

**CONFIRMATION HEARINGS ON FEDERAL
APPOINTMENTS**

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED ELEVENTH CONGRESS
SECOND SESSION

APRIL 22, APRIL 28, and MAY 13, 2010

PART 6

Serial No. J-111-4

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**NOMINATIONS OF RAYMOND J. LOHIER, JR.,
NOMINEE TO BE U.S. CIRCUIT JUDGE FOR
THE SECOND CIRCUIT; LEONARD STARK,
NOMINEE TO BE U.S. DISTRICT JUDGE FOR
THE DISTRICT OF DELAWARE**

THURSDAY, APRIL 22, 2010

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

The Committee met, pursuant to notice, at 3 p.m., Room SD-226, Dirksen Senate Office Building, Hon. Edward E. Kaufman presiding.

**OPENING STATEMENT OF HON. EDWARD KAUFMAN, A U.S.
SENATOR FROM THE STATE OF DELAWARE**

Senator KAUFMAN. I am pleased, and I am pleased to call this nomination's hearing of the Senate Committee on Judiciary to order, and I want to thank Chairman Leahy for permitting me to Chair this hearing.

I'd like to welcome both the nominees and their families and friends, the U.S. Senate and congratulate them, genuinely congratulate them on the nominations and to thank their family and friends for letting them accept the nominations.

Today we welcome Raymond Lohier, Jr., nominated to be the Judge on the Circuit Court, Second Circuit. Mr. Lohier has 13 years of experience as a Federal prosecutor and most recently served as a Deputy Chief and Chief of the Securities and Commodities Fraud Task Force in the U.S. Attorney's Office for the Southern District of New York, a very quiet place to be.

As you may know, I have been a strong champion here in the Senate of the Department of Justice efforts to root out the fraud that contributed to our financial crisis and bring those responsible to justice. Poor Mr. Lohier had to listen to me yesterday talk about that. I really appreciate your efforts. I really appreciate everything you've done and I really appreciate your accepting this public service. I know public service runs deeply to you and it is a wonderful thing you are doing.

We'd also like to give a warm welcome, an especially warm welcome to Hon. Leonard Stark from my state of Delaware, nominated to be District Court Judge for the District of Delaware. Congratulations.

Judge Stark currently serves the District as a Magistrate Judge. He was a previous Assistant U.S. Attorney, a very well-respected

Assistant U.S. Attorney in Delaware. Delaware is a small state, where everybody knows everybody. So when you're respected in Delaware, you're respected.

I'm pleased to note that he's an active member of the Delaware legal community and an active alumnus of the University of Delaware. He will be introduced by my Senior Senator, Tom Carper.

Welcome, Senator Carper, and thank you for being here. I know you are scheduled at hearings, so we'll get to you very soon. In fact, we'll get you right now.

PRESENTATION OF LEONARD STARK, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF DELAWARE BY HON. THOMAS R. CARPER, A U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Mr. Chairman, I think I'd like to start off my hearing by singing a verse of Oh, Our Delaware.

Senator KAUFMAN. Proceed.

Senator CARPER. I once had the misfortune of following Maya Angelou as a commencement speaker at the University of Delaware several years ago when I was Governor. She had written for the entire graduating class of the University that year, written a song, a poem and a song, and she sang it.

After she finished that and left 25,000 people standing on their chairs cheering, I was introduced to follow her.

Senator KAUFMAN. I am sure you did just fine.

Senator CARPER. I said, after David Roselle, the President, introduced me, I said like Maya Angelou, I too will sing my remarks.

While I am happy enough today to almost sing my remarks, I'll spare all of you for that. I just want to say to Mr. Chairman and to Pat Leahy and Jeff Sessions, the Chairman and full Committee and the Ranking Republican and to your staffs how much we appreciate the expedited consideration of this nomination.

I also want to say here as we stand next to, sit next to our other nominee, Raymond Lohier, that we wish you and your family well and congratulations on your nomination.

Mr. Stark, Len Stark will I'm sure introduce his wife and three children, his mom and sister in a little bit when he speaks. Who knows, he may introduce the rest of the crowd that is here today as well. But I just want to say we're glad that you all are here and have our Chief Judge from the Federal District Court in Delaware, Judge Sleet is here.

A fellow who is sitting almost right behind me over my right shoulder is Jim Soles, legendary professor and Political Science Professor Emeritus at the University of Delaware who has mentored among others, Leonard Stark and me. That is just a very small sampling of folks that he has mentioned over the years.

He probably single handedly has sent more people off into public service in the State of Delaware than anybody else.

Senator KAUFMAN. One of my personal heroes.

Senator CARPER. He is a personal hero to all of us from Delaware. It is great to be here with him on this special, special day.

I just want to say how pleased and really honored I was to present to the President the names of three superbly qualified Delawareans for him to consider for this judicial appointment. Any

one of them would have been an excellent addition to the court and all of them uphold the high regard in which this court, our court, is held.

The President has made I think a very wise choice in nominating our U.S. Magistrate, Leonard P. Stark, for a seat, bar seat on the U.S. District Court in Delaware. I will candor, he could not have made a bad choice from among the three names that we sent him. They are all just superb.

Len Stark is a fellow University of Delaware graduate. So likely he is a proud Blue Hen Not just any kind of Blue Hen, but a Fighting Blue Hen. He couldn't decide what to major in at the University of Delaware, whether to major in political science or economics, so he majored in both. He couldn't decide whether as an undergraduate, just an undergraduate degree with a dual major and a masters degree, so he got both. Not everybody does that as an undergraduate to also complete your graduate work in history.

I think early on the folks at U of D realized that this is an exceptional, exceptional person. He received as a student at the University of Delaware a full scholarship as a Eugene Dupont Memorial Distinguished Scholar.

Following graduation, he was twice honored by fellow students and alumni by serving as commencement speaker. I don't know about you, Len, but I love giving commencement addresses. My guess is if they had you back twice, you must have been pretty good. So for that, congratulations.

Right after graduating from the University of Delaware, Leonard Stark was selected as a Rhodes Scholar. He studied at Oxford University. He has authored numerous academic and scholar publications including a book on British politics which he wrote in his spare time in between classes at Oxford. After Oxford, Leonard wanted to earn his law degree at Yale Law School where he served as Senior Editor of the Yale Law Journal.

Somehow through all of this he managed to meet Beth. Jim Soles tells me, Dr. Soles tells me they met on their first day as freshmen at the University of Delaware. So actually after he kind of peaked on his first day, after that it was all downhill. But he still managed to accomplish quite a bit in what followed.

He finished up with Yale Law School. I think the next thing for him to do was to take a judgeship with a very distinguished jurist in our part of the country, Walter Stapleton on the Third Circuit Court of Appeals, after which Len practiced as a corporate litigator at a little bitty law firm called Skadden, Arps.

He began his career in public service as an Assistant U.S. Attorney for Delaware where from 2002 until 2007 he handled a wide variety of Federal, criminal and civil matters. Currently Leonard Stark serves as a U.S. District Court of Delaware in the service of the U.S. District Court of Delaware as a magistrate judge. In this position he already does a fair amount of the same work as a District Court Judge. Not all, but a good deal.

His docket largely consists of civil cases that are referred to him by three active District Court judges. These referral cases, a great many of which are patent infringement actions, Judge Stark handles all types of pretrial matters, and in certain cases even presides

at trial just like we sometimes get to preside as Chairs of sub-committees in hearings just like this one.

Finally, I'll just say Len Stark is a humble and dedicated public servant. In fact, if I were half as smart and half as accomplished as he is, you would not want to be in the same room with me. This is a guy, to be this good and be this smart and to be this humble is a pretty remarkable combination.

A dedicated public servant, obviously good family man. He is blessed with a wonderful wife and three terrific young children who I've been able to spend some time here today. He is joined today by his mom as well. I want to say to his mom, Linda, I think his sister Danielle is here, brother, father-in-law, James Brophree I believe also in attendance.

Particularly to Linda, to Len's mom, thank you so much for all that you and others in your family did to raise this young man. For him to turn out as well as he has, obviously somebody was involved early on and you have been involved all of his life, so great work. Maybe your sister Danielle gets an assist as well.

I have already introduced Jim Soles. Let me just say he is one of the all-time greats. The wind beneath my wings and I know Len Stark's and that of so many others who are here today.

I would conclude by saying that I think in every facet of his life, Len Stark has performed with distinction earning the highest praise from his colleagues in many of the most prestigious awards ever given to a legal scholar and to a public servant.

I think I can sum it all up by saying simply that Len Stark has the heart of a servant and his nomination, his position as magistrate on the U.S. District Court clearly provides him with the skills and preparation to be an outstanding District Court judge.

His legal acumen, his tireless work ethic, his experience as a Federal magistrate judge, as an Assistant U.S. Attorney, as a litigator, has prepared him well for this seat on the U.S. District Court in Delaware should this Committee and the Senate see fit to confirm the nomination.

In fact, it is hard for me to imagine really finding anyone in the country better prepared than he is to serve in this position. I urge my colleagues to move quickly on his confirmation and already you have moved very quickly.

Again, to you my colleague and friend, Senator Kaufman, Mr. Chairman, it is great seeing you sitting there. To Senator Leahy, our Chair and to Jeff Sessions, our ranking Republican, all the staff who helped move this along, the seat has been vacant for a long time and we are anxious to fill it and we thank you for bringing us this much closer to that goal. Thank you so much.

Senator KAUFMAN. Thank you for as you said, an excellent process and clearly coming up with an excellent result. I want to thank you. I know you have to leave to go to committee, but I appreciate it.

Senator CARPER. I'm going to go preside over a hearing of my own.

Senator KAUFMAN. There you go.

Senator CARPER. I know I leave this nomination in very good hands.

Senator KAUFMAN. Thank you.

Senator CARPER. Thank you.

**PRESENTATION OF RAYMOND J. LOHIER JR., NOMINEE TO BE
U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT BY EDWARD
E. KAUFMAN, A U.S. SENATOR FROM THE STATE OF DELA-
WARE FOR SENATOR SCHUMER**

Senator KAUFMAN. Next I have the pleasure of introducing Mr. Lohier. Senator Schumer told me that unfortunately he couldn't be here, which is the Senate is crazy now, but he sends his regret.

He has a statement here he wants to put in the record. Chairman Leahy has a statement he wants to put in the record on both the nominees. If there is no objection, I will put them in the record. Hearing none.

[The prepared statement of Senator Schumer and Chairman Leahy appears as a submission for the record.]

Mr. Lohier has had a distinguished career as a Federal prosecutor. He served as a trial attorney in U.S. Department of Justice Civil Rights Division and since 2000 has been an Assistant U.S. Attorney in the Office of the U.S. Attorney for the Southern District of New York where he is currently Special Counsel for the U.S. Attorney.

In the Southern District of New York, he has held multiple leadership positions. As Deputy Chief and Chief of the Narcotics Unit, Mr. Lohier supervised the investigation and prosecution of hundreds of cases involving large scale drug distribution networks.

He has also served as Deputy Chief and Chief of the Southern District of New York Securities and Commodities Fraud Task Force. In these roles, he supervised or co-supervised all of the District's securities fraud trials.

Most notably, Mr. Lohier oversaw the investigation and prosecution of Bernie Madoff, one of the biggest fraud cases in the country's history. His work led to Madoff's conviction, a sentence of 150 years in prison and a forfeiture of more than \$70 billion.

Mr. Lohier also participated in the investigation and prosecution of New York Attorney Marc Dreier for a \$750 million Ponzi scheme resulting in a 20-year prison sentence and forfeiture of more than \$740 million.

Mr. Lohier has received several honors and awards for his outstanding work including the Attorney General's John Marshall Award for Outstanding Legal Achievement and multiple Department of Justice Special Achievement awards.

Mr. Lohier, your credentials are truly impressive and we are deeply grateful for your public service.

With the agreement of the Ranking Member and in the interest of efficiency, we are going to have both nominees on the same panel. So if you'd come forward.

I'd like you both to please stand and raise your right hands and repeat after me.

Do you affirm the testimony you are about to give before the Committee will be the truth, the whole truth and nothing but the truth so help you God?

Mr. LOHIER. I do.

Judge STARK. I do.

Senator KAUFMAN. Thank you. Let the record show the nominees have taken the oath.

Mr. Lohier, I welcome you and acknowledge any family members or friends you have here today and then give an opening statement.

**STATEMENT OF RAYMOND LOHIER, TO BE U.S. CIRCUIT
JUDGE FOR THE SECOND CIRCUIT**

Mr. LOHIER. Thank you, Senator. I don't have a specific opening statement, but I would like to thank the Committee and you, Senator, for presiding over this hearing promptly. I would also like to thank Senator Schumer for his unstinting support throughout this process as well as Senator Gillibrand.

I'd like to thank the many members of the Department of Justice, both my current colleagues and former colleagues who have expressed their support and good wishes. Of course I'd like to thank the President for nominating me. It is a great privilege and a great honor.

I would be more than happy to answer the Committee's questions, but before that if I may, I would like to introduce and take advantage of your kind offer to introduce members of my family.

Senator KAUFMAN. Great.

Mr. LOHIER. I have here with me my lovely wife, Donna, who I was fortunate enough to meet in my first year of law school and everything went well since then.

I have also with me my two boys. William, who is eight, and John, who is six. Senator, I don't want you to be alarmed if you see them make a run for the door at any given time.

Senator KAUFMAN. I will not be alarmed.

Mr. LOHIER. I also have with me my mother, Flocie Lohier, who as much as anyone else, taught me the value of hard work and integrity. I thank her for being here.

My father, who passed away approximately two and a half years ago I'm sure is looking over me right now and is here in spirit.

I'd also like to acknowledge the fact that both my father-in-law and my mother-in-law, C.S. Lee and Nancy Lee, drove all the way up here from Florida to be here, and I thank them very much for that.

I have a very close family friend, Pat Taboe, who is also here who came last night and I appreciate her presence. I'd especially like to acknowledge the presence of someone who has been my mentor and whom I had the privilege of serving as a law clerk, and that's Judge Robert P. Patterson, Jr., of the United States District Court for the Southern District of New York and I truly have valued his mentorship over the course of the years that I have known him and since I have clerked for him.

In addition, Senator, I have got several of my wife's uncles and an aunt, Mee-Sang Skrajnowski and Wlodek Skrajnowski and K.S. Lee as well as many, many friends from law school and college and high school. I thank them all for being here. I thank you again.

Senator KAUFMAN. And I thank them for letting you do this, taking on this responsibility. I know it's a hardship on family and friends, but I think it's so incredibly worthwhile and I appreciate what you're doing.

Judge Stark, would you like to make an opening statement and point out some of your family and friends?
[The biographical Information of Raymond Lohier follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Raymond Joseph Lohier, Jr.
2. **Position:** State the position for which you have been nominated.

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

United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
4. **Birthplace:** State year and place of birth.

1965; Montreal, Canada
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1988-1991, New York University School of Law; J.D., 1991
1984-1988, Harvard College; A.B., 1988
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2000-Present

United States Attorney's Office for the Southern District of New York
 One St. Andrew's Plaza
 New York, New York 10007
 Assistant United States Attorney
 Chief, Securities and Commodities Fraud Unit (2009-present)
 Deputy Chief, Securities and Commodities Fraud Unit (2007-2009)
 Chief, Narcotics Unit (2006-2007)
 Deputy Chief, Narcotics Unit (2005-2006)

1997-2000

United States Department of Justice
 950 Pennsylvania Avenue, N.W.
 Washington, D.C. 20530
 Senior Trial Attorney, Civil Rights Division (1998-2000)
 Trial Attorney, Civil Rights Division (1997-1998)

1991-1992 & 1993-1997

Cleary, Gottlieb, Steen & Hamilton
 One Liberty Plaza
 New York, New York 10006
 Associate

1992-1993

United States District Court for the Southern District of New York
 500 Pearl Street
 New York, New York 10007
 Law Clerk to Hon. Robert P. Patterson, Jr.

1990

Patterson, Belknap, Webb & Tyler LLP
 1133 Avenue of the Americas
 New York, New York 10036
 Summer Associate

1989

United States Court of Appeals for the Third Circuit
 James A. Byrne United States Courthouse
 601 Market Street
 Philadelphia, Pennsylvania 19106
 Summer Intern to Hon. A. Leon Higginbotham, Jr. (uncompensated)

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

I have not served in the military. I have registered for selective service.

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

Attorney General's John Marshall Award for Outstanding Legal Achievement
Department of Justice Special Achievement Awards (multiple)
Black, Latino, Asian Pacific American Law Alumni Association Distinguished Service Honor
New York University School of Law Vanderbilt Medal
Editor-in-Chief, Annual Survey of American Law
Harvard National Scholarship
John Harvard Scholarship

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

Association of the Bar of the City of New York
Young Lawyers Committee (1994-1995)
Minorities in the Courts, Subcommittee Chair (1994-1997)
Inter-American Affairs Committee (1994-1997)
Government Ethics Committee (2001-2004)
National Bar Association
National Black Prosecutors Association

10. **Bar and Court Admission:**

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

New York (First Department), 1993

There has been no lapse in membership.

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

United States Court of Appeals for the Second Circuit, 2004
 United States District Court for the Eastern District of New York, 1993
 United States District Court for the Southern District of New York, 1993
 New York State Supreme Court, Appellate Division, First Department, 1993

There has been no lapse in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Friends of Brooklyn Community Board 6, Inc. (2008-present)
 First Vice-Chairperson
 American Constitution Society (2008-present)
 Brooklyn Community Board 6 (2006-present)
 First Vice-Chairperson (2008-present)
 Second Vice-Chairperson (2007-2008)
 Chairperson, Public Safety Committee (2008-present)
 Chairperson, Environmental Protection Committee (2008-2009)
 Chairperson, Budget Committee (2007-present)
 Chairperson, Community Development Committee (2007-2008)
 New York University Law Alumni Association (2008-present)
 Center For Labor Law and Employment (2001-present)
 Advisory Board Member (2001-present)
 United States Department of Justice Association of Black Attorneys
 Vice-Chairperson (1999-2000)
 Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in the Courts
 Race and Ethnicity Subcommittee on Court Appointments (1996)
 Black, Latino, Asian Pacific American Law Alumni Association (1993-present)
 Advisory Board Member (1998 to present)
 Treasurer (1993-1998)
 New York University School of Law Public Interest Law Foundation
 Board Member (mid-1990s)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

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

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

Letter to the Editor, The American Lawyer, December 2001

I was editor-in-chief of the Annual Survey of American Law during 1990-1991.

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

New York Gubernatorial Task Force Report On Judicial Diversity (January 1992)

Comment of Minorities in the Courts Committee of the Bar Association of the City of New York (1996)

Inter-American Affairs Committee Report of the Bar Association of the City of New York (1994)

As a member of Brooklyn Community Board 6, I have contributed to the Board's work, including policy statements on local issues.

I do not recall preparing or contributing in the preparation of other reports, memoranda, or policy statements.

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

As a member of Brooklyn Community Board 6, I participate in the Board's monthly meetings. I do not give formal testimony or retain notes from such participation.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions,

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

Presentation regarding federal securities laws and criminal prosecutions, The International Enforcement Institute, United States Securities and Exchange Commission (Washington, D.C., November 2, 2009)

Panel Discussion on securities and commodities fraud prosecutions and investigations, New York County Lawyers Association (New York, New York, October 15, 2009) (no notes)

Panel Discussion entitled "Ethical Considerations for Corporate Internal Investigations," Association of the Bar of the City of New York (New York, New York, September 17, 2009)

Panel Discussion entitled "Federal Sentencing: A Revolution Without Results? Examining the Present to Shape the Future," Association of the Bar of the City of New York (New York, New York, October 22, 2009)

Panel Discussion entitled "Response to Ponzi and other schemes: Alternative Investment Funds under Scrutiny," Practising Law Institute (New York, New York, June 30, 2009)

Panel Discussion on strategies in connection with international securities fraud investigations and cases, International Bar Association (New York, New York, June 12, 2009)

Panel Discussion entitled "Regulation by Prosecutors," New York University School of Law's Center on the Administration of Criminal Law (New York, New York, May 8, 2009) (video recording available at http://www.youtube.com/watch?v=PpxXwIS-p5U&feature=player_embedded; and http://www.law.nyu.edu/news/CAcl_Regulation_Prosecutors)

Panel Discussion entitled "Developments in Attorney-Client Privilege and Work Product Protection in State and Federal Courts," New York State Bar Association (New York, New York, January 27, 2009)

Speech accepting the Distinguished Service Award of the Black, Latino, Asian Pacific American Law Alumni Association (New York, New York, April 18, 2008)

Panel Discussion entitled "Diversity Initiatives in the Practice of Law," New York University School of Law, Center for Labor and Employment Law (New York, New York, January 25, 2008) (moderator)

Various panel presentations to federal and state agencies regarding securities and commodities fraud investigations and prosecutions (Atlanta, Georgia; Chicago, Illinois; Salt Lake City, Utah; Washington, D.C.; New York, New York, 2007-2009)

Speech regarding criminal penalties in connection with internet narcotics schemes involving diverted pharmaceutical drugs, John Jay College of Criminal Justice (New York, New York, June 2007)

Introduction of law school recipients of the Black, Latino, Asian Pacific American Law Alumni Association scholarship (New York, New York, April 2001)

Panel Discussion at Harvard Law School "Celebration of Black Alumni" event, regarding public service and the United States Department of Justice (Cambridge, Massachusetts, September 22, 2000)

Speech for dedication of 1990 volume of Annual Survey of American Law to Justice Harry Blackmun, New York University School of Law (New York, New York, April 9, 1991)

Speech introducing New York University School of Law Dean John Sexton for dedication of 1989 volume of Annual Survey of American Law to Honorable Barbara Jordan, New York University School of Law (New York, New York, April 26, 1990)

As an Assistant United States Attorney in charge of securities and commodities fraud investigations and prosecutions in the Southern District of New York, I have made presentations at Department of Justice functions.

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

The American Lawyer, October 2001

In 2001, I was interviewed by a student from the Columbia School of Journalism in connection with a seminar course.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?
 - i. Of these, approximately what percent were:
 - jury trials? ___%; bench trials ___%
 - civil proceedings? ___%; criminal proceedings? ___%
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide 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, provide copies of the opinions.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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

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

I have not served as a judge.

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

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

Member, Brooklyn Community Board 6 (2006-present). I was appointed by Brooklyn Borough President Marty Markowitz. Since 2008, I have served as First Vice-Chairperson of Brooklyn Community Board 6 by appointment of the Chairperson.

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I worked as an unpaid volunteer doing voter outreach during the campaign of Roberto Ramirez (a law school classmate), who was running for Public Advocate of New York City, August and September 1993.

In 1994, I did a single shift of telephone polling as a volunteer for the Governor Mario Cuomo re-election campaign. In 2000, I did a single shift of telephone polling as a volunteer for the Hillary Clinton for Senate Campaign.

I may have done very limited volunteer work for other political candidates, but I do not recall specifics.

16. **Legal Career:** Answer each part separately.

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

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

I served as a law clerk to the Honorable Robert P. Patterson, Jr., United States District Court for the Southern District of New York, from 1992-1993.

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

I have not practiced law alone.

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

1991-1992 & 1993-1997
Cleary, Gottlieb, Steen & Hamilton
One Liberty Plaza
New York, New York 10006
Associate

1997-2000
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Senior Trial Attorney, Civil Rights Division (1998-2000)
Trial Attorney, Civil Rights Division (1997-1998)

2000-Present

United States Attorney's Office for the Southern District of New York
One St. Andrew's Plaza

New York, New York 10007

Assistant United States Attorney

Chief, Securities and Commodities Fraud Unit (2009-present)

Deputy Chief, Securities and Commodities Fraud Unit (2007-2009)

Chief, Narcotics Unit (2006-2007)

Deputy Chief, Narcotics Unit (2005-2006)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

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

Currently, as Chief of the Securities and Commodities Fraud Task Force at the United States Attorney's Office, I supervise securities and commodities fraud investigations, prosecutions and trials, including accounting fraud, Ponzi schemes, insider trading, market manipulation, including so-called "pump and dump" schemes, boiler rooms, commercial and stockbroker bribery, money laundering, investment adviser fraud, foreign exchange currency schemes and other securities and commodities fraud. I also supervise and prosecute other complex white collar fraud cases.

Prior to that, as Deputy Chief and then Chief of the Narcotics Unit at the United States Attorney's Office from 2005 to 2007, I was responsible for supervising nearly all federal domestic narcotics cases investigated and prosecuted in the Southern District of New York.

From 2000 to 2005, as an Assistant United States Attorney, I investigated and prosecuted federal crimes, including white collar fraud crimes, narcotics violations and immigration-related offenses.

From 1997 to 2000, as a Trial Attorney and Senior Trial Attorney at the Civil Rights Division's Employment Litigation Section of the United States Department of Justice, I directed and participated in investigations, litigation, and trials involving alleged Title VII violations by public entities.

As an Associate at the New York-based law firm of Cleary, Gottlieb, Steen & Hamilton from 1991 to 1992, and from 1993 to 1997, I primarily worked on commercial litigation and pro bono litigation matters, as well as corporate matters, including mergers and acquisitions, joint ventures, and public offerings.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

Since 1997, my sole client has been the United States. Previously, as an Associate at Cleary, Gottlieb, Steen & Hamilton, my typical clients were corporations both in the United States and abroad. In some pro bono cases that I undertook, my clients were individuals who could not afford an attorney.

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

From 1991 to 1992 as an Associate at Cleary, Gottlieb, Steen & Hamilton, I occasionally appeared in state court. In 1993 and 1994 as an Associate at Cleary, Gottlieb, Steen & Hamilton, I appeared in federal court frequently due to one case. From approximately 1995 through 1996 as an Associate at Cleary, Gottlieb, Steen and Hamilton, I appeared in court occasionally and devoted approximately one third to one half of my practice to corporate, non-litigation matters. Thereafter, as an attorney for the United States Department of Justice from February 1997 to November 2000, I appeared in federal court fairly occasionally in 1997 and more frequently from 1998 to 2000. As an Assistant United States Attorney starting in December 2000, I appeared in federal court frequently.

- i. Indicate the percentage of your practice in:

1. federal courts: 95%
2. state courts of record: 5%
3. other courts:
4. administrative agencies:

- ii. Indicate the percentage of your practice in:

1. civil proceedings: 25%
2. criminal proceedings: 75%

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

I have tried 10 cases to verdict, judgment or final decision as chief counsel or co-counsel.

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

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

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

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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. Dreier, 09 Cr. 85 (S.D.N.Y. Dec. 2008 to July 2009).

This was a criminal case involving a \$750 million dollar Ponzi scheme by a prominent attorney of a 250-lawyer firm. I represented the United States Government, participated in the investigation and prosecution of Dreier and directly supervised the disposition of the case against and sentencing of Dreier. I participated in the drafting of charging instruments, plea documents, and sentencing documents. Dreier was sentenced to 20 years in prison and ordered to forfeit more than \$740 million.

The case was before District Judge Jed S. Rakoff and Magistrate Judge Douglas Eaton. Co-counsel was Jonathan Streeter, Assistant United States Attorney, One St. Andrew's Plaza, New York, NY 10007, 212-637-2200. Defense counsel was Gerald L. Shargel, 570 Lexington Avenue, 45th Floor, New York, NY 10022, 212-446-2323.

2. United States v. Madoff, 09 Cr. 213 (S.D.N.Y. Feb. 2009 to Aug. 2009).

This was a criminal case involving a multi-billion dollar Ponzi scheme. I represented the United States Government and supervised the disposition of the case against and sentencing of Bernard Madoff. I participated in the drafting of sentencing and related forfeiture documents. Madoff was sentenced to 150 years in prison and ordered to forfeit more than \$70 billion.

The case was before District Judge Denny Chin. Co-counsel were Lisa Baroni and Marc Litt, Assistant United States Attorneys, One St. Andrew's Plaza, New York, NY 10007, 212-637-2200. Defense counsel was Ira Lee Sorkin, Dickstein Shapiro, LLP, 1177 Avenue of the Americas, New York, NY 10036, 212-277-6576.

3. United States v. Adelson, 05 Cr. 325 (S.D.N.Y. 2004 to 2007).

This was a criminal case involving the top two executives of a biotechnology company who were convicted of charges arising out of their role in an accounting fraud that caused a \$260 million decline in the company's market capitalization. I represented the United States Government, directly handled the trial and disposition of the cases against both executives and several cooperating witnesses, and handled the appeal of one defendant in United States v. Adelson, No. 06-2738-CR, 2008 WL 5155341 (2d Cir. Dec. 9, 2008), and No. 06-2738-CR, 2007 WL 2389681 (2d Cir. Aug. 16, 2007). The first defendant was sentenced to 42 months in prison, ordered to forfeit \$1.2 million, and ordered to pay restitution in the amount of \$50 million to victims. His conviction and sentence were affirmed on appeal. The second defendant was sentenced principally to a term of imprisonment of 3 months in prison after a plea of guilty to three securities-related charges. Other cooperating defendants were sentenced to terms of imprisonment ranging from time served to one month.

The case was before District Judge Jed S. Rakoff. Co-counsel was Alexander Southwell, now of Gibson Dunn & Crutcher, 200 Park Ave., New York, NY 10166, 212-351-3981. Defense counsel were Mark S. Arisohn, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, 212-907-0840 & Peter Chavkin, Mintz Levin, 666 Third Ave., New York, NY 10017, 212-692-6231.

4. United States v. Skelly, 02 Cr. 986 (S.D.N.Y. 2004 to 2005).

This criminal case involved the two principals of a securities broker dealer who were convicted of multiple conspiracy and substantive securities fraud charges for engaging in a stock manipulation scheme that defrauded investors out of tens of millions of dollars. I represented the United States Government, handled the trial and disposition of the cases against both principals and cooperating witnesses, and worked on the appeal of United States v. Skelly and Gross, No. 06-2738-CR, 2008 WL 5155341 (2d Cir. Dec. 9, 2008), and No. 06-2738-CR, 2007 WL 2389681 (2d Cir. Aug. 16, 2007). Each defendant was sentenced principally to a term of imprisonment of 57 months. The convictions and sentences were affirmed on appeal.

The case was before District Judge Richard M. Berman. Co-counsel were Joshua Klein, now of Petrillo Klein LLP, 1221 Avenue of the Americas, 42nd Floor, New York, NY 10020, 212-899-5052 and Rhonda Jung, Securities and Exchange Commission, 3 World Financial Center, Suite 4300, New York, NY 10281, 212-336-0479. Defense trial counsel were Joseph W. Ryan, Jr., Melville Law Center, 225 Old Country Road, Melville, NY 11747, 631-629-4968 & Stephen P. Scaring, 666 Old Country Road, Suite 501, Garden City, NY 11530, 516-683-8500. Defense counsel at sentencing and on appeal were David Debold & Miguel Estrada, Gibson, Dunn & Crutcher, 1050 Connecticut Ave., N.W., Washington, DC 20036, 202-955-8500.

5. United States v. Patterson (S.D.N.Y. 2002 to 2003).

This was a criminal case involving approximately 12 individuals who were charged with a conspiracy to distribute more than one ton of marijuana in the New York City area as part of a wiretap investigation conducted by the Drug Enforcement Administration. Two defendants were also charged with possessing a firearm in furtherance of a drug trafficking crime. I represented the United States Government and handled trial preparation and the disposition of these cases. All of the defendants save one pleaded guilty just prior to trial, with sentences ranging from 21 months to 180 months in prison. A nolle prosequi was filed by the Government in connection with the charges against one of the defendants, and those charges were dismissed.

The case was before District Judge William H. Pauley III. Co-counsel was Christopher Conniff, now of Ropes & Gray, 1211 Avenue of the Americas, New York, NY 100-36, 212-596-9036. Counsel for Defendant Patterson was Isabelle A. Kirschner, Clayman & Rosenberg, 305 Madison Ave., Suite 1301, New York, NY 10165, 212-922-1080. Counsel for Defendant Gaynor was Jonathan Marks, 220 5th Avenue, Third Floor, New York, NY 10001, 212-545-8008. Counsel for Defendant Brown was Earl A. Rawlins, 2090 7th Avenue, Suite 203, New York, NY 10027, 212-222-7005. Counsel for Defendant Barrett was Jeffrey McAdams, 305 Broadway, Suite 610, New York, NY 10007, 212-406-5145. Counsel for Defendant Anderson was Michael Hurwitz, Hurwitz Stampur & Roth, 299 Broadway, Suite 800, New York, NY 10007, 212-619-4240. Counsel for Defendant Munroe was Pamela D. Hayes, 200 W. 57th St., Suite 900, New York, NY 10019, 212-687-8724. Counsel for Defendant Snape was Jeffrey G. Pittell, 299 E. Shore Rd., Great Neck, NY 11023, 516-829-2299. Counsel for Defendant Robinson was Richard Palma, 381 Park Ave. South, Suite 701, New York, NY 10016, 212-686-8111. Counsel for Defendant Medford was Allan Laurence Brenner, 536 W. Penn St., Long Beach, NY 11561, 516-897-6145. Counsel for Defendant Williams was Jerry L. Tritz, now with the Second Circuit Executive's Office, United States Courthouse, 500 Pearl Street, New York, NY 10007, 212-857-8700.

6. United States v. Southeastern Pennsylvania Transportation Authority (SEPTA), 2000 WL 1790125 (E.D. Pa. Dec. 7, 2000); 1998 WL 341605, E.D. Pa, June 25, 1998) (1998 to 2000).

In this civil case, the Department of Justice alleged that SEPTA was engaged in a pattern or practice of employment discrimination against women in violation of Title VII through the use of its physical abilities test for SEPTA's transit police officer applicants. I represented the United States Government. Following a bench trial, the court ruled in favor of SEPTA. We appealed to the Court of Appeals for the Third Circuit, which vacated and remanded the case. After a supplemental trial, the district court again ruled in favor of SEPTA.

The case was before District Judge Clarence Newcomer. Co-counsel were Robert Libman and Benjamin Blustein, now both of Miner, Barnhill and Galland, 14 W. Erie St., Chicago, IL 60610, 312-751-1170. Defense counsel was Saul H. Krenzel, 1055 Westlake Drive, Suite 300, Berwyn, PA 19312, 215-977-7230.

7. Archie v. Grand Central Partnership, Inc., 95 Civ. 0694, 997 F. Supp. 504 (S.D.N.Y. 1998) (1995 to 1996).

In this civil case, undertaken pro bono by Cleary, Gottlieb, Steen & Hamilton, I represented former homeless and jobless participants in an employment program in a lawsuit against three non-profit organizations. The plaintiffs alleged that they were paid sub-minimum wages in violation of the Fair Labor Standards Act and the New York State Minimum Wage Act. The non-profits maintained that the participants in this program were trainees not entitled to minimum wage payment. I represented the plaintiffs and litigated the case, including through discovery and motion practice, up to and in preparation for trial. I resigned as an associate with Cleary, Gottlieb, Steen & Hamilton prior to trial in order to join the Department of Justice.

The case was before then-District Judge Sonia Sotomayor. Co-counsel were Mitchell Lowenthal, Cleary, Gottlieb, Steen & Hamilton, One Liberty Plaza, New York, NY 10005, 212-225-2000 & Yves Denize, now of TIAA-CREF, 730 Third Ave., New York, NY 10017, 212-916-6261. Defense counsel was Molly Boast, now Deputy Assistant Attorney General, U.S. Department of Justice, 950 Pennsylvania Ave., NW, Washington DC 20530.

8. Moodie v. Federal Reserve Bank of New York, 861 F. Supp. 10 (S.D.N.Y. 1994); 862 F. Supp. 59 (S.D.N.Y. 1994); 58 F.3d 879 (2d Cir. 1995) (1993 to 1995).

In this civil case, undertaken pro bono by Cleary, Gottlieb, Steen & Hamilton, I represented a plaintiff who alleged that he had been discharged by the Federal Reserve Bank of New York in violation of applicable federal and state law prohibiting discrimination based on race. After a jury trial on the state law claim resulted in a mistrial, and after a concurrent bench trial on the federal law claim, the district court ruled against my client on the federal law claim and also dismissed the plaintiff's state

law claim pursuant to a specific provision of New York State law regarding election of remedies. The district court's dismissal of the state law claim was affirmed on appeal. I represented the plaintiff and, with co-counsel, tried the case and worked on the appeal.

The case was before District Judge Morris E. Lasker. Co-counsel was Thomas Moloney, Cleary, Gottlieb, Steen & Hamilton, One Liberty Plaza, New York, NY 10005, 212-225-2000. Defense counsel was Thomas C. Baxter, Jr., General Counsel, Federal Reserve Bank of New York, 33 Liberty Street, New York, NY, 212-720-5035.

9. United States v. Marano, 04 Cr. 735 (2004 to 2005).

This was a criminal insider trading case involving a director at a major credit rating agency charged with obtaining material nonpublic information about certain of the agency's clients and transmitting that information to his brother and a close family friend. Both the brother and the family friend were also charged, and all three eventually were convicted and sentenced. The director was sentenced principally to a term of 15 months in prison. I represented the United States Government and handled the litigation as well as the disposition of all cases.

The case was before District Judge Shira A. Scheindlin. Defense counsel were Jeffrey D. Smith, DeCotiis, Fitzpatrick & Cole, Glenpointe Centre West, 500 Frank W. Burr Blvd., Teaneck, NJ 07666, 201-907-5228; Robert Baum, Federal Defenders Division, Legal Aid Society, 52 Duane St., 10th Floor, New York, NY 10007, 212-417-8760; and Jay K. Musoff, Orrick, Herrington & Sutcliffe, 666 Fifth Ave., New York, NY 10103, 212-506-3782.

10. Chock Full O'Nuts Corp. v. Tetley, Inc., 94 CIV. 8262, 1997 WL 452330 (S.D.N.Y. Aug. 8, 1997); 152 F.3d 202 (2d Cir. 1998) (1994 to 1997).

This was a commercial civil litigation involving a claim of breach of contract in which parties executed an agreement for the purchase and sale of substantially all the assets of defendant's business located in New Jersey, and pursuant to which the defendant agreed to be responsible to pay for a pension liability in the event that plaintiff closed that business before a specified date. The court granted the defendant's summary judgment motion after extensive discovery. I represented the defendant, conducted most of the discovery, and argued the summary judgment motion.

The case was before District Judge Peter K. Leisure. Co-counsel was David Brodsky, Cleary, Gottlieb, Steen & Hamilton, One Liberty Plaza, New York, NY 10005, 212-225-2000. Defense counsel was Fran M. Jacobs, Duane Morris LLP, 1540 Broadway, New York, NY 10036, 212-692-1060.

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

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

Since July 2007, I have served as Chief (2009-present) and Deputy Chief (2007-2009) of the Securities and Commodities Fraud Unit of the United States Attorney's Office for the Southern District of New York. In that capacity, I have been engaged in several significant criminal securities and commodities fraud matters. Specifically, I have closely supervised and made final decisions about the following: investigative techniques; charging, including whether or not to charge and the nature of the charges; negotiations regarding appropriate dispositions of cases, including plea negotiations and cooperation agreements; the government's position relating to significant procedural and substantive issues arising in the course of each prosecution, including in connection with trial preparation, trial, and post-trial motion practice; the position of the government regarding sentencing in a particular case, including issues relating to forfeiture; and restitution, bankruptcy and other victim-related issues. Where necessary and appropriate, I have also personally negotiated with opposing counsel regarding these issues and personally handled reviewing, discussing, substantively editing documents relating to, and making recommendations about all of these issues. I have also supervised or co-supervised all securities fraud trials in the Southern District of New York since July 2007. The categories of securities fraud cases that I have investigated, prosecuted and supervised include: accounting fraud, Ponzi schemes, insider trading, market manipulation, including so-called "pump and dump" schemes, boiler rooms, commercial and stockbroker bribery, money laundering, investment adviser fraud, foreign exchange currency schemes, and other securities and commodities fraud. Finally, I have been responsible for coordinating securities and commodities fraud investigations and cases with other governmental agencies, including the United States Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Bureau of Investigation, the United States Postal Inspection Service, the Department of Labor, and the Department of the Treasury, as well as various self-regulatory organizations and foreign governmental agencies.

From October 2005 to July 2007, I served as Chief (2006-2007) and Deputy Chief (2005-2006) of the Narcotics Unit of the United States Attorney's Office. In that capacity, I supervised the investigation and prosecution of domestic federal narcotics cases in the Southern District of New York that involved large-scale local or national drug distribution networks. I directly supervised hundreds of domestic narcotics investigations and cases, as well as a few international narcotics cases and cases involving violent drug traffickers who used or possessed firearms in furtherance of their drug trafficking activity. The cases I supervised during this period involved a wide range of illegal narcotics, including heroin, cocaine base, cocaine, marijuana, ecstasy (also known as MDMA), hashish, and methamphetamine (including crystal methamphetamine). A small percentage of these cases also involved illegally diverted pharmaceutical drugs. I closely supervised and personally handled reviewing, discussing, substantively editing documents relating to, and making final decisions about the following: the use of various investigative techniques, including wiretaps, informants, and the enlistment of

cooperating witnesses; charges and charging decisions, ranging from declinations to the filing of prior felony informations; the disposition of domestic narcotics cases, including plea agreements and cooperation agreements; and documents articulating the government's position regarding sentencing in particular cases. I also closely supervised several trials conducted by the Narcotics Unit within the Southern District of New York. Finally, I was responsible for coordinating narcotics investigations and cases with other governmental agencies, including the Drug Enforcement Administration, the Department of Homeland Security's Immigration and Customs Enforcement, the Federal Bureau of Investigation, the United States Postal Inspection Service, the New York City Police Department, and the Food and Drug Administration, as well as an anti-money laundering task force.

As a senior trial attorney at the Employment Litigation Section of the Department of Justice's Civil Rights Division from 1997 to 2000, I directed investigations and litigations involving alleged Title VII violations by public entities, including individual claims of sex, race or religious discrimination and claims of a pattern or practice of illegal discrimination based on sex, race or religion.

In 1991 and 1992, I was a staff member on the New York State Gubernatorial Task Force tasked by the Governor of New York with reviewing whether New York State's method of electing judges—in particular, New York State Supreme Court Justices—violated the Voting Rights Act of 1965. At the request and direction of the Task Force members and its chairperson, I conducted research for and helped to draft preliminary versions of a report issued by the Task Force that ultimately concluded (in a final version issued in January 1992) that, as then structured, the system for the election of Supreme Court Justices in New York State likely would not survive a legal challenge under the Voting Rights Act.

I have never performed lobbying activities.

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

None.

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

None.

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

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, 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.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would recuse myself from all cases I supervised or on which I personally worked as an Assistant United States Attorney. Although I am aware of no other circumstance likely to present a conflict of interest, I would carefully examine each case for any conflict or appearance of conflict. I would disclose potential conflicts and recuse myself from cases as called for by the recusal statutes and by the Code of Conduct for United States Judges.

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

I will follow the recusal statutes and Canon 3 of the Code of Conduct for United States Judges. I will recuse myself when necessary to resolve any real or apparent conflict of interest.

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

I served on the pro bono committee of Cleary, Gottlieb, Steen & Hamilton. In that capacity and as an associate, I worked on a variety of significant pro bono matters, including the representation at trial of an indigent individual in a lawsuit alleging racial discrimination. I also represented more than 40 homeless and jobless participants in an employment program in a lawsuit alleging that the plaintiffs were paid sub-minimum wages by three non-profit organizations, in violation of the Fair Labor Standards Act and the New York State Minimum Wage Act. At the Department of Justice, I have worked diligently on both civil and criminal cases to ensure that victims in these cases obtain appropriate redress.

26. Selection Process:

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

I was first contacted by telephone by the White House Counsel's Office on January 12, 2010. By request, I submitted to that Office my curriculum vitae. Since mid-January 2010, I have been in contact with pre-nomination officials at the Department of Justice. I met with Senator Charles Schumer on January 24, 2010. I interviewed in Washington with attorneys from the White House Counsel's Office and the Department of Justice on February 12, 2010. On March 10, 2010, the President submitted my nomination to the Senate.

There is no selection commission for the Court of Appeals for the Second Circuit in New York.

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

No.



**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Lohier, Raymond J.	2. Court or Organization Second Circuit	3. Date of Report 03/09/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge - nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Anecdotal Report	6. Reporting Period 1/1/2009 to 2/28/2010
7. Chambers or Office Address One St. Andrew's Plaza New York, New York 10007	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
<p align="center">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.</p>		

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

NONE (No reportable positions.)

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

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

NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.		
2.		
3.		

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Lohier, Raymond J.	Date of Report 03/09/2010
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

	<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <small>(yours, not spouse's)</small>
1.			
2.			
3.			
4.			

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

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

	<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	2009	City University of New York School of Law - Salary
2.		
3.		
4.		

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

NONE *(No reportable reimbursements.)*

	<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1.	Exempt				
2.					
3.					
4.					
5.					

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Name of Person Reporting Lohier, Raymond J.	Date of Report 03/09/2010
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. Exempt			
2.			
3.			
4.			
5.			

VI. LIABILITIES. (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

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Name of Person Reporting Lobler, Raymond J.	Date of Report 03/09/2010
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VII. INVESTMENTS and TRUSTS - income, value, transactions (includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month- Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. American Century Growth Stock Fund	A	Dividend	J	T	Exempt				
2. American Century Ultra Stock Fund	A	Int./Div.	J	T					
3. American Century Retirement Growth Stock Fund	A	Int./Div.	J	T					
4. IRA AIG American Pathway (Annuity)	A	Int./Div.	J	T					
5. Fidelity Asset MGR	A	Int./Div.	K	T					
6. Fidelity Growth Co	A	Int./Div.	K	T					
7. Fidelity Magellan Fund	A	Int./Div.	K	T					
8. Fidelity Worldwide Fund	A	Int./Div.	K	T					
9. Fidelity Retirement Money Market	A	Interest	K	T					
10. Fidelity Investment Contract	A	Interest	J	T					
11. Fidelity SIT M&Cap Growth Fund	A	Interest	J	T					
12. IRA Fidelity Mutual Funds		None	L	T					
13. Sun America Fund/Annuity		None	J	T					
14. Janus 20 Fund	A	Int./Div.	K	T					
15. Janus Global Technology Fund	A	Int./Div.	J	T					
16. Vanguard Growth Index Fund	A	Interest	K	T					
17. Vanguard Small Cap Index Fund	A	Interest	K	T					

1. Income Gain Codes: (See Columns B1 and B4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D1)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 R = More than \$50,000,000	Q = \$1,000,001 - \$50,000,000
3. Value Method Codes (See Column C2)	P = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Club Market	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Lohier, Raymond J.	Date of Report 03/09/2010
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "XX" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-R)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	18. Vanguard 500 Index Fund		None	K	T				
19. Vanguard Windsor 2 Fund	A	Interest	K	T					
20. Wachovia Roth IRA	A	Int./Div.	K	T					
21. TIAA CREF Retirement Fund	A	Interest	M	T					
22. T Rowe Price New Horizons Fund	A	Interest	K	T					
23. T Rowe Price International Stock Fund	A	Interest	J	T					
24. AOL Inc. common stock (formerly known as AOL Time Warner)		None	J	T					
25. Bank of America common stock	A	Dividend	J	T					
26. Becton Dickinson & Co. common stock	A	Int./Div.	K	T					
27. China Mobile Ltd.	A	Dividend	J	T					
28. Chevron common stock	A	Dividend	K	T					
29. Cisco, Inc. common stock		None	J	T					
30. Dow Chemical common stock	A	Dividend	J	T					
31. Exxon Mobil Corp. common stock	A	Dividend	J	T					
32. Honeywell International common stock	A	Dividend	J	T					
33. IBM Corp. common stock	A	Dividend	K	T					
34. Intel Corp. common stock	A	Dividend	J	T					

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

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Name of Person Reporting Lohler, Raymond J.	Date of Report 03/09/2010
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VII. INVESTMENTS and TRUSTS -- Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-I)	Type (e.g., div., rent, or int.)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date Month Day	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
35. International Game Technology common stock	A	Dividend	J	T					
36. Microsoft Corp. common stock	A	Dividend	K	T					
37. OGE Energy Corp.	A	Int./Div.	K	T					
38. Oracle Corp. common stock	A	Dividend	J	T					
39. Staples Inc. common stock	A	Dividend	J	T					
40. Time Warner Cable Inc. (spinoff of Time Warner Inc.)	A	Dividend	J	T					
41. Time Warner Inc. common stock	A	Dividend	J	T					
42. Trust #1		None	O	W					
43.									

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

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Name of Person Reporting	Date of Report
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

1) Part I and Part VII

Trust 1 is an "unfunded trust" whose sole asset is a term life insurance policy.

2) Part III-A

Non-reportable non-investment income was earned during the reporting period (salary from the U.S. Government for service as an Assistant United States Attorney).

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Name of Person Reporting	Date of Report
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IX. CERTIFICATION.

