x) $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000
Examples:	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1981	13%	25 yrs.			x				
	John Jones, 123 J St., Washington, DC	Promissory note	1989	10%	on demand					x		
1	BankNorth Group, Burlington, Vermont	mortgage	1997	8.5	20			x				
2	National Bank of Middlebury, Vermont	mortgage	1997	10.0	n/a	x						
3	American Honda Finance, Burlington, VT	car loan	1998	8.5	5	x						
4												
5												

Part II: Agreements or Arrangements

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

None ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 11/91.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
William K. Sessions III		1(D)

Part I: Positions Held Outside U.S. Government

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

None [X]

	Organization *(Name and Address)*	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	11/91
1					
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 non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

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

None [X]

	Source *(Name and Address)*	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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

Attached.

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

a. Field coordinator, Leahy for U. S. Senate Campaign, March-November, 1986. I managed a local field office of the campaign as a volunteer while maintaining my practice.

b. Welch for Congress, June-September, 1988. I assisted in organizing and managing the campaign of State Senator Peter Welch.

c. Campaign Manager, Leahy for U. S. Senate, June-November, 1992. I was the campaign manager for the reelection bid of Senator Patrick J. Leahy, and shared all of the responsibilities of administering the campaign.

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	10	000	00	Notes payable to banks—secured		-0-	
U.S. Government securities—add schedule		-0-		Notes payable to banks—unsecured		-0-	
Listed securities—add schedule	26	000	00	Notes payable to relatives		-0-	
Unlisted securities—add schedule		-0-		Notes payable to others		-0-	
Accounts and notes receivable:				Accounts and bills due	2	050	00
Due from relatives and friends		-0-		Unpaid income tax		-0-	
Due from others	12	000	00	Other unpaid tax and interest		-0-	
Doubtful		-0-		Real estate mortgages payable—add schedule	107	000	00
Real estate owned—add schedule	302	000	00	Chattel mortgages and other liens payable		-0-	
Real estate mortgages receivable		-0-		Other debts—Itemize:			
Autos and other personal property	55	000	00	Am. Honda Finance	9	000	00
Cash value—life insurance	12	000	00				
Other assets—Itemize:							
IRS (husband & wife)	71	000	00				
				Total liabilities	118	050	00
				Net worth	369	950	00
Total assets	488	000	00	Total liabilities and net worth	488	000	00
CONTINGENT LIABILITIES		-0-		GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule.)		-0-	
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							

5. Schedules

ASSETS

LISTED SECURITIES

(Daughters Hannah and Myra):
Ariel Appreciation Fund
$26,000.00

UNLISTED SECURITIES

Due from Sessions, Keiner, Dumont & Barnes
$12,000.00

REAL ESTATE OWNED

Residence in Cornwall, Vermont
$250,000.00
One-fifth interest in Sessions Family Partnership,
holding condominium in Stuart, Florida, & monies
$52,000.00

LIABILITIES

Real estate mortgages payable
National Bank of Middlebury (residence)
$90,000.00
Line of Credit: National Bank of Middlebury
$17,000.00

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

III. GENERAL

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

As a federal judge, it is no longer appropriate for me to participate in such activities. However, I have spent the greater part of my legal career serving the disadvantaged. I began as a public defender. Much of the early part of my practice was dedicated to helping low and middle income persons in need of legal representation. I developed an informal sliding scale system of compensation based partly upon a person's ability to pay my fees. I have taken numerous pro bono cases when I have thought the case just. I represented such organizations as Addison County Women in Crisis on a nearly pro bono basis.

I have also been involved in youth activities within our community. I have made an effort to go into the schools as a speaker on law and the criminal justice system on numerous occasions. I was a Little League coach for over 15 years.

Since I have been on the bench, I have invited school children to observe court proceedings which were appropriate to their age, spoken with them in chambers and offered a tour of the facilities. I have also arranged to have many of the naturalization ceremonies held in schools around the State, with the children participating as color guards and hosts and hostesses.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

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

I was a member of Delta Tau Omega Fraternity at Middlebury College from 1966 to 1969. There were no women in our fraternity. Our fraternity separated from Alpha Tau Omega because of the national's discriminatory practices.

I have held no other memberships in any clubs or organizations which discriminate on the basis of race, sex or religion.

Hon. William K. Sessions III
Nominee for Federal Sentencing Commission

IV. CONFIDENTIAL

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

William Kenneth Sessions III

2. Address. List current place of residence and office address(es). List all office and home telephone numbers where you may be reached.

Home: 75 Douglas Road, Cornwall, Vermont 05753
802-462-2363

Office: U.S. District Courts, District of Vermont
11 Elmwood Avenue
P. O. Box 928
Burlington, Vermont 05401
802-951-6350

3. Have you even been discharged from employment for any reason or have you ever resigned after being informed that your employer intended to discharge you?

No.

4. Have you and your spouse filed and paid all taxes (federal, state and local) as of the date of your nomination? Please indicate if you filed "married filing separately". Did you make any back tax payments prior to your nominations. If so, give full details.

Yes. Please see answer to #5.

5. Has a tax lien or other collection procedure (to include receipt of computer balance due notices, ever been instituted against you by federal, state, or local authorities? If so, give full details.

I have never had a tax lien instituted. During a few years, (prior to becoming a judge) I underestimated my estimated quarterly tax payments. After I filed my returns, I was notified of any deficiency in the payment together with late fees. I then paid the amount due. That applied to both my federal and state taxes.

6. Have you or your spouse even been the subject of any audit, investigation, or inquiry for either federal, state, or local taxes? If so, give full details.

No.

AFFIDAVIT

I, William K. Sessions III, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

8/17/99
Date

Name

Notary

BIOGRAPHICAL INFORMATION (PUBLIC)

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

Karen Elizabeth Schreier
Karen Elizabeth Bjerke (former name)

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

Office Address	Residence
230 S. Phillips, Suite 600 Sioux Falls, SD 57117	Sioux Falls, SD

3 Date and place of birth:

July 29, 1956 - Sioux Falls, South Dakota

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

I am married to Timothy J. Dougherty. Tim is an attorney and lobbyist with Dougherty & Dougherty, PO Box 1004, Sioux Falls, South Dakota, 57117-1004.

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

St. Louis University School of Law
August, 1978 - May, 1981
Juris Doctorate received in May, 1981

St. Louis University
September, 1974 to May, 1976
January, 1977 to May, 1978
AB with honors received in May, 1978

Northern Illinois University at DeKalb
National Collegiate Honors semester at Washington, DC
September, 1976 to December, 1976.

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

Summer, 1978 and Summer, 1979

Legal intern with law firm of Miller & Shaeffer, Flandreau, South Dakota

09/78 to 05/79 and 09/79 to 05/80

Assistant Dorm Director of Marguerite Hall at St. Louis University, St. Louis, Missouri

Summer, 1980

Summer Intern for the Supreme Court of South Dakota, Pierre, South Dakota

09/80 to 05/81

Legal Intern, Legal Services of Eastern Missouri, St. Louis, Missouri

06/81 to 06/82

South Dakota Supreme Court/Law Clerk to Justice Francis G. Dunn

07/82 to 07/93

Hagen, Wilka, Schreier & Archer, P.C. Associate and partner in the law firm. Secretary for the corporation.

07/93 to present:

United States Attorney, District of South Dakota

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

No.

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

Recipient of Rep. Leonor K. Sullivan Scholarship for excellence in political science - 1976; National Catholic Daughters of the Americas Scholarship for graduate studies - 1978.

Selected for membership in Alpha Sigma Nu, a National Jesuit honors society.

Member of the Honors Student Organization at St. Louis University, graduated with honors and acknowledged on Dean's List.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are

or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association
South Dakota Bar Association
Minnehaha County Bar Association
American Trial Lawyers Association
South Dakota Trial Lawyers Association
Sioux Falls Estate Planning Council
Minnehaha County Judicial-Bar Liaison Committee
Minnehaha County Bar Association Committee on Programs
Attorney General's Advisory Committee -
Vice-Chair 1997-1998
Chair - 1998-1999

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

A. Organizations that are active in lobbying
South Dakota Trial Lawyers Association

B. Other organizations
Catholic Daughters of the Americas
Phi Alpha Delta
Alpha Sigma Nu
South Dakota Democratic Party
Minnehaha County Democratic Forum
South Dakota Peace & Justice Commission
South Dakota Historical Society
Supreme Court Historical Society

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

South Dakota Supreme Court, 1981
U.S. District Court for the District of South Dakota, 1981
U.S. Court of Appeals, Eighth Circuit, 1983
U.S. Court of Federal Claims, 1991
Flandreau Santee Sioux Tribal Court, 1991

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

1. A. Hoffman & K. Schreier, A Private Right of Action under Missouri's Omnibus Nursing Home Act, 24 St. Louis U.L.J. 661 (1981).

2. I previously wrote a column that was published in the Sioux Falls Argus Leader once a week. The column was a question and answer format that responded to questions submitted by readers. Copies of all the columns are attached.

3. I have not given any speeches on issues involving constitutional law. I testified on June 27, 1996, before the U.S. House of Representatives Judiciary Committee's Subcommittee on Crime concerning violent youth and juvenile crime. A copy of my testimony is attached and can be found at 1996 WL 10829213.

4. I testified before U.S. House of Representatives Judiciary Committee's Subcommittee on Commercial and Administrative Law regarding the Attorney General's Advisory Committee Oversight. A copy of that testimony is attached and can be found at 1998 WL 88682 (F.D.C.H.).

5. I also testified during a field hearing conducted by Senator Tom Daschle on the issue of juvenile crime. A copy of my remarks are attached. They have not been published.

6. I have given several presentations to students, parents and community members regarding the health consequences of using methamphetamine. A copy of my notes for my remarks is attached.

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

My health is excellent. I had a physical examination on December 14, 1998.

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, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court

rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

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

I was appointed United States Attorney for the District of South Dakota and began serving on July 30, 1993. I am currently holding this position. I have not ever run for elective public office.

17. Legal Career:

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

1. whether you served as a 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 Justice Francis G. Dunn of the South Dakota Supreme Court from June of 1981 to June of 1982.

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

I have not practiced law alone.

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

After my clerkship, I was hired as an associate with the firm of Hagen & Wilka, P.C. The address of the law firm is 100 South Phillips Avenue, Suite 418, Sioux Falls, SD 57102. I became a partner in 1985 and continued to practice law with the firm of Hagen, Wilka, Schreier & Archer, P.C. On July 30, 1993, I began serving as the United States Attorney for the District of South Dakota. The address of the office is 230 South Phillips Avenue, Suite 600, Sioux Falls, SD 57104

b. 1. What has been the general character of your law

practice, dividing it into periods with dates if its character has changed over the years?

From 1982 to 1993, I engaged in the general practice of law. My practice included civil litigation, appellate practice, administrative law and probate and estate planning.

From 1993 to date, I have served as the United States Attorney for the District of South Dakota. As the United States Attorney, I manage an office with 22 Assistant United States Attorneys. The office is responsible for prosecuting all federal offenses in South Dakota, and representing the United States in all civil matters, both as a plaintiff and as a defendant. Throughout the five years, I have actively been involved in prosecution decisions, authorizing plea agreements and motions for substantial assistance and downward departures, and retained final settlement authority in all civil actions. During the first three years of my term, I also maintained a civil and criminal caseload, and represented the United States in those actions.

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

From 1982 to 1993, my practice had much variety. My trial work included a medical malpractice claim under the Federal Tort Claims Act and a medical malpractice claim in state court. It also included litigation under the National Indian Gaming Act, several age discrimination claims, products liability claims, personal injury and wrongful death actions, wrongful termination of employment, breach of contract, will contests, and foreclosure actions.

In general, I represented plaintiffs in personal injury actions. On several occasions, I defended small and medium sized businesses in civil actions. I represented many teachers in job-related actions, as an attorney for the South Dakota Education Association. I also represented individuals who were executors in estates, individuals who were contesting wills and individuals who were planning their estates.

From 1993 to date, my sole client has been the United States of America.

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

Prior to 1997, I appeared in court frequently. From 1997 to now, I appeared in court occasionally. In 1997, I was selected by the Attorney General to serve as the Vice-Chair of the Attorney General's Advisory Committee of United States Attorneys and in 1998, I began serving as Chair. This role has required me to travel to Washington, D.C. on a regular basis. In addition to the other administrative and public responsibilities of the United States Attorney, I have appeared only occasionally in court during the last two years. However, during this time I have actively reviewed pending cases in the office, authorized pleas and settlements and reviewed pleadings of Assistants prior to filing.

2. What percentage of these appearances was in:

(a) federal courts:

after 1993 - 100%
before 1993 - 5%

(b) state courts of record:

after 1993 - 0%
before 1993 - 90%

(c) other courts

after 1993 - 0%
before 1993 - 5%

3. What percentage of your litigation was:

(a) civil: 60%

(b) criminal: 40%

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

I tried 76 cases to verdict during my career. In 53 cases, I represented the client as sole counsel. I acted as chief counsel in 5 cases and as associate counsel in 17 cases.

5. What percentage of these trials was:

(a) jury: 25%

(b) non-jury: 75%

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

(a) the date of representation:

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

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

A. United States v. Eugene C. Kent, 129 F.3d 122 (8th Cir. 1997)

Kent was convicted of two counts of mail fraud arising from a scheme to defraud his insurance customers, the Independent Community Bankers of South Dakota (ICB). Prior to 1990, Kent sold a fully-insured group health insurance plan to members of the ICB. Without the knowledge or consent of ICB, he converted this plan to self-insurance in 1991. Kent continued to sell health insurance to the members of ICB after 1991 without their knowledge that the plan had been converted to self-insurance. In addition, he deposited two refund checks from the group policy made payable to ICB into his business account in the total amount of $333,910. ICB did not have knowledge of these checks. This case was the first case in the Eighth Circuit that applied the mail fraud statute to this particular fraudulent activity. The conviction was affirmed on appeal, without opinion.

I was the lead counsel representing the United States in this prosecution. Associate counsel was Assistant United States Attorney Robert Mandel. I prepared the

indictment, conducted voir dire, delivered the opening argument, and questioned approximately half of the witnesses.

a. Dates of Representation: July 1994-February 1997

b. Name of court and name of judge:

United States District Court for the Southern Division of the District of South Dakota
The Honorable John B. Jones

c. Co-counsel:

Robert Mandel
230 South Phillips Avenue, Suite 600
Sioux Falls, SD 57117-5073
(605)330-4400

Counsel for Defendant:

Michael V. Black
Black & Gottlieb
3101 North Central Avenue
Phoenix, Arizona 85012
(605)265-7200

B. United States v. Desmond Rouse, Jesse Rouse, Garfield Feather and Russell Hubbeling, 111 F.3d 561 (8th Cir. 1997), cert. denied, 118 S.Ct. 261 (1997).

Four defendants were convicted of aggravated sexual abuse of five nieces, aged twenty months to seven years. Multiple issues arose both pre-trial and during the trial including: whether a guardian ad litem should be appointed to represent the interests of the minor child victims, whether the defendants were entitled to an independent medical and psychological examination of the children, whether the child witnesses would be permitted to testify by closed circuit television, whether evidence of the victims' past sexual conduct was admissible, whether statements made by the children to an FBI agent would be admissible under the residual hearsay exception, whether the proposed testimony of the defendant's expert psychological witness was sufficiently reliable scientific evidence that would assist the jury to understand a fact in issue under the Daubert standard, and whether a juror lied during voir dire regarding her alleged prejudice against Native Americans.

This case is the first case in the Eighth Circuit Court of Appeals to address the application of Daubert to the

admission of psychological testimony in a child sexual abuse prosecution and whether the use of closed circuit television infringed the Sixth Amendment rights of the defendants.

I represented the United States in this prosecution. I served as co-counsel with Assistant United States Attorney Michelle Tapken, both during trial and on appeal. Initially on appeal, a divided panel of the Court of Appeals, 100 F.3d 560, reversed and remanded the convictions of all four defendants. Ms. Tapken and I prepared a Petition for Rehearing. The petition for rehearing en banc was granted and the prior judgment was vacated, 107 F.3d 557. The panel subsequently granted the petition for rehearing and rehearing en banc was denied as moot. Upon reconsideration, the panel affirmed the four convictions.

a. Dates of Representation: January 1994-April 1997

b. Name of court and name of judge:

United States District Court for the Southern Division of the District of South Dakota
The Honorable Lawrence L. Piersol

c. Co-counsel:

Michelle Tapken
230 South Phillips Avenue, Suite 600
Sioux Falls, South Dakota 57117-5073
(605)330-4400

Counsel for other parties:

Attorney for Desmond Rouse:

John Wilka
311 East 14th Street
Sioux Falls, South Dakota 57104
(605)338-9711

Attorney for Jesse Rouse:

Steven R. Binger
515 South Cliff Avenue, #201
Sioux Falls, South Dakota 57104
(605)338-4226

Attorney for Garfield Feather:

Robert C. Heege
115 South Main Avenue
Sioux Falls, South Dakota 57104

(605)338-3471

Attorney for Russell Hubbeling:

Steven G. Haugaard
4305 South Louise Avenue, #101A
Sioux Falls, South Dakota 57106
(605)334-1121

C. United States v. Steven Berndt and David John Asmussen, 86 F.3d 803 (8th Cir. 1996)

Two defendants were convicted of multiple counts of mail fraud, conspiracy and odometer tampering arising from a scheme in which automobiles were sold after their odometers were rolled back. Berndt entered a plea of guilty and Asmussen was convicted by a jury on 54 counts. Significant issues that arose in this case include the application of the mail fraud statute to the facts of this prosecution, the computation of amount of fine and restitution, and the imposition of a sentencing enhancement against both defendants for obstruction of justice.

I represented the United States in this prosecution as lead counsel. I prepared the indictment, responded to all motions, and directed the trial strategy. I was sole counsel on appeal.

a. Date of Representation: December 1993-September 1996

b. Name of court and name of judge:

United States District Court for the Northern Division of the District of South Dakota
The Honorable Charles B. Kornmann

c. Co-counsel:

Gregg Peterman
515 Ninth Street
Rapid City, South Dakota 57701
(605)342-7822

Counsel for other parties:

Attorney for Steven Berndt:

Thomas M. Keller
PO Box 1628
Sioux Falls, South Dakota 57101
(605)338-3220

Attorney for David Asmussen:

John A. Heisler
412 West Ninth Street
Sioux Falls, South Dakota 57104
(605)367-3627

D. United States v. Nancy Ruth Iverson, 90 F.3d 1340 (8th Cir. 1996)

Iverson was convicted of theft and embezzlement of public monies from the Badlands National Park Service. The evidence at trial showed that Iverson took money she collected as fees and later paid in cash for her law school tuition. Iverson claimed the money was taken by a robber. She was sentenced to four years probation, with home detention for three months. Less than three weeks after sentencing, Iverson was issued a citation charging her with shoplifting at a grocery store. Iverson's probation was revoked. The significant issues in this case arose during the sentencing phase after the probation revocation. The court addressed for the first time in the Eighth Circuit the issue of whether it was proper to order psychiatric or psychological treatment as special conditions of probation for the purpose of protecting the public when mental illness was not raised as a defense and whether Iverson was entitled to receive credit toward her sentence of imprisonment upon revocation of her probation for the time she served in home confinement as a condition of her probation. In both instances, the court found for the United States.

I represented the United States in this prosecution as sole counsel, both at trial and on appeal.

a. Date of Representation: September 1993-July 1996

b. Name of the court and name of the judge:

United States District Court for the District of South Dakota
The Honorable Lawrence L. Piersol

c. Counsel for the other party:

Jon W. Dill
919 Main Street, #212
Rapid City, South Dakota 57701
(605)348-5235

Mary Ann Giebink
505 North Minnesota
Sioux Falls, South Dakota 57104
(605)334-0446

E. David Larson v. Kreiser's, Inc., 472 N.W.2d 761 (SD 1991). David Larson was discharged from his employment with Kreiser's, Inc. by his father, Harold Larson. David Larson contended that he had been promised by his father that he would be president of the company some day. David Larson alleged wrongful termination based on an oral promise and an implied contract of employment arising from the employee handbook. In the initial jury trial, a verdict was entered against Kreiser's in the amount of $1,225,315.

I represented Kreiser's on appeal to the South Dakota Supreme Court. The Supreme Court reversed the trial court's decision and remanded the matter for retrial. On retrial, I was lead counsel for Kreiser's. As lead counsel, I delivered the opening and closing arguments, conducted voir dire and examined over half the witnesses. The jury found in favor of the employee and returned a verdict in the amount of $1,000,000. This case is significant because the South Dakota Supreme Court found that the employee handbook of Kreiser's did not create an implied contract of employment in an employment-at-will state.

a. Date of Representation: November, 1989 - January, 1992.

b. Name of court and name of judge:

Second Judicial Circuit Court
Minnehaha County
The Honorable Judith Meierhenry

c. Co-counsel:

Thomas K. Wilka
100 South Phillips Avenue, Suite 418
Sioux Falls, South Dakota
(605)334-0005

Plaintiff's counsel:

Robert J. Burns
3400 West 49th Street, Suite 200
Sioux Falls, South Dakota
(605)361-5151

F. The Estate of Ivor Parsons, PRO 90-103. The decedent, Ivor Parsons, suffered a stroke several months prior to his death. As a result of the stroke, he was confined to a nursing home. Prior to his stroke, the decedent had a very close relationship with his granddaughter, Kristie Parsons. Shortly after being confined in the nursing home, his neighbor discharged him from the nursing home and agreed to take Mr. Parsons to her home and provide for his care. The neighbor, within a few days after removing Mr. Parsons from the nursing home, took Mr. Parsons to a lawyer for purposes of preparing a will and a power of attorney. The will provided that one-half of the estate would be transferred to Kristie Parsons and one-half to the neighbor. Mr. Parsons' condition continued to deteriorate. The neighbor used the power of attorney to add her name as a surviving joint tenant on several bank accounts and purchased items for her own use with Mr. Parsons' money. The neighbor called the lawyer who prepared the first will and told him that Mr. Parsons changed his mind and wanted the will revised to leave all his assets to her. The attorney revised the will and met with Mr. Parsons to execute the will. Mr. Parsons died.

I was sole counsel for Kristie Parsons in the resulting will contest. The court found in favor of Kristie Parsons and set aside the second will.

a. Date of Representation: 1990.

b. Name of court and name of judge:

Second Judicial Circuit
Minnehaha County
The Honorable Robert C. Heege

c. Opposing counsel:

Richard D. Casey
141 North Main, Suite 200
Sioux Falls, South Dakota
(605)339-4500

G. Mary Jager v. Ramona School District, 444 N.W.2d 21, (SD 1989). My client, Mary Jager was terminated from her employment with the Ramona School District. She contended that the termination of her employment was arbitrary, capricious and an abuse of discretion by the school board. The circuit court found in favor of Mrs. Jager and ordered reinstatement and back pay.

The Supreme Court affirmed the decision of the circuit court. The Supreme Court's decision is recognized as one of the leading cases in the area of school law, in which the school board's actions were found to be arbitrary or capricious. I was sole counsel at the school board hearing, circuit court trial, and on appeal before the Supreme Court.

a. Date of Representation: March, 1988 - 1989

b. Name of court and name of judge:

Fourth Judicial Circuit Court, Lake County
The Honorable Tim Tucker

c. Counsel for other party:

Rodney Freeman
P.O. Box 176
Huron, South Dakota 57350
(605)352-8624

H. Allen A. Clifford v. United States of America, 738 F.2d 977 (8th Cir. 1984).

Allen Clifford suffered from depression and received treatment at the VA Hospital in Fort Meade, South Dakota. Mr. Clifford was given large doses of medication without proper medical supervision. He attempted suicide. Mr. Clifford's suicide attempt resulted in an irreversible coma. At the time of trial, Mr. Clifford had been in a coma for in excess of ten years. Mr. Clifford's guardian sued the government alleging malpractice under the Federal Tort Claims Act.

Judge Bogue initially granted summary judgment to the government based on the statute of limitations. I was then hired as co-counsel for the plaintiff to handle the appeal. I was solely responsible for the appeal. The case was appealed to the Eighth Circuit Court of Appeals. The Eighth Circuit reversed the summary judgment and in their decision, the court held that the cause of action accrued when the guardian was appointed rather than when the patient became comatose. This decision created one of the few exceptions to the statute of limitations under the Federal Tort Claims Act. The action was remanded to federal district court for trial, during which I acted as co-counsel and was responsible for all briefing, witness preparation and examination of approximately one-half of the witnesses. I argued most of the motions before Judge Bogue. Judge Bogue entered a plaintiff's verdict in the amount of $1,539,903.40.

a. Date of Representation: October, 1983 - 1988.

b. Name of the court and name of the judge:

United States District Court
Western Division
The Honorable Andrew Bogue

c. Co-counsel:

Robert G. Mines
Address unknown.

Opposing counsel:

Ted L. McBride
515 Ninth Street
Rapid City, South Dakota 57701
(605)342-7822

I. In the Matter of the Guardianship of Teresa Toomey, GDN-1985. Teresa Toomey was an elderly single woman. After the death of her three single sisters, with whom she had lived, she began residing with a neighbor. After several years, Teresa Toomey began giving gifts of certificates of deposits and bank accounts to her caretaker. An action was commenced by a distant relative to have Teresa Toomey declared incompetent. I represented Teresa Toomey in the guardianship action, as sole counsel. The court held that Teresa Toomey was competent and dismissed the guardianship action after a three-day trial.

a. Date of Representation: September, 1985 - April, 1986.

b. Name of court and name of judge:

First Judicial Circuit Court - Union County
The Honorable Jay H. Tapken

c. Opposing counsel:

John F. Murphy
P.O. Box 250
Elk Point, South Dakota
(605)356-2152

Lee M. McCahren
P.O. Box 297
Vermillion, South Dakota
(605)624-4449

J. Francis M. Nuytten and Lucille C. Nuytten v. Richard L. Goss, Civ. 81-219. The plaintiffs invested $30,000 in a limited partnership. The terms of the investment provided for full repayment of the capital contributions in the event the general partner failed to make quarterly profit payments to the plaintiff. The general partner defaulted. Plaintiffs alleged breach of contract, violation of the Federal Securities Act of 1933, violation of the State Securities Act and fraud and deceit. I served as lead counsel for the plaintiffs during the jury trial. I prepared all pleadings, delivered opening and closing arguments and questioned the majority of the witnesses. At the close of all evidence, the Judge directed a verdict in favor of the plaintiff Lucille Nuytten in the amount of $28,423.56 and in favor of the plaintiff Francis M. Nuytten in the amount of $13,714.95. This case was one of the few cases in state court brought under the state and federal securities act.

a. Date of Representation: January, 1983 - July, 1983.

b. Name of court and name of judge:

Second Judicial Circuit Court
Minnehaha County
The Honorable Robert C. Heege

c. Co-counsel:

Joel T. Hagen
100 South Phillips Avenue, Suite 418
Sioux Falls, South Dakota
(605)334-0005

Opposing counsel:

James K. DeSaix
119 West Main Street
Beresford, South Dakota
(605)763-2345

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

A. Royal River Casino v. Flandreau Santee Sioux Tribe. My client, Royal River Casino, Inc., owned and operated a gaming facility on tribal land. The casino was one of

the first to open in South Dakota under the provisions of the National Indian Gaming Act. Royal River Casino, Inc. and the Flandreau Santee Sioux Tribe had a dispute concerning the division of profits under the management contract and the National Indian Gaming Act.; This dispute resulted in the commencement of simultaneous actions in federal, state, and tribal court. The litigation involved issues of injunctive relief, tribal sovereignty, and interpretation of the National Indian Gaming Act and the gaming compact with the State of South Dakota. The disputes were finally resolved through the sale of the casino after almost daily legal battles over a five-month period. I represented Royal River Casino in litigation that was pending in all three jurisdictions simultaneously.

B. Weiland v. Grand Jury. In November of 1982, I served as co-counsel for Mr. Weiland to obtain a Writ of Prohibition from the South Dakota Supreme Court to prevent a Minnehaha County Grand Jury from opening allegedly tampered absentee ballots prior to election day. In granting the Writ, the Supreme Court recognized the secrecy of the ballot over the alleged violations of the criminal code.

C. Balance Systems, Inc. V. Muehlhausen, et al. My client, Muehlhausen, was sued for damages in excess of $1 million. The case involved issues of contribution and indemnification, breach of implied and express warranties under the Uniform Commercial Code, and negligence. I was sole counsel for Muehlhausen in this litigation. This action was settled.

D. South Dakota Board of Regents v. Meierhenry, 351 N.W.2d 450(SD 1984). On appeal to the South Dakota Supreme Court, I represented the Council of Higher Education (COHE). The Supreme Court recognized for the first time in this appeal that the South Dakota Department of Labor has primary jurisdiction to hear and determine grievances arising at the South Dakota colleges and university.

E. I served as a court-appointed member of the Gender Fairness subcommittee in South Dakota. The committee reviewed whether gender discrimination exists within the court system of South Dakota and made recommendations to the South Dakota Bar Association to address the findings. A copy of the report is attached.

F. I currently serve as a member of the Eighth Circuit Court of Appeals committee on Native American issues. The purpose of the committee is to improve communications with tribal courts and identify joint

areas of interest. I am the only non-judicial appointee on this committee.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

I am not entitled to any future benefits from previous business relationships.

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

I will resolve potential conflicts of interest based on canons 2 and 4 of the Model Code of Judicial Conduct and 28 USC § 455. The categories of litigation that are likely to present a potential conflict of interest include litigation currently pending in the United States Attorney's office of the District of South Dakota, litigation in which my husband's law firm, Dougherty & Dougherty, represents a party, and litigation involving a business in which I have an investment interest.

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

No.

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

A copy of my financial disclosure report is attached.

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

See attached financial net worth statement.

6. Have you ever held a position or played a role in a

political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Yes. I served as the Treasurer of the Pam Nelson for State Senate Campaign in 1990 and 1992. My responsibilities included filing the candidate financial reports with the Secretary of State, depositing the contributions and paying the bills for the campaign.

In 1992, I served as State Chair of the South Dakota Democratic Party, which operated the South Dakota Coordinated Campaign. The Coordinated Campaign handled the registration of voters, coordinated messages and get-out-the vote efforts for the campaign of Clinton-Gore, Untied States Senator Daschle and U.S. Representative Tim Johnson and the state legislative candidates. My role included providing input for decisions regarding expenditures, staff hiring, and message delivery.

In 1992, I also served as State Co-Chair of the Clinton-Gore campaign in South Dakota. My responsibilities included making public appearances on behalf of the campaign, responding to media inquiries, and working closely with the State Director.

From 1982 to 1993, I worked as a volunteer on numerous Democratic campaigns. I do not believe that I had an official role other than as outlined above.

III. GENERAL (PUBLIC)

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

Prior to being appointed as U.S. Attorney, I volunteered for the Second Judicial Circuit Bar Association Pro Bono Project. As a volunteer, I represented a young woman who was severely mentally handicapped and who needed to have a guardianship established to obtain court approval for elective surgery. In addition, I represented a woman who wished to obtain a divorce from her husband, who was incarcerated in the county jail. I devoted approximately 20 hours during a six-month period to this project.

Prior to the establishment of the Pro Bono Project, I frequently represented clients who were unable to afford to pay legal expenses on an ad hoc basis. These cases include divorces, child custody disputes, wills, and defense of civil litigation. I devoted approximately 40 hours a year to pro bono work.

From 1982 to approximately 1989, I handled cases for a reduced fee on a referral basis from East River Legal Services. These cases usually involved issues of child custody, child support, divorces and wills. I devoted approximately 100 hours a year to service of clients of East River Legal Services.

In addition to serving individual clients, I have also provided free legal advice to several non-profit organizations. These organizations include the Wholeness Center in Flandreau, South Dakota, which was trying to obtain a "special use" zoning designation for its shelter for abused women; the Ronald McDonald House in Sioux Falls, South Dakota, which was re-writing its personnel handbook; Memorial Lutheran Church in Sioux Falls, South Dakota, which was considering the exercise of an option to sell its church facility; Catholic Daughters of the Americas, which had to recover money which was embezzled by an officer; and the Senior citizens Services Center, Inc. Which terminated an employee and brought an action to obtain sales tax relief. I devoted approximately five hours a month to providing legal services to non-profit organizations.

After being appointed as United States Attorney, I delivered Meals on Wheels to the elderly for one hour per month for three years. In addition, I volunteer at the Banquet once a year and serve meals to the poor.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

Yes. I belong to Catholic Daughters of the Americas. The membership of Catholic Daughters consists of Catholic women. It is my understanding that this is an exempt church-related organization.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to and (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission in South Dakota. When Judge Battey announced his intention to take senior status, I notified Senator Daschle's office of my interest in the position. At their request, I faxed a copy of my resume to Senator Daschle. I was interviewed by Senator Daschle. It is my understanding that Senator Daschle called Judges, members of the bar, and others regarding the qualifications of the applicants. Senator Daschle then notified me of his selection. Following this preliminary selection, the Department of Justice, the American Bar Association and the Federal Bureau of Investigation then reviewed my candidacy.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No one discussed with me any specific case, legal issue or question during the selection process.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the federal judiciary within the federal government and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing an ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe in the separation of powers between the legislative, judicial and executive branches of government. The three branches of government are co-equal. The judicial branch is responsible for interpreting the laws that are enacted by the legislative branch and implemented by the executive branch. The judiciary should only address and resolve disputes that are ripe and in which there is an actual case in controversy. In addition, I believe that cases need to be decided based on past judicial precedents.

SUBMITTED IN RESPONSE TO

SECTION II, QUESTION 5

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	53903		Notes payable to banks–secured		0
U.S. Government securities--add schedule	23950		Notes payable to banks–unsecured		0
Listed securities–add schedule	508252		Notes payable to relatives		0
Unlisted securities--add schedule	128500		Notes payable to others		0
Accounts and notes receivable:		0	Accounts and bills due	4	100
Due from relatives and friends		0	Unpaid income tax		0
Due from others		0	Other unpaid tax and interest		0
Doubtful		0	Real estate mortgages payable–add schedule Residence only	240	000
Real estate owned–add schedule Residence	350000		Chattel mortgages and other liens payable		0
Real estate mortgages receivable		0	Other debts–itemize:		0
Autos and other personal property	120000				
Cash value–life insurance	10000				
Other assets–itemize:					
Bonds	39219				
N.Y. Life annuity	20000				
			Total Liabilities	244	100
			Net Worth	1 002	724
Total Assets	1246824		Total Liabilities and net worth	1 246	824
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor none			Are any assets pledged? (Add schedule.) residence only		
On leases or contracts none			Are you defendant in any suits or legal actions? no*		
Legal Claims none*			Have you ever taken bankruptcy? no		
Provision for Federal Income Tax none					
Other special debt none					

*I am named as a defendant in several matters, but in my official capacity as United States Attorney only.

ASSETS
AS OF DECEMBER 15, 1998

Owned individually by Karen E. Schreier

Intermountain Power Agency Bond	$5,000.00
T. Rowe Price Equity Income Fund	21,190.49
T. Rowe Price Growth Stock Fund	22,184.43
T. Rowe Price New Horizons Stock Fund	25,599.14
T. Rowe Price Science & Technology Stock Fund	30,820.93
T. Rowe Price Value Fund	10,904.20
Mainstay Family of Funds, Government B Fund (IRA)	8,336.24
Merrill Lynch Eurofund CLB (IRA)	1,608.00
Merrill Lynch Latin American Growth Fund (IRA)	2,223.00
Merrill Lynch Dragon Fund (IRA)	4,822.00
Merrill Lynch Eastern Europe Fund (IRA)	1,732.00
Merrill Lynch Capital Fund CL B (IRA)	3,042.00
U. S. Treasury Strips Zero% Nov. 15, 2004 (IRA)	6,044.00
U. S. Treasury Strips Zero% Nov. 15, 2005 (IRA)	5,026.00
Greenway Trust Co. - savings account	11,090.50
Greenway Trust Co. - Certificate of Deposit	5,668.37
New York Life Insurance Company - annuity	20,000.00
Home Federal Savings & Loan - checking and savings	8,230.68
JTKJ Partnership (25% interest)	15,500.00
U.S. Government Thrift Savings Plan	103,421.49

Jointly held assets of Karen E. Schreier and Timothy J. Dougherty

Residence	350,000.00
2/3 interest in Community Health Ltd. Ptr.	8,000.00
2/3 interest in Riverway Office Ltd. Ptr.	12,000.00
First National Bank checking	2,300.00
Personal property	100,000.00
Greenway Trust Company Certificate of Deposit	5,219.93

Owned individually by Timothy J. Dougherty

½ unit of First Dakota Title Ins. Ltd. Ptr.	15,000.00
Certificate of Deposit First National Bank Sioux Falls	8,921.18
Amoco Corp. common stock	5,875.00
Burlington Northern - Sante Fe common	10,200.00
Citigroup common	11,306.25
Coca-Cola Company common	14,012.40
Compaq Computer Corp. common	6,500.00
Walt Disney Company common	9,656.10
Ericsson LM Tel Company ADR-CLB common	5,525.00
General Electric Company common	9,037.50
Gillette Company common	4,593.70
The Home Depot common	7,462.50
Intel Corporation common	10,762.50
Lucent Technologies common	4,303.10
McDonalds Corp. common	7,006.20
Medtronic common	13,525.00
Merck & Company Inc. common	15,512.50
Microsoft Corp. common	24,400.00
Motorola Inc. common	6,187.50
Pepsico Inc. common	3,868.70

Pfizer Inc. common	11,193.70
Phillip Morris Co. Inc. common	22,378.80
Tricon Global Restaurants, Inc.	457.50
Alliance FD Inc. common	10,605.58
Amer. FDS Europacific Growth Mutual fund	18,167.68
Putnam Voyager Fund CL mutual fund	3,227.59
RJR Nabisco Cap. 10% bond	5,112.40
So Dak H & E FC McKennan Hospital Bond	7,679.00
Phoenix Go AZ Bond	6,042.00
Ca HLTH Fac. Rev. bond	5,812.80
Portland Arena Gas Tax Bond	3,436.50
First Amer. Prime Obliga. Money Market	1,008.97
Fico Strips Series E bond	5,474.24
U.S. Treas. Sec. Strpd. Bond	7,406.30
FHLMC bond	1,136.80
First American Prime Money market (a/k/a Piper Jaffrey)	181.65
Conseco common	7,511.67
Hershey Foods Corp. common	3,437.50
Elan common	3,440.65
Merrill Lynch Growth fund (IRA)	14,743.70
American Legacy Growth fund	6,461.20
American Legacy Growth and income fund	2,427.06
City of Morehead, MN bond	5,000.00
Certificate of Deposit - Marquette bank	10,000.00
First National Bank in Sioux Falls savings	523.32
First National Bank in Sioux Falls checking	1,554.00
Dougherty and Dougherty, LLP	71,000.00
Dain Bosworth money market	213.01

LIABILITIES

PHH Mortgage - for personal residence	$240,000
Credit card debts	
Karen Schreier	
Visa	850
Mastercard (government card)	1,150
Discover	500
Timothy Dougherty	
Visa	800
Mastercard	800
TOTAL DEBTS	$244,100

AO-10 (w)
Rev. 1/98.

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Schreier, Karen E.	District of South Dakota	03/08/1999

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check type)	6. Reporting Period
U.S. District Court Judge- nom	X Nomination, Date / / X Initial ___ Annual ___ Final	01/01/1997 to 03/08/1999

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.
P.O. Box 5073 Sioux Falls, SD 57117-5073	Reviewing Officer _____ Date _____

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

I. POSITIONS *(Reporting individual only: see pp. 9-13 of Instructions.)*

	POSITION	NAME OF ORGANIZATION / ENTITY
☐ NONE (No reportable positions.)		
1	General Partner	JTKJ Partnership
2		
3		

II. AGREEMENTS *(Reporting individual only: see pp.14-16 of Instructions.)*

	DATE	PARTIES AND TERMS
☒ NONE (No reportable agreements.)		
1		
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐ NONE (No reportable non-investment income.)			
1	1997	Dougherty & Dougherty, LLP ($)	
2	1998	Dougherty & Dougherty, LLP ($)	
3	1997	United States of America	$ 119,32
4	1998	United States of America	$ 137,938.32

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Schreier, Karen E.	03/08/1999

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	**NONE** (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	**NONE** (No such reportable gifts.)		
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
X	**NONE** (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

* VALUE CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Schreier, Karen E. | Date of Report: 03/08/1999

VII. Page 1 INVESTMENTS and TRUSTS– income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Intermountain Power Agency Bond		None	J	T	exempt				
2 T. Rowe Price Equity Income Fund	C	Dividend	K	T	exempt				
3 T. Rowe Price Growth Stock Fund	C	Dividend	K	T	exempt				
4 T. Rowe Price New Horizons Fund	B	Dividend	K	T	exempt				
5 T. Rowe Price Science and Technology Fund	C	Dividend	K	T	exempt				
6 T. Rowe Price Value Fund	B	Dividend	J	T	exempt				
7 Mainstay Family of Funds Govt Plus (IRA)	A	Dividend	J	T	exempt				
8 Merrill Lynch Eurofund CLB (IRA)	A	Dividend	J	T	exempt				
9 Merrill Lynch Latin American Growth Fund (IRA)		None	J	T	exempt				
10 Merrill Lynch Dragon Fund (IRA)	A	Dividend	J	T	exempt				
11 Merrill Lynch Eastern Europe Fund (IRA)		None	J	T	exempt				
12 Merrill Lynch Capital Fund CL B (IRA)	A	Dividend	J	T	exempt				
13 U.S. Treasury Strips Zero% Nov. 15, 2004 (IRA)		None	J	T	exempt				
14 U.S. Treasury Strips Zero % Nov. 15, 2005 (IRA)		None	J	T	exempt				
15 Greenwood Trust Co.- savings and certificates of deposit	B	Interest	K	T	exempt				
16 New York Life Insurance Co. - annuity	B	Interest	K	T	exempt				
17 Greenway Investments (2/3 Interest (J) dissolved	B	Rent			exempt				

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Schreier, Karen E.

Date of Report: 03/09/1999

VII. Page 2 INVESTMENTS and TRUSTS– income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
18 Community Health Ltd. (2/3 interest jointly held)	B	Rent	J	T	exempt				
19 Riverway Office Lt. (2/3 interest jointly held)	A	Rent	J	T	exempt				
20 Home Federal Savings & Loan - checking and savings	A	Interest	J	T	exempt				
21 JTKJ Partnership (25% interest)	B	Rent	K	W	exempt				
22 First Dakota Title Ins. Ltd. Ptr. (S) (1/2 unit)	B	Interest	K	W	exempt				
23 Certificate of Deposit First National Bar. SF (S)	B	Interest	J	T	exempt				
24 Amoco Corp. common (S)	A	Dividend	J	T	exempt				
25 Burlington Northern-Santa Fe common (S)	A	Dividend	J	T	exempt				
26 Citibank common (S) - merged into Citigroup common		None			exempt				
27 Travelers common (S) - merged into Citigroup common		None			exempt				
28 Citigroup common (S)	A	Dividend	J	T	exempt				
29 Coca-Cola Company common (S)	A	Dividend	J	T	exempt				
30 Compaq Computer Corp. common (S)	A	Dividend	J	T	exempt				
31 Walt Disney Company common (S)	A	Dividend	J	T	exempt				
32 Ericsson LM Tel Company ADR-CLB common (S)		None	J	T	exempt				
33 General Electric Company common (S)	A	Dividend	J	T	exempt				
34 Gillette Co. common (S)	A	Dividend	J	T	exempt				

1 Inc/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 (Col. B1, D4); F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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 (Col. C1, D3); O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Schreier, Peter E.

Date of Report: 03/08/1999

VII. Page 3 INVESTMENTS and TRUSTS– income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(H)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
35 The Home Depot common (S)	A	Dividend	J	T	exempt				
36 Intel Corporation common (S)	A	Dividend	J	T	exempt				
37 Lucent Technologies common (S)	A	Dividend	J	T	exempt				
38 McDonalds Corp. common (S)	A	Dividend	J	T	exempt				
39 Medtronic common (S)	A	Dividend	J	T	exempt				
40 Merck & Company Inc. common (S)	A	Dividend	J	T	exempt				
41 Microsoft Corp. common (S)		None	K	T	exempt				
42 Motorola Inc. common (S)	A	Dividend	J	T	exempt				
43 Pepsico Inc. common (S)	A	Dividend	J	T	exempt				
44 Pfizer Inc. common (S)	A	Dividend	J	T	exempt				
45 Phillip Morris Co. Inc. common (S)	B	Dividend	J	T	exempt				
46 Tricon Global Restaurants, Inc. common (S)		None	J	T	exempt				
47 ADP Exchange Reserve, Inc. CLC - Mutual Fund (S)(Exchanged)	A	Interest			exempt				
48 Amer. FDS Europacific Growth Mutual fund (S)	B	Dividend	J	T	exempt				
49 Putnam Voyager Fund CL mutual fund (S)	A	Dividend	J	T	exempt				
50 RJR Nabisco Cap. 10% bond (S)	A	Interest	J	T	exempt				
51 So Dak H & E FC McKennan Hospital Bond (S)	A	Interest	J	T	exempt				

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000 G=$100,001-$1,000,000 H1=$1,000,001-$5,000,000 H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Schreier, Karen E.

Date of Report: 03/08/1999

VII. Page 4 INVESTMENTS and TRUSTS– income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
52 Phoenix Go AZ Bond (S)	A	Interest	J	T	exempt				
53 Co HLTH Fac. Rev. bond (S)	A	Interest	J	T	exempt				
54 Portland Arena Gas Tax Bond (S)	A	Interest	J	T	exempt				
55 First Amer. Prime Obliga. Money Market (S)	A	Interest	J	T	exempt				
56 Amer. FDS Europacific Growth Mutual fund (S)(IRA)	A	Dividend	J	T	exempt				
57 Putnam Voyager Mutual Fund (S)(IRA)	A	Dividend	K	T	exempt				
58 Fico Strips Series E bond (S) (IRA)	A	Interest	J	T	exempt				
59 U.S. Treas. Sec. Strpd. bond (S)(IRA)	A	Interest	J	T	exempt				
60 FHLMC bond (S)(IRA)	A	Interest	J	T	exempt				
61 First American Prime money market,J)(a/k/a Piper Jaff mm)	B	Interest	J	T	exempt				
62 First Emerging Growth Mutual fund (J,(Sold)(IRA)	B	Dividen			exempt				
63 Piper Emerging Growth Mutual Fund (S) (Sold)		None			exempt				
64 El Paso County Texas Bond (S)(Sold)	A	Interest			exempt				
65 Alliance FD Inc. common (S)	A	Dividend	J	T	exempt				
66 Alliance FD Inc. common (S) (Sold)		None			exempt				
67 ABC Rail Corp. common (S) (Sold)		None			exempt				
68 Conseco (f/k/a Greentree) common (S)	A	Dividend	J	T	exempt				

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Schreier, Karen E. | Date of Report: 03/08/1999

VII. Page 5 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B: (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C: (2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
69 Hershey Foods Corp. common (S)	A	Dividend	J	T	exempt				
70 Elan common (S)		None	J	T	exempt				
71 Merrill Lynch Growth fund (S) (IRA)	A	Dividend	J	T	exempt				
72 American Legacy Growth fund (S)	A	Dividend	J	T	exempt				
73 American Legacy Growth and Income fund (S)	A	Dividend	J	T	exempt				
74 City of Morehead, MN bond (S)		None	J	T	exempt				
75 Certificate of Deposit (S)- U.S. Bank (f/k/a First Bank)	B	Interest			exempt				
76 Certificate of Deposit - Marquette Bank (S)	A	Interest	J	T	exempt				
77 First National Bank in Sioux Falls-savings and checking(S)	A	Interest	J	T	exempt				
78 First National Bank in Sioux Falls - checking (J)		None	J	T	exempt				
79 Sigma Aldrich Corp. common (S)(Sold)		None			exempt				
80 Dougherty & Dougherty LLP (S)		None	L	W	exempt				
81 Dain Bosworth money market (S)		None	J	T	exempt				
82 Premier 90 J-14 CMO bond (S)(sold)	A	Interest			exempt				
83 Rubbermaid common (S) (sold)		None			exempt				
84 Citizens Utilities, Series A common (S) (sold)		None			exempt				
85 Greenway Trust Co. Cert. of Deposit (J)	A	Interest	J	T					

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Schreier, Karen E.	03/08/1999

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Schreier, Karen E.	03/08/1999

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	03/01/99	United States of America (S)	$ 18,153.60
6	1999	Dougherty & Dougherty, LLP (S)	$ 0.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Schreier, Karen E.	03/08/1999

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Karen E. Schreier Date March 8, 1999

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

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

UNITED STATES SENATE JUDICIARY COMMITTEE—QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   John Richard Steer

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

   Residence: Fairfax Station, VA 22039-2678

   Office: One Columbus Circle, NE, Suite 2-500
   Washington, DC 20002-8002

3. Date and place of birth.

   September 9, 1949
   Greenwood, SC

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

   Married
   Mary-Lynne Server Steer
   School Teacher (part-time substitute), Fairfax County Public Schools, Fairfax, VA

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

   Clemson University, 1967-71, B.S., 1971
   Clemson University, 1971-75, M.S., 1975
   University of South Carolina School of Law, 1976-78, J.D., 1978

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

   Greenwood (SC) Jersey Farm, 1971-75, part-time farm labor
   Clemson University Cooperative Extension Service, 1971, summer employee
   Clemson University Department of Agricultural Economics and Rural Sociology, 1971-73, graduate research assistant
   United States Army, 7/73-10/73, Adjutant General's Corps Officer Basic Training Course

Clemson University Cooperative Extension Service, 1/74-8/74, Instructor, Department of Agricultural Economics and Rural Sociology, and Regional Specialist, Community and Resource Development
United States Senator Strom Thurmond, 1974-86
Legislative Assistant, 1974-76
State Office Assistant (part-time employment while attending law school), 1976-79
Legislative Director and Counsel, Senate Judiciary Committee, 1979-84
Administrative Assistant to the President pro tempore, 1/85-7/85
Administrative Assistant, 7/85-2/86
Tompkins, McMaster & Thomas law firm, Columbia, SC, law clerk, 1/79-5/79
Todd & Johnson law firm, Columbia, SC, law clerk, 1/79-5/79 (concurrent with above clerkship)
United States Sentencing Commission, 1986-present
Chief Deputy General Counsel, 3/86-3/87
General Counsel, 3/87-present

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

Yes
United States Army R.O.T.C. program, Clemson University
Commissioned 2d Lieutenant, U.S. Army Reserve, 1971
Adjutant General's Corps Officer Basic Training Course, Honor Graduate, 7/73-10/73
U.S. Army Reserve (inactive, standby status), 10/73-5/79
Honorable Discharge, Captain, U.S. Army Reserve, 5/79

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

College Undergraduate, Clemson University
Numerous academic scholarships
Phi Eta Sigma, Phi Kappa Phi, Alpha Zeta Academic Honor Fraternities
Blue Key National Honor Fraternity
Who's Who in American Universities and Colleges
Alpha Zeta Award to Outstanding Student, College of Agricultural Sciences
National President, Student Agronomy Society
Distinguished R.O.T.C. Military Student and Graduate
Graduated with High Honors

Graduate School, Master of Science Program, Clemson University
Graduate research fellowship, Department of Agricultural Economics and Rural Sociology
Master's thesis regarding resource transfers from dairy farming industry

Law School, University of South Carolina
Law Review
Order of Wig and Robe
American Jurisprudence Awards— Constitutional Law, Advanced Civil Procedure
Graduated Cum Laude (first in December graduating class)

Employment, U.S. Sentencing Commission
Federal Bar Association Certificate of Appreciation in regard to Salute to Law Enforcement, 1987
Certificate of Appreciation, 1990
Distinguished Service Award (agency's highest staff recognition), 1993
Sustained Superior Performance Award, 1996

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

South Carolina Bar
Federal Bar Association, Capitol Hill Chapter
The Federalist Society
Federal Probation and Pretrial Officers Association
American Bar Association (former member)
American Judicature Society (former member)

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

Organizations that may lobby: See 9 above

Other organizations:

Parent Teacher Associations, Irving Intermediate and West Springfield High Schools
South Carolina State Society
Washington, DC Metropolitan Area Alumni Associations—Clemson University, Pennsylvania State University, University of South Carolina
Springfield, VA United Methodist Church
Crosspointe Swim and Racquet Club Homeowners' Association

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

South Carolina State and Supreme Courts, 5/14/79
U.S. Court of Appeals, Fourth Circuit, 4/30/82
U.S. Court of Appeals, D.C. Circuit, 2/5/88
U.S. Court of Appeals, Fifth Circuit, 5/25/88
U.S. Court of Military Appeals, 8/25/89

No lapse of membership with regard to any of the above.

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

"Sentencing Guidelines: In General," in Compliance Programs and the Corporate Sentencing Guidelines; Preventing Criminal and Civil Liability. West Group Publisher (1993)

"Competing Sentencing Policies in a 'War on Drugs' Era," 28 Wake Forest L. Rev. 305 (Summer 1993) (co-authored with Judge William W. Wilkins, Jr. and Phyllis J. Newton)

"The Role of Sentencing Guideline Amendments in Reducing Unwarranted Sentencing Disparity," 50 Wash. & Lee L. Rev. (Spring 1993) (co-authored with Judge William W. Wilkins, Jr.)

"The Sentencing Reform Act of 1984: A Bold Approach to The Unwarranted Sentencing Disparity Problem," 2 Crim. L. For. 355 (1991) (co-authored with Judge William W. Wilkins, Jr. and Phyllis J. Newton)

"Relevant Conduct: The Cornerstone of the Federal Sentencing Guidelines," 41 S.C. L. Rev. 495 (1990) (co-authored with Judge William W. Wilkins, Jr.)

"Sentencing Guidelines Pass Unconstitutional Muster"; guest editorial discussing constitutional issues involving the sentencing guidelines; printed under various titles in Legal Times (Oct. 3, 1988), The Connecticut Law Tribune (Oct. 3, 1988), Fulton County Daily Report (Sept. 28, 1988) (co-authored with Donald A. Purdy, Jr.)

Land Use Planning and Regulations on South Carolina's Grand Strand, Clemson University Extension Service (1974)

Speeches on Constitutional Law/Legal Policy:

During 1988-89 when the sentencing guidelines were widely subject to constitutional attack, I spoke to a number of groups (*e.g.*, the ABA Constitutional Institute for Teachers,

Washington, D.C., 6/19/89) regarding the constitutional issues involved in the litigation. I spoke from notes, and a full written text of these various speeches is not available. However, the substance of my remarks is described in the text of an article carried in a number of legal newspapers, several of which I have noted in my published writings, above. I am providing the text of this article to the Committee.

Also, during my tenure as General Counsel of the U.S. Sentencing Commission, I have addressed numerous groups on legal issues surrounding application of the sentencing guidelines. Again, these talks were done from speaker's notes, and I have no written text to share with the Committee.

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

Good
Last physical examination, December 1998

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

None

15. Legal Career:

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

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

I have not clerked for a judge.

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

I have not practiced alone.

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

(1) Tompkins, McMaster & Thomas law firm — law clerk, 1/79-5/79
Columbia, SC

(2) Todd & Johnson law firm — law clerk, 1/79-5/79, Columbia, SC

(3) U.S. Senator Strom Thurmond
Washington, DC
Legislative Director/Senate Judiciary Committee Counsel, 1979-85
Administrative Assistant, Office of President pro tempore, 1/85-7/85
Administrative Assistant, 7/85-2/86

(4) U.S. Sentencing Commission
Washington, DC
Chief Deputy General Counsel, 3/86-3/87
General Counsel, 3/87-present

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

Other than as indicated in (a)(3), I have not practiced law.

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

During my 13+ years with the U.S. Sentencing Commission, I have developed knowledge and expertise in the areas of criminal law and procedure, administrative law, and constitutional law, with a specialized knowledge of sentencing and the federal sentencing guidelines.

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

Overall, I have appeared in court occasionally, and mostly in an appellate advocacy capacity.

During my brief affiliation with the McMaster law firm, I assisted in the trial of one case before a Richland County, SC, Master-in-Equity. In this case the firm was representing a plaintiff claiming breach of contract, and this proceeding related specifically to proof of the amount of damages. I also made a brief appearance in Lexington County, SC, Family Court in an adoption proceeding.

My affiliation with the Todd and Johnson law firm involved solely the preparation of estate planning documents and no court appearances.

During my tenure with Senator Thurmond and the Senate Judiciary Committee I had no court appearances.

In my current position as General Counsel to the U.S. Sentencing Commission I have not directly represented the agency in litigation, as the Commission does not have independent litigating authority. However, with the consent of the Attorney General, the Commission as an *amicus curiae* presented its independent views on the constitutionality of the sentencing guidelines in 1988-89 litigation before numerous federal district courts, several courts of appeals, and the U.S. Supreme Court. I co-authored the Commission's *amicus* brief, coordinated its filing and the presentation of oral argument, and personally argued the Commission's position before a number of courts. This litigation is further described in 16, below.

2. What percentage of these appearances was in:

   (a) federal courts; 90%

   (b) state courts of record; 5%

   (c) other courts. 5%

3. What percentage of your litigation was:

   (a) civil; 10%

   (b) criminal. 90%

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

   I assisted in one trial before a state master-in-equity in 1979.

5. What percentage of these trials was:

   (a) jury; 0%

   (b) non-jury. 100%

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or

parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of 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.

As indicated in 15, above, my participation in litigation has occurred primarily in connection with the filing of *amicus curiae* briefs on behalf of the U.S. Sentencing Commission. During my tenure as General Counsel, the Commission has moved to file *amicus* briefs in a limited number of federal criminal cases affecting the operation of the guideline system as a whole. The more significant of these matters are as were:

(1) Constitutional Challenges to the Commission and Federal Guideline System:

Capsule Summary: Soon after the initial sentencing guidelines took effect on November 1, 1987, defendants nationwide who were potentially subject to sentencing under the guidelines challenged the constitutionality of the guidelines and the Commission. The defendants' substantially identical claims were that (1) Congress had unconstitutionally delegated authority to the Commission to set criminal penalties; and (2) Congress had transgressed the constitutional separation of powers in multiple ways, including by (a) locating the Commission in the Judicial Branch; (b) providing for the service of active federal judges with non-judges on the Commission; and (c) providing for Presidential removal of judge-commissioners for cause. These claims were litigated before several hundred district courts and a number of circuit courts of appeals. The principal issues ultimately were settled by the U.S. Supreme Court in United States v. Mistretta, 488 U.S. 361 (1989). In Mistretta, the Court, 8-1, rejected all challenges to the constitutionality of the guidelines, and the opinion of the Court adopted, in all major respects, the position espoused in the Commission's *amicus* brief.

a) Nature of participation: Co-authored Commission's *amicus* briefs and coordinated their filing at district and appellate levels. Presented oral argument on behalf of the Commission as *amicus* before approximately eight district courts (several involving multiple judges sitting together for a consolidated oral argument presentation) and the Second and Fifth Circuit Courts of Appeals.

b) Dates of representation: late 1987 through January 18, 1989 Mistretta decision

c) Courts: Presented oral argument before (1) N.D.CA, Judge Thelton Henderson, (2) D.DE, Judge Murray Schwartz, (3) D.MD, multiple judges,

(4) D.D.C., Judge Harold H. Greene, (5) M.D.TN, multiple judges, (6) N.D. IL, multiple judges, (7) S.D.AL, multiple judges, (8) D.S.C., Judge Karen Henderson, (9) Court of Appeals for the Second Circuit, three-judge panel, (10) Court of Appeals for the Fifth Circuit, three-judge panel

d) Co-counsel on *amicus* brief:

Paul M. Bator (deceased)	Mayer, Brown and Platt
Andrew L. Frey	190 S. LaSalle Street
Kenneth S. Geller	Chicago, IL 60603
Stephen G. Gilles	

e) Opposing counsel: Varied as to forum; opposing Counsel of Record in U.S. Supreme Court was:
Alan B. Morrison
Public Citizen Litigation Group
2000 P Street, N.W., Suite 700
Washington, DC 20036

(2) Brief for the United States Sentencing Commission as *amicus curiae* in *United States v. Lopez*, 938 F.2d 1293 (D.C. Cir. 1991).

In this brief, submitted at the request of the court, the Commission contended that: (1) a court could not set aside a sentencing guideline or policy statement for failure of the Commission to articulate adequately the basis and purpose of the provision, and (2) the Commission had provided an appropriate statement of reasons for its guidelines and policy statements. The Commission illustrated the reasons why the Administrative Procedures Act (APA) did not apply to the Sentencing Commission, with the exception of two individual provisions found within 5 U.S.C. § 553(c) dealing with publication and public hearing procedures. The Commission asserted that it need only support its guideline decisions with a "report [to Congress] stating the reasons for the Commission's recommendations." The D.C. Circuit agreed with the Commission's position.

My involvement in this case consisted of co-authoring the *amicus* brief. I did not otherwise participate in the litigation of the case.

(3) Brief for the United States Sentencing Commission as *amicus curiae* in *United States v. Bell*, 991 F.2d 1445 (8th Cir. 1993).

The United States Sentencing Commission filed a brief as *amicus curiae* in support of the Government's position as appellant that the *ex post facto* clause is not applicable to sentencing guideline amendments. The Commission's brief contended that the guidelines themselves are not laws and therefore not subject to *ex post facto*

restrictions because: (1) the procedure through which guideline amendments are promulgated involves no legislative action; (2) judges retain discretion to sentence outside the guidelines as a result of a flexible departure standard; and (3) the guidelines do not reclassify substantive crimes but are based on statutory offense categories. The Eighth Circuit decision, cited *supra*, was contra to the position espoused by the Government and the Commission.

My involvement in this case consisted of co-authoring the *amicus* brief. I did not otherwise participate in the litigation of the case.

(4) Memorandum of Law by the United States Sentencing Commission as *amicus curiae* in *United States v. McLellan*, Criminal Action No. 1:91-CR-326A-01 (JOF) (N.D.GA. 1995).

In this case, the defendant moved to invalidate the U.S. Sentencing Commission and the sentencing guidelines on separation of powers grounds. The defendant contended that the U.S. Supreme Court decision in *United States v. Mistretta*, 488 U.S. 361 (1989), resolved only the facial validity of the Sentencing Reform Act and that, irrespective of the Court's decision, the Commission's subsequent actions in implementing the Act had violated the separation of powers doctrine. In its memorandum of law as *amicus curiae*, the Commission argued that in resolving conflicts of sentencing law among the federal circuits, advising Congress on sentencing issues, and conducting studies of sentencing issues, it was fulfilling duties mandated by the Act. These duties were all found to be proper for the Commission in *Mistretta*, and thus the Commission was in no way stepping outside the bounds of its constitutional role in fulfilling them. The Eleventh Circuit ultimately rejected the defendant's claims. *See In re United States of America*, 60 F.3d 729 (11th Cir. 1995).

My involvement in this case consisted of co-authoring and filing the *amicus* memorandum. I was available to assist Counsel for the Government during a portion of the case but did not otherwise participate in its litigation.

(5) Washington Legal Foundation v. United States Sentencing Commission, 89 F.3d 897 (D.C. Cir. 1996)

In this litigation, which extended from May 1993 through July 1996, the plaintiff organization contended that the U.S. Sentencing Commission and advisory committees it formed were subject to the Federal Advisory Committee Act. Alternatively, plaintiffs argued that federal common law conferred a right of access to the documents generated by, in this case, an Advisory Working Group on Environmental Sanctions formed by the Commission. These claims ultimately were rejected by the Court of Appeals.

Representation of the Commission in this case was provided by the Department of Justice Civil Division. My role as lead agency counsel involved assisting in the preparation of necessary affidavits and exhibits, review of pleadings and legal memoranda, and review of briefs.

Supplemental Professional Reputation List

The following persons are familiar with my work and professional capabilities:

(1) U.S. Senator Strom Thurmond

(2) Judge William W. Wilkins, Jr. (former Commission Chair)
U.S. Court of Appeals for the Fourth Circuit
300 E. Washington Street
Greenville, SC 29601

(3) Judge Deanell R. Tacha (former Commissioner)
U.S. Court of Appeals for the Tenth Circuit
4830 West 15th Street
Lawrence, KS 66049

(4) Judge A. David Mazzone (former Commissioner)
U.S. District Court for the District of Massachusetts
5730 United States Courthouse
One Courthouse Way
Boston, MA 02210

(5) Judge Julie E. Carnes (former Commissioner)
U.S. District Court,
Northern District of Georgia
75 Spring Street
Atlanta, GA 30303

(6) Judge Richard P. Conaboy (former Commission Chair)
U.S. District Court
Middle District of Pennsylvania
235 N. Washington Avenue
Scranton, PA 18501

(7) Wayne A. Budd (former Commissioner)
Group President
Bell Atlantic—New England
Boston, MA 02110

(8) Michael Goldsmith (former Commissioner)
Professor of Law
Brigham Young University School of Law
Provo, UT 84602

(9) John Napier (corporate, government relations attorney)
Winston & Strawn
1400 L Street, NW
Washington, DC 20005

(10) Ronald Weich (defense, government relations attorney)
Zuckerman Spaeder Goldstein Taylor & Kolker
1201 Connecticut Avenue, NW
Washington, DC 20036

(11) Gary Katzman (federal prosecutor, former DOJ ex officio representative on the U.S. Sentencing Commission)
Assistant U.S. Attorney
9200 U.S. Courthouse
One Courthouse Way
Boston, MA 02210

(12) Paul K. Martin (former Commission Deputy Staff Director)
Office of the Inspector General
U.S. Department of Justice
Washington, DC 20530

(13) Frank Bowman (former assistant United States Attorney, Special Counsel, U.S. Sentencing Commission)
Professor of Law
University of Indiana School of Law
Indianapolis, IN 46227

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

During my tenure as General Counsel of the Commission, I have represented the Agency in a wide variety of matters that, fortunately, did not result in the filing of suit against the Commission or individual Commissioners, although in several such matters, there was a serious threat of such litigation. In general, these matters have included:

a. negotiation of personnel contracts
b. settlement of personnel grievances, including several EEO grievances
c. resolution of contract claims
d. resolution of copyright infringement claims

I have also authored or contributed to numerous reports and legal memoranda on issues involving application of the sentencing guidelines and the authority and duties of the Commission. Among the more significant of these are:

Commission Reports

(1) Supplementary Report on the Initial Sentencing Guidelines and Policy Statements (1987);

(2) Special Report: Mandatory Minimums in the Federal Criminal Justice System (1991);

(3) Four-Year Evaluation Study: Report on the Operation of the Guidelines System and Short-Term Impacts on Disparity in Sentencing, Use of Incarceration, and Prosecutorial Discretion and Plea Bargaining (1991);

(4) Adequacy of Penalties for Fraud Offenses Involving Elderly Victims (1995);

(5) Special Report: Cocaine and Federal Sentencing Policy (1995);

(6) Sentencing Policy for Money Laundering Offenses, including Comments on Department of Justice Report (1997);

(7) Telemarketing Fraud Offenses—Explanation of Recent Guideline Amendments (1998).

Legal Memoranda/Discussion Papers

(8) U.S. Sentencing Commission Authorities and Responsibilities (1996) — Memorandum provided in response to request from House Crime Subcommittee;

(9) The Sentencing Reform Act of 1984: Principal Features Affecting Guideline Construction (1995);

(10) Interpretation of Career Offender Provisions of Sentencing Reform Act (1987); Commission Authority to Alter Career Offender Guidelines (1990);

(11) Implementation of "Safety Valve" Provisions of 1994 Crime Bill (1994);

(12) Retroactivity of Amended Guideline Range (1995); Amendment Retroactivity-Policies and Procedures (1996);

(13) Administrative Guide for New Commissioners (1999);

(14) Numerous General Counsel Opinion Letters on specific sentencing and/or guideline issues.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

   a. U.S. Civil Service Retirement System and Thrift Savings Plan
   b. Several Individual Retirement Accounts and a Roth IRA—see financial statement
   c. Two rental residences—see financial statement
   d. Approximately 140 acres of pasture and timberland—see financial statement

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

   Based on my personal experience to date as a senior Commission employee and my knowledge of issues likely to come before the Commission, I do not anticipate conflicts of interest between my public duties as a Commissioner and my personal or immediate family's financial interests.

   Should a matter come before the Commission that presents, or appears to present, a conflict of interest question, I would consult with the Commission's ethics officer and follow the guidance of that official.

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

   Not at present. As permitted by Judicial Conference and Commission ethics standards, I may, at a future date, explore the feasibility of outside teaching for compensation at an area law school.

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

   See attached Financial Disclosure Report.

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

See attached schedule.

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

I performed some volunteer services in the 1978 and 1984 re-election campaigns of U.S. Senator Strom Thurmond.

As a Judicial Branch employee since 1986, I have been precluded from involvement in any political campaign activities.

Contingent Liabilities

As endorser, co-maker or guarantor — 0
On leases or contracts — 0
Legal claims — 0
Provision for Federal Income Tax — 0
Other special debt — 0

General Information

1 Are any assets pledged?

Yes

Mortgage on family residence

Lien on family auto (1999 Chrysler Town & Country Minivan)

2. Are you a defendant in any suits or legal actions?

No

3. Have you ever taken bankruptcy?

No

III. GENERAL (PUBLIC)

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

   Ethics standards applicable to employees of the U.S. Sentencing Commission, a Judicial Branch agency, preclude me from engaging in the private practice of law. Thus, I have not assisted the disadvantaged in a *pro bono* capacity as an attorney.

   I am active in my church (Springfield, VA United Methodist Church), which carries on a number of regular projects to aid the disadvantaged. These include a project to feed and clothe the area homeless at a local shelter and regular contributions of used clothing and household goods to the Ecumenical Community for Helping Others distribution center. Our family also makes substantial charitable donations of cash and property annually to similar entities. I have served as a volunteer leader for local Boy and Girl Scout troops and have assisted on specific projects to gather food products for the needy, renovate recreational areas at local public parks, and improve wildlife habitat.

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

   Alpha Gamma social fraternity, Clemson University, 1968-69
   Sigma Phi Epsilon social fraternity, Clemson University, 1970-71; Sig Ep Alumni Association, 1971-present
   Blue Key National Honor Fraternity, Clemson University, 1970-71
   Boy Scouts of America — volunteer leader, 1996-present

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.

Financial Statement — Net Worth (as of 9/15/99)

Assets			Liabilities	
Cash, Money Market Funds		$50,000	Real estate mortgage, personal residence	$227,000
U.S. Savings Bonds		$2,000	Chattel mortgage, auto loan	30,000
			Credit cards (normally paid in full monthly)	5,000
			Total liabilities	$262,000
Mutual Funds		$64,300	Net Worth	$1,156,300
Legg Mason Value Trust	$52,000		Total liabilities and net worth	$1,418,300
Legg Mason Spec. Inv. Trust	2,100			
MOSAIC Foresight Fund	5,100			
John Hancock Sovereign Inv. Fund	2,300			
John Hancock Global Tech. Fund	2,800			
Individual Securities		$47,300		
300 sh. Walt Disney	$ 8,400			
226 sh. Proctor & Gamble	22,000			
342 sh. Owens & Minor	3,600			
100 sh. Glaxo Wellcome	5,200			
100 sh. MCI Worldcom	8,100			
Retirement Funds		$448,200		
Legg Mason Value Trust IRA	$ 30,300			
Legg Mason Spec. Inv. Tr. Roth IRA	4,700			
Oppenheimer Growth Fund IRA	34,200			
Valley Forge Fund IRA	5,000			
U.S. Thrift Savings	160,000			
Civil Service Retirement Plan Contrib. only	95,000			
T. Rowe Price Funds Spousal IRA	4,200			
Valley Forge Fund Spousal IRA	1,800			
VALIC Retirement Funds—Spouse	98,000			
VA State Retirement—Spouse contrib.	15,000			
Life Insurance—cash value		$46,500		
Southern Farm Bureau — 2 policies	$ 20,000			
USAA — 1 policy	10,000			
John Hancock — spouse — 2 policies	5,000			
Prudential — spouse — 1 policy	1,500			
Real Estate		$705,000		
Residence, Fairfax Station, VA	$350,000			
Rental residence, Abington, PA	150,000			
Rental residence, Epworth, SC	65,000			
140 Ac. timber & farmland, Epworth, SC	140,000			
Other				
2 automobiles		$ 30,000		
Miscellaneous personal property		25,000		

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Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination *(Month, Day, Year)*	**Reporting Status** *(Check Appropriate Boxes)*	☐ Incumbent	Calendar Year Covered by Report	☒ New Entrant, Nominee, or Candidate	☐ Termination Filer — Termination Date *(If Applicable) (Month, Day, Year)*

Reporting Individual's Name	Last Name: STEER	First Name and Middle Initial: John R.
Position for Which Filing	Title of Position: Commissioner / Vice Chair	Department or Agency *(If Applicable)*: U.S. Sentencing Commission
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: Suite 2-500, 1 Columbus Circle, NE, Washington, D.C. 20002-8002	Telephone No. *(Include Area Code)*: (202) 502-4592
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: General Counsel, U.S. Sentencing Commission, 1987 - present	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Judiciary	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification: I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge	Signature of Reporting Individual: John R. Steer	Date *(Month, Day, Year)*: 3/3/99
Other Review (If desired by agency)	Signature of Other Reviewer	Date *(Month, Day, Year)*
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below)	Signature of Designated Agency Ethics Official/Reviewing Official	Date *(Month, Day, Year)*
Office of Government Ethics Use Only	Signature	Date *(Month, Day, Year)*

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

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

Agency Use Only

OGE Use Only

Fee for Late Filing

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

Reporting Periods

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

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

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

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

Schedule B--Not applicable.

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

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

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

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Reporting Individual's Name	SCHEDULE A	Page Number
John K. Steer		2

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)								Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)															
									Type								Amount									
Identify each asset held by you, your spouse, or dependent children for the production of income which had a fair market value exceeding $1,000 at the close of the reporting period. Identify each asset or source of income held by you, your spouse, or dependent children which generated over $200 in income during the reporting period. None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000	Actual Amount Only if "Other" specified	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				x					x										x							
Doe Jones & Smith, Hometown, State			x													Law Partnership Income				x						$130,000	
Kengstone Equity Fund					x								x								x						
IRA: Heartland 500 Index Fund							x						x														
1 J Rental residence, Abington, PA (1478 Rakwill Rd)					X					X							X										
2 Rental residence, Ninety Six, SC (1101 Epworth Camp Rd)				X						X											X						
3 140 Acres (approx.) Farmland/ timberland, Greenwood County, SC					X												X										
4 J Discover Savers' Account, Greenwood Trust Co., Greenwood, DE		X									X						X										
5 J Private Issue Savers' Acct. Greenwood Trust, Greenwood, DE			X								X							X									
6 J Money Mkt. Acct. - Legg Mason Cash Reserve Trust			X						X									X									

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Reporting Individual's Name: John R. Steer

SCHEDULE A continued

Page Number: 3

Block A: **Assets and Income**

Identify each asset held for the production of income which had a fair market value exceeding $1,000 at the close of the reporting period.

Identify each asset or source of income which generated over $200 in income during the reporting period.

Block B: **Valuation of Assets**

Block C: **Income: Type** and **Amount**

#		Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000	Actual Amount (Only if "Other" specified)	Date (Mo., Day, Yr.) (Only if Honoraria)
1	J	Legg Mason Value Trust (mutual fund)			X						X			X							X								
2	J	Legg Mason Special Investment Trust (mutual fund)		X										X					X										
3	J	MOSAIC Foresight Fund (mutual fund)		X										X					X										
4	S	John Hancock Sovereign Investors Fund (mutual fund)		X							X			X					X										
5	S	John Hancock Global Technology Fund (mutual fund - technology stocks)		X										X					X										
6	J	200 sh. Walt Disney Co.		X							X								X										
7	J	225 sh. Procter & Gamble Co.			X						X									X									
8	J	341 sh. Owens & Minor Inc.		X							X								X										
9	J	100 sh. Glaxo-Wellcome Inc.		X							X								X										

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Reporting Individual's Name: John R. Steer

SCHEDULE A continued

Page Number: 4

Block A: Assets and Income — Identify each asset held for the production of income which had a fair market value exceeding $1,000 at the close of the reporting period. Identify each asset or source of income which generated over $200 in income during the reporting period.	Block B: Valuation of Assets — None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Block C: Income: Type — Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	Amount — None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000	Actual Amount (Only if "Other" specified)	Date (Mo., Day, Yr.) (Only if Honoraria)
1 J 100 sh. MCI WorldCom		X							X								X										
2 Legg Mason Value Trust IRA			X						X			X						X									
3 Legg Mason Special Investment Trust Roth IRA		X										X					X										
4 Valley Forge Fund IRA		X							X			X					X										
5 Oppenheimer Growth Fund IRA			X						X			X						X									
6 U.S. Thrift Savings					X				X			X								X							
7 S T. Rowe Price Spectrum Growth Fund - Spousal IRA		X							X			X					X										
8 S Valley Forge Fund Spousal IRA		X							X			X					X										
9 S VALIC Tax Sheltered Annuity				X					X			X								X							

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Reporting Individual's Name: John R. Steer

SCHEDULE A continued

Page Number 5

	Block A: Assets and Income — Identify each asset held for the production of income which had a fair market value exceeding $1,000 at the close of the reporting period. Identify each asset or source of income which generated over $200 in income during the reporting period.	Block B: Valuation of Assets — None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Block C: Income: Type — Dividends	Rent and Royalties	Interest	Capital Gains	Excepted Investment Fund	Excepted Trust	Qualified Trust	Other (Specify Type)	Amount — None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000	Actual Amount Only if "Other" specified	Date (Mo., Day, Yr.) Only if Honoraria
S 1	Fairfax County, VA Public Schools spouse - substitute teaching																Salary			X							$2143.97	
2	Prudential Insurance Co. Annuity distribution																Annuity Death Benefits - Uncle						X				$19,268.61	
3	West Publishing Corp. book royalties										X							X										
DC 4	MOSAIC Investors Fund dependent child - daughter			X						X			X							X								
DC 5	MOSAIC Investors Fund dependent child - son		X							X			X						X									
DC 6	SCANA Corporation - 238 sh dependent child - daughter									X									X									
DC 7	SCANA Corporation - 238 sh dependent child - son									X									X									
8																												
9																												

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

Reporting Individual's Name	SCHEDULE B	Page Number
John R. Steer		6

Part I: Transactions

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

None ☐

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)								
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000	Certificate of Divestiture
	Example: Central Airlines Common	x			2/1/91			x					
1	Nominee - not applicable												
2													
3													
4													
5													

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling $250 or more; and (2) travel-related cash reimbursements received from one source totaling $250 or more. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $100 or less.** See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
	Example: Natl Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/90 (personal activity unrelated to duty)	$500
	Example: Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1	Nominee - not applicable		
2			
3			
4			
5			

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Reporting Individual's Name	SCHEDULE C	Page Number
John R. Steer		7

Part I: Liabilities

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

None ☒

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x): $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000
Examples:	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1981	13%	25 yrs.			x				
	John Jones, 123 J St., Washington, DC	Promissory note	1989	10%	on demand					x		
1												
2												
3												
4												
5												

Part II: Agreements or Arrangements

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

None ☒

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 11/91.	Doe Jones & Smith, Hometown, State	7/85
1			
2			
3			
4			
5			
6			

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Reporting Individual's Name	SCHEDULE D	Page Number
John R. Steer		8

Part I: Positions Held Outside U.S. Government

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

None ☒

	Organization *(Name and Address)*	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/55	11/91
1					
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 non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

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

None ☒

	Source *(Name and Address)*	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1		
2		
3		
4		
5		
6		

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SENATE JUDICIARY COMMITTEE QUESTIONNAIRE

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

Brian Theadore Stewart

Other variations or nicknames used (by me or others regarding me):

Ted Stewart
Brian T. Stewart
B.T. Stewart
B. Ted Stewart
Brian T. (Ted) Stewart
B. Theodore Stewart

2. **Address:**
List current place of residence:

Farmington, Utah 84025

current office address:

Office of the Governor, 210 State Capitol, Salt Lake City, Utah 84114

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

August 19, 1948
Logan, Cache County, Utah

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

I have been married to Lora Lynn Beck since August 31, 1973. She is a full-time wife and mother.

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

Idaho State University, Pocatello, Idaho; September 1966-June 1967; no degree

Utah State University, Logan, Utah; September 1967-June 1968, September 1970-June 1972; Bachelor of Science Degree, June 3, 1972

University of Utah School of Law; September 1972-February 1975; Juris Doctor Degree, June 7, 1975

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

Paid employment:

May 1972-August 1972; Utah State University, Logan, Utah; summer activities coordinator

May 1973-November 1973; Wilshire Arms Apartments, 234 First Avenue, Salt Lake City, Utah; apartment manager

September 1973-March 1974; Church of Jesus Christ of Latter Day Saints, Church Education System; early morning seminary teacher

October 1973-December 1973; Utah Attorney General, State Capitol, Salt Lake City, Utah; law clerk

November 1973-April 1976; University Heights Apartments, 130 South 1300 East, Salt Lake City, Utah; apartment manager

January 1974-November 1974; Parsons Behle & Latimer, 201 South Main Street, Salt Lake City, Utah; law clerk

November 1974-November 1980; Senior & Senior (now Nielsen & Senior), 1100 Beneficial Life Tower, Salt Lake City, Utah; legal clerk and attorney

March 1975-June1975; United States Army; active duty for training, Fort Huachuca, Arizona

July 1976-December1980; Utah National Guard, Murray, Utah; JAG officer, Trial Counsel

January-December 1980; Fruit Heights City Council; Councilman

December 1980; Senator Orrin G. Hatch, Washington, D.C.; assistant

January 1981-February 1985; Congressman James V. Hansen, Washington, D.C.; Administrative Assistant

March 1985-March 1992; State of Utah, Public Service Commission, 160 East 300

South, Salt Lake City, Utah; Public Service Commissioner

August 1986-March 1992; State of Utah, Public Service Commission, 160 East 300 South, Salt Lake City, Utah; Chairman

March-June of the years 1991 and 1994 through1998; Utah State University, Logan, Utah, Department of Political Science; visiting professor

March 1992-June 1992; candidate for United States Senate

June 1992-December 1992; State of Utah, Department of Commerce, 160 East 300 South Salt Lake City, Utah; Executive Director

January 1993-March 1998; State of Utah, Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah; Executive Director

September-December 1997; Weber State University, Ogden, Utah, Department of Political Science; visiting professor

March 1998-current; Governor Michael O. Leavitt, Governor, State of Utah, 210 State Capitol Building, Salt Lake City, Utah; Chief of Staff

Non-paid:

Gina Bachauer International Piano Competition Board of Directors, 1990-1992

ECM-RM, Inc. Board of Directors and officer 1976 -1982. This was a non-profit corporation organized to facilitate maintenance of relationships of former missionaries for the Church of Jesus Christ of Latter Day Saints who served together in England in the period 1968-1971. The corporation was involuntarily dissolved for failure to file annual reports in 1982.

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

Serial number 518-62-6397

24 Sept 1970; Enlisted United States Army Reserve (ROTC)

2 June 1972; Commissioned as 2nd Lt., Reserve Commissioned Officer, Army of the United States

2 June 1972 - 31 March 1975; active duty deferred for law school

31 March 1975 - 4 June 1975; attended U. S. Army Intelligence School, Military Intelligence Officer Basic Course at Fort Huachuca, Arizona

6 June 1975; promoted to 1st Lt.

4 June 1975 - 14 July 1976; U. S. Army Reserve, Annual Training status

15 July 1976 - 14 July 1980; assigned to the Utah Army National Guard, HHC 115th Engr. Gp (Cmbt), Murray Utah, JAGC, Trial Counsel

18 August 1977; promoted to Captain

15 July 1980 - 23 Sept 1982; assigned to U. S. Army Reserve, Ready Reserve status

23 Sept 1982; received an Honorable Discharge

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

Blue Key Honor Society, Utah State University, 1971-1972

Distinguished Military Graduate, Army ROTC, Utah State University, June 1972

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

I have been a member of the Utah State Bar Association from July, 1975 to the present.

I am a former member of the Natural Resource Section.

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

Active lobbying:

As noted elsewhere in this Questionnaire, I have held executive positions in state government. As a member of the Public Service Commission, I testified before the state legislature for the commission's budget and on substantive issues involving utility regulation. As Executive Director of the Utah Department of Commerce and Executive Director of the Utah Department of Natural Resources, I testified before the state legislature for the departmental budget and on issues

involving the jurisdiction of the department. In addition, I have testified before Congress on a number of matters involving the jurisdiction of the Department of Natural Resources.

I am a member of the Utah Republican Party.

I may be a member of the National Republican Congressional Committee via donations made.

Other organizations:

I am a member of the Church of Jesus Christ of Latter Day Saints.

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

I was admitted to practice before the Supreme Court of Utah on July 7, 1975.

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

1. "A Proposal For America's Housing Dilemma - The Urban Homeowners Association," Utah Law Review, Volume 1974, Summer, No. 2

2. "Keeping Regulators Informed on Affiliated Relationships," (with Frank A. Hoffman) Public Utilities Fortnightly, February 4, 1988

3. "State Participation in Ecosystem Management," paper delivered at symposium on ecosystem management at Utah State University and published in Natural Resources and Environmental Issues, Volume V, 1995

4. "Utah Mining Isn't an Out-of-Control Business," Deseret News opinion piece, November 8, 1993

5. "State Protects Resources," Salt Lake Tribune opinion piece, November 30, 1995

6. "Balance Approach to Environmentalism," Deseret News opinion piece, October 18, 1996

The nature of my employment for the past 14 years has required me to give many speeches on public policy matters, as well as frequent testimony before state and federal bodies. Often such speeches or testimony touched on issues of constitutional law or legal policy. I have attached copies of such speeches and testimony, or outlines and notes of such speeches and testimony, where they are available. Also included are press reports of those speeches where I have been able to find them, using due diligence. I regret that I am not able to produce copies, outlines, notes or press reports of all speeches that I have given or that may have been reported.

I have also included copies of a number of press reports regarding my activities which are not reporting on speeches or testimony. Since others may consider them relevant, I have included them.

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

My health is excellent. My last physical was January 22, 1999.

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, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Although I have not been a judge, I did serve seven years as a member of the Utah Public Service Commission, a quasi-judicial body with jurisdiction over the regulated utilities in the State of Utah. The three Commissioners make decisions regarding the utilities regulated following formal hearings and upon the issuance of orders containing findings of fact and conclusions of law. During the seven years I served on the Commission, it issued an estimated 1500 orders, including 34 major rate actions. I served as Chair of the Commission for approximately six years.

(1) Citations for the ten most significant opinions I have written (copies attached):

1. In the Matter of the Application of Utah Power & Light Company and PC/UP&L Merging Corp., Docket No. 87-035-27

2. In the Matter of the Public Service Commission's Investigation into the Charges and Allegations of James J. Simonelli, Case No. 84-035-12

3. In the Matter of the Application of the Utah Associated Municipal Power Systems, Case No. 85-2011-01

4. In the Matter of the Application of US West Communications for Approval of an Incentive Regulation Plan, Docket No. 90-049-03

5. In the Matter of the Investigation of the Reasonable of the Rates and Tariffs of Mountain Fuel Supply Company, Docket No. 89-057-15

6. Re Utah Power and Light Company, Docket No. 89-035-10, 112 P.U.R.4th 175

7. Re Sunnyside Cogeneration Associates, Docket No. 87-035-04, 104 P.U.R.4th 143

8. Re Mountain States Telephone and Telegraph Company, Docket No. 87-049-05, 95 P.U.R.4th 12

9. In the Matter of the Investigation of Certain Complaints Against Mountain Bell Telephone Company for the Provision of 976 Scoopline Services, Case No. 87-049-01

10. In the Matter of the Mountain Bell Tariff Proposal to Propose a Late Payment Charge for Past Due Bills, Case No. 86-049-T06

(2) A short summary of and citations for all appellate opinions where my decisions were reversed or where my judgment was affirmed with significant criticism of my substantive or procedural rulings are (copies attached):

Of the approximately 1500 decisions rendered by the Commission while I was a member, including 34 major rate cases, four were "reversed" or "affirmed with significant criticism of my substantive or procedural rulings":

1. The Mountain States Telephone and Telegraph Company v. Public Service Commission of Utah, 754 P.2d 928 (Utah 1988) In this case, the Utah Supreme Court reversed a decision by the Commission creating and funding a Lifeline program intended to encourage universal telephone service, asserting a lack of authority on the part of the Commission.

2. MCI Telecommunications Corp v. Public Service Commission of Utah, 840 P.2d 765 (Utah 1992) In this case, the Supreme Court reversed a decision by the Commission that it lacked authority to retroactively rate make by capturing over-earnings of U. S. West due to the Tax Reform Act of 1986 and other causes.

3. Salt Lake Citizens Congress v. Mountain States Telephone & Telegraph Company 846 P.2d 1245 (Utah 1992) In this case, the Supreme Court determined that the Commission had erred in refusing to allow the Petitioners to undertake discovery and to allow a hearing on a matter involving unjustified charitable deductions by the utility. The case was remanded back to the Commission for further hearings.

4. Justin C. Stewart, et al v. Utah Public Service Commission 885 P.2d 759 (Utah 1994) In this case, the Supreme Court invalidated an incentive plan approved by the Public Service Commission, due largely to the fact that the underlying statute permitting incentive plans was determined to be unconstitutional.

(3) Citations for significant opinions on federal or state constitutional issues:

None

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

Public offices held:

January-December 1980; Fruit Heights City Council; elected

March 1985-March 1992; State of Utah, Public Service Commission, 160 East 300 South, Salt Lake City, Utah; Public Service Commissioner; appointed

August 1986-March 1992; State of Utah, Public Service Commission, 160 East 300 South, Salt Lake City, Utah; Chairman, appointed

June 1992-December 1992; State of Utah, Department of Commerce, 160 East 300 South Salt Lake City, Utah; Executive Director; appointed

January 1993-March 1998; State of Utah, Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah; Executive Director; appointed

March 1998-current; Governor Michael O. Leavitt, Governor, State of Utah, 210 State Capitol Building, Salt Lake City, Utah; Chief of Staff; appointed

Elective public offices sought unsuccessfully:

March 1992-June 1992; candidate for United States Senate, State of Utah

17. Legal Career:

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

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

I did not serve as a clerk to a judge.

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

I did not practice alone.

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

Following admission to the bar in July 1975, I practiced law with the Salt Lake City law firm of Senior and Senior until November 1980. The firm in now known as Nielsen & Senior and its address is 1100 Beneficial Life Tower, Salt Lake City, Utah, 84111. The original firm was a small, five member firm that specialized in natural resource and environmental law. In 1978, it merged with two other firms and became more of a general practice firm with about 10 members.

I served one month as an assistant to Senator Orrin G. Hatch, 131 Senate Russell Building, Washington, D.C. 20510, and four years as Administrative Assistant to Congressman James V. Hansen of Utah, 242 Cannon House Office Building, Washington, D.C., 20515, from January 1981 to February 1985. During that time, I was an advisor on legislative matters generally, and specifically on matters considered by Congressman Hansen's assigned committees of Interior and Ethics.

The position that I occupied that most closely approximated judging was my service on the Utah Public Service Commission,160 East 300 South, Salt Lake City, Utah, 84114. This service was from March 1985 to March 1992. I served as Chairman for six years.

As Executive Director of the Utah Department of Commerce (160 East 300 South, Salt Lake City, Utah, 84114) and the Utah Department of Natural Resources (1594 West North Temple, Salt Lake City, Utah, 84114) from June 1992 to March 1998, I utilized my legal background and skills in making decisions about litigation strategy, deciding public policy, and administering the departments generally.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Private practice: (1975-1980) My practice with Senior & Senior was spent representing clients engaged in the exploration and development of uranium, oil and gas, coal, potash, oil shale, and other minerals. The clients included Pennsylvania Power and Light Company, Utah Power and Light Company, Texasgulf Sulphur Company, Great Salt Lake Chemicals and Minerals, Kaiser, and various small to medium-sized mineral exploration and development companies.

Legal activities included all aspects of federal and state leasing; private leasing and purchasing; obtaining federal and state access, drilling and development permits; assuring client compliance with federal and state mining maintenance, environmental and rehabilitation requirements; working with state and federal regulatory agencies; and negotiating and drafting leases, options and other miscellaneous contracts and documents. One of the major activities I engaged in was conducting title work prior to the purchase or sale of federal, state and private properties, many of which were multi-million dollar transactions. Some of this practice involved preparation for litigation.

During this same period, I served with the Utah National Guard (from 1976 to 1980) as Trial Counsel to an Engineer Group. My duties consisted of providing legal assistance on matters related to property acquisition, rights of way and similar matters. In addition, I initiated a program of providing lectures to troops in the Group on estate planning and wills and provided the service of writing simple wills for those who desired it.

Congressional: (1980-1985) As an assistant to Senator Hatch and as Administrative Assistant to Congressman Hansen, who served on the Interior and Ethics Committees, I served as a legal advisor. This included not only analyzing and advising on legislative matters, but in reference to the Ethics Committee, applying broad legal considerations to a number of major ethics matters, including the Congressman George Hansen (Rep. Idaho) matter and the then-renowned "House Page" scandal.

Public Service Commission:(1985-1992) In the seven years I served on the Public Service Commission, I participated or presided over (I was Chairman of the Commission from August 1986 to March 1992) dozens of hearings and participated in many more decisions (a total of approximately 1500). The Commission hearings were conducted in a formal fashion with relaxed rules of evidence. All regulatory decisions had to be based upon a record, and all orders required findings of fact and conclusions of law. The regulation of telecommunication, natural gas, electric, water, and trucking companies demanded knowledge and an understanding of law, economics, accounting and engineering.

All hearings involved at least two parties, and most involved multiple parties. Conducting the hearings in such a manner as to assure fairness and thoroughness was always a paramount consideration.

Executive Director: (1992-1998) In my position at both the Department of Commerce and the Department of Natural Resources, I determined litigation strategy to be pursued by the State on matters relevant to the Department. Part of my responsibility in these cases was to

assemble the principals who were participating as parties to an action and provide direction to the legal team.

I was personally involved in litigation strategy in numerous matters concerning the Department of Natural Resources in my five years as Director. The issues were wide-ranging and included litigation and settlement strategy regarding:

a. boundary disputes on Utah Lake
b. disputes over an RS 2477 right-of-way known as the Burr Trail in Capitol Reef National Park
c. federal reserved water right issues
d. Native American hunting and fishing rights
e. Endangered Species Act controversies in the State

In addition, I assisted in the formulation of public policy in the areas for which the departments had responsibility: in the case of the Department of Commerce these included corporations, professional licensing, public utilities, securities regulation, consumer protection and real estate regulation; in the case of the Department of Natural Resources these included wildlife resources, parks and recreation, water resources and rights, oil, gas and mining regulation, state lands and forestry, and geology. In every instance, the formulation of public policy and its implementation required the consideration of the legal implications of such policy.

In both these departments, I reviewed decisions made by specified division directors or an administrative law judge. At Commerce, I had to concur in and sign decisions issued by the department's administrative law judge in matters involving discipline of various professions. At the Department of Natural Resources, I considered appeals taken from decisions made by the Division of State Lands and Forestry. I conducted informal hearings leading to the decisions rendered in those matters.

Chief of Staff: (1998- current) I continue in a role of assisting in the formulation of public policy as part of my duties with the Governor.

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

Please see narrative below.

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

Please see narrative below.

3. what percentage of your litigation was:

(a) civil;
(b) criminal.

Please see narrative below.

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

Please see narrative below.

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

I appeared before a court in the early days of my practice with the law firm of Senior & Senior on a matter involving a breach of contract. I made a handful of similar appearances before state regulatory boards during the time that I was in private practice.

In addition, as elsewhere noted, I have been involved in the preparation of cases that went to trial as an attorney with the law firm of Senior & Senior and as the head of two departments of state government. Though I did not appear as trial counsel in these cases, I participated in trial strategy and preparation leading up to trial. Further, I participated as the adjudicator of complex litigation as a member of the Utah Public Service Commission.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
(a) the date of representation
(b) the name of the court; and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties.

As noted, I was involved in the preparation of litigation as an attorney with the law firm of Senior & Senior and as the head of two departments of state government. Though I did not appear in court in these cases, I participated in trial strategy and preparation leading up to trial. Further, I participated as the adjudicator of complex litigation as a member of the Utah Public Service Commission.

The following are members of the legal community with whom I have had recent contact, that can provide input into my legal skills, judgment and temperament:

Attorney General Jan Graham
State Capitol #236
Salt Lake City, UT 84114
(801) 538-1808 (Contact person: Tracy Tabet)

Mr. W. Cullen Battle
Fabian & Clendenin
P.O. Box 510210
Salt Lake City, Utah 84151-0210
(801) 531-8900

Ms. Kathryn H. S. Pett
Utah Transit Authority
P.O. Box 30810
Salt Lake City, Utah 84130-0810
(801) 262-5626

Mr. Ron Thompson
Thompson & Associates
148 East Tabernacle
St. George, Utah 84770
(435) 628-7777

Ms. Constance E. Brooks
Brooks & Associates
1776 Lincoln Street, Suite 1010
Denver, Colorado 80203
(303) 863-0836

Mr. Michael M. Quealy
Assistant Attorney General
1594 West North Temple, Suite 300
Salt Lake City, Utah 84116
(801) 538-7227

Mr. Dallin W. Jensen
Parsons Behle & Latimer
201 South Main #1800
Salt Lake City, Utah 84145
(801) 532-1234

Mr. David Jordan
Stoel Rives LLP
201 South Main #1100
Salt Lake City, Utah 84111-4904
(801) 578-6968

Ms. Jody Williams
Kruse Landa & Maycock
50 West Broadway, 8th Floor
Salt Lake City, Utah 84101
(801) 531-7090

Mr. Ruland J. Gill
Questar Corporation
180 East 100 South
P.O. Box 45433
Salt Lake City, Utah 84111
(801) 324-5212

Mr. Fred W. Finlinson
Callister Nebeker & McCullough
10 East South Temple #900
Salt Lake City, Utah 84133
(801) 530-7300

Mr. Randon Wilson
Jones, Waldo, Holbrook & McDonough
1500 Wells Fargo Plaza
170 South Main Street
Salt Lake City, Utah 84101-1644
(801) 521-3200

Mr. Tim Anderson
Jones, Waldo, Holbrook & McDonough
249 East Tabernacle Street
St. George, Utah 84770
(435) 628-1627

Mr. Louis H. Callister
Callister Nebeker & McCullough
10 East South Temple #900
Salt Lake City, Utah 84133
(801) 530-7300

Mr. Jim Jardine
Ray, Quinney & Nebeker
79 South Main #400
P.O. Box 45385
Salt Lake City, Utah 84145
(801) 532-1500

Mr. John S. Kirkham
Stoel Rives LLP
201 South Main #1100
Salt Lake City, Utah 84111-4904
(801) 328-3131

Ms. Barbara Hjelle
148 E. Tabernacle Street
St. George, UT 84770
(435) 628-6600

Ms. Camille Anthony*
State Capitol Building #101
Salt Lake City, UT 84114
(801) 538-1056
*Please note: I supervise Ms. Anthony

Ms. Christine Fox Finlinson
Callister Nebeker & McCullough
10 East South Temple #900
Salt Lake City, UT 84133
(801) 530-7300

Mr. Ted Smith
250 Bell Plaza #1614
Salt Lake City, UT 84111
(801) 237-6448

Mr. Gary Doxey*
General Counsel to Governor Michael O. Leavitt
210 State Capitol
Salt Lake City, UT 84114
(801) 538-1000
* Please note: I supervise Mr. Doxey

Mr. John W. Andrews
Utah School and Institutional Trust Lands Administration
675 East 500 South, Suite 500
Salt Lake City, UT 84102
(801) 538-5100

Mr. Thorpe Waddingham
Waddingham & Peterson
362 West Main Street
Delta, UT 84624
(435) 864-2748

Mr. John Harja*
Governor's Office of Planning and Budget
116 State Capitol
Salt Lake City, UT 84114
(801) 538-1559
* Please note: I supervise Mr. Harja

Mr. Brent O. Hatch
Johnson & Hatch
10 West Broadway #400
Salt Lake City, Utah 84101
(801) 363-6363

Mr. Frank Suitter
Suitter Axland
175 South West Temple
Salt Lake City, UT 84101
(801) 532-7300

Mr. Stephen G. Boyden
1594 West North Temple #300
Box 140855
Salt Lake City, Utah 84114-0855
(801) 538-7227

Mr. Thomas Mitchell
160 East 300 South
Box 140857
Salt Lake City, Utah 84114-0857
(801) 366-0398

Mr. Thomas Bachtell
Pruitt, Gushee & Bachtell
36 South State #1850
Salt Lake City, Utah 84111
(801) 531-8446

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

The time I practiced law with Senior & Senior was spent representing clients engaged in the exploration and development of uranium, oil and gas, coal, potash, oil shale, and other minerals. Legal activities included all aspects of federal and state leasing; private leasing and purchasing; obtaining federal and state access, drilling and development permits; assuring client compliance with federal and state mining maintenance, environmental and rehabilitation requirements; working with state and federal regulatory agencies; and negotiating and drafting leases, options and other miscellaneous contracts and documents. One of the major activities I engaged in was conducting title work prior to the purchase or sale of federal, state and private properties, many of which were multi-million dollar transactions. Some trial preparation was included in my private practice.

While serving with the Utah National Guard from 1976 to 1980, I served as Trial Counsel to an Engineer Group. My duties consisted of providing legal assistance on matters related to property acquisition, rights of way and similar matters. In addition, I initiated a program of providing lectures to troops in the Group on estate planning and wills and provided the service of writing simple wills for those who desired it.

As an assistant to a Senator and Administrative Assistant to a Utah Congressman, I served as a legal advisor. This included analyzing and advising on legislative matters, and, in reference to the Ethics Committee, applying broad legal considerations to a number of major ethics matters, including the Congressman George Hansen (Rep. Idaho) matter and the "House Page" scandal.

In the seven years I served on the Public Service Commission, I participated or presided over dozens of hearings and participated in many more decisions (a total of approximately 1500). The Commission hearings were conducted in a formal fashion, with relaxed rules of evidence. All regulatory decisions had to be based upon a record, and all orders required findings of fact and conclusions of law. The regulation of telecommunication, natural gas, electric, water, and trucking companies demanded knowledge and an understanding of law, economics, accounting and engineering. All hearings involved at least two parties, and most involved multiple parties.

In my position at both the Department of Commerce and the Department of Natural Resources, I determined litigation strategy to be pursued by the State on matters relevant to the

Department. Part of my responsibility in these cases was to help guide the legal teams assembled to either defend or pursue certain legal courses.

I was personally involved in the litigation strategy in numerous matters involving the Department of Natural Resources in my five years as Director. The issues were wide-ranging and included litigation and settlement strategy regarding:

a. boundary disputes on Utah Lake
b. disputes over an RS 2477 right-of-way known as the Burr Trail in Capitol Reef National Park
c. federal reserved water right issues
d. Native American hunting and fishing rights
e. Endangered Species Act controversies in the State

Further, as Executive Director of these departments, I participated in the formulation of public policy in the areas for which the departments had responsibility: in the case of the Department of Commerce these included corporations, professional licensing, public utilities, securities regulation, consumer protection and real estate regulation; in the case of the Department of Natural Resources these included wildlife resources, parks and recreation, water resources and rights, oil, gas and mining regulation, state lands and forestry, and geology. In every instance, the formulation of public policy and its implementation required the consideration of the legal implications of such policy.

In both these departments, I reviewed decisions made by specified division directors or an administrative law judge. At Commerce, I had to concur in and sign decisions issued by the department's administrative law judge in matters involving discipline of various professions. At the Department of Natural Resources, I considered appeals taken from decisions made by the Division of State Lands and Forestry. I conducted informal hearings leading to the decisions rendered in those matters.

My experience in the law has covered many divergent areas. It includes a private practice, experience as a legal adviser to a military unit, providing legal advice to a Congressman, determining the litigation strategy in two departments of state government, and seven years as the adjudicator of complex and far-reaching utility regulatory matters.

In addition, I believe that my experience in the formulation and implementation of public policy would serve me well as a judge. When the formulation of public policy includes the gathering of data, its analysis, weighing the multiplicity of factors and then rendering a thoughtful decision, it is largely akin to the methods and skills that a judge uses. I have years of policy making in my background, and I pride myself in a reputation for doing it as it ought to be, with fairness, a willingness to consider the input or opinions of all parties, and based upon the best facts available.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

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

My retirement with the State of Utah is in the form of a 401(k) and a 457 plan. These plans are managed by the Utah Retirement Systems, 560 East 200 South, Suite 200, Salt Lake City, Utah 84102. The current balances are in the total amount of approximately $110,000 (as of June 30, 1999). I will have several options for withdrawals of these amounts, including lump-sum and annuities. I have not yet decided what I intend to do with this State retirement. I have no other arrangements for compensation in the future.

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

Having participated in a broad array of legal matters during my career as a lawyer, I shall be vigilant in my efforts to detect any conflicts or potential conflicts of interest that would require my disqualification under 28 U.S.C. section 455. Full compliance with that section, as well as any other applicable codes of judicial conduct, is indispensable to maintaining public confidence in the impartiality of judicial decision making. Because my professional experience has included government service as well as private practice, and because that government service has involved a variety of executive and policy responsibilities, I will pay particularly close attention to the letter and spirit of 28 U.S.C. section 455(b)(3).

If I am fortunate to serve on the U.S. District Court, I would develop a listing of all matters in which I have been involved, whether as a lawyer in private practice or in my public sector appointments as, for example, Executive Director of the Utah Departments of Commerce and Natural Resources, in order to facilitate compliance with 28 U.S.C. section 455 and all other applicable rules concerning conflict of interest or impartiality or the appearance of conflict or impartiality.

If I maintain any funds in the State Retirement System, I would certainly not participate in any matter involving the State Retirement System.

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

None

4. List sources and amounts of all income received during the calendar year preceding your

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

I will rely on AO Form 10.

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

See attached Net Worth Statement.

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

1992: I was an unsuccessful candidate for the United States Senate

I have been an unpaid, volunteer advisor in the following political campaigns:

1980, 1986, 1988, 1990, 1992, 1994, 1996,1998: James V. Hansen (Rep. Utah)

1992 and 1998: Robert Bennett, United States Senator, Utah

1992 and 1996: Michael O. Leavitt, Governor, State of Utah

III. GENERAL (PUBLIC)

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

1. I served as a youth leader working with every level of boy scouting: Cub Scouts 1976-1977; Boy Scouts 1985-1987,1993-1994, and 1995-1997; Explorer Scouts 1978-1979, 1989. This activity involved a minimum of 1-3 hours a week and weekend camps many months, as well as an annual summer camp of 4-6 days.

2. I served as an advisor and leader to young women, ages 12-18 in the years 1996-1998. This involved 3-4 hours a month with several days spent in the summer assisting with activities.

3. I served as a Sunday school teacher of youth in the years 1973-1974, 1991-1992, 1994-1995. This involved 1-2 hours each week.

4. I served as a teacher and church leader of adults in the years 1979-1980, 1981-1985, 1987-1989, 1989-1991, 1992-1993, 1996-current. This involved 1-2 hours each week of service, teaching and other leadership responsibilities.

5. I served on the Fruit Heights City Council in 1980. This involved a city council meeting of 3-4 hours in length every two weeks, as well as other miscellaneous meetings.

6. I served on the Farmington City Historical Committee in 1989 and 1990. This involved meetings every 2-3 months of 3-4 hours in duration, as well as other miscellaneous meetings and research projects.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates – through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

Yes, I have and do belong to such organizations:

1. I have been a life-long member of the Church of Jesus Christ of Latter Day Saints which does not allow female members of the Church to hold the lay priesthood. I do not intend to attempt to change this policy.

2. As noted above, I have been a member and leader of the Boy Scouts of America organization. I do not intend to attempt to change the policy of "boys only" in this organization.

3. As a student at Utah State University in 1971-1972, I was a member of the Blue Key National Honor Society, which at that time was male only. It is my understanding that such is no longer the case.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission in this jurisdiction.

I expressed my interest in becoming a federal judge in a conversation with Senator Orrin Hatch sometime in the spring of 1997. I reaffirmed that desire in a conversation with Senator Hatch's staff in brief conversations again in March of 1998. In November of 1998, Senator Hatch and I had a personal conversation wherein he asked if I was still interested and I affirmed that I was and we discussed the matter briefly. Later in that month, he called me to tell me that he was going to send my name to the White House for consideration.

On March 11, 1999, I was interviewed by staff of the Office of the Counsel to the President and the Department of Justice in Washington, D.C. regarding my possible nomination. In addition, I have been interviewed by FBI agents and a representatives of the ABA Standing Committee on Federal Judiciary.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our federal system of justice is based on the Constitution (the supreme law of the land) and federal statutes. In our system of government, the legislative bodies, the executive branch and the judiciary all have clear and distinct roles. The role of the federal judiciary is to interpret and apply the law, whether it is the Constitution or a statute.

On occasion, trial judges are criticized for reaching unpopular decisions. Such criticism is often based on a lack of understanding of the basis upon which a trial judge must rely in making decisions, i.e. a precedent set by a higher court. When a district court judge reaches a controversial decision by following a precedent set by a higher court, as he or she is obligated to do, criticism of that decision is inappropriate. Specific criticism that such a judge is an "activist" is particularly improper is those circumstances.

District court judges may not make law from whole cloth, and are obligated to ensure that, guided by precedent, the letter and spirit of the Constitution and our democratically-enacted laws

are applied.

A judge must ensure that personal predilections remain absent from his or her decision making. There is no excuse for a judge to impose a personal agenda upon any litigant - whether through interpretations of jurisdictional requirements, the exercise of oversight responsibilities, or the relief imposed.

AO-10 (rv)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Stewart, Brian T.	U.S. District Court-Utah	07/27/1999
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. Report Type (check type)**	**6. Reporting Period**
U.S. District Judge - Nominee	X Nomination, Date 07/27/1999 Initial Annual Final	01/01/1998 to 06/30/1999
7. Chambers or Office Address	**8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.**	
210 State Capitol Building Salt Lake City, UT 84114	Reviewing Officer _____ Date _____	

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

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

	POSITION	NAME OF ORGANIZATION / ENTITY
[X]	NONE (No reportable positions.)	
1		
2		
3		

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

	DATE	PARTIES AND TERMS
[ ]	NONE (No reportable agreements.)	
1	1999	457 & 401(k) plans with Utah State Retirement Board. I have the option of leaving the plans in place or taking a pay-out option
2		
3		

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

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
[ ]	NONE (No reportable non-investment income.)		
1	1998-99	State of Utah salary	$ 156,381.00
2	1998	Utah State University salary	$ 4,000.00
3			
4			

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Stewart, Brian T.	07/27/1999

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

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
[ ]	NONE (No such reportable reimbursements.)	
1		Exempt
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
[ ]	NONE (No such reportable gifts.)		
1		Exempt	
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
[X]	NONE (No reportable liabilities.)		
1			
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Stewart, Brian T.

Date of Report: 07/27/1999

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. 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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Utah Retirement System 401k & 457 Plans	D	Dividend	M	T					
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Stewart, Brian T.	07/27/1999

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Stewart, Brian T.	07/27/1999

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Brian T. Stewart Date 7/27/99

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
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	self	spouse	other	LIABILITIES			
Cash on hand and in banks	2,500	300	500	Notes payable to banks–secured			
U.S. Government securities--add schedule				Notes payable to banks–unsecured			
Listed securities–add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	4,900	200	
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable–add schedule	206,000		
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	40,000			Auto lease - 1998 Previa			
Cash value–life insurance	2,500			$401/mo. - 21 mos. remaining			
Other assets–itemize:							
State of Utah retirement	110,000						
				Total liabilities	216,900	200	
				Net Worth	188,100	100	500
Total Assets	405,000			Total liabilities and net worth			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor on my son's car	6,000			Are any assets pledged? (Add schedule.)	yes	yes	no
On leases or contracts	—			Are you defendant in any suits or legal actions? only in official capacity	no	no	no
Legal Claims	—			Have you ever taken bankruptcy?	no	no	no
Provision for Federal Income Tax	—						
Other special debt	—						

SCHEDULE TO NET WORTH STATEMENT

1. Real Estate Owned: my wife and I are purchasing our residence in Farmington, Utah as joint tenants. I estimate its current value at the amount shown.

2. Real Estate Mortgages Payable: we owe a mortgage on our home of approximately $206,000. It was recently refinanced and so there are 29 years plus owing.

3. Assets Pledged: as noted, the residence is collateral for the mortgage

Senate Judiciary Committee Questionnaire

I. BIOGRAPHICAL INFORMATION (PUBLIC)

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

   Stefan Richard Underhill

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

   Residence: Fairfield, Connecticut

   Office: Day, Berry & Howard LLP
   One Canterbury Green
   Stamford, CT 06901

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

   Battle Creek, Michigan. June 9, 1956

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

   Married to Mary Patricia Underhill; maiden name: Mary Patricia Morrissey. Homemaker, student.

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

   Colleges: University of Virginia. Attended 1974-1978. B.A. (High Honors) 1978.
   Merton College, Oxford University. Attended 1979-1981. B.A. (Second Honors) 1981.

   Law School: Yale University. Attended 1981-1984. J.D. 1984.

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

Employment:
1978-1979, Fulbright & Jaworski (Washington, D.C.), legal assistant.
Summer 1980, Fulbright & Jaworski (London), legal assistant.
Summer 1981, Graydon, Head & Ritchey (Cincinnati), legal assistant.
Summer 1982, Lord, Day & Lord (New York), summer associate.
Summer 1983, Cravath, Swaine & Moore (New York), summer associate.
Summer 1984, Goodwin, Procter & Hoar (Boston), summer associate.
1984-1985, United States of America, law clerk to Hon. Jon O. Newman of the United States Court of Appeals for the Second Circuit.
1985 to present, Day, Berry & Howard LLP (Hartford and Stamford), associate (1985-1991), partner (1991 to present).

Other:
American Festival Theatre, Inc., Director, 1991-1994.
Federal Bar Foundation, Director, 1993-1994.
Federal Bar Council, Vice President (1994-1996), Secretary (1996 to 1998).
Connecticut Bar Association, Federal Practice Section, Treasurer (1997-1998), Vice Chairman (1998-present).
Connecticut Legal Services, Director 1996 to 1998.
Boy Scouts of America, Cubmaster 1978-1979, 1995 to present.
Whitneyville Nursery School, Director 1991-1993.
Sky Alland Scholarship Committee, McIntire School of Commerce, University of Virginia, 1995 to present.
Yale Law Journal, officer 1983-1984.
Yale Law School Moot Court Board, 1983-1984.

All dates are to the best of my recollection.

7. **Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.**

No.

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

Eagle Scout, 1972.
Echols Scholar, University of Virginia, 1974-1978.
Raven Society (academic honorary), member 1976-1978.
IMP Society (academic and service honorary), member 1976-1978; King 1977-1978.
Omicron Delta Kappa (academic and leadership honorary), member 1976-1978.
Raven Award, 1978.
Richmond Chapter of U.Va. Alumni Association Scholarship, 1977.
Algernon Sydney Sullivan Award, 1978.
Rhodes Scholar, 1979-1981.

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

American Bar Association, member 1986-present.
Connecticut Bar Association, member 1986- present.
Federal Practice Section: Executive Committee Member (1996- present), Treasurer (1997- 1998), Vice Chair (1998 - present), and Chair of Court of Appeals Committee (1997-present).
Federal Bar Council, member 1986-present.
Secretary (1996-1998)
Vice President (1994-1996)
Director, Federal Bar Foundation (1993-1994)
Second Circuit Courts Committee (1992-1993)
Raymond E. Baldwin Inn of Court, 1992-present.
Stamford-Norwalk Regional Bar Association, member 1986-present
Chair, Intellectual Property Committee (1996-1998)
New York Intellectual Property Law Association, member 1995-present
Connecticut Patent Lawyers Association, member 1996-present
Second Circuit Court of Appeals Rules Committee, member 1995-present

All dates are to the best of my recollection.

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

The following organizations to which I belong may be active in lobbying before public bodies:

American Automobile Association
American Bar Association
Connecticut Bar Association
Appalachian Mountain Club
Connecticut Legal Services, Inc.
Boy Scouts of America

I also belong to the following organizations:

University of Virginia Alumni Association
Association of American Rhodes Scholars
Federal Bar Council
Stamford-Norwalk Regional Bar Association
New York Intellectual Property Law Association
Connecticut Patent Lawyers Association
Raymond E. Baldwin Inn of Court
Smithsonian Institution
Our Lady of the Assumption Church
Stratfield School PTA
Fairfield Woods Middle School PTA
Lakewood-Trumbull YMCA

11. **Court Admission: List all courts in which you have been admitted to practice, with the dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

Courts of the State of Connecticut, admitted Dec. 12, 1985.
United States District Court for the District of Connecticut, admitted Jan. 3, 1986.
United States District Court for the Southern District of New York, admitted June 8, 1992.
United States District Court for the Eastern District of New York, admitted June 16, 1992.
United States Court of Appeals for the Second Circuit, admitted May 8, 1987.
United States Court of Appeals for the Federal Circuit, admitted May 19, 1995.

United States Supreme Court, admitted May 23, 1994.

None of these admissions has ever lapsed.