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

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

Signature _____



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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT
NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		43	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		185	355	Notes payable to relatives			
Unlisted securities--add schedule		539	700	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			500
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		470	165
Real estate owned-add schedule	1	150	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		21	000				
Cash value-life insurance							
Other assets itemize:							
				Total liabilities		470	665
				Net Worth	1	468	390
Total Assets	1	939	055	Total liabilities and net worth	1	939	055
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			500				
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

<u>Listed Securities</u>	
AOL Inc.	\$ 25
Staples Inc.	3,685
Time Warner Cable Inc.	225
Time Warner Inc	540
Cisco, Inc.	230
Bank of America	250
Chevron	17,800
Becton Dickinson & Co.	22,500
China Mobile Ltd.	11,800
Dow Chemical Co.	5,300
Exxon Mobil Corp.	13,000
Honeywell International	7,500
Intel Corp.	7,150
IBM	26,550
International Game Technology	3,500
Microsoft Corp.	33,000
OGE Energy Corp.	27,600
Oracle Corp.	4,700
Total Listed Securities	\$185,355

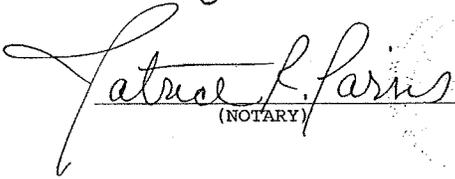
<u>Unlisted Securities</u>	
Fidelity Asset MGR	\$19,450
Fidelity Growth Co	27,600
Fidelity Magellan	18,800
Fidelity Worldwide	20,000
Fidelity Retirement Money Market	15,400
Fidelity Investment Contract	3,350
Fidelity SIT MidCap Growth	300
Fidelity Mutual Funds	80,200
Sun America Fund/Annuity	9,000
Janus 20 Fund	31,800
Janus Global Technology Fund	2,150
Vanguard Growth Index Fund	32,300
Vanguard Small Cap Index Fund	27,000
Vanguard 500 Index Fund	25,000
Vanguard Windsor 2	21,500
Wachovia Roth IRA	17,650
T Rowe Price New Horizons Fund	25,700
T Rowe Price International Stock Fund	12,300
American Century Mutual Funds	39,000

TIAA CREF Retirement Fund	102,000
IRA AIG American Pathway	9,200
Total Unlisted Securities	<u>539,700</u>
<u>Real Estate Owned</u>	
Personal residence (recent appraisal)	\$ 1,150,000
Total Real Estate Owned	<u>1,150,000</u>
<u>Real Estate Mortgages Payable</u>	
Personal residence	\$ 470,165

AFFIDAVIT

I, **RAYMOND JOSEPH LOHIER, JR.**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

3/9/10 (DATE)  (NAME)

 (NOTARY)

PATRICE R. PARRIS
 Notary Public, State of New York
 No. 01-HE5036389
 Qualified in Queens Co.
 Commission Expires November 28, 2010

RAYMOND J. LOHIER, JR.
One St. Andrew's Plaza
New York, New York 10007

April 15, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I write to update the Committee that, effective March 28, 2010, I have assumed a new position with the United States Attorney's Office for the Southern District of New York as Special Counsel to the United States Attorney.

I also would like to provide the Committee with the following additions to my Senate Questionnaire responses:

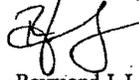
Question 12.b – Reports. In the questionnaire I submitted to the Committee, I provided as an attachment to Q 12.b., the Report of the Second Circuit Task Force on Gender, Racial, and Ethnic Fairness in the Courts, Race and Ethnicity Subcommittee on Court Appointments (2007). However, I neglected to list the report in the body of the questionnaire itself.

Question 12.d – Speeches and Talks. I have identified two further responsive entries to this question in connection with my affiliation with the Black, Latino, Asian Pacific American (BLAPA) Law Alumni Association of New York University School of Law. At BLAPA's spring 2000 annual dinner, I presented three scholarship awards to law student recipients. At the spring 1999 annual dinner, I gave a very brief update to BLAPA members on the state of the organization's fundraising campaign. I recall giving similar brief updates about the state of the organization's fundraising campaign at BLAPA's annual dinners during the period of time that I served as BLAPA's Treasurer. I have no notes, transcript, or recording for these events. Descriptions of the events from New York University Law School Alumni newsletters in 1999 and 2000 are attached.

Question 12.e – Interviews. My Senate questionnaire listed an interview I gave to a student from the Columbia School of Journalism in 2001. I have since located a copy of the article the student wrote. It is attached.

Thank you for your consideration.

Sincerely,



Raymond J. Lohier, Jr.

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

BLAPA Honors Alumni and Students at Annual Dinner

The smooth sounds of Latin jazz welcomed guests to the annual Black, Latino, Asian Pacific American Law Alumni Association (BLAPA) Dinner Party. The music by Mambo Negro, and a generous bar featuring the Rums of Puerto Rico, were perfect compliments to this year's theme, "Celebrating the Ethnic Explosion."



(L-r): Gregory Braithwaite, Beverly Alexander, Fritz Alexander II ('51), Karen Alexander, and Betty Staton ('79)

NYU Law faculty and alumni joined current and admitted students in the Law School's Martin Lipton Hall to honor the outstanding achievements of distinguished Law School alumni, and to award the BLAPA Public Service Scholarship to three remarkable students.

Dean John Sexton opened the evening by praising the Law School's considerable gains in faculty and student diversity, and admonishing current students to exploit the experience and wisdom of the Law School's distinguished alumni who were present. New York State Chief Judge Judith Kaye ('52) and the Honorable Betty Staton ('79) then joined the Dean for a special presenta-

tion honoring "one of our brightest stars," Fritz W. Alexander II ('51). It was the last public appearance for Judge Alexander, who died two weeks later.

Seated near the portrait of his likeness commissioned for the occasion, Judge Alexander spoke of the humble beginnings of the Law School, and praised the contributions of the current and former deans to the growth of the School "from the ninth and tenth floor of a factory" to the "premier institution of global legal learning" today. With his wife and colleagues by his side, Alexander also reflected on his "deep love and affection" for the Law School, the fifty years he had given to it, and the spirit

of the School that sustained him "and all those who came along."

The formal dinner program began with remarks by current BLAPA President Carol Robles Roman ('89). As guests located their seats, still buzzing from Alexander's moving reflections, Roman commented on current trends in the legal and national markets. "The trend," she said, "is us. We are hot!" Roman continued, "There is a dynamic force called the minority community in America today; it is hip to be a person of color."

Roman then introduced the program's Special Speaker, Londell McMillan ('90), a partner in his own entertainment firm. Jokingly referred to as "the Johnnie Cochran of the entertainment industry," McMillan boasts an impressive client list that includes the artist formerly known as Prince, fashion designer FUBU, Def Jam Records, and filmmaker Spike Lee. In his remarks, McMillan agreed that ethnic ideas and products are in demand. "We have flavor," he said, and "we are advancing our culture from Japan to Iran." McMillan added, "all over the world, they want the music that comes from the streets of New York and Miami, and the fashion that comes from L.A." Despite the high demand, McMillan noted, "few minorities have the opportunity to advise in these industries or capitalize on this growth. Minorities have come a long way, but we've got so far to go."

The program continued with the presentation of honorees by Herbert Barbot ('91) and of the student recipients of the Public Service Scholarships by Raymond Lohier ('91). This year's honorees included Judge Arthur Gonzalez (LL.M.'90) of the U.S. Bankruptcy Court, Nancy Chang ('78), Senior Litigation Attorney of the Center for Constitutional Rights, and O. Peter Sherwood ('71), a partner at the law firm of Kalkines, Arky, Zall & Bernstein. The Public Service Scholarship recipients were current students Jennifer Ching ('00), Vida Johnson ('00), and Sejal Zota ('00).

The 2000 BLAPA Awards Dinner ended with an update on the endowment drive and the Induction of the New Board of Officers. The formal close of the dinner program in no way marked the close of the evening. The warmth and spirit of the evening carried over into the post-dinner networking, where the guests mingled, alumni reminisced and the Latin jazz of the Mambo Negro band flavored the night. ■



Alan Kline (LL.M.) was promoted to the position of Special Trial Attorney for the Northeast Region of the IRS in Manhattan.

Juriah McMillan (LL.M.) has joined the Dallas/Fort Worth office of Deloitte & Touche as a tax partner.

David Schvutler (LL.M.) has been named partner to the New York office of Arthur Andersen, where he is a key member of the State and Local Tax practice.

1989

Starline Cohen will serve as Managing Director, Planning and Development at Schnader, Harrison, Segal & Lewis.



Steven Cohen was named partner at Morgan Lewis' Philadelphia office where he is a member of their Business and Finance Section.

Marc Davis became a junior equity analyst at Brundage, Stoy and Rose in New York.

Alan Goldsberg was named partner at Whiteman Osterman & Hanna in Albany.

Abraham Goren (LL.M.) was appointed Chairman of the Board of Directors of Elcint Ltd., a subsidiary of Elbit Medical Imaging.

Malcolm Kratzer was named partner at O'Melveny & Myers.



Christopher Loh has joined the firm of Caplan and Earnest in Boulder, CO.



John McAliese, III was named partner at Morgan Lewis in Philadelphia where he is a member of their Regulation Section.

Margot Metzger has become a member of the firm Robinson, Silverman, Pearce, Aronsohn & Berman in New York.

Elizabeth O'Connor was named partner at Flemming, Zulack & Williamson.

BLAPA Honors Alumni and Students

A special celebration of outstanding achievement: such is the essence of the NYU Black, Latino, Asian Pacific American Law Alumni Association (BLAPA) Annual Dinner. Each year, BLAPA gathers to honor alumni and a select group of current graduating law students who have made extraordinary contributions to the Law School, to the profession and to the community. The recipients are representative of the best of NYU Law and provide role models to which our students can aspire to emulate.

At this year's dinner, BLAPA celebrated the tenth anniversary of the Students Coalition for Change. Held in the Law School's Martin Lipton Hall, the dinner opened with welcoming remarks by Donna Leo ('91), BLAPA President. Zachary Carter ('75), US Attorney for the Eastern District of New York, delivered the Keynote Address on activism and the importance of standing up for one's beliefs. The BLAPA Distinguished Service Alumni Awards were then given to Phoebe Eng ('89), L. Londell McMillan ('90), John Quinones ('90), and Carol Robles-Roman ('89); and the BLAPA Public Service Recipients were Mayra Peters-Quintero ('99), Munir Fajara ('99), and LaShanda Dionne Taylor ('99).

The formal program ended with a report by BLAPA's Treasurer Raymond Lohier ('91) on the ongoing fundraising campaign to increase the endowment. The BLAPA Endowment Campaign seeks to raise \$300,000. The BLAPA Board awards three



(L-r): Patrick Bradford ('89), past BLAPA President; John Quinones ('90); Carol Robles-Roman ('89), current BLAPA President; Phoebe Eng ('89); L. Londell McMillan ('90); Judge Betty Stanton ('78), past BLAPA President and co-founder; Zachary W. Carter ('75), speaker; Donna Leo ('91), past BLAPA President.

scholarships each year to third year law students who have chosen to pursue careers in public interest. The awards are for \$5,000 and are applied to the student's highest interest rate loan. To date, BLAPA has raised roughly \$240,000 in cash and pledges. BLAPA hopes to end the campaign by December 31, 1999.

Mary Lou Parker (LL.M.) has been appointed as a trustee of the New Jersey State Bar Foundation.

Steven Surzan was named partner at the New York office of Fluorite & Jaworski. Steven focuses on corporate and securities matters.

T. Robert Zochowski was named partner at the law firm of Shearman & Sterling, New York in the bank, finance, and bankruptcy group.

1990

Carole Aciman (M.C.J.) has joined the firm of Skadden, Arps, Slate, Meagher & Flom as counsel in the Internet & E-commerce Group.

Stephan Breitstone (LL.M.) of Miltzer, Lippe, Goldstein, & Schissel testified before the House Committee on Small Business, Subcommittee on Tax, Finance, and Exports.

Dennis Duane was named partner at Milbank, Tweed, Hadley & McCloy's Financial Restructuring Group in New York, NY.



Raymond Flabor was named partner at Milbank, Tweed, Hadley & McCloy's Global Corporate Finance Group in New York, NY.

Josene Goldhand was named partner at Schottenstein, Zox & Dunn.

Jennifer Rosenfeld has been promoted to Vice President-Corporate Counsel of Menlo Logistics.

Cynthia Rubin was named partner at Flemming, Zulack & Williamson.

William Russell, Jr. was named a partner at Simpson Thacher & Bartlett.



An anthology prepared by students in Professor Gessler's 2007 seminar

Black Prosecutors

Dealing With Race in the Criminal Justice System

By Emily Kopp

When New York City police officers fired 41 shots and killed the unarmed West African immigrant Amadou Diallo in 1999, Kenneth Montgomery knew they would go free. "I knew justice would not be served," he said.

Montgomery, a 28-year-old prosecutor in Brooklyn, was in the Kings County criminal courthouse on the day the verdict was announced. As he finished his duties in the courtroom, he heard shouts coming from a nearby lounge. There he found colleagues from the district attorney's office standing around the television set. "They were cheering," he recalled. "Tears swelled up in my eyes. I didn't want to be near them."

All he wanted, he said, was for "white people to look at black men differently - we're not all criminals."

Montgomery, who is black, is considered a rising star in the district attorney's office in Brooklyn. Judges have praised him and introduced him to politicians. Colleagues admire him. He cites the black philosopher Cornell West in casual conversation. He stops secretaries in the elevator to ask about their health.

But he plans to leave the office someday.

Since he was a child, Montgomery has wanted to be a lawyer to help others in his community. But he finds that this job constantly challenges his values. "Here, when someone gets a conviction," he said, "it's a tradition to go out and drink to celebrate." Montgomery doesn't see reason to celebrate.

His career goal is a bit different: He wants to improve impoverished, crime-ridden black communities, such as Crown Heights and Brownsville, where he grew up and went to school. But he doubts whether he can do that in a profession that sees only wins and losses. After winning a trial against a 20-year-old gang member sentenced for robbery, he recalls, he had a lump in his throat because he realized that the young man's life was messed up. "He's not going to do great things," Montgomery said.

Prosecutors have enormous control over people who are arrested for crimes. They decide whether to press charges, determine what charges to pursue and request bail. While a majority of prosecutors are white, most defendants are people of color.

Race is an important factor in the criminal justice system. Of the nation's nearly 1.8 million prison inmates in 2000, 45 percent were

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black, although blacks made up just 14 percent of the total U.S. population. Nearly one in eight black men were incarcerated last year. That's 18 times the rate for white men, according to the U.S. Justice Department. Montgomery, who works in the gang unit, says he has tried only one white defendant in his career. Colleagues in other departments agree that a small percentage of their defendants are white.

The nation's 1,000 African-American prosecutors represent just 3.3 percent of all prosecutors, according to the National Black Prosecutors Association. Some of them, such as Montgomery, find themselves trying to serve both the government and their black communities, which have often been at odds.

As a teenager, Montgomery did not view the government - or white people - positively. The whites he knew were either teachers or police officers - law-and-order types who children tried to avoid. That sentiment extended to district attorneys, too. "A lot of black and Hispanic males have an innate distrust of white prosecutors," he said.

When he goes into similar neighborhoods now, he sometimes feels resentment or disgust from people on the street who see him as an arm of the government. One time, he rode with a black police officer to a crime scene in an unmarked police car. "All the black men we passed rolled their eyes," he said. "I used to do that."

Some say black prosecutors should expect such treatment from the black community. "If you take a job in an office that has shown no concern for people of color, then you have to be prepared to deal with whatever people say, rather than faulting folks for raising questions," said Bryan Stevenson, a black public defender who teaches at New York University School of Law.

In the office, Montgomery senses a different resentment from white prosecutors toward defendants, victims and witnesses of color. He has heard young white colleagues curse them or call them "crackheads." He doesn't say anything about it - he says his sarcastic attitude and bad temper could make things ugly. But their behavior bothers him.

"As I see it, that could be my aunt or my neighbor," Montgomery said of the witnesses. As for defendants, he said, "I can understand why a 16-year-old guy got to the point of selling drugs." His colleagues' words reinforce his first impression of white law-enforcement officials.

"This puts me in somewhat of an uncomfortable position," Montgomery said.

Black prosecutors are the mediators in this cold war. John Newton, 34, used to work as an assistant district attorney in the Bronx before becoming counsel to the Environmental Protection Agency in Washington, D.C. Bronx juries are more than 80 percent black and Latino. They acquit defendants in nearly half of the felony cases.

Newton remembers reading about Larry Davis, a black man charged with murdering four drug dealers in 1986. When police officers tried to arrest Davis, he shot at them and fled. Davis' lawyers said he acted in self-defense, Newton recalled. The jury

acquitted him, although he later served time for illegally carrying a gun. As a Bronx native, Newton sometimes felt obliged to explain these acquittals to his white colleagues. "A lot of white prosecutors didn't understand that fear of the police," Newton said. But to the community, he said, the officers "were just another gang in the neighborhood." Despite the culture clashes, Newton said he might return to prosecution someday.

Kirby Clements, 35, a supervisor in the Kings County District Attorney's School Advocacy Bureau, which handles all school-related crimes, also finds himself between white colleagues and blacks involved in a case. Sometimes, he said, a white prosecutor will bombard a black witness with questions during a pre-trial meeting. The witness won't respond. In frustration, the white colleague asks Clements, who is black, to help. Clements sits with the witness and asks, "What's up?" The witness talks. "It's all in how you deal with someone," Clements explained.

Sometimes witnesses and victims ask Clements to step in on their behalf. Once, the black grandmother of a sex-crimes victim insisted on working with a black prosecutor instead of the white one to whom she was assigned. "The grandmother needed to feel comfortable," Clements said. "People have stereotypes about whites" in law enforcement.

Clements said those stereotypes stem from a belief that law-enforcement officials want to lock away black people and don't care about black victims of crime. While Clements doesn't believe that's true, he says the legacy of racism in this country - coupled with media reports that often describe suspects simply as "a black male" - fuel the fear.

When Montgomery talks about his childhood, he mentions the robberies he witnessed on his subway rides to school in Brownsville, Brooklyn. He remembers the heroin addicts who loitered outside his elementary school, P.S. 327. And he says drug dealers killed one of his friends in seventh grade. As he toys with a Notorious B.I.G. compact disc, he says race isn't the only barrier between most prosecutors and the people they work with during a trial. Class plays a role.

"Some black prosecutors don't know the neighborhood, the streets," he said, referring to his colleagues who grew up in middle-class or wealthy suburbs. "They don't know how to relate. Certain white prosecutors do." But Montgomery says that both the district attorney's office and Brooklyn's black community make assumptions based on race.

Supervisors "look at me as a decent guy, funny, from the neighborhood - he'll get us some convictions," Montgomery said. After only a few weeks on the job, he was told that he would win over Brooklyn juries because he was young, articulate and black. And while some people in the black community give him dirty looks, most appreciate him, if only for his skin color. An informal survey of black defendants at the courthouse in Brooklyn one recent morning corroborated that notion. Those surveyed thought all prosecutors would treat them equally. Nonetheless, they preferred black prosecutors to white ones.

"We need more of them," said Natania Rowe, 21, of Jamaica,

Queens, who came to the courthouse because she had been in a fight. "They can see where you're coming from."

"White prosecutors don't understand the ghetto, but blacks have been there," said her boyfriend, Everic Clayton, 27.

"Color matters, but I don't like thinking about it," Montgomery said. "It's something I can't control."

Nonetheless, race is a heavy weight in the office. It dictates style and, even, job placement. Colleagues call Montgomery "the angry black man."

"That's why he's in the gang bureau," where an aggressive attitude is most effective, said Assistant District Attorney Michael Choi, who is Korean.

Montgomery said he is passionate and intense, but not angry. Nonetheless, he doesn't mind the characterization. It keeps people on their toes.

District attorneys' offices use black prosecutors to promote an illusion of racial equality, said Kenneth Nunn, a professor at Levin College of Law at the University of Florida in Gainesville.

While working as a public defender in Washington, D.C., and in California during the 1980s, Nunn noticed that district attorneys' offices assigned black prosecutors to cases involving prominent black defendants, he said. When asked to give an example, Nunn mentions Christopher Darden, the black assistant district attorney who prosecuted O.J. Simpson in Los Angeles in 1995. Nunn says district attorneys should make such assignments to stymie notions of impropriety. "But they say race has nothing to do with it," he said.

Why then, he asked, don't black prosecutors try cases in mostly white neighborhoods? "They'll hire African-American guys in areas where they need them but not elsewhere," he said. "They're being used by the office to deflect racial policies."

Clements, the School Advisory Bureau supervisor, said he doesn't feel used. "Symbolism is important," he said. He offered this example: A black friend in Atlanta, his hometown, was charged with a traffic offense. When the friend walked into the courtroom, all he saw were white faces. "I never felt so black in my life," the friend told Clements.

Clements hopes blacks who see him in court "might think, 'At least they hire somebody,'" he said.

That was not the case for Darden. Many people saw O.J. Simpson as the latest black man to fall victim to the criminal justice system. "I was branded as an Uncle Tom, a traitor used by 'The Man,'" Darden wrote in his book, "In Contempt." In subsequent interviews, he said he received death threats from whites and blacks alike. He regretted taking the case.

But Durman Jackson, president of the National Black Prosecutors Association, said that people who say such things overlook the fact that most crime victims are people of color, too. "Most of the crimes are not multiracial," he said. "Justice for all includes victims as well.

Black prosecutors can speak for the community and say, 'We've had enough, and something has to be done.' "

Montgomery agrees. "Do I ever feel funny with other young black males looking at me and I ask for 15 years?" he asked. "No, because the victim is a guy who got shot in the back, and he looks like me, too."

Ray Lohier, 35, a black federal prosecutor in Manhattan, chose his career because he wanted to change the system. He says black prosecutors can have an impact on their workplaces and the community. "If there's enough of us, we can raise the level of public confidence," he said. He acknowledged that there is a long way to go but said, "half a loaf of bread or a quarter of a loaf is better than nothing. If I have enough discretion, I might have an impact."

He knows black lawyers who would never want to be in his shoes; they don't trust law enforcement. He used to feel that way, too. "But in the big picture, would I rather have the attorneys, police officers and sheriffs, and no blacks?" he asks. "I think that's terrible and, if that's the case, I should step up."

As a law student at Emory University in Atlanta, Clements planned to become a defense attorney because he thought, "The Man is out to get us," he said. But he wouldn't change careers now. Prosecutors can use their powers to make decisions they believe are fair. "I can look at a case and say, 'It's crap, throw it away,' or 'You did it, and I'm going to pin you to the wall,' " Clements said. "I can mete out justice before the trial."

Nonetheless, few black law students plan to become prosecutors. Shana Fulton, a third-year student at Columbia Law School, says that only 3 out of 90 black students at her school are choosing that path. She is one of them. Other types of law are more popular because they offer better pay and aren't attached to any stigma. Fulton said some of her peers have asked her, "You want to put our people in jail?" She tells them, "When you're working within a community, there have to be attorneys from those communities."

But lone prosecutors can't change the system, Nunn said. "I don't think an individual prosecutor has the capability to change things," he said. Unless they are supervisors, "prosecutors don't have that kind of authority." He cites pressures working against a black prosecutor.

"There's pressure to be tough on crime," he said. "It's hard to maintain your integrity within the system if you're trying to act compassionately. A lot of prosecutors have political aspirations, too." They fear those political opportunities will slip through their hands if they stray from office policy, he said.

Montgomery plans to leave the Kings County District Attorney's Office someday to start his own legal practice. He wants to make a difference in his community, but he says he can't do it as a prosecutor. "Someone needs to be here," he said, "but it's only so effective."

Although he counts some white prosecutors among the most admirable and decent people he knows, he says the system is unfair. He laments the lack of people of color in top positions at the

district attorney's office. There is only one district attorney of color-African-American Robert Johnson of the Bronx-in New York City.

Nunn equates becoming a prosecutor with joining a gang: you don't become a member to change it. Therefore, he said, blacks should refuse jobs as prosecutors to encourage social change. Only when the district attorneys' offices are "lily white," will they be forced to address these racial inequalities. They wouldn't be able to "use black prosecutors for window dressing," he said.

When he has his own private practice, Montgomery hopes to be a role model for young black men and help them stay out of the criminal justice system. He says the ultimate responsibility for that lies within the black community-not the government. "Once they get here, it's done," he said. "The object is to keep them from coming here."

**STATEMENT OF LEONARD STARK, TO BE U.S. DISTRICT JUDGE
FOR THE DISTRICT OF DELAWARE**

Judge STARK. Yes. Thank you very much. Thank you, Mr. Chairman, and thank you to the Committee for having this hearing. I too want to thank Senator Carper for his very kind and generous introduction and for taking time out of his schedule to be here to do that.

I of course am very grateful to the President as well for this great honor of his nomination of me. I don't have an opening statement, but I would like to take the chance to introduce some of the many family and friends that I have with me starting first with my wife, Beth Stark.

We have our three children here with us. I think all three are still in the room.

Senator KAUFMAN. Yes, they are.

Judge STARK. OK. That may not last. My son, my oldest son, Brennan, is 11, my daughter Lucy is eight, and my son who I am most concerned with at the moment, James, is 3 years old.

I am very pleased also that my mother, Linda Stark, is here. She is here from St. Louis, and my sister Danielle Gordman, came in from Omaha, Nebraska to be here as well.

My father-in-law had a shorter trip, James Brophy, he is here from Maryland. There are family members and friends who are watching on the webcast as well. I particularly would like to note my mother-in-law Karen Brophy and my two brothers-in-law, Neal Brophy and Jeff Gordman.

I have several friends here in the audience including friend and colleague, our Chief Judge of the District Court, Greg Sleet and I also want to note Dr. James Soles whom Senator Carper mentioned, but I am truly blessed to have Dr. Soles as a friend and a mentor and it is certainly, as you know, no exaggeration to say that Dr. Soles at this point has been an inspiration for several generations of Delaware judges, lawyers and public servants and I'm very honored to be among them.

Finally I do want to mention my father who unfortunately and sadly is not here. I too lost my father. For me it was in 2003. My dad was an attorney, of course the very first attorney that I knew. I know that he watches over me every day including today and I know that today he is especially proud and humbled, as am I. I'd be happy to answer any questions the Committee may have.

[The biographical information of Leonard P. Stark follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Leonard Philip Stark

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

United States District Judge for the District of Delaware

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

United States District Court for the District of Delaware
J. Caleb Boggs Federal Building
844 King Street
Room 6100
Wilmington, Delaware 19801

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

1969; Detroit, Michigan

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

1993 to 1996, Yale Law School; J.D., 1996

1991 to 1993, Magdalen College, University of Oxford; D.Phil., 1993

1987 to 1991, University of Delaware; M.A. & B.S. & B.A. (*summa cum laude*), 1991

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

2007 to Present

United States District Court for the District of Delaware
J. Caleb Boggs Federal Building
844 King Street, Room 6100
Wilmington, Delaware 19801
United States Magistrate Judge

2002 to 2007

United States Attorney's Office for the District of Delaware
1007 North Orange Street
Wilmington, Delaware 19801
Assistant United States Attorney

1998 to 1999

University of Delaware
Department of Political Science and International Relations
347 Smith Hall
Newark, Delaware 19716
Adjunct Professor (fall semesters)

1996 to 2001

Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Associate (1997 to 2001)
Summer Associate (1996)

1996 to 1997

United States Court of Appeals for the Third Circuit
J. Caleb Boggs Federal Building
844 King Street, Room 5323
Wilmington, Delaware 19801
Law Clerk to the Honorable Walter K. Stapleton

1995

Shea & Gardner (now merged with Goodwin Procter LLP)
901 New York Avenue, N.W. (current address)
Washington, D.C. 20001
Summer Associate

1994

Morris James
500 Delaware Avenue # 1500 (current address)
Wilmington, Delaware 19801
Summer Associate

1994
Office of Governor Thomas R. Carper
Carvel State Office Building
820 North French Street, 12th Floor
Wilmington, Delaware 19801
Summer Law Clerk to Governor's Legal Counsel

1991
Bryan Cave
211 North Broadway, Suite 3600
St. Louis, Missouri 63102
Summer Legal Assistant

Other Affiliations (uncompensated)

2000 to 2007
University of Delaware Alumni Association
Alumni Hall
24 East Main Street
Newark, Delaware 19702
Board Member (2000 to Present)
President (2006 to 2007)

2000 to 2002
Brandywine Gateway Neighbors
1300 French Street
Wilmington, Delaware 19801
Director and Secretary

2001
Supreme Court of Delaware Board of Bar Examiners
Carvel State Office Building
820 North French Street
Wilmington, Delaware 19801
Associate Member

- 7: **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I registered for selective service upon turning eighteen.

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

University of Delaware, Outstanding Alumni Award (2009)
 FBI, Award for Dedicated Service as an Assistant United States Attorney (2007)
 University of Delaware, Presidential Citation for Outstanding Achievement (2004)
Yale Law Journal: Editor (1994 to 1995), Senior Editor (1995 to 1996)
 Yale Law School, Potter Stewart Prize for Best Overall Moot Court Argument (1995)
 Rhodes Scholarship (1991)
 University of Delaware, Taylor Award for Outstanding Senior Male (1991)
USA-Today All-USA College Academic First Team (1990)
 University of Delaware Eugene du Pont Memorial Distinguished Scholarship (1987)

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

American Bar Association
 Delaware State Bar Association
 Federal Bar Association, Delaware Chapter
 Supreme Court of Delaware Board of Bar Examiners
 Associate Member (2001)
 Third Circuit Bar Association

10. **Bar and Court Admission:**

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

Delaware, 1997

There has been no lapse in my membership.

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

United States Court of Appeals for the Third Circuit, 1997
 United States District Court for the District of Delaware, 1997

There has been no lapse in my membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Brandywine Gateway Neighbors (2000 to 2002)

Director and Secretary (2000 to 2002)

Delaware Advisory Committee to Institute for Women's Policy Research (2000)

Delaware Rhodes Scholarship Selection Committee (1996 to 2004)

Secretary (1997 to 2004)

Federal Magistrate Judges Association (2007 to Present)

Richard S. Rodney Inn of Court (2007 to 2008)

Oxford Union Society (1991 to Present)

University of Delaware Alumni Association (1991 to Present)

President (2006 to 2007)

Board of Directors (2000 to Present)

Scholarship Committees (2000 to Present)

Walter Stark Scholarship Selection Committee (2004 to Present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations listed above currently discriminates or has discriminated during my membership on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies. I am unaware of any former discrimination by these organizations.

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

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

“United States Magistrate Judges: 1995 – 2008,” in *The Delaware Bar in the Twentieth Century*, Delaware State Bar Association (Delaware) (2d ed. Forthcoming 2011) (co-author).

“Judge ‘The Game by the Rules’: An Appreciation of the Judicial Philosophy and Method of Walter K. Stapleton,” 6 *Delaware Law Review* 223 (2003) (co-author).

“Fiduciary Duties Derailed? Appropriation of Fiduciary Duties in the Battle for Control of Conrail,” 24 *Journal of Corporate Law* 30 (1998) (co-author).

“Review: *Mutual Contempt – Lyndon Johnson, Robert Kennedy, and the Feud that Defined a Decade*,” 85 *The American Oxonian* 210 (Spring 1998).

“You Gotta Be On It To Be In It: State Ballot Access Laws and Presidential Primaries,” 5 *George Mason Law Review* 137 (1997).

“‘There He Goes Again’: The Consistent Style of President, Governor and Candidate Reagan,” in *Proceedings of the Ronald Reagan Presidential Conference* at p. 547, Greenwood Press (Westport, Connecticut 1997).

Note, “The Presidential Primary and Caucus Schedule: A Role for Federal Regulation?” 15 *Yale Law and Policy Review* 327 (1996).

Choosing A Leader: Party Leadership Contests in Britain from Macmillan to Blair, St. Martin’s Press (New York) and Macmillan Press (London) (1996).

“Letter from Oxford: What We Think About All This,” 80 *The American Oxonian* 133 (Spring 1993).

“Place to Do So Many Things,” *Newsday* (February 18, 1993).

“Letter from Oxford: Exclusive? – The Social Challenge of Not Only Oxford,” 80 *The American Oxonian* 24 (Winter 1993).

“Letter from Oxford: Speaking of Politics 1992 – Off the Record,” 79 *The American Oxonian* 267 (Fall 1992).

“So, why Oxford?” *UHP Report* (May 1992).

“Review: Naomi Wolf’s *The Beauty Myth*,” 79 *The American Oxonian* (Spring 1992).

“Predicting Presidential Performance from Campaign Conduct: A Character Analysis of the 1988 Election,” 22 *Presidential Studies Quarterly* 295 (1992).

Letter to the editor, *International Herald Tribune* (January 28, 1992).

“President Bush: Good for Four, Not for More,” *The Zimbabwe Bird* (1991).

“Traditional Gender Role Beliefs and Individual Outcomes: An Exploratory Analysis,” 24 *Sex Roles: A Journal of Research* 639 (1991).

“Character and Experience: Predicting Presidential Performance,” 13 *Michigan Journal of Political Science* 69 (1991).

“Examining the Effects of Gender Roles,” 10 *Enquiry: Research at the University of Delaware* 8 (1989).

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

University of Delaware Alumni Association, *Ad Hoc Report* to the Incoming University President on Accomplishments and Future Goals of the Alumni Association.

I served on the Delaware Advisory Committee to the Institute for Women’s Policy Research (IWPR) in 2000. The IWPR was preparing reports on indicators relating to the status of women in all 50 states. On or about November 15, 2000, the IWPR published these reports, including one entitled *The Status of Women in Delaware: Politics, Economics, Health, Demographics*. As a member of the Delaware Advisory Committee, I reviewed and discussed with other members of the Committee portions of a draft of the report.

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

Democratic National Committee Rules & Bylaws Committee, “Beyond 2000” Hearing on Primary Scheduling for 2004 (Nov. 20, 1999).

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

If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

Claymont Elementary School, Wilmington, Delaware (Dec. 11, 2009). I spoke about patents to my child's fifth grade class.

University of Delaware, Homecoming Reception, Newark, Delaware (Oct. 31, 2009). In connection with receiving a UD Outstanding Alumni Award, I made brief remarks thanking the University President. (I did not use notes and have been advised there is no recording.)

"*Markman* Judges' Panel: A Symposium on the Practice, Procedure and Perspectives of the Judiciary and on Bigger *Markman* Issues" (panelist) at the Practising Law Institute's (PLI) continuing legal education program entitled "*Markman* Hearings and Claim Construction in Patent Litigation 2009," New York, New York (July 8, 2009).

University of Delaware, The Democracy Project Institute for Teachers, Newark Delaware (June 26, 2009).

University of Delaware, Naturalization Ceremony, Newark, Delaware (June 4, 2009).

"Acts, Character, Prejudices, and Witness Impeachment (Judges' Panel)" (panelist) at the Delaware Federal Bar Association, Wilmington, Delaware (May 19, 2009).

University of Pennsylvania Law School, Philadelphia, Pennsylvania (Mar. 26, 2009) (panelist).

"Ethical Issues in the Practice of Law (Judges' Panel)" (panelist) at the Delaware Federal Bar Association, Wilmington, Delaware (Mar. 11, 2009).

"Evidence and Expert Testimony in Federal Court (Judges' Panel)" (panelist) at the National Business Institute, Newark, Delaware (Feb. 20, 2009).

Claymont Elementary School, Wilmington, Delaware (Feb. 20, 2009). I spoke about being a lawyer to my child's fourth grade class. (I did not use notes and the discussion was not recorded.)

Dinner for United States Attorney for the District of Delaware, Wilmington, Delaware (Jan. 23, 2009).

University of Delaware, Alumni Career Panel (panelist), Newark, Delaware (Sept. 2008). (I did not use notes and have been advised that no recording is available.)

“General Thoughts from the Bench” at the Delaware State Bar Association Intellectual Property Section Annual Meeting, Wilmington, Delaware (June 25, 2008).

Delaware State Bar Association New Lawyers Section, Summer Associates Program (panelist), Wilmington, Delaware (June 17, 2008). (I did not use notes and have been advised that no recording is available.)

“The Art of Direct and Cross Examinations (Judges’ Panel)” (panelist) at the Delaware Federal Bar Association, Wilmington, Delaware (June 12, 2008).

University of Delaware, Naturalization Ceremony, Newark, Delaware (June 5, 2008).

“Openings, Closings, and Case Themes (Judges’ Panel)” (panelist) at the Delaware Federal Bar Association, Wilmington, Delaware (Mar. 18, 2008).

Delaware Federal Bar Association (panelist), Wilmington, Delaware (Jan. 11, 2008). I was a luncheon speaker along with Magistrate Judge Mary Pat Thyng. (I did not use notes and have been advised no recording is available.)

“Bridging the Gap: Mediation Best Practices” (panelist) at the Delaware State Bar Association, Wilmington, Delaware (Oct. 25, 2007).

Swearing-in ceremony, Wilmington, Delaware (Sept. 14, 2007).

Commencement, University of Delaware, Newark, Delaware (May 26, 2007).

Alumni Wall of Fame Ceremony, University of Delaware, Newark, Delaware (May 4, 2007).

Commencement Address at University of Delaware, Newark, Delaware (Jan. 6, 2007). (remarks provided; recording available at <http://www.ums.udel.edu/podcast/detail?e=40> (last accessed Mar. 15, 2010)).

Kendal-Crosslands Retirement Community, Kennett Square, Pennsylvania (Sept. 27, 2005). I was invited to speak to a group of retirees at this residential retirement community about the Supreme Court.

Keynote Speech at the Undergraduate Research Symposium, University of Delaware, Newark, Delaware (May 2003).

Commencement Address at University of Delaware, Newark, Delaware (Jan. 8, 2000).

Convocation Speech at the Women's Studies Department Convocation, University of Delaware, Newark, Delaware (May 31, 1997).

On at least two occasions in the 1990s, while I was an associate at Skadden Arps, I spoke to high school students about law-related topics as part of the Law Day activities sponsored by the Delaware State Bar Association. I do not recall the actual topics about which I spoke. It is likely that I used notes but I do not have a copy. The talks were neither recorded nor transcribed.

"The Reagan Administrative Style" (panelist) at the Hofstra University Ronald Reagan Presidential Conference, Hempstead, New York (Apr. 1993).

Democrats Abroad Presidential Caucus at the Oxford Union Society, Oxford, England (March or April 1992). I made a speech in support of candidate Bill Clinton. I spoke from notes, which I no longer have.

Longsands Community College, Huntingdon, England (Mar. 26, 1992).

Commencement Address at John H. Glenn High School, East Northport, New York (June 23, 1991).

Convocation Speech at the College of Arts & Sciences Convocation, University of Delaware, Newark, Delaware (June 1, 1991).

"Did We Choose the Right President in 1988?" at the University of Delaware Undergraduate Research Symposium, Newark, Delaware (May 13, 1991).

Student Research on Women Conference, University of Delaware, Newark, Delaware (Apr. 27, 1989). I believe I spoke from notes, but I do not have a copy. The substance of my talk was the research I later published in a 1991 article, copies of which are provided. I have been advised that there is no recording.

1988 to 2009: I have spoken on multiple occasions on panels or in classrooms at the University of Delaware, usually in front of students, or prospective students, or parents. The topics have typically focused on my experiences as a student at UD and my career. I do not believe I ever used notes for these appearances; if I did, I no longer have a copy. On each occasion I am sure I also answered questions. I am not aware of any recording or transcript of any of these sessions.

Emphasis on Women Lecture Series, University of Delaware, Newark, Delaware (Sept. 28, 1988). I believe I spoke from notes, but I do not have a copy. The substance of my talk was the research I later published in a 1991 article, copies of which are provided. I have been advised that there is no recording.

Student Research on Women Conference, University of Delaware, Newark, Delaware (Apr. 28, 1988). I believe I spoke from notes, but I do not have a copy.

The substance of my talk was the research I later published in a 1991 article, copies of which are provided. I have been advised that there is no recording.

Commencement Address at John H. Glenn High School, East Northport, New York (June 1987). I was one of two student speakers at my high school graduation. I spoke from notes, but I no longer have them. I do not have a recording.

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

The following list includes every such interview I can recall as well as those that I have found reflected in publications identified by searches I conducted on Westlaw, Lexis, and the Internet.

Sean O'Sullivan, *After a year on the bench, judge weighs pros and cons*, The News Journal, Aug. 31, 2008. Portions of the interview for this story were videotaped by the newspaper. Some of these portions have appeared on The News Journal's website. See <http://www.delawareonline.com/video#/Being%20a%20Judge/34362591001> (last accessed Mar. 15, 2010).

Sean O'Sullivan, *Prosecutor Stark sworn in as magistrate judge*, The News Journal, Aug. 7, 2007.

Elizabeth Bennett, *Leonard Stark to Join Federal District Court as Magistrate Judge*, Delaware Law Weekly, Aug. 1, 2007.

Sean O'Sullivan, *Magistrate Judge position will be filled by deputy to Connolly*, The News Journal, May 24, 2007.

What people are saying, The News Journal, Dec. 2, 2006.

As an Assistant United States Attorney from 2002 to 2007, I occasionally spoke to reporters about a case I was litigating. The published items I have identified based on those interviews are listed below.

Sean O'Sullivan, *Ex-NCCo officials appeal ruling*, The News Journal (June 23, 2006).

Sean O'Sullivan, *Ruling on Gordon, Freebery challenged; Federal prosecutors seek to have charges reinstated*, The News Journal (Aug. 20, 2005).

As the U.S. Attorney's Office's District Elections Officer, I was interviewed by a local radio station (WDEL) about the availability of law enforcement on Election Day to take complaints about access to the polls and voting fraud. I believe this interview occurred the day before the 2004 general election. The radio station has told me that it does not have a transcript or a copy of the radio broadcast; nor do I.

I was interviewed (along with other award recipients) by the University of Delaware for a brochure UD published in connection with its October 1, 2004 ceremony bestowing the Presidential Citation for Outstanding Achievement.

Mary Allen, *Gordon lawyers won't testify for grand jury*, The News Journal (June 15, 2004).

In approximately the summer of 2003, I was asked by the Yale Law School Career Development Office (CDO) to provide a statement about my experience working in a U.S. Attorney's Office for a CDO publication.

Man gets 5 months in rifle purchase, The News Journal, Mar. 26, 2003.

Joseph A. Slobodzian, *Probation officers can use lie detectors*, The Philadelphia Inquirer (Jan. 8, 2003).

Tom Eldred, *Smyrna man pleads in firearm sting*, Delaware State News (Dec. 20, 2002).

Brian P. Knestout, *Baccalaureate Bargains*, Kiplinger's Personal Finance (Oct. 2002).

At some date around 2002, I was asked by a reporter working for the University of Delaware to provide a quote about my experiences at UD that could be used in connection with certain promotional materials. My statement appears on UD's Alumni Relations website. See <http://www.udconnection.com/Spotlight/Leonard-Stark> (last accessed on March 15, 2010). The same statement has appeared elsewhere on earlier occasions.

Susan Jacobs, *New Rhodes Scholar Using Studies to Understand the World*, Pittsburgh Post-Gazette (Dec. 20, 2000).

Chris Emanuelli, *UD Rhodes Scholar to give Winter Commencement Address*, The Review (approximately Dec. 1999).

Marylee Sauder, *Rhodes Scholar continues his quest*, University of Delaware Messenger (1994).

In August 1993, I was interviewed by authors Thomas J. Schaeper and Kathleen Schaeper as they were researching their book, *Cowboys into Gentlemen: Rhodes*

Scholars, Oxford, and the Creation of an American Elite, which was published in 1998 (Berghahn Books, New York). I am mentioned in the acknowledgements, along with all of the others who provided interviews. However, based on my review of the book, including particularly the endnotes and index, I do not believe I am quoted anywhere in it.

In December 1992, I was interviewed by C-SPAN, in Oxford, England, as part of a series of interviews with students about their reaction to the election of Rhodes Scholar Bill Clinton as President. The interview was played on C-SPAN (as part of many hours of similar coverage) on January 9, 1993. It is available from C-SPAN's on-line video library. See <http://www.c-spanvideo.org/program/49250-1> (last accessed on March 15, 2010).

Charles T. Powers, *'Rhodies' Eye Wider Network*, Los Angeles Times, Dec. 1, 1992.

I may have participated in other interviews, with American or British press, between Election Day in November 1992 and Inauguration Day in January 1993, as there were many reporters in Oxford asking American Rhodes Scholars for their reaction to the election of a Rhodes Scholar as President.

Skip Cook, *Duo earns special place in Class of '91*, University of Delaware Messenger (Fall 1991).

Ed Okonowicz, *A Rhodes wends way from Delaware*, University of Delaware Messenger (Fall 1991).

Tom Curley, *Rhodes scholar's academic career just starting*, The News Journal (June 1, 1991).

Jen Podos, *Honors Day 1991: Outstanding senior man and woman named*, UpDate (May 16, 1991).

Ed Okonowicz, *After three decades, 'Rhodes' returns to Newark*, UpDate (Feb. 14, 1991).

Taking the High Rhodes to Success, Delaware Times (Mar. 1991).

Faye Duffy, *Taking the High Rhodes to Success*, The College Digest (Spring 1991).

University of Delaware Honors Program brochure (Spring 1991).

U.D. Student Selected as Rhodes Scholar, The EYE Magazine (Feb. 1991).

Julie Van Dyke, *The long and winding Rhodes*, UHP Report (Feb. 1991).

UD student to study in Oxford as Rhodes Scholar, Newark Post (Dec. 27, 1990).

Esther Crain, *UD scholar on the road to Oxford, England*, The Review (Dec. 14, 1990).

Nan Clements, *UD student a Rhodes scholar*, The News Journal (Dec. 10, 1990).

Robert Kelly & Safir Ahmed, *Rhodes Awards To 2 In Area*, St. Louis Post-Dispatch (Dec. 10, 1990).

Bill Swayze, *Junior honor student makes 'USA Today' team*, UpDate (May 17, 1990).

Len Stark makes USA TODAY's 1990 All-USA Academic Team, UHP Report (Feb. 1990).

Eugene du Pont Memorial Distinguished Scholars brochure (1987).

New York State YMCA Youth and Government brochure (1986).

- 13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On August 6, 2007, I was appointed by the United States District Court for the District of Delaware to an eight-year term as United States Magistrate Judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

As a magistrate judge, I may only preside over a case to judgment with the unanimous consent of all the parties. Through March 15, 2010, nineteen of my consent cases have gone to judgment (e.g., on motions to dismiss or for summary judgment or due to stipulations of dismissal following settlement) and are now closed. One of my consent cases has gone to trial and is presently in post-trial briefing.

- i. Of these, approximately what percent were:

jury trials:
 bench trials:

 civil proceedings: 100%
 criminal proceedings:

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Anello v. Indian River Sch. Dist.*, C.A. No. 07-668-LPS.

The parties in this *pro se* challenge to a public school district's handling of a child's learning disabilities consented to my jurisdiction. They filed cross-motions for summary judgment on the plaintiffs' claims that the district had violated the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, by not identifying the plaintiffs' child as learning-disabled in a timely manner (the "child find claim") and by formulating an individualized education plan ("IEP") that was inadequate for the child. I held that the district was too slow in identifying the child as eligible for special education and ordered, as relief on this child find claim, that the district reimburse the plaintiffs for certain private tutoring they had arranged for their child. I also held that the IEP eventually put in place was appropriate for the child. Accordingly, I granted in part and denied in part both parties' motions. *See* 2009 WL 304124 (D. Del. Feb. 6, 2009). The Court of Appeals affirmed. 2009 WL 4755714 (3d Cir. Dec. 14, 2009).

Plaintiffs were *pro se*. Defendant's Counsel was James H. McMackin, III, Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19899, (302) 888-6800.

2. *Eames v. Nationwide Mutual Ins. Co.*, C.A. No. 04-1324-JJF-LPS.

This purported class action for alleged misrepresentations in connection with the limits of liability for automobile insurance was referred to me for purposes of ruling on non-dispositive pretrial motions and making recommendations as to the proper disposition of case-dispositive motions. Following briefing and a hearing, I concluded that the pleadings and documents on which the Court was permitted to rely showed that there was no material misrepresentation or omission. I recommended that defendant's motion to dismiss be granted. *See Eames, et al. v. Nationwide Mutual Ins. Co.*, C.A. 04-1324-JJF-LPS (D. Del. Mar. 31, 2008) (appears as pages *1-10 to 2008 WL 4455743). After reviewing plaintiffs' objections to my Report & Recommendation ("R&R"), District Judge

Joseph J. Farnan, Jr., adopted my R&R and dismissed the case. *See* 2008 WL 4455743 (D. Del. Sept. 30, 2008). The Court of Appeals affirmed. *See* 2009 WL 3041997 (3d Cir. Sept. 24, 2009). The plaintiffs filed a petition for a writ of certiorari on January 5, 2010 (No. 09-809).

Plaintiff's Counsel was John S. Spadaro, John Sheehan Spadaro, LLC, 724 Yorklyn Road, Suite 375, Hockessin, Delaware 19707, (302) 235-7745. Defendant's Counsel was Nicholas E. Skiles, Swartz Campbell LLC, 300 Delaware Avenue, Suite 1130, Wilmington, Delaware 19899, (302) 656-5935.

3. *Esquire Deposition Servs. LLC v. Bd. on Certified Court Reporters, C.A. No. 09-206-JJF-LPS.*

The plaintiff in this case provided national court reporting services and the defendant Delaware Board on Certified Court Reporters ("Board") supervised certification and conduct of court reporters in Delaware Courts. The Board was investigating the plaintiff firm for violating a Board order that prohibited court reporting firms operating in Delaware from entering into contracts covering multiple cases or providing special terms or services that are not offered at the same time and on the same terms to all other parties in the litigation. The plaintiff brought this action seeking a declaratory judgment that the directive was unconstitutional under the Commerce Clause, Contract Clause, and Due Process Clause of the United States Constitution. The district judge referred the case to me to handle discovery disputes, make a recommendation as to the disposition of the plaintiff's motion for a preliminary injunction, and to attempt alternative dispute resolution. After I conducted several mediation conferences and ordered expedited discovery, *see* 2009 WL 1220539 (D. Del. Apr. 29, 2009), the Delaware Supreme Court revoked the directive, leading to dismissal of the federal court action.

Plaintiff's Counsel was Thomas P. Preston, Blank Rome LLP, 1201 North Market Street, Suite 800, Wilmington, Delaware 19801, (302) 425-6438 & L. Lin Wood, Bryan Cave LLP, 1201 West Peachtree Street, 14th Floor, Atlanta, Georgia 30309, (404) 572-6786. Defendant's Counsel was Richard D. Allen, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19801, (302) 658-9200.

4. *Gonzalez v. Astrue, C.A. No. 06-76-LPS.*

The parties consented to my jurisdiction in the plaintiff's challenge to the Social Security Administration's ("SSA") denial of her application for disability insurance benefits. On the parties' cross-motions for summary judgment, I found that the administrative law judge did not adequately justify the decision to give almost no weight to the plaintiff's treating

physicians and nearly controlling weight to the opinions of the non-treating physicians. I remanded the case to the SSA for further proceedings. *See* 537 F. Supp. 2d 644 (D. Del. 2008).

Plaintiff's Counsel was John S. Grady, Grady & Hampton, 6 North Bradford Street Dover, Delaware 19901, (302) 678-1265. Defendant's Counsel was David F. Chermol, Special Assistant United States Attorney, Now at Chermol & Fishman, LLC, 11450 Bustleton Avenue, Philadelphia, PA 19116, (215) 464-7224.