Note: This list does not include courts to which I have been admitted *pro hac vice* for the purpose of litigating particular lawsuits.

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

J. Leape, P. Baskin, & S. Underhill, Business in the Shadow of Apartheid: U.S. Firms in South Africa (1985 Lexington Books).

T. Darbyshire & S. Underhill, If Wishes Were Saabs: Nursery Rhymes for Modern Times (1986 Little, Brown & Co.).

T. Darbyshire & S. Underhill, If Wishes Were Porsches (1988 Cassell Publishers Ltd.).

S. Underhill with C. Morrissey, Majoring In Law (1995 The Noonday Press).

L. Brilmayer & S. Underhill, *Congressional Obligation to Provide a Forum for Constitutional Claims: Discriminatory Jurisdictional Rules and the Conflict of Laws*, 69 Virginia Law Review 819 (1983).

J. Sicilian & S. Underhill, *Don't Mess With the Software Police*, Intellectual Property Magazine of the Connecticut Law Tribune, Oct. 16, 1995.

S. Underhill, *The Truth About Career Mentoring*, 2 Symposium, No.1 at 10, Spring 1996.

S. Underhill, *Enforcement of Employee Restrictive Covenants*, published in the Labor & Employment Newsletter of the Connecticut Bar Association, Spring 1997.

S. Underhill, *Avoiding and Curing Procedural Errors*, published as seminar materials at Connecticut Bar Association seminar regarding Second Circuit Practice and Procedure, North Haven, CT, Sept. 18, 1998.

I have not made any speeches on issues involving constitutional law or legal policy.

13. **Health: What is the present state of your health? List the date of your last physical examination.**

Excellent. No known health problems of any kind.

Date of last physical exam: October 30, 1998.

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, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.**

Not applicable.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

Not applicable.

17. **Legal Career:**

a. **Describe chronologically your law practice and experience after graduation from law school, including:**

1. **whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;**

Yes. Hon. Jon O. Newman, United States Court of Appeals for the Second Circuit, July 1984 to July 1985.

2. whether you practiced alone, and if so, the addresses and the dates;

I have not practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, the nature of your connection with each;

June 1984 to July 1984:

Goodwin, Procter & Hoar
53 State Street
Exchange Place
Boston, MA 02109

Position: Summer associate

September 1985 to January 1986:

Day, Berry & Howard LLP
CityPlace
185 Asylum Street
Hartford, CT 06103

Position: Associate

January 1986 to present:

Day, Berry & Howard LLP
One Canterbury Green
Stamford, CT 06901

Positions: Associate (January 1986 to September 1991)
Partner (October 1991 to present)

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Throughout my career, my practice has been exclusively devoted to litigation. As a young associate (approximately 1986 to 1988), I spent about one-third of my time defending medical malpractice cases against a hospital, with the remainder of my time spent on general commercial litigation matters. For the remainder of my associateship

(approximately 1988 to 1991), I spent up to half of my time defending insurance coverage disputes (notably large, multi-party environmental insurance coverage cases), with the remainder of my time spent on general commercial litigation matters. Since becoming a partner in October 1991, I have spent an increasing percentage of my time (up to about half at present) on intellectual property litigation, including patent, trademark, copyright, trade secret and covenant not to compete cases.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I have represented a wide range of entities and individuals. I have done a significant amount of work for: doctors and a hospital, insurance and reinsurance companies, individual entrepreneurs and their small companies, and a variety of major manufacturing, finance, technology, and communications companies.

I have specialized in insurance and reinsurance coverage litigation, intellectual property litigation, and appellate advocacy.

c. **1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

Throughout my career, I have appeared in court frequently for motion practice, hearings, trials and appeals, although I have examined witnesses at trial only occasionally. I have conducted four trials, one preliminary injunction hearing, and two contested arbitrations as lead lawyer; one trial and three preliminary injunction hearings as second chair. I have argued six appeals in the Second Circuit Court of Appeals, one appeal in the Connecticut Supreme Court, and five appeals in the Connecticut Appellate Court.

2. What percentage of these appearances was in:

(a) federal courts;

Approximately 60 percent.

(b) state courts of record;

Approximately 40 percent.

(c) other courts.

None.

3. What percentage of your litigation was:

(a) civil;

100 percent.

(b) criminal.

None.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Three. Two as sole counsel, and one as chief counsel.

5. What percentage of these trials was:

(a) jury;

Thirty-three percent.

(b) non-jury.

Sixty-seven percent.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) The individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. EG&G Instruments, Inc. v. Canberra Industries, Inc., Civil Action No. 3:96-CV-805 (E.D. Tenn.). This was a patent infringement action involving nuclear spectroscopy instrumentation. The patented electrical circuit automates an adjustment of "poles and zeros"

that reduces an undershoot in the tail of an electrical pulse, thereby permitting more accurate analysis of nuclear radiation. This was a large, complicated piece of litigation, which involved defenses of inequitable conduct before the Patent and Trademark Office, invalidity (obviousness), and laches and estoppel, as well as important questions concerning the proper measure of patent damages.

I was one of two partners directing a team of about nine lawyers representing the defendant. In 1998 alone, I spent hundreds of hours on this case and was actively involved in developing litigation strategy, undertaking factual investigation, conducting discovery, and arguing motions. I took approximately 15 days of depositions in the case, including depositions of two of the co-inventors, various fact witnesses, and the plaintiff's damages expert. I also conducted the *Markman* hearing, as a result of which the patent claims were construed by the Court. Finally, I was to be one of the three lawyers who tried this case to the jury.

The case was filed in 1996 and was settled in November 1998, on the eve of jury selection. It was pending in the United States District Court for the Eastern District of Tennessee, before Judge Leon Jordan. Magistrate Judges Thomas Phillips and Robert Murian handled important pre-trial proceedings.

Counsel in the case are:

Opposing counsel:
Robert E. Pitts
Peter L. Brewer
Pitts and Brittian, P.C.
1319 Old Weisgarber Road
Knoxville, TN 37909
423-584-0105

Co-counsel:
Robert A. Brooks
Matthew A. Becker
Michael A. Bucci
Day, Berry & Howard LLP
CityPlace -- 185 Asylum Street
Hartford, CT 06103
860-275-0342

W. Kyle Carpenter
Woolf, McClane, Bright,
Allen & Carpenter
900 S. Gay Street
Knoxville, TN 37901-0900
423-215-1024

2. Echlin Inc. v. SPX Corporation, Civil Action No. 98 CV 635 (GLG) (D. Conn.). This was an action seeking a preliminary injunction to prevent the hostile takeover of Echlin Inc. by SPX Corporation. SPX cross-moved for a preliminary injunction, seeking to compel the Echlin board of directors to call a special meeting of shareholders at which SPX's nominees to the board could be elected. SPX had submitted demands from more than 35 percent of the

shareholders of record, demanding the special meeting. Echlin contended that the demands were defective and refused to count the vast majority of the demands, relying primarily on the facts that (1) the proxy solicitation had been sent to shareholders of record the day after the formal demand date, and (2) that an "omnibus proxy" had not been timely obtained by SPX from Cede & Co., a fiduciary organization that holds shares of stock on behalf of brokerage houses and their customers, and thus the formal holder of record of virtually all of Echlin's stock. The significance of this case is that it is representative of a number of mergers and acquisitions lawsuits in which I have appeared over the years. Those suits are generally very fast-paced and require a tremendous dedication of resources to undertake discovery and to prepare for hearing over a very short period of time.

I was part of the team of lawyers representing SPX Corporation. My involvement in the case was as the senior lawyer acting as local counsel to SPX's lead law firm, Fried, Frank, Harris, Shriver & Jacobson. In that role, I assisted with the formulation of litigation strategy, especially as that strategy was affected by Connecticut law, which governed the proxy solicitation and the takeover attempt generally. I also prepared for and took depositions of third-party witnesses, attended all Court conferences, and prepared to examine witnesses in the preliminary injunction hearing. The case ultimately settled on the eve of the preliminary injunction hearing as a result of Echlin finding a "white knight" to acquire it and Echlin's adoption of anti-takeover penalties should that transaction not be consummated.

This lawsuit was filed in early April 1998. The preliminary injunction hearing was scheduled for May 7, 1998, and settled just prior to that hearing. The case was pending in the United States District Court for the District of Connecticut, and was assigned to Judge Gerard L. Goettel.

The counsel in this case were:

Opposing Counsel:
Ronald J. Cohen
David W. Schneider
Tyler Cooper & Alcorn LLP
205 Church Street
New Haven, CT 06510
203-784-8200

Dennis E. Glazer
Kenneth M. Bernstein
Rebecca L. Winters
Davis Polk & Wardwell
450 Lexington Avenue
New York, NY 10017
212-450-4000

Co-Counsel:
Alexander R. Sussman
Kenneth Applebaum
Peter Jerdee
Israel David
Fried, Frank, Harris, Shriver & Jacobson
One New York Plaza
New York, NY 10004-1980
212-859-8000

Jonathan B. Tropp
Day, Berry & Howard LLP
One Canterbury Green
Stamford, CT 06901
203-977-7337

3. Pitney Bowes Inc. v. United States Postal Service, Civil Action No. 3:97 CV 02059 (WWE) (D. Conn. 1997). This was an action seeking a temporary restraining order, as well as preliminary and permanent injunctive relief, due to the threatened use by the United States Postal Service of Pitney Bowes' proprietary customer lists. Pitney Bowes had been required by administrative regulation to provide its trade-secret customer information to the Postal Service, which intended to use that information to promote the products and services of Pitney Bowes' competitors. The case was significant because it highlighted the tension between the Postal Service's dual roles as regulator of postage meter technology and competitor in the market for mailing services, and because it involved the difficult situation of a corporation suing the government body that it must deal with constantly in its day-to-day business.

I represented Pitney Bowes as chief litigation counsel. In that role, I participated in the expedited factual investigation that was conducted before the action was filed, drafted major pleadings, affidavits, and briefs, helped formulate litigation and business strategy, worked with co-counsel specializing in administrative law, and assisted with the negotiation of the ultimate settlement of the claims. The case was settled by stipulation without a hearing.

This case was pending from late September until late December 1997. It was filed in the United States District Court for the District of Connecticut, and assigned to Judge Warren W. Eginton.

Counsel in the case were:

Opposing Counsel:
John B. Hughes
Assistant United States Attorney
District of Connecticut
157 Church Street
New Haven, CT 06510
203-773-2108

Co-Counsel:
Ian D. Volner
Venable, Baetjer, Howard
& Civiletti, LLP
1201 New York Avenue, N.W.
Suite 1000
Washington, D.C. 20005-3917
202-962-4800

Sara E. Moss
General Counsel
Pitney Bowes Inc.
One Elmcroft Road
Stamford, CT 06926-0700
203-351-7924

4. Chieffalo v. Norden Systems, Inc., 49 Conn. App. 474, 714 A.2d 1261 (Conn. App. Ct. 1998). This was an appeal from a jury verdict entered in a wrongful termination of

employment case. The plaintiff had claimed that a contract of employment had been created by written statements in defendant's employee handbooks and oral statements made to plaintiff by his supervisor at the time he was hired. The jury found for plaintiff and awarded damages for breach of implied contract and for negligent infliction of emotional distress. The trial judge granted defendant's post-trial motion for judgment notwithstanding the verdict on the emotional distress claim. Defendant appealed from the award of contract damages; plaintiff cross-appealed from the granting of the defendant's post-trial motion. The Appellate Court held for the defendant on both the appeal and cross-appeal, directing that judgment enter in favor of defendant on all claims. This appeal is representative of my appellate practice and is the most recent appellate decision in an appeal that I briefed and argued.

I represented the defendant-appellant. Other lawyers at my firm had represented the defendant at trial. The appeal was filed in September 1996 and was decided in July 1998. The decision was authored by Judge John J. Daly, and was joined in by Judges Paul M. Foti and Sidney S. Landau.

Counsel in this appeal were:

Opposing Counsel:
Stephen J. Conover
Genuario & Conover
45 East Avenue
P.O. Box 2044
Norwalk, CT 06852
203-849-9292

Other Counsel:
None during appeal

5. Swan v. Greenwich Partners, Inc., et al., No. CV 96 0149233 (Conn. Super. Ct.). This was an action brought by a one-third shareholder of a closely held bond trading firm to compel the repurchase of his shares under the terms of a shareholders' agreement following plaintiff's termination as an employee of the company. The plaintiff and defendants differed over the timing of the required repurchase, the value at which the shares had to be repurchased, and the timing of the repayment of certain subordinated loans made by the plaintiff to the corporation. The merits of the claims were heard in arbitration before the American Arbitration Association. The arbitrator ruled largely in favor of plaintiff on the valuation issues, calculating a share price closer to plaintiff's proposed valuation than to defendants'. On the subordinated loan issues, the arbitrator ruled in favor of defendants. Thereafter, the defendants sought to vacate the arbitration award in the pending Superior Court action. This was a complex case both on the merits, which involved technical accounting and reporting requirements of a bond trading firm, and on the post-arbitration procedural issues. The arbitration took several days to complete.

I represented the defendants as chief litigation counsel and as sole counsel in the arbitration (except that in-house counsel examined one witness). I developed the defendants' litigation strategy, handled most discovery issues, and conducted the arbitration hearing and post-arbitration proceedings. The case was settled by the parties after the arbitration award and before the post-arbitration motions were decided.

This case was filed in early December 1995. The arbitration award was made in early July 1996 by the arbitrator, Ernest Fanwick. The action was withdrawn on October 28, 1996. The pre- and post-arbitration proceedings were in the Connecticut Superior Court in Stamford, Connecticut. No single judge was assigned to the case under Connecticut state court procedure, but the judge who heard the significant motions in the case was Judge Harold Dean.

Counsel in the case were:

Opposing Counsel:
Brian T. Foley
McGovern & Associates
One Lafayette Place
Greenwich, CT 06830
203-622-1101

Co-Counsel:
William J. Foster, IV
Senior Vice President and
General Counsel
Greenwich Partners, LLC
One Pickwick Plaza, Suite 250
Greenwich, CT 06830
203-625-7759

Theodore Whitehead
Day, Berry & Howard LLP
One Canterbury Green
Stamford, CT 06901
203-977-7362

6. Lawton v. Melville Corp., et al., Civil Action No. 3:94 CV 1427 (DFM) (unpublished decision), *aff'd*, 116 F.3d 1472 (2d Cir. 1997) (summary order; no. 96-9461). This was a copyright infringement action brought by a panoramic photographer against a television station, a clothing retailer, and their corporate affiliates. The defendants used a small portion of a photograph taken by plaintiff of Fenway Park as the background for a short television spot promoting a baseball ticket giveaway. All but one of the defendants admitted liability; they all contested damages. After a trial to the Court, plaintiff was awarded $7,500 -- less than defendants' pre-trial offer of judgment -- and appealed. The Second Circuit affirmed in a summary order.

This case represented a good test of trial skills because there had been no formal pre-trial discovery conducted by the parties. This made cross-examination of witnesses more difficult and more dangerous. In addition, there were significant legal issues of copyright damages raised

by this case, notably whether plaintiff had to prove that the profits earned by defendants were causally related to the infringing advertisement or whether defendants had to prove that the profits were the result of business activities unrelated to the infringement.

I represented all of the defendants in the case. Although I had not been involved in the pre-trial proceedings, I was chief trial counsel. The case was tried for five days in April and May 1996 in the United States District Court for the District of Connecticut, before Magistrate Judge Donna F. Martinez. As sole counsel on the appeal to the Second Circuit, I wrote the appellate briefs and argued the appeal. The appeal was heard by Judges John M. Walker, Jr., Guido Calabresi, and Donald P. Lay (of the U.S. Court of Appeals for the 8th Circuit, sitting by designation).

Counsel in the case were:

Opposing Counsel:
Clifford L. Tager
57 North Street, Suite 205
Danbury, CT 06810
203-792-7090

Co-Counsel:
Joy Beane
Asst. Dean for Career Development
Pace University School of Law
78 North Broadway
White Plains, NY 10603
914-422-4217

7. Times Mirror Magazines, et al. v. Davis, et ux, Civil Action No. B 90-339 (EBB) (D. Conn.). The defendants, Mr. and Mrs. Davis, created a golf publications company, SMG, which they sold to Times Mirror Magazines for a lump sum payment and additional payments to be made over time. Following the purchase, Mr. Davis continued in Times Mirror's employ as president of SMG. The parties had a falling out and Times Mirror stopped making payments of the purchase price, terminated Mr. Davis' employment, and sued the Davises for breach of representations and warranties under the purchase agreement. The Davises counterclaimed for breach of the purchase agreement, Mr. Davis' employment agreement, and various oral agreements.

This case was the equivalent of a corporate divorce and child custody dispute. The parties strongly disliked each other, and the litigation was quite bitterly contested as a result. The case was challenging because the corporate plaintiffs brought great resources to bear in the case, which the defendants could not match.

I represented the defendants, Martin and Zehava Davis. I was chief counsel throughout the litigation. I took and defended every deposition, wrote a majority of the many briefs and motions, argued every motion in court and tried the case with the assistance of one associate. The case was ultimately settled, and I negotiated the settlement agreement.

This case was tried for approximately 10 days (not consecutive) beginning on October 17, 1994. It was dismissed by stipulation in late December 1994. The case was heard by Judge Ellen B. Burns of the United States District Court for the District of Connecticut.

Counsel in this case were:

Opposing Counsel:
Richard F. Orr
49 Lexington Road
West Hartford, CT 06119
860-232-2904

David Blasband
Deutsch Klagsbrun & Blasband
800 Third Avenue
New York, NY 10022
212-758-1100

Lawrence Byrne
Squadron, Ellenoff, Plesent & Sheinfeld, LLP
551 Fifth Avenue
New York, NY 10176
212-661-6500

Co-Counsel:
Carole F. Wilder
Senior Counsel
SNET
227 Church Street, 10th Floor
New Haven, CT 06510-1806
203-771-8818

8. Dobosz v. Walsh, Civil Action No. B 84-650 (RCZ), *interlocutory appeal*, 892 F.2d 1135 (2d Cir. 1989), *judgment affirmed*, 23 F.3d 397 (2d Cir. 1994) (summary order). This was an action under 42 U.S.C. § 1983 brought by a municipal police officer against the Superintendent of Police. The defendant suspended plaintiff from active duty after plaintiff admitted under oath in the Federal Court murder trial of a fellow officer that he had lied in statements he made to officers investigating the shooting death of an Hispanic youth. After the Board of Police Commissioners reinstated plaintiff and dismissed the administrative charges against him, the plaintiff sued the Superintendent, claiming that he had been suspended in retaliation for the exercise of his First Amendment rights.

The defendant moved for summary judgment on the ground of absolute and qualified immunity. When that motion was denied, the defendant took an interlocutory appeal to the Second Circuit, which affirmed. The case was tried to a jury, which found for plaintiff and awarded both compensatory and punitive damages. The District Court granted a remittitur, which plaintiff accepted. The defendant appealed the reduced judgment to the Second Circuit, which affirmed by summary order.

I represented the defendant Superintendent of Police as sole counsel. I handled all discovery and depositions in the case, briefed and argued the motion for summary judgment, tried the case to a jury, and briefed and argued both appeals. The case was eventually settled following decision of the second appeal.

This case was tried to a jury before Judge Robert C. Zampano of the United States District Court for the District of Connecticut. This action was filed in October 1984, and was tried from July 6 to July 24, 1992.

Counsel in this case were:

Opposing Counsel:	Other Counsel:
John R. Williams	None
51 Elm Street	
New Haven, CT 06510	
203-562-9931	

9. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Sheketoff, et al., Civil Action No. B 86-547 (TFGD) (D. Conn.). This was a securities fraud action brought by a brokerage firm against one of its brokers and several of the broker's customers. The broker and the customers had conspired to "free ride" a thinly traded stock by obtaining repeated extensions of time to pay for their margined purchases of the stock and by selling and quickly repurchasing the stock in a rising market. When the stock price fell suddenly, the customers were unable to pay for their orders. Merrill Lynch sued the customers for balances due in their accounts and sued the broker for securities fraud; the customers counterclaimed, alleging that Merrill Lynch was responsible for the broker's actions because it had failed adequately to supervise the broker and because it was a "control person." This case was unusual because the brokerage firm, which generally would be responsible for securities fraud violations of its employee-broker, sought to preempt such claims by suing the broker first. Although the case was brought in Federal Court and much discovery and motion practice was conducted there, the merits of the claims were eventually litigated in an arbitration proceeding before the N.A.S.D.

I represented Merrill Lynch as one of a team of lawyers in the Federal Court proceedings. I was the sole trial lawyer for Merrill Lynch at the arbitration. The lawsuit was filed in September 1986 in the United States District Court for the District of Connecticut, and was assigned to Judge T.F. Gilroy Daly. The N.A.S.D. arbitration was conducted over three days in September and October 1990. The arbitrators entered an award on all claims and counterclaims in favor of Merrill Lynch and against both the broker and his customers in November 1990. That award was confirmed by the District Court in January 1991.

Counsel in this case were:

Opposing Counsel:

L. Douglas Shrader
Beverly Stauffer Knapp
Shrader & Knapp, P.C.
Westport, CT 06880
203-227-6628

James C. Donnelly, Jr.
Richard C. Van Nostrand
Mirick, O'Connell, DeMallie & Lougee, LLP
1700 Bank of Boston Tower
100 Front Street
Worcester, MA 01608-1477
508-799-0541

Francis J. Brady
Elizabeth J. Stewart
Murtha, Cullina, Richter and Pinney
CityPlace -- 185 Asylum Street
P.O. Box 3197
Hartford, CT 06103-0197
860-240-6000

Victor L. Zimmermann, Jr.
O'Rourke, O'Hanlon & Zimmerman
One Canterbury Green
Stamford, CT 06901
203-352-2999

Co-counsel:

John Crosskey
12 Chesbro Avenue
Noank, CT 06340
203-536-2813

Sharon Tisher
5 Bennoch Road
Orono, ME 04473
207-866-0023

10. Union Carbide Corp. v. Aetna Casualty & Surety Co., et al., 212 Conn. 311, 562 A.2d 15 (Conn. 1989). The plaintiff sued 115 insurance companies that had insured it since 1944, claiming that the defendants were responsible under their policies to pay for the clean up of hazardous wastes at thirteen sites across the country. A group of thirteen defendants moved to dismiss the case on grounds of forum non conveniens. The plaintiff and a larger group of defendants objected to dismissal. The Superior Court dismissed the case, and that decision was appealed. The Supreme Court expedited the appeal. Its decision affirming the trial court was the first appellate court decision in Connecticut addressing the doctrine of forum non conveniens.

I was part of a team of lawyers representing General Reinsurance Corporation and North Star Reinsurance Company, two of the defendants who had objected to the dismissal. I was involved with coordinating the positions of the many insurer defendants in opposing dismissal of the case. On appeal, I was the primary draftsman of the consolidated brief of the defendant-appellants, although counsel for each of the other defendant-appellants had a hand in editing the brief.

The case was pending in the Connecticut Superior Court in Danbury. The motion to dismiss the case was granted by Superior Court Judge Robert A. Fuller. The appeal was considered by Connecticut Supreme Court Justices Ellen Peters (Chief Justice), Robert Callahan, Robert Glass, Alfred Covello and Clark Hull.

There were literally dozens of counsel in this case. The following is a list of opposing counsel and only those defense counsel representing parties who joined the consolidated brief of defendant-appellants, and who are therefore more likely to be familiar with my role in the case:

Opposing Counsel:

Robert D. Chesler
Lowenstein, Sandler, Kohl,
Fisher & Boylan
65 Livingston Avenue
Roseland, NJ 07068
973-992-8700

Co-Counsel:

James F. Stapleton
Kenneth W. Ritt
Day, Berry & Howard LLP
One Canterbury Green
Stamford, CT 06901
203-977-7300

Irene A. Sullivan
Skadden, Arps, Slate, Meagher & Flom
919 Third Avenue
New York, NY 10022
212-735-3000

John R. FitzGerald
Constance L. Epstein
Jack G. Steigelfest
Howard, Kohn, Sprague & FitzGerald
237 Buckingham Street
Hartford, CT 06126-0896
860-525-3101

John L. Altieri, Jr.
O'Melveny & Myers LLP
Citicorp Center
153 East 53rd Street
New York, NY 10022-4611
212-326-2027

Paul A. Scholder
Two Whitney Avenue
New Haven, CT 06507
203-777-7218

Thomas J. Groark
Day, Berry & Howard LLP
CityPlace
185 Asylum Street
Hartford, CT 06103
860-275-0100

19. Legal Activities: **Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

The cases described in answer to question 18, above, are representative of many other cases I have handled during my career. I have been actively involved in six or eight large, multi-party environmental insurance coverage cases, as well as a major reinsurance litigation and any number of smaller insurance coverage matters. I have argued about a dozen appeals and have written the briefs in a number of others. There were three or four large, intense takeover cases that I have litigated as part of a team during my career.

I served as an arbitrator in a personal injury action and as a mediator in a dispute among members of a professional partnership. I am a Special Master of the United States District Court for the District of Connecticut.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

I am entitled to payment of a withdrawal benefit from Day, Berry & Howard LLP. The dollar amount of this payment will be established by my firm's Partnership Share Committee, and is estimated to be a minimum of negative $19,000 and a maximum of $115,000. The Executive Committee of the firm establishes the period over which the payment will be made. That period can be as long as three years, but the Executive Committee has discretion to make the payment over a shorter period, including in a lump sum, when a partner withdraws from the firm to accept a judicial appointment. I have not yet made any arrangements regarding this payment.

I have a retirement plan account over which Day, Berry & Howard LLP is the trustee. I expect this plan will be rolled over into an IRA account promptly upon my withdrawal from that firm.

I have publishing contracts for each of the books listed in answer to question I. 12. Only one of these books, *Majoring In Law*, is still in print. It is therefore possible, though unlikely, that I could receive royalties from the sale of that book from The Noonday Press.

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.**

During my initial service, I intend to recuse myself from consideration of any case in which lawyers from the firm of Day, Berry & Howard LLP appear, and from consideration of any case in which any party that I personally represented is involved. I do not anticipate that any other categories of litigation or financial arrangements are likely to present potential conflicts of interest during my initial service. When unanticipated situations arise, I will, of course, follow the Code of Judicial Conduct in resolving them and will seek the guidance of the Chief Judge of the District Court as necessary.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   No.

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   See financial disclosure report.

5. **Please complete the attached financial net worth statement in detail. (Add schedules as called for).**

   See attached.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   Yes. I volunteered on behalf of Christine Niedermeier, a candidate for the United States House of Representatives in an election held in 1987. I had no title, but researched and wrote several papers for use by Ms. Niedermeier in developing policy positions.

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

   I have devoted an average of just over 50 hours per year throughout the course of my career to service of the disadvantaged. This has taken the form of representation in litigation of individuals otherwise unable to afford lawyers and service on the board of directors of the major legal services organization serving Connecticut.

Three cases in which I represented individuals in need account for much of my pro bono workload. The first of these cases was Buchetto v. Haggquist. When I became involved in representing the plaintiff, the case was on appeal. I sought to reverse a ruling of the Connecticut Superior Court that restricted the child support and alimony payments due to the plaintiff from the defendant. Following the unsuccessful appeal, I continued to represent Mrs. Buchetto in her efforts to obtain the payments she believed were due her. During 1988, 1989, and 1990, I spent a total of over 330 hours on this pro bono case.

I came to undertake representation in two other cases by appointment from the pro bono panel of the United States District Court. In 1990, I undertook representation of the plaintiff in Polewsky v. Railroad Retirement Board, pending in the District Court. I spent about 45 hours on that case in an effort to assist Mr. Polewsky, a former railway worker, in obtaining retirement benefits under various federal statutes. Finally, in 1996, I accepted representation of the plaintiff in Acquin v. Strong, pending initially in the District Court and now refiled in the Superior Court of Connecticut. Mr. Acquin, a prisoner in the Connecticut correctional system, is a Native American who claims that he has been wrongfully prevented from practicing his religious beliefs. To date, I have spent over 50 hours representing Mr. Acquin.

Over the past year, I have assisted the Stratfield Kids' Club, a before and after school child care organization, to incorporate as a non-profit corporation and with related filings. These efforts are ongoing, but the child care organization began operating at Stratfield School in September 1998. To date, I have spent about 10 hours representing Kids' Club.

Since my appointment to the Board of Directors of Connecticut Legal Services, I have indirectly assisted Connecticut's disadvantaged obtain legal representation. Over the past several years, I have spent an average of about 25 hours per year working on behalf of Connecticut Legal Services. In addition to service on the board, I have planned a major public relations event, solicited contributions, and offered advice on a variety of topics to the administrative staff.

I have spent hundreds of hours working as the cubmaster of Cub Scout Pack 197. I have planned monthly pack meetings, an annual campfire, semi-annual camping trips, and an annual museum sleepover. Working with dozens of adult volunteers, I have overseen den activities, fundraising events, and skills development. These activities have benefitted the youth of my neighborhood in Fairfield, Connecticut.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

I do not currently belong to any such organization. I have been a member of only to two organizations that arguably meet this definition because they did not admit women: my college fraternity, and a college eating club. I belonged to Kappa Sigma Fraternity from 1975 to 1978, while a student at the University of Virginia. I belonged to Ancien Regime from 1980 to 1981, while a student at Merton College, Oxford University. I did not attempt to change the membership policies of either organization.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

To my knowledge, there is no selection commission in Connecticut that recommends candidates for nomination to the federal courts.

My experience with the judicial selection process consisted of the following: On or about April 28, 1998, I received a telephone call from Stephenie Foster, Chief of Staff to Senator Christopher J. Dodd, inquiring whether I would be interested in being considered for nomination to the District Court. As a result of that call, I submitted a resume to Ms. Foster. On or about May 22, 1998, I was interviewed by Ms. Foster; Stanley Israelite also participated in a portion of that interview. Thereafter, I was interviewed over the telephone by Diana Huffman. On June 4, 1998, I was interviewed by Senator Dodd; Ed Mann sat in on that interview. On September 3, 1998, I received a telephone call from Senator Dodd, who indicated that he would like to recommend me for nomination to the District Court. That recommendation was made public on September 4, 1998. Since that date, I have cooperated with background investigations conducted by the Department of Justice, the American Bar Association and the Federal Bureau of Investigation. I was interviewed by representatives of the Department of Justice on September 23, 1998. I was interviewed by a Special Agent of the F.B.I. on October 13, 1998. Finally, I was interviewed by a representative of the American Bar Association on October 27, 1998.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No.

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The proper role of a judge is to decide each case brought before him. This requires the judge carefully to apply the law to the facts proven by the parties. Trial judges should not create law. Doing so not only violates the separation of powers under our constitutional system, but also disrupts the reasonable expectations of all who seek to conform their conduct to the requirements of the law.

In addition, the federal courts are courts of limited jurisdiction. Even if the parties do not raise the issue, in every case a District Judge must question whether the pleadings properly invoke the subject matter jurisdiction of the federal courts. Furthermore, the

judge must conscientiously apply the doctrines of standing, mootness, ripeness and abstention to ensure that he renders decisions only in actual cases and controversies properly pending in the federal courts.

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	16	695		Notes payable to banks–secured			
U.S. Government securities–add schedule				Notes payable to banks–unsecured			
Listed securities–add schedule				Notes payable to relatives	6	500	
Unlisted securities–add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due	15	441	
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable–add schedule 40 Sherley Pl., Fftd	415	000	*
Real estate owned–add schedule 40 Sherley Pl., Fairfield, CT.	542	000	*	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts–itemize:			
Autos and other personal property	5	000	*	Auto lease	7	531	
Cash value–life insurance	34	105					
Other assets–itemize: Childrens' trusts	49	300	*				
Art	4	500	*				
IRA's	73	480					
SEP	258	611		Total liabilities	444	472	
Mutual Fund	25	847		Net Worth	565	156	
Total Assets	1,009	628		Total liabilities and net worth	1,009	628	
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							

* Estimated.

AO-10 (w)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-111)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Underhill, Stefan R.	U.S. District Court (D. Conn.)	01/26/1999

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check type)	6. Reporting Period
Nominee, U.S. District Judge	X Nomination, Date 01/26/1999 Initial Annual Final	01/01/1997 to 12/31/1998

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is in my opinion, in compliance with applicable laws and regulations.
Day, Berry & Howard LLP One Canterbury Green Stamford, CT 06901	Reviewing Officer _____ Date _____

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on the last page.

I. POSITIONS *(Reporting individual only; see pp. 9-13 of Instructions.)*

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Partner	Day, Berry & Howard LLP
2	Treasurer, Vice Chair	Connecticut Bar Association, Federal Practice Section Executive Committee
3	Secretary, Vice President	Federal Bar Council

II. AGREEMENTS *(Reporting individual only; see pp.14-16 of Instructions.)*

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	1999	Day, Berry & Howard LLP -- withdrawal benefit, no control (agreement not yet made)
2	1999	Day, Berry & Howard LLP -- transfer of SEP fund (agreement not yet made)
3		

III. NON-INVESTMENT INCOME *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	1997	Day, Berry & Howard LLP, Partnership share	$ 345,896.00
2	1998	Day, Berry & Howard LLP, Partnership share	$ 341,072.00
3			
4			

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Underhill, Stefan R. | Date of Report: 01/26/1999

IV. REIMBURSEMENTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parentheticat "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
1	Self -- SEP plan at Day, Berry & Howard LLP	Loan from own SEP plan	K
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Underhill, Stefan R. | Date of Report: 01/26/1999

VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income,assets, or transactions.)									
1 Day, Berry & Howard LLP, Form K-1	A	Interest			Exempt				
2 Fidelity Growth Company (J)	A	Distribution	J	T	Exempt				
3 Fidelity Select Technology (J)			K	T	Exempt				
4 Fidelity Equity-Income II (J)	A	Distribution	J	T	Exempt				
5 Fidelity Equity-Income (IRA)	A	Distribution	K	T	Exempt				
6 Fidelity Contrafund (S) (IRA)	B	Distribution	K	T	Exempt				
7 Fidelity Balanced (S) (IRA)	B	Distribution	K	T	Exempt				
8 Fleet Moderate Growth Portfolio (SEP)			M	T	Exempt				
9 EAI Small Managers Equity Fund (SEP)			M	T	Exempt				
10 Berger 100 Fund (DC)	C	Distribution	J	W	Exempt				
11 Berger Small Company Growth Fund (DC)	A	Distribution	J	W	Exempt				
12 Twentieth Century Ultra Fund (DC)	C	Distribution	J	W	Exempt				
13 Benham Target Maturities Trust: 2000 (DC)	B	Distribution	K	W	Exempt				
14 Invesco Industrial Income Fund (DC)	A	Distribution	J	W	Exempt				
15 ISP - Health Sciences (DC)	B	Distribution	J	W	Exempt				
16 Oakmark Small Cap Fund (DC)	A	Distribution	J	T	Exempt				
17 Artisan International Fund (DC)	A	Distribution	J	T	Exempt				

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Underhill, Stefan R. | Date of Report: 01/26/1999

VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ **NONE** (No reportable income, assets, or transactions.)									
18 Legg Mason Value Trust (DC)	A	Distribution	J	T	Exempt				
19									
20									
21									
22									
23									
24									
25									
26									
27									
28									
29									
30									
31									
32									
33									
34									

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Underhill, Stefan R.	01/26/1999

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.

(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Underhill, Stefan R.	01/26/1999

SECTION HEADING. (Indicate part of report.)

Information continued from Parts I through VI, inclusive.

PART 1. POSITIONS (cont'd.)

Line	Position	Name of Organization/Entity
4	Cubmaster	Boy Scouts of America
5	Director	Connecticut Legal Services, Inc.
6	Trustee	Family Insurance Trust

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Underhill, Stefan R.	01/26/1999

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Date 11/26/99

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

AFFIDAVIT

I, Stefan Underhill, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

January 27, 1999
(Date)

Stefan Richard Underhill

Notary Public

PRISCILLA S. PHELPS
NOTARY PUBLIC
MY COMMISSION EXPIRES DEC. 31,2001

SENATE: I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

   Thomas John Ward

2. Address: List current place of residence and office address(es).

   Residence:
   Longview, Texas

   Office:
   Brown McCarroll & Oaks Hartline
   1127 Judson Road, 220 Energy Centre
   Longview, Texas 75601
   mailing address:
   P. O. Box 3999
   Longview, Texas 75606-3999

3. Date and place of birth.

   April 17, 1943
   Bonham, Texas

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married.
   Wife's name: Elizabeth Anne Clark Ward
   Wife's occupation: unemployed

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   Arlington State University (now University of Texas at Arlington). I attended at night during summers of 1961 and 1962. No degree was earned. All credits transferred to Texas Tech University.

   Texas Tech University, Lubbock, Texas, 1960-1964, B.A. in Chemistry, 1964.

   Baylor University School of Law, 1965-1967, L.L.B. received in 1967. Name of degree changed to J.D. at sometime later.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

July 1964 to September 1965
Upjohn Company, Kalamazoo, Michigan
Pharmaceutical salesman, Veterinary Division

March-April 1966
Served as law clerk to the firm whose present name is Sheehy, Lovelace & Mayfield, Waco, Texas.

May 1966 - September 1966
Employed by United Fund of Waco to staff Office of Legal Aid. I worked five afternoons per week.

Spring of 1967
Employed part time by firm out of Dallas, Texas, to conduct classes that taught speed reading. I cannot recall the name of the firm.

November 1967 - January 1968
Texas Legislative Council

January 1968 - July 1968
Lubbock County, Texas
Assistant County Attorney

July 1968 - February 1969
Phenix and Wilder
Associate Attorney

February 1969 - November 1969
Law Office of Otto A. Ritter
Associate Attorney

November 1969 - December 31, 1970
Ward and Ross
Partner with Kenneth L. Ross

January 1, 1971 - December 31, 1990
Sharp, Ward & Ross
Partner with Earl Sharp and Kenneth L. Ross

This firm had a variety of partners. Some withdrew and went on the bench or opened their own offices. The various names I recall were:

Sharp, Ward, Ross & McDaniel - 1970-1978
Sharp, Ward, Ross, McDaniel & Starr - 1978-1981
Sharp, Ward, Ross, McDaniel & Price - 1981-1983
Sharp, Ward, Ross, Price & Hightower - 1983-1984
Sharp, Ward, Price, Hightower & Searcy - 1984-1986
Sharp, Ward, Price & Searcy - 1986-1991 was the name of the firm at the time of my withdrawal effective December 31, 1990.

January 1, 1991 - present
Brown Maroney & Oaks Hartline
(Name changed to Brown McCarroll & Oaks Hartline, LLP in early 1992)
T. John Ward, P.C., is the actual partner. I am the sole shareholder and officer of this professional corporation.

Approximately 1981 to 1983
I served as a director of Skeeter Products, Inc., a company that was acquired by Coleman Company.

1984 - 1989
I served as a director of Kitco, Inc., a well servicing company that is no longer in existence.

Approximately 1976 - 1990
I served as assistant secretary of Caddx-Caddi Controls, Inc., a company that has sold its stock to another corporation.

1987-1991; 1994 to present
I served on the Board of Trustees of Good Shepherd Medical Center, the local not- for-profit hospital.

1986-1988; 1994-1997
I served on the Board of the Good Shepherd Foundation.

1987-1991
I served on the Advisory Board for East Texas Literacy Council.

1987-1991; 1996 to present
Member of the Board of Governors, Bar Association Fifth Federal Circuit

1982-1984
I served as a director for Allied Bank, Longview, Texas.

1984-1990
I served as a director for First National Bank of Longview, predecessor to MBank Longview. Thereafter, I served as an advisory director for MBank, Bridge Bank and ultimately Bank One, Longview.

1989-1990
I served as a director for the Summit Club, Longview, Texas.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have never served in the military.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I received an academic scholarship which paid two-thirds of my tuition at Baylor Law School.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

A. State Bar of Texas, 1967 to Present

1. Member of District 2A Grievance Committee, approximately 1974-1986.

2. Chairman of District 2A Grievance Committee, approximately 1975-1976.

3. Member of Disciplinary Review Committee, 1986-1989.

B. Bar Association Fifth Federal Circuit, 1985 to Present

1. Member of the Board of Governors, 1987-1991; 1996 to present

C. American Bar Association, 1968 to Present

D. Bar Association for the United States District Court for the Eastern District of Texas
February 1997 to Present

E. Gregg County Bar Association
1969 to Present

F. Northeast Texas Bar Association
1994 to Present

G. Texas Association of Defense Counsel, 1980 to Present

H. Fellow, American College of Trial Lawyers, elected to membership - 1986

I. Advocate, American Board of Trial Advocates, elected to membership - 1989

J. Life Fellow, Texas Bar Foundation, elected to membership - 1977

K. Member, American Academy of Hospital Attorneys, elected to membership - 1989

L. Civil Justice Reform Act Advisory Group - 1995 to present
United States District Court for the Eastern District of Texas

M. Appointed by the Honorable Charles Clark, Chief Judge, United States Court of Appeals, Fifth Circuit, to serve on Merit Selection Panel to select a Bankruptcy Judge to the United States District Court for the Eastern District of Texas. (approximately 1986)

N. Appointed by the Honorable Robert M. Parker, Chief Judge, United States District Court for the Eastern District of Texas, to serve as chairman of the Merit Selection Panel to reappoint a Magistrate to the United States District Court for the Eastern District of Texas. (approximately 1989)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Organizations active in lobbying before public bodies: Sportsmen Conservationists of Texas

Other Organizations:

A. St. Andrew Presbyterian Church
Longview, Texas

B. People for the American Way

C. American Civil Liberties Union

D. Texas Tech Ex-Students Association

E. Baylor Law School Ex-Students Association

F. Cherokee Club

G. Summit Club

H. Phi Delta Theta - alumni

I. Phi Delta Phi - alumni

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

All Courts in the State of Texas, admitted December 4, 1967, by Supreme Court of Texas.

United States Supreme Court
Admitted April 22, 1985.
United States Court of Appeals, Fifth Circuit
Admitted February 2, 1973.
United States District Court for the Southern District of Texas
Admitted December 28, 1990.
United States District Court for the Eastern District of Texas
Admitted January 10, 1969.
United States District Court for the Western District of Texas
Admitted February 2, 1984.
United States District Court for the Northern District of Texas
Admitted March 30, 1983.
United States District Court for the District of Arizona
Admitted October 13, 1995.

I have been a member in good standing in all courts since my admission.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Paper and lecture entitled:
"Statutory Regulations of Health Care Providers"
April 19, 1982. State Bar of Texas, Professional Development Program. Dallas, Texas.
Co-author: Richard F. Hightower, Brown McCarroll & Oaks Hartline, 2727 Allen Parkway, Suite 1300, Houston, Texas 77019; telephone: (713) 529-3110. Mr. Hightower, an associate with my firm at the time, researched and prepared a working draft at my direction. I completed the paper for publication. The lecture was delivered by a substitute speaker because of a conflict in my schedule.

Paper and lecture entitled:
"Malpractice Carrier's Bad Faith Problems"
March 8, 1984. State Bar of Texas, Professional Development Program. San Antonio, Texas.
Co-author: Richard F. Hightower, Brown McCarroll & Oaks Hartline. Mr. Hightower, a partner with my firm at the time, researched and prepared a working draft at my direction. I completed the paper for publication and delivered the lecture.

13. Health: What is the present state of your health? List the date of your last physical examination.

The present state of my health is good.
The date of my last physical examination was July 15, 1998.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held any judicial office.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have not held any public office.

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as a 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 never served as a clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms of offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

November 1967 to January 1968 - Legislative draftsperson
Texas Legislative Council
First Floor, State Capitol Building
Austin, Texas 78701

January 1968 to July 1968 - Assistant County Attorney
Lubbock County, Texas
904 Broadway
Lubbock, Texas 79401

July 1968 to February 1969 - Phenix and Wilder - Associate Attorney
(now called Phenix and Phenix)
118 South Main Street
P. O. Drawer 1005
Henderson, Texas 75653-1005

February 1969 to November 1969 - Law Office of Otto A. Ritter, 300 Petroleum Building, Longview, Texas (Otto Ritter, deceased in 1997) - Associate Attorney

November 1969 to December 31, 1970 - Ward and Ross
Kenneth L. Ross
112 East Methvin
Longview, Texas 75601

January 1, 1971 to December 31, 1990 - Sharp, Ward & Ross
600 Mbank Building
211 East Tyler
Longview, Texas 75601

I served in the capacity of the managing partner of Sharp, Ward & Ross and its successor firms from January 1, 1971, until December 31, 1990.

January 1, 1991 to Present - Brown Maroney & Oaks Hartline
Now known as Brown McCarroll & Oaks Hartline, L.L.P.
Name change occurred in early 1992.
1127 Judson Road, Suite 220, Longview, Texas 75601.

I joined this firm as a partner effective January 1, 1991. In early 1991, on the advice of my CPA, I formed a professional corporation known as T. John Ward, P.C. The professional corporation is the actual partner. I am the sole shareholder and officer.

I practiced from the Houston office of Brown McCarroll & Oaks Hartline from January 1, 1991, to September 1, 1993. In September of 1993, I returned to East Texas to open a Brown McCarroll & Oaks Hartline office in Longview with two other attorneys. Presently, we have nine attorneys in East Texas. I serve as the partner-in-charge of the Longview office and currently serve on the Policy and Management Committees of the Firm.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From November 1967 to January 1968, I was employed by the Texas Legislative Council. I drafted legislation, generally at the request of a legislator or a state agency, that was being considered for introduction into the Texas Legislature.

From January 1968 through July 1968, I was employed as an Assistant County Attorney for Lubbock County, Texas. I tried misdemeanor cases which ranged from speeding tickets in the Justice of Peace Court to aggravated assaults, check fraud cases, and driving while intoxicated cases in the County Court at Law.

From July 1968 through November 1969, I was employed by Phenix and Wilder and the Law Office of Otto A. Ritter. Phenix and Wilder was a general practice firm with emphasis on plaintiffs' personal injury cases. I handled and tried mostly civil cases, but did some criminal defense work in the seven months I was with this firm. Mr. Ritter's practice was almost exclusively insurance defense. During the nine months I worked for Mr. Ritter, I defended personal injury cases and worker's compensation cases. I tried cases to verdict in the state district courts and county courts.

In November 1969, Kenneth L. Ross and I left the Law Office of Otto A. Ritter to form the firm of Ward and Ross. I tried various civil cases in state district court and also tried some criminal cases during the fourteen month existence of Ward and Ross.

In January 1971, Kenneth L. Ross and I formed the firm of Sharp, Ward & Ross, with the addition of Earl Sharp, age 60, as the senior partner of the firm. Mr. Sharp was an outstanding trial lawyer and was considered by many as one of the best in East Texas. Mr. Sharp was an approved attorney for several major insurance companies. With the addition of a few more

partners, my association with this firm continued until December 31, 1990. Through the clients Mr. Sharp brought to the firm, I immediately developed a very active trial docket in the state district courts throughout East Texas and the United States District Court for the Eastern District of Texas. In the first six to eight years with Sharp, Ward & Ross, the cases I tried could be described as insurance defense cases. In the late 1970s, I became involved in civil cases involving contract disputes, oil and gas issues, general commercial litigation, personal injury cases on behalf of plaintiffs, and construction litigation. By about 1980, my practice primarily involved products liability defense, hospital malpractice defense, construction litigation on behalf of owner and contractor, oil and gas litigation, general commercial litigation, and an occasional representation of a plaintiff in a personal injury case.

I served in the capacity of the managing partner of Sharp, Ward & Ross and its successor firms from January 1, 1971, until December 31, 1990.

Effective January 1, 1991, I joined Brown Maroney & Oaks Hartline (now known as Brown McCarroll & Oaks Hartline). My practice continues to involve products liability defense, hospital malpractice defense, toxic tort defense, oil and gas litigation, and general commercial litigation. Over the past five years, I have also become involved in representing defendants in class action litigation. There are also a few clients who consult me on a wide variety of non-litigation matters.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

In the last 10 to 15 years I have limited my practice almost exclusively to civil trial practice, although I still represent a few long-time clients in a wide variety of matters with the support from those members of the firm who have the necessary expertise in various areas. Most of my clients are corporations which have been sued for damages based upon products liability, breach of contract, fraud, hospital malpractice, and toxic torts. I also handle a variety of oil and gas litigation matters. In the last five years, I have undertaken representation of defendants in several class action suits.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court frequently.

2. What percentage of these appearances was in:
   (a) federal courts - 60%
   (b) state courts of record - 40%
   (c) other courts - 0%

3. What percentage of your litigation was:
   a) civil - 95%
   b) criminal - 5%

   During my tenure with the Lubbock County Attorney's office, I prosecuted exclusively criminal misdemeanor cases. In my early career as an attorney, I occasionally represented criminal defendants. Since that time, my practice has been almost exclusively a civil practice.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   I estimate that I have tried in excess of 150 cases to a verdict in courts of record as chief counsel or sole counsel. Further, I tried a large number of cases in courts not of record while at the County Attorney's office.

5. What percentage of these trials was:
   (a) jury - 90%
   (b) non-jury - 10%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   (a) the date of representation;
   (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
   (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

   1. *Louis Dorfman, et al. v. Art Machin & Associates, Inc., et al.*
      Cause No. 89-724-CA
      United States District Court
      Eastern District of Texas
      Tyler Division

Clients: Defendants Art Machin & Associates, Inc. and Art Machin, individually. I was employed in this case in December of 1990 and continued my representation until the case was finally resolved in September 1991.

Presiding Judge:
Honorable William M. Steger
United States District Judge
Eastern District of Texas, Tyler Division
P. O. Box 1109
Tyler, Texas 75710
Telephone: (903) 590-1176

Counsel for Plaintiff:
Douglas Cawley
Johnson & Gibbs
900 Jackson Street, Suite 100
Dallas, Texas 75202-4499

Current address for Douglas Cawley:
Hughes & Luce
1717 Main Street, Suite 2800
Dallas, Texas 75201
Telephone: (214) 939-5500

Counsel for Co-Defendants:
K-N Energy
J. Clifford Gunter III
Bracewell & Patterson
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781
Telephone: (713) 223-2900

Freeport McMoran Oil & Gas Co.
Robert Hayden Burns
Butler & Binion
1600 First Interstate Bank Plaza
Houston, Texas 77002-5008
Telephone: (713) 237-3111

Current address for Robert Hayden Burns:
Burns, Wooley & Marseglia
1111 Bagby Street, Suite 4900
Houston, Texas 77002
Telephone: (713) 651-0422

Union Texas
Murray J. Fogler
McDade & Fogler (named changed to McDade, Fogler, Maines & Lohse)
909 Fannin Street, Suite 1800
Houston, Texas 77010
Telephone: (713) 654-4300

Co-Counsel with me:
H. P. Smead
Smead, Anderson, Wilcox & Dunn
425 N. Fredonia Street, Suite 100
P. O. Box 3343
Longview, Texas 75606-3343
Telephone: (903) 757-2868

Elizabeth Mack
Locke Purnell Rain Harrell
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776
Telephone: (214) 740-8000

This was a complex civil RICO case in which the plaintiffs sought to recover in excess of $30 million dollars as actual damages, plus treble damages and attorney's fees.

The primary defendant was my client. He had served as operator of several gas wells in which plaintiffs owned an overriding royalty interest in the formation from which production could be legally taken. The plaintiffs also owned the minerals immediately above the formation from which my client could legally take the production. The plaintiffs alleged that my client had intentionally produced outside the legal formation, thereby knowingly stealing oil and gas. My client produced from the eight wells involved for about twenty (20) years. The other defendants had operated some of the wells for brief periods of time.

The plaintiffs were able to offer strong evidence of my client's wrongdoing. Under the RICO statute, a jury finding of intentional conduct would have resulted in a judgment for treble damages and attorneys' fees.

Our defense was that only three wells had produced from the wrong zone, and that this resulted from a good faith mistake. Unfortunately, even if we established this position, we still faced substantial exposure. The measure of damages in a case such as this is unusual in that, even though the mistake is made in good faith, the defendant who has commingled the mistakenly produced gas with rightfully produced gas has the burden of proving how much gas was produced from each

formation. The failure to prove the amount of gas attributable to each formation renders the defendant liable for the value of one hundred percent (100%) of all of the gas produced. Moreover, if the jury found the wrongful production did not result from a good faith mistake, the measure of damages is the highest price paid for hydro-carbons in the field during the period of wrongful production. In this case, the alleged wrongful production occurred over twenty years. During that period my client had sold gas for as low as $.12 per MCF, and as high as $4.32 per MCF. My client faced a $33 million dollar exposure for actual damages.

At the close of the plaintiffs' evidence, the trial judge granted defendants a directed verdict on all civil RICO claims. The jury found that my client's mistakes were made in good faith and that we established with a reasonable degree of certainty that the value of gas wrongfully taken, for which my client was responsible, was $334,000.

I was employed in this case in December 1990 to take over the trial preparation and strategy. No depositions had been taken. The case was tried in May 1991. We took thirty (30) depositions prior to trial. I was the lead counsel for Art Machin & Associates, Inc., the primary defendant. Even though there were other co-defendants, I took the lead in the cross-examination of almost every witness. Because I was employed so late, one of the biggest challenges was prioritizing the work to be done and seeing that it was completed expeditiously.

Judgment was entered against my client for slightly in excess of $1,000,000 which included actual damages of approximately $334,000 plus twenty (20) years of pre-judgment interest. The case settled before appeal.

2. *Adobe Resources Corporation v. United States of America*
Cause No. 90-CA-128
United States District Court
Western District of Texas
Midland-Odessa Division

967 F.2d 152 (5th Cir. 1992), *reh'g denied*, 975 F.2d 1119 (5th Cir. 1992).

Client: Adobe Resources Corporation. I was first involved in this case in February 1991 and continued my representation until the judgment was paid in 1992.

Presiding Judge:
Honorable Lucius Desha Bunton, III
200 East Wall Street
101 U. S. Courthouse

P. O. Box 1774
Midland, Texas 79702
Telephone: (915) 683-9457

Opposing Trial Counsel:
Jon E. Fisher
Tax Division, Department of Justice
1100 Commerce Street, Room 5B31
Dallas, Texas 75242-0599
Telephone: (214) 767-0293

Opposing Appellate Counsel:
Robert S. Pomerance
Gary R. Allen
Bruce R. Ellisen
Tax Division, Department of Justice
P. O. Box 502
Washington, D.C. 20044
Telephone: (202) 514-2000

This was a tax refund case involving an interpretation of the "reverse acquisition" rules under Treasury Regulation 1.1502-75(d)(3) and Revenue Ruling 89-80. The issue was whether my client was entitled to carry back a net operating loss to a particular year in order to gain a deduction in that taxable year. 26 U.S.C. § 172.

In this case, if our interpretation was correct, the carry back of the net operating loss would result in a tax refund to Adobe Resources in excess of $9 million dollars, plus interest.

Adobe Resources Corporation was formed through the consolidation of two publicly traded corporations referred to as Old Adobe and Madison. Ordinarily, by looking at the value of the two corporations that consolidate immediately before the consolidation, a determination can be made as to which group of stockholders received more than fifty percent (50%) of the shares of the new corporation. The group receiving more than fifty percent (50%) of the shares constitutes the consolidating corporation that is the "surviving" corporation. The new corporation is entitled to carry back its losses to the prior tax years of the surviving corporation and obtain a refund of taxes paid in prior years.

The complicating factor in this case was that Madison owned twenty-nine percent (29%) of the shares of Old Adobe. This cross-ownership provided a fact situation which the revenue regulations and rulings did not speak to.

My role was as trial counsel and I handled the oral argument on appeal.

The theory for extending the revenue regulations and rulings to obtain a tax refund was developed by Richard "Rick" Shanks, a tax lawyer with Brown McCarroll & Oaks Hartline. Mr. Shanks had sought the assistance of Richard Cox to file the suit for refund in approximately October 1990. Mr. Cox was injured in a skiing accident in December 1990 and I joined the firm in January 1991. Mr. Shanks approached me to assist him in mid-January 1991 with the case to be tried in late February 1991. This presented a considerable challenge.

There were certain critical values to which the government would not stipulate and Judge Bunton decided to submit those questions to a jury. It was a challenge to try to simplify this complex tax case for presentation to a jury and also to present the legal issues in an understandable fashion to the trial and appellate judges who were not tax specialists. We were successful through the Fifth Circuit Court of Appeals, and the tax refund recovered by our client was in excess of $15 million dollars. The government did not file a Petition for Writ of Certiorari.

3. *Kathy Butler v. United States Consolidated with Charlotte James v. United States*
Cause No. M-81-99-CA
United States District Court
Eastern District of Texas
Marshall Division

Panel Opinion
James v. United States, 740 F.2d 365 (5th Cir. 1984)

En Banc Opinion
James v. United States, 760 F.2d 590 (5th Cir. 1985)

On appeal to Fifth Circuit, *Butler* and *James* were consolidated with a case out of Louisiana:
Susan B. Clardy v. United States
United States District Court
Western District of Louisiana

United States Supreme Court Opinion:
United States v. James, 106 S. Ct. 3116, 478 U.S. 597, 92 L. Ed. 2d 483 (1986).

Client: Kathy Butler. I was employed in this case in early 1981 and continued my representation through early 1987.

Presiding Judge:
Honorable Robert M. Parker (then Chief Judge, United States District Court
Eastern District of Texas, Tyler Division)

Current address for Judge Parker:
Honorable Robert M. Parker
Judge, United States Court of Appeals, Fifth Circuit
221 West Ferguson, Room 400
Tyler, Texas 75702
Telephone: (903) 590-1350

Opposing Trial Counsel:
William J. Cornelius, Jr.
Assistant United States Attorney
Tyler, Texas 75701

Current address for William J. Cornelius, Jr.:
Wilson, Sheehy, Knowles, Robertson & Cornelius
315 East Fifth Street
P. O. Box 7339
Tyler, Texas 75711
Telephone: (903) 593-2561

Opposing Counsel before Fifth Circuit:
Thomas L. Jones
Torts Branch, Civil Division
Department of Justice
Washington, D.C.

Opposing Counsel before United States Supreme Court:
Andrew J. Pincus
Assistant Solicitor General
Department of Justice
10th Street & Constitution Ave., N.W.
Washington, D.C. 20530

Co-counsel:
Bird Old III
Old & Old
210 North Jefferson Street
P. O. Box 448
Mt. Pleasant, Texas 75456-0448
Telephone: (903) 572-4331

I represented Kathy Butler in the trial court beginning in approximately 1981. On appeal I was responsible for the brief and argument for Kathy Butler and Charlotte James. Before the United States Supreme Court, I was responsible for the brief and

made the sole argument on behalf of Charlotte James, Kathy Butler and Susan B. Clardy.

The legal significance of the case was whether the Flood Control Act's immunity provision bars recovery where the Federal Government would otherwise be liable under the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., for personal injury caused by the government's failure to warn of the dangers from the release of flood waters from federal flood control projects. The provision, 33 U.S.C. § 702c, provides that "no liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place."