5. *Infineon Techs. AG v. Fairchild Semiconductor Int'l Inc.*, C.A. No. 08-887-SLR-LPS.

District Judge Sue L. Robinson referred this patent infringement action to me for purposes including handling pre-trial motions. The parties were competitors in the semiconductor business. The plaintiffs filed suit in Delaware alleging infringement of five of their patents and seeking declaratory judgments of noninfringement and invalidity of six of defendants' patents. On the same day the defendants answered and raised counterclaims with respect to the eleven patents placed in-suit by plaintiffs, the defendants also filed suit in the District of Maine for infringement of two additional patents. Thereafter, the plaintiffs sought to amend the Delaware complaint to include claims relating to the two additional patents involved in the Maine suit. The defendants opposed the motion. Shortly after I granted the plaintiffs leave to amend the Delaware complaint, *see* 2009 WL 3150986 (D. Del. Sept. 30, 2009), the parties filed a joint stipulation of dismissal with prejudice, which was granted by Judge Robinson.

Plaintiff's Counsel were William J. Marsden, Jr., Fish & Richardson, P.C., 222 Delaware Avenue, 17th Floor, Wilmington, Delaware 19899, (302) 652-5070 & Alan D. Smith, Fish & Richardson, P.C., 225 Franklin Street, Boston, Massachusetts 02110, (617) 542-5070. Defendant's Counsel were Philip A. Rovner, Potter Anderson & Corroon LLP, Hercules Plaza, Wilmington, Delaware 19899, (302) 984-6000 & Eric P. Jacobs, Townsend and Townsend and Crew LLP, Two Embarcadero Center, 8th Floor, San Francisco, California 94111 (415) 576-0200.

6. *Innovative Therapies Inc. v. Kinetic Concepts Inc.*, C.A. No. 07-589-SLR-LPS.

In this patent infringement action, the plaintiff sought a declaratory judgment that its wound treatment device would not infringe the defendant's patents and that those patents are invalid. I agreed with the defendant that the Court lacked subject matter jurisdiction because there was no "actual controversy" between the parties, as is required for

constitutional standing, at the time the plaintiff filed the suit. *See* 2008 WL 2746960 (D. Del. July 14, 2008). District Judge Sue L. Robinson, who had referred the case to me, overruled the plaintiff's objections to my recommendation and granted the defendant's motion to dismiss. *See* 2008 WL 4809104 (D. Del. Nov. 5, 2008).

Plaintiff's Counsel were Thomas H. Kovach, Parkowski, Guerke & Swayze, P.A., 800 King Street, Suite 203, Wilmington, Delaware 19801, (302) 594-3313 & Justin P.D. Wilcox, Cooley Godward Kronish LLP, One Freedom Square, Reston Town Center, 11951 Freedom Drive, Reston, Virginia 20190, (703) 456-8073. Defendant's Counsel were Steven J. Balick, Ashby & Geddes, 500 Delaware Avenue, 8th Floor, Wilmington, Delaware 19801, (302) 654-1888 & R. Laurence Macon, Akin Gump Strauss Hauer & Feld LLP, 300 Convent Street, Suite 1500, San Antonio, TX 78205, (210) 281-7222.

7. *In re: Rosuvastatin Calcium Patent Litig.*, C.A. No. 08-MD-1949-JJF-LPS.

This is a patent infringement action brought by a branded drug company, AstraZeneca, against multiple generic drug companies. It arises from the generics' filings of Abbreviated New Drug Applications (ANDAs) with the Food and Drug Administration (FDA) to market generic versions of AstraZeneca's Crestor (rosuvastatin calcium) anti-cholesterol drug, which has been publicly reported to have annual sales of more than \$3 billion. In June 2008, the Judicial Panel on Multi-District Litigation ("JPML") consolidated all of the rosuvastatin calcium cases for pre-trial purposes and sent them to the District of Delaware. District Judge Joseph J. Farnan, Jr., referred all of these related cases to me for all pretrial purposes. Among the matters I handled in these cases were: setting a schedule to get the cases to trial by February 2010, twenty-six months after the December 2007 filing of the first complaint; recommending disposition of various defense motions to dismiss, objections to which were overruled by Judge Farnan, *see* 2009 WL 483131 (D. Del. Feb. 25, 2009), *adopting* 2008 WL 5046424 (D. Del. Nov. 24, 2008); recommending appropriate constructions of disputed patent claim terms, which were also adopted by Judge Farnan, *see* 2009 WL 3378602 (D. Del. Oct. 20, 2009), *adopting* 2009 WL 1220542 (D. Del. May 4, 2009); and recommending resolution of additional motions, including to exclude expert testimony, *see* 2009 WL 4800702 (D. Del. Dec. 11, 2009). Judge Farnan held a final pre-trial conference in December 2009 and closed the reference to me on February 1, 2010. Trial in front of Judge Farnan was held in February 2010.

Plaintiff's Counsel were Mary W. Bourke, Connolly Bove Lodge & Hutz, 1007 North Orange Street, Wilmington, Delaware 19801, (302) 658-9141; Ford F. Farabow, Jr., Finnegan, Henderson, Farabow, Garrett & Dunner,

LLP, 901 New York Avenue, NW, Washington, DC 20001, (202) 408-4000 & Charles E. Lipsey and Kenneth M. Frankel, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Two Freedom Square, 11955 Freedom Drive, Reston, Virginia 20190, (571) 203-2700. Defendants' Counsel were Steven A. Maddox, Knobbe Martens Olson & Bear, 1776 Eye Street, NW, Washington, DC 20006, (202) 640-6400; Thomas P. Heneghan and Shane A. Brunner, Merchant & Gould, 10 East Doty Street, Madison, Wisconsin 53703, (608) 280-6750; Robert B. Breisblatt, Katten Muchin Rosenman, 525 West Monroe Street, Chicago, Illinois 60661, (312) 902-5480; and Deanne M. Mazzochi, Rakoczy Molino Mazzochi Siwik, 6 West Hubbard Street, Chicago, Illinois 60610, (312) 222-6305.

8. *Power Integrations Inc. v. BCD Semiconductor Corp.*, C.A. No. 07-633-JJF-LPS.

The patents-in-suit in this action related to power supply chips incorporated into electronic devices such as cellular telephone chargers. The plaintiff-patentee sought a preliminary injunction to enjoin the defendant from manufacturing the accused power supply chips. I recommended denial of the defendant's motion to dismiss for lack of personal jurisdiction, finding that personal jurisdiction may exist in Delaware over the defendant – a Chinese company manufacturing integrated circuit chips that end up in cell phone chargers sold in Delaware – under a “stream of commerce” theory of jurisdiction. *See* 2008 WL 3850871 (D. Del. Aug. 12, 2008); 547 F. Supp. 2d 365 (D. Del. 2008). I later recommended that the plaintiff's preliminary injunction motion be denied, in part because the defendant had raised a substantial question regarding the validity of the patent claim on which the motion was predicated, particularly given that a pending reexamination of that claim by the U.S.P.T.O. had resulted in rejection of the claim. *See* 2008 WL 5069784 (D. Del. Nov. 19, 2008), *adopted by* 2008 WL 5101352 (D. Del. Dec. 3, 2008). Judge Farnan entered the parties' proposed consent judgment shortly thereafter.

Plaintiff's Counsel were William J. Marsden, Jr., Fish & Richardson P.C., 222 Delaware Avenue, Wilmington, Delaware 19801, (302) 652-5070; Frank Scherkenbach, Fish & Richardson P.C., 225 Franklin Street, Boston, Massachusetts 02110, (617) 542-5070; and Howard G. Pollack and Michael R. Headley, Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, California 94063, (650) 839-5070. Defendant's Counsel were Steven J. Balick, Ashby & Geddes, 500 Delaware Avenue, Wilmington, Delaware 19801, (302) 654-1888 & Erik R. Puknys, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Stanford Research Park, 3300 Hillview Avenue, Palo Alto, California 94304-1203, (650) 849-6600.

9. *Segen v. OptionsXpress Holdings, Inc.*, C.A. No. 08-456-LPS.

The plaintiff was a shareholder of the defendant, OptionsXpress (“Options”), and brought to the defendant’s attention allegations that several of Options’ senior officers had violated Section 16(b) of the Securities Exchange Act, 15 U.S.C. § 78p(b), by engaging in short-swing transactions of Options’ stock. The defendant concluded that the plaintiff’s allegations were correct and then obtained disgorgement of 100% of the officers’ short-swing profits, which amounted to more than \$1 million. After consenting to my jurisdiction, the parties asked me to determine how much of this recovery should be awarded to the plaintiff’s attorneys. The attorneys sought an award of 25% of the defendant’s recovery, while the defendant argued that a reasonable award should not exceed 4% of the recovered funds. I held that the appropriate fee under the unique circumstances of the case was 8% of the company’s recovery, an amount equal to about \$88,000. *See* 631 F. Supp. 2d 465 (D. Del. 2009). The parties reached an agreement to settle the case shortly after I issued my opinion.

Plaintiff’s Counsel were Paul D. Wexler, Bragar Wexler Eigel & Squire, 885 Third Avenue, New York, New York 10022, (212) 308-5858 & Glenn F. Ostrager, Ostrager Chong Flaherty & Broitman, 570 Lexington Avenue, New York, New York 10022, (212) 681-0600. Defendant’s Counsel were Lewis H. Lazarus & Katherine J. Neikerk, Morris James, 500 Delaware Avenue, Wilmington, Delaware 19801, (302) 888-6800.

10. *Zwanenberg Food Group (USA) v. Tyson Refrigerated Processed Meats Inc.*, C.A. No. 08-329-LPS.

This was a contract dispute arising from the plaintiff’s purchase of the defendant’s inventory and equipment used to manufacture canned luncheon meat for private label customers. The defendant’s largest such customer had been Wal-Mart, but, after the sale of the business from the defendant to the plaintiff, Wal-Mart decided it would not use the plaintiff to fill its orders for private label brands of canned meat products. The plaintiff claimed, among other things, that the defendant had breached the implied covenant of good faith and fair dealing by not taking actions to ensure that Wal-Mart did business with the plaintiff. Shortly after I denied the defendant’s motion for a partial judgment on the pleadings, *see* 2009 WL 528700 (D. Del. Feb. 27, 2009), the parties filed a joint stipulation of dismissal.

Plaintiff’s Counsel were Peter B. Ladig, Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, Delaware 19801, (302) 429-4232 & Edward P. Gilbert, Morrison Cohen LLP, 909 Third Avenue, New York, New York 10022, (212) 735-8675. Defendant’s Counsel was W. Harding

Drane, Jr., Potter Anderson & Corroon, LLP, 1313 North Market Street, Hercules Plaza, 6th Floor, Wilmington, Delaware 19899 (302) 984-6000.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
1. *Eames v. Nationwide Mutual Ins. Co.*, C.A. No. 04-1324-JJF-LPS, 2008 WL 4455743 at *1-10 (D. Del. Mar. 31, 2008), *adopted by* 2008 WL 4455743 at *11 (D. Del. Sept. 30, 2008). Counsel for Eames was John S. Spadaro, John Sheehan Spadaro, LLC, 724 Yorklyn Road, Suite 375, Hockessin, Delaware 19707, (302) 235-7745. Counsel for Nationwide was Nicholas E. Skiles, Swartz Campbell LLC, 300 Delaware Avenue, Suite 1130, Wilmington, Delaware 19899, (302) 656-5935.
 2. *Gonzalez v. Astrue*, C.A. No. 06-76-LPS, 537 F. Supp. 2d 644 (D. Del. 2008). Counsel for Gonzalez was John S. Grady, Grady & Hampton, 6 North Bradford Street, Dover, Delaware 19901, (302) 678-1265. Counsel for the Commissioner was David F. Chermol, Special Assistant United States Attorney, U.S. Attorney's Office, District of Delaware, now at Chermol & Fishman, LLC, 11450 Bustleton Avenue, Philadelphia, PA 19116, (215) 464-7224.
 3. *Hutchins v. Bayer Corp.*, C.A. No. 08-640-JJF-LPS, 2009 WL 192468 (D. Del. Jan. 23, 2009). Counsel for Hutchins were Edward T. Ciconte, Ciconte, Roseman & Wasserman, 1300 King St., Wilmington, Delaware 19899, (302) 658-7101 & Jason A. Itkin, Arnold & Itkin, 1401 McKinney Street, Suite 2550, Houston, Texas 77010, (713) 222-3800. Counsel for Bayer were Michael P. Kelly, McCarter & English, 405 North King Street, Wilmington, Delaware 19801, (302) 984-6301 & Eugene Schoon, Sidley Austin, 1 South Dearborn Street, Chicago, Illinois 60603, (312) 853-7000.
 4. *Infineon Technologies AG v. Fairchild Semiconductor International Inc.*, C.A. No. 08-887-SLR-LPS, 2009 WL 3150986 (D. Del. Sept. 30, 2009). Counsel for Infineon were William J. Marsden, Jr., Fish & Richardson, P.C., 222 Delaware Avenue, 17th Floor, Wilmington, Delaware 19899, (302) 652-5070 & Alan D. Smith, Fish & Richardson, P.C., 225 Franklin Street, Boston, Massachusetts 02110, (617) 542-5070. Counsel for Fairchild were Philip A. Rovner, Potter Anderson & Corroon LLP, Hercules Plaza, Wilmington, Delaware 19899, (302) 984-6000 & Eric P. Jacobs, Townsend and Townsend and Crew LLP, Two Embarcadero Center, 8th Floor, San Francisco, California 94111 (415) 576-0200.
 5. *Innovative Therapies Inc. v. Kinetic Concepts Inc.*, C.A. No. 07-589-SLR-LPS, 2008 WL 2746960 (D. Del. July 14, 2008), *adopted by* 2008 WL

4809104 (D. Del. Nov. 5, 2008). Counsel for Innovative was Justin P.D. Wilcox, Cooley Godward Kronish LLP, One Freedom Square, Reston Town Center, 11951 Freedom Drive, Reston, Virginia 20190, (703) 456-8073. Counsel for Kinetic were Steven J. Balick, Ashby & Geddes, 500 Delaware Avenue, 8th Floor, Wilmington, Delaware 19801, (302) 654-1888 & R. Laurence Macon, Akin Gump Strauss Hauer & Feld LLP, 300 Convent Street, Suite 1500, San Antonio, Texas 78205, (210) 281-7222.

6. *In re Rosuvastatin Calcium Patent Litigation*, MDL No. 08-1949-JJF-LPS, 2009 WL 1220542 (D. Del. May 4, 2009), *adopted by* 2009 WL 3378602 (D. Del. Oct 20, 2009). Plaintiff's counsel were Mary W. Bourke, Connolly Bove Lodge & Hutz, 1007 North Orange Street, Wilmington, Delaware 19801, (302) 658-9141; Ford F. Farabow, Jr., Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, 901 New York Avenue, NW, Washington, DC 20001, (202) 408-4000; Charles E. Lipsey and Kenneth M. Frankel, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Two Freedom Square, 11955 Freedom Drive, Reston, Virginia 20190, (571) 203-2700. Defendants' counsel were Steven A. Maddox, Knobbe Martens Olson & Bear, 1776 Eye Street, NW, Washington, DC 20006, (202) 640-6400; Thomas P. Heneghan and Shane A. Brunner, Merchant & Gould, 10 East Doty Street, Madison, Wisconsin 53703, (608) 280-6750; Robert B. Breisblatt, Katten Muchin Rosenman, 525 West Monroe Street, Chicago, Illinois 60661, (312) 902-5480; and Deanne M. Mazzochi, Rakoczy Molino Mazzochi Siwik, 6 West Hubbard Street, Chicago, Illinois 60610, (312) 222-6305.
7. *Madukwe v. Delaware State Univ.*, 552 F. Supp. 2d 452 (D. Del. 2008). Counsel for Madukwe was Noel E. Primos, Schmittinger & Rodriguez, 414 South State Street, Dover, Delaware 19903, (302) 674-0140. Counsel for DSU was Kathleen F. McDonough, Potter Anderson & Corroon, 1313 N. Market St., Hercules Plaza, Wilmington, Delaware 19801, (302) 984-6000.
8. *Power Integrations, Inc. v. BCD Semiconductor Corp.*, C.A. No. 07-633-JJF-LPS, 547 F. Supp. 2d 365 (D. Del. 2008). Counsel for Power was Frank Scherkenbach, Fish & Richardson P.C., 225 Franklin Street, Boston, Massachusetts 02110, (617) 542-5070. Counsel for BCD was Erik R. Puknys, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Stanford Research Park, 3300 Hillview Avenue, Palo Alto, California 94304-1203, (650) 849-6600.
9. *Segen v. OptionsXpress Holdings, Inc.*, C.A. No. 08-456-LPS, 631 F. Supp. 2d 465 (D. Del. 2009). Counsel for Segen were Paul D. Wexler, Bragar Wexler Eigel & Squire, 885 Third Avenue, New York, New York 10022, (212) 308-5858 & Glenn F. Ostrager, Ostrager Chong Flaherty & Broitman, 570 Lexington Avenue, New York, New York 10022, (212)

681-0600. Counsel for Options were Lewis H. Lazarus & Katherine J. Neikerk, Morris James, 500 Delaware Avenue, Wilmington, Delaware 19801, (302) 888-6800.

10. *U.S. Life Ins. Co. in City of New York v. Withrow*, C.A. No. 07-511-LPS, 2008 WL 281029 (D. Del. Jan. 31, 2008). Counsel for U.S. Life was Carolyn Shelly Hake, Ashby & Geddes, 500 Delaware Avenue, Wilmington, Delaware 19801, (302) 654-1888. Counsel for Withrow was Kevin A. Guerke, Seitz, Van Ogtrop & Green, 222 Delaware Avenue, Wilmington, Delaware 19801, (302) 888-0600. Counsel for Legro was Seth Andrew Niederman, Fox Rothschild, 919 North Market Street, Wilmington, Delaware 19801, (302) 654-7444.
- e. Provide a list of all cases in which certiorari was requested or granted.

To the best of my knowledge, a petition for a writ of certiorari has been filed in only one case I have handled: *Eames v. Natiomwide Mutual Insurance Co.*, C.A. No. 04-1324-JJF-LPS (D. Del.), No. 08-4125 (3d Cir.), No. 09-89 (U.S. S. Ct. Jan. 5, 2010).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- 1) *Dougherty v. Blize*, C.A. No. 07-674-SLR-LPS (D. Del. Oct. 7, 2008) (unpublished order; copy provided), *adopting in part* my Report and Recommendation, 2008 WL 2543430 (D. Del. June 25, 2008). The district judge adopted only part of my recommendation, finding that plaintiff's Fair Labor Standards Act claim was sufficient to survive dismissal.
- 2) *Sea Star Line, LLC v. Emerald Equip. Leasing, Inc.*, C.A. No. 05-245-JJF-LPS, 2008 WL 5272745 (D. Del. Dec. 17, 2008), *vacating* my order imposing sanctions, 2008 WL 4107582 (D. Del. Aug. 27, 2008) & 2009 WL 3200657 (D. Del. Oct. 6, 2009), *vacating* my order regarding sanctions, 2009 WL 1491401 (D. Del. May 26, 2009). The district judge vacated my sanctions order against an attorney for discovery violations "in order to erase any ambiguity" as to whether the attorney had adequate notice he was subject to sanctions personally. On remand, I reimposed sanctions to be paid by either the party or its attorney; the district judge vacated these new sanctions on the basis of an intervening Third Circuit opinion.

- 3) *Symbol Techs., Inc. v. Janam Techs. LLC*, C.A. No. 08-340-JJF-LPS, 605 F. Supp. 2d 618 (D. Del. 2009), *adopting in part* my Report & Recommendation, 2008 WL 5070462 (D. Del. Dec. 1, 2008). In this patent infringement action, I recommended constructions of seven disputed claim terms. The district judge adopted my recommendations on six of the claim terms.
 - 4) *Collins & Aikman Corp. v. Stockman*, C.A. No. 07-265-JJF-LPS, 2009 WL 3153633 (D. Del. Sept. 30, 2009), *adopting in part* my Report and Recommendation, 2009 WL 1530120 (D. Del. May 20, 2009). The district judge adopted my recommendation on 12 of 13 motions to dismiss in this securities action against a defunct company; the judge declined to adopt my recommendation to dismiss the action against the company's auditors.
 - 5) *Forest Labs. Inc. v. Cobalt Labs. Inc.*, C.A. No. 08-21-GMS-LPS (consolidated), 2009 WL 3010837 (D. Del. Sept. 21, 2009), *adopting in part* my Report and Recommendation, 2009 WL 1916935 (D. Del. July 2, 2009). In this patent infringement action, I recommended constructions of multiple disputed claim terms. The district judge adopted my recommendations on all of the claim terms except one.
 - 6) *McKesson Automation, Inc. v. Swisslog Italia*, C.A. No. 06-28-SLR-LPS, 2008 WL 4820506 (D. Del. Nov. 5, 2008), *declining to adopt* my Report and Recommendation, 2008 WL 4057306 (D. Del. Aug. 28, 2008). The district judge did not adopt my recommendation that plaintiff had met its burden to establish that it owned 100% of the patent rights at issue.
 - 7) *Brookins v. Red Clay Consol. Sch. Dist.*, C.A. No. 08-11-GMS-LPS, 2009 WL 4730726 (Dec. 11, 2009), *declining to adopt* my Report & Recommendation, 2009 WL 2160566 (D. Del. Jul. 17, 2009). The district judge found equitable tolling in this employment discrimination case for a *pro se* plaintiff who the district judge recognized had missed the statute of limitations deadline.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

In civil cases, all of the opinions, and any order in which I say anything I believe to be of potential interest or importance to parties other than those involved in the case before me, are made available on the District Court's website (<http://www.ded.uscourts.gov/LPSmain.htm>). Westlaw, LEXIS and publishers of reporters make decisions independent of me as to whether any of these opinions are to be published or made available in a database. Any "unpublished" order I

have issued is available through CM/ECF, which provides public access to the docket entries of cases in our Court.

- h. Provide 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, provide copies of the opinions.
- 1) *Warren v. New Castle County*, C.A. No. 07-725-SLR-LPS, 2008 WL 2566847 (D. Del. June 26, 2008).
 - 2) *Power Integrations, Inc. v. BCD Semiconductor Corp.*, C.A. No. 07-633-JJF-LPS, 2008 WL 3850871 (D. Del. Aug. 12, 2008).
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

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

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

I screen cases as they are referred to me for any potential conflicts of interest. I will also soon be using our Court's automatic recusal system. My practice has been to recuse myself if I have a close relationship with any of the parties, identified witnesses, or counsel that would interfere with my neutrality or compromise the appearance of justice. Early in my tenure, when new cases were being automatically referred to the Magistrate Judges on the basis of a formula (i.e., without any initial review by a District Judge), at least two matters in which the University of Delaware (UD) was a party were assigned to

me. I recused myself because I had recently finished my term as President of the University's Alumni Association (UDAA) and I had close relationships with many of UD's senior administrators. I no longer automatically recuse myself in UD cases, but only in UDAA cases, as there has been a great deal of turnover among UD's senior administrators and I do not know most of them.

In no case has any party requested my recusal.

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

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

I have held no public offices other than judicial office. I have had no unsuccessful candidacies for elective office and no unsuccessful nominations for appointed office.

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

In 1998, I assisted with a fundraiser for John Dorsey, then a candidate for Attorney General of Delaware.

In March or April 1992, I stood as a candidate in the Oxford, England Democratic presidential caucus, in hopes that I would be elected a delegate to the Democratic Party's Americans Abroad presidential caucus (to be held in Brussels, Belgium I believe). I pledged to support Bill Clinton. I was named an alternate delegate but did not attend the Americans Abroad caucus.

In 1988, at the University of Delaware, I was campus co-coordinator for the Michael Dukakis presidential campaign. In this capacity I helped plan events in support of the candidate on UD's Newark campus. I also recruited volunteers, and participated myself, in leafleting, canvassing, and making phone calls for Dukakis and other Democratic candidates in Wilmington, Delaware.

16. **Legal Career:** Answer each part separately.

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

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

I served as a law clerk to the Honorable Walter K. Stapleton, United States Court of Appeals for the Third Circuit, from 1996 to 1997.

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

I have never practiced law alone.

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

1997 to 2001
Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
Wilmington, Delaware 19801
Associate

2002 to 2007
United States Attorney's Office for the District of Delaware
1007 North Orange Street
Wilmington, Delaware 19801
Assistant United States Attorney

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

As a Magistrate Judge, a significant percentage of my time is spent providing alternative dispute resolution services to parties involved in cases pending in our Court. At any given time, approximately 100 cases are pending on my ADR calendar. Through March 15, 2010, I have held 100 mediation conferences.

General descriptions of ten of the most significant matters I have mediated are provided below:

- 1) Mediated to settlement a trademark dispute between two financial services companies with nearly identical names.
- 2) Mediated to settlement an environmental clean-up action brought by the United States Environmental Protection Agency for recovery of millions of dollars expended to clean up the site of a former rubber house manufacturer.

- 3) Mediated to settlement a personal injury action brought on behalf of minor and his mother who were injured during labor and delivery in a federal facility.
- 4) Mediated to settlement a sexual harassment lawsuit brought by female firefighter against her employer and supervisor.
- 5) Mediated to settlement a prisoner civil rights action alleging deprivation of constitutional right to adequate medical treatment.
- 6) Mediated to settlement an age discrimination action brought by former partner of major accounting firm.
- 7) Mediated to settlement a patent infringement action involving dermatological products.
- 8) Mediated to settlement an automobile accident case arising from a collision between plaintiff's car and defendant's tractor trailer.
- 9) Mediated to settlement a breach of contract action between public university and private entity it had hired to operate student residential buildings.
- 10) Mediated to settlement a civil rights action brought by person subjected to warrantless search in her home as result of mistaken belief by probation officers that a probation violator lived there.

b. Describe:

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

I began my law career (after my clerkship) as a litigation associate in the Delaware office of Skadden, Arps, Slate, Meagher & Flom LLP. From 1997 through 2001, I practiced primarily in the Delaware state courts, mostly the Delaware Court of Chancery and Delaware Supreme Court. I also worked on securities fraud cases in federal court and helped conduct an internal corporate investigation of allegations of insider trading. In January 2002, I became an Assistant United States Attorney for the District of Delaware. I was assigned to both the criminal and civil divisions. As an AUSA, I was responsible for investigating and prosecuting a wide variety of felonies (e.g., racketeering; mail, wire, and health care fraud; narcotics; and firearms offenses). I also handled civil health care fraud, veterans' benefits, and Freedom of Information Act

cases. In August 2007, I was appointed a United States Magistrate Judge for the District of Delaware.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Skadden Arps, our typical clients were Fortune 500 corporations or other business entities or the officers and directors of such entities. As an AUSA, I represented the United States and its law enforcement agencies (primarily FBI, DEA, BATF, and HHS).

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

Essentially all of my practice at Skadden Arps and the U.S. Attorney's Office consisted of litigation. At Skadden Arps (1997 to 2001), I appeared in court only occasionally. As an AUSA (2002 to 2007), I appeared in court frequently.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 70% |
| 2. state courts of record: | 30% |
| 3. other courts: | |
| 4. administrative agencies: | |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 50% |
| 2. criminal proceedings: | 50% |

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

At Skadden Arps (1997 to 2001), I assisted in the trial of two cases to verdict in the Delaware Court of Chancery. Both were non-jury trials. In one case, I was second chair. The other case was a 40-plus day trial with a team of approximately 10 attorneys. I was primarily responsible for observing trial proceedings and writing briefs. At the U.S. Attorney's Office (2002 to 2007), I tried two cases. Both were jury trials. In one case, I was the only attorney for the government. In the other case (a fraud trial which ended in a hung jury) I was second chair.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 50% |
| 2. non-jury: | 50% |

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

In 1998, while I was an associate at Skadden Arps, I and two other associates drafted an amicus curiae brief on behalf of the National Association of Criminal Defense Lawyers, in support of a petition for a writ of certiorari filed by Lisa Lambert. See *Lambert v. Blackwell*, No. 97-8812. Our brief was filed on May 26, 1998. Lambert's petition for a writ of certiorari was eventually denied on March 19, 2001. See *Lambert v. Blackwell*, 532 U.S. 919 (2001).

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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. Faines*, No. 05-4006 (3d Cir.).

In 2006 and 2007, as an AUSA, I represented the United States in this appeal from defendant's bank robbery conviction. I had sole responsibility for the appeal, including drafting the government's appellate brief and making the oral argument in the Court of Appeals. The defendant argued that his conviction should be reversed because the District Court limited his attorney's redirect examination of his expert in the area of fingerprint methodology and the accuracy of fingerprint analysis. Following oral argument in January 2007, in February 2007 the Court of Appeals affirmed the defendant's conviction and sentence. See 216 Fed. Appx. 227 (3d Cir. Feb. 14, 2007). In an opinion by Chief Judge Scirica, the Court held that the District Court did not limit the defendant's expert's testimony about matters for which she was qualified and did not abuse its discretion.

The Third Circuit Panel was composed of Chief Circuit Judge Anthony J. Scirica, Circuit Judge Julio Fuentes, and Circuit Judge Michael Chagares. Counsel for Faines was Eleni Kousoulis, Office of Federal Public

Defender, 715 North King Street, Wilmington, Delaware 19801, (302) 573-6010.

2. *United States v. Gordon*, Misc. No. 03-08-MPT (D. Del.), Misc. No. 03-166-KAJ (D. Del.), Crim. Act. No. 04-63-KAJ (D. Del.), Crim. Act. No. 04-63-JPF (D. Del.), Crim. Act. No. 05-541-JPF (E.D. Pa.), No. 04-1211 (3d Cir.), No. 05-3927 (3d Cir.), No. 06-1556 (3d Cir.), No. 07-1054 (3d Cir.).

Between 2002 and 2007, I represented the United States in this public corruption, racketeering, and fraud investigation and prosecution, along with the U.S. Attorney and (over several years) three other AUSAs. The grand jury charged three high-ranking officials of the government of New Castle County, Delaware ("County"). My responsibilities included: examining witnesses in the grand jury; assisting in the drafting of the 47-page, 11-count racketeering and fraud indictment; coordinating with various entities of the U.S. Department of Justice for necessary approvals and assistance (including the Public Integrity Section; Organized Crime and Racketeering Section; Criminal Appeals; Office of Enforcement Operations; and the Office of the Solicitor General); second-chairing the one trial in the matter and assisting with outlining and preparing for the anticipated multi-week second trial; briefing and arguing approximately 40 motions; briefing and arguing appeals (the case reached the Third Circuit four times); and participating in plea negotiations.

There was extensive litigation at every point in the case, almost all of which I was heavily involved with and much of which I handled personally. Some of the opinions issued in the case are: *In re Search Warrant*, Civ. Act. No. 03-008-MPT, 2003 WL 22095662 (D. Del. Sept. 9, 2003) (denying defendant's motion for return of property seized during execution of search warrant); *United States v. Gordon*, 334 F. Supp. 2d 581 (D. Del. 2004) (disqualifying defense attorney due to conflict of interest); *United States v. Gordon*, No. 05-3927, 183 Fed. Appx. 202 (3d Cir. June 8, 2006) (reversing district court's dismissal of portion of indictment); and *United States v. Gordon*, 2007 WL 1437692 (E.D. Pa. May 15, 2007) (denying defense motion for leave to serve subpoenas on White House Counsel and Attorney General).

In June 2007, Freebery pled guilty to felony Making a False Statement to a Bank, a violation of 18 U.S.C. § 1014; Gordon pled guilty to two misdemeanors of Willful Failure to Keep and Supply Information, violations of 26 U.S.C. § 7203; and Smith pled guilty to misdemeanor Tampering with a Witness, a violation of 18 U.S.C. § 1512(d)(2). In September 2007, all three defendants were sentenced to probation.

The Third Circuit Panels included Circuit Judge Mary Trump Barry, Circuit Judge Michael Fisher, Senior Circuit Judge Morton Greenberg, Circuit Judge Theodore A. McKee, Senior Circuit Judge Leonard I. Garth, Senior District Judge John C. Lifland (D.N.J., by designation), Circuit Judge Julio Fuentes, Circuit Judge D. Brooks Smith, and Circuit Judge John R. Gibson (8th Cir., by designation). The judges in District Courts were Senior District Judge John P. Fullam, Jr. (E.D. Pa.), then-District Judge Kent A. Jordan (D. Del.), and Magistrate Judge Mary Pat Thyng (D. Del.). Counsel for Gordon was Ronald H. Levine, Post & Schell, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103, (215) 587-1071. Counsel for Freebery were William W. Taylor, III & Elizabeth G. Taylor, Zuckerman Spaeder, 1800 M Street, NW, Suite 1000, Washington, DC 20036, (202) 778-1800. Counsel for Smith was Joseph A. Hurley, 1215 King Street, Wilmington, Delaware 19801, (302) 658-8980. My co-counsel were Colm F. Connolly, Morgan Lewis, 1701 Market Street, Philadelphia, Pennsylvania 19103, (215) 963-4841; Ferris W. Wharton, Office of the Public Defender, Carvel State Office Building, 820 North French Street, 3rd Floor, Wilmington, Delaware 19801, (302) 577-5200; and David L. Hall & Christopher J. Burke, U.S. Attorney's Office, District of Delaware, 1007 North Orange Street, Wilmington, Delaware 19801, (302) 573-6277.

3. *United States v. Lee*, 315 F.3d 206 (3d Cir. 2003).

Defendant had pled guilty to travel for purposes of having sex with a minor, transportation and possession of child pornography, and enticing a minor by a computer to engage in sex. He appealed from the portion of his sentence requiring that, during his term of supervised release following incarceration, he submit to random polygraph examinations. In 2002 and 2003, I represented the government, drafting the government's brief and doing the oral argument. In January 2003, the Court of Appeals issued an opinion permitting the random polygraph release condition, rejecting defendant's contention that the condition violated his Fifth Amendment right to be free from self-incrimination.

The Third Circuit Panel was composed of Circuit Judge Jane R. Roth, Senior Circuit Judge Morton I. Greenberg, and Senior District Judge Robert J. Ward (S.D.N.Y., by designation). Counsel for Lee was Christopher S. Koyste, 800 North King Street, Wilmington, Delaware 19801, (302) 419-6529. My co-counsel was Edmond Falgowski, U.S. Attorney's Office, District of Delaware, 1007 North Orange Street, Wilmington, Delaware 19801, (302) 573-6277.

4. *United States v. Watson*, Crim. Act. No. 02-63-GMS-2 (D. Del.).

In 2002 and 2003, I was sole counsel for the United States in this criminal prosecution. I presented the indictment to the grand jury against two brothers charged with being felons in possession of firearms. After one defendant pled guilty, the other chose to go to trial, which took place in July 2003. The jury acquitted the second defendant.

The District Judge was Gregory M. Sleet. Counsel for E. Watson was Jan A.T. van Amerongen, Jr., Jan A.T. van Amerongen LLC, 1225 King Street, Suite 301, Wilmington, Delaware 19801, (302) 656-8007.

5. *United States v. Hubbard*, Crim. Act. No. 03-04-KAJ (D. Del.).

In 2003, I represented the United States in this criminal prosecution, beginning with the investigation and indictment of the defendant on a charge of being a felon in possession of a firearm, a violation of 18 U.S.C. § 922(g)(1). During an administrative search of his residence, state officers found a firearm under the defendant's mattress. After reading the defendant his rights (as set out in *Miranda v. Arizona*, 384 U.S. 436 (1966)), the defendant explained how he had acquired the firearm. I handled the subsequent suppression hearing, after which the Court denied defendant's motion. *See United States v. Hubbard*, 269 F. Supp.2d 474 (D. Del. 2003). The defendant later pled guilty. *See United States v. Hubbard*, 2006 WL 3511381 (D. Del. Dec. 6, 2006).

The District Judge was Kent A. Jordan. Counsel for Hubbard was Penny Marshall, Former Federal Public Defender, District of Delaware, (302) 283-0521.

6. *United States v. Behmanshah*, No. 00-3556 (3d Cir.).

The defendant had been convicted at trial of health care fraud, mail fraud, and money laundering. It had been a complex trial and, in her appeal, she raised approximately one dozen issues challenging her conviction and sentence. The AUSA who had tried the case had since left the office, so I was asked to handle the appeal and, in 2002, I did so. I wrote the government's brief and did the oral argument. In a per curiam opinion, the Court of Appeals affirmed defendant's conviction and sentence in all respects. *See* 49 Fed. Appx. 372 (Oct. 1, 2002).

The Third Circuit Panel was composed of Circuit Judge Theodore A. McKee, Circuit Judge Joseph F. Weis, Jr., and Circuit Judge John M. Duhe, Jr. (4th Cir., by designation). Counsel for Behmanshah was Kimberly Homan, 20 Park Plaza, Boston, Massachusetts 02116, (617) 227-8616.

7. *In re Emerging Commc'ns, Inc. Shareholders Litig.*, Del. Ch. No. 16415.

I was the senior associate on this appraisal and fiduciary duty action from its inception, in 1999, until I left Skadden Arps at the end of 2001. Our client was Greenlight Capital, a former minority shareholder of Emerging Communications, Inc. In 1998, Emerging was acquired by its former-controlling shareholder. Greenlight dissented from the merger, rejecting the deal price of \$10.25 per share, even though Emerging's stock had never traded at more than \$10 per share on the stock market. Greenlight also eventually filed a complaint alleging that the controlling shareholder and Emerging's other directors had breached their fiduciary duties in connection with approving the transaction with the controlling shareholder. My responsibilities included drafting the appraisal petition and the complaint; taking and defending depositions; arguing a motion to compel; drafting pre-trial and post-trial briefs; and serving as second-chair during the two-week trial. The Court appraised the fair value of Emerging as being \$38.05 per share and found that a majority of the Emerging board had breached its fiduciary duties in connection with the transaction. *See* 2004 WL 1305745 (Del. Ch. Ct. June 4, 2004).

Then-Vice Chancellor Jack B. Jacobs presided in the Delaware Court of Chancery. Counsel for Emerging were Thomas A. Beck & Raymond J. DiCamillo, Richards, Layton & Finger, One Rodney Square, Wilmington, Delaware 19801, (302) 651-7700. Counsel for the Board Defendants were David C. McBride, Young Conaway Stargatt & Taylor, 1000 West Street, Wilmington, Delaware 19801, (302) 571-6639 & Kevin C. Logue, Paul, Hastings, Janofsky & Walker, Park Avenue Tower, 75 East 55th Street, New York, New York 10022, (212) 318-6039. Counsel for the Shareholder Class was Norman M. Monhait, Rosenthal, Monhait & Goddess, 919 Market Street, Suite 1401, Wilmington, Delaware 19801, (302) 656-4433. My co-counsel was Thomas J. Allingham II, Skadden Arps Slate Meagher & Flom, One Rodney Square, Wilmington, Delaware 19801, (302) 573-3070.

8. *Cantor Fitzgerald Inc. v. Lutnick*, 99-CIV-4008 LAP (S.D.N.Y.), No. 01-7291 (2d Cir.).

Between 2000 and 2002, I was one of two or three associates who helped draft the briefs in this diversity action against our clients, who were partners of Cantor Fitzgerald Limited Partnership ("CFLP"), and were alleged to have breached their fiduciary duties by authorizing the CFLP partnership agreement to be amended to preclude competition by the plaintiff, Cantor Fitzgerald, Inc. ("CFI"), which was CFLP's former general managing partner. (A related case, in which I was also involved, was pending in the Delaware courts. *See* below.) The United States

District Court for the Southern District of New York granted our clients' motion to dismiss based on statute of limitations. *See* 2001 WL 111200 (S.D.N.Y. Feb. 8, 2001). After CFI appealed, I helped draft our clients' appellate brief. In December 2002, the Court of Appeals affirmed the District Court's dismissal of the case. *See* 313 F.3d 704 (2d Cir. 2002).

The Second Circuit Panel was composed of Chief Circuit Judge John W. Walker, Jr., Circuit Judge Dennis Jacobs, and Circuit Judge Robert D. Sack. The District Judge was Loretta A. Preska. Counsel for CFI were Barry I. Slotnick, Buchanan Ingersoll & Rooney, 620 Eighth Avenue, 23rd Floor, New York, New York 10018, (212) 440-4444 & Michael Shapiro, Carter Ledyard & Milburn, 2 Wall Street, New York, New York 10005, (212) 238-8676. My co-counsel were Karen L. Valihura & Jennifer C. Voss, Skadden Arps Slate Meagher & Flom, One Rodney Square, Wilmington, Delaware 19801, (302) 651-3000.

9. *Cantor Fitzgerald, L.P. v. Cantor*, Del. Ch. No. 16297.

I was one of a team of associates and partners that worked on this case from 1998 through 2001. Our client, Cantor Fitzgerald LP ("CFLP"), sued several of its partners for breaching the CFLP partnership agreement by competing with CFLP in its core business of brokering government bonds. Among other things, I assisted with researching and writing preliminary injunction, summary judgment, and post-trial briefs; helped prepare more senior attorneys for depositions and attended depositions; and worked on the massive discovery that was sought and produced. Following an approximately forty-day trial, the Court ruled in favor of our client, finding that CFLP had proven "an egregious breach of the partnership agreement" and was entitled to declaratory relief and attorney's fees. *See* 2000 WL 307370 (Del. Ch. Mar. 13, 2000).

Then-Vice Chancellor Myron T. Steele presided in the Delaware Court of Chancery. Counsel for Cantor were Stephen E. Jenkins & Richard I.G. Jones, Jr., Ashby & Geddes, 500 Delaware Avenue, Wilmington, Delaware 19801, (302) 654-1888; Barry I. Slotnick, Buchanan Ingersoll & Rooney, 620 Eighth Avenue, 23rd Floor, New York, New York 10018, (212) 440-4444; and Michael Shapiro, Carter Ledyard & Milburn, 2 Wall Street, New York, New York 10005, (212) 238-8676. My-counsel were Rodman Ward, Jr., Thomas J. Allingham II, and Karen L. Valihura, Skadden Arps Slate Meagher & Flom, One Rodney Square, Wilmington, Delaware 19801, (302) 651-3000.

10. *Cede & Co. v. Technicolor, Inc.*, Del. Ch. No. 7129.

From approximately late 1998 to late 2001, I was the sole associate on this long-running appraisal and breach of fiduciary duty case. The case had

begun in 1983. By the time of my involvement, there already had been a 47-day trial and three appeals to the Delaware Supreme Court. My responsibilities included helping write briefs that argued a new trial was not necessary, a position with which the Court of Chancery agreed. *See Cede & Co. v. Technicolor, Inc.*, 1999 WL 65042 (Del. Ch. Jan. 29, 1999). Following another appeal – in which I helped write the briefs – the Delaware Supreme Court disagreed, and remanded the case with directions that the Court of Chancery conduct a new trial. *See Cede & Co. v. Technicolor, Inc.*, 758 A.2d 485 (Del. 2000). Thereafter, until the time I left Skadden Arps at the end of 2001, I assisted with various matters, including successfully opposing the plaintiff's request that the Court of Chancery certify yet another interlocutory appeal to the Delaware Supreme Court. *See Cede & Co. v. Technicolor, Inc.*, 2001 WL 515106 (Del. Ch. May 7, 2001). I was not involved in the new trial or the subsequent appeal. *See Cede & Co. v. Technicolor, Inc.*, 884 A.2d 26 (Del. 2005).

The Delaware Supreme Court Panel was composed of Justice Joseph T. Walsh, Justice Randy J. Holland, and Retired Justice Maurice A. Hartnett, III. Chancellor William B. Chandler, III, presided in the Delaware Court of Chancery. Counsel for Cede & Co. were Robert K. Payson & Arthur L. Dent, Potter Anderson & Corroon, 1313 North Market Street, Hercules Plaza, Wilmington, Delaware 19801, (302) 984-6000 and Gary J. Greenberg, 12 West 57th Street, New York, New York 10019, (212) 246-1222. My co-counsel was Thomas J. Allingham II, Skadden Arps Slate Meagher & Flom, One Rodney Square, Wilmington, Delaware 19801, (302) 651-3070.

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

While an associate at Skadden Arps and as an Assistant United States Attorney, I worked almost exclusively on litigation.

As an associate at Skadden Arps, I was given substantial responsibility in representing a publicly-traded company and many of its employees and former employees in connection with a confidential SEC investigation of insider trading. I prepared approximately two dozen witnesses for SEC depositions and defended those depositions. Among my witnesses were the company's former CEO and CFO, other senior and mid-level officers, and executive assistants.

As part of a celebration that was held in February 2010 in honor of Third Circuit Judge Walter K. Stapleton's forty years on the federal bench, I helped produce a video entitled, "The Jury Is In: A Tribute to the Honorable Walter K. Stapleton." My primary role was to conduct interviews with approximately thirty of Judge Stapleton's current and former colleagues, former law clerks, and family and friends.

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

In the fall semesters of 1998 and 1999, I taught "Constitutional Law I" to upper-level undergraduates at the University of Delaware. The course focused on separation of powers and federalism.

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

None.

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

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, 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.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I would continue to follow the relevant statutory provisions and canons governing recusal, as I have while serving as a United States Magistrate Judge. I also would continue to automatically recuse myself in any cases involving the University of Delaware Alumni Association, so long as I sit on its board of directors. I do not foresee other likely potential conflicts-of-interest.

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

If confirmed, I will continue to handle all matters involving actual or potential conflicts of interest through the careful and diligent application of Canon 3 of the Code of Conduct for United States Judges as well as other relevant Canons and statutory provisions, including 28 U.S.C. §§ 144 and 455.

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

At Yale Law School, I participated in the Prison Legal Services Clinic, and served as a Supervising Student during my second semester in the Clinic. In this capacity, I provided pro bono representation to a federal inmate in connection with a parole hearing and state inmates in their efforts to obtain necessary medical treatment.

As a summer associate at Shea & Gardner, I provided pro bono representation to an individual who was appealing an administrative decision to deny his application for Social Security Disability Insurance benefits.

As an associate in private practice, I devoted more than 200 hours to helping research and draft an amicus curiae brief in support of a petition for writ of certiorari in the Supreme Court of the United States, on behalf of the National Association of Criminal Defense Lawyers. I provided additional pro bono assistance to an organization seeking to establish a charter school in Delaware. I also served on the District of Delaware's Criminal Justice Act Panel as an associate member to a more senior member of the firm, making me eligible to assist with the defense of indigent federal criminal defendants. I recall receiving only one case assignment in this capacity.

I also have been a volunteer for law-related education activities, including serving as a judge or juror for the Delaware and (when Delaware hosted it) National High School Mock Trial Competitions, serving as a judge for a trial advocacy course at Widener University Law School, helping judge students participating in Widener University Law School's Ruby Vale Moot Court Competition, judging a mock trial competition at Temple Law School, and speaking to high school students as part of the Delaware State Bar Association's Law Day activities.

26. **Selection Process:**

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

There is no selection commission in my jurisdiction to recommend candidates for nomination to the federal courts. Knowing that there was a vacancy on our District Court, on January 29, 2009, I sent my resume to the Office of the Vice President, expressing my interest in being considered for the position. On February 15, 2009, The News Journal reported that Senator Thomas R. Carper was soliciting applications from individuals interested in being considered for the judicial vacancy. In response, on February 25, 2009, I submitted my materials to Senator Carper's office. I have had intermittent contact with Senator Carper's office since that time. On March 12, 2009, I was interviewed by a senior member of Senator Carper's staff. On April 20, 2009, I was interviewed by Senator Carper. On April 24, 2009, Senator Carper informed me that he was submitting my name and two others to the White House for consideration for a possible nomination. On November 25, 2009, I was contacted by the United States Department of Justice Office of Legal Policy. Since then I have been in contact with pre-nomination officials at the Department of Justice. On February 2, 2010, I was interviewed at the Department of Justice by attorneys from the Department and from the Office of White House Counsel. On March 17, 2010, the President submitted my nomination to the Senate.

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

No.

AO 10
Rev. 1/2008

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Slark, Leonard P.	2. Court or Organization District of Delaware	3. Date of Report 3/16/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge-Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 3/17/2010 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/01/2009 to 2/28/2010
7. Chambers or Office Address 844 King Street Lockbox 28 Wilmington, DE 19801	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Director	University of Delaware Alumni Association
2.	
3.	
4.	
5.	

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT
Page 2 of 6

Name of Person Reporting Stark, Leonard P.	Date of Report 3/16/2010
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <small>(yours, not spouse's)</small>
1. 2010	Net rental income (former primary residence)	\$1,750.00
2.		
3.		
4.		

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

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

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2009	Self-employed, garden designer
2. 2010	Net rental income (former primary residence)
3.	
4.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment. (Includes those to spouse and dependents children; see pp. 25-27 of filing instructions.)*

NONE *(No reportable reimbursements.)*

	<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt					
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT
Page 3 of 6

Name of Person Reporting Stark, Leonard P.	Date of Report 3/16/2010
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. Exempt			
2.			
3.			
4.			
5.			

VI. LIABILITIES. (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Chase Manhattan	Mortgage on former primary residence later used as rental property in Wilmington, DE	M
2.	TD Bank	HELOC on former primary residence later used as rental property in Wilmington, DE (Pt. VII, line 13)	L
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Stark, Leonard P.	Date of Report 3/16/2010
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VII. INVESTMENTS and TRUSTS – Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (I-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	1. Wilmington Savings Fund Society	A	Interest	K	T	Exempt			
2. Ameriprise/Wachovia Marisco Growth Fund	A	Dividend	J	T					
3. Ameriprise/Wachovia RVST Equity Index Fund I	A	Dividend	J	T					
4. Vanguard Morgan Growth Fund	A	Dividend	J	T					
5. Fidelity Investments DE Portfolio 2024 (Index)		None	K	T					
6. Fidelity Investments Fidelity Asset Manager 70%	A	Dividend	J	T					
7. Fidelity Investments Fidelity Asset Manager 30%	A	Dividend	J	T					
8. Fidelity Investments DE Portfolio 2015		None	L	T					
9. Fidelity Investments DE Portfolio 2018		None	L	T					
10. Fidelity Investments Spartan 500 Index Investor Class	A	Dividend	J	T					
11. Fidelity Investments Fidelity Freedom 2030	A	Dividend	J	T					
12. Fidelity Investments Fidelity Cash Reserves	A	Interest	J	T					
13. Rental Prop. (former primary residence), Wilmington, DE	C	Rent							
14. ING Direct online savings account	A	Interest	J	T					
15.									
16.									
17.									