A majority of the United States Supreme Court (six) held that 33 U.S.C. § 702c barred recovery.

Three members of the Court joined in Justice Stevens' dissent which commented on the majority's holding as follows:

> In my view neither the plain language of the statute nor the legislative history behind it supports imparting such a perverse design to the Legislature. In my opinion, this provision applies only to property damage and the judgment below should be affirmed.

United States v. James, 106 S. Ct. at 3125.

Kathy Butler, Eddy Butler and Charlotte James were sucked through the federally controlled discharge gates of the Millwood reservoir located in the State of Arkansas. Eddy Butler was killed. Kathy Butler and Charlotte James received personal injuries.

At trial I represented Kathy Butler and Charlotte James. We faced a significant challenge in addition to the government's contention that it was entitled to immunity. Because the accident occurred in Arkansas, we had to establish liability under Arkansas substantive tort law for the government to be liable under the Tort Claims Act. Arkansas had a statute generally known as a "recreational use" statute. This statute provides that in order for a recreational user to recover against the owner of premises for damages caused by a failure to warn, the user must prove the significantly more difficult standard of willful and malicious failure. This is a significant burden, rendered more difficult when the trier of fact is a judge instead of a jury.

At trial we sustained this burden; the district judge found that the government's failure to warn was willful and malicious, and that this failure was a proximate cause of the plaintiffs' injuries. The judge found damages of $1 million for Kathy Butler's injuries and the death of her husband. He found damages of $40,000 for Charlotte

James. The judge then concluded that the immunity provision of the Flood Control Act barred recovery.

Subsequent to trial, my role was that of any appellate lawyer. I lost before the initial three judge panel, prevailed before the court *en banc* and finally lost in a split decision (6-3) before the United States Supreme Court.

I was responsible for directing the research and was ultimately responsible for the content of all briefing, except in the United States Supreme Court. I employed the Washington, D.C. firm of Onek, Klein and Farr to assist in the final briefing effort, but I presented the oral argument.

The United States Supreme Court reversed the *en banc* opinion of the Fifth Circuit and rendered judgment that Plaintiffs take nothing.

After receiving the Supreme Court's opinion, I still felt I had not exhausted all efforts for my client. I sought to have a bill introduced in the Congress compensating my client. I was successful in getting the bill introduced, both in the Senate and the House. Unfortunately, the bill stalled in the House Judiciary Sub-Committee. Despite my spending five days in Washington, D.C., I was unable to get the bill out and finally admitted defeat.

4. *Lynda Roberts, et al. v. Offshore Casing Crews and Exxon Corporation*
Cause No. 571-83
115th District Court of Upshur County, Texas

Appellate citation:
Exxon Corporation and Offshore Casing Crews, Inc. v. Lynda Roberts, et al., 724 S.W.2d 863 (Tex. App.—Texarkana 1986, writ denied).

Client: Defendant-Appellant Offshore Casing Crews, Inc. I was employed in 1984 and continued my representation until 1986 when the Court of Appeals judgment became final.

Presiding Judge:
Virgil Mullinax, now retired, who may be contacted through:
Honorable Pat McDowell, Presiding Judge
First Administrative Judicial Region of Texas
Room 612, 600 Commerce Street
Dallas, Texas 75207
Telephone: (214) 653-7505

Counsel for Plaintiff Lynda Roberts:
Paul L. Sadler

Wellborn, Houston, Adkison, Mann, Sadler & Hill
300 West Main Street
P. O. Box 1108
Henderson, Texas 75653-1108
Telephone: (903) 657-8544

Counsel for Defendant Exxon:
Rene J. Mouledoux
c/o Exxon Co. U.S.A.
P. O. Box 2180
Houston, Texas 77252-2180
Telephone: (713) 656-2574
Telephone: (713) 656-3636

This was a wrongful death case brought by Lynda Roberts on behalf of herself and her minor daughter to recover damages caused by the death of her husband. The plaintiff alleged that her husband's death was caused by the negligence of Exxon and my client, Offshore Casing.

The deceased was a member of a drilling crew that was drilling a well for Exxon. My client provided casing tongs to be used in the installation of production casing pursuant to a contract with Exxon. The contract contained an indemnity clause providing that Offshore would indemnify Exxon for Offshore's negligence. The contract also provided that Offshore would perform its work in a good and workmanlike manner.

At trial in October 1985, the jury found Exxon negligent and that its negligence contributed seventy-five percent (75%) to plaintiffs' damages. The jury also found Offshore negligent and that its negligence contributed twenty-five percent (25%) to plaintiffs' damages.

The trial court granted Exxon indemnity against Offshore based upon the indemnity provision of the contract and the novel theory that the jury finding of negligence was tantamount to a breach of the duty to perform in a good workmanlike manner and awarded indemnity in favor of Exxon and against Offshore.

We believed both of these propositions to be contrary to the law of indemnity contracts under Texas law. The court of appeals agreed and reversed the judgment and rendered in favor of Offshore, limiting Offshore's liability to twenty-five percent (25%) of the damages found by the jury. The Texas Supreme Court denied Application for Writ of Error.

I tried the case under some difficult circumstances and obtained what we considered to be very favorable jury findings in light of the fact that I had none of the employees

of Offshore who were present at the time of the accident available to testify. I argued the appeal, but did little work in preparation of the brief, which was prepared by counsel for the excess insurance carrier of Offshore Casing.

The case was reversed and rendered in part and affirmed in part on appeal. The verdict of the jury was upheld, assessing responsibility seventy-five percent (75%) to Exxon and twenty-five percent (25%) to Offshore. All of Exxon's claims for indemnity were denied.

5. *The L. E. Myers Company v. Eastex Telephone Cooperative and F. M. Hollandsworth Consulting Engineers*
Civil Action No. 79-95-CA
United States District Court
Eastern District of Texas
Marshall Division

Client: Plaintiff L. E. Myers Company, which was the general contractor. I was employed in this matter in February 1979 and continued my representation until the trial court's judgment was paid in 1982.

Presiding Judge:
Honorable Robert M. Parker, Chief Judge (United States District Court
Eastern District of Texas, Tyler Division)

Current address for Judge Parker:
Honorable Robert M. Parker
Judge, United States Court of Appeals, Fifth Circuit
221 West Ferguson, Room 400
Tyler, Texas 75702
Telephone: (903) 590-1350

Counsel for Eastex Telephone Cooperative:
Thomas D. Johnson
Dale H. Johnson
McWhorter Cobb & Johnson
1722 Broadway
P. O. Box 2547
Lubbock, Texas 79408
Telephone: (806) 762-0214

Counsel for F. M. Hollandsworth Consulting Engineers:
Jack Flock
Ramey, Flock, Jeffus, Crawford, Harper & Collins
(name changed to Ramey & Flock)

500 First City Place, 5th Floor
P. O. Box 629
Tyler, Texas 75710-0629
Telephone: (903) 597-3301

This was a breach of contract case. The contract provided for the installation of approximately 320 miles of an underground telephone system for Eastex Telephone. F. M. Hollandsworth had provided the engineering services to Eastex pursuant to an engineering services contract. The Rural Electrification Administration ("REA") funded the entire project. REA had inspected the job and placed all the blame for job delay and cost overruns on my client. We met with REA and representatives of Eastex and Hollandsworth and were told we had no chance of recovery and that no contractor had ever been successful in a case such as this. Nevertheless, we filed suit and tried it to the Court. Judgment was rendered in favor of my client for slightly in excess of $1.5 million dollars, including attorney's fees and pre-judgment interest.

I was the trial counsel for this case. Essentially, we had to prove a case of engineering malpractice against F. M. Hollandsworth and then establish Hollandsworth as the agent of Eastex. This was a particularly challenging case because not only did the consulting engineers not want to testify against their fellow engineer, but all those who did REA work did not want to do anything to offend the REA. Basically, we proved our case by deposing all the Hollandsworth employees to establish their acceptable standards of practice and then proved that they did not meet them. This was an extremely fact and document intensive case.

The $1.5 million judgment was paid without appeal.

6. *Patrick C. Cummins v. Coltec Industries*
Civil Action No. 393-CV-2596D
United States District Court
Northern District of Texas
Dallas Division

Client: Coltec Industries, Inc. I was employed in this matter in 1993 and continued my representation through trial and settlement which occurred in 1997.

Presiding Judge:
Honorable Sidney A. Fitzwater
15A3 Earle Cabell Federal Building
1100 Commerce Street
Dallas, Texas 75242
Telephone: (214) 767-6395

Opposing Counsel:
James Albert Jennings
W. Christopher Haynes
Erhard, Ruebel & Jennings
3030 LTV Tower
1525 Elm Street
Dallas, Texas 75201-3509
(This firm withdrew from representation on March 10, 1995)

Thereafter, Plaintiff was represented by:
Louis P. Bickel
Edward S. Koppman
Melinda G. Jayson
J. Eric Gambrell
Akin, Gump, Strauss, Hauer & Feld
1700 Pacific Ave., Suite 4100
Dallas, Texas 75201-4618
Telephone: (214) 969-2800

Mr. Gambrell and Mr. Bickel were the sole trial counsel for Plaintiff.

This case involved complex issues of stock ownership. Plaintiff Patrick Cummins was the 21 year old son of Laurence Cummins. Laurence Cummins was a licensed stockbroker with over 30 years of experience.

In 1992 and 1993 Laurence Cummins visited several gun shows in the Dallas area and purchased stock certificates (Gun Show Certificates) originally issued by Colt Patent Fire Arms Manufacturing Company and Colt Manufacturing Company (collectively "Colt Manufacturing"). Mr. Cummins paid between $10 and $100 for these certificates. The certificates in total represented in excess of 2,000 shares of Colt Manufacturing. Laurence Cummins claimed to have given these certificates to his son in 1993 or 1994.

Thereafter, Patrick Cummins presented the Colt Manufacturing certificates to Chemical Bank, the transfer agent for Coltec Industries. Coltec is the successor corporation to Colt Manufacturing. Had the certificates been valid and outstanding, Plaintiff would have been entitled to shares in Coltec Industries with a current market value exceeding $1,000,000.

Coltec Industries had become the successor to Colt Manufacturing through a series of mergers and acquisitions. Colt Manufacturing had been acquired in 1955 by Penn-Texas. It was the position of Coltec that at the time of this acquisition all of the Gun Show Certificates had been canceled and were not entitled to registration.

The most significant problem was that the certificates were not marked as cancelled in any fashion.

The problem of establishing cancellation was significant and had to be done through circumstantial proof. In 1950, the board of Colt Manufacturing made a conditional tender offer for all of its stock. The price offered was attractive and 127,000 of 195,000 shares were tendered. We had some stock transfer records, but they were not conclusive. Because of the forty years between the time of the tender offer and plaintiff's attempt to register, we were unable to locate any witnesses who had direct knowledge. Additionally, the law firm that had acted as counsel to Colt Manufacturing had declared bankruptcy, and we had no records.

We were able to prevail on a motion for partial summary judgment with respect to the certificates that did not have appropriate signature guarantees.

With respect to the remaining certificates, we presented our defense primarily through expert testimony, using a retired stockbroker with significant experience as early as 1953, coupled with a person who had significant experience as a transfer agent. The jury found the stock certificates were not entitled to registration. The court further concluded that my client was entitled to attorneys' fees under its counter-claim. Using this as leverage, we settled the case before judgment was entered.

The significance of this case from my client's perspective was that this was the second case of this nature. The first case had settled by payment of a substantial amount. The settlement was supposed to be confidential, but the *Cummins* case was filed within 6 months of the settlement of the first case and many documents surfaced that had been produced in the first case. With the result we obtained, the client has had no further claims of this nature.

I served as lead counsel on this case as well as lead trial counsel. I was responsible for directing the research and ultimately responsible for supervising the case and preparing it for trial. At trial, I was in charge of selecting a jury, making opening statements, examining the witnesses and cross-examining the plaintiff's witnesses. I also delivered the final argument. I was ably assisted by Ms. Elizabeth Mack of Locke Purnell Rain & Harrell, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201-6776; telephone: (214) 740-8000.

As indicated, the Court granted summary judgment with respect to several of the stock certificates at issue because the plaintiff had not obtained signature guarantees on the certificates. However, the summary judgment did not dispose of certain stock certificates. We tried those to a jury and the jury found in favor of my client. The Court held that we were entitled to attorneys' fees, and we settled the case shortly thereafter.

7. *United States of America v. Zack Williams and Paul Williams*
Civil Action No. TY-86-07-CA
United States District Court
Eastern District of Texas
Tyler Division

Clients: Zack Williams and Paul Williams, CPA. I was employed in this matter in 1986 and continued my representation through the second trial in September 1988.

Presiding Judge:
Honorable William M. Steger
U. S. District Judge
Federal Courthouse
Tyler, Texas 75710
Telephone: (903) 590-1176

Opposing Counsel:
William Barger
James Rodio
U.S. Department of Justice
Taxation Division
Washington, D.C.
Telephone: (202) 633-5150

Co-counsel:
Odis Hill
Hill & Hill
211 North Center
P. O. Box 3369
Longview, Texas 75606-3369
Telephone: (903) 753-3369

Glenn A. Perry
Perry & Womack
211 North Center
P. O. Box 3266
Longview, Texas 75606-3266
Telephone: (903) 757-9191

R. L. Whitehead, Jr.
505 North Green Street
P. O. Box 688
Longview, Texas 75606
Telephone: (903) 758-0561

This was a criminal tax matter. The government alleged that the Williams brothers created illegal tax shelters and my clients were charged with filing fraudulent tax returns. The case was significant because the government had an informant/witness who was a CPA and an attorney who testified against defendants, one of whom was a CPA, and was able to provide strong testimony of the defendants' knowledge and intent.

I had represented the Williams brothers for a number of years in a variety of matters. At the time they were indicted, they had fallen on hard financial times and had limited resources. I assisted in organizing the defense and finding experienced criminal defense counsel. Odis Hill and Glenn Perry represented Paul Williams. R. L. Whitehead, Jr. and I represented Zack Williams in the actual trial. The case was ultimately tried twice. At the first trial in December 1987, my role was limited to presenting character witnesses and reviewing documents produced by the government. The first trial lasted six days, and the jury convicted both defendants on all counts. Thereafter, Judge Steger found that the government had committed a *Brady* violation, and he granted the defendants a new trial. The *Brady* violation occurred because the government had withheld a number of documents in which the government's chief witness had made statements which contradicted his testimony.

At the second trial in September 1988, I found and helped develop an expert witness who was a CPA and was very effective for the defense. I took the lead in cross-examining the government's chief witness and I also found practicing attorneys who undermined the government's witness by testifying regarding his reputation for lack of veracity. At the close of the evidence, the jury acquitted both defendants of all counts.

Judgment of acquittal.

8. *Darwin N. Cox v. the City of Longview, et al.*
Civil Action No. 6:85CV313
United States District Court
Eastern District of Texas
Tyler Division

Clients: City of Longview, Texas, Chief of Police James McLaughlin. I was employed in this case in 1985 and continued my representation through 1989 when the case was closed.

Presiding Judge:
Honorable William Wayne Justice
Federal Building & U.S. Courthouse
211 West Ferguson

P. O. Box 330
Tyler, Texas 75710
Telephone: (903) 590-1187

Opposing Counsel
Beatrice Mladenka-Fowler
1529 Heights Boulevard
Houston, Texas 77008
Telephone: (713) 862-7349

Mary L. Sinderson
2900 Wesleyan Street
Houston, Texas 77027-5117
Telephone: (713) 871-8600

This was an excessive force case in which I represented the City of Longview and its Chief of Police. I was lead trial counsel for my clients in this case. The police officer defendants were represented by David McCracken, now with the firm of Locke Purnell Rain Harrell, P.C.

The plaintiff had owned a rental house in the City of Longview. His son had previously lived there, but had moved out. A police officer had peered over a backyard fence and thought he had seen a marijuana plant. Thereafter, the officer obtained a search warrant.

The plaintiff, an elderly gentleman, wore a hearing aid. On the day the police executed the search warrant, Mr. Cox had been working in the house all day, making repairs so it could be rented. After he finished, he consumed a few beers with a pizza, removed his hearing aid, turned on the ceiling fan, placed his pistol beside his bed, and fell asleep. Around midnight, the officers executed a "no knock" search warrant, one in which they did not announce their entry, and abruptly entered the plaintiff's home. Because the plaintiff had removed his hearing aid, he could not hear the calls of the police officers but could only see flashlights flickering throughout his house. The plaintiff armed himself with a handgun and a Longview police officer promptly shot him. The officers found no illegal drugs on the premises. The plaintiff sued the City of Longview and the police officer for personal injuries suffered as a result of this gunshot wound. The case was significant and extremely difficult to try because the elderly gentleman made a very sympathetic plaintiff who had done absolutely nothing wrong. Convincing the jury that exigent circumstances justified the execution of the search warrant in this manner and that the defendants were, therefore, not liable for plaintiff's injury was difficult.

I coordinated the defense and took a lead role at trial. Counsel for all of the individual defendants except the Chief of Police was David McCracken who is with

Locke Purnell Rain Harrell, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201; telephone: (214) 740-8000; but at the time was with Strasburger & Price, Suite 4300, 901 Main Street, Dallas, Texas 75202, telephone: (214) 651-4300.

The jury found in favor of all defendants, and the Court entered judgment in favor of all defendants.

9. *B. R. West Enterprises, Inc. d/b/a West Machine and Tool Works v. Minserco, Inc.*
Civil Action No. 2:95CV93
United States District Court
Eastern District of Texas
Marshall Division

Client: B. R. West Enterprises, Inc. d/b/a West Machine and Tool Works. I was employed in this matter in June 1996 and continued my representation to June 1998 when the case was finally resolved.

Presiding Judge:
Honorable Joe J. Fisher
Jack Brooks Federal Building
300 Willow Street
P. O. Box 88
Beaumont, Texas 77704
Telephone: (409) 839-2514, 654-2800

Opposing counsel:
Tom Henson
Ramey & Flock
500 First City Place
P. O. Box 629
Tyler, Texas 75710
Telephone: (903) 597-3301

Roger Townsend (appellate counsel)
Holman Hogan Dubose & Townsend, L.L.P.
440 Louisiana, Suite 1400
Houston, Texas 77002-1635
(713) 222-8800; Fax: (713) 222-8810

In this case I represented the Plaintiff, B. R. West Enterprises, Inc., against Minserco, Inc. The matter arose out of the breach of an oral joint venture agreement. My client had alleged that he entered into an oral agreement with the defendant which was to continue for so long as the defendant was conducting business in the East Texas area. My client had discovered that on numerous occasions the defendant was breaching

the joint venture by failing to account for profits earned under the joint venture agreement. Damages were very difficult to establish. Additionally, because there was no term of the joint venture expressed in years, the difficult question became proving the length of time that the defendant would be conducting business in the East Texas market. We accomplished this by establishing the probable life of the market itself, the lignite mining industry in Texas. We compared the revenues which my client could expect to earn through the joint venture for that time period to the revenues which it could be expected to earn without the joint venture through the same period. Damages caused by the breach of the joint venture agreement exceeded $4 million.

As lead trial counsel, I directed and coordinated all research and trial strategy, and tried the case to the court in June 1997.

The Court found in favor of the Plaintiff and awarded the amount of damages which our expert concluded the Plaintiff had lost as a result of the breach of the joint venture agreement. The court rendered final judgment for an amount slightly in excess of $4.3 million. While on appeal to the United States Court of Appeals for the Fifth Circuit, we mediated the case and successfully settled all issues. The terms are confidential.

10. *Mel Lewis v. Texas American Bank of Longview, Town North National Bank, Bruce Morris, David Lovelace, Dan Fiscus and Cox Jones*
Civil Action No. 87-331-CA
United States District Court
Eastern District of Texas
Tyler Division

Clients: Texas American Bank of Longview and Town North National Bank. I was employed in this case in 1987 and continued my representation through trial and final judgment entered in 1989.

Presiding Judge:
Honorable William M. Steger
U. S. District Judge
Federal Courthouse
Tyler, Texas 75710
Telephone: (903) 590-1176

Opposing counsel:
John Smithson
My understanding is that Mr. Smithson is currently incarcerated in a Federal Correctional Institute.

Louis B. Gohmert, Jr.
Judge, 7th Judicial District
203 Courthouse
100 North Broadway
Tyler, Texas 75702
Telephone: (903) 535-0625

This case involved complex civil RICO allegations and violations of the Bank Tying Act. The Plaintiff claimed that the defendants had violated the Bank Tying Act by requiring excessive security and guaranty agreements. Further, the plaintiff claimed a RICO violation arising from an alleged conspiracy to deprive the plaintiff of the real estate securing the loan. At that time, there was relatively little case law interpreting the Bank Tying Act's provisions. The RICO count made the case significant because RICO provides for the automatic trebling of damages. The amount in controversy, trebled, exceeded $1,000,000. My clients were the primary defendants in the lawsuit.

My role was that of lead trial counsel for the primary defendants, Texas American Bank of Longview and Town North National Bank.

The Court granted a directed verdict on the civil RICO counts and the jury found in favor of the defendants on all claims under the Bank Tying Act. No appeal was taken from the final judgment.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question; please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

a. In 1974 my partner, Earl Sharp, filed a class action case against Exxon on behalf of James P. Rogers and others similarly situated alleging that Exxon had failed to pay Mr. Rogers, a royalty owner in Traywick-Douglas gas field in Nacogdoches County, Texas, the correct amount of money. The disputed issues revolved around what was the market value of the gas taken at the wellhead under the terms of the oil and gas lease. After initial discovery, the matter was certified as a class. The parties then agreed to abate the case because there was a similar case working its way through the state appellate system which would hopefully provide guidance as to what evidence would be appropriate to determine market value. In about 1979 Earl Sharp's health would not permit him to be in charge of a case of this magnitude and I took over the case. In 1980 the Texas Supreme Court handed down a decision which gave some guidance for determining market value. I devoted a considerable effort to this case. We entered in settlement negotiations in February through probable mid-March and had a settlement approved by mid-June 1981. The settlement for the class exceeded $12 million which was significant in 1981.

b. In 1993 I was asked to represent Houston Cellular Telephone Company (HCTC) and the McCaw Cellular telephone entities in defending what was filed as a national class action seeking to void the contracts that HCTC had with its clients in the Houston area market and seeking the same relief as against McCaw for the contracts it had in the various markets across the country. The plaintiffs alleged that the contracts violated public policy and various state deceptive trade practices and anti-trust statutes. At that time, McCaw Cellular Communications was the largest cellular telephone carrier in the country. The litigation involved substantial discovery, document production and review, and depositions. This litigation was resolved to the satisfaction of our clients in 1996. It was settled as a class action for a limited class of customers in Texas. The national class allegations were eliminated in the first year. AT&T purchased McCaw during the time the case was pending and the various cellular markets operate today as AT&T Wireless Services.

c. In 1993, I assumed the responsibility for the defense of a complex real estate fraud case styled *Milestone Properties, Inc. v. Federated Metals Corporation; ASARCO, Inc. and Lone Star Lead Construction Corporation*, Cause No. 437569-A, 250th Judicial District Court of Travis County, Texas. The case arose after Federated Metals, a wholly owned subsidiary of ASARCO, Inc., sold approximately 14 acres of land adjoining Federated Metals' plant site. Federated's primary business was the reclamation of metals from scrap metal. For 35 to 40 years, Federated has used the 14 acres to dispose of waste materials produced in the reclamation process. In addition, another ASARCO affiliate, Lone Star Lead, had used the site to dispose of waste materials utilized in its business, the primary function of which was the rebuilding of certain devices used in the paper manufacturing industry.

With the enactment of the environmental laws such as the Resource Conservation and Recovery Act of 1976 and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, together with state laws imposing similar duties, ASARCO could no longer use the 14 acres to dispose of these materials. In 1980, a real estate developer approached ASARCO wanting to purchase the tract to construct warehouses. The sale closed in 1980.

The developer did not realize his plans to build warehouses because the market in Houston had become saturated. In 1986, the 14 acre tract was identified by the Texas authorities as being a State Registry Site for hazardous waste. The purchaser sued ASARCO and its subsidiaries. Portions of the case were dismissed on limitations grounds and the case ultimately was appealed. *Milestone Properties v. Federated Metals*, 867 S.W.2d 113 (Tex. App.--Austin 1993). The appeals court concluded that two of the claims were not barred by the applicable statutes of limitation. The court remanded the case for trial on these claims in 1994. The case was extremely difficult to try from our perspective because our former employee who had negotiated the transaction was very elderly and was no longer with the company. Nonetheless, the case proceeded to trial and was tried for nine days. On

the morning before jury arguments, a settlement was reached between my clients and the plaintiff. Due to the number of issues involved and the variety of expert witnesses and fact witnesses, the investigation and discovery of this case was exceptionally time-consuming and required considerable attention to the details of the transaction and the relationship of the suit to the various environmental laws.

Plaintiff was represented at trial by William T. Little of Gilpin, Paxson & Bersch, L.L.P., 1900 West Loop S, Suite 2000, Houston, Texas 77027-3259; telephone: (713) 623-8800.

LONGVIEW:65200.1
17356.89455

SENATE: II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   If appointed and confirmed I would receive the return of my paid in capital in the amount of $106,000 from the Brown McCarroll & Oaks Hartline, L.L.P. partnership. I believe I could negotiate a lump sum payment in order to avoid recusal should attorneys from Brown McCarroll & Oaks Hartline appear before me. I also own interests in certain oil and gas wells with the right to participate in additional wells drilled on the leases. The operators of the wells are Winchester Production Company and Cook Exploration Company. I receive payments for royalty and other interests from these wells, and the amounts vary according to production and the price of the minerals.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   (a) I would roll over the funds I have in the Brown McCarroll & Oaks Hartline Employee Retirement Plan & Trust into an existing IRA account with Morgan Stanley Dean Witter.

   (b) Management of Brown McCarroll & Oaks Hartline has indicated I would be paid a lump sum for my capital account. Additionally, the firm would actively pursue the release from contingent liabilities by all creditors of the firm. Based upon past experience the firm is relatively certain this can be accomplished. In the event either of these could not be accomplished, I would recuse myself from presiding over any matter wherein a party was represented by Brown McCarroll & Oaks Hartline.

   (c) Should Winchester Production Company, any affiliate thereof, or Cook Exploration Company have a matter before me, I would recuse myself.

   (d) I would resign from the Board of Trustees of Good Shepherd Medical Center. Should Good Shepherd be a party in litigation in the court in which I was presiding, I would recuse myself to avoid any appearance of impropriety.

   (e) I would carefully evaluate any case involving a former client. I will recuse where necessary.

(f) I will follow the Code of Judicial Conduct and consult with the Chief Judge of the Eastern District of Texas to resolve any questions that might arise concerning interpretation.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for).

See attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I served as the Gregg County Coordinator for U.S. Senator Lloyd Bentsen for the ten year period of 1980-1990 inclusive.

In 1987 and 1990, I served as campaign finance chairman for Martha Whitehead in her campaign for City Council of City of Longview. Ms. Whitehead was successful on both occasions. As chairman, I handled all contributions and was responsible for filing of finance reports.

AO-10 Rev. 1/98

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1997/1998

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Ward, T. (Thomas) John	U. S. District Court, Eastern District, Texas	1/8/99
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. Report Type** (check appropriate type)	**6. Reporting Period**
Nominee - U. S. District Judge	X Nomination, Date _____ ___ Initial ___ Annual ___ Final	December 31, 1997, December 31, 1998
7. Chambers or Office Address	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
1127 Judson Road, Suite 220 Longview, TX 75601	Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of Instructions.)*

POSITION	NAME OF ORGANIZATION/ENTITY
☐ NONE (No reportable positions.)	
Member	Board of Trustees - Good Shepherd Medical Center
Member	Board of Governors - Bar Association for Fifth Judicial Circuit
See Attachment No. 1	

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of Instructions.)*

DATE	PARTIES AND TERMS
☐ NONE (No reportable agreements.)	
1990	Brown McCarroll & Oaks Hartline/Partnership Agreement and provisions for payment upon withdrawal
1992	Brown McCarroll & Oaks Hartline Retirement Plan, no control

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐ NONE (No reportable non-investment income.)		
1997	T. John Ward, P. C./trial lawyer	$ 395,750.00
1998	T. John Ward, P. C./trial lawyer	$ 427,936.00
1997	Oil and gas working interest (schedule attached)	$ 90,266.41
1998	Oil and gas working interest (schedule attached)	$ 78,493.46
	See attachment No. 2	$

Financial Disclosure Report
For Calendar Year 1998
Date of Report -

Attachment No. 1

I. Positions (Cont'd)

Position	Name of Organization/Entity
3. President and sole shareholder	T. John Ward, P.C. (a professional corporation, Texas)
4. Partner through T. John Ward, P.C. (see 3 above)	Brown McCarroll & Oaks Hartline, LLP

Financial Disclosure Report
For Calendar Year 1998
Date of Report -

Attachment No. 2

III. Non-Investment Income

Date	Source and Type	Gross Income
1997	Oil and gas royalty (schedule attached)	1,181.56
1998	Oil and gas royalty (schedule attached)	500.13
1997	T. John Ward, P.C. (a tax option, Sub-S corporation)	13,472.00
1998	T. John Ward, P.C. (a tax option, Sub-S corporation)	unknown
1997	WSP Farmout Partnership	5,302.00
1998	WSP Farmout Partnership	unknown

T. John Ward
Recap of Oil & Gas Income
1997 & 1998

Supplemental Report
Attachment No. 2

Payor	1998 Gross Income	1997 Gross Income
Working Interest:		
The Long Trusts	617.79	1,202.33
The Long Trusts		176.25
Conquest Energy, Inc.	361.79	517.16
Segrest-Ward Joint Venture	13,751.50	27,641.40
Cook Exploration Company	39,532.97	44,022.38
Scurlock Permian Corporation		14.88
Key Production Company, Inc.	2,355.71	3,405.86
Winchester Production Company	21,869.15	13,286.15
Twin Montana, Inc.	4.55	
	78,493.46	90,266.41
Royalties:		
4-Sight Operating		0.93
American Natural Crude Oil Acq.	0.91	2.81
Amoco Production Company	26.93	12.52
Birdsong-Gabriel	1.07	1.46
Buffco Production, Inc.	0.13	
Byron Roach, Trustee	10.22	
Chevron Oil Company	0.05	
Chevron Oil Company	0.01	
Cook Exploration Company		204.21
C.W. Resources, Inc.		45.93
C.W. Resources, Inc.	93.19	163.83
Diamond Shamrock	27.40	
Dynergy Midstream	25.03	
Eastex Crude		1.12
Enserch Exploration	1.87	1.92
Eott Energy Operating L.P.		22.69
Exxon Corporation		107.95
Falco S&D, Inc.	1.61	
Gene Powell Investments		0.60
Genesis Crude Oil		6.54
Goldston Oil Corporation	11.66	15.46
Hassie Hunt Exploration	6.72	9.65
Hunt Trust Estate		0.87

T. John Ward
Recap of Oil & Gas Income
1997 & 1998

Supplemental Report
Attachment No. 2

Payor	1998 Gross Income	1997 Gross Income
Jeral W. Jackson	0.33	0.58
JKJ Oil Company	125.71	331.01
Koch Oil Company	3.16	
Jones Company, Ltd.		0.66
Longhorn Production Company	3.79	
Louis Dreyfus Natural Gas	2.23	
Lynx Energy Co, Inc.		10.79
Merit Energy Company	5.97	9.45
Merit Energy Company	24.89	12.45
Mitchell Energy Corporation	28.63	25.94
Mobil Texas Oil Royalty Class Action	0.17	
Mustang Operating Company	17.18	33.03
Oryx Energy Company	16.54	
Oxy USA, Inc.		2.28
Petro Hunt, LLC	0.50	
The Pickens Company	1.47	
Pride Oil Company	19.53	
Roosth & Genecov Production		0.61
Roosth & Genecov Production		0.58
R. Byron Roach		11.01
Scurlock Permian Corp.	6.02	13.78
Sonora Petroleum		0.95
Statewide Crude Oil Co.	0.54	
Sun Refining & Marketing Co.	11.33	13.75
Texaco Exploration & Production		16.73
The Pickens Co.		2.03
Total Minatome Corp.		0.66
T.M. Hopkins Operating	0.04	0.17
UMC Petroleum Corp.		25.15
Union Gas Operating Co.		1.09
Valance Operating Co.	0.25	
Verado Energy	8.46	8.70
Warren NGL, Inc.	5.93	39.35
Western Gas Resources, Inc.	9.94	6.08
Western Gas Resources, Inc.		14.63
Wm. Herbert Hunt Trust Estate	0.72	1.61
	500.13	1,181.56

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Ward, T. (Thomas) John

Date of Report: 1/8/99

IV. REIMBURSEMENTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
XX	* NONE (No such reportable reimbursements.)	
1	* Exempt, Section 102(b)(1)., Section 102(h)	
2		
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
XX	*NONE (No such reportable gifts.)		
	* Exempt, Section 102 (b) (1), Section 102(h)		$
			$
			$
			$

I. LIABILITIES. *(Includes those of spouse and dependent children; indicate, where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
	NONE (No reportable liabilities.)		
	Hibernia National Bank of Texas	Signature Loan (J)	L*
	(formerly First National Bank-Marshall)		
	First City National Bank	real estate note (J)	K
	See Attachment No. 3		
	At December, 1997, value code was "M" for item #1		

Financial Disclosure Report
For Calendar Year 1997, 1998

ATTACHMENT #3
IV. Liabilities

Schedule of Contingent Liabilities

Note 1 - Personal Contingent Liabilities

I am contingently liable on the following note payable:

City National Bank - Longview, secured by four acre tract on Loop 281	58,667.00

Note 2 - Contingent Liability - Brown McCarroll & Oaks Hartline

I have certain contingent liabilities associated with Brown McCarroll & Oaks Hartline, a limited liability partnership, regarding leased office space (see Exhibit A). No obligations are in default as of December 31, 1998. The net worth of the partnership was $12,842,000 as of November 30, 1998. Partners have no individual liability on notes payable to banks.

EXHIBIT A
TO ATTACHMENT #3 OF
FINANCIAL DISCLOSURE REPORT

BROWN McCARROLL & OAKS HARTLINE, LLP
PARTNERS' CONTINGENT LIABILITIES
As of November 30, 1998

1. Lease of office space at 111 Congress Ave., Austin, Texas

Term:	10 years (from September 1994)
Sq. Footage:	Approximately 91,949
Lease Amount:	$15.69 per sq. ft. until September 20, 1998 and prevailing market rate as of September 20, 1998 for remaining term of the lease.
Personal Liability:	Each partner is severally liable for an amount equal to such partner's ownership percentage times the "Accrued Liability Amount". The "Accrued Liability Amount" means the sum of $41,666.67 multiplied by the number of months which has elapsed from September 2, 1994. Maximum total personal liability for all partners is $2,000,000, which occurs on September 20, 1998. Partner's personal liability will be released on September 20, 2000.

2. Lease of office space at The Crescent, Dallas, Texas

Term:	10 years (from June 1, 1991)
Sq. Footage:	26,422
Lease Amount:	$20 per sq. ft. for 18,477 sq. ft; $26 per sq. ft. for 3,525 sq. ft; $29.50 per sq. ft. for 4,420 sq. ft.
Personal Liability:	Partners have joint and several liability not to exceed an aggregate of $600,000. Commencing on the sixth anniversary date of the lease and each year thereafter, partner obligation is reduced by $120,000.

3. Lease of office space at TriWest Plaza, Dallas, Texas

Term:	3 years from September 1, 1996
Sq. Footage:	2,109
Lease Amount:	$17.00 per sq. ft.
Personal Liability:	Joint and several

4. Lease of office space at American General Tower, 2727 Allen Parkway, Houston, Texas

Term:	5 years from January 1, 1997
Sq. Footage:	24,682
Lease Amount:	13,934 sq. ft. @ $12.50 10,748 sq. ft. @ $12.50
Personal Liability:	Joint and several

5. Lease of office space in the Energy Centre, Longview, Texas

Term:	5 years from January 15, 1994
Sq. Footage:	5,222
Lease Amount:	$9.50 per square foot including expenses.
Personal Liability:	Joint and several

6. Lease of office space at 204 South Wellington, Marshall, Texas

Term:	3 years from April 30, 1997
Sq. Footage:	2,000
Lease Amount:	$9.00 per square foot
Personal Liability:	Joint and several

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Ward, T. (Thomas) John

Date of Report: 1/8/99

VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

Description of Assets (including trust assets) *Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse; "(S)" for separate ownership by spouse; "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	Income during reporting period (1) Amt. Code1 (A-H)	(2) Type (e.g., div., rent or int.)	Gross value at end of reporting period (1) Value Code2 (J-P)	(2) Value Method Code3 (Q-W)	Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month-Day	(3) Value Code2 (J-P)	(4) Gain Code1 (A-H)	(5) Identity of investment (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
1 Tuboscope, Inc. (J)	A	div	J	T	Exempt, Section 102(b)(1)				
2 City of Longview Bond (J)	A	int	J	T	Exempt, Section 102(b)(1)				
3 Texas Capital Value Fund (J)	A	div	K	T	Exempt, Section 102(b)(1)				
4 Am. Skandia Annuity (J)	* none	n/a	K	T	Exempt, Section 102(b)(1)				
5 Northbrook Life Ins. V/A (J)	* none	n/a	M	T	Exempt, Section 102(b)(1)				
6 Northbrook Life Ins. V/A (J)	* none	n/a	K	T	Exempt, Section 102(b)(1)				
7 Dean Witter Am. Value Fund (G)	A	div	J	T	Exempt, Section 102(b)(1)				
8 DW - Dividend Growth Fund (J)	A	div	J	T	Exempt, Section 102(b)(1)				
9 DW-Strategist Fund (J)	A	div	J	T	Exempt, Section 102(b)(1)				
10 DW-Capital Growth (J)	B	div	J	T	Exempt, Section 102(b)(1)				
11 DW-Global Dividend (J)	A	div	J	T	Exempt, Section 102(b)(1)				
12 Hibernia Natl. Bank CD (J) (1)	B	int	K	T	Exempt, Section 102(b)(1)				
13 Hibernia Natl. Bank CD (J) (1)	C	int	K	T	Exempt, Section 102(b)(1)				
14 SW Lease Properties #1 ** (J)		rent			sold	8/31	M	G	R & S Miller Ltd. Partnership
15 SW Lease Properties #2 ** (J)		rent			sold	8/31	K	E	R & S Miller Ltd. Partnership
16 Kenton Co., Kentucky Airport Bond (J)	A	int			sold	11/4	J		McCarty & Co.
17 *income is deferred									
18 See Attachment No. 4									

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-$1,000,000; H1=$1,000,001-$5,000,000; H2=More than $5,000,000
(See Col. C1, D1)

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; 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
(See Col. C1, D1)

3. Value Method Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book value; V=Other; W=Estimated

(1) formerly First National Bank-Marshall

Financial Disclosure Report
For Calendar Year 1998
Date of Report -

Attachment No. 4

VII. Investments and Trusts

No.	Description			Amount Code	Type	Value Code	Value Method
17	Oil and gas minerals (Texas)	(J)		B	rent	M	W
18	NE Territory Addn LLC	(J)	**	none	N/A	L	W
19	Las Cruces Associates	(J)	**	none	N/A	J	W
20	Dean Witter (IRA)		*	none	N/A	L	T
21	Dean Witter (IRA)	(S)	*	none	N/A	L	T
22	Bell County, Texas Health Facility Development Bond	(J)		A	int	J	T
23	Longview Bank & Trust CD	(J)		C	int	L	T
24	Hibernia National Bank Super NOW Account (1)	(J)		A	int	J	T
25	1/6th undivided interest in unimproved real estate, Longview, Gregg County, Texas	(J)		none	N/A	M	W
26	Capital account relative to Brown McCarroll & Oaks Hartline, LLP held through T. John Ward, P.C.	(J)		none	N/A	M	T

** Filer can not direct, influence, or in any manner affect the purchase, exchange, sale or disposition of the entity or property owned by the entity.

NOTE: Reporting individual is a participant in the retirement program of Brown McCarroll & Oaks Hartline, through his interest in the partnership owned by T. John Ward, P.C. However, the individual possesses no control over these investments other than choice of investment type. The current value of this investment is value code M.

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting: Ward, T. (Thomas) John	Date of Report: 1/8/99

III. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, to the best of my knowledge after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered his report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome ich litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is rate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met cable 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 liance with the provisions of 5 U.S.C. app. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

ature T. John Ward Date 1/8/99

E: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE JECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C. App. 4, § 104.)

FILING INSTRUCTIONS:

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	251	000	00	Notes payable to banks–secured		-0-	
U.S. Government securities--add schedule				Notes payable to banks–unsecured	80	000	00
Listed securities–add schedule Sch. #1	91	159	00	Notes payable to relatives			
Unlisted securities--add schedule Sch. #2	20	000	00	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others (estimate)	100	000	00	Other unpaid tax and interest			
Doubtful				Real estate mortgages payable–add schedule			
Real estate owned–add schedule Sch. #3	380	000	00	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts–itemize:			
Autos and other personal property	75	000	00	Household - estimated	8	500	00
Cash value–life insurance							
Other assets–itemize:							
orking interest Oil & Gas							
producing properties	225	000	00				
ee attached Schedule #4	614	543	00	Total liabilities	88	500	00
				Net Worth	1,668	202	00
Total Assets	1,756	702	00	Total liabilities and net worth	1,756	702	00
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor See Schedule #5				Are any assets pledged? (Add schedule.)Yes, see Schedule #6			
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 4/15/99	10	000	00				
Other special debt							

SCHEDULE 1

Schedule of Listed Securities

1.	600 shares of Tuboscope Inc. held in the name of T. John Ward	$	13,200.00
2.	Texas Capital Value Funds, a mutual fund held in the name of T. John Ward	$	24,180.00
3.	Dean Witter Mutual Funds account in the name of Elizabeth C. Ward	$	53,779.00
	Total	$	91,159.00

SCHEDULE 2

Schedule of Unlisted Securities

1.	City of Longview, Texas Municipal Bond	$	10,000.00
2.	Bell County, Texas Health Facility Development Corporation	$	10,000.00
	Total Value	$	20,000.00

SCHEDULE 3

Schedule of Real Estate

1.	Homestead on 43.5 acres Gregg County, Texas	$	175,000.00
2.	Undivided 1/6th interest in 4 acre tract on Loop 281, Longview, Texas (net value)	$	140,000.00
3.	Limited Partnership Interest in Northwest Territory Addition, L.L.C., a real estate development in Garden City, Kansas	$	65,000.00
	Total	$	380,000.00

SCHEDULE 4

Schedule of Other Assets

1.	Dean Witter IRA Standard Account in name of T. John Ward	$	77,980.00
2.	Dean Witter Variable Annuity Policy issued by Northbrook Life Insurance Company in the name of T. John Ward	$	159,497.00
3.	American Skandia Life Assurance Variable Annuity Policy issued in the name of T. John Ward	$	35,200.00
4.	Capital Account in Brown McCarroll & Oaks Hartline held in the name of T. John Ward, P.C.	$	106,000.00
5.	Interest in Brown McCarroll & Oaks Hartline Employee Retirement Plan and Trust in the name of T. John Ward	$	146,609.00
6.	Rauscher Pierce Refsner, Inc. Money Market Account in the name of T. John Ward	$	2,550.00
7.	CIBC Oppenheimer Corporation Money Market Account in the name of T. John Ward	$	4,175.00
8.	Dean Witter Variable Annuity Policy issued by Northbrook Life Insurance Company in the name of Elizabeth C. Ward	$	22,627.00
9.	Dean Witter IRA Standard Account in the name of Elizabeth C. Ward	$	59,905.00
	Total	$	614,543.00

SCHEDULE 5

Notes to Financial Statement

Note 1 - Method of Presentation

The estimated values in the accompanying statement were determined by T. John Ward and are not based on independent appraisals. All joint ventures and real estate investments are valued at the estimated fair market value of assets in excess of the related liabilities. Any tax liability arising from the realization of values presented in this statement is not herein recognized as a liability.

Note 2 - Personal Contingent Liabilities

I am contingently liable on the following note payable:

City National Bank - Longview, secured by four acre tract on Loop 281	88,000.00

Note 3 - Contingent Liability - Brown McCarroll & Oaks Hartline

I have contingent liabilities associated with Brown McCarroll & Oaks Hartline, a limited liability partnership. I own 3.86% of this partnership through T. John Ward, P.C. No obligations are in default as of December 31, 1998. The net worth of the partnership was $12,842,000 as of November 30, 1998. Partners have no individual liability on notes payable to banks. Partners are jointly and severally liable on the lease obligations at all office locations except Austin, Texas. The liability for the Austin office location is several and expires in September 2000. The Austin office is the largest office of the firm. The lease obligations are as shown on the attached Exhibit A.

Note 4 - Capital Account - Common Stock - T. John Ward, P.C.

The capital account held through stock ownership in the professional corporation, T. John Ward, P.C., is with the law firm Brown McCarroll & Oaks Hartline. For valuation purposes presented herein, the amount of $106,092 represents the amount due the professional corporation upon voluntary or involuntary separation from the firm. In the event of the firm's liquidation, the professional corporation, wholly owned by me, would receive $398,420 pursuant to the partnership agreement. In the event of death, the partnership has insurance which would pay the amount of $398,420 to my estate.

SENATE III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

With respect to pro bono legal activities, one of the most significant trials of my career involved the representation of two brothers in a criminal tax case. My involvement in that case was extensive and the case was ultimately tried twice. Each trial lasted six days. The amount of time spent on these matters was extensive. Because the cases were tried twice, the value of time spent on the case represented a substantial investment. Several years later my client sent me a substantial payment.

Over the course of the past several years, I have represented an elderly gentleman who at one time had been somewhat successful. Five years ago he essentially became insolvent. From time to time he needs the advice of counsel. He has been sued numerous times for debts, and I have tried to negotiate the best settlement possible.

I am currently representing a woman who has been sued in Harris County, Texas, over a debt she does not legitimately owe. This case has continued for approximately two years. I have devoted approximately $7,500 to this project.

I provide legal services at discounted rates to various public entities, including schools and public mental health and retardation centers. Moreover, I provide legal services free to local churches on issues such as governance, wrongful discharge and alleged sexual misconduct.

In 1992-1993, I devoted a substantial amount of time to the representation of a principal involved in a dispute with her employer, Tyler Independent School District. We were able to negotiate a very favorable settlement, which included all payment due under her contract plus an additional year's salary. I accepted the case pro bono and performed all of the services without any expectation of receiving payment. However, after the matter was resolved, we discovered that the principal had an insurance policy through her professional association. We received a partial payment for the value of my services. I shared the funds received with attorney Charles Clark of Tyler, Texas, because I had prevailed upon him to assist me on a pro bono basis.

With respect to additional civic activities, I have served on various charitable boards such as the Advisory Board of the East Texas Literacy Council and Board of the Good Shepherd Foundation. I presently serve on the Board of Trustees of Good Shepherd Medical Center, the local not-for-profit hospital. This is my second term.

SCHEDULE 6

Schedule of Pledged Assets

1. The assets of Brown McCarroll & Oaks Hartline, L.L.P. are pledged to secure the liabilities of Brown McCarroll & Oaks Hartline. Any default by Brown McCarroll & Oaks Hartline would impact the payment of $106,000 as a return of capital in the event of withdrawal.

EXHIBIT A
TO SCHEDULE 5 OF
FINANCIAL STATEMENT

BROWN McCARROLL & OAKS HARTLINE, LLP
PARTNERS' CONTINGENT LIABILITIES
As Of November 30, 1998

1. Lease of office space at 111 Congress Ave., Austin, Texas

Term:	10 years (from September 1994)
Sq. Footage:	Approximately 91,949
Lease Amount:	$15.69 per sq. ft. until September 20, 1998 and prevailing market rate as of September 20, 1998 for remaining term of the lease.
Personal Liability:	Each partner is severally liable for an amount equal to such partner's ownership percentage times the "Accrued Liability Amount." The "Accrued Liability Amount" means the sum of $41,666.67 multiplied by the number of months which has elapsed from September 2, 1994. Maximum total personal liability for all partners is $2,000,000, which occurs on September 20, 1998. Partner's personal liability will be released on September 20, 2000.

2. Lease of office space at The Crescent, Dallas, Texas

Term:	10 years (from June 1, 1991)
Sq. Footage:	26,422
Lease Amount:	$20 per sq. ft. for 18,477 sq. ft; $26 per sq. ft. for 3,525 sq. ft.; $29.50 per sq. ft. for 4,420 sq. ft.
Personal Liability:	Partners have joint and several liability not to exceed an aggregate of $600,000. Commencing on the sixth anniversary date of the lease and each year thereafter, partner obligation is reduced by $120,000.

3. Lease of office space at TriWest Plaza, Dallas, Texas

Term:	3 years from September 1, 1996
Sq. Footage:	2109
Lease Amount:	$17.00 per sq. ft.
Personal Liability:	Joint and several

4. Lease of office space at American General Tower, 2727 Allen Parkway, Houston, Texas

Term:	5 years from January 1, 1997
Sq. Footage:	24,682
Lease Amount:	13,934 sq. ft. @ $12.50 10,748 sq. ft. @ $12.50
Personal Liability:	Joint and several

5. Lease of office space in the Energy Centre, Longview, Texas

Term:	5 years from January 15, 1994.
Sq. Footage:	5222
Lease Amount:	$9.50 per square foot including expenses.
Personal Liability:	Joint and several

6. Lease of office space at 204 South Wellington, Marshall, Texas

Term:	3 years from April 30, 1997
Sq. Footage:	2000
Lease Amount:	$9.00 per square foot
Personal Liability:	Joint and several

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe that the proper role of a judge is to apply the law as it is enacted by the legislature. Moreover, I believe that judges, particularly those at the trial level, should faithfully apply the law as interpreted by the higher courts. This approach permits society to structure its conduct according to existing law and reserves to the public the power to change that law through the proper channels. I believe it is extremely important, if at all possible, for people to be able to determine, in advance, whether certain conduct is legally proscribed. Given the number of transactions entered with an eye toward the legal ramifications, a judge's rulings should seek to apply existing legal principles to foster that concept. I believe the public expects no less. Because federal district court jurisdiction is granted by Congress, those jurisdictional grants should be the starting and ending points for most questions involving access to the federal courts. Given the workload of the federal courts, a judge should scrutinize the personal stake alleged in the controversy to determine whether it falls within

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

From about 1984 to 1992, I was a member of Pinecrest Country Club of Longview, Texas. The club does not now, and did not when I was a member, discriminate in its membership policies on any basis whatsoever. However, during the time I was a member, the club's by-laws provided for preferential golf tee times for men, and for a separate card room for men. (Those policies have since changed.) Because I played neither golf nor cards at the club, and used only the dining facilities several times a year, I was not aware of these policies until I inquired about them for the purposes of answering this question.

When I was about 13 years old, I became a member of the Boy Scouts of America. That group discriminated on the basis of sex. While attending Texas Tech, I was also a member of Alpha Phi Omega, a national service fraternity. One of its requirements was to be a member of the Boy Scouts of America. Finally, as an undergraduate student at Texas Tech University, I pledged and became a member of Phi Delta Theta, a men's social fraternity.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission in this jurisdiction. In the summer of 1997 I contacted U.S. Representatives Ralph Hall and Max Sandlin and made them aware of my interest in the position should it become available. Through fellow lawyers, I made U.S. Representatives Nicholas Lampson and Jim Turner aware of my interest. Upon Judge Justice's announcement of his intention to take senior status, I personally contacted Representatives Hall, Sandlin, Lampson and Turner. I requested other lawyers to write letters in support of my selection and asked them to solicit others to support my nomination. At the suggestion of Representative Sandlin I visited each of these Representatives in Washington, D.C. in early May 1998, along with Representative Martin Frost. I have also stayed in contact with Representatives Hall and Sandlin by telephone throughout this process.

Following the submission to The White House of my name along with the name of Greg Thompson, I have been interviewed by the Federal Bureau of Investigation, Department of Justice, and the American Bar Association. I have also been interviewed by representatives of Senator Phil Gramm and Senator Kay Bailey Hutchison.

a jurisdictional grant. The statutory grounds for jurisdiction, coupled with the Federal Rules of Civil Procedure, provide very specific parameters governing the rights of litigants to utilize the federal courts. A judge's role is to apply those principles and the governing substantive law. By fulfilling this role, a judge demonstrates a sense of fairness which assures a fair resolution of the matters before him or her, regardless of a party's race, religion, sex, situation in life, representation, or other irrelevant matters.

LONGVIEW:65198.1
17356.89455

Response of Honorable Ann Claire Williams
to Senate Judiciary Committee Questionnaire

I. BIOGRAPHICAL INFORMATION (Public)

1. Full name (include any former names used.)

   Ann Claire Williams

2. Address: List current place of residence and office address(es).

Residence	Office
Chicago, IL	United States District Court Northern District of Illinois 219 South Dearborn Street Room 1988 Chicago, IL 60604

3. Date and place of birth.

   August 16, 1949
   Detroit, Michigan

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   David Jonathan Stewart
   Senior Vice President
   Amalgamated Bank of Chicago
   1 West Monroe
   Chicago, IL 60603

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

1972-1975	University of Notre Dame Law School, Notre Dame, Indiana *Juris Doctor, May 1975*
1970-1972	University of Michigan, Ann Arbor, Michigan *M.A. in Guidance and Counseling, May 1972*

1966-1970 Wayne State University, Detroit, Michigan
Bachelor of Science in Education, August 1970

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment

September 1969 to August 1972
Teacher
Detroit Board of Education

August 1973 to October 1975
Assistant Dorm Director
University of Notre Dame
Farley Hall

June 1974 to August 1974
Law Clerk
Hill, Jones and Farrington

September 1975 to August 1976
Judicial Law Clerk to Judge Robert Sprecher (deceased)
United States Court of Appeals for the Seventh Circuit

October 1976 to May 1985
United States Attorneys' Office for the Northern District of Illinois

1. Assistant United States Attorney
   Criminal Litigation Division
   October 1976 - December 1980

2. Deputy Chief, Criminal Receiving and Appellate Unit
   December 1980 - February 1983

3. Organized Crime Drug Enforcement Task Force Chief
   February 1983 - May 1985

September 1977 to Present
Faculty Member
National Institute for Trial Advocacy

March 1980 to June 1984
Adjunct Professor in Trial Advocacy
Northwestern University Law School

June 1985 to Present
United States District Court Judge
United States District Court for the Northern District of Illinois

Board Memberships

Federal Judges Association
President, 1999-2001
President-Elect, 1997-1999
Treasurer and Board Member, 1993-1997

Federal Bar Association, Chicago Chapter
1990 - Present

Just the Beginning Foundation
Founding Board Member and Chair, 1992 - present

National Association of Public Interest Law
Board Member 1996-1999

National Institute for Trial Advocacy
Board Member 1996 - Present

University of Chicago Laboratory Schools
Board Member, 1990 - Present

University of Notre Dame
Board Member 1987 - Present
Secretary 1997- Present

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Awards
The League of Black Women
1985 Black Rose Award

Illinois Judicial Council
1986 Edith S. Sampson Memorial Award
for Pioneering Judicial and Civic Service

Women of Wayne State University Alumni Association
1987 Headliner Award

National Bar Association Women Lawyers Division
1988 Achievement Award

City Council of the City of Philadelphia, Pennsylvania
1988 Citation Recognizing Career Achievements

National Black Prosecutors Association
1991 Distinguished Service Award

Internal Revenue Service
1992 Martin Luther King, Jr. Day Award

Cook County Bar Association
1993 Special Recognition Award

Black Women Lawyers Association of Chicago
1993 Distinguished Service Award

Black Alumni of Notre Dame
1994 Frazier Thompson Pioneer Award

National Institute for Trial Advocacy
1994 Distinguished NITA Faculty Member

Chicago Field Divisions of the Drug Enforcement Administration
and Federal Bureau of Investigation
1994 Distinguished Public Service Award

Federal Bureau of Prisons, Chicago, IL
1995 Black History Month Award

Black Women Lawyers Association of Chicago and
Women's Bar Association of Illinois
1995 Woman of Distinction Award

Chicago-Kent College of Law Black Law Students Association
1996 Thurgood Marshall Award

Chicago Bar Association
1997 Earl Burrus Dickerson Award
for Outstanding African-American Lawyer or Judge

University of Notre Dame Alumni Association
1997 Notre Dame Women's Award of Achievement

Minority Legal Education Resources, Inc.
1997 Award for Commitment and Excellence

Women's Bar Association of Illinois
1998 Women With Vision Award

Honorary Degrees

Lake Forest College
1987 Honorary Doctor of Laws

University of Portland
1993 Honorary Doctor of Public Service

University of Notre Dame
1997 Honorary Doctor of Law

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Professional Organizations (Judicial)

1. Federal Judges Association
   President, 1999-2001
   President-Elect, 1997-1999
   Treasurer and Board Member, 1993-1997

2. Court Administration and Case Management Committee
   Judicial Conference of the United States
   Chair, 1993 -1997
   Committee Member, 1990-1997

3. Executive Committee for the Northern District of Illinois and
   Judicial Council of the Seventh Circuit
   Member, 1993-1996

4. Federal Judicial Center, New Judges School for United States
   District Court Judges
   Faculty Member, 1990-1997

Professional Organizations (Legal)

1. Black Women Lawyers Association of Greater Chicago

2. Cook County Bar Association

3. Federal Bar Association, Chicago Chapter (1990 - Present)
   Board of Directors, 1990-Present

4. Illinois Judicial Council

5. Illinois State Bar Association

6. National Bar Association

7. Northern District of Illinois Trial Bar Committee (1981 - 1984)

8. National Institute for Trial Advocacy (1996 - Present)
   Board of Directors, 1996-Present

9. Women's Bar Association of Illinois

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Organizations Active in Lobbying
Federal Judges Association

Other Organizations

1. Just the Beginning Foundation
Founding Member and Chair, 1992 - present

2. Minority Legal Education Resources, Inc. (MLER)
Co-Founder and Member, 1977 - 1983

3. MLER Consortium of Law Schools and Bar Associations
Founder and Consortium Member, 1997 - present

4. National Association of Public Interest Law
Board Member 1996-1999

5. Union League Club
Member, 1989 - Present
(See Attached By-Laws)

6. University of Chicago Laboratory Schools
Board Member, 1990 - Present

7. University of Notre Dame
Member 1987 - Present
Secretary 1997- Present

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

1. Supreme Court of Illinois - October, 1975

2. U.S. District Court for the Northern District of Illinois - December, 1981

3. Federal Trial Bar for the Northern District of Illinois - December, 1982

4. United States Supreme Court - June, 1980

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Published Writings

Federal Courts, The Chicago Defender, April 1993

Going to Trial, Materials for presentation to Chicago Bar Association, Young Lawyer's Section, September 12, 1991 (with Judge James Zagel)

Going to Trial. Materials for presentation to Chicago Bar Association, Young Lawyer's Section, September 10, 1992 (with Judge James Zagel)

Going to Trial. Materials for presentation to Chicago Bar Association, Young Lawyer's Section, September 27, 1993 (with Judge James Zagel)

Motion Practice in Federal Courts. Materials for presentation to Chicago Bar Association, Young Lawyer's Section, September 21, 1993.

Open Letter to Article III Judges, InCamera: Federal Judges Association Quarterly Report, April 1999

Tributes to Senior Judge Abraham Lincoln Marovitz, CBA Record 27, May 1998.

Take It From the Top, InCamera: Federal Judges Association Quarterly Report, August 1999

Speeches with Notes

ABA
Litigation Section Annual Meeting
The Definitive Update on Federal Civil Procedure
April 23, 1998

American Judicature Society
Judges' Pet Peeves
June 25, 1989

Chicago Bar Association
Earl Dickerson Award Ceremony
October 22, 1998

Chicago Bar Association
Effective Litigation of Employment Cases
A View From The Bench
April 16, 1992

Chicago Bar Association
How I Run My Courtroom
April 17, 1991

Chicago Bar Association
Impact of Federal Criminal Changes Upon The
Federal System -- The Judicial Perspective
April 15, 1993

Chicago Bar Association
Jury Selection Seminar
1998

Chicago Bar Association
Lawyer Credibility in Litigation
April 28, 1988

Cook County Bar Association
Justice and Equality -- Is It More Than A Dream?
June 11, 1993

Federal Bar Association
New Judges Luncheon
September 24, 1986

Federal Women's Week
United States Department of Labor
April 29, 1987

Federal Women's Program Subcommittee
Scholarship Luncheon
June 14, 1990

Law Firm Summer Associate Luncheon
Advantages of Obtaining a Judicial Clerkship
June 25, 1991

MLER
Keeping a Positive Mindset
June 27, 1991
July 1, 1993
June 19, 1997
June 24, 1998
June 24, 1999

National Bar Association, Philadelphia Chapter,
Women's Lawyer's Division
Moving Into the Mainstream
June 8, 1988

National Black Prosecutors Association
June 13, 1986

Northwestern Law School
Observations From The Bench
August 4, 1986

Northwestern Law School
Public Interest Seminar
1997

Northwestern Law school
April 30, 1987

Notre Dame Recognition Ceremony
May 19, 1991

Roland Chamblee's Induction to Superior Court Bench
South Bend, Indiana
1990

Rotary Club
Law Day
May 5, 1998

Sorority Luncheon
Detroit, Michigan
Building Bridges for the Future
August 7, 1986

University of Portland
Commencement Address
May 2, 1993

Women's Bar Association of Illinois
Women With Vision Award
October 22, 1998

Speeches without notes

CACM
Appellate Case Management
November, 1998

Transcripts of Presentations/Testimony

Federal Judicial Center
Civil Trial Video Tape Transcript
April 8, 1998

Statement before the Subcommittee on Intellectual Property
and Judicial Administration of Committee on the Judiciary
U.S. House of Representatives
May 5, 1993

Statement before the Subcommittee on Courts and Administrative Practice of Committee on the Judiciary
U.S. Senate
October 29, 1993

Statement before the Subcommittee on Intellectual Property
and Judicial Administration of Committee on the Judiciary
U.S. House of Representatives
May 11, 1993

Statement before the Subcommittee on Courts and Intellectual Property of Committee on the Judiciary
U.S. House of Representatives
On H.R. 1252, "Judicial Reform Act of 1997"
May 14, 1997

Statement before the Subcommittee on Public Buildings and Economic Development of Committee on Transportation and Infrastructure
U.S. House of Representatives
On The Courthouse Construction Program and the Fiscal Year 1999 Budget
July 16, 1998

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. June, 1999.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed to the United States District Court for the Northern District of Illinois on June 14, 1985 and remain as a judge on that court. The United States District Court for the Northern District of Illinois has jurisdiction over lawsuits arising under federal statutes and the United States Constitution. The district court also has diversity jurisdiction under 28 U.S.C. § 1332.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Ten Significant Opinions

1. Aristotle P. v. Johnson, 721 F. Supp. 1002 (N.D. Ill. 1989)

2. Brye v. Brakebush, 32 F.3d 1179 (7th Cir. 1994)

3. Chrissafis v. Continental Airlines, Inc., 940 F. Supp. 1292 (N.D. Ill. 1996)

4. Comite Pro-Celebracion v. Claypool, 863 F. Supp. 682 (N. D. Ill. 1994)

5. Didzerekis v. Stewart, 41 F. Supp.2d 840 (N.D. Ill. 1999)

6. In re Olympia Brewing Company Securities Litigation, 674 F. Supp. 597 (N.D. Ill. 1987)

7. Metzl v. Leininger, 850 F. Supp. 740 (N.D. Ill. 1994)

8. Treece v. Village of Naperville, 903 F. Supp. 1251 (N.D. Ill. 1995)

9. United States v. Pitt-Des Moines, 970 F. Supp. 1346 (N.D. Ill. 1997)

10. Wiley v. International Association of Machinists and Aerospace Workers, No. 94 C 3958, 1994 WL 329932 (N.D. Ill. July 6, 1994)

(2) Appellate reversal summaries

Carr v. O'Leary, 167 F.3d 1124 (7th Cir. 1999)

Carr, an inmate, brought § 1983 action against prison warden and director of state prison system for alleged due process violation, based on punishment imposed on him for missing morning count as result of prison riot. After partial summary judgment on liability had been granted in inmate's favor, warden and director moved to dismiss and the motion was granted, 1996 WL 598942. Carr appealed. The Seventh Circuit held that: (1) warden and director waived defense that inmate's § 1983 claim was barred on grounds that claim improperly challenged punishment's validity, and (2) grounds did not exist for relieving warden and director of their waiver. Reversed and remanded.

Tice v. American Airlines, 162 F.3d 966 (7th Cir. 1998)

Former airline pilots brought action against airline under Age Discrimination in Employment Act (ADEA), challenging airline's policy of refusing to allow 60- year-old pilots to downbid to flight officer positions. I denied airline's motion to change venue, 959 F. Supp. 928, and granted airline's motion for judgment on the pleadings on claim preclusion grounds. Former pilots and airline appealed. The Seventh Circuit held that:

(1) action was not subject to claim preclusion resulting from earlier suits essentially challenging same downbidding policy, and (2) District Court did not abuse its discretion in declining to transfer venue from Illinois to Texas. Affirmed in part; reversed and remanded in part.

United States v. Sapoznik, 161 F.3d 1117 (7th Cir. 1998)

Police chief was convicted on his plea of guilty of violating Racketeer Influenced and Corrupt Organizations Act (RICO) by taking bribes to protect illegal gambling in town's bars and restaurants. Defendant appealed his sentence. The Seventh Circuit held that: (1) there was insufficient evidence to permit an approximation of net benefits generated by bribes received by defendant, as required to support calculation of base offense level; (2) defendant's receipt of similar bribes in his previous job was properly deemed "relevant conduct"; (3) district court properly assessed additional punishment points for obstruction of justice; and (4) district court did not abuse it discretion in ordering defendant to repay city one year's salary as restitution. Sentence vacated and case remanded for re-sentencing based on new calculation of benefits generated by defendant's bribes.

Bennett v. Roberts, 1998 WL 778308 (7th Cir. 1998)
Bennett v. Schmidt, 153 F.3d 516 (7th Cir. 1998)

Prospective employee filed action against two school districts and their respective school board members alleging employment discrimination and a conspiracy to discriminate against her in hiring and promotion because of her race, and sought to proceed as class action. On defendants' motion, I dismissed prospective employee's conspiracy claim for failure to state a claim and ordered lawsuits against the school districts and their board members to be severed, 1996 WL 495555. I granted defendants' motions for failure to state a claim. On appeal in both cases, the Seventh Circuit that: (1) fact that complaint used 12 pages to set out a claim that could have been stated in 6 pages did not justify dismissal for violation of rule requiring short and plain statement of claim, and (2) general allegations of racial discrimination in employment and intent by employer were sufficient to overcome motion to dismiss for failure to state a claim. Vacated and remanded.

United States v. Infelise, 159 F.3d 300 (7th Cir. 1998)

Following Racketeer Influenced and Corrupt Organizations Act (RICO) convictions, government sought to forfeit property and I ordered forfeiture of some assets, 938 F. Supp. 1352. Defendant and his wife appealed, and government cross-appealed. The Seventh Circuit held that: (1) Court of Appeals had jurisdiction over government's appeal from district court's refusal to forfeit particular asset under

RICO's substitute assets provision; (2) defendant's life insurance annuity was subject to forfeiture under substitute assets provision; and (3) "tainted" assets could be forfeited under substitute assets provision. Affirmed in part, reversed in part, and remanded with instructions. Rehearing and Suggestion for Rehearing En Banc Denied Nov. 23, 1998.

Walker v. Wallace Auto Sales, Inc., 155 F.3d 927 (7th Cir. 1998)

Automobile buyers brought suit alleging that seller and finance company which had taken assignment of their sales contract systematically imposed hidden finance charges on automobile purchases in violation of Truth in Lending Act (TILA), Racketeer Influenced and Corrupt Organizations Act (RICO), Illinois Consumer Fraud Act, and Illinois Sales Finance Agency Act. I dismissed suit, and buyers appealed, 1997 WL 598149. The Court of Appeals held that: (1) buyers stated claim against seller under TILA, but (2) buyers did not state claim against finance company under TILA. Affirmed in part, and reversed and remanded in part.

Jenkins v. Nelson, 157 F.3d 485 (7th Cir. 1998)

Following convictions for aggravated battery and felony-murder, 190 Ill. App. 3d 115, 137 Ill. Dec. 225, 545 N.E.2d 986, defendant petitioned for habeas corpus and I granted the petition. The Seventh Circuit held that: (1) petitioner was not procedurally barred from challenge to felony murder instructions by failing to object to the instructions at trial; (2) non-Pattern felony-murder instructions were erroneous since they were insufficient to make the jury aware of the requirement that defendant's acts contributed to the death; (3) to determine on habeas review harmlessness of instruction omitting element of the offense, Court of Appeals must make de novo examination of the record as a whole to determine whether trial error had a substantial and injurious effect or influence in determining the jury's verdict; (4) instructional error in present case was harmless; and (5) instruction on both bodily harm and insulting contact types of aggravated battery, when defendant was charged only under the bodily harm prong, did not constitute an impermissible constructive amendment of the indictment, and thus counsel was not ineffective in failing to object. Reversed and remanded.

United States v. Senn, 129 F.3d 886 (7th Cir. 1997)

Defendants were convicted of conspiracy to import marijuana, distribute marijuana, commit mail fraud, wire fraud, and money laundering. Defendants appealed. The Seventh Circuit held that: (1) failure to disclose prosecution witness's entire criminal record was not Brady violation; (2) prosecution's closing arguments did not impermissibly comment on defendant's invocation of their Fifth Amendment right not to testify; (3) to enhance defendant's base offense by two levels, under sentencing guidelines, on grounds that defendant acted as captain of vessel carrying controlled substance, prosecution was not required to show that defendant exercised special skill; (4) guilty plea only three days before scheduled start of narcotics trial was not

timely, for purposes of sentencing guideline permitting 1-point reduction for acceptance of responsibility under circumstances permitting government to avoid preparing for trial and permitting court to allocate its resources accordingly; (5) defendant's base offense level was properly increased, under sentencing guidelines, for entire amount that his telemarketing scam netted, rather than amount by which he personally defrauded victims; but (6) district court erred in applying obstruction of justice sentence enhancement to defendant who admitted, before grand jury, his involvement in conspiracy to distribute marijuana, even if he prevaricated about some details of crime. Affirmed in part, vacated in part, and remanded in part.

Alliance to End Repression v. Cispes, 119 F.3d 472 (7th Cir. 1997)

Organization brought action to enforce consent decree entered in class action against federal agencies and individual defendants, alleging unlawful infiltration, surveillance, and harassment of the plaintiffs, who were individuals and organizations residing in or located in City of Chicago. I found that Federal Bureau of Investigation (FBI) had violated decree and awarded attorney fees, 1994 WL 86690, and FBI appealed. The Court of Appeals held that: (1) FBI's conduct could not constitute serious intentional noncompliance with decree if FBI acted only negligently, and (2) organization was not entitled to attorney fees. Fee award vacated; judgment reversed and remanded.

Dixon v. Godinez, 114 F.3d 640 (7th Cir. 1997)

State prisoner brought § 1983 action against prison officials, alleging that conditions of his confinement in protective custody wing violated Eighth Amendment. I granted summary judgment in favor of officials, and prisoner appealed, 1995 WL 42229. The Seventh Circuit held that: (1) issues of fact as to whether clothes and bedding issued to prisoner adequately protected him from cold temperatures in cell, and as to officials' allegedly deliberate indifference, precluded summary judgment on claim that cold violated Eighth Amendment, but (2) poor ventilation in cell during summer did not violate Eighth Amendment. Affirmed in part and reversed and remanded in part.

In the Matter of United States Brass Corp., 110 F.3d 1261 (7th Cir. 1997)

Texas debtor, a plumbing systems manufacturer, appealed after the Bankruptcy Court for the Northern District of Illinois, Ronald Barliant, J., granted insurers' request that it abstain from hearing six adversary proceedings that involved disputes over extent of liability insurance coverage and I, 198 B.R. 940, affirmed. The Court of Appeals, held that: (1) mere fact that bankruptcy court may have erred in concluding that there was equitable ground to remand removed proceeding did not permit review of remand order; (2) actions which had been removed to bankruptcy court, for declaratory judgment as to scope of debtor's insurance coverage, were equitable in nature, for purposes of deciding whether equitable doctrine of abstention applied; and (3) proceedings brought for determination of coverage provided by debtor's insurance

policies were "noncore proceedings," for abstention purposes, notwithstanding importance of coverage question to debtor's bankruptcy case. Affirmed in part, vacated in part, and remanded.

Rockwell Graphic Systems, Inc. v. DEV Industries, Inc., 91 F.3d 914 (7th Cir. 1996)

Manufacturer of commercial printing equipment, after obtaining injunctions prohibiting competitor from disclosing its trade secrets, moved for rule to show cause why competitor's successor and its former president should not be held in contempt for violating injunctions. The court denied manufacturer's motion without evidentiary hearing, and manufacturer appealed. The Seventh Circuit held that: (1) party who seeks enforcement of injunction through medium of civil contempt is entitled, as matter of due process, to resolution of genuine issues of material fact that bear upon allegations by which it seeks to support finding of contempt, and (2) district court abused its discretion in limiting its inquiry to privity issue without resolving genuine issues of material fact. Vacated and remanded. Eschbach, Circuit Judge, filed concurring opinion.

Creek v. Village of Westhaven, 80 F.3d 186 (7th Cir. 1996)

Developer filed civil rights action and sought damages for a municipality's and homeowners' association's attempts to prevent the developer from building a rent-supported apartment complex. I, 1995 WL 31587, entered summary judgment against the developer. Developer appealed. The Court of Appeals held that: (1) the developer could not recover damages for any lost profit that was due to changes in federal law during delays, inasmuch as the delays did not make it more likely that federal law would change adversely to the developer and, thus, the changes could not be deemed to have been "caused" by the municipality; (2) under Illinois law, res judicata did not bar the developer's suit for damages where, although the developer knew that he had lost valuable time when he sought injunctive relief as result of municipality's delay, he could not estimate his full damages because he did not know when he would obtain permit and necessary federal financing and be able to go forward with his project; and (3) the municipality was not protected by the homeowners' association's First Amendment immunity, but needed to establish its own immunity under the petition clause, for having filed suit to invalidate the federal approval of rent support for the developer's apartment complex. Reversed and remanded.

United States v. DiDomenico, 78 F.3d 294 (7th Cir. 1996)

Twenty defendants were convicted of conspiracy in violation of Racketeer Influenced and Corrupt Organizations Act (RICO) and predicate acts of extortion, bribery, murder, and other offenses. Defendants appealed. The Seventh Circuit held that: (1) absent showing of prejudice, defendants were not entitled to evidentiary hearing to determine whether prosecution had bugged defense attorney meeting room at jail; (2) empanelment of anonymous jury was not an abuse of discretion; (3) after

ascertaining inconsistency in verdict, district court did not have to ask whether verdict contained other clerical errors; (4) unpreserved error in instructions on tax counts was not plain error; (5) hearsay statement made by a defendant to prevent collapse of ongoing conspiracy, rather than to cover up finished conspiracy, was admissible against coconspirators; (6) unconvicted crimes could not be used under grouping provision of sentencing guidelines to derive additional base levels; and (7) defendant assumed risk of calculation error in sentencing range under plea agreement. Affirmed except for reversal of one defendant's sentence.

In the Matter of Mount Calvary Baptist Church, 70 F.3d 51 (7th Cir. 1995)

Multiperil insurer sued for declaratory judgment that multiperil policies had been canceled and that insurer was not liable to insured under policy. The Bankruptcy Court, David H. Coar, J., 162 B.R. 181, recommended that judgment be entered in favor of Chapter 11 debtor-insured, and insurer objected to Bankruptcy Court's proposed findings of fact and conclusions of law. The district court, 172 B.R. 880, entered judgment for insurer. Debtor appealed. The Court of Appeals held that multiperil insurance policy was in effect on day of debtor's fire. Reversed and remanded.

In the Matter of Statistical Tablulating Corp, Inc., 60 F.3d 1286 (7th Cir. 1995)

Government moved to reopen Chapter 11 case following remand of order appealed prior to dismissal of case. The United States Bankruptcy Court, Judge Thomas W. James, denied motion, and government appealed. The district court, 166 B.R. 322, affirmed, and further appeal was taken. The Seventh Circuit held that bankruptcy court had jurisdiction over remanded dispute. Reversed and remanded.

In the Matter of Scheri, 51 F.3d 71 (7th Cir. 1995)

In nondischargeability proceeding, the Bankruptcy Court held that debts were nondischargeable. Debtor appealed and I granted creditor's motion to dismiss appeal on ground that debtor failed to file appellate brief within 15 days of docketing date. Debtor appealed. The Court of Appeals held that: (1) dismissal of appeal is proper sanction when circumstances require it; (2) although Court of Appeals' review of district court's decision was very deferential, deferential review could not be equated with no review at all; and (3) remand was required to district court for sufficient explanation as to basis for court's determination that dismissal was appropriate sanction. Vacated and remanded.

Reinke v. Boden, 45 F.3d 166 (7th Cir. 1995)

Action was brought for breach of written guaranty of lease and the court dismissed action pursuant to doctrine of res judicata, based upon judgment of dismissal by Minnesota courts pursuant to Minnesota statute of limitations. Appeal

was taken. The Seventh Circuit held that, because statutes of limitations in Minnesota were procedural devices, Minnesota courts' conclusion that cause of action was barred by its statute of limitations was determination that action was time barred in Minnesota, and was not res judicata on whether it was time barred in Illinois. Reversed and remanded.

Dausch v. Rykse, 52 F.3d 1425 (7th Cir. 1994)

Church member brought action against church and pastor alleging that pastor had engaged in improper counseling conduct. Church and pastor moved to dismiss complaint, and I granted motion. Church member appealed, and the Court of Appeals held that: (1) complaint failed to state claim for negligence or negligent infliction of emotional distress against church; (2) dismissal of claim alleging negligent infliction of emotional distress on part of pastor which was not assigned as error was not properly before court and would not be considered; (3) complaint stated claim for professional negligence against pastor; (4) claim for breach of fiduciary duty by pastor and church would not be recognized under Illinois law; and (5) complaint stated claim against pastor for violation of Illinois Sexual Exploitation in Psychotherapy Act. Affirmed in part, reversed in part, and remanded. Coffey, Circuit Judge, concurred and filed opinion. Ripple, Circuit Judge, concurred in part and dissented in part in judgment and filed opinion.

Sherwin Manor Nursing Center, Inc. v. McCauliffe, 37 F.3d 1216 (7th Cir. 1994)

Jewish operators of nursing home brought § 1983 and § 1985(3) conspiracy suit against surveyors employed by state Department of Public Health, alleging that they had prepared unfavorable report containing "false, fabricated and meritless findings" because of an "anti-Semitic animus." The court dismissed complaint and appeal was taken. The Seventh Circuit held that operators could maintain claim that (1) was based on deprivation of equal protection rights, even though Department had withdrawn report and reinstated license; (2) report had violated their free exercise of religion rights; and (3) surveyors had engaged in conspiracy to deny operator's constitutional rights. Reversed.

Gaskill v. Gordon, 27 F.3d 248 (7th Cir. 1994)

In mortgage foreclosure proceeding, receiver for defaulting mortgagor filed motion to establish superior lien on mortgaged properties to compensate receiver for unreimbursed fees and expenses. The court established lien for $265,000 and mortgagee appealed. The Seventh Circuit held that: (1) district court's conclusion that actions of receiver benefitted mortgagee, warranting lien displacing mortgagee's prior mortgage, was not erroneous, and (2) record was insufficient for determination whether $265,000 figure represented appropriately amount of money owed receiver for expenses on properties at issue or whether it included expenditures made on other receivership properties. Affirmed in part, award vacated and case remanded.

United States v. Daddino, 5 F.3d 262 (7th Cir. 1993)

Defendants were convicted in the United States District Court for the Northern District of Illinois, 733 F. Supp. 1174, of conspiracy to affect interstate commerce by extortion of money and attempt to affect interstate commerce by extortion, and they appealed. The Court of Appeals remanded for re-sentencing, 971 F.2d 1302. On remand, the government moved the court to amend the sentencing order to require defendant to pay the costs of his incarceration and supervision, and I granted government's motion. On appeal, the Seventh Circuit held that: (1) omission of costs of incarceration and supervision in sentencing order was not clerical mistake subject to correction under rule permitting clerical mistakes to be corrected at any time, and (2) written sentencing order, which was unambiguous on its face, could serve to resolve ambiguities in oral pronouncement made the same day. Reversed and remanded with instructions. **See also United States v. Schweihs, 971 F.2d 1302 (7th Cir. 1992), infra.**

Northwest Tissue Center v. Shalala, 1 F.3d 522 (7th Cir. 1993)

Plaintiffs brought action challenging Food and Drug Administration (FDA) regulations governing replacement heart valves, seeking declaratory and injunctive relief. Government moved to dismiss complaint and the court granted motion. Plaintiffs appealed. The Seventh Circuit held that: (1) failure to timely seek judicial review of regulations did not foreclose such review, and (2) its prior ruling that FDA's interpretation, that regulations applied to human heart valve allografts, was permissible did not bar plaintiffs from contending that regulations and administrative record was inadequate to provide notice that regulations would be so applied. Affirmed in part, reversed in part, and remanded.

Todd v. Societe Bic, 991 F.2d 1334 (7th Cir. 1993)

Action was brought against manufacturer of butane lighter for death of child in fire started by four-year-old child playing with lighter. I granted summary judgment for manufacturer and plaintiffs appealed. The Court of Appeals, Frank A. Kaufman, Senior District Judge, sitting by designation, held that: (1) trial court should have applied risk-utility test, as alternative to consumer-contemplation test, in determining whether lighter was unreasonably dangerous, and (2) grant of summary judgment was error in view of disputed issues of material fact as to manufacturer's duty to manufacture its lighters with child-resistant features and as to adequacy of warning. Reversed and remanded. Manion, Circuit Judge, filed dissenting opinion.

On rehearing, en banc panel of the Seventh Circuit reversed the three judge panel and affirmed my original decision. In its en banc decision, the Court of Appeals held that: (1) warning emblazoned on lighter, "KEEP OUT OF REACH OF CHILDREN," was sufficient, and (2) certification to Illinois Supreme Court was warranted to answer questions of whether "consumer" for purposes of consumer contemplation test for finding defective product includes nonpurchasers who manufacturer should foresee will

use or misuse product, and whether risk-utility test applies to consumer products whose risks can be appreciated by their intended users. **See Todd v. Societe Bic, S.A., 9 F.3d 1216 (7th Cir. 1993).**

Sherman v. Community Consolidated School Dist. 21, 980 F.2d 437 (7th Cir 1992)

Father of minor individually and as natural guardian for his son sued school district for damages and for declaration that state statute requiring recitation of Pledge of Allegiance in public elementary schools was unconstitutional. The court, 758 F. Supp. 1244, granted summary judgment for defendants and plaintiffs appealed. The Seventh Circuit held that: (1) 11th Amendment barred suit against Attorney General of Illinois in his official capacity; (2) father and student had standing to challenge Illinois Statute requiring recitation of pledge; and (3) public schools in Illinois could lead Pledge of Allegiance daily without violating First Amendment so long as pupils were free not to participate. Affirmed in all respects, except remanded to dismiss Attorney General from the case. Manion, Circuit Judge, concurred and filed opinion.

Hunt v. Chicago Housing Authority, 972 F.2d 351(7th Cir. 1992) (Table)
(Unpublished Order -- Opinion Available on Westlaw, 1992 WL 203836)

Terminated employee that had criticized housing authority's alleged waste and mismanagement brought suit against housing authority and various individuals under § 1983 alleging that his termination violated his rights under the First and Fourteenth Amendments. After jury trial, I entered judgment on jury verdict that housing authority and individuals had violated employee's rights under First and Fourteenth Amendments, and housing authority appealed. The Seventh Circuit held that: (1) verdict against individuals on constitutional claims could not stand because individuals were entitled to qualified immunity; (2) court properly instructed jury; (3) evidence supported verdict against housing authority on constitutional claims. Verdict against housing authority affirmed, verdict against individual defendants reversed.

United States v. Schweihs, 971 F.2d 1302 (7th Cir. 1992)

Defendants were convicted of conspiracy to affect interstate commerce by extortion of money and attempts to affect interstate commerce by extortion. I sentenced them, 733 F. Supp. 1174, and defendants appealed. The Court of Appeals held that: (1) evidence of prior acts of extortion was properly admitted; (2) court properly denied defendant's request to redact offensive language from videotaped evidence; (3) government did not violate defendant's due process rights by refusing to give immunity to witness; (4) court properly enhanced sentence for use of organized crime connections in extortion; (5) sentence enhancement based on defendant's leadership role in conspiracy was improper; (6) court properly applied criminal history factor in sentencing; (7) court properly increased defendant's offense level in sentencing for multiple counts; (8) severance of defendants was not required; (9) misjoinder of different offenses charged against different defendants was harmless error; (10) defendant did not establish that he withdrew from conspiracy; (11) court

properly instructed jury as to elements of extortion; and (12) defendants' convictions were supported by evidence. Convictions affirmed; sentences vacated and remanded.

In the Matter of Grabill Corp., 967 F.2d 1152 (7th Cir. 1992)

Defendant in an adversary proceeding petitioned district court to withdraw reference to Bankruptcy Court on ground that Bankruptcy Court did not have authority to conduct jury trial. The court, 133 B.R. 621, denied petition concluding that Bankruptcy Court could conduct jury trials. Defendant brought interlocutory appeal. The Court of Appeals held that Bankruptcy Code did not authorize bankruptcy judge to conduct jury trial, and when jury trial was required by Seventh Amendment, trial had to be held in District Court, sitting in its original jurisdiction of bankruptcy. District Court reversed; case remanded with directions. Posner, Circuit Judge, dissented and filed opinion.

United States v. Maciaga, 965 F.2d 404 (7th Cir. 1992)

Defendant pled guilty to two counts of bank larceny. Defendant appealed sentence. The Court of Appeals held that evidence was insufficient to warrant two-level enhancement of defendant's sentence for "more than minimal planning." Reversed and remanded for new sentencing.

Beraha v. Baxter Health Care Corp., 956 F.2d 1436 (7th Cir. 1992)

Licensor sued licensee alleging violation of express and implied obligations of good faith and fair dealing, breach of fiduciary obligation, and fraudulent misrepresentation. The court granted summary judgment for licensee on all three Counts of complaint and licensor appealed decision as to Counts one and three. The Seventh Circuit held that: (1) even if letter from licensee to licensor was considered part of license agreement, letter was too vague to constitute "best efforts" cause; (2) court would not provide by implication a "best efforts" clause; (3) licensee was required to exercise reasonably its discretion in developing and marketing licensed product; and (4) material issues of fact existed as to whether licensee reasonably exercised its discretion. Affirmed as to Count three of fraudulent misrepresentation, but vacated as to Count one of breach of express duty of good faith and fair dealing. Remanded for further proceedings on Count one.

Brotherhood Railway Carmen Division v. Atchison, Topeka & Santa Fe, 956 F.2d 156 (7th Cir. 1992)

A union filed an action against a railroad under the Railway Labor Act to enforce arbitration award governing worker's severance pay claim. The court ordered railroad to pay full amount sought by union, and railroad appealed. The Seventh Circuit held that: (1) District Court improperly ordered railroad to pay full amount of severance pay to worker in light of fact that award merely found that worker had been terminated for reason entitling him to severance pay benefits, but did not specify an amount of

benefits to be paid, and (2) whether railroad had waived its right to oppose full severance pay award by failing to bring worker's refusal of railroad job offer to the attention of the arbitral board was a question for the arbitral board, not the court. Reversed and remanded with directions.

United States v. Velasco, 953 F.2d 1467 (7th Cir. 1992)

Defendants were convicted of conspiring to possess cocaine with intent to distribute and distributing cocaine within 1,000 feet of an elementary school, and they appealed. The Court of Appeals held that: (1) prosecutor's statement to trial judge outside presence of jury referring to part of defendant's postarrest statement admitting that defendant knew box in trunk contained cocaine was not violation of agreement with defendant not to use proffer recanting portion of defendant's postarrest story; (2) mere tangential influence that privileged information may have on prosecutor's thought process in preparation for trial is not impermissible "use" of that information; but (3) pursuant to Government's confession of error during appeal, defendant's Illinois conviction should not have been counted as felony conviction within meaning of career offender provisions. Affirmed in part and reversed and remanded in part.

Smith v. City of Chicago Heights, 951 F.2d 834 (7th Cir. 1992)

Detainee brought action under § 1981 and § 1983 against various police officers alleging that he was attacked and beaten after a traffic stop. The court granted officers' motion to dismiss on ground that two-year statute of limitations had expired. Appeal was taken. The Seventh Circuit held that: (1) two-year statute of limitations for civil rights violations under § 1981 and § 1983 were procedural, and not jurisdictional, and thus were potentially subject to equitable tolling and equitable estoppel, and (2) remand was necessary to determine whether equitable estoppel or equitable tolling applied in light of detainee's allegations that officers had affirmatively misled him as to their participation in the attack. Affirmed in part; vacated and remanded in part.

In the Matter of Establishment Inspection of Microcosm, 951 F.2d 121 (7th Cir. 1991)

Occupational Safety and Health Administration sought to hold factory owner in contempt for refusal to comply with inspection warrant. I found owner to be in contempt for refusing to admit OSHA inspectors to inspect his plant, and imposed $619.79 in attorney's fees and $1,500 of sanctions. Owner appealed finding of contempt, attorney's fees award, and monetary sanctions. The Court of Appeals affirmed My' finding of contempt and attorney's fee award, but reversed imposition of monetary sanctions. Affirmed in part and reversed in part.

Perfetti v. First National Bank of Chicago, 950 F.2d 449 (7th Cir. 1991)

A 54-year-old employee brought an age discrimination action against his employer after he lost his job as result of a reduction in force and was not rehired. I entered judgment on jury verdict for employee, and employer appealed. The Seventh

Circuit held that there was insufficient evidence to support jury's finding that proffered reason for not rehiring employee was unworthy of credence.
Jury's verdict reversed and case remanded.

Sears, Roebuck and Co. v. Murray Ohio Manufacturing Co., 949 F.2d 226 (7th Cir. 1991)

Seller of allegedly defective bicycle brought indemnification action against manufacturer and its insurer subsequent to entry of judgment against seller and in favor of buyers. The court granted summary judgment for seller. Manufacturer and insurer appealed, and seller cross-appealed. The Court of Appeals held that Court could not consider issue on appeal as to whether district court had authority to look beyond jury verdict in determining applicability of indemnification and insurance agreements, where neither parties nor court raised issue below. Affirmed in part, reversed in part, and remanded.

United States v. Infelise, 934 F.2d 103 (7th Cir. 1991)

Defendants moved to revoke pretrial detention and I denied motion. Defendants appealed. The Seventh Circuit held that: (1) showing that prosecution or court unnecessarily delayed bringing case to trial was prerequisite to detainees establishing that delay violated due process, and (2) provision of Bail Reform Act permitting continued detention only if there is no adequate alternative that is less restrictive must be satisfied regardless of constitutional requirements. Remanded with directions.

Hughes v. Joliet Correctional Center, 931 F.2d 425 (7th Cir. 1991)

State prison inmate brought civil suit against prison and prison staff doctor and nurse, alleging medical malpractice constituting cruel and unusual punishment in treatment of inmate. The court dismissed the defendants, and inmate appealed. The Court of Appeals held that: (1) allegations were sufficient to withstand motion to dismiss for failure to state claim; (2) district judge should have considered state prison inmate's request for attorney in light of particulars of inmate's suit, rather than simply denying inmate's request for attorney in accordance with general policy that attorney would not be requested for indigent prisoner until and unless judge decided that evidentiary hearing was warranted; and (3) in deciding whether to grant motion requesting counsel for indigent party in civil case, district judge must be alert to pitfalls that confront laymen in dealing with nonintuitive procedural requirements applied in setting of complex legal doctrine. Affirmed in part; vacated in part; and remanded with directions.

United States ex rel. Partee v. Lane, 926 F.2d 694 (7th Cir. 1991)

Petition was filed for writ of habeas corpus and the court granted the writ. Appeal was taken. The Seventh Circuit held that trial counsel's failure to subpoena important alibi witness did not deprive defendant of Sixth Amendment right to effective assistance of counsel. Reversed.

Rockwell Graphic Systems, Inc. v. DEV Industries, Inc., 925 F.2d 174 (7th Cir. 1991)

Printing press manufacturer brought action against competitor and competitor's president for violation of Illinois trade secret law and violation of Racketeer Influenced and Corrupt Organizations Act (RICO) based on conspiracy to misappropriate trade secrets. The court, 730 F. Supp. 171, entered summary judgment in favor of defendants, and manufacturer appealed. The Seventh Circuit held that fact issue as to whether manufacturer took reasonable precautions to protect its trade secrets in its piece part drawings used to manufacture replacement parts precluded summary judgment. Reversed and remanded.

Diamond Mortgage Corp. of Illinois v. Sugar, 913 F.2d 1233 (7th Cir. 1990)

Corporate Chapter 11 debtors brought action against attorneys who had represented debtors and law firms, alleging legal malpractice and breach of fiduciary duties, and attorneys and firms moved to dismiss. The court, adopting the recommendation of United States Magistrate James T. Balog, dismissed. Debtors appealed. The Seventh Circuit held that: (1) debtors' suit was "related to" the underlying bankruptcy cases, although not core proceeding; (2) courts may apply bankruptcy rule allowing nationwide service of process in noncore, related proceedings, and application of nationwide service of process provisions did not violate due process rights of attorneys who resided in Michigan and Michigan law firms; and (3) under Illinois long-arm statute, court would have jurisdiction over debtors' suit. Reversed and remanded.

Schoenberger v. Oselka, 909 F.2d 1086 (7th Cir. 1990)

The court imposed Rule 11 sanctions for signing and filing state court complaint that was removed to federal court. Appeal was taken. The Court of Appeals held that Rule 11 did not grant the district court authority to impose the sanctions. Reversed.

Merrill Lynch Mortgage Corp. v. Narayan, 908 F.2d 246 (7th Cir. 1990)

Real estate company which purchased residence for resale brought fraudulent misrepresentation action against vendors. I entered default and default judgment against vendors and denied their motions to set aside entry of default and to vacate default judgment, and vendors appealed. The Court of Appeals held that: (1) entry of default was not abuse of discretion; (2) refusal to consider motion to set aside entry of default was not abuse of discretion; and (3) entry of default judgment was not abuse of discretion. With the exception of the punitive damages award, case affirmed.

Egert v. Connecticut General Life Insurance Co., 900 F.2d 1032 (7th Cir. 1990)

Insured covered under employee health insurance plan pursuant to terms of Employee Retirement Income Security Act brought action challenging the carrier's decision that insured's in vitro fertilization was not covered under the plan. The court

held that the carrier's decision was not arbitrary or capricious, and employee appealed. The Seventh Circuit held that employee's wife was entitled to coverage. Reversed and remanded with instructions.

Dribeck Importers, Inc. v. G. Heileman Brewing Co., Inc., 883 F.2d 569 (7th Cir. 1989)

Beer importer brought action against distributor seeking recovery for costs incurred in defense of lawsuits brought by former wholesalers, pursuant to settlement agreement between distributor and importer. Judge Suzanne B. Conlon and I both granted summary judgment in favor of importer and appeal was taken. The Court of Appeals, Ripple, Circuit Judge, held that settlement agreement requiring beer distributor to defend and indemnify importer against certain suits was ambiguous and thus distributor's obligation could not be resolved through summary judgment. Reversed and remanded.

United States v. Bucey, 876 F.2d 1297 (7th Cir. 1989)

Defendant was convicted of various offenses stemming from his participation in money laundering scheme. On appeal, the Seventh Circuit held that: (1) defendant did not violate substantive currency reporting statutes, and (2) evidence supported convictions for mail fraud and conspiracy. Affirmed in part, reversed in part and remanded with directions.

Scherr v. Woodland School Community Consolidated District No. 50, 867 F.2d 974 (7th Cir. 1988)

In separate cases, female school teachers sued school districts alleging that districts' maternity leave policies violated Title VII. The court granted school districts' motions for summary judgment, and teachers appealed. The Court of Appeals held that: (1) claim of pregnancy discrimination, like any other claim of discrimination under Title VII, may be based either on theory of disparate treatment or theory of disparate impact; (2) material issues of fact existed with respect to whether one school district's maternity leave policy constituted disparate treatment in violation of Title VII; (3) other school district's "no combination" policy did not constitute disparate treatment since its nonpregnant teachers could not combine paid sick leave and general leave of absence; and (4) material issues of fact existed as to whether school districts' maternity leave policies had disparate impact. Affirmed in part, reversed in part and remanded. Manion, Circuit Judge, concurred in part and dissented in part and filed and opinion and would grant rehearing en banc.

Alcan Aluminum Ltd. v. Franchise Tax Board, 860 F.2d 688 (7th Cir. 1988)

I dismissed constitutional challenge to California's franchise tax brought by foreign corporations with American subsidiaries that did business in California. Foreign corporations appealed. The Court of Appeals held that: (1) foreign corporations with American subsidiaries that did business in California alleged injuries sufficiently direct

and independent of injuries suffered by their subsidiaries to confer standing to make constitutional challenge to California's franchise tax, and (2) foreign corporations which had no standing in state court could not be barred from federal court on strength of principles of comity and federalism. On petition for writ of certiorari to the United States Supreme Court, the Supreme Court reversed the Seventh Circuit and ordered reinstatement of My' original judgment. **See Franchise Tax Board v. Alcan Aluminum Ltd., 493 U.S. 331 (1990).** The Supreme Court held that although plaintiffs had standing to challenge California's tax, the challenge was barred by the Federal Tax Injunction Act, 28 U.S.C. § 1341.

Smith v. Springer, 859 F.2d 31 (7th Cir. 1988)

Former inmate brought civil rights action against police officers alleging officers fabricated evidence for use in his previous rape trial which resulted in conviction. Officers moved for dismissal. The court granted judgment for defendants. On appeal, the Seventh Circuit held that: (1) § 1983 suit was not collateral attack on plaintiff's prior conviction, and (2) plaintiff was not required to exhaust any state remedies prior to bringing § 1983 suit. Reversed and remanded.

Bandag, Inc. v. National Acceptance Co. of America, 855 F.2d 491 (7th Cir. 1988)

Seller brought action against guarantor seeking to collect $40,000 plus statutory interest for purchaser's defaulted payments. The court entered judgment for guarantor, and seller appealed. The Court of Appeals held that guarantor's obligation arose upon shipment of merchandise, rather than when invoices were due and payable, and, thus, obligation arose before guaranty expired. Reversed.

FMC Corp. v. Boesky, 852 F.2d 981 (7th Cir. 1988)

Corporation brought suit against alleged inside traders for wrongful misappropriation and misuse of confidential business information, charging violations of federal securities laws, RICO, and state common law. On motion to dismiss, the court, 673 F. Supp. 242, held that corporation did not have constitutional standing to bring suit. Corporation appealed. The Seventh Circuit held that wrongful misappropriation of corporation's confidential business information and use of that information to further insider trading was a distinct palpable injury that was legally cognizable under Article III case or controversy requirement. Reversed and remanded.

United States v. York, 852 F.2d 221 (7th Cir. 1988)

Defendant was convicted in a jury trial for arson, conspiracy to commit arson and mail fraud, and mail fraud and he appealed. The Court of Appeals held that admission of incriminating statements made to the defendant's probation officer by the defendant's 14-year-old son about events which occurred when the son was nine, under the residual exception to the hearsay rule, was reversible error in light of the absence of information showing the trustworthiness of the statements and the possibility that the answers were in response to misleading and suggestive questions.

Reversed and remanded.

Southwest Suburban Board of Realtors, Inc. v. Beverly Area Planning Association, 830 F.2d 1374 (7th Cir. 1987)

Real estate brokerage firm, individual broker, and trade association of brokers brought antitrust action against neighborhood planning association, certain of its employees and volunteers, and certain real estate brokerage entities alleging antitrust violations with respect to real estate listings in particular area of city. The court granted defendants' motions for summary judgment on grounds that plaintiffs lacked standing, and plaintiffs appealed. The Seventh Circuit held that: (1) neither individual broker whose injuries were not distinct from those of his brokerage firm nor the trade association had standing, but (2) brokerage firm did have standing to bring antitrust action alleging that it had been the target of a group boycott. Affirmed in part, reversed in part, and remanded.

Wright v. Occupational Safety and Health Administration, 822 F.2d 642 (7th Cir. 1987)

Co-administrators maintaining wrongful death suit against oil company following fire and explosion sought records compiled by OSHA during course of its investigation of the accident. In suit under the Freedom of Information Act, OSHA moved for summary judgment on its claim under exemption for records or information compiled for law enforcement purposes. Motion was granted the district court and co-administrators appealed. The Seventh Circuit held that: (1) with respect to certain categories of documents, the record did not provide reviewing court with adequate basis to decide whether the requested materials fell within the exemption, but (2) the remaining categories of documents did fall within the exemption. Affirmed in part, vacated in part, and remanded.

Premier Electrical Construction Co. v. National Electrical Contractors Association, Inc., 814 F.2d 358 (7th Cir. 1987)

Employer brought action against, inter alia, employer trade association, of which it was not a member, and fund established to help defray costs of association's collective bargaining, seeking damages and declaratory and injunctive relief under the Sherman Act. The court, 627 F. Supp. 957, ruled in favor of plaintiff employer on antitrust claim, based on collateral estoppel, but denied recovery of costs of defending prior suits brought by the fund, and appeal and cross appeal were taken. The Court of Appeals held that: (1) class members who opt out may not claim, under doctrine of issue preclusion, the benefits of class victory; (2) doctrine of stare decisis nonetheless applies, and where a defendant's activities span more than one Court of Appeals, only the gravest reasons should lead the court in opt-out suit to come to a conclusion that departs from that in the class suit; (3) agreement, if it in fact existed, between association and union calling for union to obtain, as part of collective bargaining agreement with any firm that was not a member of the association, a

requirement that the firm contribute one percent of its gross payroll to the association's fund, was unlawful price fixing per se; and (4) if plaintiff employer was injured by the fund's prior suits to enforce the private price-fixing agreement, the First Amendment and the Noerr-Pennington doctrine would not preclude recovery, as damages, of the cost of defending those prior suits. Reversed and remanded.

United States v. Hooks, 811 F.2d 391 (7th Cir. 1987)

Defendant filed motion for release on bond pending termination of his appeal and the court denied the motion. The Court of Appeals held that district judge's denial of defendant's motion for release on bond pending appeal without any statement of reasons, required remand, and execution of defendant's sentence would be stayed in interim. Remanded with directions.

United States ex re. Cross v. DeRobertis, 811 F.2d 1008 (7th Cir. 1987)

State prisoner petitioned for habeas corpus. The court granted writ, 661 F. Supp. 683, and appeal was taken. The Court of Appeals held that showing of prejudice from alleged deficient performance of counsel in failing to investigate was insufficient without comprehensive showing as to what the investigation would have produced. Reversed and remanded.

(3) Significant Opinions on Constitutional Issues With Appellate History

Didzerekis v. Stewart, 41 F. Supp.2d 840 (N.D. Ill. 1999)
No appeal, case pending

Yellow Cab Co. v. City of Chicago, 3 F. Supp.2d 919 (N.D. Ill. 1998)
No appeal

United States v. Pitt Des Moines, Inc., 970 F. Supp. 1346 (N.D. Ill. 1997)
Affirmed, 168 F.3d 976 (7th Cir. 1999)

Treece v. City of Naperville, 903 F. Supp. 1251 (N.D. Ill. 1995)
No appeal

Campbell v. Illinois Dep't of Corrections,
907 F. Supp. 1173 (N.D. Ill. 1995)
No appeal

Trust & Investment Advisors, Inc. v. Hogsett,
43 F.3d 290 (7th Cir. 1994)
No petition for a writ of certiorari filed

Comite Pro-Celebracion v. Claypool, 863 F. Supp. 682 (N.D. Ill. 1994)
No appeal

Perez v. United States, 850 F. Supp. 1354 (N.D. Ill. 1994)
No appeal

United States v. Velasco, 847 F. Supp. 580 (N.D. Ill. 1994)
No appeal

Metzl v. Leininger, 850 F. Supp. 740 (N.D. Ill. 1994)
Affirmed, 57 F.3d 618 (7th Cir. 1995)

United States v. Edwards, No. 92 CR 884,
1993 WL 453461 (N.D. Ill. 1993)
No appeal

Holstein v. City of Chicago, 803 F. Supp. 205 (N.D. Ill. 1992)
Affirmed, 29 F.3d 1145 (7th Cir. 1994)

Sherman v. Community Consolidated Scool District 21,
758 F. Supp. 1244 (N.D. Ill. 1991)
Affirmed on constitutional issue, reversed on procedural issue,
980 F.2d 437 (7th Cir. 1992)

Lifchez v. Hartigan, 735 F. Supp. 1361 (N.D. Ill. 1990)
Affirmed, 914 F.2d 260 (unpublished order), 1990 WL 130686

Aristotle P. v. Johnson, 721 F. Supp. 1002 (N.D. Ill. 1989)
No appeal

United States ex rel. Berry v. Monahan, 681 F. Supp. 490 (N.D. Ill. 1988)
No appeal

United States v. Bucey, 691 F. Supp. 1077 (N.D. Ill. 1988)
Reversed in part on other grounds, 876 F.2d 1297

Adamson v. Volkmer, 680 F. Supp. 1191 (N.D. Ill. 1987)
No appeal

Baltz v. Shelley, 661 F. Supp. 169 (N.D. Ill. 1987)
No appeal

Monitor v. City of Chicago, 653 F. Supp. 1294 (N.D. Ill. 1987)
No appeal

Mirshak v. Joyce, 652 F. Supp. 359 (N.D. Ill. 1987)
No appeal

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. Whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the judge, the court, and the dates of the period you were a clerk;

September, 1975 - September, 1976
Law Clerk to the late Judge Robert A. Sprecher
United States Court of Appeals for the Seventh Circuit.

Researched and drafted opinions and orders in cases assigned to Judge Sprecher. Approximately 60% of the cases to which I was assigned involved federal civil practice and approximately 40% involved federal criminal practice.

During this time, I also served as a Staff Law Clerk to the full Seventh Circuit Court of Appeals. In this capacity, I drafted memoranda and proposed orders in cases which were not set for oral argument but were decided by a three-judge panel on the basis of the briefs filed by appellate counsel. After preparing the memoranda, I met with the judges to discuss the cases and, based on the panel's ruling, I prepared draft orders for approval. The majority of these cases were civil in nature.

2. Whether you practiced alone, and if so, the addresses and dates;

No.

3. The dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

February, 1983 - May 1985
United States Attorney's Office
Coordinator, Drug Task Force
North Central Region
219 South Dearborn, Room 500
Chicago, IL 60604

December 1980 - February 1983
United States Attorney's Office
Deputy Chief
Criminal Receiving and Appellate Unit
219 South Dearborn, Room 1500
Chicago, IL 60604

October 1976 - December 1980
United States Attorney's Office
Assistant United States Attorney
Criminal Litigation Division
219 South Dearborn, Room 1500
Chicago, IL 60604

a. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From September 1975 to 1985, I gained expertise in federal trial and appellate practice. Beginning as a law clerk to the late Judge Robert A. Sprecher of the United States Court of Appeals for the Seventh Circuit from 1975 to 1976, I became very familiar with federal civil and criminal appellate practice, opinion and brief writing, and persuasive techniques used in written and oral advocacy. During my clerkship, I was also exposed to federal criminal and civil substantive law.

Following my clerkship, from 1976 to 1978, as an Assistant United States Attorney assigned to the Criminal Receiving and Appellate Division (CRAD), I further developed my appellate skills. As part of my duties, I regularly reviewed district court records and trial transcripts in order to write persuasive briefs which succinctly and accurately presented the facts and the law. My brief writing experience included single issue as well as complex white collar crime cases which involved multiple defendants

and issues, lengthy transcripts, numerous witnesses, and extensive documentary evidence.

From December 1980 to 1983, I worked as a Deputy Chief of CRAD in the United States Attorney's Office. As a deputy chief, I supervised from eight to fifteen new assistants. My supervisory duties included conducting case reviews designed to assess an assistant's performance. On a day-to-day basis, I reviewed assistants' recommendations of prosecution or declination, draft indictments and charges, proposed plea agreements, and arrest and search warrants. A major part of my responsibilities also included editing appellate briefs for completeness, accuracy, legal analysis, effective advocacy and for various policy considerations. I also conducted strategy conferences with assistants to discuss investigative techniques and preparation for trials and appeals. Finally, I appeared with CRAD assistants in probable cause hearings before magistrates, hearings before district court judges, and oral arguments in the Court of Appeals.

While developing my specialization in the federal appellate area, I was also developing an expertise in federal trial advocacy. From 1976 to 1983, I tried approximately twenty-five cases, primarily jury trials, and prepared dozens of other cases for trial which were ultimately settled by plea agreement. The trials varied in nature and length from simple mail theft to large complex white collar crime and bribery cases. These complex cases included multiple defendants, numerous witnesses, voluminous documents and complex legal issues. As part of my trial preparation, I organized extensive witness and discovery files. During the investigation of these cases and prior to trial, I appeared regularly before federal grand juries to present witnesses and documentary evidence. As a consequence of my trial and litigation experiences, I became familiar with the Federal Rules of Evidence as they related to federal criminal trials.

In February 1983, I was promoted to the newly created position of Chief and Coordinator for the Presidential Organized Crime Drug Enforcement Task Force (OCDETF) for the North Central Region. The North Central Region, one of twelve OCDETF Task Regions, consisted of nine judicial districts in Illinois, Iowa, Indiana, Minnesota and Wisconsin. Chicago was designated as the core city and administrative hub of the North Central Region. The goal of the OCDETF Program was to dismantle sophisticated narcotic organizations by using the combined resources and investigative expertise of seven federal law enforcement agencies (FBI, DEA, ATF, U.S. Customs, IRS, U.S. Marshal and U.S. Coast Guard).

As Chief and Coordinator, I was responsible for the organization and implementation of program policies, procedures and practices, including the procurement and design of regional office space. My responsibilities included the day-to-day supervision and management of seven experienced Assistant United States

Attorneys, regional coordinators form each of the seven participating federal agencies, ten agents assigned to Task Force cases and a number of office personnel. With respect to Chicago Task Force cases, I reviewed and approved prosecution memoranda which were submitted for various criminal indictments charging violations of the continuing criminal enterprise, racketeering, income tax, money laundering and drug importation and distribution statutes. Additionally, I reviewed and approved Title III wiretap applications, search and arrest warrants, plea agreements and forfeiture petitions.

In addition to managing the core city OCDETF Office, I periodically visited each of the non-core cities and met with the respective United States Attorneys and other federal, state and local law enforcement agents concerning Task Force efforts. I also organized quarterly United States Attorney meetings and two annual regional meetings which were attended by 150 to 200 federal, state and local law enforcement representatives. These meetings were designed to disseminate information, outline policies and establish good working relationships throughout the region. On a national level, I reported on a regular basis to the OCDETF Administrative Unit in Washington, D.C. and ultimately to D. Lowell Jensen, Associate Attorney General, regarding the status of OCDETF activities in the North Central Region. This reporting involved compiling and maintaining statistical records and case reports on OCDETF investigations.

Finally, in addition to the trial appellate and supervisory experience I gained as an Assistant United States Attorney, I taught in a variety of trial advocacy programs for law students and practicing attorneys. In my role as trial advocacy instructor, I sharpened my trial skills and knowledge by assisting students in persuasively presenting cases before a judge or jury. Furthermore, teaching students to effectively utilize and apply the Federal Rules of Evidence in meeting evidentiary requirements for the introduction of oral testimony, documents, and exhibits enhanced my understanding of the rules. Because the majority of the courses in which I participated emphasized civil trial practices, I also became familiar with the applicability of the Federal Rules of Evidence to federal civil practice.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

United States of America

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

1976 - 1983	Frequently
1983 - Present	Not at all

2. What percentage of these appearances was in:

(a) federal courts;
100%
(b) state courts of record;
None
(c) other courts
None

3. What percentage of your litigation was:

(a) civil;
None

(b) criminal
100%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In the period from 1979 to February 1983, I tried approximately sixteen cases to verdict. In each of these cases, I examined at least half of the witnesses that testified on behalf of the government. I gave either the opening statement and rebuttal argument or presented the closing argument. I fully participated in the pre-trial, side bar and jury instruction conferences in each of the cases.

5. What percentage of these trials was:

(a) jury;
65%

(b) non-jury.
35%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) United States v. Dennis L. Roberts, a/k/a John Rodine, a/k/a Jack Rodine, a/k/a J. Rodine, a/k/a Floyd Highstrom - 77 CR 53

A two week trial (May 16, 1997 to May 25, 1997)
Judge John Powers Crowley (deceased)
Northern District of Illinois
Court of Appeals Numbers 77-1743; 79-1366; 80-1849; 619 F.2d1 (7th Cir. 1979) (unpublished orders dated June 27, 1978, March 19, 1982).

Defense Attorneys

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Co-Counsel

James Streicker
Robert Stephenson
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(312) 263-0345

In a five month period from August, 1976 through December, 1976, the defendant, Dennis Robert devised a scheme to defraud 100,000 victims throughout the United States of approximately $ 1.7 million dollars. The defendant, using aliases including John, Jack and J. Rodine and Floyd Highstrom placed advertisements in T.V. Guide and various other national publications offering digital wristwatches and

calculators for sale at $16.95 and $17.95 each. The advertisements guaranteed delivery of the digital wristwatches and calculators by Christmas, 1976 if purchasers forwarded prepayments by December 15, 1976, to Teltronics, the defendant's company. No watches or calculators were ever delivered. Roberts transferred over $710,000 of the fraud proceeds to various Mexican bank accounts, purchased 600 gold coins and withdrew $103,000 in cash. A few days before Christmas, after leaving Chicago, he attempted to wire the remaining $850,000 to Mexican bank accounts. However, the Illinois Attorney General froze those accounts because of numerous complaints from victim purchasers.

Roberts was charged with and convicted of fifty counts of mail fraud. Judge Crowley sentenced him to a seven year period of incarceration, ordered restitution payments in the amount of $750,000 and fined the defendant $50,000.00.

Because of the complexity of the scheme to defraud and the number of witnesses involved, two other assistants tried the case with me Robert Stephenson, Deputy Chief of the Criminal Receiving and Appellate Division and James Streicker. During the two week trial, over forty witnesses testified on behalf of the government. I examined sixteen witnesses, including former employees of the defendant's corporation, bankers, business acquaintances of the defendant and numerous victims. In addition, I introduced extensive documentary evidence including bank records, defendant's business records, and voluminous payroll and employee records of companies that Roberts hired to provide various services. Finally, I was responsible for giving a thirty-minute opening statement.

(2) United States v. Vertis King, Andrew West, Garland Jeffers and Richie Dean Jeffers - 77 CR 62.

A two week trial (September 10 to September 21, 1979)
Judge Bernard M. Decker, Northern District of Illinois
United States vs. West 670 F.2d. 675 (7th Cir. 1982)

Defense Attorneys

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This case involved a conspiracy between two guards at the Cook County Jail, Sargent Vertis King and Officer Andrew West and an inmate of the jail, Garland Jeffers. Jeffers was the leader of a large drug trafficking gang called "The Family" which operated out of Gary, Indiana. Richie Dean Jeffers, Garland's wife was also a member of the conspiracy. The conspiracy involved Richie Dean Jeffers' travel from Indiana to the Cook County jail for the purpose of smuggling narcotics to Garland Jeffers and other gang members. In order to accomplish this goal, Richie Dean Jeffers and various unindicted co-conspirators visited Jeffers and other gang members at times when Sargent King or Officer West were on duty. In exchange for allowing narcotics to enter the jail, permitting sexual favors and providing other special treatment, Richie Dean Jeffers provided the guards with payoffs in the form of cash and cars.

The guards and the Jeffers' were charged in a six count indictment with conspiracy to violate the travel act and substantive travel act violations. Following a two week trial, all four defendants were convicted on most of the counts charged in the indictment. Judge Decker sentenced all the defendants to prison terms of four and five years.

Of significance was the fact that this was the first time that Cook County jail guards were charged in federal court with taking bribes. The case was viewed as an important step toward cleaning up corruption in the Cook County jail. I tried this case with Thomas A. Durkin. Of approximately fifteen witnesses who testified on behalf of the government, I examined half. The witnesses I examined included unindicted co-conspirators, gang members, car dealers, bankers and jail guards. I also introduced business records of the jail, bank and car dealers. I gave the one hour closing argument at the conclusion of the trial.