1. Income Gain Codes (See Columns D1 and D4)	A - \$1,000 or less F - \$50,001 - \$100,000	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000	D - \$5,001 - \$15,000 I - More than \$5,000,000	E - \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J - \$15,000 or less N - \$250,001 - \$500,000 P3 - \$25,000,001 - \$50,000,000	K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000	L - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000	M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q - Appraisal U - Bank Value	R - Cost (Real Estate Only) V - Other	S - Assessed W - Estimated	T - Cash Market	

FINANCIAL DISCLOSURE REPORT
 Page 5 of 6

Name of Person Reporting	Date of Report
Stark, Leonard P.	3/16/2010

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

Part III A. Non-reportable non-investment income was earned during the reporting period (salary from U.S. government for services as a U.S. Magistrate Judge).

Part VII Line 13: The rental property (our former residence in Wilmington, DE) was no longer rented after March 31, 2009. It was then sold on August 1, 2009.

FINANCIAL DISCLOSURE REPORT
 Page 6 of 6

Name of Person Reporting	Date of Report
Stark, Leonard P.	3/16/2010

IX. CERTIFICATION.

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

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

 Signature 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

Leonard Stark

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		40	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		8	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		484	000
Real estate owned-add schedule		612	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		45	000	Orthodontist		4	000
Cash value-life insurance							
Other assets itemize:		119	486				
Vanguard Mutual Funds		3	448				
Fidelity IRAs		32	527				
Fidelity 529 College Savings Accounts		176	548	Total liabilities		496	000
Amcriprise 401K		31	375	Net Worth		564	884
Total Assets	1	060	884	Total liabilities and net worth	1	060	884
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		No	
On leases or contracts				Are you defendant in any suits or legal actions?		No	
Legal Claims				Have you ever taken bankruptcy?		No	
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

<u>Other Assets</u>	
Thrift Savings Plan	\$119,486
<u>Real Estate Owned</u>	
Personal residence	\$612,500
<u>Real Estate Mortgages Payable</u>	
Personal residence – first mortgage	\$411,000
Home equity line of credit	<u>73,000</u>
Total Real Estate Mortgages Payable	\$484,000

Senator KAUFMAN. And again, thank your family for allowing you to embark on this adventure. I tell you, you are honored by having Judge Sleet and Professor Soles here with you two folks who are among the most respected in Delaware. So it's an honor for you to have them here and it's an honor for us that they are here.

What I'd like to do is just ask some questions. Senator Sessions is on his way, he should be here in a few minutes, but I'm just going to start and proceed. What I'd like to do is just ask a series of questions to both of you. We'll start with Mr. Lohier.

Could you briefly describe your judicial philosophy?

Mr. LOHIER. Yes, Senator. If I am fortunate enough to be confirmed as a Circuit Court Judge, my judicial philosophy would be very straightforward. That is that I would apply the law either Supreme Court precedent, binding Supreme Court precedent or binding Second Circuit Court precedent or the plain text of a statute.

I would apply that law to the facts in the record of the case and I would do so objectively, impartially and with an open mind.

Senator KAUFMAN. Thank you. Judge Stark.

Judge STARK. Yes, Senator. As a magistrate judge now and if fortunate enough to be confirmed as a District Court judge, my approach is to carefully apply the precedent of the Supreme Court and the Court of Appeals to the facts of the case as they appear before me.

Senator KAUFMAN. Mr. Lohier, you have spent 13 years as a Federal prosecutor. Can you kind of lay out what it is you learned in that that would be helpful to be on the bench?

Mr. LOHIER. I've learned a tremendous amount, Senator. First and foremost, as a prosecutor in the Southern District of New York, I had the great privilege of writing briefs and submitting briefs, as well as arguing orally before the Second Circuit Court of Appeals which is always a formidable experience.

In addition, I learned what it takes to create a record below the District level, what goes into a record and what the potential pitfalls and appealable issues below may be.

In addition to that, as a supervisor I was blessed. I was blessed to supervise some of the most outstanding, in my view, prosecutors in the country on very difficult cases, some of which you mentioned.

In the course of my supervision of those fine, fine, prosecutors, I had the opportunity to review decisions, to grapple with incredibly complex legal scenarios and legal issues, as well as a very wide array of facts, very complex facts both on the financial fraud front as well as the narcotics front.

As a result of that, I have had a wide range of experience that I think will serve me well.

Senator KAUFMAN. Thank you. Judge Stark, you worked as a judicial law clerk, private practice and a prosecutor. What did you learn from that that you think will help you be on the District Court?

Judge STARK. Thank you, Senator. I have had the opportunity to work with a number of truly phenomenal attorneys, both as a litigator in private practice and as an AUSA. I have had the opportunity to try cases, civil and criminal, in both state and Federal

court and I think through all that experience I have learned just both how difficult but how important it is to put together a case, to put together a record to vigorously represent your client's interest and to pursue justice.

I have found all of that to be helpful as a magistrate judge and I'm sure I would continue to find that helpful as well if I'm fortunate enough to be confirmed.

Senator KAUFMAN. Both of you have been prosecutors. Can you just spend a few minutes and talk about what you've learned as prosecutors and what you think of the effect of deterrents for white collar crime?

Mr. LOHIER.

Mr. LOHIER. With respect to white collar crime, Senator, and I know that you have worked incredibly hard in this area. I believe that the fight against financial fraud and the fight against financial crimes is a critical fight that our Nation faces.

Certainly as a judge, I will abide by the Supreme Court precedent and abide by and comply with any Second Circuit Court precedent in the area of financial crimes, but it means a lot to me and I have learned how critical that fight is to the integrity of our markets.

Senator KAUFMAN. Judge Stark.

Judge STARK. And I would certainly echo what Mr. Lohier has said. From my experience as a prosecutor, I believe prosecuting white collar offenses is just as important as prosecuting other types of offenses. There certainly is a deterrent effect from prosecutions, and that's very important.

Senator KAUFMAN. And how much of it do you think is stiffer sentences or surety of longer prison sentences? I mean, is there any one thing that you think really is more helpful than another as a deterrent?

Mr. LOHIER. I think stiffer sentences do have a deterrent effect, Senator. I also think that the regulation in place that is in place to make sure that the defendants know what the line is are critical, and those bright line rules that we have in place are also critical to combat financial crime.

Senator KAUFMAN. Great. I want to thank you both for this hearing. Judge Sessions is held up in his meeting, so what I would like to do is thank you both for being here today, congratulate you on your nominations. I think it is easy to see that you are both truly qualified and we are grateful, as I said before, grateful to you but even more grateful to your spouses and friends and family that you answered the Federal services call and are willing to serve in the positions that you have.

I wish you the very best of luck. I have no doubt you're going to have wonderful careers and I'm looking forward to seeing you confirmed out of the Senate and onto your posts. So with that, I'll adjourn.

I'd like to keep the record open in case anyone has anything to add until noon tomorrow. We stand in recess.

[Whereupon, at 3:30 p.m., the Committee was adjourned.]

[Questions and answers and submissions follow.]

QUESTIONS AND ANSWERS

Responses of Raymond Joseph Lohier, Jr.
 Nominee to be United States Circuit Judge for the Second Circuit
 to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No.

2. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. **Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. **Why or why not?**

Response: The Supreme Court has more recently addressed this issue in *Gonzales v. Raich*, which squared the holdings in *Lopez* and *Morrison* with the Court’s Commerce Clause precedent. If confirmed, I would follow that precedent.

3. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: In *Roper*, the Supreme Court relied in part on evolving standards of decency, and, if confirmed, I would faithfully apply that Supreme Court precedent.

- a. **Do you believe evolving standards of decency are relevant to a court’s evaluation of the text of the Constitution or Bill of Rights?**

Response: According to the Supreme Court’s binding decision in *Roper*, evolving standards of decency are relevant to assessing the proportionality of punishments for capital offenses under the Eighth Amendment.

- b. **How would you determine what the evolving standards of decency are?**

Response: In assessing the proportionality of punishments for capital cases under the Eighth Amendment, I would, if confirmed, apply and follow the analysis set forth by

the Supreme Court in *Roper*, which directs lower courts to begin with a review of objective indicia of consensus, as expressed by legislative enactments.

c. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?

Response: The Supreme Court has ruled that the death penalty is not unconstitutional in all cases, and, if confirmed, I would be bound by that precedent.

d. What factors do you believe would be relevant to the judge’s analysis?

Response: Please see my response above.

4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: In some very limited circumstances involving the interpretation of international contracts or the obligations of the United States under an international treaty ratified by the United States, it may be necessary to consider international law. The foreign law of foreign nations, by contrast, should have no bearing on the meaning of the Constitution. If confirmed, I would interpret the Constitution according to its text, history, and binding Supreme Court and Second Circuit precedent, not according to the foreign laws of other nations.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Please see my response above.

b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: Outside of the obligations of the United States under an international treaty ratified by the United States, no.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: Please see my response above.

5. The American Bar Association’s Standing Committee on the Judiciary rated your nomination “Substantial Majority Qualified, Minority Not Qualified.” Were you satisfied with the ABA’s review of your record?

Response: The ABA did not provide me with any specific information about the scope or nature of its review.

a. Do you believe you deserved the rating you received, specifically the “Minority Not Qualified”?

Response: Although the ABA’s official rating was “Qualified,” I do not agree with the insubstantial minority of the ABA’s Standing Committee on the Judiciary that voted to rate my nomination as “Not Qualified.”

b. Did the ABA explain why you received the “Minority Not Qualified” rating?

Response: The ABA did not explain, and I did not ask, why some member(s) of the ABA’s Standing Committee on the Judiciary disagreed with the substantial majority of the Committee, which determined I was qualified.

c. Did you agree with their analysis of the factors that resulted in the “Minority Not Qualified” rating?

Response: Please see my response above.

d. Did you have an opportunity to provide contrary evidence prior to the Committee’s vote to counter the findings that resulted in the “Minority Not Qualified” rating?

Response: I was not asked to provide and did not volunteer any additional information after I learned about the vote of the ABA’s Standing Committee on the Judiciary.

6. Prior to hear Supreme Court hearing, Justice Sonia Sotomayor asserted that “personal experiences affect the facts that judges choose to see.” Do you agree with Justice Sotomayor’s statement?

Response: I am not familiar with the context in which Justice Sotomayor made that statement, but if confirmed I will objectively and impartially consider all relevant facts. That is the job of a judge.

**Responses of Raymond Joseph Lohier, Jr.
Nominee to be United States Circuit Judge for the Second Circuit
to the Written Questions of Senator Jeff Sessions**

- 1. You participated in the drafting of a report by the New York Gubernatorial Task Force on Judicial Diversity, which noted that diversity “actually helps improve the quality of judicial decision-making” because different backgrounds “keep the law rooted in the experience of our whole society.”**

Response: I participated in drafting the report that was ultimately issued by the New York Gubernatorial Task Force on Judicial Diversity based on comments from and views expressed by members of the Task Force. I was not a signatory to the report.

- a. Do you agree with the report’s conclusion that diversity “actually helps improve the quality of judicial decision-making”?**

Response: Experiential, gender, racial, ethnic, religious and other categories of diversity is important to maintain and enhance public confidence in the judiciary. It neither improves nor degrades the quality of judicial decision-making itself, and it does not serve as a proxy for arriving at any particular result in a case.

- i. If so, how does diversity help improve the quality of decision-making?**

Response: Please see my response above.

- ii. What role, if any, do you believe diversity plays or should play in judicial decision-making?**

Response: Diversity in the judiciary plays an important role in enhancing the confidence of litigants, lawyers and members of the public of all backgrounds that everyone will be treated fairly and equally under the law, regardless of background.

- b. How can litigants know that they are being treated fairly if a judge’s background, rather than the application of the law to the facts, affects his or her legal decisions?**

Response: A judge’s application of the law to the facts alone should affect his or her legal decisions.

- 2. The report offered several suggestions on ways to improve judicial diversity within the New York court system, including that judicial screening panels should “consider any lack of diversity in the appointments already made by others and, if several persons are to make appointments at the same time, those persons confer with regard to adequate diversity prior to making appointments.”**

Response: I participated in drafting the report that was ultimately issued by the New York Gubernatorial Task Force on Judicial Diversity based on comments from and views expressed by members of the Task Force. I was not a signatory to the report.

- a. **Do you personally agree that selection panels should consider whether a particular appointment would improve judicial diversity?**

Response: Yes. I personally believe that diversity in the judiciary plays a role in enhancing the confidence of litigants, lawyers and members of the public of all backgrounds that everyone will be treated fairly and equally under the law, regardless of background.

- b. **If so, what weight should diversity be given during that selection process?**

Response: The preeminent function of a selection panel is the selection of qualified judges. As long as diversity is also considered as a factor, what weight to give it rests with the selection panel.

3. **During the 2008 presidential campaign, President Obama described the types of judges that he will nominate to the federal bench as follows:**

“We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”

- a. **Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama’s criteria for federal judges, as described in his quote?**

Response: If confirmed, I would treat every litigant, regardless of background, fairly, without bias, and with respect. I also would work hard to understand and carefully consider the arguments and facts presented by every litigant.

- b. **During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: I agree that judges should not apply feelings to facts and should apply the law to facts.

- c. **What role do you believe empathy should play in a judge’s consideration of a case?**

Response: If “empathy” in the judicial context means only the ability and willingness to understand the arguments and facts presented by litigants, as opposed to sharing their feelings, then I believe it is an important quality for a judge to have.

- d. **Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?**

Response: No.

- i. **If so, under what circumstances?**

Response: Please see my response above.

- e. **As you know, Justice Stevens recently announced his retirement. The President said that he will select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: Judges should base their decisions solely on the law and facts presented in a case.

4. **Please describe with particularity the process by which these questions were answered.**

Response: I drafted these answers, and they are mine.

5. **Do these answers reflect your true and personal views?**

Response: Yes.

**Responses of Leonard P. Stark
Nominee to be United States District Judge for the District of Delaware
to the Written Questions of Senator Tom Coburn, M.D.**

1. **Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No. The text of the Constitution is fixed (absent amendment through the Article V amendment process).

2. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. **Do you believe *Lopez* and *Morrison* are consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. **Why or why not?**

Response: The Supreme Court stated in *Lopez* and *Morrison*, as well as in *Gonzales v. Raich*, 545 U.S. 1 (2005), that its decisions in these recent cases are consistent with its earlier Commerce Clause decisions.

3. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: As a United States Magistrate Judge, I have not had occasion to consider the analysis referenced here. As a Magistrate Judge—and if confirmed as a District Court Judge—my obligation is to follow the binding precedent of the Supreme Court and the Court of Appeals.

- a. **Do you believe evolving standards of decency are relevant to a court’s evaluation of the text of the Constitution or Bill of Rights?**

Response: No, except to the extent that the binding precedent of the Supreme Court and the Court of Appeals requires otherwise.

- b. **How would you determine what the evolving standards of decency are?**

Response: If, under the precedent of the Supreme Court or the Court of Appeals, I were required in a particular case to assess evolving standards of decency, I would do so in the manner set forth in the decisions of these higher courts.

- c. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: The Supreme Court has held that the death penalty is constitutional. A judge could not find it unconstitutional in all cases.

- d. What factors do you believe would be relevant to the judge’s analysis?**

Response: A judge should follow the precedent of the Supreme Court and the Court of Appeals.

- 4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: No, except to the extent the binding precedent of the Supreme Court and the Court of Appeals requires otherwise.

- a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: Only under circumstances in which the Supreme Court or the Court of Appeals has held that it is proper to do so.

- b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: As a federal judge operating in the American justice system, my obligation is to apply and interpret the law of the United States, and in doing so I am bound to follow the law of the United States.

- c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?**

Response: No, except to the extent the binding precedent of the Supreme Court and the Court of Appeals requires otherwise.

**Responses of Leonard P. Stark
Nominee to be United States District Judge for the District of Delaware
to the Written Questions of Senator Jeff Sessions.**

1. **In your questionnaire, you indicated that you taught Constitutional Law to undergraduates at the University of Delaware in 1998 and 1999, and you included a syllabus from your Fall 1998 class. The syllabus stated that the course “will pay particular attention to the impact of evolving constitutional interpretation on political events.”**

a. What did you mean by this statement?

Response: I believe the phrase about which you are asking is from a 1998 course catalog. I did not mean to imply that the Constitution was evolving. Rather, I meant that the course would include discussion of a number of legal questions related to political topics that had received or were receiving attention from the Supreme Court and/or the media, including (as the course catalog states): “Can a sitting president be indicted or made to answer a civil suit? When, and on what grounds, may Congress impeach a president or federal judge? Is the statute authorizing a special prosecutor to investigate high-ranking government officials an impermissible infringement on executive power? Can states limit the terms that their Representatives and Senators are eligible to serve in Congress?”

b. Do you think that the interpretation of the Constitution should change based on evolving societal norms?

Response: The interpretation of the Constitution is governed by the Supreme Court and the Court of Appeals. In my current position as a United States Magistrate Judge, and in the future if confirmed as a District Court Judge, my obligation is to follow the binding precedents of the Supreme Court and the Court of Appeals.

c. Do you believe the Constitution is a living document?

Response: No. The text of the Constitution is fixed (absent amendment through the Article V amendment process).

d. What in your view is the role of a judge?

Response: I believe the role of a District Court Judge is to apply the precedents of the Supreme Court and the Court of Appeals to the facts of the particular case before the judge, as carefully and impartially—and in as timely a manner—as humanly possible. This is what I have strived to

do as a United States Magistrate Judge and would continue to do if confirmed as a District Court Judge.

2. In your questionnaire, you indicated that 100% of the cases you have presided over as a magistrate have been civil proceedings. Criminal cases account for a substantial portion of the federal docket.

a. How has your experience as a magistrate judge prepared you for the position to which you have been nominated?

Response: My experience as a United States Magistrate Judge has prepared me for the position of District Court Judge by giving me the opportunity to handle criminal cases. My responsibilities in criminal matters include serving as our District's criminal duty judge every other week. In this capacity I preside at initial appearances, preliminary hearings, detention and bail hearings, and arraignments in all types of felony prosecutions. I also review proposed criminal complaints and search warrant applications. A recent review of my docket also reflects that I have presided over approximately five misdemeanor cases to judgment, including sentencing.

b. If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?

Response: I am familiar with federal criminal law and federal sentencing guidelines, both from my experience as a United States Magistrate Judge and from my five and one-half years as an Assistant United States Attorney. As a Magistrate Judge, my criminal responsibilities include serving as our District's criminal duty judge every other week; presiding at initial appearances, preliminary hearings, bail and detention hearings, and arraignments; reviewing proposed criminal complaints and search warrant applications; and presiding over misdemeanor cases through sentencing. I will also rely on the knowledge I gained earlier in my career as an AUSA, in which capacity I prosecuted a wide variety of federal criminal offenses, including health care fraud, bank robbery, firearms offenses, narcotics, and racketeering. I handled cases from the investigative stage through sentencing and appeals, all of which gave me substantial experience with federal criminal law and the sentencing guidelines. If confirmed, I will also take advantage of training and education available to District Court Judges, as I have done as a Magistrate Judge.

c. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?

Response: Yes.

d. What are your general views of the sentencing guidelines?

Response: My view is that the sentencing guidelines are a crucial consideration in any sentencing decision. I believe this is why, under controlling Third Circuit precedent, a sentencing judge is required to begin the analysis of an appropriate sentence by calculating the applicable guideline range.

3. During the 2008 presidential campaign, President Obama described the types of judges that he will nominate to the federal bench as follows:

“We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”

a. Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama’s criteria for federal judges, as described in his quote?

Response: To the extent the President’s concept of empathy requires that federal judges be committed to treating all individuals who appear before them with fairness, putting aside any personal bias or prejudice, and to do the work necessary to understand and critically evaluate the positions of all who come before the judge, I believe I satisfy his criteria.

b. During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?

Response: Yes.

c. What role do you believe empathy should play in a judge’s consideration of a case?

Response: When making decisions, a judge must put aside whatever emotions or feelings the judge may feel for or against a litigant. The judge’s decision should be based solely on a careful, impartial application of the law to the facts.

d. Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response: Not applicable.

ii. Please identify any cases in which you have done so.

Response: I do not recall any such case.

iii. If not, please discuss an example of a case where you have had to set aside your own subjective sense of empathy and rule based solely on the law.

Response: I do not recall any such case. My rulings are based solely on the law and the facts.

e. As you know, Justice Stevens recently announced his retirement. The President said that he will select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?

Response: I believe judges should base their decisions solely on the law and facts presented.

4. Please describe with particularity the process by which these questions were answered.

Response: I received the questions directed to me through the Department of Justice (DOJ) on April 29, 2010. I reviewed the questions and the materials referenced in them and then prepared my responses. Later I discussed my responses with DOJ and then finalized my responses. On May 3, 2010, I asked that DOJ forward my responses to the Senate Judiciary Committee on my behalf.

5. Do these answers reflect your true and personal views?

Response: Yes.

SUBMISSIONS FOR THE RECORD



Frederick L. Cottrell III
302-651-7509
Cottrell@rlf.com

March 23, 2010

The Honorable Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-0104

The Honorable Jeff Sessions
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-0104

Re: Nomination of Magistrate Judge Leonard Stark for the United States District Court for the District of Delaware

Dear Senators Leahy and Sessions:

As a Republican, I frankly disagree with the President on many issues. However, I write in strong support of the recent nomination by the President of Magistrate Judge Leonard Stark to be a United States District Court Judge for the District of Delaware. I know Judge Stark both personally and professionally. He is extremely bright, hard-working, moderate in his views and would be an excellent addition to the Delaware District Court. He is a fellow graduate of the University of Delaware and, I believe, would not bring a liberal or political agenda to the Court and would take his role as an "umpire" of the law seriously. In short, I do not believe he will legislate from the bench and I would respectfully urge all members of the Judiciary Committee to approve this nomination quickly. This is one nomination from the Administration all Republicans should support.

Thank you for your time and consideration of this important matter and please do not hesitate to call me with any questions.

Respectfully,

Frederick L. Cottrell III

FLC,II/afg

cc: The Honorable Thomas Carper
The Honorable Edward Kaufman
The Honorable Michael Castle

■ ■ ■

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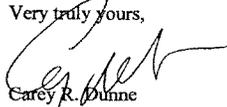
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Dear Mr. Cohen:

We are pleased to inform you that the Committee on the Judiciary of The Association of the Bar of the City of New York has found Raymond Lohier, Jr., Esq. APPROVED for appointment to the United States Court of Appeals for the Second Circuit.

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Very truly yours,


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STATEMENT FOR THE RECORD

Senator Kirsten E. Gillibrand

April 22, 2010

Mr. Chairman, I am pleased to offer my support for the confirmation of a highly talented and accomplished New Yorker, Raymond J. Lohier, Jr., who has been nominated by President Obama to serve on the United States Circuit Court of Appeals for the Second Circuit. Ray has been nominated to fill the vacancy left by the elevation of Associate Justice Sonia Sotomayor to the U.S. Supreme Court, and I know that he will bring the same commitment to justice, fairness, and the rule of law to that distinguished court that was demonstrated by Justice Sotomayor for more than a decade.

A *cum laude* graduate from Harvard College, and alumnus of the New York University School of Law, where he earned his Juris Doctorate and was awarded the Vanderbilt Medal, and former Editor-in-Chief of the Annual Survey of American Law, Ray possesses a stellar academic background. His professional record, most notably as a federal prosecutor, is equally impressive and has prepared him well to serve with distinction on the United States Court of Appeals.

For nearly a decade, Ray Lohier has served as an Assistant United States Attorney for the Southern District of New York; most recently leading that Office's efforts to prosecute securities and commodities fraud. As an Assistant U.S. Attorney, Ray Lohier has been involved in the prosecution of some of the most challenging and complex cases of securities fraud, commodities fraud, insider trading, and Ponzi schemes to recently come before the Second Circuit, including the high profile prosecution of Bernard Madoff for a Ponzi scheme that defrauded billions of dollars from New Yorkers and individuals across the country. Prior to that, he served as a Senior Trial Attorney in the Civil Rights Division of the U.S. Department of Justice.

Ray is also committed to public service and serves on Brooklyn Community Board 6, where he is currently First Vice Chairman and Chair of the Public Safety Committee. As an attorney in private practice at the firm of Cleary, Gottlieb, Stein & Hamilton, in New York City, Ray was a member of the firm's pro bono committee while also serving the State of New York on the Gubernatorial Task Force on Judicial Diversity on the Bench and the Second Circuit Task Force on Gender, Racial and Ethnic Fairness in the Courts, Subcommittee on Court Appointments. Ray has also been a member of the National Black Prosecutors Association.

In addition to all that he has accomplished as an attorney, Ray has been married for the past 10 years to Donna, a professor at CUNY law school and former Chair of the New York Asian Women's Center. Together they are raising two children, William, who is 8 years old, and John, who is 6.

Thank you, Mr. Chairman, for your leadership and tireless efforts in this Committee and in the United States Senate to quickly and fairly confirm highly qualified individuals such

as Ray Lohier. I wholeheartedly endorse this nomination, and believe that if confirmed, Ray will be an outstanding addition to the Second Circuit bench. He will be a judge committed to the rule of law and civil rights. I hope that the Judiciary Committee will swiftly and favorably report his confirmation to the full Senate for an up or down vote, so that he may begin the next chapter of his service to our country on the federal bench.

Statement of

The Honorable Patrick LeahyUnited States Senator
Vermont
April 22, 2010

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
April 22, 2010

Today we welcome to the Committee two of President Obama's nominees to fill vacancies on the Federal bench, Raymond J. Lohier, Jr., of New York, nominated to fill a seat on the Second Circuit, and Leonard P. Stark, nominated to fill a vacancy on the District Court for the District of Delaware. Both of these nominees will bring impressive experience to the bench. Mr. Lohier has served for the past 10 years as an Assistant U.S. Attorney for the Southern District of New York, and Judge Stark has served for the past three years as a Magistrate Judge on the court to which he is now nominated for a lifetime position. Both nominees come to the Committee with the strong support of their home state Senators. I hope we can consider them both promptly and help address the growing crisis of judicial vacancies.

I thank Senator Kaufman for chairing the hearing today. I know he has a particular interest in the nomination of Judge Stark from his home state of Delaware. I also want to again thank Senator Kaufman for his persistent efforts on behalf of the nomination of Chris Schroeder to lead the Office of Legal Policy at the Department of Justice. Those efforts led to a strong bipartisan vote to confirm Mr. Schroeder yesterday, after months of delay.

Yesterday, the Senate also confirmed its first Federal circuit or district court nomination in over a month. Yet, even after confirming Judge Thomas Vanaskie to the Third Circuit yesterday and Judge Denny Chin to the Second Circuit this morning, the Senate has confirmed only 20 of President Obama's circuit and district court nominations in the 15 months of his presidency. By contrast, during the 17 months I chaired the Judiciary Committee during President Bush's first two years, the Senate confirmed 100 of his judicial nominees. Quite a contrast. Because of Republican obstruction of this President's nominees, the Senate is barely at 20 percent of the total that we achieved back in 2001 and 2002.

In order for the Senate to carry out its constitutional advice and consent role by considering these well-qualified, non-controversial nominations, we had to overcome Republican obstruction by filing cloture petitions and then devoting entire days to so-called "debate" on nominations that Republican objections had stalled for months. Twenty-three judicial nominations reported favorably by this Committee remain stalled on the Executive Calendar awaiting Senate

consideration. Seventeen of them were reported without a single dissenting vote by the Republican and Democratic Senators serving on the Judiciary Committee.

By this date in George W. Bush's presidency, with a Democratic Senate majority, the Senate had confirmed 45 Federal circuit and district court judges. Despite the fact that President Obama began sending judicial nominations to the Senate two months earlier than President Bush, the Senate is far behind the pace we set during the Bush administration. In the second half of 2001 and through 2002 the Senate confirmed 100 of President Bush's judicial nominees. Given Republican delay and obstruction, this Senate may not achieve half that by the end of this year. The costs of this obstruction are borne, as usual, by the American people, as judicial vacancies have skyrocketed to more than 100, more than 40 of them designated as "judicial emergencies" by the Administrative Office of the U.S. Courts.

Earlier today the Senate finally confirmed Judge Denny Chin to fill one of the four current vacancies on the Second Circuit's panel of 13 judges, all of which are judicial emergencies. Mr. Lohier would fill another. Holding these vacancies open is wrong and recalls the years during the Clinton administration when similar Republican practices led to Chief Judge Winter declaring that the entire Circuit was in an emergency in order to continue to operate with panels containing only a single Second Circuit judge.

That was the time when Senate Republicans were holding up the nomination of then Judge Sonia Sotomayor to the Second Circuit. Paul Gigot wrote a column in the Wall Street Journal conceding that they were doing so because they were afraid that President Clinton would nominate her to the Supreme Court that summer if there was a vacancy. I recall that the secret hold on her nomination went on for seven months without any explanation or justification. I spoke on the floor more than a dozen times about the nomination, but Senate Republicans then in the majority refused to take it up despite the judicial emergency declared by Judge Winter. They did not lift the hold and agree to consideration until October 1998 when the possibility of a Supreme Court vacancy had passed for the year. They put politics ahead of the needs of the Second Circuit and the people who relied on those courts for justice.

That was the same period of time Republicans allowed the confirmation of only 17 of President Clinton's judicial nominees for the entire 1996 session, a figure not equaled until their obstruction led to the confirmation of only 12 circuit and district court nominations last year, which was the lowest annual total in more than 50 years. The failure of the Republican majority to address skyrocketing judicial vacancies ultimately led Chief Justice Rehnquist to publicly criticize their actions. They pocket filibustered more than 60 of President Clinton's nominees.

I tried to do better when I became Judiciary chairman during President Bush's first term and we confirmed 100 of his judicial nominations in 17 months. Regrettably, that progress has not been reciprocated. Judicial vacancies have skyrocketed again.

We must do better. We have a chance to do so with the nominations of Mr. Lohier and Judge Chatigny. I hope that they do not face the same delays that have held up so many nominations this Congress. With respect to today's nominee, Mr. Lohier has for the past 10 years served as an Assistant U.S. Attorney for the Southern District of New York. Before that he served as a trial

attorney in the Civil Rights Division of the U.S. Department of Justice, worked in private practice in New York, and served as a law clerk to Judge Robert P. Patterson, Jr. on the Southern District of New York.

Mr. Lohier is a Haitian American who graduated with honors from Harvard University and then received his law degree from one of the Nation's leading law schools, New York University School of Law, where he was the recipient of the school's highest honor, the Vanderbilt Medal, and was editor-in-chief of the Annual Survey of American Law.

Judge Stark has been a Magistrate Judge since 2007. He previously served as Assistant U.S. Attorney for the District of Delaware, worked in private practice in Wilmington and served as a law clerk for Judge Walter K. Stapleton of the Third Circuit. Born in Detroit, Michigan, Judge Stark graduated with honors from the University of Delaware, where he received the Taylor Award for Outstanding Senior Male and was named to the USA-Today All-USA College Academic First Team. A Rhodes Scholar, Judge Stark obtained a Ph.D. from Oxford University in 1993. He then earned his law degree from Yale Law School, where he was an editor of the Yale Law Journal.

Both nominees before us today will make fine additions to the Federal bench. I look forward to hearing from them today and promptly considering their nominations in Committee and seeing them promptly considered and confirmed by the Senate.

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Statement of Senator Charles E. Schumer
On the Nomination of
Raymond J. Lohier to the United States Court of Appeals for the Second Circuit

I am extremely proud to support the nomination of Raymond J. Lohier to the Second Circuit Court of Appeals. I recommended Mr. Lohier to the President not only because of his exceptional qualifications and outstanding professional record, but also because I believe he brings the kind of practical real world experience our courts desperately need.

Mr. Lohier's academic credentials speak for themselves. He is a cum laude graduate of Harvard College and a graduate of the New York University School of Law, where he was Editor in Chief of the Annual Survey of American Law and recipient of the Vanderbilt Medal. As a young lawyer, Mr. Lohier clerked for the Hon. Robert P. Patterson, Jr., who serves on the United States District Court for the Southern District of New York.

Early in his career, Mr. Lohier gained valuable private sector experience as an associate in the prestigious law firm Cleary, Gottlieb, Steen & Hamilton, where he handled a mix of complex civil and criminal cases. During this time, he also served on the New York Gubernatorial Task Force on Minority Representation on the Bench.

Mr. Lohier's devotion to public service drew him to the Department of Justice. He served first for three years in the Civil Rights Division, and then in 2000 he became an Assistant United States Attorney in the Southern District of New York -- one of the top, if not the top, prosecutor's offices in the country.

He swiftly distinguished himself in the Southern District, and was promoted with unusual speed. He became deputy chief and then chief of the Narcotics Unit, and rose to deputy chief, and finally, chief of the Securities and Commodities Fraud Task Force. In that job, Mr. Lohier was on the front lines of the war against financial fraud, which is currently one of the most important missions of the Department of Justice. He worked on the prosecution of Marc Dreier, resulting in a 20-year prison sentence for Dreier's ponzi scheme. And, he has overseen the investigation into Bernard Madoff's unprecedented financial fraud. Since his nomination to the Second Circuit, he has served as Special Counsel to the U.S. Attorney for the Southern District.

Throughout his career, Mr. Lohier has demonstrated his dedication to his community and his profession. He serves as the First Vice-Chairperson of the Brooklyn Community Board 6, and has held leadership positions in local and national bar associations.

I have always had three standards in evaluating judicial nominees: excellence, moderation, and diversity. Mr. Lohier easily meets all three. His academic and professional experiences clearly put him at the forefront of the legal profession. His experience in both the public and private sectors suggests a mainstream worldview that will allow him to understand and appreciate the arguments of the range of litigants that will appear before him. And finally, his Haitian heritage will enhance the diversity of the federal bench.

Mr. Lohier's outstanding leadership skills, his intellect, his commitment to justice, his deep connections to New York, and his extensive experience make him an exceptional choice for a position on the United States Court of Appeals for the Second Circuit.

**NOMINATIONS OF ROBERT N. CHATIGNY,
NOMINEE TO BE U.S. CIRCUIT JUDGE FOR
THE SECOND CIRCUIT; AND JOHN A.
GIBNEY, NOMINEE TO BE U.S. DISTRICT
JUDGE FOR THE EASTERN DISTRICT OF
VIRGINIA**

WEDNESDAY, APRIL 28, 2010
U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:35 p.m., Room SD-226, Dirksen Senate Office Building, Hon. Amy Klobuchar presiding.

Present: Senators Sessions, Grassley, Kyl, and Coburn.

**OPENING STATEMENT OF HON. AMY KLOBUCHAR A U.S.
SENATOR FROM THE STATE OF MINNESOTA**

Senator KLOBUCHAR. All right. I'm pleased to call this nominations hearing of the Senate Judiciary Committee to order.

I want to give a warm welcome to both of our nominees. I can tell you, the last nomination hearing that I chaired—I think Senator Sessions was there—was in the middle of the snow blizzard and our nominees were stranded in a hotel room with their babies for 6 days, so they were really happy to come out and be here.

So, it is great to be here with our judicial nominees, Robert Chatigny, as well as the second one, who is Mr. Gibney. So, thank you very much, both of you, for being here. We have many Senators, seven Senators, here for this great event. So we'll start here with Senator Dodd, who was here first. I know that he is going to speak and introduce Robert Chatigny, as is Senator Lieberman.

Senator Dodd.

**PRESENTATION OF ROBERT N. CHATIGNY, NOMINEE TO BE
U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT BY HON.
CHRISTOPHER J. DODD, A U.S. SENATOR FROM THE STATE
OF CONNECTICUT**

Senator DODD. Thank you very much, Madam Chairman, Senator Sessions, Senator Grassley. Of course, I am delighted to be talking about anything but financial reform at this point.

[Laughter.]

Senator DODD. So I may stay here and filibuster the rest of the afternoon on this matter so I don't have to go back to these other issues. But I'm delighted to be here this afternoon and to introduce,

along with obviously Joe, my great pal and friend here, an individual that I not only respect immensely, but is my great, great friend for many, many years, and his family as well.

He's here, Madam Chairman, with his wife Stacy in the back. He'll want to introduce these people himself, probably. Stacy and two sons, John and Peter, who are here, and sister-in-law Sugar, his mother-in-law Elaine is back there as well, sister-in-law Barb, brother Vic, are all the family kind of gathered around as well. So we're delighted to recommend or to introduce them as well, so I thank you for having this hearing.

Judge Chatigny's outstanding resume, Madam Chairman, I think makes it clear that he's tremendously well-qualified to serve on the Second Circuit of the Court of Appeals. I want to congratulate President Obama for this excellent nomination.

In 1994, President Clinton nominated Judge Chatigny, Bob, to serve on the District Court and Judge Chatigny was confirmed unanimously by the U.S. Senate in 1994. For nearly 16 years he has been a Federal judge in Connecticut, serving as chief judge for the District of Connecticut from 2003 to 2009. In addition to ruling on a wide variety of cases, Judge Chatigny has earned a reputation of integrity, intelligence, and strict adherence to the rule of law.

So I am pleased that Judge Chatigny has received the support of numerous former Federal prosecutors in Connecticut who understand the importance of upholding the rule of law and vouch for his character and his qualifications.

Allow me to quote from a letter that I think was sent to the Committee, Madam Chairman, from three former U.S. Attorneys, each of whom happened to be appointed by Republican Presidents at the time who served well and with great distinction in our State. In their letter to you and to the members of the Committee, they said this about Judge Bob Chatigny: "We believe that he is a fair-minded and impartial judge who has the appropriate fitness and temperament for the appellate court."

In addition, Madam Chairman, the Committee has also received a letter signed by nearly 20 Assistant U.S. Attorneys currently practicing in Connecticut in which they express their confidence as well that Judge Bob Chatigny would be "unbiased, compassionate, and temperate". Clearly, Madam Chairman, Bob has the confidence and the support of the Connecticut legal and law enforcement communities in our State.

Judge Chatigny's legal experience prior to his appointment reveals a very rich understanding of, and a very deep, deep commitment to, the American legal system. After graduating from Brown University and Georgetown University Law Center, he served as clerk to three Federal judges, including Judges John Newman and Jose Cabranas. Prior to his service on the court, Bob built an excellent reputation in private practice, first as an associate at Williams & Connolly here in Washington, then returning to private practice in Hartford, Connecticut for a decade.

In addition, Judge Chatigny has devoted substantial time and effort to improving the legal profession. When the Governor of Connecticut sought experienced and knowledgeable public servants to help make up better public policy, Judge Chatigny was the easy

choice, serving on both the State Judicial Selection Commission and the State Commission on Prison and Jail Overcrowding.

In addition, he has served various roles with the Connecticut Bar Association, as well as being an advisor to the congressionally created Federal Court's Study Committee. There can be very little doubt—no doubt whatsoever then—that this man's talents, his temperament are tremendous well-suited for service on the Second Circuit Court of Appeals.

On a personal note, Madam Chairman, I have had the privilege of getting to know Bob for many, many years. His wife Stacy and her parents I knew even before I knew Bob and we go back a long time. They're very, very close, wonderful friends of my parents as well. As a friend of Bob's and someone who recognizes his tremendous accomplishments, I am grateful that he has agreed to continue his service to our country by allowing his name to be put forward for this very, very important position. As a Senator, I am proud to recommend to you one of the State's finest jurists, Bob Chatigny, as the next member of the U.S. Court of Appeals for the Second Circuit.

I would say on a side note, not part of these remarks, in terms of a full disclosure, that 11 years ago this June, Bob also married me and my wife Jackie. Jackie is not here to testify, I believe, on his behalf after 11 years, but I believe she would as well. So I know that's not part of the remarks and no reason for his name to be forward for you to consider voting for him, but I would be remiss if I didn't thank him publicly as well for performing those duties on that day.

Senator SESSIONS. Well, that was a good act.

Senator DODD. Yes, it was.

[Laughter.]

Senator DODD. He was impartial, too. Showed good temperament, Jeff.

Senator KLOBUCHAR. And thank you, Senator Dodd, for revealing that conflict of interest.

Senator DODD. That is a conflict.

[Laughter.]

Senator KLOBUCHAR. That was very, very smart.

Judge, I see you also have half of the independent caucus of the U.S. Senate here in your other Connecticut Senator.

Senator Lieberman, welcome.

PRESENTATION OF ROBERT N. CHATIGNY, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT BY HON. JOSEPH LIEBERMAN, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator LIEBERMAN. Thanks, Madam Chair, Senator Sessions, members of the Committee. I thank you for giving me this opportunity to join my dear colleague and friend, Senator Dodd, in support of Judge Robert Chatigny's nomination to serve on the U.S. Court of Appeals for the Second Circuit.

I am proud to be here to support the nomination. I'm delighted to see his family. I want to mention, his late father-in-law, Peter Savin, who was a great friend to Senator Dodd and me, a wonderful citizen in Connecticut, very charitable, just a lot of fun to be

with, passed away some years ago so he's not here in person. But I actually felt that he called me when I was in a conference committee a while ago and said, now, get up and get over to give your statement for Bob. That's important.

Senator Dodd and I, together, recommended Judge Chatigny to President Clinton in 1994 for a vacancy that then existed on the District Court in Connecticut, and he was, I am happy to say, nominated and confirmed by the Senate unanimously. In fact, from 2003 to 2009, Judge Chatigny was the chief judge for the District of Connecticut.

Throughout his tenure on the court he has demonstrated a surpassing commitment to thoughtful, hardworking rulings upholding the rule of law. He's shown real impressive legal knowledge and capabilities. I hear from both those who have appeared before him, but also from his colleagues, that he has that magical, mysterious ingredient known as a fine judicial temperament and has worked very effectively with his colleagues on the bench to fashion opinions, to keep the court moving in exactly the direction it should be moving.

I'm not going to repeat all the facts of his personal and legal career which Senator Dodd did, except to say that I think that in his years on the District bench he has clearly earned the respect of his peers on the bench and in the Connecticut bar. He's rendered admirable service for the past 15 years as a district judge, which makes him eminently capable to sit on this very important Circuit Court.

It is why I am so grateful that President Obama responded favorably to our recommendation and that of many others that he give Bob Chatigny the chance to serve on the Second Circuit Court, and why I feel that he is so clearly ready to assume this responsibility. So I thank you and the members of the Committee for proceeding forward with the confirmation process here and I look forward to working with you and the rest of our Senate colleagues to see to it that Judge Chatigny is confirmed to serve on the Second Circuit Court of Appeals.

Thank you very much.

Senator KLOBUCHAR. Well, thank you very much, Senators Dodd and Lieberman. Of course you are welcome to stay to hear your colleagues, but if you have other things to do, we understand that as well and we really thank you for coming to our Committee today. Thank you.

All right. Senator Webb, thank you for being here.

PRESENTATION OF JOHN A. GIBNEY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA BY HON. JIM WEBB, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WEBB. Thank you, Madam Chairman, Senator Sessions, Senator Grassley. I am pleased to join my colleague from Virginia, Senator Mark Warner, for the purpose of introducing to this Committee an outstanding attorney from Virginia, John Gibney, whom the President has nominated for a seat on the U.S. District Court for the Eastern District of Virginia.

I have a longer statement. I would ask it be submitted for the record and summarize, with your consent.

First of all, I have to say that when I found out that Judge Chatigny was an alumnus of Georgetown Law Center the same era that I was, it brought back a saying that they used to have at Georgetown. That was that the A students became professors and judges, the B students practiced law, the C students went into business, and the D students became politicians.

[Laughter.]

Senator WEBB. So here we both are, Judge.

I'd like to recognize Mr. Gibney's son, John Gibney, III, who joined us today, along with Mr. Gibney's future daughter-in-law, Jesse Telhorster, both of whom are with us and are sitting right behind me today.

I believe President Obama has made an extraordinary choice in nominating John Gibney. As I have met with candidates for Federal judicial vacancies in Virginia, an exhaustive process that Senator John Warner and I began and Senator Mark Warner and I have continued, I continue to be impressed by the caliber of the candidates that the Virginia bar has been putting forward, and the pool from which Senator Warner and I had to choose from for this position was extraordinary. It included judges, legal scholars, and skilled trial attorneys.

From this very competitive field, Senator Warner and I recommended Mr. Gibney because of the overwhelming endorsement that he received from his peers across the State, and also because of his professional dedication. We recommended him to the President for nomination in June of last year.

Mr. Gibney is not only known as an excellent trial attorney who has tried hundreds of cases, but also is a stand-out example of professionalism in the practice of law. He has been repeatedly asked to speak at the Virginia State Bar Young Lawyers Conference Professionalism Program for New Lawyers.

He has devoted countless hours toward teaching ethics, continuing legal education classes to his fellow members of the bar. He has devoted his time to serving his community and helping fellow members of the bar throughout his career. I am proud to note that Mr. Gibney is a product of Virginia's educational institutions. He is a 1973 graduate of the College of William and Mary, and a 1976 graduate of the UVA Law School.

His legal career has included time spent as an Assistant Attorney General of Virginia, as a law clerk to Hon. Harry L. Carrico, former chief justice and current senior justice of the Supreme Court of Virginia. So I am pleased to give my strongest endorsement, and I would now invite my colleague, Senator Mark Warner, to offer some comments.

Senator KLOBUCHAR. Thank you very much, Senator Webb. Your full statement will be put on the record.

[The prepared statement of Senator Webb appears as a submission for the record.]

Senator KLOBUCHAR. Senator Warner, welcome to our Committee.

PRESENTATION OF JOHN A. GIBNEY, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA BY HON. MARK WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you, Madam Chair. Thank you, Senator Klobuchar, Senator Sessions, Senator Grassley, Senator Coburn, for this opportunity.

Again, I won't reiterate all of the comments that my colleague Senator Webb made. I would like to thank the Committee for acting quickly on this nomination. We nominated John Gibney last June. The President actually, I guess, formally nominated him just earlier this month. The fact that this hearing is already being held, we are grateful for the speedy, expeditious manner in which you are addressing this issue.

I also was going to point out the fact that John Gibney went to both William and Mary and UVA. Judge Carrico, the long-term chief of our State Supreme Court, now senior status, is somebody who is extraordinarily well-regarded, and the fact that John Gibney clerked for Judge Carrico went a long way in my mind.

As Senator Webb indicated, John Gibney was highly regarded or highly qualified by the State bar, and John has been active in a whole series of legal activities around the Commonwealth and around Richmond.

But I want to follow up as well, kind of off my comments, on why I think we made this choice. We've been blessed with extraordinary candidates in Virginia who Senator Webb and I had to work through, and I thank my senior Senator again for the process that he and John Warner established as we screen and try to make sure that we get all the input needed to make these kind of recommendations to the President.

But in John Gibney we found somebody who, I think—I'm not sure how much of his life story he will relay to the Committee, but it's an interesting life story. It's one that's had some success, it's had some failure, it's had some challenges.

In his law practice, I think he has represented a variety of clients and a variety of intersections in the legal system that will bring a perspective, should you decide to move forward and if the Senate, as I hope, will confirm him, that sometimes could be absent from the bench.

I think sometimes it's great, as I think Senator Webb said, that we get the *Law Review* candidates, and as at least a lawyer by training, never by practice, I think it's important that we get the legal scholars represented on the bench. I also think it is important that we get people who have really practiced law day in and day out, seeing the challenges that everyday Americans have to confront as they face the sometimes complex and challenging judicial system we have in this country. In John Gibney, we've got somebody who I think is a lawyer's lawyer, somebody who understands those challenges, and someone I will echo with my colleague Senator Webb, I give my full-fledged endorsement to. I appreciate the Committee's actions on his nomination today and I look forward to voting for his confirmation on the floor of the Senate.

So, thank you, Madam Chairman.

Senator KLOBUCHAR. Thank you very much. Thank you, both of you, for being here. Have a good day. We're going to have a lot of fun here, I can tell you that much.

Senator Sessions is going to give his opening statement. Before I do that, I wanted to put the opening statement of Chairman Leahy on the record in support of both of our nominees, Judge Chatigny as well as Mr. Gibney.

[The prepared statement of Chairman Leahy appears as a submission for the record.]

Senator KLOBUCHAR. Senator Sessions.

**STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM
THE STATE OF ALABAMA**

Senator SESSIONS. Thank you, Madam Chairman. I look forward to the hearing today. The nominees have all been looked at through our staff and through the President and his staff, and undergone background evaluations by the FBI, and the American Bar Association, and anyone else who wants to comment on their nomination. So even though the hearings are important, also much of this is in the record and we have the ability to review it.

Looking at the nomination of Judge Chatigny, I think we'll ask a number of questions today about that. He presided over several last-minute motions to stay the execution of perhaps Connecticut's most notorious serial killer, Michael Ross, who had been convicted and sentenced to death nearly 20 years earlier for kidnapping, rape, and murder of six women, and he confessed to the murder of eight.

After multiple appeals, State court proceedings, and in Federal court, the defendant explicitly instructed his attorney not to appeal anymore. From there, we had a number of actions by the judge to really frustrate what appeared to be the lawful decision of the State of Connecticut, and I have concerns about it. We've talked earlier, and I appreciate that.

Judge, I enjoyed our opportunity to meet. I'm not in any way questioning your integrity and intentions. I appreciate the strong support that Senator Dodd has given to your nomination. I also got a call from former Attorney General Mukasey, who believes in you and supports your confirmation.

But seven Assistant State's Attorneys General have filed an ethics complaint concerning the conduct in that case, and we have a letter from the attorney, the prosecutor who handled the habeas case in your court who opposes your nomination. So it is a matter that I take very seriously and I believe judges have roles. Federal judges, in review of State court convictions that have been confirmed by the State Supreme Court, have limited responsibilities to interfere in the execution of that and we'll discuss those issues as we go forward. Thank you.

Senator KLOBUCHAR. All right. I'm going to ask the first questions, then we'll go down the row here. I think I'll start with a general question about how you would characterize your own judicial philosophy and what makes you want to be a judge.

Judge CHATIGNY. I appreciate the Committee's interest in learning how I approach cases and I do my best to decide each case on its merits, taking each case one at a time, examining the facts with

care, applying the relevant precedent, and avoiding injecting my own personal policy preferences into the matter.

I've tried to do that throughout my 15 years as a district judge, and if I am fortunate enough to be confirmed, I would do that as a judge of the Court of Appeals.