(3) United States vs. Gordon Brown - 78 CR 798

A one week trial (July 9, 1979 to July 13, 1979)
Judge Bernard M. Decker, Northern District of Illinois
Court of Appeals Number 79-2040 (Unpublished Order dated April 24, 1980)

Defense Attorneys
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U.S. Magistrate Judge Nan Nolan
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This case was part of an on-going project in the United States Attorney's Office to stamp out corruption in the Chicago Bureau of Electrical Inspection. The investigation began when the Federal Bureau of Investigation received complaints from electrical contractors who were being "shaken down" by electrical inspectors. The electrical inspectors were responsible for reviewing specifications for proposed electrical work to determine whether the plans complied with the city's electrical code. Their duties also included inspection of the proposed site before and after the work was completed. If proposed changes were in compliance with the code, an inspector authorized the issuance of an electrical permit, so that the work could begin. Periodic visits were made by inspectors to the site to insure that the work complied with the code. From 1970 to 1978, Brown, who was a supervisor of electrical inspectors, used his office to extort money from various electrical contractors for approval of work that did not comply with the code and to insure expeditious approval of plans and specifications that did comply with the code.

Brown was the first supervisor of the Bureau of Electrical Inspection indicted. In a twelve count indictment, he was charged with unlawfully using his office to extort money and with violations of the federal racketeering statute. Following a one week trial before Judge Decker, Brown was convicted on all counts and ultimately sentenced to an eighteen month period of incarceration.

I tried this case with Robert Semmer, Chief of the Criminal Litigation Division. Of approximately fifteen witnesses, I examined half including victim electrical contractors, and city officials. Also, I introduced extensive documentary evidence relating to city permits, business records of contractors and employment files. Finally, I gave an hour long closing argument.

(4) United States vs. Larry Edmond Posey also know as Bunko, Gordon Darnell Watt and Christopher Eugene Washington - 79 CR 588

A six day trial, January 28, 1980 to February 4, 1980.
Judge Nicholas J. Bua, Northern District of Illinois
Court of Appeals Numbers 80-1369, 80 -1371
(Unpublished Order dated June 5, 1981)

Defense Attorneys

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From March, 1977 through September, 1978 defendants Posey, Washington and Watt operated a prostitution ring using women and teenage girls from fifteen to seventeen years old. Although the ring was based in Chicago, defendants transported the women and girls to Indiana, Michigan, Kentucky, Georgia, Missouri and Minnesota. On the way to these destinations, the women solicited truck drivers at truck stops along well traveled interstate highways. Once they reached destination cities, the ring operated out of various hotels. All monies derived from the prostitution activities were given to the defendants.

Defendants were charged in a seven-count indictment with conspiracy to transport and transporting adult and minor females across state lines for the purpose of prostitution. Defendants were convicted on all counts and were sentenced to two and three year prison terms.

This case was significant because of the age of the girls and because of threats defendants made to them.

I tried this case with Mary Stowell. During the trial, I examined half of the approximately fifteen witnesses, including teenage victims, police officers, hotel and

credit card company employees. I also introduced extensive evidence which documented the numerous trips defendants had taken including hotel, phone and other travel records. I gave a one hour closing argument in this case.

(5) United States vs. Joan Lynch - 81 CR 007

An eight day trial (June 29, 1981 to July 9, 1981)
Judge Nicholas J. Bua, Northern District of Illinois
United States vs. Lynch, 699 F.2d 839 (7th Cir. 1982)

Defense Attorneys

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From August 1975 to August 1980, the defendant with her husband, Ronald Lynch, participated in a scheme to bypass administrative procedures at the Cook County Board of Appeals in order to obtain reductions in Cook County property tax assessments for clients of the R.M. Lynch Company. The defendant and her husband, before his death, owned the company, which was in the business of representing property owners appealing real estate tax assessments before the Board. The R.M. Lynch Company functioned by bribing employees at the Board to forge the initials of Board of Appeals Commissioners indicating approval of reductions. The R.M. Lynch Company paid an estimated $111,000 in bribes to Board employees over five years to effectuate this scheme. As a result of the scheme, the County lost approximately $1.4 million in revenue and the defendant collected $367,000 in fees.

The defendant, Joan Lynch, was charged with nine counts of mail fraud and one count of conspiracy to commit racketeering. After an eight day jury trial, she was convicted of mail fraud and racketeering. She was sentenced to pay a $34,000 fine and to make restitution to Cook County in the amount of $100,000.

This case was part of a major investigation into corruption at the Cook County Board of Appeals in which more than thirty individuals were indicted and convicted. The defendant, through the R.M. Lynch Company, earned more from participating in

the illegal scheme than any other indicted defendant. The case had legal significance because it defined for the first time, the scope of the district court's power in ordering restitution under Title 18 United States Code, Section 3651.

I tried this case with John Podliska. Approximately twelve witnesses were called in the government's case and I examined half of them, including indicted and unindicted co-conspirators, bankers and clients of R.M. Lynch Company. Also, extensive documentary evidence was introduced which primarily consisted of voluminous Board of Appeals records, R.M. Lynch files and bank records. I gave a one hour closing argument at the conclusion of the trial.

(6) United States vs. Green D. Smith, Milton Kelly, Jr., Leonard Smith, Luther Woods, Curtis Woods, Emma Ragland, Harvey Lowery, Joseph Jackson, Ronnie Jamison, Kelvin Wilder, Donna Bradford, James Woods, Ernest Harris -79 CR 512

A five week trial (November 5, 1979 to December 14, 1 979)
Judge John Powers Crowley, Northern District of Illinois
Court of Appeals Numbers 80-1267-68,1288-90,1320, 1358
(Unpublished Order dated July 28, 1981)

Defense Attorneys:

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James Schweitzer
Moved out of state
Address unknown

From 1976 to 1979, defendants Green D. Smith and Milton Kelly, Jr. supervised and managed a sophisticated heroin ring which operated 24 hours a day on the south side of Chicago. Members of the organization sold heroin in $10 and $20 bags and grossed from $5,000 to $20,000 per day. In addition to managing the criminal enterprise, Smith and Kelly procured the heroin from wholesale heroin dealers then turned it over to mixers and cutters. The mixers and cutters prepared the heroin for street distribution. To avoid detection, the mixing was done at fifteen different homes rented or owned by Smith or Kelly. Depending on the quantity to be mixed and the demand, the mixers prepared heroin 24 hours a day. Once a batch of heroin was ready for street distribution, it was given to one of four shift supervisors. The shift supervisors, who worked one of three eight hour shifts, supervised five to ten street workers. The shift supervisors distributed the $10 and $20 bags to the workers who sold to the customers. The shift supervisors periodically collected money from the workers at the end of their shifts, turned over the gross receipts to Smith, Kelly or one of their lieutenants.

Defendants Smith and Kelly were indicted for organizing and supervising a continuing criminal enterprise from 1976 to 1979, conspiracy and other narcotic violations. Fifteen of their employees were indicted on conspiracy, distribution and possession charges. Thirteen defendants including Smith and Kelly went to trial. After a five week trial with twenty-eight government witnesses, twelve defendants were convicted on most counts and one was acquitted. Defendants Smith and Kelly were sentenced to fifteen and twenty year terms of incarceration. Other defendants, depending on their records and involvement in the organization, were sentenced to a variety of prison terms.

This was the first continuing criminal enterprise indictment returned in this

district and the conviction of this narcotics ring had a significant impact on narcotic trafficking on the south side of Chicago.

Because of the number of defendants, the number of witnesses and the complexities of the trial, I tried the case with James Schweitzer and Richard Cox. I examined one-third of the witnesses including indicted and unindicted coconspirators, undercover police officers, car dealers and bankers. I also introduced documentary evidence to prove that Kelly and Smith derived substantial income and acquired assets with proceeds of the narcotic trafficking, including bank and business records reflecting financial transactions and activities. I also gave a three hour closing argument at the trial 's conclusion.

(7) United States vs. Joseph Riotto Russo - 80 CR 258

A seven day jury trial
Judge John Powers Crowley, Northern District of Illinois

Defense Attorney:

Gordon Nash
Gardner, Carton & Douglas
321 N. Clark Street
Chicago, IL 60610
(312) 245-8428

Felipe Sanchez (co-counsel)
219 S. Dearborn, Suite 500
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(312) 353-2817

In 1975 and 1976, Russo obtained two loans in the amount of approximately $210,000 from a suburban bank for the purpose of improving his trucking business. Both loans were guaranteed by the Small Business Administration and Russo failed to repay the loans. In applying for the loans, Russo denied that he had been adjudicated bankrupt in 1960 and 1971. He also indicated that he had never been convicted of a crime when in fact he had at least three convictions. In 1977, he applied for two personal loans from the same bank totaling $12,000 in which he failed to admit he had been adjudicated bankrupt. He also defaulted on those loans.

Russo was charged in a four count indictment with making false statements to a federally insured bank. He was convicted on all counts and sentenced to five years probation.

This case was significant because of the amount of money involved and the number of false statements made by Russo.

I tried this case with Felipe Sanchez. During the trial, I examined more than half of the witnesses including accountants and bankers. I also introduced extensive

documentary evidence including bank records and SBA loan applications. I also gave the opening statement and rebuttal argument in this case.

(8) United States vs. Johnny Moore - 78 CR 855

An eight day jury trial
Judge Joseph Perry, Northern District of Illinois

Defense Attorneys:

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Co-counsel
William K. Hedrick
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Skokie, IL 60077
(847) 679-6655

In the course of robbing the postal carrier of mail including checks and other negotiable instruments, Moore struck the carrier repeatedly with a tire iron. The carrier was hospitalized for at least two weeks and had recurring medical problems as a result of the beating. Moore was charged with stealing the mail by using a deadly weapon, possession of stolen mail and forgery. He was sentenced to the mandatory minimum of twenty-five years.

This trial was significant because of the extent of the postal carrier's injuries and the use of expert testimony to tie the defendant to the crime.

I tried this case with William K. Hedrick. During the trial, I examined half of the approximately twelve witnesses, including a cooperating co-defendant, eye witness, fiber expert, bank and victim witnesses. I gave the opening statement and rebuttal argument in this case.

(9) United States v. Mauro A. Marasigan & Remedios Marasigan - 78 CR 277

A five day trial
Judge Prentice H. Marshall, Northern District of Illinois

Defense Attorney:
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Co-counsel
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Between August 1977, and December, 1977 Marasigan mailed stolen and forged United States Treasury Checks valued in excess of $100,000 to his wife Remedios and asked her to cash them. Marasigan was obtaining the checks in the Philippines, then forwarding them to his wife to cash in Chicago. Various other family members were forging endorsements and opening accounts for the express purpose of cashing the checks.

When Marasigan was searched and detained by immigration officials in Montreal, Quebec, he had 74 United States treasury checks in his possession totaling approximately $17,000.

This case was significant due to the amount involved and the sophistication of the scheme. Remedios and Maura Marasigan were charged in a fourteen count indictment with uttering and possessing United States Treasury checks. The night before trial, I learned that the investigating agent failed to fully disclose the circumstances if Remedios Marasigan's confession. I advised both the court and defense counsel of the Brady violation and the confession was suppressed. Judge Marshall eventually found the defendants not guilty.

I tried this case with William K. Hedrick. I examined half of the ten witnesses including bankers, agents and cooperating family members. I delivered the opening statement and closing argument in this case.

(10) United States vs. Charles Fletcher - 76 CR 1297

A five day jury trial, 1978
Judge Nicholas Bua, Northern District of Illinois

Defense Attorney
John Daniel Stewart
1201 Walnut Street, Suite 2400
Kansas City, MO, 64106

(816) 426-3122

Fletcher devised a scheme to obtain and cash stolen out of state payroll and government checks. He endorsed or arranged for others to endorse the checks. Fletcher then asked his girlfriends to open numerous bank accounts for the purpose of depositing and cashing the stolen instruments.

Fletcher was charged in a ten count indictment with interstate transportation of stolen securities. He was found guilty on all counts and sentenced to a prison term. This case was significant due to the extensive documentary evidence introduced and because of the reluctance of the unindicted girlfriends to testify.

(d) Additional contacts

Members of the Legal Community

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3. Steven Bashwiner
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10. Andrea Zopp
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11. Victoria Peters
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12. Zaldwaynaka L. Scott
Chief General Crimes Section, U.S. Attorneys Office
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Chicago, IL
312-353-4258

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Many of the most significant legal activities I pursued culminated in the trials detailed in question #18 as well as a number of appeals. I negotiated numerous guilty pleas in cases during my tenure at the United States Attorneys Office as well. All of those cases are in closed files.

I have served on a number of committees as well.

1. Court Administration and Case Management Committee (CACM) Chair
Judicial Conference of the United States.

CACM is responsible for making policy recommendations to the Judicial Conference concerning issues of court administration and case management for the federal judiciary. The Chair of CACM is appointed by the Chief Justice of the United States Supreme Court.

In my capacity as chair of CACM, I worked on a number of issues, including, but not limited to: the impact of the electronic courtroom on case management; implementation of the Civil Justice Reform Act ("CJRA") and the efficient movement of civil cases through court; and long range planning as it related to arbitration and mediation. As part of my duties, I reported the committee's findings to the Federal Judicial Conference and testified before Congress on these issues.

2. Executive Committee member
United States District Court for the Northern District of Illinois

The Executive Committee administers and conducts the business of the Court and assists the Chief Judge in his capacity as administrative head of the court. The Executive Committee also serves to act in an emergency on behalf of the court. The Committee is composed of the Chief Judge, the Clerk of the Court and four of the court's most senior

judges. As an Executive Committee member, I worked to formulate policy recommendations concerning local rules, court procedures and court expansion.

3. Automation Committee Chair
United States District Court for the Northern District of Illinois

The Automation Committee monitors the progress of automation at the Court. In my capacity as chair of the Automation Committee, I worked on the video conferencing project. The Committee examined the benefits an electronic courtroom can provide, such as enhanced video presentations during trial. We visited various courthouses and met with vendors. In addition, during my tenure as chair of the Committee, the court installed an electronic mail (e-mail) system and was involved in implementing the electronic case management system currently in use.

4. Northern District of Illinois Trial Bar Committee

As a member of this committee, which was the product of a pilot program, I helped to establish a set of criteria by which trial attorneys would be permitted to practice before the United States District Court for the Northern District of Illinois. Now, attorneys seeking admission to the bar must have had a minimum level of trial experience before the district court and have completed certain advocacy courses. The Committee meets regularly to formulate policy and regulations concerning admission and practice for Trial Bar members.

AO-10 Rev. 1/98

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1998

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Williams, Ann Claire	Northern District, Illinois	5/12/99
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	**5. Report Type** (check appropriate type)	**6. Reporting Period**
U.S. District Court	___ Nomination, Date _____ ___ Initial _X_ Annual ___ Final	01/01/1998 to 12/31/1998
7. Chambers or Office Address	**8.** On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.	
219 S. Dearborn Street, #1988 Chicago, IL 60604	Reviewing Officer _____ Date _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of Instructions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
☐	NONE (No reportable positions.)	
1	Board Member & President	Just The Beginning Foundation
2	Trustee & Secretary	University of Notre Dame
	Treasurer/President-Elect	Federal Judges Association
3	Trustee	University of Chicago Laboratory Schools
	Trustee	National Institute for Trial Advocacy

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of Instructions.)*

	DATE	PARTIES AND TERMS
X	NONE (No reportable agreements.)	
1		
2		
3		

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
☐	NONE (No reportable non-investment income.)		
1	1998	National Institute for Trial Advocacy	$20,040.00
2	1998(S)	Amalgamated Bank	$
3			$
4			$
5			$

SECTION IV

Reimbursements

1998:

April 23	New York, NY ABA Section of Litigation annual meeting
May 1-3	Washington, D.C. Federal Judges Association Board meeting
May 4-5	San Francisco, CA ABA White collar crime conference
May 26	Washington, D.C. Federal Judges Association Representative Committee meeting
June 5	Detroit, MI Just The Beginning Foundation Devitt Award
June 22	Berkley, CA Federal Judges Association Meeting w/ counsel
July 12	Detroit, MI Just The Beginning Foundation
September 10	Detroit, MI Just The Beginning Foundation JTBF pre-conference meeting

National Institute for Trial Advocacy

1998:

January 24-31	Houston, TX
February 27 - March 3	Costa Mesa, CA
March 9-12	Northbrook, IL
October 18-23	Lombard, IL

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FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Williams, Ann Claire	5/12/99

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

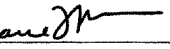
None

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

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. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature  Date 5/12/99

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. 4, § 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 bank	19	000	00	Notes payable to banks-secured[4] Auto Loan	18	500	00
U.S. Government securities[1] (add schedule)	35	000	00	Notes payable to banks - unsecured[5]	6	300	00
Listed securities (add schedule)[2]	4	000	00	Notes payable to relatives		0	
Unlisted securities (add schedule)		0		Notes payable to others		0	
Accounts and notes receivables		0		Accounts and bills due	3	000	00
Due from relatives and friends	3	000	00	Unpaid income tax		0	
Due from others		0		Other unpaid tax and interest		0	
Doubtful		0		Real estate mortgages payable[6] (add schedule)	177	000	00
Real estate owned (add schedule)[3]	265	000	00	Chattel mortgages and other liens payable		0	
Real estate mortgages receivable		0		Other debts (itemize):[7] Equity Line	37	000	00
Autos and other personal property	175	000	00	Credit Cards:[8]			
Cash value - life insurance		0		A - ACW	14	000	00
Other assets (itemize):				B - DJS	16	500	00
Profit Sharing (DJS)	80	000	00				
IRA	49	000	00				
Fed. Thrift Svgs.	24	500	00	Total Liabilities	272	300	00
				Net Worth	382	200	00
Total Assets	654	500	00	Total liabilities and net worth	654	500	00
CONTINGENT LIABILITIES		0		GENERAL INFORMATION			
As endorser, co-maker or guarantor		0		Are any assets pledged? (add schedule)		No	
On leases or contracts		0		Are you a defendant in any suites or legal actions?		No	
Legal claims		0		Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax		0					
Other special debt		0					

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1) Zero Coupon Treasury
US Savings Bonds

2) AT&T,50 Shrs; Lucent,16 Shrs.

3)Personal Residence

4)Elgin State Bank

5)CIT- RV Ln

6)Bank Of America

7)Elgin State Bank

8A) Credit cards

8B) Credit Cards

By _____
Ann C. Williams (ACW)

By _____
David J. Stewart (DJS)

Dated: June 14, 1999

III. GENERAL (Public)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

On a regular basis, I give courtroom tours to school students of all ages educating them about the role of the federal judiciary in America (once or twice per month). For example, on April 13, 1999, I hosted a program for students from Schiller Elementary School in Chicago. *See* Kate Marquess, Sonnenschein Uses Its WITS For Students on Field Trip, *Chicago Lawyer* 13, Vol. 22(6), May 20, 1999.

I also participate in educational programs and panel discussions for various bar organizations and other community groups (once per month). For instance, on July 20, 1999, I served on a panel with other federal judges for the Chicago Committee on Minorities in Large Law Firms.

In addition to those activities, I serve on several boards and work with a number of not-for-profit organizations.

Just the Beginning Foundation ("JTBF")
Time Commitment: Monthly board meetings

JTBF was founded to accomplish several goals: (1) to commemorate the contributions of African-Americans to the federal judiciary; (2) to educate the public on the struggles and successes of African-American lawyers and judges who are the role models for future generations; (3) to collect, preserve and disseminate historical and other information on African-Americans in the federal judicial system and (4) to provide financial support for students who exemplify JTBF's goals and to lawyers whose public service demonstrates a personal commitment to utilizing their legal talents for the public good. I am a founding member and current chair of this organization which has sponsored three national conferences, published two books, and created a traveling exhibit which was on display at the public library for two months.

Minority Legal Education Resources, Inc. ("MLER")
Time Commitment: 2 lectures per year

MLER is a not-for-profit Illinois corporation that is dedicated to enhancing the legal education and experience of minority and other law students. Its primary activity is the administration of a six-week supplemental bar preparation program in which volunteer lawyers assist law graduates by administering and grading sample bar examinations. I was co-founder of this organization and continue to lecture on a regular basis in the program.

MLER Consortium of Law Schools and Bar Associations
Time Commitment: 6 meetings per year @ 1 hour
2 panel presentations per year @ 4 hours

The MLER Consortium is an organization of law schools, bar associations, other judges and lawyers working together to help minority law students in Chicago area law schools achieve greater academic success and assist them with career planning. Panel discussions, open to all students, are held twice a year at Chicago area law schools where prominent judges and attorneys serve as panelists. I chair the Consortium and oversee the planning of events.

National Institute of Trial Advocacy ("NITA")
Time Commitment: 2 meetings per year

NITA is the country's premier trial advocacy program, in law schools and other CLE courses. I serve on the NITA Board of Directors and work with other members to set policy for the program.

University of Chicago Laboratory Schools
Time Commitment: 1or 2 meetings per year (I have been on inactive status for the last four years and am only involved during emergencies)

The University of Chicago Laboratory School is a private elementary and secondary school in Chicago serving approximately 1,400 children. I serve on the board, working with other board members as part of the governing body that set policies for the school.

University of Notre Dame
Time Commitment: 3 meetings per year

The University of Notre Dame is a private university located in South Bend, Indiana. I am an alumni of the University of Notre Dame Law School. I serve on the Board of Trustees as Secretary attending meetings and help to set policies for the school. The Board is the governing body of the University that set policies for the school.

2. The American Bar Association's Commentary to its code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

No

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is a selection committee in my jurisdiction to recommend candidates to the United States District Court, but no selection committee in my jurisdiction to recommend candidates to the Seventh Circuit Court of Appeals.

I interviewed with both Senator Richard Durbin and Senator Peter Fitzgerald of Illinois. I also met with representatives from the White House Counsel's office on Tuesday, May 18, 1999. In addition, I was evaluated by the American Bar Association and the Federal Bureau of Investigation.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Criticism of judicial activism and the proper role of the federal judiciary was an issue in 1985 when I became a district judge and continues to raise concerns today. I am sensitive to those concerns and recognize the very distinct roles of each of the three branches of government. A judge's primary responsibility is to decide particular cases fairly and expeditiously based on the facts presented and the law. Thus, dispute resolution, not problem resolution, is the courts' aim. It is the role of Congress and the President to address the societal problems this nation faces. Before deciding any issue, however, a court should review the parties' dispute to ensure that the case falls within the limited subject matter jurisdiction of the federal courts. Likewise, when resolving disputes, federal judges should be careful not to exceed the authority granted them by Article III of the Constitution by rendering advisory opinions where there is no actual case or controversy or by allowing litigation among parties that do not have a legitimate interest in the case. Finally, when applying these important constitutional requirements, adherence to *stare decisis* is a principle to which judges must subscribe.

Jerod 5/99

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. **Full name (include any former names used.)**

Charles Reginald Wilson
(My friends refer to me as "Chuck")

2. **Address: List current place of residence and office address(es).**

Current place of residence	:	Tampa, Florida
Office address	:	United States Attorney's Office Park Tower Suite 3200 400 N. Tampa Street Tampa, Florida 33602

3. **Date and Place of birth.**

October 14, 1954
Pensacola, Florida

4. **<u>Marital Status</u> (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Date of marriage:	November 6, 1981
Spouse's maiden name:	Belinda Marie Flint
Spouse's occupation:	Financial Consultant Associate
Employer's name:	Solomon Smith Barney, Inc.
Business address:	100 N. Tampa Street Suite 3000 Tampa, FL 33602-5198

5. **Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

College attended : University of Notre Dame

Dates attended : August, 1972 to May, 1976
B.A. received on May 16, 1976

Law School attended: University of Notre Dame Law School

Dates attended : August, 1976 to May, 1979
J.D. received on May 20, 1979

6. **Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.**

United States Attorney
Middle District of Florida
400 North Tampa Street
Suite 3200
Tampa, Florida 33602
(813) 274-6100
October, 1994 - Present

United States Magistrate Judge
United States District Court
Middle District of Florida
801 N. Florida Avenue
Tampa, Florida 33602-4511
August, 1990 - September, 1994

County Judge
Thirteenth Judicial Circuit of Florida
Hillsborough County Courthouse
Tampa, Florida
December, 1986 - August, 1990

Private Practice:
Charles R. Wilson
100 South Ashley Drive
Room 1360
Tampa, Florida 33602
January 1, 1981 - December 1, 1986

Office of the Hillsborough County Attorney:
Hillsborough County Courthouse
Tampa, Florida 33602
November, 1979 - December, 1979
September, 1980 - December, 1980
The County Attorney at this time was:
J. Bert Grandoff, Jr., Carlton, Fields, Ward, Emmanuel, Smith & Cutler
Post Office Box 3239
Tampa, Florida 33601-3239

Law Clerk for:
The Honorable Joseph W. Hatchett
United States Court of Appeals for the Eleventh (formerly the Fifth) Circuit
Post Office Box 10429
Tallahassee, Florida 32302
January, 1980 - September, 1980

Summer intern for:
Morris W. Milton
Attorney At Law
(now deceased)
St. Petersburg, Florida
June 1, 1978 - August 30, 1978

Summer intern for:
Shackleford, Farrior, Stallings & Evans
Post Office Box 3324
Tampa, Florida 33601-3324
June 1, 1977 - August 15, 1977
June 1, 1976 - August 26, 1976

Research Assistant for:
Donald Kommers
Professor of Law
University of Notre Dame Law School
Notre Dame, Indiana 46556
October 1, 1978 - May 1, 1979

Door Guard for:
University of Notre Dame Food Service
Notre Dame, Indiana 46556
September 1, 1978 - May 20, 1979
September 1, 1978 - May 20, 1979

7. **Military Service: Have you had any military service?**

No

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.**

J. Ben Watkins Award for Professional Excellence in the Practice of Law, by the Stetson University Law Review, St. Petersburg, Florida, November, 1994

Most Productive Young Lawyer, by the Hillsborough County Bar Association, May, 1990

George Edgecomb Memorial Award for Outstanding Achievement At An Early Age, by the Greater Tampa Urban League, August, 1987

Mark of Excellence Award, by the Tampa Bay Chapter of the National Association of Black Public Administrators, March, 1999

9. **Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.**

PROFESSIONAL AFFILIATIONS

The Florida Bar Association:
- Board of Governors, Young Lawyers Section (1984-1988)
- Long Range Planning Committee, Young Lawyers Section (1984-1985)
- Public Relations Committee, Young Lawyers Section (1981-1982)
- Convention Committee, Young Lawyers Section (1984-1985)
- Bridge-The Gap Committee, Young Lawyers Section (1986-1988)

The Hillsborough County Bar Association:
- President, Young Lawyers Section (1987-1988)
- Chair, Law Week (1994)
- Board of Directors, Young Lawyers Section, (1981-1988)
- Orientation Committee, Chairman, (1981, 1982, 1983 and 1984)
- Bylaws Committee, Young Lawyers Section (1982)
- Social Committee, Young Lawyers Section (1986-1987)
- Pro Bono Awards Committee of the Thirteenth Judicial Circuit (1983-1984)
- Chairman, Judicial Evaluation Committee (1984-1985)
- Judicial Liaison Committee (1986-1988)
- Long Range Planning Committee (1988-1991)
- Chair, Liberty Bell Committee (1999)

The American Bar Association:
- Public Utility Law Section (1982-present)
- Young Lawyers Division (1979-1991)

American Judicature Society (1983-1989)

The Trial Lawyers Association of America (1984-1986)

The National Bar Association (1979-present)

The Federal Energy Bar Association (1984-1986)

Ferguson-White Inn of American Inns of Court (1988-present)
President (1994-95)

Federal Bar Association (1997-present)

American Law Institute (1997-present)

Jacksonville Bar Association (1994-present)

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

The following are organizations to which I presently belong which I believe are active in lobbying before public bodies:

The American Bar Association

The Florida Bar Association

The following are all other organizations to which I presently belong:

University of Notre Dame Law School, Advisory Board (1995-Present)

Academy of the Holy Names, (Tampa, Florida) Parents Advisory Board (1994-Present)

Christ-The-King Catholic Church, Tampa, Florida (1998-present)

University Club of Tampa (1992-present)

Tampa Yacht Club (1993-present)

Both the University Club of Tampa and the Tampa Yacht Club require membership (as opposed to being open to the public). A copy of the by-laws are attached.

11. **Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.**

United States Supreme Court - Admitted on February 26, 1999

Supreme Court of Florida - Admitted on October 27, 1979

United States District Court for the Middle District of Florida - Admitted on November 21, 1979

United States Court of Appeals for the Eleventh Circuit - Admitted on September 1, 1980

12. **Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.**

The following represents all articles and published material that I have written. They are all published in "The Lawyer", which is the newsletter for the Hillsborough County Bar Association. A copy of each is attached.

1. "The Appellate Division," November, 1996
2. "Prison Construction Keeping Pace with Population Growth," November, 1997
3. "The Criminal Alien Problem in Florida," December, 1996
4. "Police Use of Force–A Collection of National Data," December, 1997
5. "Sentencing Appeal Waivers," January, 1997
6. "A Report on Financial Institution Fraud," November, 1995
7. "The Dangers of Rohypnol," October, 1997
8. "International Efforts to Combat Computer Crime," January, 1998
9. "Methamphetamine A Growing National Problem," October, 1996
10. "Violent Juvenile Crime: A Trend Analysis," October, 1995
11. "Nation's Probation and Parole Population Increases," August, 1997
12. "The Crime Victim's Fund," October, 1996
13. "Environmental Crime Prosecution Emerges to the Forefront in Central Florida," September, 1995
14. "Substantial Crack Use Decline Found Among Arrestees," August, 1997
15. "Violence Reduction Strategies Remain in the Forefront," August, 1995

16. "Standing Up to Arson," August, 1996
17. "We Seek to Serve the Public in Many Ways," April, 1996
18. "The Violence Against Women Act," March, 1996
19. "Getting Tough on Hate Crimes," February, 1998
20. "The Brady Law is Working," February, 1997
21. "The Criminal Alien Problem in Florida," February, 1996
22. "International Efforts to Combat Computer Crime," January, 1998
23. "Federal Arrestee Drug Testing is Underway," January, 1996

The following is a published article written by Assistant United States Attorney Edward Page that I edited. This article was also published in "The Lawyer", the newsletter for the Hillsborough County Bar Association. A copy is attached.

1. "Sentencing Commission Action Under Review," July, 1995

The following represents all speeches by me on issues involving constitutional law or legal policy: A copy of each is provided.

1. Speech at Naturalization Ceremony for New U.S. Citizens, Tampa, Florida, May 30, 1995

2. Speech to the American Bar Association Meeting of Military Lawyers, Jacksonville, Florida, November 2, 1995

3. Freedom Week Speech to Downtown Tampa Sertoma Club, May 9, 1995

4. 1996 ABA Convention - Keynote Address - Electronic Commerce: Finance and Fraud on the Information Superhighway, Orlando, Florida, October 30, 1995

5. Comments for Law Enforcement Arson Conference, Tampa, Florida, July 13, 1996

6. Remarks at International Asian Organized Crime Conference, Orlando, Florida, April 21, 1997

7. Speech to Law Enforcement Training Session on Leadership in the Asset Forfeiture Program, Tampa, Florida, April 8, 1998

8. Strategies to Combat Crime in Communities, Tampa, Florida, July 23, 1998

9. Speech to Jacksonville, Florida Chamber of Commerce, April 7, 1995

10. Comments for Law Enforcement Meeting on Church Fires, July 1, 1996

11. Speech to National Clandestine Lab Conference, Orlando, Florida, August 20, 1998

12. Speech to Florida Crime Prevention Conference, Orlando, Florida, October 20, 1997

13. Comments to the U.S. Customs Service Office of Investigations Conference, Orlando, Florida, October 22, 1997

14. Speech to Federal Bar Association, Tampa, Florida, October 31, 1997

15. Speech to the Central Florida Chapter of the FBI National Academy Associates, May 22, 1996

16. Comments at FBI Training Session, Tampa, Florida, September 20, 1995

17. Comments for the FBI/Criminal Division Continuing Education Conference, Introductory Remarks, Tampa, Florida, December 15, 1998

18. Comments for the Tampa Field Division FBI All Agents' Conference, December 13, 1996

19. Speech to the Tampa Chapter of the Federal Bar Association, July 22, 1997

20. Speech to Federal Law Enforcement Officers, Tampa, Florida, November 4, 1994

21. Comments for Community Meeting on Church Fires, Tampa, Florida, July 9, 1996

22. Talking Points on Food Stamp Fraud, Jacksonville, Florida, April 29, 1996

23. Objections at Trial How to Deal With the Difficult Lawyer ABA CLE Seminar, Tampa, Florida, December 9, 1992

24. Speech to the George Edgecomb Bar Association, Tampa, Florida, October 25, 1995

25. Speech to the Hillsborough County Bar Association Law Day Luncheon, Tampa, Florida, May 2, 1996

26. Remarks for Health Care Fraud Training Conference, Tampa, Florida, September 24, 1998

27. Comments for the Florida Heroin Trafficking and Abuse Awareness Conference; Partnerships in Prevention, Orlando, Florida, August 21, 1997

28. Opening Remarks for Health Care Fraud Conference, Tampa, Florida, April 9, 1997

29. Comments to the Tampa Bay Inn of Court Meeting, January 6, 1997

30. Speech to Stetson Law School Student Interns, Tampa, Florida, March 10, 1995

31. Speech to the Internal Revenue Service Training Session, St. Petersburg, Florida, May 8, 1995

32. Speech to the Jacksonville Federal Bar Association, June 27, 1995

33. Opening Address at the American Bar Association, Young Lawyer's Division Affiliate Outreach Conference at Marco Island, Florida, May 14, 1992 (I unable to locate a copy of this speech)

34. Speech to Law Enforcement Officers, Tampa, Florida, February 2, 1996

35. Remarks for Law Enforcement Summit, Tampa, Florida, November 16, 1995

36. Speech for Law Enforcement Appreciation Awards Luncheon, Tampa, Florida, March 30, 1996

37. Welcoming Remarks Law Enforcement Conference, Tampa, Florida, June 4, 1998

38. Middle District of Florida Weed and Seed Program Remarks, Tampa, Florida, October 18, 1996

39. Speech to the Tampa Bay Lions Club, August 3, 1995

40. "What is a Magistrate Judge" - Florida Bar Continuing Legal Education Seminar, Tampa, Florida, October 27, 1994

41. Speech at Naturalization Ceremony for New U.S. Citizens, Tampa, Florida, March 29, 1995

42. Speech to the National Organization for Black Law Enforcement Executives, Orlando, Florida, June 6, 1995

43. Opening Remarks, Department of Justice Budget Officers' Conference, Clearwater, Florida, March 10, 1997

44. Speech to the Orange County, Florida Bar Association, July 19, 1995

45. Comments for Tampa Bay Area Chiefs of Police, March 11, 1999

46. Speech to Meeting of United States Postal Inspectors, Cocoa Beach, Florida, October 5, 1995

47. Comments for Public Corruption Conference, Tampa, Florida, June 2, 1998

48. Opening Remarks for the Middle District of Florida Conference, August 25, 1995

49. Speech to the Florida Department of Corrections Statewide Security Chiefs' Conference, Orlando, Florida, October 2, 1996

50. Comments for Freedom Week, Downtown Tampa Sertoma Club, May 21, 1996

51. Speech to the Hillsborough County Sheriff's Black Advisory Committee, October 19, 1996

52. Comments at Ceremony for Transfer of Title to Skyline Bar, Bradenton, Florida, April 10, 1996

53. Introductory Remarks for Law Enforcement Telemarketing Working Group Meeting, Tampa, Florida, October 17, 1996

54. Comments for the Tampa Chapter of the Federal Bar Association, August 28, 1997

55. Comments at Triad Southeast Conference, February 21, 1996

56. Speech to Trial Lawyer's Section Luncheon, Hillsborough County Bar Association, Tampa, Florida, July 10, 1996

57. Speech to the Trial Lawyers Section of the Hillsborough County Bar Association, Tampa, Florida, July 12, 1995

58. Comments for the Governor's Fourth Annual Summit on Domestic Violence, Orlando, Florida, October 3, 1997

59. Southeast Regional Convention of the Criminal Investigation Unit of the Internal Revenue Service in St. Petersburg, Florida, October 1992

60. Comments for Tampa, Florida Weed and Seed Conference, August 22, 1996

61. Comments for Orlando, Florida Weed and Seed Meeting, August 29, 1997

62. Press Conference - Manatee/Sarasota Violent Crimes Task Force, Sarasota, Florida, June 16, 1995

63. Comments for the Commemoration Ceremony of the Transfer of Property to Quality Life Center of Southwest Florida, Ft. Myers, Florida, September 3, 1997

64. Comments for the Visit to the Orlando Weed and Seed Site, Orlando, Florida, August 29, 1997

65. Comments to St. Petersburg Weed and Seed Conference, St. Petersburg, Florida, April 8, 1997

66. Comments for Meeting at East Tampa Weed and Seed Corporation to Develop Communities of Tampa, March 6, 1997

67. Welcoming Remarks, American Bar Association, Government and Public Sector Lawyer's Division, Orlando, Florida, August 2, 1996

68. National Practice Institute Seminar on "Objections at Trial, How to Deal With the Difficult Lawyer", Tampa, Florida, December 9, 1992 (I am unable to locate a copy of this speech)

69. Bridge the Gap Seminar, Young Lawyer's Division, Florida Bar on Florida Court Practice, 1989, 1990, 1991 (extemporaneous)

70. Hillsborough County, Florida Sheriff's Advisory Council--Law Day Speech, April, 1994 (I am unable to locate a copy of this speech)

71. Diversity in the Legal Profession at American Bar Association Young Lawyers Division Conference in Portland, Oregon, June, 1994 (I am unable to locate a copy of this speech)

72. "The State of the Middle District of Florida" to the Charlotte County Bar Association, February 16, 1993 (I am unable to locate a copy of this speech)

73. Florida Bar Association Labor and Employment Law Section Conference on Proposed Changes to Federal Rules of Civil Procedure, Tampa, Florida, September 1993 (extemporaneous)

74. Opening Remarks at the FDIC, Financial Litigation Unit/U.S. Probation Conference, Tampa, Florida, March 31, 1999

75. Speech to Hillsborough Community College, Martin Luther King Day, Tampa, Florida, February, 1994 (I am unable to locate a copy of this speech)

77. Unlocking the Mysteries of Federal Court, A Guide for the Unwary--How to Avoid Returning from Battle on Your Shield, Florida Bar Seminar, September, 1992 (I am unable to locate a copy of this speech)

78. Southeast Regional Convention of the Criminal Investigation Unit of the Internal Revenue Service, St. Petersburg, Florida, Welcoming Remarks, October, 1992 (extemporaneous)

79. Federal Court Practice, Florida Bar Bridge-the-Gap Seminar, October, 1990, 1991, 1992 (extemporaneous)

80. Opening Remarks at the FDIC, Financial Litigation Unit/U.S. Probation Conference, Tampa, Florida, March 31, 1999

81. Speech to St. Petersburg Bar Association, April 9, 1999

82. Freedom Week, Sertoma Club, May 11, 1999

13. Health: What is the present state of your health? List the date of your last physical examination.

My health is excellent. My last physical examination was conducted on March 10, 1999.

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 served as a United States Magistrate Judge for the United States District Court for the Middle District of Florida, in the Tampa Division, from August, 1990 to September, 1994. I was appointed to this position by the District Court in May of 1990. I assumed my duties on August 13, 1990. As a Magistrate Judge, I presided over criminal pre-trial proceedings; misdemeanor trials, when the parties had consented for me to do so; civil discovery and procedural motions; preparation of proposed findings and recommended dispositions in habeas corpus and social security cases; civil trials upon the consent of the parties; and a variety of other matters as assigned by the District Judges, pursuant to 28 U.S.C. § 636.

Prior to my appointment as a Magistrate Judge, I served as a County Judge in the Thirteenth Judicial Circuit in Hillsborough County, Florida. I was appointed to this Court by former Governor (now U.S. Senator) Bob Graham in November, 1986 and served until July, 1990. County Judges have original jurisdiction in misdemeanor cases not cognizable by the Circuit Courts, violations of municipal and county ordinances, civil causes of action at law not exceeding $15,000, and landlord/tenant cases.

15. **Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opining.**

(1) The following are citations for twelve of the most significant opinions I have written:

A. Dimmit v. City of Clearwater, 782 F. Supp. 586 (M.D. Fla. 1991), aff'd and modified, 985 F.2d 1565 (11th Cir. 1993).

B. Dowd v. International Longshoremen's Ass'n, 781 F. Supp. 1565 (M.D. Fla. 1991) (Nimmons, J., adopting Report and Recommendation), aff'd, 975 F.2d 779 (11th Cir. 1992).

C. E. Frank Griswold, III v. United States, 1994 WL 245223 (M.D. Fla. 1994), aff'd in part and rev'd in part, 59 F.3d 1571 (11th Cir. 1995).

D. T-Marc, Inc. v. Pinellas County, No. 91-600-Civ-T-17(A) (M.D. Fla. June 19, 1992) (unpub.), adopted, 804 F. Supp. 1500 (M.D. Fla. 1992) (Kovachevich, J.).

E. Fortner v. Singletary, 797 F. Supp. 951 (M.D. Fla. 1992) (Nimmons, J., adopting Report and Recommendation), rev'd, 19 F.3d 1445 (11th Cir. 1994) (TABLE).

F. Bodine v. Federal Kemper Life Assurance Co., No. 85-1814-Civ-T-17(A) (M.D.Fla. Nov. 6, 1991) (unpub.), adopted in part and overruled in part, 138 B.R. 88 (M.D. Fla. 1992) (Kovachevich, J.).

G. Alabama Sportservice, Inc. v. National Horsemen's Benevolent and Protective Ass'n, Inc., No. 91-155-Civ-T-17(A) (M.D. Fla. April 11, 1991) (unpub.), adopted in part and referred for evidentiary hearing, 767 F. Supp. 1573 (M.D. Fla. 1991) (Kovachevich, J.).

H. McHenry v. The Florida Bar, No. 92-370-Civ-T-17(A) (M.D. Fla. August 7, 1992) (unpub.), rejected, 808 F. Supp. 1543 (M.D. Fla. 1992) (Kovachevich, J.), aff'd, 21 F.3d 1038 (11th Cir. 1994), rev'd sub nom., Florida Bar v. Went For It, Inc., 515 U.S. 618 (1995).

I. Joseph Wayne Capaz v. Harry K. Singletary, Jr., No. 90-1421-Civ-T-10(A) (M.D. Fla. Sept. 6, 1991) (Hodges, J., adopting report and recommendation) (unpub.).

J. Anis v. Blecker, 141 F.R.D. 530 (M.D. Fla. 1992).

K. Beadle v. City of Tampa, 1993 WL 771045 (M.D. Fla. 1993), aff'd, 29 F.3d 589 (11th Cir. 1994), cert. denied, 514 U.S. 1128 (1995). (The Westlaw cite is to my underlying opinion, but it erroneously references Thomas G. Wilson as the Magistrate Judge.)

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*Since these opinions were not officially reported, I have attached copies.

L. Mannings v. School Bd. of Hillsborough County, Florida, 796 F.Supp. 1491 (M.D. Fla. 1992) (Kovachevich, J., rejecting Report and Recommendation), reconsidered on motion, 816 F.Supp. 714 (M.D. Fla. 1993).

(2) A short summary and citation for all appellate opinions where my decisions were reversed or where judgment was affirmed with significant criticism of substantive or procedural rulings:

A. E. Frank Griswold, III v. United States, 59 F.3d 1571 (11th Cir. 1995), aff'g in part and rev'g in part, 73 A.F.T.R. 2d 94-1379, 94-1 USTP P 50, 213 (M.D. Fla. 1994).

This case of first impression concerned the requirements for the IRS to release a federal tax lien pursuant to Internal Revenue Code § 6325. E. Frank Griswold, III challenged penalties assessed by the Internal Revenue Service for failure to pay certain taxes relating to two of his businesses. The parties consented to resolution of the case by the United States Magistrate Judge. I granted summary judgment on behalf of the IRS, finding that, to release a federal tax lien, the IRS must file a certificate of release for each notice of lien filed against the taxpayer, whether original or refiled. I ruled, however, that the IRS's failure to file a certificate of release in this case was neither knowing nor negligent, and I denied Griswold's claim for damages. The Eleventh Circuit reversed and held that the IRS must issue a certificate of release which sufficiently identifies the underlying tax obligation and lien as well as any notices of any federal tax liens filed with respect to that lien so that a person searching title to the property could discover whether a lien exists. Accordingly, my ruling was reversed and remanded for the purpose of conducting additional proceedings consistent with the opinion.

B. McHenry v. Florida Bar, 808 F.Supp. 1543 (M.D. Fla. 1992) (Kovachevich, J., rejecting Report and Recommendation), aff'd, 21 F.3d 1038 (11th Cir. 1994), rev'd sub nom., 515 U.S. 618 (1995).

The issue in this case was whether the rules of the Florida Bar prohibiting personal injury lawyers from sending targeted, direct-mail solicitations to accident victims and their relatives for thirty days immediately following an accident or disaster violated the First and Fourteenth Amendments to the United States Constitution. I concluded that the Bar rules did not violate the Constitution because they were narrowly tailored to accomplish a legitimate governmental

interest and directly served those interests within the limits of the Constitution. The District Court rejected my Report and Recommendation and entered Summary Judgment for the plaintiffs. That decision was affirmed by the United States Court of Appeals for the Eleventh Circuit. The United States Supreme Court reversed the judgment of the Court of Appeals and ruled that the Florida Bar Rule at issue is not barred by the First Amendment.

C. Masters v. Nationwide Mutual Fire Ins. Co., 858 F.Supp. 1184 (M.D. Fla. 1994) (Bucklew, J., rejecting Report and Recommendation).

Plaintiff moved for a remand of this civil action to state court, contending that defendant's removal notice was not timely filed. I submitted a Report and Recommendation to the District Court, recommending that plaintiff's motion for remand be granted for untimely filing because the thirty day period in which a notice of removal must be filed begins when service is made to the defendant's statutory agent. The District Court disagreed, finding that the thirty day period begins to run when the summons and complaint were mailed by the statutory agent to the person being served.

D. Fortner v. Singletary,19 F.3d 1445 (11th Cir. 1994) (TABLE), rev'g, 797 F.Supp. 951 (M.D. Fla. 1992) (Nimmons, J., adopting Report and Recommendation).

This case involved a petiton for a writ of habeas corpus by a state prisoner following his conviction after entry of guilty pleas to armed robbery and grand theft. The petitioner alleged that his convictions should be vacated for the reason that he was denied the effective assistance of counsel, that his pleas were not knowingly, voluntarily and intelligently entered and that his convictions violated the constitutional prohibition against double jeopardy. I recommended that the petition be denied since the petitioner failed to demonstrate that he would not have entered guilty pleas absent the shortcomings of his counsel, nor did he show that he would not have pled guilty had he known that his prior sentences would run consecutively to his sentence in this case. The District Court accepted the Report and Recommendation and denied the petition. The District Court's decision was reversed by the Eleventh Circuit in an unpublished opinion.

E. Arthur Rutenberg Homes, Inc. v. Drew Homes, Inc., 29 F.3d 1529 (11th Cir. 1994) (vacating judgment in Arthur Rutenberg Homes, Inc. Drew Homes, Inc., 829 F.Supp. 1314 (M.D. Fla. 1993)).

This copyright case was tried before me as United States Magistrate Judge, by consent of the parties. Home builder Arthur Rutenberg, as successor in interest to another builder, sought to enforce a copyright for an architectural plan against a competitor pursuant to 17 U.S.C. § 201(a). I ruled that the evidence failed to establish that Rutenberg owned a valid copyright at the time of the alleged infringement pursuant to the statute. The Eleventh Circuit disagreed and reversed, finding that the evidence satisfied the requirements of the statute and that Rutenberg did in fact possess a valid copyright. The Eleventh Circuit remanded for additional fact-finding proceedings on the infringement issue.

F. Daugherty v. Sarasota County, 86 F.3d 1168 (11th Cir. 1996) (TABLE) (aff'g in part and rev'g in part 157 F.R.D. 542 (M.D.Fla. 1994)).

This was a civil rights action brought by the owners of real property against Sarasota County, Florida on a claim for just compensation, violation of due process, and violation of equal protection under the law. The parties consented to resolution of the case by the United States Magistrate Judge. Sarasota County moved to dismiss for lack of subject matter jurisdiction and alternatively for summary judgment. As United States Magistrate Judge, I denied the motion on various grounds. The denial was appealed to the Eleventh Circuit which affirmed in part and reversed in part in 1996, without formal published opinion.

G. Hernandez v. Dugger, 41 F.3d 668 (11th Cir. 1994) (TABLE), rev'g, 829 F.Supp. 372 (M.D. Fla. 1993) (Merryday, J. rejecting Report and Recommendation).

This case involved a petition for a writ of habeas corpus by a state prisoner following his conviction for sexual battery of a child under the age of 12. The petitioner alleged that his conviction should be vacated for the reason that the trial court violated his right to testify on his own behalf by failing to allow him to re-open his case after he rested, but before the matter was submitted to the jury. I recommended that the petition be denied since petitioner waived his constitutional right to testify on his own behalf. The District Court

rejected that recommendation and granted the petition. The District Court's ruling was reversed on appeal to the Eleventh Circuit. The Eleventh Circuit agreed with my ultimate recommendation that the petition should have been denied.

H. Mannings v. School Bd. of Hillsborough County, Florida, 796 F.Supp. 1491 (M.D. Fla. 1992) (Kovachevich, J., rejecting Report and Recommendation), reconsidered on motion, 816 F.Supp. 714 (M.D. Fla. 1993).

In this school desegregation case, a motion was filed by the School Board of Hillsborough County to enjoin a separate state court proceeding by private citizens challenging a desegregation plan. The matter was referred to me as Magistrate Judge for Report and Recommendation. I recommended that the Court grant the School Board's motion to enjoin the private citizens from filing a class action in state court as it would interfere with the desegregation proceeding pending in federal court. The District Court rejected this Report and Recommendation, finding that such action was violative of the Anti-Injunction Act, 28 U.S.C. § 2283 which prohibits the United States from enjoining proceedings in a state court except as expressly authorized by act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. The District Court subsequently reconsidered and granted the School Board's motion to enjoin the separate state court proceeding.

I. Bodine v. Federal Kemper Life Assurance Co., 138 B.R. 88 (M.D. Fla. 1992) (Kovachevich, J., adopting in part and overruling in part Report and Recommendation).

This case was presented to the Court for a determination on the amount of a charging lien filed by counsel for the plaintiff seeking attorney's fees for representation of a plaintiff in a personal injury case. Plaintiff's bankruptcy petition was pending in the United States Bankruptcy Court. The matter was referred to the United States District Court for consideration of the amount of the charging lien. The District Court referred the issue to the Magistrate Judge for a Report and Recommendation on the amount of the lien. As Magistrate Judge, I applied the "lodestar" method, in accordance with established authority to determine the amount of the charging lien.

Objections to the Report and Recommendation were filed on various grounds. The Report and Recommendation was adopted in substantial part but amended to include an award of prejudgment and post-judgment interest.

J. United Aluma Glass v. Bratton Corporation, 8 F.3d 756 (11th Cir. 1993) (Dyer, J., aff'g in part, rev'g in part and remanding) (the opinion incorrectly lists the Magistrate Judge as Thomas G. Wilson).

This case involved a construction contract dispute between a subcontractor and a contractor, and their sureties, concerning the construction of a Hillsborough County, Florida detention facility. Following a jury trial over which I presided with the consent of the parties, a $262,957.24 judgment was entered for plaintiff contractor against defendant's subcontractor as damages for work on the project and for loss of business value resulting from wrongful termination of contract. Various issues were presented on direct appeal to the Eleventh Circuit. The verdict was upheld in all respects except that the Eleventh Circuit reversed the judgment for the surety companies, holding that the Court should have applied the general principle of suretyship that the liability of a surety is coextensive with the liability of the principal. The Eleventh Circuit further ordered prejudgment interest as a part of the total damages awarded to the plaintiff.

K. United States v. Christian Schmidgall, 25 F.3d 1523 (11th Cir. 1994) (Kravitch, J., vacating and remanding).

In this case, Christian Schmidgall was indicted for unlawfully importing cocaine into the United States. He entered conditional pleas of guilty, preserving for appeal the Court's consideration of the denial of his motion to dismiss the indictment, alleging an improper use of his prior immunized testimony in violation of his Fifth Amendment right against self-incrimination. The matter was referred to me as United States Magistrate Judge for hearing and preparation of factual findings and a Report and Recommendation to the District Court. I recommended that the motion to dismiss be denied, and that recommendation was accepted by the District Court. On appeal, the Eleventh Circuit reversed the ruling of the District Court, finding that the United States failed to meet its burden of proof by a preponderance of the evidence that none of Schmidgall's immunized testimony was used in obtaining the indictment against him. The case was remanded for further proceeding.

L. Powell v. State, 592 So.2d 785 (Fla. 2d DCA 1992) (Campbell, A.C. J, reversing).

In the Circuit Court for the Thirteenth Judicial Circuit of Florida, defendant, Powell, was convicted of possession of cocaine and obstructing an officer. Prior to the trial, he filed a motion to suppress cocaine that officers discovered in his pockets after he was stopped and searched, contending that an anonymous tip was insufficient to provide probable cause for an investigative stop. I denied the motion to suppress. That ruling was reversed by the Second District Court of Appeals which held that an anonymous tip was insufficient to provide probable cause for an investigative stop and that, therefore, the motion should have been granted.

M. Brown v. State, 577 So.2d 708 (Fla. 2d DCA 1991) (Sheb, A.C. J., reversing) (disagreed with by Popple v. State, 609 S.2d 619 (Fla. 4th DCA 1992).

In the Circuit Court for the Thirteenth Judicial Circuit of Florida, the defendant moved to suppress evidence of narcotics obtained from his possession pursuant to a vehicle stop for illegal parking. I denied the motion to suppress based on facts presented at a suppression hearing. The Second District Court of Appeals of the State of Florida reversed my decision and held that the police officer's stop of a vehicle for illegal parking was pretextual and that the motion should have been granted.

N. Fernandez v. State, 570 So.2d 1008 (Fla. 2d DCA 1990) (Altenbernd, J., reversing and remanding), reh. denied, 570 So.2d 1008 (1991).

Defendant was convicted of aggravated assault with a firearm in the Circuit Court for the Thirteenth Judicial Circuit of Florida. Before submission of the matter to the jury, the defendant requested an instruction on the lesser included offense of discharging a firearm in public. I denied the request. The Second District Court of Appeals of the State of Florida reversed, finding that the evidence supported the requested instruction.

O. State v. Wells, 538 So.2d 1292 (Fla. 2d DCA 1989) (Parker, J., granting writ of certiorari).

In this case, defendant was charged with attempted second-degree murder in the Circuit Court for the Thirteenth Judicial Circuit of Florida. I granted defendant's motion to suppress a videotaped deposition of the victim, finding that there was a constitutional denial of confrontation of the witness since the defendant was not allowed to be physically present in the victim's hospital room where the deposition was taken to perpetuate testimony for the trial. The state sought a writ of common law certiorari to quash the order granting the motion to dismiss. The writ was granted upon a finding by the Second District Court of Appeals that the defendant waived any procedural defect in the taking of the deposition and was not, based on all of the circumstances, denied his right to confront and hear the witness, or to confer with the attorney during the deposition.

(3) Citations for significant opinions on federal or state constitutional issues.

A. Dimmitt v. City of Clearwater, 782 F.Supp. 586 (M.D. Fla. 1991), aff'd and modified, 986 F.2d 1565 (11th Cir. 1993).

B. Miller v. Dugger, 90-1486-Civ-T-17(A) 1992 WL 97350 (M.D. Fla. 1992) (Kovachevich, J., adopting report and recommendation).

C. T-Marc, Inc. v. Pinellas County, No. 91-600-Civ-T-17(A)((M.D. Fla. June 19, 1992) (unpub.), adopted, 804 F.Supp. 1500 (M.D. Fla. 1992) (Kovachevich, J.)

D. Fortner v. Singletary, 797 F.Supp. 951 (M.D. Fla. 1992) (Nimmons, J., adopting Report and Recommendation), rev'd, 19 F.3d 1445 (11th Cir. 1994) (TABLE).

E. Mannings v. School Board, 796 F.Supp. 1491 (M.D. Fla. 1992) (Kovachevich, J., rejecting Report and Recommendation, reconsidered on motion, 816 F.Supp. 714 (M.D. Fla. 1993).

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*Since this opinion was not officially reported, I have attached a copy.

F. McHenry v. Florida Bar, No. 92-370-Civ-T-17(A) (M.D. Fla. August 7, 1992) (unpub.), rejected, 808 F. Supp. 1543 (M.D. Fla. 1992) (Kovachevich, J.), aff'd, 21 F.3d 1038 (11th Cir. 1994), rev'd sub nom., Florida Bar v. Went For It, Inc., 515 U.S. 618 (1995).

G. Beadle v. City of Tampa, 1993 WL 771045 (M.D. Fla. 1993), aff'd, 29 F.3d 589 (11th Cir. 1994), cert. denied, 514 U.S. 1128 (1995). The Westlaw cite is to my underlying opinion, but it erroneously references Thomas G. Wilson as the Magistrate Judge.

There may be other Reports and Recommendations that I entered during my service as a United States Magistrate Judge on federal constitutional issues. However, there is no index or mechanism available for locating them. The opinions listed above are the most significant opinions that I have located.

16. **Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.**

On September 29, 1994, I was appointed by Attorney General Janet Reno to serve as the Interim United States Attorney for the Middle District of Florida. President Bill Clinton nominated me to become United States Attorney on September 19, 1994. I was confirmed by the Senate on October 7, 1994. I was appointed by President Clinton to serve a four-year term, which has expired, and I continue to serve at his pleasure.

17. **Legal Career:**

*Since this opinion was not officially reported, I have attached a copy.

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I served as a Law Clerk for the Honorable Joseph W. Hatchett of the United States Court of Appeals for the Eleventh Circuit. Justice Hatchett is presently the Chief Judge of the Eleventh Circuit and I am applying for the seat from which he has announced his resignation. My service with the Court was prior to the split of the Fifth Circuit into the now Fifth and Eleventh Circuits. The dates of my service were January, 1980 to September, 1980.

2. whether you practiced alone, and if so, the addresses and dates;

I practiced alone as an attorney between January 1, 1981 and December 1, 1986. The addresses are as follows:

100 South Ashley Drive
Room 1360
Tampa, Florida 33602

300 North Franklin Street
Tampa, Florida 33602

3. The dates, names and addreses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Between November, 1979 and December, 1979 and between September, 1980 and December, 1980, I was an Assistant County Attorney in Hillsborough County, Florida. The County Attorney was J. Bert Grandoff, Jr., who is presently a partner in the Tampa law firm of Carlton, Fields, Ward, Emmanuel, Smith and Cutler, P.O. Box 3239, Tampa, Florida 33601-3239, (813) 223-7000. My

service consisted essentially of representing the county in administrative and civil matters in the Circuit and County Courts and providing advice and guidance to the Hillsborough County Commission and its Departments. I represented Hillsborough County in matters before the Hillsborough County Civil Service Board.