Senator KLOBUCHAR. Senator Dodd and Senator Lieberman mentioned your family, but there may be relatives they didn't mention. So if you want to introduce them to us, we'd love to meet them.

Judge CHATIGNY. Actually, Senator Dodd, as usual, was very good to introduce everybody, I believe. My wife Stacy is with us, my sons Peter and John are seated here in the front row, and my good friend Peter Kahn from the law firm of Williams & Connolly. Behind them, my brother Vic and his wife Barb, and my mother-in-law, Elaine Savin, and my sister-in-law Sugar. We appreciate very much this opportunity to appear before the Committee today.

Senator KLOBUCHAR. Well, thank you.

You talked about your judicial philosophy. I appreciated that answer. Has your being a judge for the last 16 years changed at all your view of what a judge does?

Judge CHATIGNY. It has impressed me with the importance of treating each case with care, extending to all people who come before the court an opportunity to be fully heard and it has left me with a strong conviction about the importance of the facts of each case and the need to examine the facts of each case with particular care.

Senator KLOBUCHAR. Thank you. I'd like to explore that more, but I was listening to Senator Sessions' opening statement and I know he wants to focus on one of your cases. I thought I would give you an opportunity, just right here, to talk about that. I know this is the *Michael Ross* case involving horrific murder. I guess my first question as a threshold matter would be: do you have any problems applying the death penalty or upholding capital sentences?

Judge CHATIGNY. None at all.

Senator KLOBUCHAR. And the death penalty is, of course, the ultimate punishment. We have to be very careful when it's applied. For example, individuals have to be competent to stand trial. According to a 2002 Supreme Court ruling—that would be *Atkins v. Virginia*—executing mentally incompetent individuals is a violation of the Eighth Amendment ban on cruel and unusual punishment. And so I know from cases that I read throughout my life and work as a prosecutor, whether it's a death penalty or a non-death penalty case, that judges are very conscious that these procedures be followed with any case. Is that correct?

Judge CHATIGNY. Yes.

Senator KLOBUCHAR. And in this case, Michael Ross, the defendant, indicated that he wanted to waive further appeals and be put to death. So when you hear that and you know about the murder, if you're a guy on the street you think, OK, it's over. Could you explain to me what made you question whether he was legally competent to waive his appeal and just make that decision on his own?

Judge CHATIGNY. Yes. Thank you for the question. I understand and appreciate why people are concerned about what happened in this difficult case. The litigation came before me on a Friday afternoon and I was asked to conduct an emergency hearing on the

question whether this defendant was competent to waive legal challenges to the death sentence.

I had no reason to question the good faith of the people who came before me. They did not appear to be death penalty abolitionists, interested in using the court to pursue their own agenda. I thought that they were urgently concerned about the question of his competence.

I looked at the case over the weekend and presided at an emergency hearing on Monday. Based on my review of the facts and the law, I concluded that a stay should enter so that a hearing could be conducted on the issue of his competence to waive challenges to his death sentence. It was a very difficult week for all concerned. The Court of Appeals upheld the stay, but a closely divided Supreme Court vacated the stay.

Senator KLOBUCHAR. And there was a 6-day evidentiary hearing, is that right?

Judge CHATIGNY. As a result of the events that occurred during that week, the defendant's own counsel moved in the State court for a stay so that a full hearing could be held on the issue. A hearing was conducted. A determination was made that the defendant was competent, and he was executed.

Senator KLOBUCHAR. And do you have any issues with the Superior Court's determination?

Judge CHATIGNY. No.

Senator KLOBUCHAR. So I just want to be clear before we embark on this journey to talk to you more about this case, that the whole episode here wasn't about the death penalty. You were ready to actually give that out as a sentence. The issue to you was whether or not the defendant was competent to make certain decisions.

Judge CHATIGNY. That's correct.

Senator KLOBUCHAR. And after this Ross episode was over, there were complaints filed against you alleging judicial misconduct for how you handled the case. A special Committee comprised of then-Second Circuit Chief Judge John Walker, Second Circuit Judge Pierre LaValle, and then-Chief District Judge Michael Mukasey of the Southern District of New York exhaustively investigated the facts and the allegations against you, and this panel absolved you of any wrongdoing and cleared you of all the allegations against you. Is that correct?

Judge CHATIGNY. Yes.

Senator KLOBUCHAR. And then the findings of this special panel were adopted by the Judicial Council for the Second Circuit. Is that right?

Judge CHATIGNY. Yes.

Senator KLOBUCHAR. All right. Very well. I have gone slightly over my time, so Senator Sessions, if you want an extra minute and a half, please, it's yours.

Senator SESSIONS. Thank you.

Senator KLOBUCHAR. Thank you.

Senator SESSIONS. But I see my colleague is here. Senator Grassley is here, Senators Coburn and Kyl. I'd be pleased to yield to Senator Coburn at this time.

Senator COBURN. Welcome, Judge Chatigny. I want to go directly to the *Ross* case, but before I ask you questions I want to make

sure that everybody understands that are not familiar with the case of the Roadside Strangler, Michael Ross. I'd like to describe a few of the details before I ask you questions.

While in prison, Michael Ross participated in the creation of a documentary on serial killers entitled, "The Serial Killers," during which he described in great detail how he raped and murdered eight women and girls. In the video, he explained, "Serial killers like me like to strangle their victims, and that is I guess the most common form of killing because there's more of a connection, it's more real, it's not as quick." Ross murdered all of his victims by strangling them.

He later describes how he tied up Leslie Shelly, age 14, and put her in the trunk of his car and then took the other girl, April Brunias, age 14, and "raped her and killed her, and I put her in the front seat." Then he pulled Leslie Shelley out of the trunk and brutally raped and killed her. In describing his last victim, Wendy Baribeault, he said, "I raped her and I killed her. It wasn't as pleasant. It wasn't a nice rape."

Judge Chatigny, this is the man you described in your testimony and in your discussions on this case as "the least culpable of people on death row" and said, "he should never have been convicted, or if convicted, he never should have been sentenced to death," and that "when Mr. Ross says that I feel I'm the victim of a miscarriage of justice because they didn't treat it as a mitigating factor, I can well understand where he's coming from."

Judge, this serial murderer is the man you did everything possible to prevent the execution of. I think the record shows that. You believed in your position. I just wonder why you think your behavior in this case, which is pretty extraordinary—I've only sat on this Committee for 5 years—why that behavior would warrant a promotion to a much more senior court.

Judge CHATIGNY. Senator, thank you for your question. I appreciate your concern. And of course, I found these horrible crimes to be unimaginably and unspeakably abhorrent. I believed that under the law, I was obliged to give careful consideration to the claim that he was not competent to waive legal challenges to this death sentence.

Senator COBURN. Was he not found out to be competent and ruled competent?

Judge CHATIGNY. Ultimately, yes. After a full adversarial hearing he was determined to be competent, and on that basis he was executed. I believe that the law required such a hearing to be held and that was my sole concern. I regret very much using words that make it appear that I was concerned about the issue of his guilt. In fact, I had no such concern.

Senator COBURN. But you did, in fact, agree that there were mitigating circumstances. I think you pronounced him with a diagnosis of sexual sadism. Is that correct?

Judge CHATIGNY. Senator, I wish I could—

Senator COBURN. I have the record here. Those are your words.

Judge CHATIGNY. Yes. And read out of context, I can appreciate that the reader could think that I had an opinion. I addressed those issues in connection with the issue of competence. The defendant had a long history of mental illness, several disorders, in-

cluding the one you mentioned. These were relevant to the question of his competence to waive legal rights.

Senator COBURN. What was the name of the psychiatrist who diagnosed him with sexual sadism?

Judge CHATIGNY. He was evaluated by a psychiatrist named Michael Norko, and Dr. Norko testified in the State proceeding that preceded my involvement that the defendant was competent. Part of the difficulty in this unusual case was that there was no adversary proceeding at that stage and his opinion was not tested in any way. After the events that occurred before me, he contacted the defendant's lawyer and said, now that I have looked at material I had not seen before, I realize my opinion could change. And it was on that—

Senator COBURN. Could change or did change?

Judge CHATIGNY. Could change.

Senator COBURN. OK.

Judge CHATIGNY. And on that basis, the defendant's lawyer sought a stay so that the issue could be adequately investigated and reliability determined.

Again, I apologize for using words that call into question my character as a judge in that case. In life, we—

Senator COBURN. I'm not challenging your character. Your record shows that you have great character. That's not what I'm challenging. I'm worried about a standard that's outside the law, an empathy standard where you become too identified with a case to make a sound judgment. As a matter of fact, multiple courts before yours had found him competent. You were not the only one.

The other question that I have is that you were actually involved in this case prior to it coming to you as an attorney, is that correct?

Judge CHATIGNY. Technically, perhaps. But—

Senator COBURN. Was that made evident to the people who were on both sides of the trial in this case? Was it disclosed?

Judge CHATIGNY. It was not, for the simple reason that I had forgotten my prior involvement.

Senator COBURN. In a serial murder case of eight people?

Judge CHATIGNY. I was not involved in the case. Thirteen years before the matter came to me I was contacted by a friend who asked me if I would file, on behalf of the Connecticut Criminal Defense Lawyers Association, a motion in the State Supreme Court for leave to file an amicus brief on an evidentiary issue. I agreed to do so. I reviewed the motion that he prepared and I saw to it that it was filed, and that was the end of my involvement in the matter.

Senator COBURN. I think my records are correct, that's the only death penalty case you were involved in in 25 and you forgot it?

Judge CHATIGNY. Senator, the simple truth is that—

Senator COBURN. The rape and murder of eight young women?

Judge CHATIGNY. Well, I never represented Michael Ross and my involvement didn't extend beyond essentially acting as local counsel for my friend for the purpose of filing an application to file a motion, and that—

Senator COBURN. But you actually did research on that case on mitigating factors. Is that correct?

Judge CHATIGNY. I did some very limited research before concluding that there was no need for me to be involved anymore, and I told my friend that this was the case and I had no further involvement.

Senator COBURN. I'm sorry. My time is up. I'll have to wait till the second round.

Senator KLOBUCHAR. Thank you very much.

Just to clarify the record, Judge Chatigny, the issue last raised by Senator Coburn about your recollection of filing a motion, you didn't actually represent the defendant, is that correct?

Judge CHATIGNY. That's correct.

Senator KLOBUCHAR. And in the Mukasey report when they reviewed the conduct from this case, they in fact found that this was innocent and not misconduct. Is that correct?

Judge CHATIGNY. They found that it was an innocent lapse of memory, which it was.

Senator KLOBUCHAR. OK.

Judge CHATIGNY. When I realized that I had a prior involvement I was stunned, as was my former partner when he learned about it. It had been 13 years. It may seem to reasonable people that my involvement was in some way significant, but it wasn't.

Senator COBURN. Madam Chairman, I'd just like to add, prior to you joining our Committee there was a judge, a Circuit judge by the name of Jim Payne who disclosed he owned 100 shares of Wal-Mart to the litigants in a trial and we castigated him as a Committee.

I didn't, but the Chairman did, saying how unethical it was, even though he disclosed it. So we're talking about two different standards now, one that says it's fine not to disclose and one that says somebody is not on the appellate bench today because they did disclose. I'd add that to the record.

Senator KLOBUCHAR. OK. Well, I wasn't there for that case. I just know what the finding of Judge Mukasey was in this case, and that was that there was no misconduct.

Senator COBURN. But our job is not on the findings of Judge Mukasey. It is our job to see if somebody is suitable for a Circuit judge position, not the finding of an appeal in terms of lawyers.

Senator KLOBUCHAR. That's correct.

Senator Sessions.

Senator SESSIONS. Senator Kyl, I'll yield.

Senator KYL. Thank you very much, Judge. Welcome. Maybe that's not the right terminology here, but obviously this *Ross* case is something that's been well-publicized. It's something that I'm sure you appreciate we have an obligation to look into.

Judge CHATIGNY. Yes.

Senator KYL. Part of the concern that I have about the case relates to the issue of judicial temperament. You consider judicial temperament to be a key factor in our evaluation of a nominee for the court, I presume. I guess the thrust of the questions that I have go to a conference you held with some of the lawyers and some of the terminology that you used during that conference. This was on January 28, according to the notes that I have here, with the defendant's lawyer, whose name is Paulding.

Here are some of the things that my notes reflect that you said during that. First of all, do you remember that teleconference?

Judge CHATIGNY. Yes.

Senator KYL. At least now you do.

Judge CHATIGNY. I do.

Senator KYL. You told him that he was “facilitating the execution of his client”, that “we are not in this profession to help people get killed”, and third, “and I tell you that, Mr. Paulding, because it is true. What you’re doing is terribly, terribly wrong, and so I don’t know how anybody in your position honestly, Mr. Paulding—I do not know how anybody in your position could be accepting of this responsibility to proceed in the face of this record to be the proximate cause of this man’s death.”

Do you remember those statements?

Judge CHATIGNY. I do.

Senator KYL. You then went on to warn him of the consequences of his not reversing course. You said, “So I warn you, Mr. Paulding, between now and whatever happens Sunday night, you’d better be prepared to live with yourself for the rest of your life and you’d better be prepared to deal with me if an investigation is conducted and it turns out that what Lopez says and what this former program director says is true, because I’ll have your law license.” Do you remember saying that?

Judge CHATIGNY. Yes.

Senator KYL. And then when Mr. Paulding told you that he had spoken to his client as you had previously instructed him to do, you responded, “Then you better make a clear record of it. You better have a court reporter there taking down the advice you’re giving him, because believe me, if—you’re going to need it. You’re going to need it.”

Do you remember saying that?

Judge CHATIGNY. I do.

Senator KYL. Do you think that the way that you expressed yourself in that hearing was appropriate and do you believe that it might raise a legitimate question in our mind as to your judicial temperament?

Judge CHATIGNY. Senator, thank you for asking me this question because I can well understand why you would be concerned. I regard judicial temperament as vitally important, indispensable. And one of the difficulties that I have with the *Ross* case is the way I spoke to Mr. Paulding. I used words that were excessive, words that were harsh. I regretted them immediately and I undertook to apologize to him at the earliest opportunity and he was very gracious to say to me that no apology was necessary. But, yes, I do acknowledge that my choice of words was terrible. It’s a situation in which I believed then, and I believe now, that I did the right thing, but I went about it the wrong way.

Senator KYL. Do you recall now what caused that to occur? Did you lose your temper? Were you simply really uptight about this particular case? Were you mad at Ross? What was your state of mind that caused you to do something that you’ve acknowledged was inappropriate?

Judge CHATIGNY. This telephone conference took place at the end of a grueling week, with hours remaining before the execution. I believed that I had a duty to point out to this lawyer—

Senator KYL. Was it pressure? I'm trying to—because of the time here, trying to—

Judge CHATIGNY. I'm sorry.

Senator KYL. Was it—your explanation would be that you were under a lot of pressure, or what? I'm not trying to put words in your mouth, I'm just looking for an explanation because that is unacceptable behavior for a judge.

Judge CHATIGNY. I agree that the words I used were wrong and the pressure was intense. I would like to think that, even under intense pressure, I would now display calm detachment, which I surely did not display at the time. But it was a learning experience for me, to be sure.

Senator KYL. Judge, because of our timing rules our questioning is really chopped up here, so my first round of 5 minutes has now expired. I'll just carry on then where I left off next time I have a chance to query you.

Thank you.

Senator KLOBUCHAR. Thank you. And just since the topic of your temperament came up, I just want to put in the record that the Committee has received a joint letter from three former Republican-appointed U.S. Attorneys for the District of Connecticut: Kevin O'Connor, U.S. Attorney from 2002 to 2008; Alan Nevis, U.S. Attorney from 1981 to 1985; and a U.S. district judge for that same district from 1985 to 1989; and Stanley Twardy, Jr., U.S. Attorney from 1985 to 1991, who wrote that they "support without any reservation the nomination of Judge Robert Chatigny to the U.S. Court of Appeals for the Second Circuit".

In a letter dated April 16th, 2010, they wrote that they, "Have found him to be even-tempered, thorough, and without agenda", as well as "a fair-minded and impartial judge" whose record in sentencing Federal criminal defendants shows that he is appropriately sensitive to the facts of the person before him and the rights of the victims of the crimes that have been committed. So I will include this letter in the record.

[The letter appears as a submission for the record.]

Senator KLOBUCHAR. I would also note just one more clarification of the record, that in the Mukasey findings, that this was not found to be a reason for misconduct. I think they call it unusual, but they understood the circumstances. Is that correct?

Judge CHATIGNY. Yes.

Senator SESSIONS. Madam Chairman, are you—

Senator KLOBUCHAR. I'm just clarifying the record since—

Senator SESSIONS. Well, are you going to respond to each witness' testimony? Is that the way we're going to do it?

Senator KLOBUCHAR. Senator Sessions, it's your time to question and I'll go after that. Your turn.

Senator SESSIONS. Well, I would offer for the record the letter from Mr. Michael E. O'Hare, the supervising Assistant State's Attorney who represented the State in this case, who questions the wisdom of this appointment and the fitness of the nominee to serve who was there, participated, and saw what happened. I don't think

this is a matter that is going to lightly go away, Judge. I wish it was, but it's just not going to be dismissed.

I have been a prosecutor and I have seen judges go beyond their proper role in hearings, and I believe you did in this case. I believe Mr. Paulding, the attorney for the defendant, conducted himself in a way he should have and that you did not. And so that's a problem for me. You have a good record. People like you. In other cases—there are some concerns in other cases. But I just have to tell you, I've seen the transcript and I didn't—not so much—I think it evidenced a lack of a proper understanding of your role in the matter.

So with regard to the competency hearing you testified to that occurred before the death penalty was carried out, this matter had been tried in the State courts of Connecticut, had been appealed to the Connecticut Supreme Court, and a competency hearing had been held and the death penalty had been affirmed by the highest court in the State of Connecticut, had it not?

Judge CHATIGNY. Yes.

Senator SESSIONS. And so what occurred, as I understand it, is that a letter came in from a prisoner at the last minute saying that the defendant may have been brainwashed and that somehow this caused a second competency hearing to occur. Is that correct?

Judge CHATIGNY. It was one of a number of things that happened to contribute to that result.

Senator SESSIONS. Now, with regard to that letter, when did that letter come in? Did that come in before the Friday teleconference?

Judge CHATIGNY. Yes. I believe it arrived 2 days before—two or 3 days before. I don't recall—

Senator SESSIONS. And Mr. Paulding had been in constant contact with his client, and as it turned out that letter was insubstantial and not proven to be dispositive of the issue of his competency.

And apparently, is it not true, that the client, Mr. Ross, the murderer, had decided he didn't want to appeal anymore? He felt that the judgment of execution was due to be carried out and he was prepared to accept it.

Judge CHATIGNY. Yes. And the issue before me was whether he was competent to waive legal remedies.

Senator SESSIONS. And the attorney who has been working with him and been defending him that he chose—is that correct, or was he appointed?

Judge CHATIGNY. Senator, let me take this opportunity to clarify. His long-time defense counsel who had defended him over the course of the many years were the ones who came to the Federal court, claiming that he was not competent to waive legal remedies. The lawyer who was representing him at the time, Mr. Paulding, had been hired to advocate that he was competent.

Senator SESSIONS. By the defendant or his—

Judge CHATIGNY. By the defendant.

Senator SESSIONS. So the defendant wanted a lawyer to make clear that he didn't think he was incompetent and that he was prepared to accept his fate.

Judge CHATIGNY. Yes.

Senator SESSIONS. Which is consistent with what the competency hearing in the State had found, and consistent with what the appellate courts and the Supreme Court of Connecticut had found.

Now, tell me again. I have to ask this. Senator Coburn asked you about the letter that you wrote from your friend. Did you know—did you sign the letter?

Judge CHATIGNY. I signed an application for leave to file a brief, yes.

Senator SESSIONS. And was a brief—was it the brief that was filed?

Judge CHATIGNY. No brief was ever filed. My involvement was limited to filing that application for permission to file a brief, looking briefly at an issue and then informing my friend that I didn't think it was necessary or appropriate for me to be briefing that issue, that others could do it, and so my involvement ended.

Senator SESSIONS. So he did give you some indication of what the issue was apparently.

Judge CHATIGNY. Not really.

Senator SESSIONS. Well, you say you told him it wasn't appropriate for you to respond, or something to that effect. Surely you had some basis to make an evaluation of the merits of the case.

Judge CHATIGNY. Please understand that this was one issue of many and I was not involved in considering all the other issues. My consideration of this one particular issue was very limited. As I said before, I was not involved in the *Ross* litigation, except for that very brief involvement, which I unfortunately forgot. Had I remembered, I would have recused myself to avoid even a possible appearance of bias. But regrettable as it is, I forgot.

Senator SESSIONS. Well, my time has run at this point. You know, we want to be fair to you and we're going to do that. You need to have an opportunity to explain, and I've learned a few things in talking with you already I didn't fully understand. But we do have some more. Madam Chairman, I think we'll need to have some more time.

Senator KLOBUCHAR. Of course. Whatever time you need.

I just had some follow-up questions, Judge Chatigny.

Now, so what happened here is, you have this case, he's going to be executed, and then you get some information that the guy that had found him, the medical expert who had found him competent to stand trial, was now doubting his opinion. Is that right? Or wasn't sure if that was correct, or he might make a different opinion?

Judge CHATIGNY. The sequence needs to be clarified. The psychiatrist who evaluated this defendant in the State court competency proceeding contacted the defendant's lawyer soon after the telephone conference that we've discussed and told the lawyer that he had come into possession of material, actually writings, by this defendant that caused him to think that his opinion about the defendant's competence could change. That, together with other information that emerged, caused Mr. Ross's lawyer to move to stay the execution so that the issue of the defendant's competence could be reevaluated.

Senator KLOBUCHAR. And so you then had to make a decision. So the lawyer gets this information that the expert who had said his

client was competent now isn't sure if he's competent, so he gives him that. So the lawyer—I just, as a lawyer myself, you would have an obligation to bring that before a judge.

So, now you look at this competency issue. I just remember, as a prosecutor, we would have these cases come up. I will be honest, as a prosecutor, we'd always want them to be found competent to stand trial even if they were like talking to tomatoes or whatever cases that we had. We did have one like that.

And sometimes we would concede it because it was so obvious, and sometimes it was a murky area, but a lot of times as a prosecutor we would fight to have someone declared competent. I'm sure you've seen that. But your obligation as a judge—let's say that you had just dismissed this and didn't even look at it and said, you know what? He's competent and I don't even want to give a chance to have a hearing on this. Then what if he was executed then and then someone had found that the lawyer—that this lawyer hadn't brought it up or hadn't done anything about. What would have happened to that lawyer?

Judge CHATIGNY. Well, that was my concern. I undertook to warn Mr. Paulding of the potential consequences if he failed to act and his client was executed in violation of his constitutional rights. I was trying to do the right thing to protect the integrity of the system. If we were going to have an execution we should do it right. This was the first one in 45 years, and I thought it was important that it be done carefully.

Senator KLOBUCHAR. So it wasn't your belief that somehow he shouldn't be executed or—

Judge CHATIGNY. No.

Senator KLOBUCHAR. Even that he didn't do the deeds. It was that—and the horrific crime. It was that the procedure at hand, you felt especially if it was this landmark execution, horrific case, public focus, and you wanted it to be handled in the right way, is that what you're talking about?

Judge CHATIGNY. Yes. And as it happened, Mr. Paulding prepared a motion for a stay of the execution for filing in Federal court, and recognizing that these unusual events of the past week had created an unfortunate situation, I urged him to file the motion in State court, out of respect for the State court, to give the State court an opportunity to act on that, and he did. The State court granted the motion, held the competency hearing, made the finding that the defendant was competent, and in the end that's how it turned out.

Senator KLOBUCHAR. And then one other clarification. During this three-judge panel, looking back at this case with all of its facts and evidence, Michael Ross's lawyer, who is J.R. Paulding, testified that he did not feel pressured, but sought a postponement of the execution based on his own view of the evidence and his duties as a lawyer. Is that correct?

Judge CHATIGNY. Yes.

Senator KLOBUCHAR. OK.

Judge CHATIGNY. And I feel particularly badly about what occurred because I think that Mr. Paulding did his conscientious best in the circumstances.

Senator KLOBUCHAR. And then after that happened, when the three-judge panel issued its decision, it actually said that, "while the judge used strong language, there was no misconduct. Under the proper circumstances, a judge may deliver a warning that threatens a misbehaving attorney with disciplinary action or contempt citation by the judge, or referral to another disciplinary authority without necessarily interfering with any legitimate right of the attorney or the attorney's client."

Again, these were three judges: Second Circuit Chief Judge Walker, who was nominated by President George H.W. Bush; Judge Pierre LaValle; and then Southern District of New York Chief Judge Michael Mukasey, who as we know later went on to serve as the U.S. Attorney General under George W. Bush.

And I understand that Mr. Mukasey is publicly supporting your nomination. As we know from Senator Sessions' statement, that he had called him. Is that correct?

Judge CHATIGNY. Yes.

Senator KLOBUCHAR. All right.

So again, I want to thank you. I would love to talk to you. I think you've had like 450 opinions. Is that correct?

Judge CHATIGNY. Yes.

Senator KLOBUCHAR. And only 16 of them have been reversed. Who's counting? I don't know.

[Laughter.]

Senator KLOBUCHAR. Something like that. Or been maybe taken up to be reconsidered broader, than reversed.

But I want to thank you for your patience. I know my colleagues have some other questions. Thank you very much.

Judge CHATIGNY. Thank you.

Senator KYL. Madam Chairman, Senator Coburn has graciously agreed to let me go ahead.

Senator KLOBUCHAR. Senator Kyl.

Senator KYL. Let me go ahead. As is the case sometimes, things interfere with this hearing, and I apologize, but I only have a minute before I have to go to another commitment.

I've got two questions, each with a subpart. Let me go back to this conference that we talked about before. You, in this conference, cited your own personal experience in an unrelated matter, touring the prison where Mr. Ross was held. I gather this was not a part of the record in the case before you. Was that an appropriate thing under those circumstances?

And I guess, second, you also referenced abundant literature that you had read on the issue, noting that most European countries would refuse to extradite prisoners if a prisoner was going to end up "in that setting." I think you were referring to that particular prison.

I guess the second part of this question is: how does that inform, or do you believe that this is an appropriate reference for you to inform interpretation of U.S. case law?

Judge CHATIGNY. Senator, dealing with the first part of the question, I had toured the facility in connection with another case and I wanted to put that on the record so that Mr. Paulding and others would know what was in my mind. In the ordinary case, a judge would not take into consideration things outside the record, but

this was an emergency proceeding and I felt I had an obligation to disclose that, partly because I wanted to do my best to focus Mr. Paulding's attention on what was going on. And I—

Senator KYL. I'm sorry. Because of the time—I appreciate that.

Judge CHATIGNY. I'm sorry.

Senator KYL. Can you get to the second part of the question regarding the foreign law?

Judge CHATIGNY. Yes.

Senator KYL. This is a matter of great concern to those of us who don't think it appropriate to resolve U.S. cases on the basis of foreign law.

Judge CHATIGNY. I understand. And I have never used foreign law to decide an issue before me and I can't envision a circumstance in which I would. My point here was to impress upon Mr. Paulding that the conditions of the defendant's confinement could exacerbate his mental illness, as alleged. As it turned out, after the full evidentiary hearing in State court, that proved not to be so. But at the time I spoke, I had an allegation that it was so and I went forward for that reason only.

Senator KYL. Well, what did European extradition experience have to do with that?

Judge CHATIGNY. Only insofar as they relied upon empirical evidence regarding the effect of long-term solitary confinement on inmates, and for no other reason.

Senator KYL. Let me switch to a second subject. After the teleconference and after the Supreme Court affirmed the Second Circuit's reversal of the temporary restraining order and there were no additional impediments to his execution, which was then set to occur at 2 a.m. on the following morning, about 3 hours before the scheduled execution you directed the clerk of your court to call the Execution Command Center and request the number of Judge Patrick Clifford, who was the State trial court judge in the case. Is that correct?

Judge CHATIGNY. Yes.

Senator KYL. Now, given the fact that there was no longer any matter pending before you, and I gather there was no motion on the part of any party, why did you do that?

Judge CHATIGNY. I wanted the judge to know that I was available in case he wanted to speak with me. I thought there was a chance he might hear from Mr. Paulding and he might want to seek clarification from me.

Senator KYL. Did you speak with him, with the judge?

Judge CHATIGNY. No.

Senator KYL. Did you also try to contact the chief justice of the Supreme Court, Justice Sullivan?

Judge CHATIGNY. No.

Senator KYL. Do you believe now that it was appropriate for you to call to volunteer that if they had any questions, that you'd be happy to try to answer them?

Judge CHATIGNY. I do.

Senator KYL. The thing that is in my mind in this line of inquiry is that it appears to me that you believe that anybody who could commit such a heinous crime must be mentally unfit, and it appears to me that you take an undue interest—even though I appre-

ciate the fact that you said if there's going to be an execution you want to make sure it's done right—and were very exercised about the way you discussed this with counsel. Would you care to comment on my—on this perception that I have?

Judge CHATIGNY. Yes. Thank you for giving me the opportunity. I can well understand why you would have that perception. It's unfortunate that the *Ross* case gets in the way of the record of my work day-to-day in all kinds of cases over the course of 15 years. It is not a reliable indication of my character as a judge or my work as a judge. Again, I believe I did the right thing, but I went about it the wrong way. For that, I'm sorry.

Senator KYL. I appreciate that. There were some other questions that I wanted to ask concerning some other decisions that you were involved in and I think we'll have the opportunity to put those questions on the record for you. I would appreciate that.

[The questions appear under Questions and Answers.]

Senator KYL. And for those family or friends who are here, I wasn't here at the beginning so I don't know exactly who everybody in the audience is. I hope that everyone appreciates that the Senate has an obligation, a very serious obligation to the U.S. Constitution, to provide advice and consent to the President on his nominations. Just as your responsibilities require rigorous investigation, Judge, I am sure that those who are representing you here today can appreciate that our responsibility requires the same.

I appreciate your responsiveness and I apologize for having to leave now.

Judge CHATIGNY. Thank you.

Senator KLOBUCHAR. Thank you very much, Senator Kyl. Thank you for being here.

Senator COBURN.

Senator COBURN. Let me go back. I think I heard you, and you need to clarify this for me. What was the reason you did not file an amicus brief on the *Ross* case?

Judge CHATIGNY. The issue that was suggested for briefing seemed to me to not warrant a brief on behalf of the Criminal Defense Lawyers Association.

Senator COBURN. Is it not true that you were written by Mr. Ross after you'd filed a motion to file an amicus brief, and that you wrote him back saying your involvement was when the case was over?

Judge CHATIGNY. Yes.

Senator COBURN. OK. Thank you.

And you didn't have any recollection of that prior to this case?

Judge CHATIGNY. I did not.

Senator COBURN. All right. Thank you.

I want to go back to the interaction with Counselor Paulding and just clarify for the record a little bit. Paulding only filed a stay after he had what he believed at that time was an implied threat. Would you agree with that?

Judge CHATIGNY. Senator, I believe Mr. Paulding has stated that he did not feel threatened and that he sought the stay based mainly on his conversation with Dr. Norko and his duty to the courts

to bring to their attention new information or evidence bearing on the issue of his client's competence.

Senator COBURN. Then why would Mr. Ross testify in front of you that the only reason he agreed to go along with the filing of the stay is to "protect Paulding's law license"?

Judge CHATIGNY. There was no such testimony by anyone before me.

Senator COBURN. It was in the Supreme Court, in the State Supreme Court.

Judge CHATIGNY. That was not the position he took.

Senator COBURN. That's a direct quote: "protect Paulding's law license," from the State Supreme Court.

Let me move on, if I may. Do you believe that there is a mitigating factor in all death penalty cases?

Judge CHATIGNY. No.

Senator COBURN. Do you believe that in sexually related crimes such as Ross's, that there usually is a mitigating factor?

Judge CHATIGNY. No.

Senator COBURN. How much time did you spend researching mitigating factors when you were first asked to look at Mr. Ross's record by the—I think it was the Connecticut trial bar, benevolent—

Judge CHATIGNY. I don't recall doing any research into mitigating factors.

Senator COBURN. Thank you.

Judge CHATIGNY. I think it was an evidentiary issue, but I don't recall.

Senator COBURN. It should be noted for the record, at the time of your conversation with Mr. Paulding, you were a member of the Grievance Committee of the U.S. District Court for the District of Columbia. Is that correct? Would your statements to Mr. Paulding carry more weight considering you were on the Grievance Committee versus a judge who was not on the Grievance Committee? Would you, as a reasonable man, tend to think that it might carry more weight?

Judge CHATIGNY. Senator, I'm not sure. And I'm trying to recall if I was a member of the Grievance Committee at that time. I don't recall. But certainly, you're right. A forceful statement to a lawyer will tend to have an impression, and I do regret that my words to Mr. Paulding were harsh.

I would want to be clear. You referred to Mr. Ross's testimony. I believe he gave that testimony in the subsequent State court proceeding.

Senator COBURN. Yes, he did.

Judge CHATIGNY. I don't want to leave you with the impression that I doubt that he did that.

Senator COBURN. No, no. No. I understand that. Thank you. Let's move off that for a minute. I'll bet you'd like to move off of it, and so would I. Thank you for being so cooperative.

In *Doe v. Lee*, you held that the Connecticut Sex Offender Registration Act was unconstitutional. The U.S. Supreme Court unanimously reversed your decision. Specifically, the court rejected your conclusion that a violation of a liberty interest occurred because the law implied that all registrants are currently dangerous and im-

posed onerous registration obligations, relying on its previous precedent established in *Paul v. Davis*, that mere injury to reputation, even if defamatory, does not constitute the deprivation of a liberty interest.

Why did you disregard prior Supreme Court precedent in that ruling?

Judge CHATIGNY. Senator, as in every case, I did my best to faithfully apply the law. In that case, a procedural issue was presented. I studied the relevant precedents of the Second Circuit, did my best to follow them. I concluded that due process did require that a hearing be held in a circumstance where a—

Senator COBURN. I'm out of time. Let me just ask one other question. You're not responsible just for the precedents of the Second Circuit, you're responsible for the precedents of the Supreme Court as well, correct?

Judge CHATIGNY. Yes.

Senator COBURN. Thank you. I'll yield back and I'll wait for the next round.

Senator KLOBUCHAR. Okay. Thank you.

And just to clarify that issue, you did not actually strike down *Megan's Law*, is that correct?

Judge CHATIGNY. No. I ruled that due process required a hearing. The Second Circuit affirmed. The Supreme Court—

Senator KLOBUCHAR. And they unanimously affirmed?

Judge CHATIGNY. They did. The Supreme Court unanimously reversed. I, of course, accept their ruling as the law of the land and have no difficulty whatsoever following it. But I did my best to apply the law as I understood it.

Senator KLOBUCHAR. And again, you didn't strike it down. It was a procedural issue, that you felt that there should be—you felt that there should be an additional procedure.

Judge CHATIGNY. To be clear, under Connecticut's registry, non-dangerous registrants and dangerous registrants were lumped together. There was no differentiation. The plaintiff claimed to be non-dangerous and he wanted an opportunity to prove that at a hearing before he was listed on the registry. Under applicable precedent, Supreme Court and Second Circuit, I concluded that he was right, and on that basis I said you can't put these people on the registry without giving them a hearing. The Court of Appeals agreed. The Supreme Court unanimously disagreed and the registry is in effect.

Senator KLOBUCHAR. Okay. Thank you.

Senator SESSIONS.

Judge, as a trial judge you have the authority on motion, if contempt is executed in your presence, to discipline lawyers, do you not?

Judge CHATIGNY. Yes.

Senator SESSIONS. And lawyers know that and they respect the power of a judge. I have to say that your comments—really, threats—to Mr. Paulding were inappropriate. Would you agree?

Judge CHATIGNY. I would agree that the words I used were excessive, yes.

Senator SESSIONS. And you also said at that time, "We're not in this profession to help people get killed." A lawful execution does

not meet my definition of killing. Do you think that's a bad choice of words?

Judge CHATIGNY. Very much so.

Senator SESSIONS. And then when you said to the lawyer, "what you're doing is terribly, terribly wrong", and you went on to say, "I do not know how anybody in your position could be accepting of this responsibility and proceed in the face of this record to be the proximate cause of this man's death."

Then you, I think, went on to basically threaten him. You said, "Then you better make a clear record of it. You better have a court reporter there taking down the advice you're giving him, because believe me, you're going to need it. You're going to need it."

Do you feel like—it seems to me the lawyer was representing a client who had had a full panoply of appeals and was ready to accept his fate, and it seems to be a mentality among some in our legal system that the death penalty must be resisted at virtually all costs, and we go to every possible effort to delay its coming.

Do you agree that you have a right, when the time is ready, that the defendant is ready to be executed, that he should be executed?

Judge CHATIGNY. Yes, if he's competent, then that's his choice.

Senator SESSIONS. Now, during this call you said this that worries me: "Looking at the record in light most favorable to Mr. Ross, he never should have been convicted." How could you say that?

Judge CHATIGNY. Here again, Senator, I appreciate the question because it gives me an opportunity to clarify and to address your understandable concern. I was trying to explain to Mr. Paulding that the significant evidence casting doubt on his client's competence pervaded the case.

The issue of guilt was not before me. That issue had been determined, but the issue of competence was before me and his history of mental illness was clearly relevant to that issue. His prior counsel had defended the case based on an insanity defense, later based on his mental disorders. And I regret that I used words that suggested I had an opinion about this defendant's guilt or that I was concerned about his guilt. I was not. I—my sole concern was whether he was competent to waive legal remedies. It was a learning experience, as I said. If I had it to do again I would certainly do it differently.

Senator SESSIONS. Well, you said "he should never have been convicted" and then went on to say "or if convicted, he never should have been sentenced to death because sexual sadism is clearly a mitigating factor." Can you cite any authority in which sexual sadism has been defined as a mitigating factor?

Judge CHATIGNY. No.

Senator SESSIONS. Well, I don't think there is any. I'm rather—it seems to me that would be, if anything, an aggravating factor.

Judge CHATIGNY. My intention was to call Mr. Paulding's attention to the record of the defendant's disorders, including that one, solely to impress upon him the need to reassess the issue of his competence to waive legal remedies.

Senator SESSIONS. Well, you said that there was significant evidence raising questions about his competency. I don't know that there was a scintilla of evidence. I guess this letter, if you chose

to see it as something of value, could have been seen as some minor possibility of a competency question.

But really, the attorney, Mr. Paulding, was in contact with his client who had been—and didn't take this seriously. All it was was a letter from a person in jail, maybe trying to help out a fellow prisoner, if he could frustrate the system, it sounded like to me. There was no real credible facts stated in that letter that would make me think that there was a real significant question of competency. Wouldn't you agree?

Judge CHATIGNY. I do agree. I realize now that there's an important point that needs to be clarified. At the emergency hearing on the application for the stay, the plaintiffs proffered evidence on the subject of the defendant's competence, including expert testimony, which had not been considered by the State court.

It was against the background of that evidence that we subsequently saw new evidence emerge, but the evidence that concerned me at the very beginning was this evidence proffered at the emergency hearing, including expert psychiatric evidence, which had not been part of the competency hearing in the State court. I am sorry I didn't clarify that earlier.

Senator SESSIONS. Well—

Judge CHATIGNY. When the competency hearing was reconvened in State court, there were expert witnesses on both sides who testified on that issue. The trial-type proceeding took approximately a week, with two experts on both sides of the question, and then the State judge wrote a careful, thoughtful opinion, finding that the defendant was competent.

Senator SESSIONS. But the Connecticut Supreme Court had also reviewed it previously in the record of the previous competency hearing and found him adequate, did it not? So you were just second-guessing their decision based on a letter from a prisoner. Excuse me. He should be able to answer that and I'll give you more time. I've gone beyond my time.

Judge CHATIGNY. I believe strongly that a district judge should defer to the State court, and I do that. In this unusual case, I believed that the allegations that were made and the evidence that was presented to me in support of those allegations raised a sufficient issue about competence to require a further review, in no small part because there had been no adversarial hearing in the State court where the issue could be tested, as we test issues in our system.

Senator KLOBUCHAR. OK. Thank you.

Judge Chatigny, I just want to go back over this, your sort of exacerbation at the hearing and why you felt that way and used that language that you now regret. And I was actually listening to it, thinking about times that I've been before judges who get mad, even in civil cases, about things. Some of the words you used remind me of other words I've heard, so it didn't really surprise me, but they don't usually get litigated because it never comes out. But I've heard judges use very strong language at lawyers, and that's not excusing it, I just have.

And so, but one of the things I found interesting was just this succinct statement by the panel, the Second Circuit conclusion, about some of the things you had said in exchange with the lawyer,

who as we know has already said that he didn't feel pressured, and I'll get to that in a minute.

But they said, "The words cannot be read in isolation. The proceeding colloquy clearly shows Judge Chatigny's growing exasperation with the fact that Ross was about to be executed based on his waiver of legal remedies in the face of a reasonable possibility", and you've already told Senator Sessions that if you felt that he was firmly competent, had no questions about that, the fact that he waived his remedies and was going to be executed, that wouldn't be a problem for you. Is that correct?

Judge CHATIGNY. That's correct.

Senator KLOBUCHAR. So you said that—what they say is that "in the face of a reasonable possibility that he was not competent to give such a waiver", so you have this situation where this new evidence has come before you from his lawyer, so you're concerned that he may not be competent, and at the same time you have a lawyer—the Second Circuit stated, "his lawyer was refusing to take steps to examine new evidence casting doubt on his client's competence. The judge was clearly concerned that Paulding's", that's the lawyer, "reluctance to engage the court in the question of Ross's competence, based on Paulding's sense that he was bound by his client's instructions, might cause an unconstitutional execution." So once again, your concern was not that you didn't want to do the death penalty or you had a problem with it, it was that you were concerned that this could be found to be unconstitutional and you wanted to have it done right.

Judge CHATIGNY. That's true.

Senator KLOBUCHAR. And the lawyer—and I can understand where the lawyer is coming from—feels lawyers should do what their client says. But from your standpoint, and the case law shows, the first question the lawyer has to ask is, is my client competent or not.

Judge CHATIGNY. That's correct.

Senator KLOBUCHAR. And that's why I can understand you got a little heated, whether it was right or not, in trying to make sure that lawyer understood that, that, yes, you're bound by what your client says but you've got to make sure he's competent. OK.

So, the other piece of this is just some of the things that we heard about your feelings on the case itself, and what you were trying to do here was to make sure the procedures were followed. That's right?

Judge CHATIGNY. Yes.

Senator KLOBUCHAR. OK. And I'd just note that again, in the Second Circuit decision, that it says—they say, "There is no indication that Judge Chatigny sought to nullify Ross's death sentence. Rather, the transcript clearly reflects his focus on insuring that a proper competency determination be made."

Then one other thing I wanted to put on the record here was that 17 former Federal prosecutors who worked with or appeared before you wrote to this Committee about their "conviction in his integrity and fitness to serve on the Court of Appeals". In an April 27, 2010 letter, they describe you as "unfailingly respectful of others and their views with no axe to grind", and asserted that, "in criminal as well as civil matters, Judge Chatigny has proven himself over

the course of 15 years on the bench to be unbiased, compassionate, and temperate.”

So I'd like to put that letter on the record as well in addition to the ones that we heard from the chief U.S. Attorneys that were included in the record.

[The letter appears as a submission for the record.]

Senator KLOBUCHAR. Just one other follow-up. You've had how many cases? Do you remember how many cases you've had in your career as judge?

Judge CHATIGNY. Thousands.

Senator KLOBUCHAR. I think someone told me you had 4,000 cases.

Judge CHATIGNY. That sounds right.

Senator KLOBUCHAR. OK. And you've issued 450 decisions.

Judge CHATIGNY. I thought perhaps more. I think I've had approximately 450 criminal defendants come before me for sentencing. That's an estimate. The number of opinions, I'm not sure.

Senator KLOBUCHAR. And most of those—we discussed almost all of those cases have been upheld. I think I had the number, 16 cases had been reversed. Is that right?

Judge CHATIGNY. I believe so. I'm not sure.

Senator KLOBUCHAR. And have you had other cases where you had to deal with competence and make sure that the defendant was competent to stand trial?

Judge CHATIGNY. Yes.

Senator KLOBUCHAR. Is it something that you are acutely aware of when you go into these cases?

Judge CHATIGNY. Yes.

Senator KLOBUCHAR. Do you think other judges are concerned about that as well?

Judge CHATIGNY. I do.

Senator KLOBUCHAR. OK. I was thinking your son is over there. Oh, one has left. It's just too much. I'll talk to him later. When you think about all of these cases you had, the 4,000 cases and all of the work you've done as a judge, what are you most proud of? It might not be one case, but just of the work and your judicial philosophy, what you've done as a judge that you would want them to know.

Judge CHATIGNY. Well, thank you for that question. I would say that I'm proud of doing a fair and honest job of it day in and day out and trying to do my part to maintain public confidence in a system of justice that I revere.

Senator KLOBUCHAR. OK. Thank you very much.

I think Senator Coburn is next.

Senator COBURN. Thank you. I'd like to enter into the record an affidavit submitted by Mr. Golub of the Connecticut Criminal Defense Lawyers Association which states that in fact the particular issue you agreed to research related to establishing mitigating factors for death penalty cases.

[The affidavit appears as a submission for the record.]

Senator COBURN. The other thing I wanted to raise with you is, are you aware of Federal statute 28 U.S.C. 2254(e)?

Judge CHATIGNY. I believe so.

Senator COBURN. OK. It states that in Federal habeas corpus proceedings, factual determinations of State courts shall be presumed to be correct.

Judge CHATIGNY. Yes.

Senator COBURN. And as I understand it, the Connecticut courts considered and rejected the allegation that Mr. Ross was not competent when he decided not to pursue further appeals, and that in the hearing on the public defender's habeas corpus petition, however, you said that this finding was "not binding on me, it can't be". Is that accurate?

Judge CHATIGNY. Yes.

Senator COBURN. And why is it not binding on you?

Judge CHATIGNY. Because the procedure that was followed was limited and I was presented with evidence raising a substantial issue on a matter of life and death.

Senator COBURN. Thank you.

I want to go back to one other area and then I'll finish, and I'll have some questions for the record.

You gave a speech at the American Constitution Society at the University of Connecticut Law School in which you criticized mandatory minimums because "empathy for individuals in a case inevitably comes into play, as it should". Does empathy factor in your decisions in a courtroom?

Judge CHATIGNY. No.

Senator COBURN. Just in sentencing?

Judge CHATIGNY. Not in sentencing.

Senator COBURN. Well, explain that statement to me then. You criticized mandatory minimums in that speech, and your following statement was, "empathy for individuals involved in a case inevitably comes into play, as it should".

Judge CHATIGNY. Well, I recall the speech. I don't recall the comment.

Senator COBURN. Well, that's a quote exactly.

Judge CHATIGNY. Yes. I don't doubt that I made the comment. I believe I was referring to not just the defendant, but also the victims, as well as witnesses when I referred to the individuals, plural, in a case. I think that it is important, in a criminal case at sentencing, for a judge to be conscious of the interests of all concerned, but the decision needs to be based on the facts and the law.

Senator COBURN. In the same speech you said, "We shouldn't try to drastically reduce departures. Departures are essential. The purpose of the Federal Sentencing Guidelines is to provide consistency and uniformity." I agree with that. "That way the sentences imposed for the same crimes do not vary widely depending on the judge the defendant happens to draw on."

What factors do you consider in deciding whether or not downward departure is appropriate?

Judge CHATIGNY. I consider the presentation made by the parties, I look at the guidelines with care, and I ask whether, on the facts before me, a departure under the guidelines is warranted. I recognize—

Senator COBURN. You're not out of line with all the rest of the judges, so I don't want to make that point. I think you've followed that fairly well. I do have some questions, however, on six child

pornography prosecutions and one sexual tourism case. You've departed on those cases.

The reason I'm asking the question is, we have a sexual sadism case which looks like you're sympathetic towards, we have Megan's Law, which you're trying to give a greater constitutional right than what the Supreme Court ultimately said was there, and then we have this instance of child pornography in which you're going against the Sentencing Guidelines. And I may have as well, but the reason for the question is, you put all these together, it creates a story that would appear that you're soft on sexual crimes, sexual pornography, and abuse of children. I know you're not and I'm not saying that, but you can understand why those questions should be asked.

Judge CHATIGNY. Yes. Absolutely. I recognize that a narrative has developed here that depicts me in this way, and I can assure you that child pornography is abhorrent to me, and if I have departed it is only because the facts and the law seem to demand it.

Senator COBURN. Thank you very much. You've been very cooperative. Appreciate it.

Judge CHATIGNY. Thank you.

Senator KLOBUCHAR. Senator Sessions.

Senator SESSIONS. Thank you. I know you've handled a lot of cases, some 4,000 cases. But can you think of any case in which you've injected yourself more personally into than this case involving a sexual predator who murdered, admittedly, eight women?

Judge CHATIGNY. I cannot. I have spent years working on other cases. This case took about a week, actually, just a week. I've given a lot of thought to other cases, and in that way invested myself heavily in them. But you're right, this case is unique.

Senator SESSIONS. I know this judicial panel ruled that you shouldn't be disciplined, but there are statements read by our distinguished chairman, who's a good prosecutor and knows the law, but this was basically not an affirmation of your conduct in that hearing, but a finding, according to your fellow judges, that you had not violated the Code of Judicial Conduct. Would that be right?

Judge CHATIGNY. Yes.

Senator SESSIONS. I don't think we should overstate that.

When you said in your sentence—you said he shouldn't have been sentenced—"shouldn't have been convicted", then you said "he shouldn't have been sentenced to death because sexual sadism is a mitigating factor—clearly, a mitigating factor", which is finding of major proportions without any record to back it up, I would suggest, but you also said, I think, in that hearing that Ross was "the least culpable, the least of people on death row". Did you say that? What did you mean by that?

Judge CHATIGNY. Thank you for the question, Senator, because again I recognize that there is a valid basis for concern and it gives me an opportunity to explain. I was terribly concerned that an execution was about to occur when the issue of mental competence had not been properly evaluated.

In trying to impress that upon Mr. Paulding, I pointed out to him that if you looked at the record in the light most favorable to the defendant, all of these things could be said. Why was that relevant? Because they all pertain to his mental illness. His previous

counsel had said that he was so ill that he was not guilty, that he was so ill he was not eligible for the death penalty. Mental illness pervaded the case and I was trying to focus attention on that so that the lawyer would reassess his position before it was too late.

Senator SESSIONS. Well, it wasn't any question about his guilt. He had confessed to that and the evidence was overwhelming. So a defense lawyer has got to have some defense and insanity is the only one left, I suppose. So just because defense counsel pleaded guilty and urged that his client was incompetent in a case like this, I think he was probably making the only argument or plea that could be made. But you gave that great weight, his personal statement that he thought he was—did you take a personal statement from the counsel or did you just review the record of the State court process by which they pled mental competency?

Judge CHATIGNY. I reviewed the record, such as it was, in the very limited time available to me. And I must say—

Senator SESSIONS. How would this make him the "least culpable of people on death row"? What did you mean by that?

Judge CHATIGNY. If, as has had been claimed, he was in fact severely mentally ill, and given the clear relevance of his history of severe mental illness to the issue of his competence to waive legal remedies, I felt that this was a way of addressing the matter with Mr. Paulding's lawyer that might cause him to reassess his position, as I believed he had an ethical obligation to do.

Again, I regret my choice of words. I did the best I could in the circumstances to follow the law and discharge my responsibility. I fell short of doing it as I would have wished, in retrospect. I treat it as a learning experience.

Senator SESSIONS. Well, I understand that.

Let me just ask one more thing. Now, in the first hearing before we had this teleconference and this occurred, you found that the State should—you stayed the execution and you found that he was entitled to another hearing on competency. The Second Circuit went along with that. They tried to give—all judges are given some deference. But the Supreme Court, by a 5:4 majority, said even giving deference to the trial judge's decision processes, there was insufficient evidence to order a delay. At that point you didn't have this letter from the prisoner, is that right?

Judge CHATIGNY. I can't recall the timing exactly, but that letter cropped up while the case was on appeal, as I recall.

Senator SESSIONS. Well, Madam Chairman, you know these are tough hearings and we take a person with thousands of cases. You know that story about the law, as the cloud comes over the city and the lightening bolt comes out of the sky and says you're negligent?

Senator KLOBUCHAR. That's us.

Senator SESSIONS. It's one person and he's declared negligent, or you're declared to be in error. You have a lot of friends, Judge, and you've obviously done good work on the bench. I don't think your integrity has been questioned. So we'll be glad to look at this.

I have a strong feeling that our Federal courts have forgotten their role in these cases. Until the last 50 or so years, cases weren't retried in Federal court. When you got an affirmance by the Supreme Court of a State, it was presumed to be final.

Now we have Federal judges that think they want to review everything, second-guess State courts, cost thousands of dollars, delay executions, and the Supreme Court, in the reversal of your case, I think, was a statement: judges, you've got to be careful, you're overreaching here. This does not call for another hearing based on the record that they went up to. They see them from all over the place.

So my fundamental concern is along that line, not with you in any personal way. I appreciate your testimony. I think you've been patient with us and I think you've endeavored to be honest and fair in answering the questions.

Thank you very much.

Judge CHATIGNY. Thank you.

Senator KLOBUCHAR. I appreciate your closing comments there, Senator Sessions. Again, Judge Chatigny, I mean, despite that people may have disagreements on what the role of a Federal court judge should be here, but do you feel, based on the Constitution, based on cases handled by Circuit Courts in the past, that you had a duty to look at that competency issue and make sure that this defendant, however horrific he was, was competent before an execution, a decision before he could waive his rights and be executed?

Judge CHATIGNY. Yes.

Senator KLOBUCHAR. All right.

Senator SESSIONS. Madam Chairman, I'll offer Senator Grassley's statement for the record.

Senator KLOBUCHAR. OK.

Senator SESSIONS. He wished to be here and expressed his interest in the issues of the case, but had to be at another matter.

Senator KLOBUCHAR. Well, thank you very much, Senator Sessions. We'll include that.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator KLOBUCHAR. I also just want to include the—you know, we've been—I loved Senator Sessions's reference to the lightning bolt coming down on one case. But just to clarify here, put on the record, that in more than 15 years as a Federal judge, the government has never appealed a single one of your sentences. As Senator Coburn noted, your downward departure rate was completely in the range of other judges, and he acknowledged that, even though he touched on a few cases with which he disagreed.

And as much as he may have mentioned cases where you had downward departed again in the range with other judges, you've also had some cases where you've given out maximum sentences. In 2001, a cocaine dealer, 20 years, maximum sentence allowed by law. There you had the dealer's defense attorney publicly attacking you for imposing such a harsh sentence. Those were not the cases were brought up today. They were not brought up, but there are cases like that and we acknowledge that as we look at your record of 4,000 cases.

So I just want to thank you for appearing before us. As the other Senators have noted, you showed much patience, as did your family. Your other son did return, but now he's gone, and they have been standing by your side at every moment. I can tell that, and

they care very much about you. We look forward to working with you in the weeks to come here.

Thank you very much.

Judge CHATIGNY. Thank you so much. Thank you.

Senator KLOBUCHAR. All right. We'll take 1 minute and then we'll have our next nominee up.

OK. Are we ready to go, everyone? Thank you. OK.

Mr. Gibney, will you please stand to be sworn? You are standing. [Whereupon, the witness was duly sworn.]

Senator KLOBUCHAR. Thank you.

Now the numbers are a little more even here, Mr. Gibney. We won't be three to one, and I don't even think we'll need that here. But I want to thank you for being here. You certainly had a nice testament to you from Senator Webb and Senator Warner, both of whom are very well-respected in this body.

Do you have your family members or friends you'd like to introduce?

Mr. GIBNEY. I do, your Honor—Senator. Thank you, first, Madam Chairman, for the opportunity, and Mr. Sessions for the opportunity, to appear before you. I'd also like to thank Senators Warner and Webb for their kind remarks, and of course President Obama for his kindness in nominating me.

With me today are my son, John Gibney, III, my future daughter-in-law, Jesse Telhorster, and my assistant, Kelly Arnett. I'm very proud to have them with me today as well.

Senator KLOBUCHAR. Well, thank you very much.

I think I'll start out with the question that I asked of Judge Chatigny. That is, as someone who has spent many years in private practice with a vast array of cases, how do you characterize what you believe will be your judicial philosophy? How are you going to look at cases having made that transition from private attorney to being a judge, from being an advocate to being someone who is a trier of the facts?

Mr. GIBNEY. My role as a judge and my judicial philosophy, if I'm fortunate enough to be confirmed, would be that I believe that a judge's role—a district court judge's role is to find the law from examining the text of the Constitution, the text of statutes, the relevant Supreme Court decisions, and the relevant decisions of the Fourth Circuit Court of Appeals, to find the facts exclusively from the evidence that comes before me, and to apply the law to the facts.

Senator KLOBUCHAR. And listening to Judge Chatigny talk about what he'd learned in his 16 years as a judge, what do you think is the most important quality a Federal judge should have?

Mr. GIBNEY. I think the most important quality any kind of judge should have, Federal judge included, is humility. I think that humility—and by humility I don't mean the quality of being abased or meek or put down in some way, but rather the quality of knowing your place in the world, knowing that it's not the center of the world, knowing that everybody in that courtroom is just as important as you are, that they have their own concerns that are important to them, and that each one of them deserves the same respect that you would give to a fellow member of the bench.

Senator KLOBUCHAR. Very good.

You worked as an Assistant Attorney General in the Virginia Attorney General's Office. Can you tell us about your time in that office and what skills you learned that will be helpful?

Mr. GIBNEY. My time in that office was—thank you for asking that question, Senator. My time in that office was—was very rewarding and it was there that I honed my skills that have allowed me to, in my legal career, represent a lot of local governments. I think that what I learned best in the Attorney General's Office was the need for hard work at all times and the need to—and of course, the need to have the—the delight I took in judges who treated all the litigants fairly.

Senator KLOBUCHAR. Well, you don't have these 4,000 decisions that we have to examine.

Mr. GIBNEY. I don't.

Senator KLOBUCHAR. I'm sure you're very disappointed about that.

[Laughter.]

Senator KLOBUCHAR. But you come from the private practice. Generally, Federal judges have great discretion to decide whether to sit on a case when possible conflicts of interest arise. It's therefore important that judicial nominees have a well thought out view of when recusal is appropriate.

Former Chief Justice Rehnquist made clear on many occasions that he understood that the standard of recusal was not subjective, but rather objective. It was whether there might be any appearance of impropriety. How do you interpret the recusal standard for Federal judges, and in what types of cases do you plan to recuse yourself? I don't need specific examples of clients or cases, but just a statement that you will follow the applicable law.

Mr. GIBNEY. Thank you, Senator. I will, of course, follow the applicable law and all the precedents in that area and will examine each case closely to see if there's any potential conflict that needs to be addressed by me, or even if I think there's no possibility of it, to point it out to counsel if there's any remote way that anyone could think there was a possible conflict.

Senator KLOBUCHAR. Just one last question. As a lawyer who's practiced for so long and is well-known in your community, what do you think some of the greater challenges are now that are facing the Federal judiciary?

Mr. GIBNEY. I think that the—thanks for asking that question. I think that the greatest challenge facing the Federal judiciary at this time is probably the difference in the quality of defense among various defendants. Of course, it's not the judge's job to go in and try the case for the lawyers, but as we've seen in a number of high-profile cases, wealthy people seem to be able to get a different caliber of representation than the ordinary folk, and I think that is a very difficult question and poses a dilemma to our system.

Senator KLOBUCHAR. Thank you very much.

Senator Sessions.

Senator SESSIONS. Well, Mr. Gibney, you have a good record of trying a lot of cases. I think it indicated some 500 or more trials, 90 percent of which you were the sole attorney on.

Mr. GIBNEY. That's correct.

Senator SESSIONS. Which is indicative of a deep experience with the system and should put you in a position to be able to handle the decision-making processes that come before a judge, recognizing maybe when a lawyer really does need a continuance and maybe they don't, or when they've made an honest mess-up in their preparation, or whether they're consistently unprepared and need to be disciplined, or whatever.

Do you feel that the experience you have will help you make those kind of decisions that make the system work a little better?

Mr. GIBNEY. Senator, yes. Thank you very much for that question. I do feel that way. I've been down in the trenches. I've been yelled at by judges, I've lost a lot of cases, I've won a lot of cases. I think I understand the difficulties that lawyers face in real life in preparing for court and coming to court and representing clients, and representing difficult clients.

Senator SESSIONS. And do you believe that a judge, when they put on the robe and take the oath to serve under the Constitution and the laws of the United States, that that means that you must put aside your personal views, policy concepts, political or ideological values and objectively find the facts and apply them fairly to the law as written?

Mr. GIBNEY. Thank you, Senator Sessions. Absolutely, I do.

Senator SESSIONS. Let me ask you this question. In March of 2000, you told the *Greensboro News & Record* you did not favor mandatory dispute resolution programs, even though the law supports them. You stated, "I think they are grossly unfair to the worker" because employers in non-union settings have leverage over an employee, I think in essence you said.

The arbitrators are not representative of the peer group of those who would make up a jury. I understand that you could make those points. They're not matters that ought to be—you shouldn't be criticized for expressing those views. But my question is, with regard to mandatory resolution programs, even though you may not support them, will you require them when they are required pursuant to contract and case law and statutory authority?

Mr. GIBNEY. Yes, I will, Senator.

Senator SESSIONS. Well, in criminal cases, a lot of these powerful defendants are outgunning the prosecutors, so maybe—I don't know about it in civil cases, but a lot of individual plaintiffs had you for their attorney. I figure you could stand up against any of them.

Mr. GIBNEY. Well, I've tried to do my best throughout my career when the odds are long and when the odds are short.

Senator SESSIONS. Well, it is a great legal system we have.

Mr. GIBNEY. It is, and I'm very honored.

Senator SESSIONS. Individual attorney, individual clients can go to someone like you who has great skill and probably can contend with any lawyer in the country and sue the biggest, fattest corporation, and every now and then get a \$100 million verdict, whether they deserve it or not, sometimes. So I think the system works pretty well.

I think it is appropriate for a judge in a case to not—to not allow a poorer client to be taken advantage of. How would you evaluate that process about what you might do if an outgunned young law-

yer is maybe being taken advantage of a bit? What do you think the responsibility of a judge is when you see something like that occur in your courtroom?

Mr. GIBNEY. Senator, thanks for that question. That's a very difficult question. When do you jump in when someone is ineffectively assisting a client in a criminal matter.

Senator SESSIONS. Or civil.

Mr. GIBNEY. Well, civil is a little different.

Senator SESSIONS. It's a little different. But—

Mr. GIBNEY. But I would try, to the best of my ability, to make sure that the ground rules are fair for everybody and that both lawyers have an equal opportunity to put on their case. If I sensed that in a criminal case we were reaching a stage where there was ineffective assistance of counsel as defined by the relevant Supreme Court decisions, which is a pretty stiff standard, in that case I would probably step in in some way—and I'm not sure how at this time—and try to make sure that whatever process we went through was fair to the defendant.

Senator SESSIONS. Well, you're right, it's not an easy thing. I've seen judges avoid error sometimes in an appropriate way without, I think, being unfair to any party. But thank you so much. I'm impressed with your experience. I think the kind of experience you bring to the bench is valuable and it should stand you in good stead.

Mr. GIBNEY. Thank you, Senator Sessions. I've been very fortunate to be a lawyer as long as I have, in what you denoted is a great profession and a great system.

Senator KLOBUCHAR. Well, thank you very much, Senator Sessions. Thank you, Mr. Gibney. Now, we could just hang out and see if our colleagues return to ask you questions or we could adjourn the hearing.

So I want to let everyone know that the record will remain open for 1 week, and we wish you good luck, Mr. Gibney. We're all impressed by your credentials. I don't want to speak for everyone, but we're impressed—I'm impressed by your credentials, as well as Judge Chatigny's. I want to thank you for this civil hearing and that we're able to complete it, and having your family here I'm sure is special as well.

Thank you. The hearing is adjourned.

Mr. GIBNEY. Thank you, Senator.

[Whereupon, at 4:30 p.m. the Committee was adjourned.]

[The biographical information follows.]

[Questions and answers and submissions for the record follow.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Robert Neil Chatigny

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

United States Circuit Judge for the Second Circuit

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

Office: United States District Court
District of Connecticut
Abraham A. Ribicoff Federal Building
450 Main Street
Hartford, Connecticut 06103

Residence: [REDACTED]

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

1951; Taunton, Massachusetts

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

1974-1978; Georgetown University Law Center; J.D. 1978

1969-1973; Brown University; A.B. 1973

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

1994 to Present
United States District Court
Abraham A. Ribicoff Federal Building
District of Connecticut
450 Main Street
Hartford, Connecticut 06103
United States District Judge

1991 to 1994
Chatigny & Cowdery
750 Main Street
Hartford, Connecticut 06106
Partner

1986 to 1990
Law Offices of Robert N. Chatigny
60 Washington Street
Hartford, Connecticut 06016
Self-employed sole practitioner

1984 to 1986
Chatigny & Palmer
60 Washington Street
Hartford, Connecticut 06106
Partner

1981 to 1983
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005
Associate

1980 to 1981
United States Court of Appeals for the Second Circuit
450 Main Street
Hartford, Connecticut 06103
Law Clerk to Hon. Jon O. Newman

1980
United States District Court for the District of Connecticut
450 Main Street
Hartford, Connecticut 06103
Law Clerk to Hon. José A. Cabranes

1979 to 1980

United States District Court for the Northern District of California
450 Golden Gate Avenue
San Francisco, California 94102
Law Clerk to Hon. Samuel Conti

1976 to 1979

Fulbright & Jaworski
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Law Clerk

1974 to 1976

United States Fidelity & Guaranty Co.
100 Light Street
Baltimore, Maryland 21202
Claims Adjuster

Summer 1974

Mrs. Lillian Phipps (deceased)
North Broadway
Saratoga Springs, New York 12866
Groundskeeper/Driver

Winter 1974

Hirano Brothers Construction Company
Honolulu, Hawaii
Construction Worker

Summer 1973

Questar Group Development Company (defunct)
Lake George, New York 12845
Construction Worker

Other Affiliations (uncompensated)

1989 to 1994

Fax-Pax U.S.A., Inc.
9 Jerome Avenue
Bloomfield, Connecticut 06002
Secretary

1985 to 1990
 Hartford Stage Company
 50 Church Street
 Hartford, Connecticut 06103
 Director

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

I have not served in the military. I registered for selective service while in college.

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

Children's Justice Award, Center for Children's Advocacy, 2008
 Pro Bono Service Certificate of Appreciation, U.S. District Court for the District of Connecticut, 1990
 Elected Delegate, Connecticut Bar Association House of Delegates, 1986-1992
Georgetown Law Journal, Case & Note Editor (1977-78); Staff (1976-77)
 William E. Leahy Moot Court, Best Advocate and Best Brief Prizes, 1978
 Georgetown University Law Center, Honor Roll of Advocates, 1978
 Brown University Scholarship, 1969-1973
 Awarded 4-year Naval ROTC Scholarship (full tuition), 1969

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

American Bar Association
 Criminal Justice Section, White Collar Crime Committee, 1988 to 1992
 Litigation Section
 Tort & Insurance Practice Section
 American Bar Foundation
 American Trial Lawyers Association
 Connecticut Bar Association
 House of Delegates, 1986 to 1992
 Executive Committee, Federal Practice Section, 1986 to 1994
 Connecticut Bar Foundation
 Life Fellow, 2005
 Connecticut Trial Lawyers Association
 Federal-State Judicial Council of Connecticut
 Federal Courts Study Committee Advisory Panel, 1988

Hartford County Bar Association
 Continuing Legal Education Committee, 1986 to 1990
 Judicial Council for the Second Circuit
 Space and Facilities Committee, 2003 to 2009
 Oliver Ellsworth Inn of Court
 Bencher, 1990 to 1998
 Bencher Emeritus, 1998 to present
 State of Connecticut Judicial Selection Commission, 1993-94
 United States Court of Appeals for the Second Circuit
 Committee on Rules and Internal Operating Procedures, 1994 to 1998
 United States District Court for the District of Connecticut
 Chief Judge, 2003 to 2009
 Chair, Local Rules Committee, 1994 to 2003
 Panel of Special Masters, 1986 to 1994
 Grievance Committee, 1989 to 1994
 Civil Justice Advisory Group, 1991-93, 1995-1997
 Advisory Committee for Selection of Magistrate Judge, 1993

10. **Bar and Court Admission:**

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

Connecticut, 1985
 District of Columbia, 1978

Following my appointment to the District Court, I took inactive status in Connecticut and resigned from the D.C. Bar. There has been no other lapse in membership.

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

Supreme Court of the United States, 1983
 United States Court of Appeals for the Second Circuit, 1984
 United States Court of Appeals for the Eleventh Circuit, 1982
 United States Court of Appeals for the District of Columbia Circuit, 1989
 United States District Court for the District of Connecticut, 1984
 United States District Court for the District of Columbia, 1982
 Connecticut (All Courts), 1985
 District of Columbia (All Courts), 1978

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Brown University Club of Central Connecticut, 1984-present
 Greater Hartford Jewish Community Center, 1999-present
 The Hartford Club, 1992-1994 & 2003-2006
 Hartford Stage Company, Board of Directors, 1985-1990
 Hartford YMCA, 1986-1990 (approximate)
 Mt. Sinai Hospital, Corporator, 1985-1990
 Simsbury Youth Hockey Association, 1994-2002
 Tumble Brook Country Club, 1980-present

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the listed organizations currently discriminates on the basis of race, sex, religion or national origin. The Hartford Club admitted its first women and minority members in the early 1970s and today has a diverse membership. Tumble Brook Country Club used to restrict tee times on weekend mornings to men but ceased doing so in 1994. I have no knowledge of any other discrimination by any of these organizations.

12. Published Writings and Public Statements:

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

Search and Seizure in the United States Court of Appeals: 1975-76 Term
Criminal Law and Procedure, 65 Geo.L.J. 213 (1976).

As a staff editor and then as a Case & Note Editor of the Georgetown Law Journal from 1976-1978, I assisted in editing articles for publication.

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

While in private practice in Connecticut and later as a judge, I served on our District Court's Civil Justice Advisory Group, established pursuant to the Civil Justice Reform Act, and in this capacity contributed to preparation of reports regarding civil case management and alternative dispute resolution. See Report and Plan of Civil Justice Advisory Group of the United States District Court for the District of Connecticut, 1997 WL 34712065 (Oct. 1997); Report and Plan of the United States District Court For the District of Connecticut, 1992 WL 12611691 (Dec. 1992). While in private practice, I also served on the Connecticut Bar Association Federal Practice Section Executive Committee, which occasionally responded to requests by the District Court for written comment on specific matters relating to local rules of practice. I contributed to the preparation of such comments. The comments typically were not more than a page or two and I have not retained copies.

I served as Chair of the Local Rules Committee of our District Court from 1994 to 2003. In this capacity, I submitted brief reports to the other members of the Court from time to time regarding recommended changes in local rules. I have not retained copies of these reports.

I have no record or recollection of any other reports, memoranda, or policy statements that I prepared or to which I contributed.

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

I testified before the United States Senate Judiciary Committee on September 14, 1994, in connection with my nomination to be United States District Judge for the District of Connecticut.

I have no record or recollection of any other testimony, official statements, or other communications relating, in whole or in part, to matters of public policy or legal interpretation.

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

Remarks Delivered as Chief Judge of the District Court:

During my tenure as chief judge of the District Court (2003-2009), I presided at special sessions of the Court and delivered remarks while acting in this capacity.

As chief judge, I presided at the installation of Jonathan Kreisberg as Director of the Hartford Regional Office of the National Labor Relations Board on July 8, 2009, and made brief remarks.

As chief judge, I spoke at annual meetings of the Federal Practice Section of the Connecticut Bar Association, which are held each June in honor of Connecticut's federal judiciary. These are social gatherings but it is customary for the chief judge to offer remarks on behalf of the Court. On these occasions, my remarks were devoted to reviewing highlights of the preceding year regarding personnel, space and facilities, special projects, rules of practice and notable cases.

While serving as chief judge, I made it a practice to attend monthly meetings of the Executive Committee of the Federal Practice Section and quarterly meetings of the Section. On many of these occasions, I provided a brief report regarding the current operations of the Court and responded to questions. Usually, my remarks and the question and answer session lasted a total of not more than about 15 minutes. On none of these occasions did I speak from a prepared text. Most of the time I spoke from handwritten notes, which I have not retained. On some occasions, I spoke from an outline.

As chief judge, I spoke to the District of Connecticut Bench-Bar Conference, held every other year in September, concerning "The State of the District."

As chief judge, I also spoke at a reception honoring our Magistrate Judges, which was jointly sponsored by the Connecticut Bar Association and the Federal Bar Council, an organization of lawyers who practice in the federal courts of the Second Circuit.

Other Remarks:

Since joining the District Court, I have presided at naturalization ceremonies approximately eight times per year. At each ceremony, I have spoken to the newly naturalized citizens about the meaning of the oath of citizenship. The speech has changed somewhat over the years.

In May 2008, I received an award from the Center for Children's Advocacy in Hartford and made brief remarks. The audience consisted of other honorees, directors and staff of the Center, children and youth served by the Center, and invited guests.

In November 2003, I spoke at the inaugural meeting of the American Constitution Society chapter at the University of Connecticut School of Law. The audience consisted of law students and one or more professors. My topic was Judicial Independence and Accountability In Sentencing.

I have been a guest lecturer at the University of Connecticut School of Law on the subjects of federal courts and federal criminal practice. The audience consisted of law students and one or more teachers.

During a visit to Duke Law School in October 2004, I spoke to a class of law students on the subject of contracts (10/6/04) and spoke to another class on the subject of federal courts (10/7/04). I did not retain my notes.

I have been a guest lecturer at the Quinnipiac University School of Law on the subject of federal courts. The audience consisted of law students. I did not retain my notes.

For many years, I was an active participant in the activities of the Oliver Ellsworth Inn of Court in Hartford. As a "Bencher" of the Inn, I was responsible for leading a "pupillage group," which was required to make a presentation to the entire Inn on a subject relating to trial or appellate advocacy. On these occasions, I was responsible for introducing the presentation.

On approximately six to eight occasions, I participated in continuing legal education programs sponsored by the Connecticut Bar Association and Hartford County Bar Association regarding tips on federal practice. On each occasion, the audience consisted of lawyers. I did not retain my notes.

On several occasions, I also have participated in continuing legal education programs sponsored by the Federal Bar Council. On each occasion, the audience consisted of lawyers, judges and their family members. I did not retain my notes.

On February 21, 2006, I spoke at a dinner for honor students at the Kingswood-Oxford School in West Hartford, Connecticut, on the subject of the rule of law. The audience consisted of high school students, parents and teachers. I did not retain my notes.

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

As a judge and practicing attorney I generally have avoided giving interviews. In reviewing my files and publicly-available news databases, I identified the following two exceptions:

Jack Ewing, "Cabranes Gets Backing for Supreme Court Seat," HARTFORD COURANT, Apr. 2, 1993, at D1
 Sports News Brief, UNITED PRESS INTERNATIONAL, Feb. 27, 1989

- 13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On September 29, 1994, after confirmation by the United States Senate, I was appointed by President Clinton to serve as a United States District Judge for the District of Connecticut. I became chief judge on February 1, 2003, and served in that capacity until August 31, 2009.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over 82 trials. All together, I have presided over 3,581 civil cases and 444 criminal cases (involving a total of 645 criminal defendants).

- i. Of these, approximately what percent were:

jury trials:	73%
bench trials:	27%
civil proceedings:	85%
criminal proceedings:	15%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. Ethicon, Inc. v. United States Surgical Corp., Case No. 89-CV-386

In this patent infringement case, a person who claimed to be the sole inventor of a medical device and his exclusive licensee sued the licensee's competitor. After a bench trial, I held that an electrical technician was a co-inventor and should be added to the patent. See 937 F. Supp. 1015 (D. Conn. 1996). Because the co-inventor did not want to join as a plaintiff in the suit, the case was subsequently dismissed. See 954 F. Supp. 51, aff'd, 135 F.3d 1456 (Fed. Cir. 1998), cert. denied, 525 U.S. 923 (1998).

For the Plaintiff: Jacob D. Zeldes, Zeldes, Needle & Cooper PC, 1000 Lafayette Boulevard, P.O. Box 1740, Bridgeport, CT 06601-1740, Tel: (203) 332-5721.
For the Defendant: David Dobbins, Patterson, Belknap, Webb & Tyler LLP, 1133 Avenue of the Americas, New York, NY 10036, Tel: (212) 336-2800.

2. Zimmitti v. Aetna Life Insurance Company, Case No. 92-CV-187

This age discrimination case was brought by the manager of a department at Aetna whose longtime employment with the company was terminated in connection with a major reorganization and reduction in force. The company urged that the reduction in force was done in a manner that avoided discrimination. After the jury found for the plaintiff, the defendant filed a motion for judgment as a matter of law on the ground that the evidence did not support a finding that its decision to eliminate the plaintiff's position was motivated by age discrimination. I denied the motion and the defendant appealed. The case was remanded to permit me to reconsider the defendant's motion in light of an intervening en banc decision of the Court of Appeals, which clarified that the plaintiff's verdict could not be sustained unless the evidence was sufficient to support a reasonable finding that the defendant's action was motivated by discrimination. See Zimmitti v. Aetna Life Ins. Co., 131 F.3d 132 (2d Cir. 1997). On the remand, I concluded that the evidence was sufficient to sustain the jury's verdict. See Zimmitti v. Aetna Life Ins. Co., 64 F. Supp. 2d 69 (D. Conn. 1999).

For the Plaintiff: Gregg D. Adler, Livingston, Adler, Pulda, Meiklejohn & Kelly, PC, 557 Prospect Avenue, Hartford, CT 06015-2922, Tel: (860) 233-9821. For the Defendant: Albert Zakarian, Day Pitney LLP, 242 Trumbull Street, Hartford, CT 06103, Tel: (860) 275-0290.

3. Emily J. v. Rowland, Case No. 93-CV-1944

This class action was brought on behalf of children detained in Connecticut's juvenile detention centers challenging the constitutionality of the conditions of their confinement. After an evidentiary proceeding tried without a jury, I found that children in detention with serious mental health needs were not receiving timely and adequate treatment in violation of their rights under the Fourteenth Amendment and that the State of Connecticut Department of Children and Families and the State of Connecticut Judicial Branch were jointly responsible. After further proceedings, the parties submitted a corrective action plan, which was successfully implemented over a period of years.

For the Plaintiffs: Martha Stone, Center for Children's Advocacy, University of Connecticut School of Law, 65 Elizabeth Street, Hartford, CT 06105, Tel: (860) 570-5327. For the Defendants: Margaret Q. Chapple, State of Connecticut Attorney General's Office, 55 Elm Street, P.O. Box 120, Hartford, CT 06141, Tel: (860) 808-5340. Susan T. Pearlman, State of Connecticut Attorney General's Office, 110 Sherman Street, Room 305, Hartford, CT 06105, Tel: (860) 808-6480.

4. United States v. Bryce, Case Nos. 97-CR-249 and 99-CR-238

In case number 97-CR-249, the defendant was charged with conspiracy to distribute cocaine and possession with intent to distribute. Prior to trial, a confidential informant who had assisted the government in its investigation of the case was murdered. A jury convicted the defendant on both counts and I sentenced him to concurrent terms of imprisonment of 124 months. The defendant appealed. While the appeal was pending, the defendant was indicted in case number 99-CR-238 for murdering the confidential informant and the case was transferred to me. At the murder trial, the defendant took the stand and admitted his involvement in cocaine trafficking, which he had previously denied, but insisted he had nothing to do with the murder. The jury returned a verdict of not guilty. In the meantime, the Court of Appeals had reversed the defendant's conviction on one of the two charges (possession) in the initial drug case and remanded the case for resentencing on the remaining count of conviction. See United States v. Bryce, 208 F.3d 346 (2d Cir. 1999). The government urged me to increase the defendant's sentence on that count to the statutory maximum of 240 months on the ground that the evidence presented at the murder trial established by at least a preponderance (the standard of proof applicable to judicial factfinding at sentencing) that the defendant had murdered the confidential informant. I found that the defendant was responsible for the murder and therefore increased his sentence to 240 months in accordance with the sentencing guidelines and applicable case law. See United States v. Bryce, 141 F. Supp.2d 269 (D. Conn. 2001), aff'd, 287 F.3d 249 (2d Cir. 2002), cert. denied, 537 U.S. 884 (2002). I subsequently denied a petition for post-conviction relief

alleging ineffective assistance of counsel. See United States v. Bryce, Case No. 3:97-CR-249, 2007 WL 2175188 (D. Conn. July 26, 2007).

For the Government: David A. Ring, now Associate General Counsel, Hamilton Sundstrand Corporation, 1 Hamilton Road, Windsor Locks, CT 06096, Tel: (860) 654-6452. For Bryce: John R. Williams, 51 Elm Street, Suite 409, New Haven, CT 06510, Tel: (203) 562-9931; and Salvatore J. Petrella, 558 Main Street, 1st Floor, Cromwell, CT 06416, Tel: (860) 632-8300.

5. United States v. Richards, Case No. 99-CR-266

I presided over all aspects of this 28-defendant drug trafficking case. Twenty-five defendants pleaded guilty. Three defendants proceeded to trial (two were tried together) and found guilty by juries. I imposed sentences on all defendants, including a term of 262 months on the leader of the drug trafficking ring.

For the Government: David A. Ring, now Associate General Counsel, Hamilton Sundstrand Corporation, 1 Hamilton Road, Windsor Locks, CT 06096, Tel: (860) 654-6452. For the defendants who went to trial: Jeremiah F. Donovan, P.O. Box 554, Old Saybrook, CT 06475, Tel: (860) 388-3750; Michael G. Moore, Law Offices of Maria de Castro Foden, 107 Oak Street, Hartford, CT 06106, Tel: (860) 278-3001.

6. Cowan v. Breen, Case No. 00-CV-52

This case was brought under 42 U.S.C. § 1983 by the estate of a woman who was fatally shot by a police officer following a motor vehicle stop. The shooting occurred after the woman's boyfriend, who was driving the car at the time of the stop, led the officer on a foot chase into nearby woods. The boyfriend managed to get away and the officer turned back. On reaching the road, the officer saw the woman driving the car from the scene of the stop headed in his direction. He then fired shots at the oncoming car. The officer testified that the woman appeared to be trying to hit him with the car and that his use of deadly force was reasonable because he believed his own life was in danger. I submitted the issue of liability to the jury using a special interrogatory. My instructions asked the jury to decide whether at the moment the officer irrevocably decided to fire the fatal shot, he had an objectively reasonable belief that he was in immediate danger of serious injury or death because the driver of the car was trying to hit him. The jury responded "No." The issue of liability having been determined in favor of the plaintiff, the case settled prior to presentation of evidence on damages.

For the Plaintiff: David N. Rosen, 400 Orange Street, New Haven, CT 06511, Tel: (203) 787-3513. For the Defendant: Thomas Gerarde and John J. Radshaw, Howd & Ludorf, LLC, 65 Wethersfield Avenue, Hartford, CT 06114-1190, Tel: (860) 249-1361.

7. United States v. Green, Case No. 00-CR-186

Seven defendants were charged with bank fraud in connection with a counterfeit check scheme. One went to trial and was convicted on all counts. The other six defendants pleaded guilty.

For the Government: David A. Ring, now Associate General Counsel, Hamilton Sundstrand Corporation, 1 Hamilton Road, Windsor Locks, CT 06096, Tel: (860) 654-6452. For the defendant who went to trial: Kevin A. Randolph, now a Judge of the Connecticut Superior Court, 410 Center Street, Manchester, CT 06040, Tel: (860) 646-5874.

8. United States v. Watras, Case No. 00-CR-198

The defendant in this case was charged with stalking his spouse and father-in-law. Following trial, a jury convicted him of two counts of interstate stalking, one count of interstate travel to violate a protective order, and one count of unlawful possession of a firearm by a person subject to a protective order. I sentenced the defendant to 42 months in prison to be followed by three years of supervised release. The case was significant because of the nature of the charges and the defendant's reliance on an insanity defense.

For the Government: James I. Glasser, now a partner in Wiggin & Dana, P.O. Box 1832, 265 Church Street, New Haven, CT 06508-1832, Tel: (203) 498-4313. For Watras: Paul F. Thomas, Office of the Federal Defender, 265 Church Street, Suite 702, New Haven CT 06510-7007, Tel: (203) 498-4200.

9. United States v. Harris, Case No. 04-CR-360

The defendant in this case was charged with narcotics trafficking and firearms offenses. Evidence supporting the charges—crack cocaine packaged for sale and a loaded handgun—were seized by police from the glove compartment of a car abandoned by the defendant after he led police on a high speed chase. I denied a motion to suppress the evidence found in the glove compartment. 2005 WL 3021178 (D. Conn. Nov. 10, 2005). Following trial, the jury convicted the defendant on all counts and I sentenced him to 300 months in prison and eight years of supervised release reflecting the seriousness of his offense conduct and criminal history.

For the Government: Anthony E. Kaplan and Paul A. Murphy, Office of the United States Attorney, 157 Church Street, New Haven, CT 06510, Tel: (203) 821-3700. For Harris: William H. Paetzold, Moriarty & Paetzold, LLC, 2230 Main Street, Glastonbury, CT 06033, Tel: (860) 657-1010.

10. Ross ex rel. Smyth v. Lantz, No. 05-CV-116

In this habeas case under 28 U.S.C. § 2254, and a companion civil rights case under 42 U.S.C. § 1983, Ross v. Rell, No. 05-CV-130, I issued temporary restraining orders staying the execution of a state court defendant, Michael Ross, who was under a sentence of death for murders involving kidnapping and sexual assault. After many years on death row, Ross was facing imminent execution as a result of his decision to waive legal rights. In the habeas case, the Chief Public Defender for the State of Connecticut sought to stay Ross's execution on the ground that Ross was not competent to validly waive post-conviction challenges to his death sentence. In the second case, Ross's father sought a stay on the same basis. During an emergency hearing in the habeas case, I granted the Chief Public Defender's request to proceed as Ross's next friend, ordered a competency hearing to be held, and granted a stay of the execution pending the outcome of the competency hearing. See Ross ex rel. Smyth v. Lantz, 392 F. Supp. 2d 236 (D. Conn. 2005). I subsequently granted Ross's father's request for a temporary restraining order staying the execution. See Ross v. Rell, 2005 WL 181883 (D. Conn. Jan. 26, 2005). The Court of Appeals denied a motion to vacate the stay of execution entered in the habeas case. See Ross ex rel. Smyth v. Lantz, 396 F.3d 512 (2d Cir. 2005). Three days later, the Supreme Court granted an application to vacate the stay by a vote of 5-4. See Lantz v. Ross, 543 U.S. 1134 (2005). Soon after the Supreme Court's decision, the Court of Appeals decided that Ross's father had not established a likelihood of success on the merits, and therefore granted a motion to vacate the stay of execution, but the Court of Appeals stayed its order to allow Ross's father time to seek further review. Ross v. Rell, 398 F.3d 203 (2d Cir. 2005). This temporary stay also was vacated by the Supreme Court. Rell v. Ross, 543 U.S. 1134 (2005). Hours before the execution was scheduled to occur, I convened a telephone conference with counsel of record to discuss new information that had come to my attention indicating that Ross was not competent to waive legal rights. During the conference, I expressed my belief that Ross's attorney had a professional duty to investigate this new evidence of Ross's possible incompetence. Following the conference, Ross's counsel obtained a postponement of the execution in order to investigate the new evidence. A week-long competency hearing was subsequently held in state court. The hearing resulted in a determination that Ross was competent and he was executed.

For the Chief Public Defender: Hubert J. Santos, Santos & Seeley, P.C., 51 Russ Street, Hartford, CT 06106, Tel: (860) 249-6548. For the State: Jo Anne Sulik and Michael E. O'Hare, Office of the Chief State's Attorney, 300 Corporate Place, Rocky Hill, CT 06067, Tel: (860) 258-5887; For Ross's Father: Antonio Ponvert, III, Koskoff, Koskoff & Beider, P.C., 350 Fairfield Avenue, Bridgeport, CT 06604, Tel: (203) 336-4421, and James J. Nugent, Nugent & Bryant, 236 Boston Post Road, Orange, CT 06477, Tel: (203) 795-1111; For the Governor: Anne E. Lynch, Terrence M. O'Neill, Henri Alexandre and Steven R. Strom, State of

Connecticut Attorney General's Office, 110 Sherman Street, Hartford, CT 06105,
Tel: (860) 808-5450.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
1. Palmer v. Garuti, No. 3:06-CV-795, 2009 WL 413129 (D. Conn. Feb. 17, 2009), and See Palmer v. New Britain General Hospital, No. 3:05-CV-943, 2009 WL 378646 (D. Conn. Feb. 13, 2009). For the Plaintiff: Diane Polan, 129 Church Street, Suite 802, New Haven, CT 06510, Tel: (203) 865-5000. For the defendants: Peter D. Clark, 525 Bridgeport Ave. Shelton, CT 06484, Tel: (203) 925-9688; Donna R. Zito, O'Brien, Tanski & Young, LLP, 185 Asylum Avenue, Hartford, CT 06103, Tel: (860) 525-2700.
 2. Michaels v. U.S. Dep't of Justice, 544 F. Supp. 2d 131 (D. Conn. 2008). The plaintiff was pro se. For the Defendant: Carolyn Aiko Ikari, U.S. Attorney's Office, Hartford, 450 Main Street, Room 328, Hartford, CT 06103, Tel: (860) 947-7480.
 3. Mr. & Mrs. "M." Parents of "K.M." v. Ridgefield Board of Education, No. 3:05-CV-584(RNC), 2007 WL 987483 (D. Conn. March 30, 2007), and 2008 WL 926518 (D. Conn. March 31, 2008). For the Plaintiffs: Dana A. Johnson and Jennifer D. Laviano, Law Offices of Jennifer Laviano, LLC, 76 Route 37 South, Sherman, CT 06784, Tel: (860) 350-4757. For the Defendant: Mark J. Sommaruga, Sullivan Schoen Campana & Connon, LLC, 646 Prospect Avenue, Hartford, CT 06105, Tel: (860) 233-2141.
 4. Omni Corp. v. Sonitrol Corp., 476 F. Supp. 2d 125 (D. Conn. 2007), aff'd, 303 Fed. Appx. 908 (2d Cir. 2008). For the Plaintiffs: Kevin Ebrahim Dehghani, 205 Church Street, Suite 438, New Haven, CT 06510, Tel: (203) 773-9513. For the Defendant: James T. Shearin, Pullman & Comley, 850 Main Street, Bridgeport, CT 06601, Tel: (203) 330-2240.
 5. Wilson v. Lowe's Home Center, Inc., 401 F. Supp. 2d 186 (D. Conn. 2005). For the Plaintiff: V. Michael Simko, Jr., 2 Corporate Drive, Suite 234, Shelton, CT 06484, Tel:(203)925-1800. For the Defendant: David C. Casey, Littler Mendelson, P.C., One International Place, Suite 2700, Boston, MA 02110, Tel: (617) 378-6000.
 6. Holt v. Home Depot, U.S.A., Inc., No. 3:00-CV-1578(RNC), 2004 WL 178604 (D. Conn. Jan 22, 2004), aff'd 135 Fed. Appx. 449 (2d Cir. 2005). For the Plaintiff: Thomas W. Meiklejohn, Livingston, Adler, Pulda, Meiklejohn & Kelly, PC, 557 Prospect Avenue, Hartford, CT 06015, Tel: (860) 233-9821. For

the Defendant: Hugh F. Murray, III, Murtha Cullina, LLP, CityPlace I, 185 Asylum Street, Hartford, CT 06103, Tel: (860)240-6077.

7. Cahoon v. Int'l Brotherhood of Electrical Workers, Local 261, 175 F. Supp. 2d 220 (D. Conn. 2001). For the Plaintiff: William R. Davis and Eugene K. Swain, Riscassi & Davis, 13 Oak Street, Hartford, CT 06106, Tel: (860) 522-1196. For the International Union: Peter J. Ponziani, Danaher, Tedford, Lagnese & Neal, 21 Oak Street, Hartford, CT 06106, Tel: (860) 247-3666. For the Local Union: Scott B. Clendaniel, 300 Windsor Street, Hartford, CT 061020, Tel: (860) 277-7480.

8. United States v. Bryce, 141 F. Supp. 2d 269 (D. Conn. 2001), aff'd 287 F.3d 249 (2d Cir. 2002), cert. denied, 537 U.S. 884 (2002). For the Government: David A. Ring, Associate General Counsel, Hamilton Sundstrand Corporation, 1 Hamilton Road, Windsor Locks, CT 06096, Tel: (860) 654-6452. For the Defendant: Salvatore J. Petrella, 558 Main St., Cromwell, CT 06416, Tel: (860) 632-8300.

9. Connecticut ex rel. Blumenthal v. U.S. Dep't of the Interior, 26 F. Supp. 2d 397 (D. Conn. 1998), rev'd, 228 F.3d 82 (2d Cir. 2000). For the Plaintiffs: David Wrimm, Office of the Attorney General, 55 Elm Street, Hartford, CT 06105, Tel: (860) 808-5318. For the Defendants: John B. Hughes, United States Attorney's Office, 157 Church Street, Floor 23, New Haven, CT 06510, Tel: (203) 821-3700.

10. Cody v. Ward, 954 F. Supp. 43 (D. Conn. 1997). For the Plaintiff: Jonathan Joseph Klein, 1445 Capitol Avenue, Bridgeport, CT 06604, Tel: (203) 330-1900. For the Defendant: David S. Golub, Silver, Golub & Teitell, 184 Atlantic Street, Stamford, CT 06901, Tel: (203) 428-4171.

- e. Provide a list of all cases in which certiorari was requested or granted.
- Connecticut Dept. Of Public Safety v. Doe, 132 F. Supp. 2d 57 (D. Conn. 2001), aff'd, 271 F.3d 38 (2d Cir. 2001), rev'd, 538 U.S. 1 (2003)
- Doriss v. City of New Haven, 2006 WL 2474916, aff'd, 276 Fed. Appx. 36 (2d Cir. 2008), cert. denied, 129 S. Ct. 604 (2008)
- United States v. Bryce, 141 F. Supp. 2d 269 (D. Conn. 2001), aff'd, 287 F.3d 249 (2d Cir. 2002), cert. denied, 537 U.S. 884 (2002)
- State of Conn. ex rel. Blumenthal v. Dept. of Interior, 26 F. Supp. 2d 397 (D. Conn. 1998), rev'd, 228 F.3d 82 (2d Cir. 2000), cert. denied, 532 U.S. 1007 (2001)
- Sal Tinnerello & Sons, Inc. v. Town of Stonington, Case No. 3:97-CV-1273, aff'd, 141 F.3d 46 (2d Cir. 1998), cert. denied, 525 U.S. 923 (1998)
- Ethicon, Inc. v. U.S. Surgical Corp., 954 F. Supp. 51 (D. Conn. 1997), aff'd, 135 F.3d 1456 (Fed. Cir. 1998), cert. denied, 525 U.S. 923 (1998)
- Evans Cooling Systems, Inc. V. General Motors Corp., 939 F. Supp. 154 (D. Conn. 1996), aff'd, 125 F.3d 1448 (Fed. Cir. 1997), cert. denied, 522 U.S. 1115 (1998).

Chase Manhattan Bank v. Traffic Stream Infrastructure, 251 F.3d 334 (2d Cir. 2001) (sitting by designation). cert. denied, 534 U.S. 1074 (2002).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Saviano v. Westport, 2009 WL 2048959 (2d Cir. 2009), vacating and remanding 2007 WL 735707 (D. Conn. March 5, 2007). The Court of Appeals ruled that the plaintiff should have been given more time to submit papers in opposition to a motion for summary judgment.

Walczyk v. Rio, 496 F.3d 139 (2d Cir. 2007), affirming in part, reversing in part, and remanding 339 F. Supp. 2d 385 (D. Conn. 2004). The Court of Appeals ruled that the defendants' motion for summary judgment should have been granted.

United States v. Vitale, 459 F.3d 190 (2d Cir. 2006), remanding Case No. 02-CR-262. The Court of Appeals ruled that I erred in failing to conduct a post-trial hearing on possible juror bias.

O'Connor v. Pierson, 426 F.3d 187 (2d Cir. 2005), affirming in part, vacating in part and remanding Ruling and Order, Case No. 3:00-CV-339 (D. Conn. Dec. 10, 2003) (order granting summary judgment). The Court of Appeals ruled that the defendants' motion for summary judgment on the plaintiff's substantive due process claim should have been denied. On the remand, I concluded that res judicata barred the claim and the Court of Appeals affirmed. O'Connor v. Pierson, 482 F. Supp. 2d 228 (D. Conn. 2007), aff'd, 568 F.3d 64 (2d Cir. 2009).

In Re Grand Jury Investigation, 399 F.3d 527 (2d Cir. 2005), reversing Ruling and Order, Case No. 3:04-MC-133 (D. Conn. April 26, 2004). The Court of Appeals ruled that I erred in ordering a government lawyer to testify before a grand jury investigating allegations of public corruption because the attorney-client privilege applied.

Ross ex rel. Smyth v. Lantz, 392 F. Supp. 2d 236 (D. Conn. 2005), motion to vacate stay denied and appeal dismissed, 396 F.3d 512 (2d Cir. 2005), stay vacated, 543 U.S. 1134 (2005). I granted a request to stay the execution of a state defendant pending a hearing on his competency to waive legal remedies and accept execution. The Court of Appeals denied a motion to vacate the stay, but an application to vacate the stay was granted by the Supreme Court.

Ross v. Rell, No. 05-CV-130, 2005 WL 181883 (D. Conn. Jan. 26, 2005), order vacated, 398 F.3d 203 (2d Cir. 2005), stay vacated, 543 U.S. 1134 (2005). I

granted the plaintiff's request for an order staying the execution of his son pending a competency hearing. The Court of Appeals concluded that the plaintiff had not shown a likelihood of success on the merits but continued the stay to permit the plaintiff to seek further review. The Supreme Court granted an application to vacate the stay.

Rabin v. Wilson-Coker, 362 F.3d 190 (2d Cir. 2004), reversing and remanding 266 F. Supp. 2d 332 (D. Conn. 2003). The Court of Appeals ruled that I erred in interpreting a statute bearing on Medicaid recipients' eligibility for transitional medical assistance.

Duzant v. Electric Boat Corp., 81 Fed. Appx. 370 (2d Cir. 2003), vacating and remanding order entered in Case No. 3:01-CV-2417 (D. Conn. Jan. 27, 2003). The Court of Appeals ruled that the defendant's motion for summary judgment in an employment discrimination suit should have been denied.

Connecticut Dept. of Public Safety v. Doe, 538 U.S. 1 (2003), reversing 271 F.3d 38 (2d Cir. 2001), affirming 132 F. Supp. 2d 57 (D. Conn. 2001). The Supreme Court ruled that the Due Process Clause did not entitle the plaintiff to a hearing to determine whether he was currently dangerous before he was included in Connecticut's sex offender registry.

Mulvaney Mech., Inc. v. Sheet Metal Workers Int'l Ass'n., Local 38, 288 F.3d 491 (2d Cir. 2002), vacating and remanding 2000 WL 852430 (D. Conn. Mar. 31, 2000). The Court of Appeals held that I erred in vacating an arbitration award.

Connecticut ex rel. Blumenthal v. U.S. Dept. of Interior, 228 F.3d 82 (2d Cir. 2000), reversing and remanding 26 F. Supp. 2d 397 (D. Conn. 1998). The Court of Appeals ruled that the Connecticut Indian Land Claims Settlement Act did not prevent the Secretary of the Interior from taking land into trust for the benefit of the Mashantucket Pequot Tribe.

United States v. Bryce, 208 F.3d 346 (2d Cir. 2000), reversing in part, affirming in part and remanding for resentencing. The Court of Appeals affirmed the defendant's conviction for conspiracy to possess with intent to distribute cocaine but reversed his conviction on a count charging actual possession due to insufficiency of the evidence.