Presently, I am the United States Attorney for the Middle District of Florida. In this capacity, I oversee an office consisting of 109 Assistant United States Attorneys and approximately 150 additional support staff employees in enforcing the federal laws in the Middle District of Florida and representing the agencies of the United States in civil proceedings.

The remainder of my legal career has been in judicial service as described in my response to question 14 above and as a sole practitioner in private practice, as described in my response to question 17a.2.

b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

While in private practice from January 1, 1982 to December 15, 1986, I was a sole practitioner with a general practice. My practice emphasized civil and criminal litigation in federal and state trial and appellate courts. I was a member of the Criminal Justice Act Panel available to represent indigent criminal defendants in federal court. I also represented Central Life Insurance Company of Florida.

As an Assistant County Attorney for Hillsborough County, Florida in 1979 and 1980, I represented Hillsborough County in a variety of administrative and civil matters in the Florida courts and provided advice and guidance to the Hillsborough County Commission and its departments. I represented Hillsborough County primarily on employment and labor matters and participated in the draft of county ordinances for presentation to, and consideration by, the Hillsborough County Commission. I appeared frequently before the Hillsborough County Civil Service Board on challenges to personnel actions (i.e., reprimands, suspensions and terminations) by County employees.

Since October 1, 1994, I have served as United States Attorney for the Middle District of Florida, where I oversee the operation of one of the largest United States Attorney Offices in the country. I supervise a staff of 250 employees, 109 of whom are attorneys. My responsibility is to implement the initiatives and directives of the Department of Justice in the Middle District of Florida, and to set and implement the civil and criminal enforcement priorities for the Middle District. The United States Attorney's Office is divided into three divisions: Criminal, Civil and Appellate. I am directly involved in the supervision and management of criminal, civil and appellate cases on behalf of the United States and its agencies. The Criminal Division participates in the investigation and prosecution of violations of federal criminal laws and statutes. The Civil Division represents the agencies of the United States in both the federal and state courts. The Appellate Division represents the United States on appeals to the United States Court of Appeals for the Eleventh Circuit.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

As an Assistant County Attorney for Hillsborough County, Florida in 1979 and 1980, my client was the Hillsborough County Commission, a five-member elected board of representatives which oversees county government in Hillsborough County, Florida. I provided advice and counsel to the Commission and the administrative departments under its supervision. I concentrated primarily on employment and labor law issues.

From January 1, 1982 until December 15, 1986, I was a sole practitioner with an office in Tampa, Florida. My practice was of a "general" nature, and I represented a wide variety of clients on personal, criminal, domestic and civil matters. I served as a member of the Criminal Justice Act panel available to represent indigent criminal defendants in federal court by court appointment. I also served as general counsel for the now defunct Central Life Insurance Company in Tampa, Florida.

From October 1, 1994 to the present, I have served as the United States Attorney for the Middle District of Florida. The United States Attorney relies upon federal, state and local law enforcement agencies to investigate reported violations of federal criminal law and refer potential prosecutions to my office. The

primary agencies with whom I work on a daily basis include: the Federal Bureau of Investigation, Drug Enforcement Administration, United States Secret Service, United States Customs Service, Treasury Department's Bureau of Alcohol, Tobacco and Firearms and the Internal Revenue Service. The Civil Division of the United States Attorney's Office provides representation to these agencies as well as various other agencies of the United States who are subject to civil proceedings in both the federal and state courts.

c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

I appeared in Court frequently, during my private practice between January, 1982 and December, 1986. I appeared in court occasionally as an Assistant County Attorney in Hillsborough County, Florida in 1979 and 1980. As an Assistant County Attorney, I appeared frequently before administrative bodies, primarily the Hillsborough County Civil Service Board.

Although I have not appeared in court personally as counsel for the United States during my service as United States Attorney, I have participated significantly in the supervision of civil, criminal and appellate cases handled by my office, including trials and appellate oral arguments.

2. **What percentage of these appearances was in:**

(a) federal courts;

Private Practice - 50%
Assistant County Attorney - 0%
United States Attorney - 0%

(b) state courts of record;

Private Practice - 45%
Assistant County Attorney - 100%
United States Attorney - 0%

(c) other courts.

Private Practice - 5%
Assistant County Attorney - 0%
United States Attorney - 0%

3. **What percentage of your litigation was:**

(a) civil;

Private Practice - 50%
Assistant County Attorney - 100%
United States Attorney - 0%

(b) criminal.

Private Practice - 50%
Assistant County Attorney - 0%
United States Attorney - 0%

4. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

(a) civil;

Private Practice - Approximately 17 - all sole counsel
Assistant County Attorney - 0
United States Attorney - 0

(b) criminal.

Private Practice - 20 - all sole counsel
Assistant County Attorney - 0
United States Attorney - 0

5. **What percentage of these trials was:**

(a) jury;

Private Practice - 55%
Assistant County Attorney - 0%
United States Attorney - 0%

(b) non-jury.

Private Practice - 45%
Assistant County Attorney - 0%
United States Attorney - 0%

18. **Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Although I have not personally appeared in court on behalf of the United States as United States Attorney for the Middle District of Florida, I have been heavily involved in litigated matters in a supervisory capacity:

1. In 1995-1999, I personally participated in legal strategy, analysis and oversight in United States v. Vicki Lopez-Lukis and Sylvester Lukis, Case No. 95-4-CR-FTM-21D (M.D. Fla.), a criminal prosecution that was tried in the United States District Court for the Middle District of Florida, Fort Myers Division. In November, 1997, after a jury trial that I personally supervised, Lopez-Lukis, a Lee County, Florida Commissioner, was found guilty of mail fraud by depriving Lee County citizens of her "honest services" while she was a County Commissioner. Lopez-Lukis and her then boyfriend lobbyist, Sylvester Lukis, profited over $300,000 by keeping their relationship hidden from the public and Lukis' clients, Goldman-Sachs and Ogden Martin, Inc., during her term. His

clients received contracts with Lee County valued in the millions of dollars. Sylvester Lukis was acquitted. Lopez-Lukis was convicted and sentenced to 27 months of imprisonment by the late Honorable Lee Gagliardi, United States District Judge, followed by a term of supervised release of 2 years. Lopez-Lukis appealed her conviction to the United States Court of Appeals for the Eleventh Circuit (Case No. 97-2286). Her conviction was per curiam affirmed on January 27, 1999. A petition for rehearing en banc was denied.on May 4, 1999. Lopez-Wolfe and Lukis were represented by:

Thomas C. Green
Bradford A. Berenson
Griffith L. Green
Sidley & Austin
1722 Eye Street
Washington, D.C. 20006
(202) 736-8069

Lead Trial Counsel for the United States was:

Douglas Molloy
Assistant U.S. Attorney
U.S. Courthouse & Federal Building
2110 First Street, Suite 3-137
Fort Myers, FL 33801
(941) 461-2200

2. Another example of a litigated matter requiring my personal oversight and supervision was the government's prosecution in United States v. William J. McCorkle, et al., Case No. 98-52-CR-Orl-19(C) (M.D. Fla. 1998). After a six-week, high-profile trial, McCorkle, his wife, Chantal, and two other defendants were convicted of conspiring to commit mail and wire fraud by conducting a nationwide telemarketing enterprise which promised to teach consumers how to purchase distressed real estate, using McCorkle's money, and how to purchase big-ticket items at unadvertised government auctions for pennies on the dollar. William and Chantal McCorkle were also convicted of using falsely obtained credit cards and using false Social Security account numbers in furtherance of the scheme to defraud. Chantal McCorkle was also convicted of lying to the United States Magistrate Judge by concealing approximately $760,000 from the Court in an affidavit filed in connection with a hearing related to the seizure of assets by the federal government. On January 25, 1999, William McCorkle was sentenced by the Honorable Patricia Fawsett of the United States District Court to a term of imprisonment of 24 years, 4 months. Chantal McCorkle was sentenced to a term of imprisonment of 24 years, 4 months. Two convicted co-

defendants received lesser sentences and one co-defendant was acquitted. The principal defendants were represented by:

F. Lee Bailey
1400 Centrepark Blvd., Suite 909
West Palm Beach, FL 33401-7490
(561) 687-3709
Counsel for William T. McCorkle

Mark L. Horowitz
17 E. Pine Street
Orlando, FL 32801
(407) 843-7733
Counsel for Chantal McCorkle

Larry H. Colleton
2300 Concord Street
Orlando, FL 32803
(407) 896-1125
Counsel for Brian Higgins

Lee Fugate
Laura L. Vaughan
Zuckerman, Spaeder, Taylor & Evans
401 E. Jackson Street, Suite 2525
Tampa, FL 33602
(813) 221-1010
Counsel for Sammy Smith

Robert Eagan
217 E. Ivanhoe Blvd., N.
Orlando, FL 32804-6486
(407) 894-0341
Counsel for American Empire Management and Development Company

Lead Trial Counsel for the United States was:

Paul Byron
Assistant U.S. Attorney
U.S. Courthouse & Federal Building
80 N. Hughey Avenue, Room 201
Orlando, FL 32801
(407) 648-6700

3. Although I have participated in the supervision of many criminal and civil cases over the past five years, one of the most significant is United States of America v. Emilio Ippolito, Susan Mokdad, et al., Case No. 96-64-CR-T-23E (M.D. Fla. 1996), which was prosecuted in the United States District Court in the Middle District of Florida in 1997, the Honorable Stephen D. Merryday presiding. Four defendants were charged with conspiracy and obstruction of justice as a result of their participation in a scheme to threaten judges, jurors and witnesses in criminal cases prosecuted in the United States District Court for the Middle District of Florida. The defendants fashioned themselves as "sovereign citizens, not subject to the law and statutes of the United States. The evidence at trial included their participation in "constitutional law courts" in which they tried federal judges for crimes against the United States. After a four-week trial, all defendants were convicted and sentenced to periods of incarceration of between 11 and 20 years. The defendants were represented by:

Thomas H. Ostrander
456 12th Street, West
Bradenton, FL 34205
(941) 746-7220
Counsel for Emilio Ippolito

Paul Grant
19039 Plaza Drive, #260
Parker, CO 80134
(303) 841-9649
Counsel for Susan L. Mokdad

Brent Davis Armstrong
5560 Roosevelt Boulevard, #3
Clearwater, FL 34620-3438
(727) 524-3755
Counsel for Phillip Marsh

Douglas J. Carpa, Pro Se
Reg. #27878-008
FCI, Phoenix
37910 N. 45th Ave., Dept. 1700
Phoenix, AX 85027-7055

Frederick W. Vollrath
307 South Fielding Avenue
Tampa, FL 33606
(813) 254-5900
Stand-by Counsel for Douglas Carpa

Brian L. Weakland
2805 W. Busch Blvd., Suite 100
Tampa, FL 33618
(813) 935-1180
Counsel for John J. Gentz

Daniel F. Daly
111 S. Moody Avenue
Tampa, FL 33609
(813) 25103341
Counsel for Charles P. Dunnigan

Stephen M. Crawford
610 West Bay Street
Tampa, FL 33602
(813) 251-2273
Counsel for Jack W. Warren

Anne F. Borghetti
520 Second Avenue South
St. Petersburg, FL 33701
(727) 502-03000
Counsel for Laurent J. Moore

Lead Trial Counsel for the United States was:

Ernest Peluso
Assistant U.S. Attorney
Park Tower, Suite 3200
400 N. Tampa Street
Tampa, FL 33602
(813) 274-6000

4. As United States Attorney, I supervise the operation of a nine-lawyer Appellate Division. A recent example of an appeal to the United States Court of Appeals for the Eleventh Circuit requiring my personal supervision is United States v. Jerome Wilkerson, No. 97-21-CR-Orl-22 (M.D. Fla. 1997). Wilkerson was indicted for possession of a firearm by a convicted felon in the Middle District of Florida and arrested in the Northern District of Florida. The primary issue presented for the Court's consideration at oral argument in February of 1999 was whether the District Court erroneously determined that the Speedy Trial Act period had begun to run when Wilkerson had appeared before a federal Magistrate Judge in the district where he was arrested rather than the district where he had been indicted. I assisted in the preparation of the government's brief and in the moot court preparation of the Chief of our Appellate Division who presented the oral argument to the Eleventh Circuit panel on February 15, 1999. On March 23, 1999, the United States prevailed when the decision of the United States District Court was reversed with a remand to reinstate the indictment. United States v. Jerome Wilkerson, 1999 WL 156072 (11th Cir. Fla.). Wilkerson is represented by:

Clarence W. Counts
Assistant Federal Defender
80 N. Hughey Ave., Suite 417
Orlando, FL 32801
(407) 648-6338

Arguing the appeal on behalf of the United States was:

Tamra Phipps
Assistant U.S. Attorney
U.S. Attorney's Office
Park Tower, Suite 3200
400 North Tampa Street
Tampa, Florida 33602

The following are the ten most significant litigated matters that I personally handled during my private practice between 1982 and 1986.

1. United States v. Wayne Prater, in the United States Court of Appeals for the Eleventh Circuit, Case Nos. 85-3676 and 85-3647.

In this case, I was appointed by the United States District Court in the Middle District of Florida to represent Wayne Prater on an appeal to the Eleventh Circuit resulting from his conviction in the District Court on charges of wire fraud, causing false entries to be made in books and records of a financial institution, misapplying funds of a financial institution and various other financial crimes. Prater was the President and Chief Executive Officer of Independence Investment Company, a wholly-owned subsidiary of Freedom Savings and Loan Association in Tampa, Florida. The government contended at trial that Prater misused his position as an officer of Independence Investment Company to obtain funds and property owned by Independence and Freedom. The issues included: (1) whether the government failed to prove that Prater was "connected in any capacity" with a savings and loan association; (2) whether the trial court improperly admitted evidence; (3) whether the evidence was sufficient to support the jury's verdict; and (4) whether the trial court erred by failing to grant Prater's motion to dismiss the indictment. I prepared the brief for Mr. Prater and argued his appeal before the Eleventh Circuit. His convictions were affirmed as reported at United States v. Wayne Prater, 805 F.2d 1441 (11th Cir. 1986). The Eleventh Circuit panel consisted of the Honorable Paul Roney, the Honorable Jake Godbold, Circuit Judges of the Court of Appeals, and the Honorable C. Klein Atkins, Senior U.S. District Judge for the Southern District of Florida, sitting by designation.

Attorney for the United States:

Hon. Karla Spaulding
(now United States Magistrate Judge)
United States Courthouse & Federal Building
80 N. Hughey Avenue, Room 597
Orlando, FL 32801
(407) 648-6208

2. United States of America v. Patricia M. Warren, et. al , Case Number 82-85-Cr.-T-Bk, in the United States District Court for the Middle District of Florida; Case No. 83-3230 in the United States Court of Appeals for the Eleventh Circuit as reported at United States v. Gold, et al., 743 F.2d 800 (11th Cir. 1984).

In this case, I represented Patricia M. Warren, the Regional Manager of Opti-Center, Inc., who was charged, along with four others, in a forty-count Indictment in federal court, with Medicare fraud and conspiracy to commit Medicare fraud. There were three co-defendants in the case. I was sole counsel for defendant, Warren. United States District Court Judge Benjamin Krentzman (now deceased) presided. Terry Zitek, Chief of the Criminal Division of the United States Attorneys Office, was the prosecutor. All of the defendants were convicted on all forty counts after a three-month jury trial in 1983. All four defendants appealed their convictions to the United States Court of Appeals for the Eleventh Circuit. I represented Mrs. Warren on the appeal which included the preparation of her appellant's brief and participation in the oral argument. The convictions were affirmed by the Eleventh Circuit on October 3, 1984.

Attorneys:
Terry Zitek, Asst. U.S. Atty.
Park Tower, Suite 3200
400 N. Tampa Street
Tampa, Florida 33602
(813) 274-6000

Mark Pizzo, Asst. Fed. Public Defender
(now U.S. Magistrate Judge) (Counsel for a Co-Defendant, Gary N. Highsmith))
Sam M. Gibbons United States Courthouse
Tampa, Florida 33602-4511
(813) 301-5011

J. Michael Hayes
(Counsel for Co-Defendant, Dr. Donald L. Gold)
Assistant State Attorney
13th Judicial Circuit
742 Davis Boulevard
Tampa, Florida 33606-3914
(813) 251-0261

3. Theresa and Lawrence Luppens v. Ford Motor Company, Civil Case Number 80-17014, in the Circuit Court for Hillsborough County, Florida.

   In this case, I represented Mr. and Mrs. Luppens in a claim against Ford Motor Company for breach of a warranty given to the Luppens when they purchased their 1979 Mercury Marquis station wagon to celebrate Mr. Luppens' retirement. This automobile was in the repair shop for over 120 days at various intervals after purchase. The Luppens prevailed on the claims of breach of implied warranty of suitability and express warranty, and the jury awarded the Luppens the return of their purchase price. Judge John M. Griffin (now retired) presided. The case was tried in 1983.

   Attorney for defendant:

   Norman Stallings, Jr.
   2915 Villa Rosa Park
   Tampa, FL 33611
   (813) 839-2484

4. State of Florida v. "L.T." and "J.J."
   Only the initials of the Defendants are given since the records in this case have been expunged. I am unable to obtain the case number from the Clerk of Circuit Court.

   I represented "L.T." and "J.J." on grand theft charges in the Circuit Court in Hillsborough County, Florida. I was sole counsel for both defendants. The defendants were accused of stealing a truckload of construction materials from a construction site during off hours, according to several eyewitnesses. Hillsborough County Circuit Judge James Arnold presided. His address and telephone number is Hillsborough County Courthouse, 419 N. Pierce Street, Room 311, Tampa, Florida 33602-4022, (813) 272-6993. Both defendants were found not guilty by the jury after the eyewitness testimony conflicted on several accounts. The case was tried in 1984.

   Attorney for the State:

   Cass Castillo
   Polk County State Attorney's Office
   P.O. Box 9000
   Bartow, FL 33831
   (941) 524-4800

5. Dr. Leonard Campbell v. The School Board of Hillsborough County, Florida, Case No. 82-894, consolidated with 82-1319, in the United States District Court for the Middle District of Florida; and on appeal to the United States Court of Appeals for the Eleventh Circuit.

   In this case, I represented a teacher in the Hillsborough County School system who felt that he was discriminated against on the basis of his race when he was denied the job of Supervisor of Affirmative Action for the School Board, after having been given the highest rating by the Screening Committee. The action was based on Title VII of the Civil Rights Act of 1964. United States District Judge William Castagna presided. I was sole counsel for the plaintiff. Judgment was entered for the defendant. To the best of my recollection, an appeal to the United States Court of Appeals was affirmed, per curiam, without a published opinion. I am unable to re-create the file which has long been destroyed. The case was tried in 1985. I represented Campbell both at trial and on appeal.

   Attorney for the defendant:

   Thomas M. Gonzalez
   109 N. Brush St., Suite 200
   Tampa, Florida 33601-0639
   (813) 273-0050

6. United States of America v. Jimmie Dean Gibson, Case Number 86-223-Cr-T-10(A), United States District Court for the Middle District of Florida.

   In this case, I was appointed by the Court, pursuant to the Criminal Justice Act, to represent Jimmie Dean Gibson who was charged in a three-count Indictment in federal court with unlawfully altering postal money orders by chemically erasing and replacing serial numbers. After a trial by a jury, the defendant was convicted on all three counts. United States District Judge William Terrell Hodges presided. Susan Daltuva, Assistant United States Attorney, represented the United States. The case was tried in 1986. I did not represent Mr. Gibson on an appeal to the Eleventh Circuit since the conviction coincided with my appointment to serve as a County Judge in Hillsborough County, Florida in December of 1986. New counsel was appointed to represent Mr. Gibson on his appeal.

Attorney for the United States:

Susan Daltuva
Assistant United States Attorney
2110 First Street, Suite 3-137
Fort Myers, FL 33901
(941) 461-2200.

7. Rosa Wilson v. State of Florida Department of Corrections, Case No. 82-343-Civ-T, United States District Court for the Middle District of Florida.

In this case, I represented Rosa Wilson in an employment discrimination action against the State of Florida Department of Corrections, alleging discrimination based upon race and sex, pursuant to Title VII of the Civil Rights Act of 1964. Ms. Wilson, a black female, applied for a position as a detention guard, but was not selected. The case was tried by the Honorable William Castagna, United States District Court for the Middle District of Florida, in 1984. I was sole counsel for the plaintiff. Judgment was entered for the defendant.

Defendant's Attorney:

Bruce Minnick
formerly Assistant Attorney General
State of Florida
Post Office Box 15588
Tallahassee, Florida 32317-5588
(850) 386-9444

8. United States of America v. Elizabeth King, et al., Case No. 84-151-Cr-T-13, United States District Court for the Middle District of Florida; Case No. 85-3078 in the United States Court of Appeals for the Eleventh Circuit, as reported at United States v. Taylor, et al., 792 F.2d 1019 (11th Cir. 1986).

In this case, I was appointed by the Court, pursuant to the Criminal Justice Act, to represent Elizabeth King who was charged, along with others, with conspiracy to kidnap and kidnapping. I was sole counsel for the defendant, Elizabeth King. The kidnapping victim was Valerie Endsley, Ms. King's sister. Endsley was alleged to have been beaten and kidnapped by King, her former lover, and various other acquaintances, who feared that Endsley was involved in a murder plot. All defendants were convicted on both counts. The case was tried by a jury before the late George C. Carr, United States District Judge for the Middle District of Florida, and appealed to the United States Court of Appeals for the Eleventh Circuit. All convictions were affirmed. I prepared the brief for appellant King.

Attorney for the United States:

J. Larry Hart
(formerly Assistant United States Attorney)
7614 Massachusetts Avenue
New Port Richey, FL 34653-3022
(727) 847-2737

E. C. Watkins, Jr.
(Counsel for Co-Defendant Peter Martin)
802 E. Baker Street
Plant City, FL 33566-3653

Roger L. Young
(Counsel for Co-Defendant Gerald White)
2901 S. Tamiami Trail
Sarasota, FL 34239-5106
(941) 366-1980

Thomas J. Hanlon
(Counsel for Co-Defendant Jimmy Edward Taylor)
Pasco County Courthouse
38053 Live Oak Avenue, Room 202
Dade City, FL 33523-3819
(352) 521-4388

9. James R. Wallace v. Equal Employment Opportunity Commission, Case No. 84-259-Civ-T-17(A), United States District Court for the Middle District of Florida.

In this case, I represented James R. Wallace in a Federal Torts Claim action against the EEOC. Wallace contended that he was unable to proceed with his employment discrimination claim as a result of the negligence on the part of the EEOC which lost his file. The Honorable Elizabeth A. Kovachevich, United States District Judge for the Middle District of Florida, presided in this case. The case was tried in 1984. Judgment was entered for the EEOC. I was sole counsel for the plaintiff.

Attorney for the United States:

Virginia Covington
Assistant United States Attorney
400 N. Tampa St., Suite 3200
Tampa, FL 33602
(813) 274-6000

10. United States of America v. Richard Hope, Larry Dennison and Eugene Shores, et al., Case No. 85-203-CR-T-15, in the United States District Court for the Middle District of Florida.

In this case, I was appointed by the District Court, pursuant to the Criminal Justice Act, to represent Mr. Shores who was charged, along with others, with conspiracy to import marijuana into the United States. Mr. Shores was a "ham radio operator" who was alleged to have assisted co-defendants in bringing loads of marijuana into the United States by monitoring the activities of law enforcement. All defendants were convicted. The presiding judge was the Honorable William Castagna, United States District Judge for the Middle District of Florida. I was sole counsel for the defendant, Eugene Shores. The case was tried in 1985.

Attorney for the United States:

Michael Rubinstein
Assistant United States Attorney
U.S. Attorney's Office
Park Tower, Suite 3200
400 N. Tampa Street
Tampa, FL 33602
(813) 274-6100

Attorney for Co-Defendant, Dennison:

Terry Bostic
Akerman, Senterfitt & Eidson, P.A.
Post office Box 3273
Tampa, Florida 33602-3273
(813) 223-7333

Attorney for Co-Defendant, Hope:

Frank Winkles
Cunningham & Greiwe
10 S. Ashley Drive, Ste. 100
Tampa, FL 33602-5348
(813) 228-0505

Attorney for Co-Defendant:

Fred Buckine
1112 E. Kennedy Blvd., Ste. A
Tampa, FL 33602-3512
(813) 223-5549

Since the majority of cases listed in response to this question are older than five years, the following represents the names, addresses and telephone numbers for twelve members of the legal community who have had recent contact with me as United States Attorney or as United States Magistrate Judge:

John M. Fitzgibbons
707 N. Franklin Street
Suite 700
Tampa, FL 33602-4430
(813) 221-8800

W. Crosby Few
Room 202
Perry Paint and Glass Building
Tampa, Florida 33602-4157
(813) 229-6401

Earl Moreland
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Bernie McCabe
Pinellas County State Attorney
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Clearwater, FL 33758-5028
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Ronald K. Cacciatore
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(813) 223-4831

Lynn Hamilton Cole
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Suite 2700
Tampa, FL 33602
(813) 223-7009

Benjamin H. Hill, III
Hill, Ward & Henderson
101 E. Kennedy Blvd.
Suite 3700
Tampa, FL 33602
(813) 221-3900

James R. Hilbert
360 Central Avenue
Suite 1490
St. Petersburg, FL 33701
(727) 824-0771

James E. Felman
Kynes, Markman & Felman
P.O. Box 3396
100 S. Ashley Drive
Suite 1300
Tampa, FL 33601-3396
(813) 229-1118

Stuart C. Markman
Kynes, Markman & Felman
P.O. Box 3396
100 S. Ashley Drive
Suite 1300
Tampa, FL 33601-3396
(813) 229-1118

Gary R. Trombley
P.O. Box 3356
Tampa, FL 33601-3356
(813) 229-7918

Thomas C. MacDonald, Jr.
100 N. Tampa Street
Suite 2100
Tampa, FL 33602-5809
(813) 221-2500

The following is the name of a lawyer who I have supervised as United States Attorney:

Virginia Covington
Assistant U.S. Attorney
U.S. Attorney's Office
Park Tower, Suite 3200
400 North Tampa Street
Tampa, FL 33602
(813) 274-6308

19. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)**

A. In October of 1996, I was appointed to serve as a member of the Civil Justice Reform Act Advisory Group for the United States District Court for the Middle District of Florida. The committee was assembled by Chief Judge Elizabeth A. Kovachevich pursuant to the Civil Justice Reform Act of 1990. This committee was set up to review the handling of civil cases in federal court and to make recommendations for improvement of the system. The task of the committee was three-fold: (1) to assess whether the recommendations previously implemented by the court as a result of the prior Civil Justice Reform Act Advisory Committee had been effective; (2) to assess whether any recommendations of the prior committee that were not implemented should be resurrected; and (3) to make additional recommendations to the court for further improvement of the civil justice system. In December of 1997, the committee filed a report concluding that access to the judiciary to assure prompt handling of the cases from beginning to end with proper timing of the interim issues to avoid unnecessary litigation expenses and resolution are paramount. Suggestions included greater utilization of motion hearing days, encouragement of utilization of Magistrate Judges, and a strengthened mediation process.

B. After I became United States Attorney in October of 1994, I established environmental crime as a top white collar crime prosecution priority for Central Florida. Thereafter, the number of environmental crimes cases prosecuted within the district increased 700 percent between 1995 and 1998. During that time, our office successfully prosecuted several cases of national significance, including the first prosecution of its kind in the case of United States v. Ocean Chemical Carriers, Inc. and Captain Peter A. Thorpe, Case No. 97-148-CR-T-17(E) (M.D. Fla. 1997). Ocean Chemical Carrriers was charged with having dumped over 60,000 gallons of waste into the Atlantic Ocean in violation of the Act to Prevent Pollution from Ships. Our prosecution resulted in a plea agreement in which Ocean Chemical Carriers agreed to pay a fine of $50,000.00 and restitution of $200,000.00. The company was placed on probation for a period of two years. The plea agreement coincided with the establishment of a centralized Environmental Restitution Fund, which is presently being administered by the Jacksonville Community Foundation, the University of Florida College of Law and the Environmental Studies Program at New College. This fund ensures that full restitution is made in environmental crimes cases, where there is a specifically unidentifiable victim. It is the first such fund of its kind in the country by virtue of being designed to accept restitution payments for

multiple cases throughout the district. Now, the United States District Court can order violators to make restitution in cases where there is an unidentifiable victim. Environmental groups can apply to the Fund for environmental "clean-up" projects.

C. Recently, my office reached a settlement with Metropolitan Life Insurance Company (Met Life) resolving potential civil and criminal claims against Met Life as a result of a four-investigation into deceptive sales practices. An earlier inquiry by the State of Florida and the National Association of Insurance Investigators led to a published report to the Florida Insurance Commission which found that Met Life had sold approximately 20,000 whole life insurance policies, mainly to nurses throughout the fifty states, based on a sales campaign that was misleading and violative of state laws and regulations. On November 19, 1998, a settlement was reached with Met Life in which the Company agreed to pay the United States government a civil monetary penalty of $25 million dollars. The settlement agreement is the largest monetary penalty ever obtained by the United States pursuant to Title XII of the United States Code. Met Life also agreed to make restitution to those persons victimized by its conduct. In the insurance industry, the public often relies on the advice and expertise of agents about legally complex products. The settlement was significant in holding members of the insurance industry responsible for their conduct when they breach the public's trust. Met Life was represented by Bruce Yannette, Debevoise and Plimpton, 875 Third Avenue, New York, New York 10022.

D. As United States Attorney in the Middle District of Florida, I have been successful in distinguishing this district as the nation's leader in implementing the Department of Justice's Weed and Seed strategy. The Middle District has the highest number of Weed and Seed sites of any of the 93 federal judicial districts in the country: 13. Weed and Seed is a law enforcement initiative providing enhanced law enforcement to drug and crime-infested neighborhoods, followed by an infusion of economic services to ensure that crime does not reoccur. On two separate occasions during my service as United States Attorney, I have integrated asset forfeiture with Weed and Seed in an effort to assist in restoring crime-infested neighborhoods. Recently, my office was successful in prosecuting a drug trafficking organization and divesting that organization of a parcel of real property, used as a bar, in Bradenton, Florida. Rather than liquidate the assets and distribute the proceeds of the sale to the law enforcement agencies who participated in the investigation and prosecution of the drug trafficking organization, I negotiated the transfer of the real property to the Manatee Branch of the NAACP for use as a small business incubator. Also, a drug trafficking organization in Fort Myers, Florida was recently successfully prosecuted for drug trafficking in the Fort Myers area. The organization was divested of its ownership in a tavern, valued at approximately

$200,000.00, which was purchased with drug money. Rather than sell the bar and distribute the money to law enforcement, I negotiated the deed of the property to a community service organization known as "The Quality of Life Center" in Fort Myers. The facility has been renovated and is now being used for after-school mentoring and school programs for neighborhood children.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. **List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

   None

2. **Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of interest during your initial service in the position to which you have been nominated.**

   I will recuse myself from participating in the consideration of any matter presenting a conflict of interest, whether personal or professional. The only potential conflicts of interest that I anticipate are those that concern investigations and prosecutions which I am presently in the process of conducting as United States Attorney for the Middle District of Florida. If I am appointed to serve on the Court, I will ensure that the United States Attorney's Office advises me of any matter presented for appeal to the Eleventh Circuit for which I provided supervision during my service as United States Attorney.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

   None

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

   I will provide copies of the Financial Disclosure Report required by the Ethics in Government Act of 1978.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

   Attached.

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

   I have played no role in political campaigns since my appointment to the County Court in December of 1986. Prior to that, I contributed, financially to candidates for office including Senator Bob Graham in his campaign for election to the United States Senate, as well as Kennan Dandar, an unsuccessful candidate (Republican) to the Hillsborough County Commission.

III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence of professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

In August of 1986, I was awarded a Volunteer Service Award for contributing over 100 hours of legal service to the Greater Tampa Urban League at its annual award's dinner.

In the United States Attorney's Office, I have provided leadership in maintaining an Adopt-A-School Program, involving volunteer time by staff members in elementary and high schools within the District that are located in disadvantaged neighborhoods. I participate regularly in programs at Robles Park Elementary School in Tampa, Florida, by speaking to children, tutoring elementary students, and serving as a role model.

The United States Attorney's Office for the Middle District of Florida has the highest number of Weed and Seed sites of any of the 94 federal judicial districts in the country: 13. I attend Steering Committee meetings and participate in community activities regularly at these Weed and Seed sites, interacting with children and neighborhood residents. Weed and Seed is a law enforcement initiative involving the provision of enhanced law enforcement to crime-infested neighborhoods, followed by an infusion of economic services to ensure that crime does not re-occur.

For the past six years, I have served as a member of the Nominating Committee for the Board of Directors of Bay Area Legal Services Corporation, a legal services organization for the poor in Tampa, Florida.

I have also served as a member of the Board of Directors of Metropolitan Ministries of Tampa. Metropolitan Ministries is a non-profit facility that serves the needs of the homeless population of Tampa, Florida including temporary and transitional services.

My community service also includes serving as a member of the Advisory Board of the Salvation Army, Tampa Division; Greater Tampa Urban League; Tampa Day Care Nursery, Inc. (President during the year 1985-1986); Allocations Committee, United Way of Greater Tampa; Downtown Tampa Sertoma Club.

During my judicial service, I purposely avoided participating in organizations that primarily engage in fund-raising, since participation in such activity would constitute a violation of the Canons of Judicial Conduct.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?**

I have never belonged to an organization that discriminated on the basis of race, sex, or religion. The only exception would constitute my participation in Sigma Pi Phi Fraternity (1985-1990) which is a men's social fraternity. I am no longer a member of that fraternity.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There is a federal judicial nominating committee in existence in the State of Florida which recommends candidates for federal district judgeships to Senator Bob Graham. Senator Graham's nominating committee only recommends candidates for nomination to the United States District Court. Therefore, the nominating committee did not participate in my nomination.

I have been interviewed by the Office of White House Counsel, Federal Bureau of Investigation, the United States Department of Justice and the American Bar Association's Standing Committee on the Federal Judiciary in connection with this nomination.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No

5. **Please discuss your views on the following criticism involving "judicial activism."**

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**

b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**

c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**

d. **A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**

e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

Judicial independence, and restraint, are basic constitutional principles that are vital to our system of justice. Cases presented for judicial resolution should be decided without ideological bias and with the quality of justice uppermost in mind. I am a proponent of the plain language canon of statutory and constitutional application--when the language of the law is clear, judges are not free to replace it with unenacted, legislative intent. The role of the Court is to safeguard, and not to make the law.

STATEMENT OF NET WORTH

(Charles R. Wilson)

ASSETS

Cash on Hand	
Sunbank, Tampa (joint checking)	$4,500
Nationsbank, Tampa (joint checking)	$1,000
Securities	
Home Depot (107 @ 58)	$6,206
Danka (200 @ 5)	$1,000
IBM (7@ 116)	$812
Florida Progress (20 @ 41)	$820
Retirement Plans	
Charles Wilson (Federal Gov't Thrift)	$53,000
Belinda Wilson (401K)	$30,000
Real Estate	
Primary Residence (Tampa, FL)	$395,000
Secondary Residence (Santa Rosa Beach, FL)	$345,000
*1/3 interest in condominium (Tampa, FL)	$110,000 (=1/3 SHARE)
Other	
Furnishings (primary & secondary residences)	$25,000
Vehicle (1994 Mazda 626)	$9,000
Jewelry	$8,000
TOTAL ASSETS	$989,338

CONTINGENT LIABILITIES

None $0

*Other financial owners: Valerie Wilson-Reed (sister) and Michael D. Wilson (step-brother)

LIABILITIES

Notes Payable	
Suntrust Credit Line	$16,800
Suntrust - Mastercard	$3,800
Lease Agreement (American Honda Finance) remaining term 7 mos @ $330 per month)	$2,310
Real Estate Mortgages Payable	
Primary Residence (Citicorp Mtg)	$185,000
Secondary Residence (Bank of America)	$235,000
TOTAL LIABILITIES	$432,910
NET WORTH	$556,428
TOTAL LIABILITIES & NET WORTH	$989,338

GENERAL INFORMATION

Are any assets pledged?	No
Are you a defendant in any suits for legal actions?	None in personal capacity. Only lawsuits in my official capacity as U.S. Attorney.
Have you ever taken bankruptcy?	No

AO-10
Rev. 1998

FINANCIAL DISCLOSURE REPORT
FOR CALENDAR YEAR 1998

Report Required by the Ethics Reform Act of 1989, Pub. L. No. 101-194, November 30, 1989 (5 U.S.C. App. 4, 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Wilson, Charles R.	U.S. Court of Appeals, Eleventh Circuit	May 28, 1999

4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
U.S. Court of Appeals Judge - Nominee	X Nomination, Date May 27, 1999 ___ Initial ___ Annual ___ Final	January 1, 1998- May 27, 1999

7. Chambers or Office Address	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations.
U.S. Attorney 400 N. Tampa Street Room 3200 Tampa, FL 33602	Reviewing Officer _____ Date _____

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.

I. POSITIONS. *(Reporting individual only; see pp. 9-13 of Instructions.)*

	POSITION	NAME OF ORGANIZATION/ENTITY
	☐ NONE (No reportable positions.)	
1	Board Member	University of Notre Dame - Law School Advisory Board (Tampa, FL)
2	Board Member	Academy of the Holy Names, Parents Advisory Board
3	Board Member	Metropolitan Ministries of Tampa, FL (Homeless Shelter

II. AGREEMENTS. *(Reporting individual only; see pp. 14-16 of Instructions.)*

	DATE	PARTIES AND TERMS
	☒ NONE (No reportable agreements.)	
1		
2		
3		

III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of Instructions.)*

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
		☐ NONE (No reportable non-investment income.)	
1			
2	1997	Florida Power Corp.-Wife's salary and compensation	$
3	1998	Florida Power Corp.-Wife's salary and compensation	$
4	1999	Salomon Smith Barney - Wife's salary and compensation	$
5			$
			$

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Wilson, Charles R.

Date of Report: May 28, 1999

IV. REIMBURSEMENTS — transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1		
2	exempt	
3		
4		
5		
6		
7		

V. GIFTS. *(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)*

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1			
2	exempt		$
3			$
4			$
			$

VI. LIABILITIES. *(Includes those of spouse and dependent children; indicate, where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)*

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
1			
2	Bank of America (J)	Mortgage Loan on Secondary Residence	M
3	SunTrust Bank, Tampa, FL (J)	Revolving Credit Line	K
4			
5			
6			

*Value Codes: J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more.

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Wilson, Charles R.

Date of Report: May 28, 1999

VII. Page 1 INVESTMENTS and TRUSTS – income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets (including trust assets) *Indicate, where applicable, owner of the asset by using the parenthetical "(H)" for joint ownership of reporting individual and spouse; "(S)" for ownership wholly by spouse; "(DC)" for ownership by dependent child.* *Place "(X)" after each asset exempt from prior disclosure*	B. Income during reporting period (1) Amt. Code1 (A–H)	(2) Type (e.g., div., rent or int.)	C. Gross value at end of reporting period (1) Value Code2 (J–P)	(2) Value Method Code3 (Q–W)	D. Transactions during reporting period (1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure (2) Date Month - Day	(3) Value Code2 (J–P)	(4) Gain Code1 (A–H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
1 Secondary Residence – Santa Rosa Beach, FL	E	rent	N	Q					
2 Condominium in Tampa, FL (jointly with siblings)	None		N	T					
3 Vanguard 401K (S)			K	T					
4 Home Depot Common Stock	A	div.	J	T					
5 Danks Common Stock	None		J	T					
6 Merrill Lynch Phoenix B Fund	A	div./ cap.gain		None	exempt				
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									

1. Income/Gain Codes (See Col. B1, D4): A=$1,000 or less; B=$1,001-$2,500; C=$2,501-$5,000; D=$5,001-$15,000; E=$15,001-$50,000; F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=More than $5,000,000
2. Value Codes (See Col. C1-D3): J=$15,000 or less; K=$15,001-$50,000; L=$50,001-$100,000; M=$100,001-$250,000; N=$250,001-$500,000; O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=More than $50,000,000
3. Value Method Codes (See Col. C2): Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market; U=Book value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting: Wilson, Charles R.	Date of Report: May 28, 1999

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS (Indicate part of Report.)

IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

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. 4, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature Charles R. Wilson Date May 28, 1999

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. 4, § 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

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Fredric Dean Woocher. (At various times, I have also used the shorter version of my name, Fred Woocher.)

2. Address: List current place of residence and office address(es).

Residence: Los Angeles, CA

Office: 100 Wilshire Boulevard, Suite 1900
Santa Monica, CA 90401

3. Date and place of birth.

January 13, 1951, in New York City, New York.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

I have been married, since June 19, 1983, to Wendy Harriet Dozoretz. My wife is employed as a teacher (middle and high school) at The Oakwood School, 11600 Magnolia Blvd., North Hollywood, CA 91601-3098.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Yale University	9/68 - 6/72	A.B., Magna Cum Laude (6/12/72)
Stanford University	9/73 - 6/77	M.A. (6/15/75) Ph.D. (6/12/77)
Stanford Law School	9/75 - 6/78	J.D. (6/18/78)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

6/72 - 8/72	Yale University, Department of Psychology National Science Foundation Summer Research Fellowship
9/72 - 8/76	Stanford University, Department of Psychology Graduate Teaching Assistant & Research Assistant (part-time)
6/77 - 7/77	Manatt, Phelps & Phillips (Los Angeles, CA) Summer Associate
7/77 - 8/77	Wilmer, Cutler & Pickering (Washington, DC) Summer Associate
6/78 - 6/79	United States Court of Appeals, D.C. Circuit Law Clerk to Chief Judge David L. Bazelon
7/79 - 7/80	United States Supreme Court Law Clerk to Justice William J. Brennan, Jr.
8/80 - 2/81	United States Department of Defense Staff Asst. to Secy. of Defense Harold Brown
3/81 - 6/81	The San Francisco Foundation (San Francisco, CA) Project Consultant
7/81 - 8/88	Center for Law in the Public Interest (Los Angeles, CA) Staff Attorney
2/88 - 6/88	Taxpayers to Limit Campaign Spending (Los Angeles, CA) Communications Director & Legal Counsel
9/88 - 12/90	California Department of Justice (Los Angeles, CA) Special Counsel to the Attorney General
1/91 - present	Strumwasser & Woocher (Santa Monica, CA) Partner

5/91 - 3/97	California League of Conservation Voters Member, Board of Directors; Treasurer
6/92 - 6/97	California Common Cause Member, Board of Directors
1/93 - 5/93	Loyola Law School (Los Angeles, CA) Adjunct Professor of Law
5/97 - present	CLCV Education Fund Member, Board of Directors

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have not had any military service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

I was awarded the "Classmates Today - Neighbors Tomorrow" Scholarship for my studies at Yale University from the Pfc. Malcolm C. Eisman Post No. 670, Jewish War Veterans of the U.S.A. I graduated magna cum laude from Yale and was elected to Phi Beta Kappa. I also received Honors with Exceptional Distinction in Psychology and was awarded the Albert E. Angier Prize in June 1972 for the best undergraduate research project. That summer, I received a National Science Foundation award and stipend to continue my research in cognitive psychology.

At Stanford University, I was awarded a National Science Foundation Fellowship for graduate study in experimental psychology. At Stanford Law School, I was a recipient of the Hilmer Oehlmann, Jr., Prize for outstanding written work in the first-year research and legal writing program, I was selected to be President of the Stanford Law Review, and I was elected to Order of the Coif.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

California State Bar Association
Committee on Human Rights (1983-86)
Chair (1984-85)
Committee on Environment (1986-88)

Los Angeles County Bar Association
Committee on Judicial Evaluations (1985-90)
American Bar Association
ALI-ABA Committee on Continuing Professional Education
(Lecturer, Hazardous Wastes, Superfund, and Toxic Substances)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I am presently a member of the following organizations which, I believe, either actively engage in lobbying before public bodies or use a portion of their revenues to support some lobbying activities:

American Cancer Society
American Civil Liberties Union
California Common Cause
California League of Conservation Voters

I am also a member of the following other organizations:

American Jewish Congress
American Red Cross (Partners' Club)
Beverly Hills Country Club
Brentwood Eagles (Brentwood School Booster Club)
Brentwood School Parents' Association
Los Angeles County Museum of Art
Westwood Charter School Booster Club
Westwood Charter School PTA
Wilshire Boulevard Temple

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

California State Courts — 12/19/80

U.S. District Court, Central District of California — 9/22/81

U.S. District Court, Northern District of California — 9/27/91

U.S. District Court, Southern District of California — 8/18/94

U.S. Court of Appeals for the Ninth Circuit — 10/23/81

U.S. Supreme Court — 1/9/84

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have written or co-authored the following three legal articles, copies of which are enclosed:

(1) Note, *Did Your Eyes Deceive You? Expert Psychological Testimony on the Unreliability of Eyewitness Identification*, 29 Stanford Law Review 969 (1977).

(2) Michael Strumwasser & Fredric Woocher, *Proposition 103: The Continuing Battle Over California's Insurance-Reform Initiative*, Los Angeles Lawyer, p. 38 (October 1993).

(3) Fred Woocher, *Memorial Dedication to Justice William J. Brennan, Jr.*, 31 Loyola Law Review 749 (1998).

I have also had an Op-Ed piece and Letter to the Editor published in the *Los Angeles Times* (copies are enclosed):

(1) "Curb Spending, Limit Influence-Peddling," *Los Angeles Times* (May 24, 1988), Metro, p. 7.

(2) "Congressional Campaign Warchests," *Los Angeles Times* (Nov. 5, 1990), Metro, p. 4.

In addition, I have made presentations at the following Continuing Legal Education programs, but I did not retain any notes or other materials from them:

(1) "Professional Responsibility: Ethical Close Calls," sponsored by PEN/CLE Productions (November 1991).

(2) "Bridge the Gap," sponsored by the Los Angeles County Bar Association (Jan. 25, 1992).

(3) "Major Ethical Considerations Confronting Business Litigators," sponsored by the Antitrust Section of the California State Bar Association (Nov. 14, 1992).

(4) "Proposition 103: Whose Loss and Whose Gain?," presented at the Lawyers' Club of San Francisco's 13th Annual Getaway Weekend Retreat (July 17, 1993).

(5) "Prosecuting and Defending the California Open Meetings Act and Public Records Act," at the California First Amendment Assembly Conference, University of Southern California (Sept. 28, 1996).

I also participated in a news conference with several other attorneys and law professors back in August 1987 to discuss the then-pending nomination of Judge Robert H. Bork to the U.S. Supreme Court. I expressed my concern at that time, based upon a review of his published judicial decisions, that Judge Bork had inappropriately allowed his personal opinions and viewpoints to affect his consideration of the cases that came before him, and that he appeared to place his own personal ideology above the laws that Congress had enacted. Although I do not have any notes or other materials from that press conference, I have enclosed copies of two newspaper reports of my remarks, one from the *Associated Press* dated August 28, 1987, and another from the *Los Angeles Times*, dated August 29, 1987, page 18.

13. Health: What is the present state of your health? List the date of your last physical examination.

The present state of my health is excellent. My last complete physical examination occurred on February 24, 1999.

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 previously held judicial office.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where you judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never held public office. (Although my positions as judicial law clerk, Staff Assistant to the Secretary of Defense, and Special Counsel to the California Attorney General were exempt, non-civil service positions, I am assuming that they are not considered to fall within the category of "public office.")

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

6/78 - 6/79

United States Court of Appeals, D.C. Circuit
U.S. Courthouse
333 Constitution Ave., N.W.
Washington, DC 20001

Law Clerk to Chief Judge David L. Bazelon

7/79 - 7/80

United States Supreme Court
1 First Street, N.E.
Washington, DC 20543

Law Clerk to Justice William J. Brennan, Jr.

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

8/80 - 2/81	United States Department of Defense Defense Pentagon, Room 3E854 Washington, DC 20301 Staff Asst. to Secy. of Defense Harold Brown
3/81 - 8/88	Center for Law in the Public Interest 10951 W. Pico Blvd., 3rd Floor Los Angeles, CA 90064 Staff Attorney
9/88 - 12/90	California Department of Justice 300 S. Spring St., North Tower Los Angeles, CA 90013 Special Counsel to the Attorney General
1/91 - present	Strumwasser & Woocher 100 Wilshire Blvd., Ste. 1900 Santa Monica, CA 90401 Partner

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

With the exception of my service in the California Attorney General's office, my practice has been a general civil litigation practice, in both the trial and appellate courts, with an emphasis on complex civil litigation involving public policy issues. From 1981-1988, as a staff attorney at the nonprofit Center for Law in the Public Interest, I handled primarily high-impact civil cases against governmental agencies seeking to implement or vindicate the public's statutory or constitutional rights. At the California Attorney General's office during 1988-1990, my responsibilities were more of a supervisory nature — with somewhat less hands-on litigation involvement — although I continued to make fairly regular court and administrative agency appearances in connection with the litigation over Proposition 103 (an insurance-reform initiative passed by California's voters in November, 1988).

In my private practice with Strumwasser & Woocher since 1991, I have maintained an emphasis on complex civil litigation involving public policy issues, although the firm's practice in recent years has become more varied than that,

incorporating more traditional commercial litigation representing private clients, as well. As our firm has grown, I have not only kept up my own active litigation docket, but I now also spend a portion of my time supervising the litigation activities of the more junior attorneys in the office.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I have for the past decade typically represented a mix of government agencies and elected officials, as well as individuals and nonprofit organizations in litigation against public agencies and officials. In 1991 and 1992, our law firm's practice was almost exclusively occupied in representing the California Insurance Commissioner in administrative and civil litigation over the implementation of Proposition 103. Since then, our practice has diversified considerably to include complex civil litigation on a variety of other issues, including constitutional law, environmental protection and land use litigation, and First Amendment and workers' rights issues. In particular, I have developed a specialty in political and election law, with an active practice representing candidates and public officeholders, as well as other individuals, associations, and government entities, regarding compliance with election and campaign finance regulations, the qualification of initiatives, referenda, and recall petitions for the ballot, and disputes over contested elections. Our firm also handles a variety of general business civil litigation between private clients.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I have regularly appeared in court throughout my legal career, aside from my two years as a judicial law clerk and my relatively brief tenure at the Defense Department. As Special Counsel to the California Attorney General, I made somewhat fewer direct court appearances, playing more of a supervisory and policy-making role in the office instead, but I nevertheless did make regular administrative and judicial court appearances in connection with the Proposition 103 litigation. During the remainder of my legal career, I frequently appeared in court, especially in connection with law-and-motion and other potentially case-dispositive legal proceedings (e.g., summary judgment, writ of mandate, preliminary injunction hearings).

2. What percentage of these appearances was in:
   (a) federal courts;
   (b) state courts of record;

(c) other courts.

Approximately 15-20% of my court appearances have been in federal court, 70-75% in state courts, and 10-15% in hearings before administrative agencies.

3. What percentage of your litigation was:
(a) civil;
(b) criminal.

With the exception of my judicial clerkships and my responsibilities supervising some criminal prosecutions while serving in the California Attorney General's office, all of my direct litigation has been in the civil area.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have probably tried between 75 to 100 cases to verdict or judgment in my 18 years of practice. Approximately 15 to 20 of those cases involved full evidentiary trials or hearings with live witness testimony and cross-examination; the remainder either involved "paper trials," using witness declarations and deposition testimony, or were resolved on the basis of the pleadings or other pre-trial motions. In almost all of these cases, I served as sole or chief counsel. Although at the outset of my career I generally was supervised by a more senior attorney in the office, I relatively quickly developed my own caseload and began handling cases either as chief counsel or as co-counsel with one of my colleagues. During the past decade in private practice, with the exception of three or four major cases in which I was co-lead counsel with my partner Michael Strumwasser, I have been chief counsel on all of my cases, and essentially sole counsel in about half of them. (Our firm generally tries to assign both a senior partner and one or more junior attorneys to every case.)

5. What percentage of these trials was:
(a) jury;
(b) non-jury.

All of these cases were non-jury trials.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your

participation in the litigation and the final disposition of the case. Also state as to each case:

(a) the date of representation;
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and
(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Among the most significant litigated matters I have personally handled are the following:

1. League of Women Voters v. Federal Communications Commission. In one of my first cases, I represented the League of Women Voters of California and the Pacifica Foundation public radio stations in successfully challenging the constitutionality of the Federal Communications Act's ban on editorializing by any noncommercial broadcasting station receiving funds from the Corporation for Public Broadcasting. I handled the case from the summary judgment proceedings in the U.S. District Court through and including oral argument in the U.S. Supreme Court. In a 6-3 decision, the Supreme Court ruled that the statute violated the First Amendment because the editorializing prohibition did not merely restrict the use of government monies, but also extended to broadcasts financed exclusively with private funding. The case has subsequently been viewed as a "landmark" decision in First Amendment jurisprudence and on the issue of the permissible conditions that may be attached to the receipt of federal funds.

Reported Decisions: F.C.C. v. League of Women Voters, 468 U.S. 364, 104 S.Ct. 3106 (1984)
League of Women Voters v. FCC, 547 F.Supp. 379 (C.D. Cal. 1982)
League of Women Voters v. FCC, 798 F.2d 1255 (9th Cir. 1986) (related attorneys' fee decision)
League of Women Voters v. FCC, 751 F.2d 1383 (9th Cir. 1985) (related attorneys' fee decision)
League of Women Voters v. FCC, 568 F.Supp. 295 (C.D. Cal. 1983) (related attorneys' fee decision)

Judges: United States Supreme Court
Then-U.S. District Court Judge Malcolm M. Lucas, C.D. Cal.
JAMS/Endispute
350 S. Figueroa, Ste. 990
Los Angeles, CA 90071-1102
(213) 620-1133

Opposing Counsel: Hon. Samuel A. Alito, Jr. (now a U.S. Circuit Court Judge)
U.S. Court of Appeals for the Third Circuit
357 U.S. Post Office & Courthouse
Franklin & Walnut Streets
Newark, NJ 07101
(973) 645-2424

2. Proposition 103 Litigation. From the day after its passage on November 8, 1988 through the present, my partner Michael Strumwasser and I have represented the State of California and the Commissioner of Insurance in the defense and implementation of Proposition 103, the insurance reform initiative. While serving on California Attorney General John Van de Kamp's executive staff, we were responsible for writing the briefs and preparing the Attorney General's oral argument in Calfarm Ins. Co. v. Deukmejian, in which the California Supreme Court upheld the facial constitutionality of the initiative. Upon leaving the Attorney General's office and establishing our firm in January 1991, we were hired by newly elected State Insurance Commissioner John Garamendi to design a program for implementing Proposition 103's rebates and prior-approval rate regulation scheme, and to defend the initiative and the Commissioner's program in court. During the next four years, we developed the Commissioner's regulatory program, represented the Department of Insurance in roughly a dozen administrative proceedings establishing the insurance companies' rollback liability, and successfully defended the Commissioner's program against a barrage of industry-initiated court challenges.

The administrative proceedings involved both quasi-legislative hearings, in which a "generic" regulatory formula applicable to all insurers was developed, and a series of adjudicatory "trials," in which the individual companies' rollback liabilities were determined. My partner and I generally divided these proceedings between us; we were co-counsel in the "generic" hearings and each of us then separately handled four or five adjudicatory hearings, in which we were assisted by staff counsel from the Department of Insurance. My partner and I were co-counsel on all of the court cases, dividing tasks on an almost daily basis as we juggled assignments to keep up with the demands of the litigation. The scores of lawsuits that ensued were consolidated in a single, statewide Judicial Council Coordinated Proceeding, under the direction of Los Angeles Superior Court Judge Miriam Vogel and, following Judge Vogel's elevation to the state Court of Appeal, Superior Court Judge Dzintra Janavs. A number of related lawsuits were also filed in federal court.

Some of the issues litigated in these court cases included the legality of Insurance Commissioner Garamendi's abandonment of his predecessor's rollback calculation methodology, the applicability of Proposition 103 to assigned-risk automobile insurance policies, the time deadline applicable to the Commissioner's review of insurers' rollback exemption applications, the facial constitutionality of Commissioner Garamendi's rollback and prior approval rate regulations, and the constitutionality of those regulations as applied to a particular insurer, 20th Century Insurance Company. Our litigation efforts culminated in half a dozen reported appellate opinions and in the California Supreme

Court's unanimous decision in 20th Century Ins. Co. v. Garamendi, which upheld the validity of the Commissioner's Proposition 103 regulations and his $78 million (plus interest) rollback order directed to 20th Century Insurance Company. Our firm continues to represent Insurance Commissioner Chuck Quackenbush on Proposition 103 litigation matters and, to date, more than $1 billion has been refunded to California consumers as a result of the initiative's implementation.

Reported Decisions:
Calfarm Ins. Co. v. Deukmejian, 48 Cal.3d 805 (1989)
20th Century Ins. Co. v. Garamendi, 8 Cal.4th 216 (1994)
Fireman's Fund Ins. Co. v. Quackenbush, 87 F.3d 290 (9th Cir. 1996)
Fireman's Fund Ins. Co. v. Garamendi, 790 F.Supp. 938 (N.D. Cal. 1992)
Safeco Ins. Co. v. Garamendi, 27 Cal.App.4th 400, 14 Cal.Rptr.2d 621 (1992), *review granted and summarily affirmed* (Cal. Sup. Ct. No. S030921)
State Farm Mutual Auto Ins. Co. v. Garamendi, 28 Cal.App.4th 16, 15 Cal.Rptr.2d 546 (1992), *review granted and summarily affirmed* (Cal. Sup. Ct. No. S030917)
Wilshire Ins. Co. v. Garamendi, 5 Cal.App.4th 1573 (1992)
California Automobile Assigned Risk Plan v. Garamendi, 234 Cal.App.3d 1486 (1991)
California Automobile Assigned Risk Plan v. Garamendi, 232 Cal.App.3d 904 (1991)

Judges:
California Supreme Court
U.S. Court of Appeals for the Ninth Circuit:
Judges D.W. Nelson, Schroeder, and Kozinski
U.S. District Court Judge Charles Legge, N.D. Cal.
California Court of Appeal, 2nd District, Div. 4:
Justices George, Goertzen, and Epstein
California Court of Appeal, 2nd District, Div. 5:
Justices Boren, Turner, Grignon
California Court of Appeal, 2nd District, Div. 7:
Justices Lillie, Johnson, Woods
Then-Los Angeles Superior Court Judge (now Court of Appeal Justice) Miriam A. Vogel
Los Angeles Superior Court Judge Dzintra Janavs
Then-Administrative Law Judge (now U.S. Magistrate Judge) Elizabeth D. Laporte, N.D. Cal.

Opposing Counsel:

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3. Amwest Surety Ins. Co. v. Wilson. In a matter that grew out of the Proposition 103 litigation, I was co-counsel with my partner in a case that resulted in another precedent-setting California Supreme Court decision that defined the scope of the state Legislature's authority to amend an initiative enacted by the voters, as well as the role of the judiciary in reviewing such legislative enactments.