Phillip v. Fairfield Univ., 118 F.3d 131 (2d Cir. 1997), affirming in part and remanding in part 960 F. Supp. 552 (D. Conn. 1997). I granted a preliminary injunction to a student-athlete enjoining the NCAA from interfering with his opportunity to receive financial aid from his university and play basketball. The Court of Appeals remanded for further analysis of whether the plaintiff was likely to succeed on the merits of his claim under state law.

Worldcrisa Corp. v. Armstrong, 129 F.3d 71 (2d Cir. 1997), reversing and remanding order entered in Case No. 96-CV-797. The Court of Appeals ruled that a motion to stay pending arbitration should have been granted.

Thornley v. Penton Publ'g, Inc., 104 F.3d 26 (2d Cir. 1997), vacating judgment entered on jury verdict and remanding case for new trial. In this employment discrimination case, the Court of Appeals ruled that the jury should have been instructed that the plaintiff had to prove that his performance satisfied the particular expectations of his employer, as opposed to the legitimate expectations of an employer.

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

I have never designated an opinion published or unpublished. Throughout my time on the bench, I have filed all decisions with our Court's Office of the Clerk, which in recent years has used the CM/ECF system to make all written decisions available to the public online. Many of my decisions also have been published electronically by Westlaw or Lexis or formally reported in the Federal Supplement.

- h. Provide 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, provide copies of the opinions.

Palmer v. Garuti, No. 3:06-CV-795, 2009 WL 413129 (D. Conn. Feb. 17, 2009)

Palmer v. New Britain General Hospital, No. 3:05-CV-943, 2009 WL 378646 (D. Conn. Feb. 13, 2009)

Estate of Gadway v. City of Norwich, 512 F. Supp. 2d 134 (D. Conn. 2007)

Bungert v. Shelton, No. 3:02-CV-1291, 2005 WL 2663054 (D. Conn. Oct. 14, 2005)

Leebaert v. Harrington, 193 F. Supp. 2d 491 (D. Conn. 2002), aff'd, 332 F.3d 134 (2d Cir. 2003)

Kruelski v. State of Connecticut Superior Court, 156 F. Supp. 2d 185 (D. Conn. 2001), aff'd, 316 F.3d 103 (2d Cir. 2003)

Doe v. Lee, 132 F. Supp. 2d 57 (D. Conn. 2001), aff'd, Doe v. Dept. of Public Safety, 271 F.3d 38 (2d Cir. 2001), rev'd, 538 U.S. 1 (2003)

Mallon v. Walt Disney World Co., 42 F. Supp. 2d 143 (D. Conn. 1998)

Hanrahan v. City of Norwich, 959 F. Supp. 2d 118 (D. Conn. 1997), aff'd, 133 F.3d 907 (2d Cir. 1997)

Medeiros v. O'Connell, 955 F. Supp. 21 (D. Conn. 1997), aff'd, 150 F.3d 164 (2d Cir. 1998)

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I authored one opinion, in United States v. Leaphart, 98 F.3d 41 (2d Cir. 1996), in which our unanimous panel held that a sentencing court erred in imposing a two-year term of supervised release because the maximum term that could be imposed was one year. We rejected the defendant's other claims of error for lack of merit.

I also sat by designation on the panel that heard and decided the following cases:

Chase Manhattan Bank v. Traffic Stream (BVI) Infrastructure Ltd., 251 F.3d 334 (2d Cir. 2001)

McMenemy v. City of Rochester, 241 F.3d 279 (2d Cir. 2001)

United States v. Tucker, 5 Fed. Appx. 23, 2001 WL 209873 (2d Cir. 2001)

Zimmerman v. Long Island R.R., 2 Fed. Appx. 172, 2001 WL 99530 (2d Cir. 2001)

Turgeon v. Operating Engineers, Local No. 98, 2 Fed. Appx. 176, 2001 WL 99578 (2d Cir. 2001)

United States v. Hirsch, 239 F.3d 221 (2d Cir. 2001)

National Broadcasting Co., Inc. v. Bear Stearns & Co., Inc., 165 F.3d 184 (2d Cir. 1999)

Transaero, Inc. v. La Fuerza Aerea Boliviana, 162 F.3d 724 (2d Cir. 1998)

United States v. International Broth. of Teamsters, Chauffeurs, Warehousemen & Helpers of America, 156 F.3d 354 (2d Cir. 1998)

United States v. Earth Construction, Inc., 159 F.3d 1348, 1998 WL 537516 (2d Cir. 1998)

Romney v. Lin, 105 F.3d 806 (2d Cir. 1997)

Lee v. Edwards, 101 F.3d 805 (2d Cir. 1996)

Fighting Finest, Inc. v. Bratton, 95 F.3d 224 (2d Cir. 1996)

United States v. Pappas, 94 F.3d 795 (2d Cir. 1996)

Romney v. Lin, 94 F.3d 74 (2d Cir. 1996)

Aetna Cas. & Sur. Co. v. Georgia Tubing Corp., 93 F.3d 56 (2d Cir. 1996)

Beaudin v. Ben and Jerry's Homemade, Inc., 95 F.3d 1 (2d Cir. 1996)

Jones v. Hoffman, 86 F.3d 46 (2d Cir. 1996)

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

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

Under our Court's automatic recusal system, the Clerk's Office maintains a list of persons and entities whose involvement in a case triggers my recusal without action on my part. The list, which I update regularly, consists of entities in which I have a financial interest requiring automatic disqualification, as well as clients I represented in private practice and certain lawyers, including members of my former law firm.

By recollection and search of available records, I have identified the following cases in which an issue of recusal was raised:

In Burns v. King, Case No. 3:02-CV-897, the plaintiff, acting pro se, asserted that I was biased against her and favored the opposing party because of various rulings I made in the case. Similar allegations were made against the Magistrate Judge assigned to the case. I did not recuse myself because there was no legal basis for doing so. The Court of Appeals subsequently rejected the plaintiff's conclusory allegations of bias as unsupported. See 160 Fed. Appx. 108, 112 (2d Cir. 2005).

In United States v. Bryce, Case No. 3:99-CR-238, the defendant, acting pro se, filed a motion to disqualify me after I granted the government's motion to increase his sentence. After the disqualification motion was briefed by both sides, I denied the motion in a ruling and order explaining that there were no valid grounds for disqualification.

In In re James R. Phaiah, Case No. 3:06-CV-1158, counsel for a bankruptcy trustee seeking to recover a contingency fee earned by a lawyer in an action brought on behalf of the debtor against a third party suggested that I consider recusing myself because I had appointed the lawyer to represent the debtor in the action against the third party. I ordered briefs to be filed on the issue, heard oral argument and decided that I should not recuse myself because there was no legal basis for doing so.

In Ross v. Rell, Case No. 3:05-CV-130, involving Michael Ross's competency to waive legal remedies and submit to execution, discussed above, one of the attorneys for the State asked if I held any beliefs against the death penalty. I responded that I did not have

any beliefs that would stand in the way of implementing a death penalty in circumstances where the law called for it to be done. I did not recuse myself because I was not aware of any basis for recusal. After the litigation was over, it was brought to my attention that thirteen years earlier, while in private practice, I signed an application for permission to file an amicus curiae brief on behalf of the Connecticut Criminal Defense Lawyers Association (CCDLA) in Ross's direct appeal to the Connecticut Supreme Court. Leave was granted but no brief was filed and I took no further action. When the litigation concerning Ross's competency to waive legal rights came before me as a judge, I did not recall my fleeting involvement on behalf of the CCDLA thirteen years earlier. Had I recalled it, I would have recused myself.

In Valley Housing LP v. City of Derby, Case No. 3:06-CV-1319, I denied a letter motion that sought my recusal based on my having engaged in committee work with one of the attorneys for the plaintiff in my capacity as chief judge and the attorney's as co-chair of the Federal Practice Section of the Connecticut Bar Association (among other professional connections). By agreement of all parties, I subsequently transferred the case to another judge for a bench trial.

In United States v. Akande, Case No. 3:05-CR-136, the defendant, who was represented by counsel, filed a motion on his own seeking to disqualify me after I announced at his sentencing hearing that I was considering imposing a nonguidelines sentence in excess of the top of the advisory guideline range. I denied the defendant's motion in a brief written order pointing out that the motion was procedurally improper and no valid ground for recusal existed.

15. Public Office, Political Activities and Affiliations:

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

Member, State of Connecticut Prison and Jail Overcrowding Commission,
appointed by Governor Lowell P. Weicker, 1991-93.

Member, State of Connecticut Judicial Selection Commission, appointed by
Governor Weicker, 1993-94.

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

None.

16. **Legal Career:** Answer each part separately.

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

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

I clerked for United States District Judge Samuel Conti (N.D. Cal.) from February 1979 to January 1980, for then-United States District Judge José A. Cabranes (D. Conn.) from February 1980 to August 1980, and for United States Circuit Judge Jon O. Newman (2d Cir.) from September 1980 to August 1981.

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

1986 to 1990
Law Offices of Robert N. Chatigny
60 Washington Street
Hartford, Connecticut 06016

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

1981 to 1983
Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005
Associate

1984 to 1986
Chatigny & Palmer
60 Washington Street
Hartford, Connecticut 06106
Partner

1991 to 1994
Chatigny & Cowdery
750 Main Street
Hartford, Connecticut 06106
Partner

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

While in private practice, I served as a mediator on a pro bono basis in a number of federal cases assigned to me as a member of the District Court's Panel of Special Masters. I do not have a list of the cases.

While in private practice, I was appointed by the United States District Court for the District of Connecticut to serve as a special master in a complex antitrust case, Landmark Holdings Corp. v. Bermant, 664 F.2d 8891 (2d Cir. 1981). The case was initially assigned to me for recommended rulings on discovery disputes and substantive issues. After my recommended rulings were adopted by the Court, I was assigned to conduct settlement conferences with the lawyers and a lengthy mediation ensued, which led to a settlement of the case.

b. Describe:

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

I concentrated on litigation. Following my clerkships, I practiced as an associate at Williams & Connolly, where I worked on civil and criminal cases under the supervision of a number of partners. The civil cases included a medical malpractice trial in the District of Columbia, complex declaratory judgment litigation in the U.S. District Courts for the District of Columbia and the Southern District of New York involving the availability and scope of liability insurance coverage for manufacturers of DES, an appeal in the D.C. Circuit involving the legal and ethical duties of a corporation's outside counsel, and an appeal in the Eleventh Circuit involving the obligations of directors of a closely held corporation. The criminal cases included a grand jury investigation into arms shipments to foreign countries, a murder case in the District of Columbia on behalf of an indigent defendant and an appeal in the Eleventh Circuit concerning the scope of the Coast Guard's authority to stop and search private vessels on the high seas.

I left Williams & Connolly to return to Connecticut to start a law firm with a lawyer who is now a Justice of the Connecticut Supreme Court. At first, our practice consisted mainly of small commercial cases, appointed criminal cases and some personal injury cases involving claims of medical malpractice and products liability. In time, my practice consisted primarily of federal white collar criminal defense work, civil RICO litigation, and medical malpractice litigation. The firm also acted as local

counsel in Connecticut for major firms located elsewhere, including, Williams & Connolly; Cravath, Swaine & Moore; and Skadden, Arps, Slate, Meagher & Flom.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

My clients were varied. I represented the State of Connecticut, the Metropolitan District Commission (a public agency), major corporations, prominent businessmen, law firms, lawyers, plaintiffs in medical malpractice cases, defendants in medical malpractice cases, charitable organizations, small businesses and indigent individuals. Toward the end of my years in private practice, I specialized in federal grand jury practice and professional liability matters.

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

My practice has been entirely devoted to litigation. While in private practice, I appeared in court occasionally.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 60% |
| 2. state courts of record: | 30% |
| 3. other courts: | |
| 4. administrative agencies: | 10% |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 60% |
| 2. criminal proceedings: | 40% |

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

I started trial as sole or lead counsel in a number of cases, but all were settled or dismissed.

- i. What percentage of these trials were:

- | | |
|--------------|------|
| 1. jury: | 100% |
| 2. non-jury: | |

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

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

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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. Young & Rubicam, Inc., 741 F.Supp. 334 (D. Conn. 1990)

The defendants in this case were charged with federal crimes arising from an alleged conspiracy to bribe foreign government officials. I was co-counsel for the lead defendant, Young & Rubicam, Inc., along with the late Thomas D. Barr and his partner Stephen S. Madsen of Cravath, Swaine & Moore (Tel: 212-474-1000). After jury selection began, the case was resolved by a corporate plea. U.S. District Judge Peter C. Dorsey presided. A civil RICO case arising out of the same conduct alleged in the indictment was dismissed by Judge Dorsey. See Abrahams v. Young & Rubicam, Inc., 757 F.Supp. 171 (D.Conn. 1991). The Government was represented by then-Assistant United States Attorneys Robert J. Lynn and Robert W. Werner.

2. Fortunato v. Hartford Hosp., Case No. CV-89-0363402S, Connecticut Superior Court, J.D. Hartford/New Britain at Hartford (1994)

This medical malpractice case went to trial in Hartford Superior Court in February 1994. I was lead counsel. My client was a 57 year old man who underwent surgery on his cervical spine and awoke from the operation quadriplegic. The case settled during jury selection following conferences conducted by Superior Court Judge John J. Langenbach. The defendant was represented by Thomas J. Groark, Jr. (Tel: 860-275-0216).

3. Woody Allen v. Frank S. Maco, (1993 to 1994)

I served as co-counsel for Mr. Allen in connection with administrative complaints he filed against a Connecticut prosecutor. The prosecutor announced at a press conference that the State had sufficient evidence to charge Mr. Allen with the crime of sexually

assaulting his adopted daughter. The prosecutor stated that he would not charge Mr. Allen, despite the existence of probable cause, because he wanted to protect the child against the rigors of a trial. Two administrative proceedings were held on Mr. Allen's complaints: one before the Connecticut Criminal Justice Commission; the other before a local panel of the Statewide Grievance Committee. My co-counsel was Elkan Abramowitz of Morvillo, Abramowitz, Grand, Iason & Silberberg of New York City (Tel: 212-856-9600). The prosecutor was represented by James A. Wade of Robinson & Cole in Hartford (Tel: 860-275-8200).

4. Hamma v. Gradco (Japan) Ltd., B-88-115 (JAC) (D.Conn. 1992)

In this civil RICO case, I was sole counsel for a Japanese company charged with fraud in connection with its acquisition of valuable patent rights. I moved to dismiss the case on the ground that the Court lacked personal jurisdiction over the foreign company. After extensive briefing and oral argument, the motion to dismiss was granted. The plaintiff was represented by the late Edward F. Hennessy and Brien P. Horan of Robinson & Cole in Hartford (Tel. 860-275-8200).

5. Piotrowski v. Dataproducts Corp., Case No. B-84-287 (RCZ) (D.Conn. 1987-89)

I brought this negligence and products liability case on behalf of a young man who sustained second- and third-degree burns over two-thirds of his body surface in an explosion and fire at his workplace. The complaint alleged that the parent company of the plaintiff's employer failed to require adequate safety precautions, a claim that survived a motion to dismiss based on the employer's immunity from suit under the workers' compensation statute. The case was successfully settled after extensive pretrial litigation. The late Robert C. Zampano presided. Defense counsel included Joseph G. Lynch of Halloran & Sage in Hartford (Tel: 860-297-4625); and Francis H. Morrison III of Hartford (Tel: 860-275-8155).

6. Warkentin v. Norwalk Hosp., Case No. CV-86-0080874, Connecticut Superior Court, J.D. of Stamford/Norwalk at Stamford (1986-87)

In this medical malpractice case, I was lead counsel for the estate of a 17 year old who bled to death on an operating table at a community hospital following a car accident. The case settled the first day of trial. Superior Court Judge Nicholas Cioffi presided. Defense counsel included Donna R. Zito of Hartford (Tel: 860-525-2700) and Carl E. Cella of North Haven (Tel: 203-239-5851).

7. United States v. Lofgren, Criminal No. B-87-72 (WWE) (D.Conn. 1988)

This was a bribery case arising from a five-year sting operation conducted by IRS agents in Connecticut and New York. The agents were assisted by a priest, who urged people to pay ostensibly corrupt IRS agents a fee in exchange for reduction or elimination of their tax liability. I was sole counsel for a small businessman who paid the agents on several occasions. Each payment was surreptitiously recorded by the agents on videotape. I moved on due process grounds to dismiss the indictment or, in the alternative, to suppress the videotapes and was eventually able to negotiate a reasonable disposition of the case based in part on the due process argument. U.S. District Judge Warren W. Eginton

presided. The Government was represented by then-Assistant United States Attorney Ethan Levin-Epstein, now of New Haven (Tel: 203-777-4425).

8. Leary v. Connecticut Bank and Trust, Connecticut Superior Court, Judicial District of Hartford/New Britain at Hartford (1986-88)

I was lead counsel for a securities trader who was terminated by his employer on the ground that he had engaged in an improper relationship with a securities broker. The termination ended the plaintiff's 20-year career as a securities trader. Suit was filed against the employer and a third party that brought the alleged impropriety to the employer's attention. The complaint alleged claims for wrongful discharge, defamation and infliction of emotional distress. The case settled after extensive pretrial litigation. The defendants were represented by Peter W. Brenner of Shipman & Goodwin in Hartford (Tel: 860-251-5790) and George J. DuBorg of Wethersfield (Tel: 860-633-4797).

9. State v. Floyd, 217 Conn. 73, 584 A.2d 1157 (1991)

Three employees of Pratt & Whitney were charged with the offense of failure to assist a police officer in violation of a Connecticut statute. The case arose out of their refusal to obey the officer's request for help in arresting a fellow employee. The Company retained me to defend the employees. My motion to dismiss the charges on constitutional grounds was granted by the trial court and the State appealed to the Connecticut Supreme Court. The Chief Justice selected the case for argument before a special session of the Court sitting at Yale Law School. I briefed and argued the case. The Court construed the statute in a manner favorable to my clients but remanded the case for trial. On the second day of trial before Superior Court Judge Thomas F. Parker, after I made a Batson challenge to the State's attempt to strike a prospective juror, the State nolleed the case. The case was reported in annual surveys of Connecticut law as one of the most significant cases of the year. The State was represented by Assistant State's Attorney Carolyn K. Longstreth of the Chief State's Attorney's Office (Tel: 203-265-2372).

10. United States v. Thompson, 710 F.2d 1500 (11th Cir. 1983)

This criminal case arose out of a warrantless Coast Guard boarding and search of a locked cabin aboard a private vessel on the high seas. Chief Judge Joe Eaton of the U.S. District Court for the Southern District of Florida granted defense motions to suppress marijuana found in the cabin of the vessel and the government appealed. The case presented significant issues concerning the scope of the Coast Guard's law enforcement authority on the high seas. I wrote the main brief for the defendants and argued the appeal before a panel of the Eleventh Circuit (Circuit Judges Vance and Anderson and District Judge Charles R. Scott). The Government was represented by Robert J. Bondi, Assistant United States Attorney.

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

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

During my time in private practice from 1981 to 1994 I was engaged primarily as a litigator. After I started my own firm in Connecticut in 1984, I added internal investigations, white-collar criminal work, representation before grand juries, and service as a special master.

My most significant internal investigation was in 1994 when I was retained by the Metropolitan District Commission (MDC), the public agency responsible for water and sewer in the Greater Hartford area, to investigate allegations of impropriety relating to a multimillion dollar severance and retirement package claimed by a recently-retired District Manager. In another matter beginning in 1992, I was retained by the Attorney General of Connecticut to represent the interests of the State in connection with a number of complaints charging a high-level state official and other state employees with sexual harassment.

My most significant appointment as a special master for the District of Connecticut involved a complex antitrust case that was assigned to me for recommended rulings on discovery disputes and substantive issues following a remand by the Court of Appeals.

I have performed no lobbying activities on behalf of clients.

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

Other than acting as a guest lecturer, I have not taught any courses.

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

None.

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

I have no such plans, commitments, or agreements.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, 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.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed to the Court of Appeals, I would not sit on cases that I heard as a district judge. In addition, I would continue to watch for and address conflicts due to financial interest or cases involving persons or entities I represented while in private practice.

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

If confirmed, I will continue to follow the recusal statutes and Canon 3 of the Code of Conduct for United States Judges. I will recuse myself when necessary to resolve any real or apparent conflict of interest.

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

While in private practice, I and other members of my firm represented indigent individuals. I estimate that we devoted approximately 10 to 15% of our time to representing indigent clients. My firm contributed financial support to the Capital Area Foundation for Equal Justice, which helped provide legal services to low-income persons in Greater Hartford. The firm was a founding member of the Foundation and one of only two in the Leadership League.

As a member of the House of Delegates of the Connecticut Bar Association, I supported adoption of the IOLTA program in Connecticut, which led to significant increases in funding for legal aid agencies. As a member of the Connecticut Prison and Jail Overcrowding Commission, I supported programs aimed at helping disadvantaged young people and first offenders.

As chief judge of the District Court, I made it a priority to improve the Court's pro bono program. With the assistance of the Federal Practice Section of the Connecticut Bar Association, we designed and implemented a new pro bono program. Currently, I serve as a liaison between the District Court and the Federal Practice Section with regard to the operation of this program.

26. Selection Process:

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

In July 2009, Senator Dodd informed me that he had recommended me to the White House for consideration as a potential nominee to the Court of Appeals. I have known Senator Dodd for many years and he recommended me in 1994 for appointment to the District Court on which I now serve. Nothing further occurred until November 19, 2009, when I received a telephone call from the Office of Legal Policy at the Department of Justice informing me that my name had been submitted for consideration. Since that date, I have been in contact with pre-nomination officials at the Department of Justice. On January 22, 2009, I interviewed in Washington with attorneys from the Office of White House Counsel and the Department of Justice. The President submitted my nomination to the Senate on February 24, 2010.

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

No.

AO 10
Rev. 1/2008

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Chatigny, Robert N.	2. Court or Organization 2nd Circuit	3. Date of Report 2/24/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 2/24/2010 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2009 to 1/31/2010
7. Chambers or Office Address U.S. District Court 450 Main Street Hartford, CT 06103	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

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

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	_____
2.	_____
3.	_____

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Chatigny, Robert N.	Date of Report 2/24/2010
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

	<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1.			
2.			
3.			
4.			

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

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

	<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	2010	Kingswood-Oxford School Teacher
2.	2009	Kingswood-Oxford School Teacher
3.		
4.		

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.*
(Includes those to spouse and dependent children; see pp. 23-27 of filing instructions.)

NONE *(No reportable reimbursements.)*

	<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT
Page 3 of 13

Name of Person Reporting Chatigny, Robert N.	Date of Report 2/24/2010
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

VI. LIABILITIES. (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1. American Express	Credit Card		J
2. American Express	Credit Card		K
3. Simsbury Bank	Business Loan		L
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 13

Name of Person Reporting Chatigny, Robert N.	Date of Report 2/24/2010
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-50 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Bank of America Checking Acct.		None			Exempt				
2. Fax-Pax U.S.A., Inc. Shares		None	K	W					
3. Savin Groves		None							
4. Vanguard Windsor II Fund SEP IRA	A	Dividend	J	T					
5. Vanguard International Group Fund SEP IRA	A	Dividend	J	T					
6. Vanguard Windsor II Fund IRA	A	Dividend	J	T					
7. Vanguard International Growth Fund IRA	A	Dividend	J	T					
8. IRA Rollover - Cash	A	Interest	J	T					
9. Bernstein Intermediate Duration Portfolios	D	Dividend	N	T					
10. Bernstein International Value Portfolio II		None							
11. Bank of America Corp.	A	Dividend							
12. Bernstein Diversified Municipal Portfolio	A	Dividend							
13. Alliance Bernstein WLT APP-AD		None	N	T					
14. Bernstein Custodian Cash	A	Interest							
15. Horse - 15% Ownership		None							
16. Bernstein Short Dur DVSD Municipal Portfolio	A	Dividend							
17. Bernstein Short Dur DVSD Municipal Portfolio	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$300,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessed W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 5 of 13

Name of Person Reporting Chatigny, Robert N.	Date of Report 2/24/2010
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VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Wisconsin Energy Corp.	A	Dividend							
19. Bank of America Checking Acct		None							
20. Stock - Conoco Phillips	A	Dividend							
21. Simsbury Bank - Checking Account		None							
22. Simsbury Bank - Savings Account	A	Interest	J	T					
23. Simsbury Bank - Savings Account	A	Interest	J	T					
24. Stock - Travelers Companies	A	Dividend							
25. Stock - Sprint Nextel Corp.		None							
26. Stock - Citigroup Inc.	A	Dividend							
27. Stock - Kroger	A	Dividend							
28. Stock - General Electric	A	Dividend							
29. Stock - Saarna Corp.		None							
30. Stock - BP PLC	A	Dividend							
31. Stock - JP Morgan Chase & Co.	A	Dividend							
32. Stock - Chevron Corp.	A	Dividend							
33. Stock - Amer International Group		None							
34. Stock - Hartford Financial Services	A	Dividend							

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Chatigny, Robert N.	Date of Report 2/24/2010
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VII. INVESTMENTS and TRUSTS – Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-68 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Stock - Time Warner Inc.	A	Dividend							
36. Stock - Exxon Mobil Corp.	A	Dividend							
37. Stock - Genworth Financial Inc.		None							
38. Stock - XL Capital	A	Dividend							
39. Stock - Goldman Sachs Group	A	Dividend							
40. Stock - AT&T Inc.	A	Dividend							
41. Stock - Verizon Communications	A	Dividend							
42. Stock - CBS Corp.	A	Dividend							
43. Stock - Merck & Co.	A	Dividend							
44. Stock - Pfizer Inc.	A	Dividend							
45. Stock - Verizon Communication	A	Dividend							
46. Stock - Black & Decker Corp.	A	Dividend							
47. Stock - Nokin Corp.	A	Dividend							
48. Stock - Allstate Corp.	A	Dividend							
49. Stock - Deutsche Bank	A	Dividend							
50. Stock - Fidelity National	A	Dividend							
51. Stock - Morgan Stanley	A	Dividend							

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

FINANCIAL DISCLOSURE REPORT
Page 7 of 13

Name of Person Reporting Chatigny, Robert N.	Date of Report 2/24/2010
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. Stock - McKesson Corp.	A	Dividend							
53. Stock - Autoliv Inc.	A	Dividend							
54. Stock - Macy's Inc.	A	Dividend							
55. Stock - Caterpillar Inc.	A	Dividend							
56. Stock - Tyco Int'l	A	Dividend							
57. Stock - Royal Dutch	A	Dividend							
58. Stock - McKesson Corp.	A	Dividend							
59. Stock - Macy's Inc.	A	Dividend							
60. Stock - SuperValu Inc.	A	Dividend							
61. Stock - BP - PLC	A	Dividend							
62. Stock - Chevron Corp.	A	Dividend							
63. Stock - ConocoPhillips	A	Dividend							
64. Stock - Exxon Mobil	A	Dividend							
65. Stock - Travelers	A	Dividend							
66. Stock - JP Morgan	A	Dividend							
67. Bernstein Diversified Municiple Portfolio	A	Dividend							
68. Stock - Fifth Third Bancorp.	A	Dividend							

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Chatigny, Robert N.	Date of Report 2/24/2010
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VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(1) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
69. Stock - Gannett Co.	A	Dividend							
70. Stock - Bristol-Myers Squibb Co.	A	Dividend							
71. Stock - Sanofi Synthelabo	A	Dividend							
72. Stock - Wyeth	A	Dividend							
73. Stock - Cardinal Health Inc.	A	Dividend							
74. Stock - Tyson Foods Inc. - CL A	A	Dividend							
75. Stock - Archer-Daniels-Midland Co.	A	Dividend							
76. Stock - Toyota Motor Corp.	A	Dividend							
77. Stock - JC Penney Co. Inc.	A	Dividend							
78. Stock - Safeway Inc.	A	Dividend							
79. Stock - TJX Companies Inc.	A	Dividend							
80. Stock - Eastman Chemical Co.	A	Dividend							
81. Stock - General Electric Co.	A	Dividend							
82. Stock - Corning Inc.	A	Dividend							
83. Stock - Nokia Corp.	A	Dividend							
84. Stock - Ericsson LM TEL Co.	A	Dividend							
85. Stock - Motorola Inc.	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$115,000 or less N = \$250,001 - \$500,000 P2 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 Q = Appraisal U = Book Value	C = \$1,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 R = Cost (Real Estate Only) V = Other	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P3 = \$5,000,001 - \$25,000,000 P5 = More than \$50,000,000 S = Assessment T = Cash Market W = Estimated	E = \$15,001 - \$50,000
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FINANCIAL DISCLOSURE REPORT
Page 9 of 13

Name of Person Reporting Chatigny, Robert N.	Date of Report 2/24/2010
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VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "00" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-I)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	86. Stock - Dell Inc.		None						
87. Stock - Western Digital Corp.		None							
88. Stock - Apache Corp.	A	Dividend							
89. Stock - Devon Energy Corp.	A	Dividend							
90. Stock - Occidental Petroleum Corp.	A	Dividend							
91. Stock - Hartford Financial Services Group	A	Dividend							
92. Stock - Amgen Inc.		None							
93. Stock - Amgen Inc.		None							
94. Stock - Schering-Plough CP	A	Dividend							
95. Stock - Bunge LTD	A	Dividend							
96. Stock - Limited Brands Inc.	A	Dividend							
97. Stock - Home Depot Inc.	A	Dividend							
98. Stock - ACE LTD	A	Dividend							
99. Stock - News Corp.	A	Dividend							
100. Stock - Gap Inc.	A	Dividend							
101. Stock - EOG Resources Inc.	A	Dividend							
102. Stock - Lincoln National Corp.	A	Dividend							

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$125,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraised U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Fairmarket	T = Club Market	

FINANCIAL DISCLOSURE REPORT
Page 10 of 13

Name of Person Reporting Chatigny, Robert N.	Date of Report 2/24/2010
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VII. INVESTMENTS and TRUSTS - income, value, transactions (includes those of spouse and dependent children; see pp. 34-50 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
103. Stock - Lowe's Cos Inc.	A	Dividend							
104. Stock - Proctor & Gamble Co.	A	Dividend							
105. Stock - Capital One Financial Corp.	A	Dividend							
106. Stock - Eli Lilly & Co.	A	Dividend							
107. Stock - DuPont (E.I.) De Nemours	A	Dividend							
108. Stock - Northrup Grumman Corp.	A	Dividend							
109. Stock - ENSCO Intl Inc.	A	Dividend							
110. Stock - Regions Financial Corp.	A	Dividend							
111. Stock - Nexen Inc.	A	Dividend							
112. Stock - GlaxoSmithKline PLC - Spon AD	A	Dividend							
113. Stock - US Bancorp	A	Dividend							
114. Stock - Vodafone Group PLC -SP ADR	A	Dividend							
115. Stock - Masco Corp.	A	Dividend							
116. Stock - Unum Corp.	A	Dividend							
117. Stock - DR Horton Inc.	A	Dividend							
118. Stock - Cimarex Energy Co - W/I	A	Dividend							
119. Stock - Ingersoll-Rand PLC	A	Dividend							

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Chatigny, Robert N.	Date of Report 2/24/2010
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-50 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
120. Stock - Wells Fargo & Company	A	Dividend							
121. Stock - Valero Energy Corp.	A	Dividend							
122. Stock - Textron Inc.	A	Dividend							
123. Stock - SPX Corp.	A	Dividend							
124. Stock - BB&T Corp.	A	Dividend							
125. Stock - Nisource Inc.	A	Dividend							
126. Stock - AK Steel Holding Corp.	A	Dividend							
127. Stock Garmis LTD	A	Dividend							
128. Stock - Huntsman Corp.	A	Dividend							
129. Stock - Tyco Electronics LTD	A	Dividend							
130. Stock - Steel Dynamics Inc.	A	Dividend							

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

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Chatigny, Robert N.	2/24/2010

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

Part III.A. - Non-Investment Income was received during the reporting period as salary from the United States Government for services as a United States District Judge.

FINANCIAL DISCLOSURE REPORT
 Page 13 of 13

Name of Person Reporting	Date of Report
Chatigny, Robert N.	2/24/2010

IX. CERTIFICATION.

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

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

 Signature _____
 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

Robert Neil Chatigny

NET WORTH

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

ASSETS			LIABILITIES		
Cash on hand and in banks	15	000	Notes payable to banks-secured	58	000
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	45	000
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid income and interest		
Doubtful			Real estate mortgages payable-add schedule	290	000
Real estate owned-add schedule	950	000	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts-itemize:		
Autos and other personal property	25	000	Credit Line	340	000
Cash value-life insurance					
Other assets itemize:					
See attached	691	223			
			Total liabilities	733	000
			Net Worth	948	223
Total Assets	1	681 223	Total liabilities and net worth	1	681 223
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor			Are any assets pledged? (Add schedule)	NO	
On leases or contracts			Are you a defendant in any suits or legal actions?	NO	
Legal Claims			Have you ever taken bankruptcy?	NO	
Provision for Federal Income Tax					
Other special debt					

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Other Assets

AllianceBern Wealth Apprec (AWAYX)	\$ 309,028
Bernstein Intermediate Duration (SNIDX)	253,182
Thrift Savings Plan account	22,945
Vanguard SEP-IRA Account	24,255
Vanguard IRA Account	71,953
TIAA CREF Account	9,860
Total Mutual Funds	\$ 691,223

Real Estate Owned

Personal residence	\$ 950,000
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Real Estate Mortgages Payable

Personal residence	\$ 290,000
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AFFIDAVIT

I, **ROBERT NEIL CHATIGNY**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 22, 2010
(DATE)

Robert Chatigny
(NAME)

Paul A. We
(NOTARY)

My Commission
Expires 9.30.12

**Robert N. Chatigny
United States Courthouse
450 Main Street - Room 135 Annex
Hartford, Connecticut 06103**

March 9, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In response to Senator Sessions' request of yesterday afternoon, I am providing to the Committee the documents reviewed by the Special Committee of the Second Circuit Judicial Council as part of its investigation in the *Ross* case.

I also am attaching my unpublished opinions that are not available on Lexis or Westlaw.

I am in the process of gathering the sentencing history information requested by Senator Sessions, which I hope to transmit to the Committee by this afternoon.

Thank you for your consideration.

Sincerely,

/signed

Robert N. Chatigny

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

*SECOND JUDICIAL CIRCUIT OF THE UNITED STATES
UNITED STATES COURTHOUSE
40 FOLEY SQUARE-ROOM 2904
NEW YORK, NEW YORK 10007
(212) 857-8700 PHONE
(212) 857-8680 FACSIMILE*

DENNIS JACOBS
CHIEF JUDGE

KAREN GRAYE MILTON
CIRCUIT EXECUTIVE

March 8, 2010

By Overnight Federal Express Mail

Michael L. Shenkman, Senior Counsel
Office of Legal Policy
United States Department of Justice
Room 4235RFK Main Justice Building
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

**Re: Second Circuit Judicial Misconduct Complaints
Docket Nos. 8512-8517, 8519**

Dear Mr. Shenkman:

Judge Robert N. Chatigny, United States District Judge for the District of Connecticut, the subject judge in the above-referenced judicial misconduct complaints, has authorized me pursuant to 28 U.S.C. § 360(a)(3) to disclose to you copies of the materials reviewed by the Special Committee appointed to review this complaint. Chief Judge Dennis Jacobs of the Second Circuit is aware of and concurs in the disclosure of these materials to you for the purpose of providing them to the Senate Judiciary Committee.

The Department of Justice has provided us with a list of materials relating to the above-referenced complaints already provided to the Senate Judiciary Committee. We have taken the liberty of not copying materials already in possession of the Senate Judiciary Committee, but are including those materials contained in the files of the Special Committee which the Committee reviewed as part of its inquiry into these complaints. Where materials are redundant, we only have included one copy rather than multiple identical copies of the same material. If that is not a satisfactory arrangement, please advise me and we will provide copies of the omitted materials.

Judge Chatigny's authorization to release these materials to the Senate Judiciary Committee only allows disclosure as to him. We are not authorized to release the names of the complainants or any witnesses interviewed by the Special Committee; therefore, care should be taken not to permit the names of these individuals to become public.

Finally, I believe that the materials accompanying this letter constitute all of the materials in our files that are responsive to the request of the Senate Judiciary Committee. If, however, additional materials come to my attention, I will dispatch them to you upon discovery.

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Michael L. Shenkman, Senior Counsel
Letter of March 8, 2010
Page Two

Thank you for your attention to this matter. Please let me know if I can be of further assistance to you.

Very truly yours,



Karen Greve Milton
Circuit Executive

cc: Chief Judge Dennis Jacobs
Judge Robert N. Chatigny



Folder 1: Complaints, Materials From Witnesses and Orders of Chief Judge

I. Complaints:

- A. Original complaints in all seven proceedings.
- B. Amendments to complaint in 05-8519.
- C. Exhibits to complaints, including transcripts of relevant proceedings (2)

II. James T. Cowdery: Original and Supplemental Affidavits

III. William F. Dow, III: Affidavit

IV. Michael A. Fitzpatrick: Affidavit

V. David S. Golub: Affidavit, with Exhibits, and Supplemental Affidavit

VI. T.R. Paulding, Jr.: Affidavit and Copy of "Statement for the Media"

VII. Orders of Chief Judge Walker dated June 9, 2005, July 7, 2005, September 8, :
December 15, 2005.

**Robert N. Chatigny
United States Courthouse
450 Main Street - Room 135 Annex
Hartford, Connecticut 06103**

April 15, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter responds to recent communications from Senator Sessions and his staff for information and documents relating to unpublished opinions, below-Guideline sentences, and sentencing opinions and hearing transcripts.

Unpublished Opinions. On March 8, Senator Sessions requested copies of my unpublished opinions. Copies of all my unpublished opinions were delivered to the Committee on March 9. I have no other unpublished opinions to provide.

Sentencing Departure History. On March 8, Senator Sessions requested a list of all criminal cases in which I have departed downward from the Sentencing Guidelines, including a description of the charge(s) for which the defendant was convicted, the sentence called for under the Guidelines, the sentence imposed, and the reason(s) for the departure. The United States Sentencing Commission staff assisted me by preparing a list of all cases in which I departed downward, showing: (1) the guideline minimum sentence, (2) the sentence actually imposed, (3) the offense(s) of conviction (by statute number) and (4) the reason(s) for the departure. The Commission staff did not include the docket numbers of the cases and the names of the defendants in the list in order to protect the identity of individuals who received a below-Guideline sentence at the request of the Government. I provided data to the Committee as I received it, in the form of a partial list on March 18 (covering the most recent five years), followed by a complete list on March 24.

I am now enclosing a list compiled by the Commission staff that provides all the above information with the addition of docket numbers and defendant names for all cases in which the below-Guideline sentence was not sponsored by the Government.

Sentencing Opinions and Transcripts. I have been asked to provide copies of written opinions and available hearing transcripts in cases in which I imposed a sentence

below the applicable Guideline range. Please be advised that there are no written opinions in any of these cases. In accordance with 18 U.S.C. § 3553, it has been my practice to fully explain the reasons for a departure in open court and provide a written statement of reasons to the Sentencing Commission. To identify available transcripts, I have reviewed the docket sheet in every case on the list generated by the Commission staff in which I imposed a below-Guideline sentence. Based on this review, I have identified a total of 28 cases involving downward departures in which transcripts were prepared. I am providing all 28 transcripts to the Committee with this letter.

The explanation for the small number of available transcripts is that transcripts typically are prepared only in the event of an appeal, and in my more than 15 years as a district judge, the Government has never appealed any of my sentences (in three cases, a protective notice of appeal was filed and then withdrawn). In the absence of an appeal, parties usually do not order transcripts because of the cost. I estimate that preparing transcripts in the rest of the cases in which I sentenced below the Guidelines without a Government motion would cost more than \$15,000 in public funds.

Finally, with regard to my downward departures, please note that I have previously provided an analysis prepared by the Sentencing Commission for Fiscal Years 2005-2009 showing that my departure rate is in line with the average for the District of Connecticut as a whole. I am reattaching that analysis for the convenience of the Committee.

Supplemental Items for Question 12. I also would like to provide the Committee with the following additions to my Senate Questionnaire Responses.

I have one addition to my response to Question 12.d. On September 30, 2005, I participated in a training session for members of the District Court's Criminal Justice Act Panel. I made very general remarks about sentencing (as one of three judges on a panel) and I answered questions. I am providing a copy of the program agenda. I have no notes, transcript, or recording.

I have the following additions to my response to Question 12.e, for which I am providing copies:

Jaret Seiberg, "Going Private," CONNECTICUT LAW TRIBUNE, July 5, 1993, at 3.

Mark Pazniokas, "U.S. Judges Sworn In; Week's Total is Now 3," HARTFORD COURANT, Nov. 5, 1994, at A3

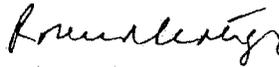
Ellen Simon, "James Wade: A No-Profile Counsel for High-Profile Clients," CONNECTICUT LAW TRIBUNE, November 8, 1993, at 9.

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Jaret Seiberg, "What Process is Due When There's Scant Process at All? Justice Commission Tackles Maco Hearing Without Game Plan," CONNECTICUT LAW TRIBUNE, November 8, 1993, at 1.

Thank you again for your consideration.

Very truly yours,



Robert N. Chatigny

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Judge Robert N. Chatigny**Index of Sentencing Hearing Transcripts for Below-Guideline Sentences**

The following list of cases involving below-Guideline sentences in which a transcript of all or part of the sentencing hearing is available was compiled using the District of Connecticut's Electronic Document Filing System to search the docket sheets for each case on the list prepared by Sentencing Commission staff showing all my below-Guideline sentences.

	<u>Case No.</u>	<u>Defendant Name</u>	<u>Transcript Status</u>
1.	95-CR-112	Donald M. Judson	Provided
2.	95-CR-171	Thurman Evans	Provided
3.	96-CR-101	Abayomi Olubunmi	Provided
4.	96-CR-149	Trevor Perry	Provided
5.	96-CR-16	Craig Batchelor	Provided
6.	97-CR-77	John Salmon (partial transcript)	Provided
7.	97-CR-139	Ralph J. Crispino, Jr.	Provided
8.	97-CR-171	Darrell Harris	Provided
9.	97-CR-182	Keith Chaney (partial transcript)	Provided
10.	98-CR-33	Jose Colon	Provided
11.	99-CR-38	Philip Simone	Provided
12.	99-CR-266	Desmond Brown	Provided
13.	99-CR-266	Damian Lazarus	Provided
14.	00-CR-38	Louis Edwards	Provided
15.	00-CR-171	Casper DeBoer	Provided
16.	01-CR-242	Joel Caraballo	Provided
17.	02-CR-212	Carl Dudley	Provided
18.	03-CR-198	Norman Wiggins	Provided
19.	03-CR-207	Francia Comacho	Provided
20.	04-CR-137	Rosemarie Bria	Provided
21.	04-CR-147	Osborne Tate	Provided
22.	05-CR-50	Jeffrey Lerman	Provided
23.	05-CR-244	Khue T. Deleon (partial transcript)	Provided
24.	05-CR-249	Joseph Tomaso	Provided
25.	06-CR-16	Trevor Simpson	Provided
26.	07-CR-215	Jerry D'Aquino	Provided
27.	09-CR-10	Roger Chapell	Provided
28.	09-CR-15	Warren Raynor	Provided

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chagnry, Fiscal Year 1995-2009

USSCIDN	OFFENDANT	DOCKETID	GLMIN	SENTENCE	FY	SENTDATE	STATUTE1	STATUTE2	STATUTE3	STATUTE4	STATUTES
241920	Bailey, Richard C	9400249	6	0 00	1995	5/3/1995	18922A1A				
244990	Tracy, Richard N	9500018	6	0 00	1995	6/16/1995	18371				
259431	Judson, Donald M	9500112	10	6 00	1996	10/17/1995	4153	4154			
298905	Garrigues, Lucien Kirk	9600049	37	7 00	1997	10/4/1996	81326A				
313870	Disaminaya, Juan Mata	9600084	77	63 00	1997	12/6/1996	81326A				
321008	Otubummi, Abayomi	9600181	46	37 00	1997	2/21/1997	81326A	81326B2			
324107	Estep, Myra J	9600150	6	0 00	1997	4/25/1997	18842A3				
329337	Williamson, William	9600110	12	0 00	1997	6/6/1997	18371				
339473	Batz, Juan A	9700033	110	102 00	1997	7/30/1997	18922G1				
342060	Jevnes, Janet Kristen	9700078	10	5 03	1997	9/26/1997	18656				
361004	Salmon, John	9700077	15	15 00	1998	12/12/1997	182251C1A				
369323	Evans, Truman	9500171	181	60 00	1998	3/17/1998	21841A1	21841B1A	18924C		
371270	Chaney, Keith Lamar	9700182	24	0 00	1998	3/5/1998	21843B				
375271	Phery, Trevor	9600149	999	427/1998	1998	4/27/1998	21846	2184101A	21841A1		
388987	Lopez, Jorge Jr	9700179	70	30 00	1998	5/22/1998	21846	21841B1A			
393217	Crispino, Ralph J	9700139	10	3 00	1998	8/6/1998	331319				
403535	Harris, Darrell	9700171	262	160 00	1999	19/5/1998	21841A1	21841B1A			
408405	Colon, Jose	9800033	119	97 00	1999	11/30/1998	265941	265981D			
418010	Callabross, Keith	9700173	235	120 00	1999	1/22/1999	21846	21841B1A	265871		
422233	Duncan, Clemis	9700178	235	120 00	1999	12/3/1998	21841A1	21846	21841B1A		
434912	Batchelor, Craig	9700016	262	240 00	1999	3/18/1999	21846	21841B1A			
437122	Navelto, Jose Miguel	9800159	46	37 00	1999	6/3/1999	21841A1	21846	21841B1C		
445230	Simone, Philip Dean	9800208	21	15 00	1999	7/1/1999	21846	21841B1C			
457026	Christie, Herbol	9800096	87	60 00	1999	7/27/1999	21841A1	21846	21841B1A		
469477	Brown, Robert E	9700257	57	36 00	1999	6/14/1999	265861D				
450545	Musacchio, Paul	9900120	15	4 00	1999	9/3/1999	182252AA2				
458988	Kaplow, Herbert	9900101	12	6 00	1999	8/13/1999	181341				
483379	Cyr, Galen J	9900181	18	4 00	2000	3/12/2000	267201				
503825	Collard, Douglas	0000051	12	0 00	2000	6/9/2000	2672061				
525213	Sjean, Jeffrey L	9900048	57	42 00	2001	1/18/2001	18922G1				
547851	Booth, Rudolph	9900266	18	16 00	2001	3/8/2001	21846	21841B1C			
548721	Reid, Garfield	0000035	18	13 85	2001	3/9/2001	18924A2	18922G5			
554059	Debowe, Casper	0000171	63	51 00	2001	5/11/2001	21963	21962A	21960B3		
554736	Lewis, Lenworth	9800266	70	63 00	2001	9/2/2001	21846	21841B1B			
559080	Edwards, Louis	0000038	235	120 00	2001	4/12/2001	21841A1	182	21846	21841B1B	21841B1A
563436	Lazanus, Damian	9900266	120	123 00	2001	6/1/2001	21846	21841B1A			
569337	Rhodes, Murphy	9900266	27	24 00	2001	6/29/2001	21846	21841B1C			
572981	Lus, Donovan	9900266	180	84 00	2001	9/7/2001	21846	21841B1B			
575105	Roldan, Jose R	0000186	21	18 00	2001	7/24/2001	1813441				
584991	Boykin, Tyshawn	0100071	8	6 00	2002	10/19/2001	181341				
589083	Lopez, Arminda	9900266	120	60 00	2002	11/2/2001	21841A1	21846	21841B1A		
592226	Santillo, Garrett	0000281	10	0 00	2002	10/19/2001	18975C				
606245	Craig, Fanella V	0000186	12	16 00	2002	1/8/2002	1813442	1813441			
617515	Jones, Jeffrey Bernard	0100257	15	4 00	2002	5/31/2002	18371				
621552	Hall, Thomas Henry	0100241	30	6 00	2002	6/14/2002	18922G1	18924A2			
622536	Wright, Swan	0100257	18	12 03	2002	5/17/2002	18371				
623577	Brown, Desmond	9900266	87	81 00	2002	4/19/2002	21846	21841B1B			
623980	Davis, Maria	0000186	8	6 03	2002	4/18/2002	18371	1813442	1813441		
623981	Ford, Malicia Lwam	0000237	12	3 00	2002	4/12/2002	181344	18371			
629733	Edwards, Tamara	0100257	8	3 00	2002	6/26/2002	18371				
629898	Ackerman, Eleanor A	0200038	12	10 00	2002	6/28/2002	181341				
632397	Clarke, Ronald	9900266	87	6 00	2002	6/21/2002	21846	21841B1A			
633226	Ches, Codi	0100257	8	4 00	2002	6/28/2002	18669				
634370	Morero, Michael	0100214	70	30 00	2002	7/12/2002	21841A1	21841B1B			
635249	Bryantcaple, Elisha Deann	0100257	10	6 00	2002	7/22/2002	18371				
638114	Ferrone, Richard	9900266	46	39 13	2002	7/24/2002	181956				
678237	Smin, Charles	0200224	30	20 00	2003	4/25/2003	21841A1	21841B1C			

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chalghy, Fiscal Year 1995-2009

USSC/DN	REASON1	REASON2
241920	Diminished capacity (§5K2.13)	.
244890	Military record	.
259431	Family ties and responsibilities (§5H1.6)	Mental and emotional conditions (§5H1.3)
258895	Mental and emotional conditions (§5H1.3)	.
313870	Deportation	.
321008	Pursuant to plea agreement	Deportation
324107	Offense behavior was an isolated incident	.
329337	General mitigating circumstances (§5K2.0)	Family ties and responsibilities (§5H1.6)
335473	General mitigating circumstances (§5K2.0)	.
342060	Diminished capacity (§5K2.13)	.
361004	Diminished capacity (§5K2.13)	.
369323	General mitigating circumstances (§5K2.0)	.
371270	General mitigating circumstances (§5K2.0)	.
375271	Mental and emotional conditions (§5H1.3)	.
388987	Community ties (§5H1.6)	Remorse
393217	General mitigating circumstances (§5K2.0)	Offense behavior was an isolated incident
403535	Criminal history over represents defendant's involvement	.
408465	General mitigating circumstances (§5K2.0)	.
418010	Family ties and responsibilities (§5H1.6)	Physical condition (§5H1.4)
422233	General mitigating circumstances (§5K2.0)	.
434912	Mental and emotional conditions (§5H1.3)	.
437122	Other	.
445230	Offense behavior was an isolated incident	.
445706	General mitigating circumstances (§5K2.0)	.
449477	General mitigating circumstances (§5K2.0)	.
450545	General mitigating circumstances (§5K2.0)	.
458988	Family ties and responsibilities (§5H1.6)	Physical condition (§5H1.4)
486379	Physical condition (§5H1.4)	Mental and emotional conditions (§5H1.3)
503825	Not representative of the heartland	.
525213	Family ties and responsibilities (§5H1.6)	Diminished capacity (§5K2.13)
547851	Pursuant to plea agreement	.
548721	Other	.
554059	Pursuant to plea agreement	.
554736	Criminal history over represents defendant's involvement	.
558080	General mitigating circumstances (§5K2.0)	.
563436	General mitigating circumstances (§5K2.0)	.
568337	Criminal history over represents defendant's involvement	.
572981	Criminal history over represents defendant's involvement	.
575105	Criminal history over represents defendant's involvement	.
584981	Criminal history over represents defendant's involvement	.
589083	Criminal history over represents defendant's involvement	.
592226	Mental and emotional conditions (§5H1.3)	.
606245	General mitigating circumstances (§5K2.0)	.
617516	Criminal history over represents defendant's involvement	.
622152	Family ties and responsibilities (§5H1.6)	.
622536	Family ties and responsibilities (§5H1.6)	.
623577	General mitigating circumstances (§5K2.0)	.
623960	Offense behavior was an isolated incident	.
623981	Family ties and responsibilities (§5H1.6)	.
629733	Family ties and responsibilities (§5H1.6)	.
629888	Diminished capacity (§5K2.13)	.
632097	General mitigating circumstances (§5K2.0)	.
632226	Family ties and responsibilities (§5H1.6)	.
634370	General mitigating circumstances (§5K2.0)	.
635249	Criminal history over represents defendant's involvement	.
638114	Rehabilitation	Rehabilitation
678237	General mitigating circumstances (§5K2.0)	.