Under the California Constitution, a statewide initiative adopted by a popular vote of the electorate may generally not be amended or repealed by the Legislature unless the initiative so provides. Proposition 103 contained a section that authorized the Legislature to adopt amendments to it, but only by a two-thirds vote, and only "to further the purposes of the initiative." In 1990, the Legislature enacted a bill declaring that surety insurance was not covered by Proposition 103's rollback and prior-approval provisions. A group of surety insurers immediately sought a judicial declaration that they were exempt from the initiative and did not owe any rollbacks. On behalf of Insurance Commissioner Garamendi, we defended the lawsuit, joined by the sponsors of Proposition 103, contending that the bill purporting to exempt surety insurance was an invalid legislative amendment that violated Proposition 103 and the state Constitution. The California Supreme Court unanimously agreed, holding that surety insurance was included within the definition of "property-casualty insurance" under Proposition 103 and that it did not "further the purposes" of the initiative to remove that line of insurance from its coverage.

Reported Decisions: Amwest Surety Ins. Co. v. Wilson, 11 Cal.4th 1243 (1995)

Judges: California Supreme Court
California Court of Appeal, 2nd District, Div. 3:
Justices Danielson, Croskey, and Hinz
Los Angeles Superior Court Judge Dzintra Janavs

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4. Stringfellow Acid Pits Superfund Clean-up Litigation. One of the most complex and massive litigation matters I have been involved in is the federal Superfund clean-up litigation over the Stringfellow Acid Pits in Riverside County. In 1983, the federal and state governments filed one of the first enforcement actions under CERCLA against dozens of toxic waste generators and the owners of the notorious Stringfellow Acid Pits, an abandoned hazardous waste dump that was leaking and threatened to poison the local community's groundwater supply. The defendants counterclaimed against the State of California, contending that the State was liable for the cleanup costs since it had approved and licensed the site, had encouraged the defendant generators and haulers to deposit their wastes there, and had been responsible for maintaining the site since its closure, the defendants also countersued the federal government, because several federal agencies had deposited their own hazardous wastes at Stringfellow. Multiple cross-claims were also filed among the defendants.

While working at the Center for Law in the Public Interest, I was contacted by Penny Newman, a resident of the community of Glen Avon just downstream from the Acid Pits, who sought a means for the local residents to have a meaningful voice in the clean-up plan for the Stringfellow waste dump. The local residents were very frustrated with the governments' lack of commitment and their clean-up efforts to that point, and they feared that because both the State and the federal government faced the possibility of

being held liable for a large share of the remedial costs, they might have a disincentive to push for the most complete — and hence most expensive — clean-up option. On behalf of Ms. Newman and an organization of local residents, Concerned Neighbors in Action ("CNA"), we moved to intervene as plaintiffs in the federal CERCLA enforcement action, asserting claims for liability against all of the existing parties, including the state and federal governments. I was co-lead counsel on the case with my colleague at the Center, Joel Reynolds.

Ours was one of the first such intervention motions ever filed in a CERCLA case, and by itself it generated considerable litigation. The residents' claim to an entitlement to intervention-as-of-right was contested by all of the existing parties; the defendants wanted to prevent their intervention altogether, and the government plaintiffs sought to limit their participation with onerous conditions. Then-U.S. District Court Judge Malcolm Lucas denied CNA's petition to intervene as of right, but granted permissive intervention with certain less restrictive conditions. Concerned that anything less than complete intervention without conditions might prejudice our clients' interests, we immediately appealed to the Ninth Circuit. After initially dismissing the appeal, the Court of Appeals withdrew its original opinion and reversed the District Court, concluding that CNA was entitled to intervene as of right. However, the government and defendants appealed that decision to the U.S. Supreme Court, which granted certiorari and, without reaching the merits, reversed the Ninth Circuit's decision on the jurisdictional ground that an order denying intervention-as-of-right but granting permissive intervention was not a "final" order or otherwise subject to immediate interlocutory appeal. (I co-authored our Supreme Court briefs, but did not present the oral argument to the Court.)

While these appellate battles occurred, our firm continued to participate on CNA's behalf as permissive intervenors in all of the trial court proceedings, which largely focused on many theretofore-unresolved legal issues over the proper interpretation of CERCLA's liability provisions. We briefed and argued those motions together with all the other parties, and the District Court ruled in our clients' favor on almost all of the pre-trial liability issues. We also worked closely with the government agencies and the industry defendants in developing an acceptable interim remedial and monitoring plan, as well as a framework for reviewing and coming to agreement on the final clean-up proposal. I have been told that the Stringfellow process has served as a nationwide model for incorporating community input into the remedial programs at other Superfund sites.

In September 1988, when I joined the state Attorney General's office, I had to recuse myself from any further participation in the Stringfellow case due to the obvious conflict of interest I then faced in my new position. The case subsequently went to trial before Special Master Harry V. Peetris, who found the State to be liable for the bulk of the clean-up costs. I believe the State is in the process of appealing that ruling.

Reported Decisions: Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370 (1987)
United States v. Stringfellow, 783 F.2d 821(9th Cir. 1986)
United States v. Stringfellow, 755 F.2d 1383 (9th Cir. 1985)

Judges: United States Supreme Court
U.S. Court of Appeals for the Ninth Circuit:
Judges Reinhardt, Goodwin, and Solomon (Dist. Ct., by designation)
Then-U.S. District Court Judge Malcolm M. Lucas (C.D. Cal.)
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5. Litigation Over the Diversion of Tobacco Tax Funds. Since 1994, I have represented a nonprofit organization, Americans for Nonsmokers' Rights, in litigation against the State of California over the State's diversion of Proposition 99 tobacco tax revenues to the funding of programs unrelated to anti-tobacco education and research. Adopted as an initiative in 1988, Proposition 99 imposed an additional 25-cent tax on each pack of cigarettes and other tobacco products, and mandated that these revenues be allocated by its statutory formula into six separate, special accounts, each of which is to be used solely for financing certain specified tobacco-related programs, such as health education and tobacco research programs. In 1993, the Governor and the Legislature began to divert some of the Proposition 99 revenues into other, unauthorized government programs, citing a purported fiscal crisis and budgetary shortfall. When the State not only continued, but increased, the diversions for the 1994-95 and 1995-96 fiscal years, Americans for Nonsmokers' Rights ("ANR") sued, claiming that the appropriations bills effecting over $120 million in diversions were illegal "amendments" to Proposition 99 that were not consistent with the initiative's purposes. ANR's lawsuit was consolidated with a similar suit subsequently filed by the American Lung Association and American Cancer Society. Following a brief trial, Sacramento County Superior Court Judge Roger K. Warren issued a writ of mandate enjoining any further diversion of Proposition 99

revenues and requiring reimbursement to the Tobacco Tax Fund of those funds that had previously been appropriated to non-tobacco related programs.

In response to the Superior Court's decision, which was issued in March of 1995, the Legislature passed, and the Governor signed, a new appropriations bill for fiscal year 1995-96, which again diverted over $60 million from anti-tobacco education and research programs, but this time explicitly purported to amend Proposition 99 in order to authorize the appropriations. ANR and the American Lung Association again filed separate suits challenging the diversions in Sacramento County Superior Court, and Judge James T. Ford issued a preliminary injunction prohibiting the diversions, on the ground that the amendment violated Proposition 99's requirement that any amendment be "consistent with the initiative's purposes."

The State appealed both decisions, and they were heard together by a panel of the Third District Court of Appeal. In December 1997, the Court of Appeal issued two opinions in the consolidated cases: In the first, denominated American Lung Association v. Wilson, the Court affirmed Judge Warren's writ of mandate against the 1994-95 diversions, holding that the appropriations measure was legally invalid to the extent it allocated revenues from the Tobacco Tax Fund in a manner other than that required by Proposition 99 without actually amending the initiative itself; in the companion opinion, issued under the name Americans for Nonsmokers' Rights v. State of California, the Court of Appeal reversed Judge Ford's preliminary injunction, ruling that the legislative amendment authorizing the re-allocation of revenues from the Tobacco Tax Fund was not necessarily inconsistent with the purposes of Proposition 99 as a matter of law, and remanding the case for a full trial on whether the diversions could be deemed consistent with the initiative's purposes as a matter of fact. Although the California Supreme Court initially granted review of the Court of Appeal's latter decision, after the case was briefed and was awaiting argument, the Court dismissed the petition for review without explanation, instead decertifying the Court of Appeal's opinion and sending the cases back to the Superior Court for trial. The actions are presently being held in abeyance in that court, while the parties wait to see whether the Legislature will take action to moot the cases by re-appropriating the previously-diverted but yet-unspent funds in accordance with Proposition 99's original spending formula.

Reported Decisions: American Lung Ass'n v. Wilson, 51 Cal.App.4th 743, 59 Cal.Rptr.2d 428 (1996)
Americans for Nonsmokers' Rights v. State of California, 51 Cal.App.4th 724, 59 Cal.Rptr.2d 416 (1996), *review granted and subsequently dismissed, opinion decertified for publication*

Judges: California Court of Appeal, 3rd District:
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6. Campaign Finance Reform Litigation. I have been counsel in several major litigation matters dealing with campaign finance reform initiatives. I first became involved in this issue when I was a Staff Attorney at the Center for Law in the Public Interest, representing California Common Cause in a couple of cases. This experience led to my serving as General Counsel for the Proposition 68 campaign in the June 1988 primary election. In that election, the voters passed both Proposition 68 and Proposition 73, a competing campaign finance reform measure, but the latter received more affirmative votes. Under the California Constitution, if the provisions of two or more measures approved by the voters conflict, those of the measure receiving the greatest number of votes prevail. On behalf of Proposition 68's sponsors, I initiated litigation to determine which, if any, provisions of Proposition 68 should take effect. While that case was pending in the Court of Appeal, however, I joined the Attorney General's office and had

to substitute out as counsel. Ultimately, in Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission, 51 Cal.3d 744 (1990), the state Supreme Court held, by a 4-3 vote, that since Propositions 68 and 73 were presented to the voters as competing initiatives offering alternative regulatory schemes, none of Proposition 68's provisions were operative, even if some of them would not otherwise conflict with Proposition 73's provisions.

Two years later, the principal provisions of Proposition 73 — its fiscal-year contribution limits — were struck down by the federal courts. Raising an issue that was expressly left open by the Court in Taxpayers, Proposition 68's supporters filed an original writ of mandamus in the Supreme Court, arguing that the invalidation of Proposition 73 rendered it *void ab initio* and meant that Proposition 68 should now be given effect. By this time, I had left the Attorney General's office for private practice, so I was able to serve once again as co-counsel for Common Cause and the Proposition 68 proponents in this case. The Supreme Court, again by a 4-3 vote, ruled that because some portions of Proposition 73 were severable from its unconstitutional provisions and could therefore remain operative, and because the two initiatives were *presented* to the voters as competing measures, Proposition 68 could still not take effect, even if none of its provisions conflicted with what remained of Proposition 73. Gerken v. Fair Political Practices Commission, 6 Cal.4th 707 (1993).

Both the majority and dissenting opinions in Gerken pointedly noted that none of the parties in that case had asked the Court to consider adopting a "saving" or "reformed" construction of Proposition 73's fiscal-year contribution limits in order to eliminate their constitutional infirmity consistent with the voters' intent. Soon thereafter, State Senator Quentin Kopp (one of Proposition 73's proponents) and Common Cause took the Supreme Court up on that offer, filing another original writ proceeding in which they requested that Proposition 73's fiscal-year contribution limits be judicially "reformed" through a saving construction to operate on a constitutionally permissible per-election basis. I again represented Common Cause in that case (writing the briefs and presenting argument), and the Supreme Court yet again ruled against us in Kopp v. Fair Political Practices Commission, 11 Cal.4th 607 (1995), holding by another 4-3 vote that although the Court possessed the general authority to "reform" an initiative measure to save it from unconstitutionality, it would be improper to do so in this particular case, given the Court's inability to discern what level of contribution limits the voters would have wanted to adopt in place of Proposition 73's limitations.

Reported Decisions: Gerken v. Fair Political Practices Commission, 6 Cal.4th 707 (1993)
Kopp v. Fair Political Practices Commission, 11 Cal.4th 607 (1995)

Judges: California Supreme Court

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7. Exxon Oil Tankering Litigation. Although our firm does not generally represent governmental entities on a continuing, ongoing basis, we are frequently retained by public agencies to provide representation on certain discrete, complex litigation matters. I handled one such case in the federal District Court in Los Angeles on behalf of the County of Santa Barbara, which found itself embroiled in a dispute with Exxon Corporation over the oil company's right to ship oil by tanker off the Santa Barbara coastline. Exxon produces oil and gas from platforms in federal waters several miles off the Santa Barbara coast. The crude oil is transported by underwater pipeline to an onshore processing facility, from which it is then shipped to designated refining centers throughout the country. As a condition for obtaining a permit in 1984 to construct and operate its processing facility in Santa Barbara, Exxon committed that all oil processed at the treatment facility would be transported from the facility and the County by pipeline, as long as a pipeline was determined to be technically and economically feasible.

The 1994 Northridge earthquake damaged one of the pipelines that Exxon and the other oil companies had been using, and it reduced the overall capacity of pipeline transportation from Santa Barbara to refineries in the Los Angeles area and other points east and south. Exxon therefore began transporting some of its Santa Barbara oil by pipeline northward to a facility in the San Francisco Bay Area, where it was loaded onto a tanker ship, mixed with oil brought down from Alaska, and transported through federal and international waters by marine tanker to Los Angeles, passing just off the Santa Barbara coastline. Upon learning of this development, the County wrote to Exxon, advising the company that the County interpreted Exxon's permit to require that all Santa Barbara-processed oil be shipped by pipeline all the way to the refineries, and that if such pipeline transport were presently determined to be infeasible, Exxon should submit a compliance plan to the County identifying the steps it was taking to increase the pipeline capacity and specifying the date by which it would commit to returning to the exclusive use of pipeline transportation.

Exxon responded by filing a Section 1983 civil rights suit against the County for millions of dollars in damages and for declaratory and injunctive relief, arguing that the County lacked jurisdiction to regulate in any manner the company's tankering in federal and international waters, and that if the permit were construed to permit such regulation, it was preempted by federal and international law. I was lead counsel for the County in the extensive litigation that ensued over such issues as the scope and availability of a section 1983 action based upon the Commerce Clause, the applicability of federal pre-emption, ripeness and abstention doctrines, and the County's waiver/estoppel claims against Exxon. In July, 1996, on the parties' cross-motions for summary judgment, U.S. District Court Judge J. Spencer Letts granted partial summary judgment for Exxon, prohibiting Santa

Barbara County from taking any action to prohibit or interfere with Exxon's tankering, but awarding Exxon only $1 in nominal damages. Both parties appealed from Judge Letts' decision, but a settlement was subsequently reached in which the cross-appeals were dismissed, Exxon and the County agreed to a limited tankering schedule, and the parties released each other from all litigation costs, attorneys' fees, and administrative expenses.

Case:	Exxon Corporation v. County of Santa Barbara (C.D. Cal. No. 95-7704-JSL)
Judges:	U.S. District Judge J. Spencer Letts, C.D. Cal.
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8. Election Contest Litigation. One of the specialty practice areas that I have developed is litigation over close elections, and one of the more significant election contests that I have litigated was the case of Wallace v. Chamberlin, in which I successfully represented Santa Barbara County Supervisor William Wallace in challenging the results of the November 1992 supervisorial election. The semi-official canvass of returns had shown Wallace losing re-election by approximately 20 votes out of more than 35,000 cast. Following an administrative challenge to the canvass results and a ballot-by-ballot manual recount of the votes, the margin of defeat was reduced to 5 votes. We then filed a judicial election contest on behalf of Wallace against the winning candidate, Willy Chamberlin, contending that various uncounted ballots should have been counted and that certain other ballots should have been rejected because they were illegally cast.

I was lead counsel for Supervisor Wallace in the ensuing four-week trial, in which approximately 75 witnesses were called to testify and hundreds of documents and voting

records were introduced into evidence. At the conclusion of the trial, Justice Nat Agliano (sitting by designation of the Judicial Council, following the voluntary recusal of the entire Santa Barbara County Superior Court bench) declared Chamberlin the winner by 2 votes. Wallace appealed, and in a 60-page unpublished decision, the Court of Appeal unanimously reversed the trial court and declared Wallace the winner of the election. The Court ruled that at least 10 additional ballots should have been counted for Wallace and that four absentee votes should have been deducted from Chamberlin's total because they had been illegally cast. (The concurring opinion would have gone even farther, ordering that an additional 18 originally-disqualified ballots be counted for Wallace.) The California Supreme Court denied Chamberlin's petition for review, and Wallace immediately thereafter was reinstated on the Board of Supervisors.

The Wallace v. Chamberlin contest exemplifies one type of election-related litigation that has become a significant part of my practice. In addition to conducting about 20-30 administrative recounts, I have now handled almost a dozen judicial election contests — almost certainly more than any other lawyer in the state — including successfully defending Congresswomen Loretta Sanchez and Jane Harman against the federal election contests filed with the House of Representatives by their respective opponents in the 1996 and 1994 Congressional elections. My first exposure to these type of cases came in 1987, when I successfully obtained a new run-off election (which he subsequently won handily) for Garland Hardeman, a candidate for the Inglewood City Council, based upon absentee-ballot fraud and other illegalities in the conduct of the original election. (I was co-counsel for Hardeman at trial, along with Mark Borenstein of Tuttle & Taylor, but had to substitute out and remove myself from the appeal when I took a position in the state Attorney General's office.) The Court of Appeal ultimately affirmed the Superior Court's decision in Hardeman v. Thomas, 208 Cal.App.3d 153 (1989), one of the few reported decisions in this area of the law.

Since returning to private practice, I have averaged about one election contest per year. In addition to the Wallace and Hardeman cases, I was successful in gaining a new run-off election for Long Beach City Council candidate Tonia Uranga, who had initially been declared the loser by just two votes, and in having San Bernardino County school board member Dona Silva declared the winner, after the County Registrar had certified the election of her opponent. On the opposite side of the coin, in addition to the Sanchez and Harman election contests, I have also successfully defended the election victories of Diamond Bar City Councilmember Carol Herrera, Los Angeles County Municipal Court Judge Pete Meeka, and — most recently — California State Senator Richard Alarcon in the June 1998 primary for the 20th State Senate District.

Case: Wallace v. Chamberlin (2d Civil No. B075148 (1994))

Judges: California Court of Appeal, Second District, Div. 6:
Justices Stone, Gilbert, and Yegan
Retired Justice Nat Agliano

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9. Initiative and Referendum Litigation. A large part of our firm's and my personal caseload at any given point in time has been litigation concerning the initiative and referendum process. One of the first significant cases that I litigated in this area was Committee of Seven Thousand (C.O.S.T.) v. Superior Court. I represented a citizens' group in the City of Irvine that opposed the imposition of new development fees to finance the construction of three new freeways in Orange County. The organization circulated an initiative petition declaring that before the Irvine City Council could enact any new fee or tax to help finance construction of the freeways, it must first submit the proposal to a vote of the people and receive the approval of a majority of those voting on the measure. The City Clerk certified that the initiative had qualified for the ballot, but before the City Council could call for the election, a coalition of freeway supporters filed a lawsuit in Orange County Superior Court to block the council from acting, contending that the initiative was invalid and beyond the power of the electorate to enact.

The Superior Court granted the requested injunction, and I filed a petition for writ of mandate for my clients in the Court of Appeal seeking to reverse the trial court's decision. The Court of Appeal denied the writ and upheld the Superior Court's ruling. We then filed a petition for review with the California Supreme Court, which granted the petition but ultimately affirmed the Court of Appeal's decision. The Supreme Court held that language in the Subdivision Map Act stating that "the *board of supervisors* of the County of Orange and the *city council* of any city in that county may, by ordinance, require the payment of a fee . . . for purposes of defraying the actual or estimated cost of

. . . constructing major thoroughfares" signified an intent to delegate such discretionary authority *exclusively* to the governing bodies, and not to permit the people to exercise such authority by an initiative.

The C.O.S.T. case is representative of many cases that I have litigated challenging a local governmental body's refusal to place a citizen-sponsored initiative, referendum, or recall measure on the ballot. In part because an initiative or referendum is generally only used when the elected officials disagree with the position the ballot measure's proponents are espousing, legal disputes constantly arise over city or county officials' attempts to block a measure they oppose from appearing on the ballot. Sometimes, as in the C.O.S.T. case, the litigation involves whether a particular issue is a proper legal subject for the exercise of the initiative or referendum power; in other cases, the litigation centers on some procedural requirement that the proponents are alleged to have violated in attempting to gather the signatures on their petitions. Given the tight time frame in which most of these cases must be brought and resolved, the lawsuits have usually been resolved at the trial court level, or in an unpublished decision from the Court of Appeal; the C.O.S.T. case is significant because it is one of the relatively few cases in this area that has made its way up the appellate ladder into a reported decision from the California Supreme Court.

Reported Decisions:	Committee of Seven Thousand v. Superior Court, 45 Cal.3d 491 (1988) Committee of Seven Thousand v. Superior Court, 194 Cal.App.3d 1076, 221 Cal.Rptr. 616 (1985), *decertified upon S.Ct. review*
Judges:	California Supreme Court California Court of Appeal, 4th District: Justices Crosby, Trotter, and Wallin
Opposing Counsel:	Alvin S. Kaufer NOSSAMAN, GUTHNER, KNOX & ELLIOTT 445 S. Figueroa St., 31st Floor Los Angeles, CA 90071-1602 (213) 612-7828

10. Litigation Over Initiative and Referendum Procedures. As mentioned above, another major category of ballot access cases I often handle are those involving a dispute over compliance with some procedural requirement in the Elections Code. In one such case, Browne v. Russell, the tobacco industry had sponsored a referendum challenging the Los Angeles City Council's enactment of an ordinance prohibiting smoking in restaurants. The referendum proponents timely circulated and submitted their petitions to the City Clerk, who rejected more than a thousand signatures on the ground that the persons who had circulated the petitions on which those signatures appeared were not City residents and registered voters, in violation of a provision in the City Election

Code requiring that petition circulators be residents and qualified, registered voters of the City. The invalidation of these signatures caused the referendum to fall short of the needed number of signatures, and the City Clerk issued a certificate of insufficiency.

The referendum proponents sued, contending that the requirement that petition circulators be residents of the City violated the First Amendment by unduly burdening the referendum proponents' right of political expression. Representing a coalition of public health organizations and individuals who supported the City's no-smoking ordinance, I intervened to defend the constitutionality of the "circulator residency" requirement. The Los Angeles Superior Court, however, agreed with the referendum proponents and ordered the City Clerk to count the challenged signatures and to determine whether the petition qualified for the ballot with the inclusion of those signatures. We filed an emergency petition for writ of mandate with the Court of Appeal, which issued an alternative writ and reversed the Superior Court, holding that the City's "circulator residency" requirement did not substantially burden the referendum proponents' free speech or referendary rights, and that any such burden was in any event justified by the City's compelling interest in preserving the integrity of the initiative and referendum process by preventing its domination by non-resident special interest groups. (The U.S. Supreme Court this year appeared to endorse the Court of Appeal's view, holding in Buckley v. American Constitutional Law Foundation, Inc. (Jan. 12, 1999), 1999 U.S. LEXIS 506, that although a Colorado law requiring all petition circulators to be *registered voters* of the state violated the First Amendment, a requirement that the circulators be state *residents* passed constitutional muster.)

Reported Decisons: Browne v. Russell, 27 Cal.App.4th 1116 (1994)

Judges: California Court of Appeal, 2nd District:
Justices Nott, Gates, and Fukuto
Los Angeles Superior Court Judge Robert H. O'Brien

Opposing Counsel: Mark H. Epstein
MUNGER TOLLES & OLSON LLP
355 S. Grand Ave., 35th Flr.
Los Angeles, CA 90071-1560
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Los Angeles, CA 90012-4110
(213) 485-5425

Roger Jon Diamond
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19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

The legal work that my partner and I have performed for the California Insurance Commissioner in implementing and defending the legality of Proposition 103 — an undertaking that has resulted in refunds of approximately $1 billion to California's consumers and in the development of a stable property-casualty insurance market in the state — undoubtedly constitutes the most prominent, and is arguably the single most successful, legal activity that I have pursued. Because of the expertise that I have developed in the area of election law, however, I have been involved in dozens of other cases that are equally significant in defending the people's right to propose and enact legislation through the initiative process, or to have that legislation fully implemented following its adoption by the voters. As mentioned above, perhaps only a handful of these cases progress beyond the trial court level or result in published opinions from the appellate courts, yet they are all very important to the local residents affected by such measures and — in my view, at least — they are significant in preserving the integrity of our democratic process and in vindicating the voters' rights under the Constitution and under the laws enacted by their elected representatives.

Aside from my litigation efforts, I have also been involved throughout my career in helping to draft legislation, at the local, state, and federal levels. From my days clerking at the Court of Appeals and the Supreme Court, I developed a healthy respect for the

"separation of powers" doctrine and for the preeminent role assigned to the legislative branch in enacting the laws by which our society is ordered. As a consequence, I have frequently worked with clients or elected officials in developing legislative remedies for problems that were not adequately addressed by existing laws. For example, while at the Center for Law in the Public Interest, I was one of the attorneys who helped to draft proposed amendments to the *qui tam* provisions of the Civil War-era federal False Claims Act, in order to encourage potential relators to come forward and expose fraud in federal contracts and procurement programs; under Senator Grassley's leadership, many of these proposals were incorporated into Congress' 1986 amendments to the Act. Similarly, during my tenure in the California Attorney General's office, I drafted a comprehensive package of bills to tighten and improve the state's campaign finance and ethics laws; some of the proposals were enacted by the state legislature, and the remainder — including the first proposal for term limits for state officials — were included in an unsuccessful 1990 ballot measure (Proposition 131) sponsored by the Attorney General. In my private practice, I continue to assist local elected officials and citizen groups in crafting legislation dealing with selected issues affecting their communities, particularly in the land use area.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am presently a partner with Michael Strumwasser in two business entities: the Strumwasser & Woocher law firm; and Strumwasser & Woocher Investments, an entity that we formed in February 1998 in order to manage a small office building that we and our spouses jointly purchased that year for the purpose of eventually housing our law firm.

I intend to sever all business connections with the Strumwasser & Woocher law firm upon assuming the bench. However, for some brief period of time following my departure, the firm is expected to receive payments (from clients and fee awards) owing to the accounts-receivable and work-in-progress that were outstanding at the time of my departure. Upon the advice of our accountant, I will continue receiving my proportionate share of the net revenues from the accounts-receivable attributable to the work I performed prior to my departure, as those payments are received by the firm; in due course, all of those receivables and work-in-progress will be accounted for, and all of my financial ties to the law firm will then be completely severed. I will also presumably receive my pro-rata share of the firm's contribution to my pension plan for the calendar year in which I depart the firm; in the past, the firm's pension plan has been funded by October 15th of the calendar year following the year in which the pension liability was incurred.

At this point, I anticipate continuing to hold my passive investment in Strumwasser & Woocher Investments after I take a seat on the court, since my wife and I will continue to retain a one-half ownership in the office building that the partnership manages. This means that I would continue to receive my proportionate share of any net rental income received from the office building. However, I will become a completely passive investor, with Mr. Strumwasser assuming all of the management responsibilities.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I would, of course, strictly adhere to the Judicial Canons of Ethics regarding any potential conflicts of interest. Beyond that, however, I think it is important not only to guard against any actual conflicts of interest, but to ensure that there would be no

appearance of any conflict of interest. I think the best prescription to prevent any such possibility is to fully disclose to the litigants and their counsel at the outset of a case assignment any areas of potential concern and to provide them with the opportunity to object or to have their case re-assigned to another judge who is completely free of any potentially conflicting interests.

With specific regard to potential conflicts arising from my finances and outside business interests, I would intend to recuse myself from any matter in which my current law firm and former colleagues are involved; regardless of what the Canons of Ethics would technically permit and whether or not I still had any ongoing financial involvement with my former colleagues, our relationship has simply been too close to maintain an appearance of impartiality. Beyond that relationship, I think it unlikely that there would be many other areas of concern in my particular case. My family holds very few investments or assets other than shares in broadly diversified, publicly available, mutual funds and government bonds. Nevertheless, if appointed to the bench, I would readily dispose of any other financial interests that could give rise to a potential conflict with my judicial responsibilities.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No. I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see the attached Financial Disclosure Report.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Please see the attached Financial Net Worth Statement and its accompanying schedule.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In March through June of 1988, while on sabbatical from my work at the Center for Law in the Public Interest, I served as the Director of Communications and Legal

Counsel for Taxpayers to Limit Campaign Spending, the political committee that sponsored Proposition 68, a campaign finance reform proposal appearing on the June 1988 primary ballot. My responsibilities including handling press coverage for the initiative campaign, dealing with assorted legal issues that arose during the course of the campaign, and generally assisting in developing the strategy for the campaign along with others involved in the effort. Although Proposition 68 received a majority of votes in the election, it was never implemented because a competing campaign finance reform proposal on the same ballot, Proposition 73, passed by an even larger percentage.

Aside from my involvement with the Proposition 68 campaign, I have never held a formal position with any other political campaign, although I have served as legal counsel or advisor to a number of political candidates during the past decade. Because one of my major areas of specialization is political and election law, I am often retained by a candidate or committee to provide advice regarding some aspect of the electoral process or to provide representation in litigation regarding election results or compliance with the election laws. Generally, my representation has been in connection with a discrete legal issue, such as litigation over what occupational ballot designation a candidate may use, or advice regarding campaign finance restrictions and other election-related regulations. I would estimate that in the past eight years, I have provided representation in this manner to some 25-30 candidates and their campaigns, primarily for local or state legislative elections.

AO-10 (rv)
Rev. 1/98

FINANCIAL DISCLOSURE REPORT
Nomination Report

Report Required by the Ethics Reform Act of 1989, Pub L No. 101-194, November 30, 1989 (5 U.S.C. App. 4, Sec. 101-112)

1. Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
Woocher, Fredric D.	U.S. District Court, C.D. Cal.	05/13/1999
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Nominee	**5. Report Type (check type)** X Nomination, Date / / Initial Annual Final	**6. Reporting Period** 01/01/1998 to 05/10/1999
7. Chambers or Office Address Strumwasser & Woocher LLP 100 Wilshire Blvd., Ste. 1900 Santa Monica, CA 90401	**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 section where you have no reportable information. Sign on the last page.

I. POSITIONS (Reporting individual only; see pp. 9-13 of Instructions)

☐ NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION / ENTITY
1	Partner	Strumwasser & Woocher LLP
2	Partner	Strumwasser & Woocher Investments
3	Director	CLCV Education Fund

II. AGREEMENTS (Reporting individual only; see pp. 14-16 of Instructions.)

☐ NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1	1999	Strumwasser & Woocher LLP - receive pro-rata share of revenue owing to accounts receivable and work-in-progress incurred prior to departure from former firm
2		
3		

III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-21 of Instructions.)

☐ NONE (No reportable non-investment income.)

	DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
1	1997	Strumwasser & Woocher, Partner Draw	$ 322,000.00
2	1997	The Oakwood School (S)	
3	1998	Strumwasser & Woocher, Partner Draw	$ 229,900.00
4	1998	Twentieth Century Fund Foundation, Honorarium	$ 600.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Woocher, Fredric D.	05/13/1999

IV. REIMBURSEMENTS — transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements received by spouse and dependent children, respectively. See pp. 25-28 of Instructions.)

	SOURCE	DESCRIPTION
☐	NONE (No such reportable reimbursements.)	
1	Exempt	
2		
3		
4		
5		
6		
7		

V. GIFTS

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate gifts received by spouse and dependent children, respectively. See pp. 29-32 of Instructions.)

	SOURCE	DESCRIPTION	VALUE
☐	NONE (No such reportable gifts.)		
1	Exempt		
2			
3			

VI. LIABILITIES

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 33-35 of Instructions.)

	CREDITOR	DESCRIPTION	VALUE CODE*
☐	NONE (No reportable liabilities.)		
1	City National Bank (J)	Mortgage on Rental Property, Santa Monica, CA (Pt VII, line 7)	N
2			
3			
4			
5			
6			

* VAL CODES: J=$15,000 or less K=$15,001-$50,000 L=$50,001 to $100,000 M=$100,001-$250,000 N=$250,001-$500,000
O=$500,001-$1,000,000 P1=$1,000,001-$5,000,000 P2=$5,000,001-$25,000,000 P3=$25,000,001-$50,000,000 P4=$50,000,001 or more

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Woocher, Fredric D.	05/13/1999

VII. Page 1 INVESTMENTS and TRUSTS— income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(Q)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions.)									
1 Sanwa Bank	A	Interest	K	T					
2 Sanwa Bank (J)	A	Interest	L	T					
3 Strumwasser & Woocher LLP Partnership Interest									
4 City National Bank	C	Interest	M	T					
5 Southwest Securities Gov't Portfolio - CNI Shares	A	Dividend	J	T					
6 Strumwasser & Woocher Investments Partnership Interest									
7 Rental Property, Santa Monica, CA (1998 $720,000) (J)	D	Rent	O	R	Exempt				
8 FW IRA Account at Schwab									
9 Berger 100 Fund	A	Dividend	J	T					
10 Fidelity Asset Mgr Fund	C	Dividend	K	T					
11 Gabelli Small Cap Growth Fund	B	Dividend	L	T					
12 State of Israel Development Bonds	A	Interest	J	T					
13 Janus Fund	A	Dividend	K	T					
14 Schwab 1000 Fund	A	Dividend	M	T					
15 Schwab International Index Fund	A	Dividend	K	T					
16 Schwab Money Market Fund	A	Dividend	J	T					
17 Schwab S & P 500 Fund	A	Dividend	J	T					

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Moocher, Fredric D.

Date of Report: 05/13/1999

VII. Page 2 INVESTMENTS and TRUSTS-- income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
18 Vanguard Wellesley Income Fund	B	Dividend	K	T					
19 FM Keough (SEP-IRA) Account at Shearson Smith Barney									
20 Alliance Growth Fund	C	Dividend	K	T					
21 Delaware Group Value Fund	A	Dividend	J	T					
22 Delaware Group Delcap Income Fund	B	Dividend	K	T					
23 SmithBarney Balanced Fund	C	Dividend	J	T					
24 Smith Barney Cash Portfolio Fund	C	Dividend	L	T					
25 Smith Barney Premium Total Fund	B	Dividend	J	T					
26 CG Capital Mkts - Emerging Markets Fund	A	Dividend	J	T					
27 CG Capital Mkts - International Equity	A	Dividend	K	T					
28 CG Capital Mkts - Large Cap Growth Fund	A	Dividend	K	T					
29 CG Capital Mkts - Large Cap Value Fund	B	Dividend	J	T					
30 CG Capital Mkts - Small Cap Growth Fund	A	Dividend	J	T					
31 CG Capital Mkts - Small Cap Value	B	Dividend	J	T					
32 Phoenix Zweig Sec Tr Appreciation Fund	B	Dividend	J	T					
33 FM Brokerage Account at Schwab									
34 Aetna Inc. Common Stock	A	Dividend	J	T					

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Boocher, Fredric D.

Date of Report: 05/13/1999

VII. Page 3 INVESTMENTS and TRUSTS— income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	B. (2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	C. (2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
35 Alltel Corp Common Stock	A	Dividend	J	T					
36 California State GO Muni Bonds	A	Interest	J	T					
37 Disney Corp Common Stock	A	Dividend	K	T					
38 Federated Hi-Yield Bonds Fund	A	Dividend	J	T					
39 Foundation Health System Common Stock		None	J	T					
40 Invesco Strategic Environmental Fund		None	J	T					
41 Pioneer Natural Resources Common Stock	A	Dividend	J	T					
42 Schwab 1000 Select Fund	A	Dividend	L	T					
43 Schwab California Tax-Free Money Market Fund	B	Dividend	L	T					
44 Schwab S & P 500 Select Fund	A	Dividend	J	T					
45 Sprint FON Group Common Stock	A	Dividend	J	T					
46 Sprint PCS Group Common Stock	A	Dividend	J	T					
47 USA Networks Inc Common Stock		None	J	T					
48 Vanguard Fixed High-Yield Fund	A	Dividend	J	T					
49 Wellpoint Health Network Common Stock		None	J	T					
50 FM Brokerage Account at Shearson Smith Barney									
51 AIM New Pacific Growth Fund	A	Dividend	J	T					

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT | Name of Person Reporting: Woocher, Frederic D. | Date of Report: 05/13/1999

VII. Page 4 INVESTMENTS and TRUSTS— income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.*	B. Income during reporting period: (1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	C. Gross value at end of reporting period: (1) Value Code (J-P)	(2) Value Method Code (Q-W)	D. Transactions during reporting period: (1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
52 Golden West Financial Common Stock	A	Dividend	J	T					
53 Meditrust Paired CTF Common Stock	B	Dividend	J	T					
54 Nuveen California Quality Muni Bond Fund	B	Dividend	K	T					
55 Nuveen Insured California Muni Bond Fund	A	Dividend	J	T					
56 Smith Barney Cash Portfolio Fund	A	Dividend	J	T					
57 Pacificorp Common Stock	A	Dividend	J	T					
58 Municipal Investment Accumulation Program Muni Bond	C	Interest	K	T					
59 MM Brokerage Account at Shearson Smith Barney (DC)									
60 Delaware Group DelCap Income Fund (DC)	C	Dividend	K	T					
61 International Developement Bank Zero Coupon Bond (DC)	A	Interest	J	T					
62 Smith Barney Appreciation Fund (DC)	B	Dividend	J	T					
63 Swedish Government Zero Coupon Bond (DC)	A	Interest	J	T					
64 MM Brokerage Account at Schwab (DC)									
65 Neuberger & Berger Partners Fund (DC)	A	Dividend	J	T					
66 Schwab 1000 Fund (DC)	A	Dividend	K	T					
67 Schwab Money Market Fund (DC)	A	Dividend	J	T					
68 Schwab S & P 500 Fund (DC)	A	Dividend	K	T					

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

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3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Moecher, Fredric D.

Date of Report: 05/13/1999

VII. Page 5 INVESTMENTS and TRUSTS— income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.* *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 (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	If not exempt from disclosure: (2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
69 Willamette Industries Common Stock (DC)	A	Dividend	J	T					
70 JM Brokerage Account at Schwab (DC)									
71 Harbor 100 Fund (DC)	A	Dividend	K	T					
72 Schwab 1000 Fund (DC)	A	Dividend	K	T					
73 Schwab Money Market Fund (DC)	A	Dividend	J	T					
74 Schwab S & P 500 Fund (DC)	A	Dividend	K	T					
75 WD IRA Account at Schwab (S)									
76 Federated Growth Fund (S)		None	J	T					
77 Founders Special Fund (S)	A	Dividend	J	T					
78 Franklin Income Fund (S)	A	Dividend	J	T					
79 Gabelli Growth Fund (S)	A	Dividend	K	T					
80 State of Israel Bond (S)	A	Interest	J	T					
81 Public Storage Inc Common Stock (S)	A	Dividend	J	T					
82 Schwab 1000 Fund (S)	A	Dividend	J	T					
83 Schwab Money Market Fund (S)	A	Dividend	J	T					
84 WD Keough Account at Schwab (S)									
85 Schwab 1000 Fund (S)	A	Dividend	J	T					

1 Inc/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
(Col. B1, D4) F=$50,001-$100,000; G=$100,001-$1,000,000; H1=$1,000,001-$5,000,000; H2=$5,000,001 or more

2 Val 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
(Col. C1, D3) O=$500,001-$1,000,000; P1=$1,000,001-$5,000,000; P2=$5,000,001-$25,000,000; P3=$25,000,001-$50,000,000; P4=$50,000,001 or more

3 Val Mth Codes: Q=Appraisal; R=Cost (real estate only); S=Assessment; T=Cash/Market
(Col. C2) U=Book Value; V=Other; W=Estimated

FINANCIAL DISCLOSURE REPORT

Name of Person Reporting: Moocher, Fredric D.

Date of Report: 05/13/1999

VII. Page 6 INVESTMENTS and TRUSTS— income, value, transactions *(Includes those of spouse and dependent children. See pp. 36-54 of Instructions.)*

A. Description of Assets. *Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. 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				
						If not exempt from disclosure			
	(1) Amount Code (A-H)	(2) Type (e.g., dividend, rent or interest)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, partial sale, merger, redemption)	(2) Date: Month-Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)
☐ NONE (No reportable income, assets, or transactions.)									
86 MD TIAA-CREF Retirement Account (S)									
87 CREF Stock Fund (S)		None	J	T					
88 TIAA Traditional Annuity (S)	*	Interest	J	T					
89									
90									
91									
92									
93									
94									
95									
96									
97									
98									
99									
100									
101									
102									

1 Inc/Gain Codes: (Col. B1, D4)	A=$1,000 or less	B=$1,001-$2,500	C=$2,501-$5,000	D=$5,001-$15,000	E=$15,001-$50,000
	F=$50,001-$100,000	G=$100,001-$1,000,000	H1=$1,000,001-$5,000,000	H2=$5,000,001 or more	
2 Val Codes: (Col. C1, D3)	J=$15,000 or less	K=$15,001-$50,000	L=$50,001-$100,000	M=$100,001-$250,000	N=$250,001-$500,000
	O=$500,001-$1,000,000	P1=$1,000,001-$5,000,000	P2=$5,000,001-$25,000,000	P3=$25,000,001-$50,000,000	P4=$50,000,001 or more
3 Val Mth Codes: (Col. C2)	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market	
	U=Book Value	V=Other	W=Estimated		

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Moocher, Fredric D.	05/13/1999

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS.
(Indicate part of report.)

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Moocher, Fredric D.	05/13/1999

SECTION HEADING. (Indicate part of report.)
Information continued from Parts I through VI, inclusive.

PART 3. NON-INVESTMENT INCOME (cont'd.)

Line	Date	Source and Type	Gross Income
5	1998	The Oakwood School (S) $	0.00
6	1999	Strumwasser & Moocher LLP, Partner Draw $	204,000.00
7	1999	The Oakwood School (S) $	0.00

FINANCIAL DISCLOSURE REPORT	Name of Person Reporting	Date of Report
	Moocher, Fredric D.	05/13/1999

IX. CERTIFICATION

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the 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. 4, section 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature Fredric Moocher Date 5/13/99

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. 4, Section 104).

FILING INSTRUCTIONS

Mail original and three additional copies to:

Committee on Financial Disclosure
Administrative Office of the United States Courts
One Columbus Circle, N.E.
Suite 2-301
Washington, D.C. 20544

NET WORTH STATEMENT
Fredric D. Woocher
(As of 5/10/99)

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	113	527.	60	Notes payable to banks-secured			
U.S. Government securities-included within listed securities (see Portfolio Value Report)				Notes payable to banks-unsecured			
Listed securities-see attached Portfolio Value Report by Account	1,249	517.	00	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 tax and interest			
Doubtful				Real estate mortgages payable			
				Countrywide Home Loans (Personal Residence)	327	136.	73
				City National Bank (Office Building - value of ½ interest)	492	385.	24
Real estate owned				Chattel mortgages and other liens payable			
Personal residence Est.	650	000.	00				
Office Building (value of ½ interest) Est.	720	000.	00				
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property Est.	30	000.	00				
Cash value-life insurance							
Other assets-itemize:							
Partnership Interest in Strumwasser & Woocher LLP Assets Est.	190	000.	00				
				Total Liabilities	819	521.	97
				Net Worth	2,133	522.	63
Total Assets	2,953	044.	60	**Total liabilities and net worth**	2,953	044.	60
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	None			Are any assets pledged? (Add schedule.)	No.		
On leases or contracts (1/2 Interest in S & W Office Lease)	312	500.	00	Are you defendant in any suits or legal actions?	No.		
Legal Claims	None			Have you ever taken bankruptcy?	No.		
Provision for Federal Income Tax	None						
Other special debt	None						

96-97DAR-All Investment Accts 5/12/99

Portfolio Value Report by Account

(Includes unrealized gains)

* Estimated Prices

Security	Shares	Curr Price	Cost Basis	Gain/Loss	Balance
FW IRA - Schwab					
Berger 100 Fund	324.916	15.460 *	4,333.75	689.46	5,023.21
Fidelity Asset Mgr	1,254.243	17.950 *	18,507.95	4,005.71	22,513.66
Gabelli Sm Cap Grt	2,680.668	21.590 *	43,882.01	13,993.61	57,875.62
Israel Bond	20.000	100.000 *	2,000.00	0.00	2,000.00
Janus Fund	861.552	37.920 *	17,839.85	14,830.21	32,670.06
Schwab 1000 Fund	3,376.464	36.380 *	36,978.83	85,856.94	122,835.77
Schwab Intl Index	2,629.150	16.180 *	26,630.11	15,909.54	42,539.65
Schwab MM Fund	2,277.290	1.000 *	2,277.29	0.00	2,277.29
Schwab S & P 500	571.625	20.650 *	10,088.68	1,717.37	11,804.05
Wellesley Inc Fund	957.825	21.770 *	18,361.13	2,490.72	20,851.85
-Cash-	2,000.000	1.000	2,000.00	0.00	2,000.00
TOTAL FW IRA - Schwab			**182,897.60**	**139,493.56**	**322,391.16**
FW Keough					
Alliance Grwth Fnd	884.833	42.870 *	22,360.84	14,714.78	37,075.62
CG Cap-Emerg Mkts	455.877	6.180 *	4,202.85	-1,385.53	2,817.32
CG Cap-Intl Equity	1,414.961	11.990 *	12,602.50	4,362.88	16,965.38
CG-Lg Cap Grwth	943.361	23.910 *	10,104.57	12,451.20	22,555.77
CG-Lg Cap Value	746.066	14.290 *	7,695.95	2,985.34	10,681.29
CG-Sm Cap Grwth	447.677	17.380 *	5,650.59	2,130.04	7,780.63
CG-Sm Cap Value	1,072.030	10.450 *	10,807.22	395.50	11,202.72
Del Delcap FD Inc	717.094	25.210 *	16,554.75	1,523.19	18,077.94
Delaware Value	521.139	26.180 *	10,939.71	2,703.71	13,643.42
Phoenix Zweig Ser Tr Appre	852.606	15.510 *	14,305.37	-1,081.45	13,223.92
SmithBar Balanced Fund	1,061.546	14.070 *	15,209.66	-273.71	14,935.95
SmithBar Cash Port	72,673.780	1.000 *	72,673.78	0.00	72,673.78
SmithBar Prem Tot	639.838	20.980 *	10,581.10	2,842.71	13,423.81
TOTAL FW Keough			**213,688.89**	**41,348.66**	**255,037.55**
FW Street Acct					
Israel Bond	5.000	100.000 *	500.00	0.00	500.00
Israel Zero Cpn	4.000	3,500.000 *	12,366.00	1,634.00	14,000.00
Israel Zero Cpn 5	1.000	3,383.000 *	3,383.00	0.00	3,383.00
Pacificorp	640.385	19.138 *	10,254.13	2,001.63	12,255.76
TOTAL FW Street Acct			**26,503.13**	**3,635.63**	**30,138.76**
JW Street Acct					
Israel Zero Cpn 2	1.000	3,357.000 *	3,357.00	0.00	3,357.00
Israel Zero Cpn 3	1.000	3,080.000 *	3,080.00	0.00	3,080.00
Israel Zero Cpn 5	1.000	3,383.000 *	3,383.00	0.00	3,383.00
TOTAL JW Street Acct			**9,820.00**	**0.00**	**9,820.00**
Muni Fund IAP					
Muni Fund IAP	1,869.250	18.220 *	31,164.52	-750.79	30,413.73
TOTAL Muni Fund IAP			**31,164.52**	**-750.79**	**30,413.73**
MW Street Acct					
Israel Bond	10.000	100.000 *	1,000.00	0.00	1,000.00
Israel Zero Cpn	1.000	3,500.000 *	2,992.00	508.00	3,500.00
Israel Zero Cpn 2	1.000	3,357.000 *	3,308.00	49.00	3,357.00
Israel Zero Cpn 3	1.000	3,080.000 *	3,080.00	0.00	3,080.00
Israel Zero Cpn 5	1.000	3,383.000 *	3,383.00	0.00	3,383.00
Willamette Industr	72.000	38 15/16 *	720.00	2,083.50	2,803.50
-Cash-	-11.520	1.000	-11.52	0.00	-11.52

96-97DAR-All Investment Accts 5/12/99

Portfolio Value Report by Account

(Includes unrealized gains)

* Estimated Prices

Security	Shares	Curr Price	Cost Basis	Gain/Loss	Balance
TOTAL MW Street Acct			**14,471.48**	**2,640.50**	**17,111.98**
Schwab - FW					
Aetna Cl C Pref	11.555	77 5/16 *	39.92	853.45	893.37
Aetna Inc.	33.266	87 11/16 *	19.86	2,897.18	2,917.04
Alltel Corp Del	75.158	67 7/16 *	2,512.09	2,556.38	5,068.47
Cal State GO's	100.000	100.789 *	9,979.17	99.73	10,078.90
Disney	1,204.040	31 3/4 *	10,600.10	27,628.17	38,228.27
Federated Hi-Yield	1,010.439	9.100 *	9,063.56	131.44	9,195.00
Foundation Hlt Sys	130.000	13 13/16 *	0.00	1,795.63	1,795.63
Invesco Strat Envr	978.132	7.360 *	7,664.44	-465.39	7,199.05
Pioneer Natural Re	317.007	11 11/16 *	-20.82	3,725.84	3,705.02
Schwab 1000 FD-Select	1,617.223	36.400 *	50,470.83	8,396.07	58,866.90
Schwab Ca TF MM	52,741.580	1.000 *	52,741.58	0.00	52,741.58
Schwab S&P 500-Select	331.213	20.690 *	5,857.93	994.87	6,852.80
Sprint FON Group	136.224	102 3/16 *	4,280.90	9,895.65	14,176.55
Sprint PCS Group	68.000	42 1/4 *	0.00	2,873.00	2,873.00
USA Networks Inc	198.000	37 3/8 *	1,602.48	5,797.77	7,400.25
Vang Fixd Hi Yield	1,158.232	7.860 *	8,819.34	284.36	9,103.70
Wellpoint Hlth Net	66.000	70 1/4 *	2,855.00	1,781.50	4,636.50
TOTAL Schwab - FW			**166,486.38**	**69,245.65**	**235,732.03**
Schwab - JW					
Berger 100 Fund	229.364	15.460 *	3,647.44	-101.47	3,545.97
Schwab 1000 Fund	770.414	36.380 *	14,403.19	13,624.48	28,027.67
Schwab MM Fund	11,058.460	1.000 *	6,578.98	4,479.48	11,058.46
Schwab S & P 500	1,250.587	20.650 *	12,960.52	12,864.11	25,824.63
TOTAL Schwab - JW			**37,590.13**	**30,866.60**	**68,456.73**
Schwab - MW					
N & B Partners	89.417	27.700 *	1,995.84	481.01	2,476.85
Schwab 1000 Fund	759.407	36.380 *	14,206.91	13,420.31	27,627.22
Schwab MM Fund	11,394.290	1.000 *	11,520.93	-126.64	11,394.29
Schwab S & P 500	1,250.587	20.650 *	12,960.52	12,864.11	25,824.63
TOTAL Schwab - MW			**40,684.20**	**26,638.79**	**67,322.99**
SmithBarney-FW					
AIM New Pacific Growth Cl A	369.557	6.140 *	4,380.72	-2,111.64	2,269.08
Euro Disney	175.000	1.240 *	3,098.30	-4,881.30	217.00
EuroDisney Wts	175.000	0.052 *	54.07	-44.97	9.10
Golden West Finan	100.000	100 1/8 *	400.49	9,612.01	10,012.50
Meditrust Paired CTF	360.000	12.438 *	5,887.50	-1,409.82	4,477.68
Nuveen Cal Quality	1,677.802	17.500 *	25,421.62	3,939.91	29,361.53
Nuveen Growth	991.000	*	0.00	0.00	0.00
Nuveen Insd Calif	612.702	15.250 *	8,860.14	483.56	9,343.70
SmithBar Cash Port	9,579.000	1.000 *	9,579.00	0.00	9,579.00
-Cash-	14.000	1.000	14.00	0.00	14.00
TOTAL SmithBarney-FW			**59,695.84**	**5,587.75**	**65,283.59**
SmithBarney-MW					
Del Delcap FD Inc	854.590	25.210 *	19,728.96	1,815.25	21,544.21
Int'l Bank Zero Cp	100.000	93.014 *	2,950.00	6,351.40	9,301.40
SmithBar Apprec Fd	776.440	16.790 *	8,089.63	4,946.80	13,036.43
SmithBar Cash Port	29.150	1.000 *	29.15	0.00	29.15
Sweden Zero Cpn	100.000	90.285 *	5,547.60	3,480.90	9,028.50

Portfolio Value Report by Account

(Includes unrealized gains)

* Estimated Prices

Security	Shares	Curr Price	Cost Basis	Gain/Loss	Balance
TOTAL SmithBarney-MW			**36,345.34**	**16,594.35**	**52,939.69**
TIAA-CREF					
CREF Stock	51.773	170.596 *	7,305.73	1,526.56	8,832.29
TIAA Traditional Annuity	7,308.120	1.000 *	7,308.12	0.00	7,308.12
-Cash-	5,762.700	1.000	5,762.70	0.00	5,762.70
TOTAL TIAA-CREF			**20,376.55**	**1,526.56**	**21,903.11**
WD IRA - Schwab					
Federated Growth	178.141	33.010 *	4,011.41	1,869.03	5,880.44
Founders Spcl Fund	1,220.422	7.430 *	9,242.13	-174.40	9,067.73
Franklin Income	3,727.035	2.350 *	8,650.45	108.08	8,758.53
Gabelli Growth Fnd	451.748	39.390 *	10,566.05	7,228.30	17,794.35
Israel Bond	20.000	100.000 *	2,000.00	0.00	2,000.00
Public Storage Inc	147.000	27 7/8 *	1,961.87	2,135.76	4,097.63
Schwab 1000 Fund	323.347	36.380 *	10,081.14	1,682.24	11,763.38
Schwab MM Fund	1,898.000	1.000 *	1,898.00	0.00	1,898.00
-Cash-	2,000.000	1.000	2,000.00	0.00	2,000.00
TOTAL WD IRA - Schwab			**50,411.05**	**12,849.01**	**63,260.06**
WD Keough					
Schwab 1000 Fund	265.114	36.380 *	4,701.61	4,943.22	9,644.83
Schwab MM Fund	60.790	1.000 *	80.79	-20.00	60.79
TOTAL WD Keough			**4,782.40**	**4,923.22**	**9,705.62**
TOTAL Investments			**894,917.51**	**354,599.49**	**1,249,517.00**

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have spent much of my legal career providing free legal services to non-profit organizations, indigent individuals, and others. At the Center for Law in the Public Interest, all of the firm's legal services were provided free of charge to the clients, who were generally non-profit organizations or individuals who, while perhaps not technically indigent, could not afford to pay for the attorneys' services. Indeed, that was one of the criteria that the Center used in determining whether to take a particular case; as a nonprofit public interest law firm, the Center was precluded by law from taking any money from its clients for legal services, or generally from taking cases that could have been handled by the private bar.

In my present law practice, most of our representation is provided on an "ability to pay" basis: While we have some clients who pay full "commercial" rates, many others are charged substantially discounted rates, and some pay no, or at best only marginal, fees. Some of our cases are taken on a purely "pro bono" basis, with no expectation of ever getting paid for our work; many others, however, are taken on a reduced-fee basis, with the hope and expectation that the firm will be able to recover the full value of our attorneys' fees through a subsequent court award (under the private attorney-general doctrine or some other statutory fee-shifting provision) if and when we prevail in the litigation.

I also devote a substantial number of hours each month to law-related volunteer activities, through participation on Bar Association committees, speaking at and attending Continuing Legal Education programs, serving on the Boards of Directors of non-profit organizations, and providing pro bono legal advice to citizen groups, candidates for office, and other interested individuals within my areas of expertise. Beyond these professional activities, I volunteer time for charitable functions and programs sponsored by my synagogue and my children's schools, and I have served as coach for my son's recreation league soccer, basketball, and Little League teams.

2. The American Bar Association's Commentary of its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not currently belong to any organization that invidiously discriminates on the basis of race, sex, or religion, nor have I ever knowingly belonged to any organization that did so.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes, I was recommended for nomination to the federal court by the Central District Judicial Advisory Committee that Senator Barbara Boxer had established for that purpose. In November 1998, upon learning that there were at least two vacancies on the U.S. District Court for the Central District of California, I wrote to Senator Boxer's office expressing my interest in being considered for a position on the court and requesting information on how to apply for the position. I was asked to fill out a lengthy Personal Data Questionnaire, which I submitted to the Senator's office along with a list of attorneys and judges with whom, against whom, and before whom I had practiced. In January 1999, I was interviewed by Senator Boxer's Central District Judicial Advisory Committee along with several other candidates. It is my understanding that the Advisory Committee then forwarded my name and a couple of others to Senator Boxer's office as "finalists" for consideration for appointment to the District Court. After I had a final telephonic interview with Senator Boxer's chief aide in early February 1999, Senator Boxer announced that she was recommending me to President Clinton for nomination to the District Court.

My name was forwarded to the White House and I underwent an FBI background investigation and screening by the Department of Justice and the American Bar Association Standing Committee on the Federal Judiciary. Upon the successful completion of these reviews, President Clinton then formally nominated me for a position on the District Court.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue,or question? If so, please explain fully.

No one involved in the process of selecting me as a judicial nominee has discussed with me any specific case, legal issue, or question in a manner that could reasonably be interpreted as asking how I would rule on such case, issue, or question.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In my opinion, the federal judiciary, especially at the District Court level, has a limited — albeit critical — role to play within government and within society generally. Respect for the elected legislative and executive branches of government, as well as recognition of the special but limited competence of the courts, dictates that the federal judiciary be careful not to exceed the restrictions placed by the Constitution on the scope of its lawful authority.

Judges must resist the temptation to issue rulings that go beyond resolution of the specific controversies before them or that make broad pronouncements on the rights of individuals or the obligations of government officials and institutions. Instead, judges must remember that — in marked contrast to their colleagues in the legislative and executive branches — they were not elected by the people to address and "cure" broad societal problems. However brilliant and well-intentioned they might otherwise be, the courts must limit themselves to resolving the specific disputes before them.

Simply put, I believe the role of a federal district court judge is to adjudicate the cases that are brought before him or her, within the confines of the Constitution and statutes, and based upon the particular facts that are presented to the court. Unlike the parties and attorneys who litigate the cases, judges must not be proactive in attempting to promote their own personal views of what would constitute a "better" world. Judges

must issue rulings on a case-by-case basis, without any broader or more far-reaching agenda of their own.