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chagny, Fiscal Year 1995-2009

USSCIDN	REASON3	REASON4
241920	.	.
244890	.	.
259431	.	.
298805	.	.
313870	.	.
321008	.	.
324107	.	.
329337	.	.
335473	.	.
342060	.	.
361004	.	.
369323	.	.
371270	.	.
375271	.	.
388987	Family ties and responsibilities (§5H1.6)	.
393217	.	.
403535	.	.
408485	.	.
418910	Rehabilitation	.
422233	.	.
434912	.	.
437122	.	.
445230	.	.
445706	.	.
449477	.	.
450549	.	.
458988	.	.
486379	.	.
503825	.	.
525213	.	.
547851	.	.
548721	.	.
554059	.	.
554736	.	.
558080	.	.
563436	.	.
568337	.	.
572981	.	.
575105	.	.
584991	.	.
589083	.	.
592226	.	.
606245	.	.
617515	.	.
622152	.	.
622536	.	.
623577	.	.
623980	.	.
623981	.	.
629733	.	.
629898	.	.
632097	.	.
633226	.	.
634370	.	.
635249	.	.
638114	.	.
678237	.	.

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chalngny, Fiscal Year 1995-2009

USSCIDN	REASONS	REASON6	REASON7	REASON8
241920
244880
259431
298805
313870
321008
323107
329337
335473
342060
361304
369323
371270
375271
388987
393217
403535
408465
418010
422233
434912
437122
445290
449706
449477
450545
458068
486379
503825
525213
541251
548721
554059
554736
558080
563436
568337
572981
575105
584991
589063
592226
606245
617516
622152
622536
623577
623980
623981
629733
628859
632097
633226
634370
635249
638114
678237

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chagny, Fiscal Year 1995-2009

USSCIDN	DEFENDANT	DOCKETID	GLMIN	SENTENCE	FY	SENTDATE	STATUTE1	STATUTE2	STATUTE3	STATUTE4	STATUTES
098186	Dodley, Carl	0200212	262	135.00	2003	6/13/2003	21841A1	21841B1AI			
701035	Caraballo, Joel	0100282	180	60.00	2003	5/9/2003	18924E	18922C1			
716041	Cochran, Keith Curtis	0200028	18	9.03	2003	12/6/2002	21841A1	21841B1C			
719879	Copeland, Ruby	0200354	70	36.00	2003	9/19/2003	21841A1	21841B1C			
726917	Moore, Anthony	0200374	70	60.00	2003	9/5/2003	18922G1				
760478	Andrews, Kimberly A	0300198	12	0.00	2004	7/2/2004	21841A1	21841B1C			
760724	Comacho, Francia	0300287	46	22.00	2004	12/12/2003	181956A1BI				
773410	Iv, Tin	0300153	27	12.03	2004	8/30/2004	18371	182	81325		
778442	Bna, Rosemarie D	0400137	12	6.00	2004	9/9/2004	2672061				
781317	Demarin, Christopher G	0300198	15	0.00	2004	8/5/2004	21841A1	21841B1C			
801613	Delosantos, Freddy	0300098	37	15.00	2004	12/22/2003	21848				
804489	Valente, John J	0300357	12	6.03	2004	4/29/2004	1813441				
814023	Youngblood, Norman J	0300314	10	4.00	2004	4/8/2004	18922G3				
826573	Jones, Sharon D	0200344	8	0.00	2004	4/28/2004	18371				
793880	Grassun, Albert J	0400239	10	5.00	2005	11/23/2004	2672061				
803449	Barnetta, Francis R	0300198	41	17.20	2005	1/28/2005	21841A1	21841B1C			
845571	Fernnaguino, Paulino	0300198	70	48.00	2005	4/26/2005	21841A1	21841B1AI			
849778	Caines, Cheryl	0300185	84	8.00	2005	1/10/2005	21841A1	21841B1C			
851199	Atrowood, Rebecca M	0400089	15	11.82	2005	5/20/2005	181952A3A				
860475	Johnson, Donna	0300198	15	0.00	2005	5/9/2005	21841A1	21841B1C			
908955	Festa, Stephen	0400223	21	18.00	2006	11/21/2005	162252AA56				
913715	Wiggins, Norman	0300198	151	84.00	2006	1/27/2006	21841A1	21841B1C			
919091	Marrero, Antonio	0300198	70	60.00	2006	3/3/2006	21848	21841B1AI			
924518	Cellier, Lawrence	0500305	15	0.00	2006	5/4/2006	181461				
933541	Chaggaris, Evan	0500075	10	0.00	2006	5/8/2006	18876C				
1006851	Morrell, Joseph	0500044	18	6.00	2006	5/28/2006	18924A2	18922A6			
1019003	Tomaso, Joseph	0500249	24	12.03	2006	8/11/2006	181341				
1023723	Tate, Osborne A	0400147	262	180.00	2006	9/11/2006	21841B1AI				
1047273	Bishop, Donna M	0500135	21	12.00	2007	12/20/2006	181341				
1062664	Hoyt, Charles	0500321	27	6.30	2007	3/5/2007	21841A1	21846	21841B1B		
1064737	Adams, Darin	0600255	37	20.00	2007	3/2/2007	21963				
1064805	Ramdeen, O'neil	0600066	21	6.00	2007	3/9/2007	184				
1065745	Ford, Reggie	0400131	120	84.00	2007	3/12/2007	18922J	21844A	18924A2		
1074538	Martorelli, Shariene	0500321	24	0.66	2007	4/23/2007	21841A1	21841B1C			
1083940	Costanzo, Barbara	0500321	18	0.16	2007	5/8/2007	21841A1	21841B1C			
1083957	Harris, Anthony	0400360	420	300.00	2007	5/21/2007	21841A1	18924C1A	18922G1	21841B1BI	18924E1
1084888	Ruoli, Thomas J	0600020	78	57.00	2007	6/28/2007	181341	18371			
1085058	Dole, Matthew M	0600262	33	12.03	2007	8/25/2007	182252A5B				
1095167	Lerman, Jeffrey	0500350	46	6.00	2007	8/7/2007	18371				
1095234	Avila, Alejandro	0700048	10	4.72	2007	8/8/2007	81326A	181546A			
1098648	Franco, Wayne	0500321	24	6.72	2007	8/28/2007	21841A1	21841B1C			
1100682	Carlin, Eugene	0700068	18	18.03	2007	8/29/2007	2672062	267201			
1102301	Berbic, Snezana	0700080	30	21.03	2007	9/6/2007	2672061				
1103886	Palmeria, Jason Anthony	0700116	57	36.00	2007	9/17/2007	182423B				
1104239	Kleinberg, Seth	0500049	63	0.00	2007	9/17/2007	18371	171201A1A			
1106848	Deleon, Khue T	0500244	15	12.00	2007	9/13/2007	181014				
1118479	Ambrogio, Toni	0600041	12	6.00	2007	9/7/2007	181341				
1115173	Murray, Anika K	0600193	70	16.36	2008	11/9/2007	21841A1	21841B1C	21845		
1127493	Bowenbank, Tony Garth	0600193	70	30.00	2008	12/19/2007	21841A1	21841B1C			
1132028	Simpson, Trevor	0600016	210	160.00	2008	1/10/2008	21841A1	21841B1A			
1132352	Kennedy, Thomas J	0700186	30	30.00	2008	1/23/2008	181341	2672061			
1141194	Caron, Arnie	0700306	12	9.00	2008	3/11/2008	181623				
1147962	Davison, Richard	0700087	12	7.00	2008	4/14/2008	18922J				
1148634	Carnes, Scott	0700095	30	6.00	2008	4/22/2008	18371				
1153142	Daquino, Jerry	0700215	41	27.00	2008	4/24/2008	181341	18371	182		
1154311	Stengel, James	0700290	10	6.00	2008	4/28/2008	18922A6				
1154469	Kaura, Gurdev	0800016	10	6.00	2008	5/14/2008	2672061				

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chaligay, Fiscal Year 1995-2009

USSC:DN	REASON1	REASON2
698186	Criminal history over represents defendant's involvement	.
701035	General mitigating circumstances (§5K2.0)	.
710041	Rehabilitation	.
719879	Diminished capacity (§5K2.13)	Mental and emotional conditions (§5H1.3)
726917	Criminal history over represents defendant's involvement	.
760478	Family ties and responsibilities (§5H1.6)	.
760724	Aberrant behavior (§5K2.20)	.
773410	Aberrant behavior (§5K2.20)	.
778442	General mitigating circumstances (§5K2.0)	Mental and emotional conditions (§5H1.3)
781317	General mitigating circumstances (§5K2.0)	Other
801613	Other	.
804489	Diminished capacity (§5K2.13)	.
814023	Aberrant behavior (§5K2.20)	.
826573	Aberrant behavior (§5K2.20)	General mitigating circumstances (§5K2.0)
793880	Acceptance of responsibility	General mitigating circumstances (§5K2.0)
803449	General mitigating circumstances (§5K2.0)	.
944571	Aberrant behavior (§5K2.20)	General mitigating circumstances (§5K2.0)
947779	Mental and emotional conditions (§5H1.3)	General mitigating circumstances (§5K2.0)
951199	General mitigating circumstances (§5K2.0)	Time served
960475	Insufficient documentation provided on SOR to determine reason	.
900855	Mental and emotional conditions (§5H1.3)	.
913715	Criminal history issues	Criminal history issues
918091	Reduce disparity	General mitigating circumstances (§5K2.0)
924518	Diminished capacity (§5K2.13)	.
933541	Diminished capacity (§5K2.13)	.
1006951	General mitigating circumstances (§5K2.0)	Rehabilitation
1019003	Physical condition (§5H1.4)	.
1023723	General guideline adequacy issues	General mitigating circumstances (§5K2.0)
1047273	Diminished capacity (§5K2.13)	.
1062664	Diminished capacity (§5K2.13)	Rehabilitation
1064737	Age (§5H1.1)	Previous employment record (§5H1.5)
1064905	Aberrant behavior (§5K2.20)	.
1065745	Criminal history issues	Rehabilitation
1074538	Family ties and responsibilities (§5H1.6)	Rehabilitation
1083940	Mental and emotional conditions (§5H1.3)	General mitigating circumstances (§5K2.0)
1083957	Nature and circumstance of offense/history of defendant	Reflect seriousness of offense/promotes respect for law/just punishment
1084888	Mental and emotional conditions (§5H1.3)	General mitigating circumstances (§5K2.0)
1085058	Mental and emotional conditions (§5H1.3)	.
1095167	Nature and circumstance of offense/history of defendant	Avoid unwarranted sentencing disparity among defendants
1095224	Family ties and responsibilities (§5H1.6)	.
1098548	Educational and vocational skills (§5H1.2)	Family ties and responsibilities (§5H1.6)
1100582	Family ties and responsibilities (§5H1.6)	Nature and circumstance of offense/history of defendant
1102501	Family ties and responsibilities (§5H1.6)	.
1102986	Nature and circumstance of offense/history of defendant	Reflect seriousness of offense/promotes respect for law/just punishment
1104239	Reduce disparity	Mental and emotional conditions (§5H1.3)
1106848	Family ties and responsibilities (§5H1.6)	.
1118479	Family ties and responsibilities (§5H1.6)	Diminished capacity (§5K2.13)
1115173	Family ties and responsibilities (§5H1.6)	Family ties and responsibilities (§5H1.6)
1127469	Nature and circumstance of offense/history of defendant	Educational and vocational skills (§5H1.2)
1132028	Time served	Reduce disparity
1132352	Nature and circumstance of offense/history of defendant	Physical condition (§5H1.4)
1141194	Family ties and responsibilities (§5H1.6)	Rehabilitation
1147962	Criminal history issues	Nature and circumstance of offense/history of defendant
1149634	Nature and circumstance of offense/history of defendant	Reflect seriousness of offense/promotes respect for law/just punishment
1153142	General mitigating circumstances (§5K2.0)	.
1154311	Family ties and responsibilities (§5H1.6)	Aberrant behavior (§5K2.20)
1154489	Cooperation (motion unknown)	Other

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chatigny, Fiscal Year 1995-2009

USSC:DN	REASON3	REASON4
698186	.	.
701035	.	.
716041	.	.
719879	.	.
726917	.	.
760478	.	.
760724	.	.
773410	.	.
778442	.	.
781317	.	.
801613	.	.
804489	.	.
814023	.	.
826573	18 U.S.C. § 3552(a)	.
793860	.	.
803449	.	.
844571	.	.
849778	Diminished capacity (§5K2.13)	.
851159	.	.
860475	.	.
900855	.	.
913715	Drug dependence/alcohol abuse (§5H1.4)	Family ties and responsibilities (§5H1.6)
919091	Family ties and responsibilities (§5H1.6)	Criminal history issues
924518	.	.
933541	.	.
1000951	Physical condition (§5H1.4)	Mental and emotional conditions (§5H1.3)
1019003	.	.
1023723	Reduce disparity	.
1047273	.	.
1062664	.	.
1064737	Family ties and responsibilities (§5H1.6)	Military record/charitable works/good deeds (§5H1.11)
1064805	.	.
1065745	Criminal history issues	.
1074538	.	.
1083940	Rehabilitation	.
1083957	Afford adequate deterrence to criminal conduct	Protect public from further crimes
1084868	Diminished capacity (§5K2.13)	Aberrant behavior (§5K2.20)
1085058	.	.
1095167	Mental and emotional conditions (§5H1.3)	Cooperation without motion (not §5K1.1)
1095254	.	.
1098648	Drug dependence/alcohol abuse (§5H1.4)	Rehabilitation
1100682	.	.
1102501	.	.
1103988	Afford adequate deterrence to criminal conduct	Aberrant behavior (§5K2.20)
1104239	Diminished capacity (§5K2.13)	Criminal history issues
1106848	.	.
1118479	.	.
1115173	.	.
1127493	Previous employment record (§5H1.5)	Family ties and responsibilities (§5H1.6)
1132028	Nonviolent offense/offender	Cooperation without motion (not §5K1.1)
1132352	Family ties and responsibilities (§5H1.6)	.
1141134	.	.
1147362	Family ties and responsibilities (§5H1.6)	.
1148634	Avoid unwarranted sentencing disparity among defendants	Family ties and responsibilities (§5H1.6)
1153142	.	.
1154311	General mitigating circumstances (§5K2.0)	Rehabilitation
1154469	Military record/charitable works/good deeds (§5H1.11)	Restitution

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chaigny, Fiscal Year 1995-2009

USDCDN	REASONS	REASON6	REASON7	REASON8
698196	-	-	-	-
707025	-	-	-	-
716541	-	-	-	-
719879	-	-	-	-
725917	-	-	-	-
760476	-	-	-	-
780724	-	-	-	-
773410	-	-	-	-
778442	-	-	-	-
781317	-	-	-	-
801613	-	-	-	-
804489	-	-	-	-
814623	-	-	-	-
826573	-	-	-	-
793890	-	-	-	-
803449	-	-	-	-
844571	-	-	-	-
849778	-	-	-	-
851199	-	-	-	-
860475	-	-	-	-
900855	-	-	-	-
913715	Previous employment record (§5H1.5)	-	-	-
919091	-	-	-	-
924516	-	-	-	-
933541	-	-	-	-
1006051	Drug dependence/alcohol abuse (§5H1.4)	-	-	-
1019003	-	-	-	-
1029723	-	-	-	-
1047273	-	-	-	-
1062654	-	-	-	-
1064737	Aberrant behavior (§5K2.20)	Cooperation without motion (not §5K1.1)	Multisite in the offense	Defendant's positive background or good character
1064805	-	-	-	-
1067445	-	-	-	-
1074538	-	-	-	-
1082949	-	-	-	-
1083957	Provide defendant with educational or vocational training/medical care	Age (§5H1.1)	-	-
1084898	-	-	-	-
1085056	-	-	-	-
1095167	Diminished capacity (§5K2.13)	Conduct on release/bond/supervision	-	-
1095254	-	-	-	-
1096648	Previous employment record (§5H1.5)	General mitigating circumstances (§5K2.0)	-	-
1100692	-	-	-	-
1102591	-	-	-	-
1103095	Remorse	-	-	-
1104239	Distress	Low likelihood of recidivism/not a risk to community	-	-
1108948	-	-	-	-
1118479	-	-	-	-
1115173	-	-	-	-
1121493	Mentor in the offense	Criminal history issues	-	-
1132028	Other	Age (§5H1.1)	-	-
1132352	-	-	-	-
1141194	-	-	-	-
1147962	-	-	-	-
1148634	Cooperation without motion (not §5K1.1)	Aberrant behavior (§5K2.20)	-	-
1153142	-	-	-	-
1154311	-	-	-	-
1154469	Previous employment record (§5H1.5)	Family ties and responsibilities (§5H1.6)	-	-

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chaligry, Fiscal Year 1995-2009

USSCION	DEFENDANT	DOCKETID	GLMIN	SENTENCE	FY	SENTDATE	STATUTE1	STATUTE2	STATUTE3	STATUTE4	STATUTE5
1159586	Graefinger, Christina	0700087	45	37.00	2008	5/9/2008	18922A1A				
1165921	Mello, Joseph	0700224	30	30.00	2008	6/25/2008	181341	2672061			
1166607	Jaeger, Daniel James	0800081	30	0.00	2008	6/27/2008	18371				
1173220	Thomas, Teon	0700087	120	110.00	2008	8/6/2008	18922J				
1173222	Graziani, Louis	0700281	51	24.00	2008	8/6/2008	182252AA5				
1183659	Palei, Priyavrat H	0800011	18	12.00	2009	10/28/2008	181030A5A	181030A5B1			
1209016	Matthews, Joshua	0800010	37	12.00	2009	12/18/2008	21841A1	21841B1C			
1217030	Sierra, Raymond	0700254	37	30.00	2009	1/29/2009	21846				
1230571	Morris, Donald	0800251	18	18.00	2009	3/29/2009	2672062				
1238242	House, Christopher	0900026	37	12.00	2009	4/29/2009	182252AA5B				
1239421	Chapel, Roger Dean	0900010	37	14.00	2009	5/5/2009	182252AA5B				
1244603	Ache, Cassandra	0800117	24	18.00	2009	5/29/2009	18666A1A	18371			
1248528	Collado, Apolinar	0900043	21	20.00	2009	5/18/2009	81326A	81326B2			
1274680	Hackett, Wade	0900104	37	24.00	2009	9/28/2009	18922G1				

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chatigny, Fiscal Year 1995-2009

USSC:DN	REASON1	REASON2
1159586	Criminal history issues	Military record/charitable works/good deeds (§5H1.11)
1165921	Cooperation/Attempted Cooperation (not SK, not with prosecution, per se)	Impact on employment of defendant/others
1165607	Low likelihood of recidivism/not a risk to community	Criminal history issues
1173220	Criminal history issues	Family ties and responsibilities (§5H1.6)
1173222	Nature and circumstance of offense/history of defendant	
1193659	Aberrant behavior (§5K2.20)	Provide defendant with educational or vocational training/medical care
1209016	Nature and circumstance of offense/history of defendant	Lack of youthful guidance/tragic or troubled childhood
1217030	Conduct on release/bond/supervision	Educational and vocational skills (§5H1.2)
1230571	Nature and circumstance of offense/history of defendant	Criminal history issues
1238242	Nature and circumstance of offense/history of defendant	Mental and emotional conditions (§5H1.3)
1239421	Nature and circumstance of offense/history of defendant	
1244603	Family ties and responsibilities (§5H1.6)	
1245528	Insufficient documentation provided on SDR to determine reason	Reflect seriousness of offense/promotes respect for law/just punishment
1274680	Nature and circumstance of offense/history of defendant	Provide defendant with educational or vocational training/medical care

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chatigny, Fiscal Year 1995-2009

USSC/IDN	REASON3	REASON4
1159586	.	.
1165921	General mitigating circumstances (§5K2.0)	.
1166607	Criminal history issues	Cooperation (motion unknown)
1173220	.	.
1173222	Rehabilitation	.
1193659	.	.
1209016	Avoid unwarranted sentencing disparity among defendants	Mult/role in the offense
1217030	Rehabilitation	General mitigating circumstances (§5K2.0)
1230571	Family ties and responsibilities (§5H1.6)	Community ties (§5H1.6)
1238242	.	.
1239421	Physical condition (§5H1.4)	Aberrant behavior (§5K2.20)
1244603	.	.
1246528	Time served	.
1274680	Mental and emotional conditions (§5H1.3)	Previous employment record (§5H1.5)

Cases Sentenced Below the Sentencing Guideline Range, Judge Robert N. Chatigny, Fiscal Year 1995-2009

USSION	REASONS	REASON6	REASON7	REASON8
1155386	.	.	.	.
1156921	.	.	.	.
1166807	Loss issues	Remorse	.	.
1173220	.	.	.	.
1173222	.	.	.	.
1193559	.	.	.	.
1209016	Criminal history issues	General guideline adequacy issues	.	.
1217030	.	.	.	.
1230571	Aberrant behavior (§5K2.20)	Low likelihood of recidivism/not a risk to community	.	.
1238242	.	.	.	.
1239421	Rehabilitation	Low likelihood of recidivism/not a risk to community	.	.
1244503	.	.	.	.
1246528	.	.	.	.
1274680	Family ties and responsibilities (§5H1.6)	Criminal history issues	.	.

CJA FEDERAL CRIMINAL PRACTICE SEMINAR
SEPTEMBER 30, 2005

Location: *Water's Edge Resort & Spa*
1525 Boston Post Road
Westbrook, CT

AGENDA

- 8:30 - 9:00 **Registration/Continental Breakfast**
Welcoming Remarks
THOMAS G. DENNIS
CHIEF FEDERAL DEFENDER
DISTRICT OF CONNECTICUT
- 9:00 - 9:30 **Overview: ECF Status And CJA Invoicing**
VICTORIA MINOR, CHIEF DEPUTY CLERK
U.S. DISTRICT COURT
NEW HAVEN
- 9:30 - 10:00 **Defending A Methamphetamine Case**
GARY D. WEINBERGER, ASSISTANT FEDERAL DEFENDER
- 10:00 - 10:30 **The Past Ain't What It Used To Be: *Shepard v. United States* And Its Impact On Criminal History**
THOMAS BELSKY, ASSISTANT FEDERAL DEFENDER
- 10:30 - 10:45 **Break**
- 10:45 - 11:15 **Booker Developments In The Second Circuit And Beyond**
SARAH F. RUSSELL, ASSISTANT FEDERAL DEFENDER
- Appellate Issues: What Works And What Does Not Work**
SARAH F. RUSSELL, ASSISTANT FEDERAL DEFENDER
- 11:15 - 11:30 **BOP Advocacy**
TODD A. BUSSERT, ESQ.
LAW OFFICE OF TODD A. BUSSERT
- 11:30 - 12:30 **The Nature Of Human Memory High Stress Events: Scientific And Legal Implications**
CA Morgan III MD, MA
ASSOCIATE PROFESSOR OF PSYCHIATRY
SECTION OF LAW & PSYCHIATRY
RESEARCH AFFILIATE, HISTORY OF MEDICINE
YALE UNIVERSITY SCHOOL OF MEDICINE

CJA FEDERAL CRIMINAL PRACTICE SEMINAR
SEPTEMBER 30, 2005

- 12:30 - 2:00 **Lunch Break (On Your Own)**
- 2:00 - 2:30 **Crawford v. Washington**
TERENCE S. WARD, ASSISTANT FEDERAL DEFENDER
- 2:30 - 3:00 **Issues Of Concern To Panel Members**
SHELLEY R. SADIN, ESQ., CJA PANEL REPRESENTATIVE
ZELDES, NEEDLE & COOPER, P.C.
- 3:00 - 5:00 **Sentencing Forum**
- MODERATOR: CRAIG RAABE, ESQ.
ROBINSON & COLE, LLP
- PANEL: HONORABLE ROBERT N. CHATIGNY
HONORABLE JANET B. ARTERTON
HONORABLE JANET C. HALL
- WILLIAM NARDINI, ESQ.
ASSISTANT UNITED STATES ATTORNEY
- WARREN MAXWELL
DEPUTY CHIEF, UNITED STATES PROBATION
OFFICE
- 5:00 **Adjourn**

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July 5, 1993

Volume 19; Issue 27

Section: Behind the Bar

GOING PRIVATE

Jaret Seiberg

Robert W. Werner is jumping from the public sector, where he has spent nearly his entire legal career, to Hartford's **Chatigny & Cowdery**, where he will specialize in white-collar criminal defense work.

'I am excited and a little bit nervous because I've been out of the day-to-day law practice,' says Werner, who has served for the past year as the executive director of the Division of Special Revenue.

Robert **Chatigny**, who began his small firm in 1983 with Richard N. Palmer, now a state Supreme Court justice, says the firm hired Werner to help it cope with a steadily expanding practice.

'We know him to be an exceptionally talented and very fine person who is a very fine lawyer,' **Chatigny** says. 'He has the kind of background and experience we are looking for.'

Werner says financial considerations were at the top of his list of reasons for leaving the public sector, especially because he and his wife are expecting a child this fall.

His public service tenure began shortly after he graduated from law school when he clerked for U.S. Supreme Court justices Lewis F. Powell Jr. and Anthony M. Kennedy. He also served in the U.S. Attorney's office in Connecticut and as special counsel to Gov. Lowell P. Weicker Jr.

During Werner's tenure at Special Revenue, he successfully led an effort to privatize the state's off-track betting enterprise. He also served at the helm during a raucous legislative battle over legalizing casino gambling in the state.

Inheriting this legalized gambling headache will be John B. Meskill, who currently serves as the unit chief in the planning and research division. Meskill, the son of former state governor and Senior Circuit Judge Thomas J. Meskill of the U.S. Court of Appeals for the 2nd Circuit, spent his first four years out of law school at New Britain's Sledzik & McGuire before leaving to become a unit chief at Special Revenue. As a unit chief, he says he worked closely with Werner on all of the division's major projects, including the shift that he plans to continue from game operator to game regulator.

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'That will be the direction this agency is going,' Meskill says.

--- INDEX REFERENCES ---

COMPANY: US COURT OF APPEALS

NEWS SUBJECT: (Legal (1LE33); Judicial (1JU36))

REGION: (Connecticut (1CO13); New England (1NE37); North America (1NO39); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (CIRCUIT; SPECIAL REVENUE; SUPREME COURT; US COURT OF APPEALS; US SUPREME COURT) (Anthony M. Kennedy; Chatigny; Inheriting; John B. Meskill; Lewis F. Powell Jr.; Lowell P. Weicker Jr; Meskill; Richard N. Palmer; Robert Chatigny; Robert W. Werner; Thomas J. Meskill; Werner)

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November 5, 1994

Section: CONNECTICUT

U.S. JUDGES SWORN IN; WEEK'S TOTAL IS NOW 3
MARK PAZNIOKAS
Courant Staff Writer

The federal judiciary ended a historic week Friday with the investiture of two new U.S. District Court judges, including the first black judge to sit on the federal bench in Connecticut.

Alvin W. Thompson and Robert N. Chatigny took the oath of office from U.S. Sen. Christopher Dodd in afternoon ceremonies. With Dominic J. Squatrito, who took office Monday, they increase from four to seven the number of active federal judges in the state.

"Three judges in a week -- this clearly must be an all-time record," said William E. Willis, chairman of the American Bar Association committee that screens district court nominees.

Until this week, only one new federal judge had taken office here in the past nine years. A fourth new judge, Janet Arterton, has been recommended to President Clinton for the state's remaining judicial vacancy by U.S. Sen. Joseph I. Lieberman.

Squatrito, Thompson and Chatigny are among 101 federal judges confirmed this year, the highest number in 15 years. In all, there have been 129 federal judges confirmed in the first two years of the Clinton administration, which has sought credentials, youth and diversity.

Clinton has attempted to remake the face of the federal judiciary, and 58 percent of his nominations have been women or members of minority groups.

Thompson, 41, of Windsor, was one of a handful of black managing partners of major U.S. law firms when nominated by Clinton. He became managing partner of Robinson & Cole of Hartford, one of the state's biggest firms, in 1991 at the age of 38.

Dodd called Thompson's a storybook life of a young man who overcame adversity. His father died when Thompson, the youngest of six children, was 2 years old; from a poor family in Baltimore's inner city, he won scholarships to Princeton University and Yale Law School.

Thompson said he may have grown up with modest means, but thanks to his mother, Grizell Thompson Parsons, "We never lacked for anything of importance."

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As his wife, Lesley Morgan Thompson, and their three school-age children watched, U.S. Marshal John O'Connor and Thompson's mother helped him into his black judicial robes. Thompson smiled and the audience laughed as his mother fussed over the robes, arranging them just so.

Chatigny, 42, of Bloomfield, also is one of six children. He grew up in upstate New York and worked his way through Brown University and the Georgetown University Law Center. He was a partner in the small Hartford litigation firm of Chatigny and Cowdery.

Chief Judge Jon O. Newman of the 2nd Circuit Court of Appeals, whom Chatigny served as a law clerk, described Chatigny as a former protege of the legendary Edward Bennett Williams. Even as a clerk, Newman said, Chatigny had the obvious potential to be a judge.

Chatigny swore the oath of office as his 6-year-old son, Peter, held the Bible and his wife, Stacey L. Savin, snapped photographs. Chatigny said, "I feel like the luckiest person in the universe."

Peter C. Dorsey, the chief judge of the Connecticut district, said the ceremonies were happy events for the entire judiciary, as well as the families of Thompson and Chatigny.

Caseloads had risen dramatically in the past three years, making judges here some of the busiest in the nation.

"Thanks to you, Sen. Dodd, it's getting a little crowded up here," Dorsey said as Chatigny prepared to take his seat as the seventh active, or full-time, district court judge in Connecticut.

Dorsey said his caseload will go down by about 200 cases, from 675. Three years ago he carried only 315 cases. Other judges will see similar reductions, and plaintiffs will get their day in court much more quickly, he said.

"I've had motions pending for more than six months, which is appalling," Dorsey said. "I have more pending motions than the whole Southern District of New York, which has 26 or 27 judges."

---- INDEX REFERENCES ----

COMPANY: AMERICAN BAR ASSOCIATION

NEWS SUBJECT: (Legal (1LE33); Judicial (1JU36))

REGION: (Connecticut (1CO13); USA (1US73); Americas (1AM92); New England (1NE37); North America (1NO39); New York (1NE72))

Language: EN

OTHER INDEXING: (2ND CIRCUIT COURT OF APPEALS; AMERICAN BAR ASSOCIATION; BROWN UNIVERSITY; CONNECTICUT; EDWARD BENNETT WILLIAMS; GEORGETOWN UNIVERSITY LAW CENTER; PRINCETON UNIVERSITY; ROBINSON COLE; US DISTRICT COURT; US SEN; YALE LAW SCHOOL) (Alvin W. Thompson; Bible; Chatigny; Christopher Dodd; Clinton; Cowdery; Dodd; Dominic J. Squatrito; Dorsey; Janet Arterton; John O'Connor; Jon O. Newman; Joseph I. Lieberman; Lesley; Morgan Thompson; Newman; Peter; Peter C. Dorsey; Robert N. Chatigny; Squatrito; Stacey L. Savin; Thompson; Thompson Parsons; William E. Willis)

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Volume 19; Issue 44

JAMES WADE: A NO-PROFILE COUNSEL FOR HIGH-PROFILE CLIENTS

Ellen Simon

Defense attorney James A. Wade and his client, Litchfield State's Attorney Frank S. Maco, looked pretty bad last Wednesday night in Wallingford.

Maco looked tight and pinched. Wade was wearing a well-pressed suit and a rumpled face. The suit was impeccable--standard-issue big-firm finery befitting a Robinson & Cole partner. The face resembled lawn furniture still outside at the end of November.

Yet the two had just won in a major battle before the Criminal Justice Commission over a complaint filed by filmmaker Woody Allen against Maco. Ellen had charged Maco with violating the Rules of Professional Conduct by announcing in late September that he would not seek a warrant for Allen's arrest for allegedly molesting his seven-year-old adopted daughter Dylan Farrow, even though he believed he had probable cause to do so. (See related story, page one.)

Maco originally hired Bridgeport's Jacob D. Zeldes, of Zeldes, Needle & Cooper, but Zeldes was disqualified the week of the session because of possible conflicts. When Zeldes disclosed his business and social relationships with some of the commissioners, they decided he could only appear before them with the consent of Allen's attorneys. They did not consent.

As the commission spoke to the press four hours after going into executive session, it was obvious that Wade's victory was neither easy nor complete. James F. Stapleton, a Day, Berry & Howard partner and the commission chair, called Maco's comments insensitive and inappropriate, but said they did not violate the ethical rules. His motion dismiss the complaint passed unanimously.

But when he opened the floor for comments, Superior Court Judge A. William Mottolese, a commission member, took Maco to task. As he spoke, Maco looked on with his arms tightly crossed. Wade sat next to him, passing something small from one hand to the next, twisting it and twisting it.

It was hard to tell what transgressed behind the commission's closed doors-- and that likely suited Wade just fine. The quest for no publicity is classic Wade. Wade isn't a low-profile guy who takes high-profile cases. He's a no-profile guy who takes explosive cases.

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Wade doesn't talk to the press at all, except to firmly refuse to talk to the press at all. And he likes to keep matters firmly in hand, even if it means shutting other lawyers out of the process.

At the Maco hearing, according to Robert N. **Chatigny**, one of the lawyers for Allen, Wade moved to have Allen's lawyers dismissed because they had no business appearing in the context of a personnel matter between Maco and the commission.

'He asked that we not disclose his response to the complaint, on the theory that we were not entitled to have it,' says **Chatigny**, of Hartford's **Chatigny & Cowdery**.

In the end, however, Allen's lawyers were allowed to stay; they just couldn't disclose what had transpired at the session.

Vintage Wade.

When Connecticut Magazine named Wade in a story about the top four defense lawyers in the state, the other three, Zeldes, Maco's first choice for a lawyer, Hugh F. Keeffe of New Haven, and Hubert J. Santos of Hartford, were photographed individually standing firm and tall against a dramatic dusky blue sky.

Wade was nowhere to be seen.

Again, vintage Wade.

Born to Try Cases

Wade, 56, was born on Staten Island and educated at Yale and the University of Virginia School of Law. He served as a lawyer in the JAG Corps in the U.S. Navy, and then joined Robinson & Cole. He golfs and tries cases. It's unclear when he started golfing. He started trying cases as soon as he finished law school.

Wade has made his name trying cases. He's a rare bird for these parts: a big-firm lawyer--Robinson & Cole is the state's second-largest firm--who gets down and dirty in the criminal-defense trenches. He takes all kinds of criminal cases: DWI with manslaughter; blowing someone up with dynamite; murder with the air conditioner set low to mask the time of death (with the murderer going sailing and faking a ship-to-shore call); assault with a bottle, provoked by a thrown bottle cap; an explosives factory explosion that sent a man almost a mile away flying out of bed.

He's also made a practice of taking on various state agencies. One big win during his first decade of practice was a decision throwing out all the budgets approved by the nascent state Commission of Hospitals and Health Care. Health-care lawyers still talk about that one with a touch of awe.

Wade also has a reputation as a political insider. He was counsel to the Democratic majority in the House of Representatives and to the Democratic State Central Committee when former Gov. William A. O'Neill was chairman. When former Gov. Ella T. Grasso's sparrings over lawn signs with her former lieutenant governor, Robert Killian, who left her administration to run against her for governor, turned into litigation, Wade represented Grasso. Grasso's next lieutenant governor was O'Neill, who looked to Wade as one of his closest advisers when he became governor.

When former Democratic Party boss John Bailey Sr. was being investigated, posthumously, for bribery, his estate hired Wade. No charges were filed. When the General Assembly started impeachment proceedings against Hartford Probate Judge James Kinsella in 1984, Wade represented Kinsella and took his case to the state Supreme Court. Kinsella retired before the General Assembly could vote on his impeachment.

Every case was a splashy affair—the stuff of front-page headlines. But you won't see any quotes from Wade. And that seems to be a prime engine driving his legal business.

Wade often represents people with big money in big trouble, people who want a crackerjack lawyer who keeps quiet outside the courtroom.

For example, when Manchester psychiatrist Dr. Donald Pet was accused of having sexual contact with four of his patients in 1984, he hired Wade to represent him at hearings before the state Health Department. Wade took the case to the state Supreme Court—a no-stone-turned lawyer, he argues frequently before the high court—but when it came back to the Health Department two years later, Pet could no longer afford him and began to represent himself pro se.

When Hartford County High Sheriff Alfred Rioux found himself under investigation for an alleged fee-splitting arrangement with some favored deputies, he too hired Wade.

Tough-Guy Charm

Wade reached this eminence with a mixture of toughness, charm and a refusal to quit, according to lawyers familiar with his work.

William V. Dworski, of New Britain's Dworski and Tomassetti, squared off against Wade in a minority-party representation case involving the New Britain Board of Aldermen. The question was whether a law providing for minority-party representation, even when the party is wiped out at the polls, was constitutional. The Republicans wanted seats. Wade is a career Democrat. He represented the Democratic candidates who wanted to take all the seats they won, even though the law forbade members of one political party from occupying more than two-thirds of the seats on any municipal board in the state.

'He was kind of beaten on the law,' says Dworski. 'The law wasn't there. The thing that stands out in my mind was he said to me, —It's not over until it's over.' Wade lost, but only after an appeal was heard by the full state Supreme Court.

Wade excels at cross-examination. Former Chief State's Attorney Austin J. McGuigan, a partner at Hartford's Hoberman & Pollack, faced Wade in a case where one of McGuigan's witnesses was a drinker. The question was whether his drinking might have affected his memory. Wade established a friendly rapport with the witness that led to an admission which completely destroyed the witness' credibility.

'Wade got the guy to tell him that his two best friends were Jack and Jim: Jaek Daniels and Jim Beam. I was crawling under my seat,' McGuigan says.

But others insist that Wade doesn't try cases on charm. 'His court persona is pure skill,' says James W. Bergenn, a partner at Hartford's Shipman & Goodwin. 'He doesn't do anything on charm. In court, he pushes straight ahead and relies on intellectual acuity and very careful questioning.'

Wade represented trash haulers charged with antitrust violations in *United States v. Tobacco Valley Sanitation, et al.* Wade represented Tobacco Valley, Bergenn represented one of the other defendants. The case had an all-star defense line-up, which included Zeldes and New Haven's Ira B. Grudberg, of Jacobs, Grudberg, Belt & Dow.

'Jim did a good job of hitting hard,' Bergenn recalls. 'Others of us would play different roles: tear-jerkers, finesse lawyers. Jim hits hard.'

He doesn't try to win on affability, Bergenn says. 'He wins on technical points,' he says. 'Prosecutors knew they were going to have to do a lot more work in a Jim Wade case than they would with other lawyers.'

New London State's Attorney C. Robert Satti can testify to that. Satti has a reputation for extraordinary thoroughness. When he faced Wade in the case of the murderous husband who turned up the air conditioner to mask the time of death, the legal community mumbled that even if the case wasn't the trial of the century, it might take a century. It took 17 weeks.

Satti calls Wade an intelligent attorney who 'doesn't miss any points.'

Satti says Wade endears himself to juries because he's polite and well-prepared.

'He picks and chooses his questions carefully,' Satti says. 'Only on a few occasions have I seen him ask questions of witnesses that might in some way detract from his charm.'

The lawyers who have faced Wade in court agree that he doesn't pull backdoor tricks.

'You never have to worry about your back with Jimmy Wade,' says F. Timothy McNamara, a partner at Hartford's Hoberman & Pollack. 'He comes straight at you. He never uses inappropriate tactics.'

An up-front man in court, Wade will probably always be a no-show in public. At last Wednesday's hearing, a sadder and wiser Frank Maco waved off the press and slipped out the back door with Wade. The two were gone from the damp parking lot edged with pine needles before anyone could look at them twice.

Vintage Wade.

---- INDEX REFERENCES ---

COMPANY: HOUSE OF REPRESENTATIVES; ROBINSON AND COLE

NEWS SUBJECT: (Legal (1LE33); Public Affairs (1PU31); Business Litigation (1BU04); Judicial (1JU36); Government (1GO80); Political Parties (1PO73); Business Management (1BU42); Business Lawsuits & Settlements (1BU19))

REGION: (Connecticut (1CO13); North America (1NO39); USA (1US73); Americas (1AM92); New England (1NE37))

Language: EN

OTHER INDEXING: (BRITAIN BOARD OF ALDERMEN; CRIMINAL JUSTICE COMMISSION; DEMOCRATIC; DEMOCRATIC STATE CENTRAL COMMITTEE; GOV; HARTFORD; HARTFORD COUNTY HIGH SHERIFF ALFRED RIOUX; HEALTH DEPARTMENT; HOUSE OF REPRESENTATIVES; JAG CORPS; MCGUIGAN; PROFESSIONAL CONDUCT; REPUBLICANS; ROBINSON COLE; SUPERIOR COURT; SUPREME COURT; US NAVY; UNIVERSITY OF VIRGINIA SCHOOL OF LAW) (A.; Allen; Assembly; Attorney C. Robert; Austin J. McGuigan; Belt Dow; Bergenn; Bridgeport; Chatigny; Chatigny Cowdery; Donald Pet; Dworski; Dylan Farrow; Ella T. Grasso; Ellen; F. Timothy McNamara; Frank Maco; Frank S. Maco; Grasso; Health; Health Care; Hospitals; Hubert J. Santos; Hugh F. Keefe; Ira B. Grudberg; Jacob D. Zeldes; James A. Wade; James F. Stapleton; James Kinsella; James W. Bergenn; JAMES WADE; Jim; Jim Beam; Jim Wade; Jimmy Wade; John Bailey Sr.; Kinsella; Litchfield State; Maco; McGuigan; Needle Cooper; Neill; Pet; Prosecutors; Robert Killian; Robert N.

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Volume 19; Issue 44

Section: Allen v. Maco

WHAT PROCESS IS DUE WHEN THERE'S SCANT PROCESS AT ALL?
JUSTICE COMMISSION TACKLES MACO HEARING WITHOUT GAME PLAN

Jaret Seiberg

The Criminal Justice Commission proved one point last week when it dismissed filmmaker Woody Allen's complaint against Litchfield State's Attorney Frank S. Maco: It's impossible to tell what process is due state prosecutors like Maco since the commission has virtually no set process at all.

This point became evident after the meeting when commission members could not agree on whether they needed to conduct a formal hearing before they could have disciplined Maco, who landed on the hot seat when he said at a press conference in September that, while he had probable cause to seek a warrant for Allen's arrest for allegedly sexually abusing his adopted daughter Dylan, he would not prosecute.

While the outcome of the debate is moot because the commission dismissed Allen's complaint, the mere fact that it occurred shows some of the problems a governmental body can encounter when it operates without rules.

Commission Chairman James F. Stapleton, a former Superior Court judge who's now with the Stamford office of Day, Berry & Howard, says the group could have disciplined Maco at last week's hearing.

'It was my view that we gave him notice and that was a sufficient hearing to warrant taking action last night,' Stapleton says.

Stapleton concedes that others on the commission might disagree. He's right. Commission member Ralph G. Elliot, of New Haven's Tyler Cooper & Alcorn, says the commission only had two options last week: dismiss the complaint or set a date for a formal public hearing.

'We would have to give notice to him that at such-and-such a time the commission would have a hearing and you have the right to have counsel present and to present witnesses,' Elliot says.

Without this notice, the commission would have violated Maco's due-process rights, Elliot says.

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The dispute should not be surprising. The commission does not operate under a formal set of rules. Rather, it relies on several sketchy paragraphs contained in one state law.

Need for Due Process

Still, while the commission may lack rules and may fail to follow the model other criminal-justice agencies use--they go for a two-tiered set-up, with a probable cause hearing followed by a hearing on the merits--it does not mean that the process is unfair, according to several constitutional-law experts and attorneys involved in the Maco case.

State constitutional-law expert Wesley W. Horton, of Hartford's Moller, Horton & Rice, says as long as the committee notifies the prosecutor of the charges and gives the prosecutor a chance to respond, then it has met due-process requirements.

Horton says there is no need for a two-tiered system like the Judicial Review Council uses. 'It is up to the discretion of the commission,' he says.

Geoffrey C. Hazard Jr., a Yale Law School professor who teaches civil procedure, says the commission can approach the task any number of ways, as long as it allows the employee to know what the charges are and provides him with the opportunity to defend himself.

'I think the notion that there is a single way to do these things is wrong,' Hazard says.

Robert N. Chatigny, of Hartford's Chatigny & Cowdery, who represented Woody Allen in the Maco matter, says he believes the commission gave his client a fair hearing.

'The commission was very good to us to allow us to attend,' Chatigny says. 'We were in the room for several hours with lots of discussion. I think the commission went overboard to show us a fair time.'

Stapleton also says he believes all parties received a fair shake. 'There were five lawyers in the room,' he says with a laugh. 'That should be enough.'

Maco did not return a call seeking comment. His lawyer, James A. Wade, declines comment. (For more about Wade, see related story, next page.)

No Outside Counsel?

The commission's meeting began with a snag. Before Allen's three lawyers could comment, Wade objected to their presence and asked the commission to remove them. Chatigny says Wade told the commission that Allen and his counsel no longer had a role in the dispute because they already had filed the complaint. Therefore, they should be excluded from the commission's executive session, Wade argued.

The commission rejected that argument and opened its executive session with statements from both sides. Each side then responded to the other's statement. That led to more than an hour of questions from commission members, according to Elliot.

Elliot says that during the statements, board members examined the transcripts and other filings. He says they then dismissed the lawyers and discussed the case.

Stapleton classifies these discussions as extensive. When they completed them four hours after starting the meeting,

the commission went public. Stapleton opened this portion of the meeting by saying the commission considered Allen's charge that Maco violated Rules 8.4 and 3.6 of the Rules of Professional Conduct, which prohibit prejudicial comments and statements that could affect a trial.

Stapleton then moved that the commission dismiss the charges. Elliot seconded the motion. But, before the vote, commission member and Superior Court Judge A. William Mottolese interjected.

He said he believed that while Maco did not violate any of the rules, his conduct was insensitive and inappropriate. He says Maco could have fulfilled his obligation to explain his decision without damaging Allen's reputation.

'I feel that we should not limit ourselves to the specific complaint,' Mottolese said. 'But I think we should look at Maco's conduct as a whole.'

The rest of the commission, however, ignored the proposal, suggesting they already had dismissed that idea while in executive session.

Barry K. Stevens, a Stratford-based attorney and commission member, disagreed with Mottolese and defended Maco, saying the public simply did not understand the prosecutor's comments.

Elliot also expressed support for Maco, saying that he only was trying to explain his decision as a public servant should. 'That is what a democracy is all about.'

The commission then voted unanimously to dismiss the complaint. At that point, Maco and Chief State's Attorney John M. Bailey, also a commission member, left the room together with Maco patting Bailey on the back. At the same time, attorneys for Allen congregated in the hall to plan their next move.

The move turned out to be a press conference in front of the building housing the Office of the Chief State's Attorney, where the meeting was held.

Allen attorney Elkan Abramowitz, of New York's Morvillo, Abramowitz, Grand, Iason & Silberberg, told the crowd of local media representatives that they believed they won even though the commission tossed the complaint.

'To the extent that there was some criticism, we are very, very grateful,' Abramowitz said.

Not Over Yet

If Abramowitz is pleased, he should thank Connecticut's voters for deciding to create the Criminal Justice Commission during a 1984 state constitutional referendum.

The amendment ended a 280-year practice which gave judges the authority to hire and fire prosecutors. James J. Murphy Jr., the first chairman of the commission and a partner at Norwich's Berberiek, Murphy, Devine & Whitty, says lawyers began to feel uncomfortable with the setup because it left prosecutors beholden to the judges.

Then-Chief State's Attorney Austin J. McGuigan defended the status quo in a March 1984 speech to the General Assembly's Judiciary Committee, saying it would be better than the current proposal to allow the governor to appoint the state's attorneys.

'Even the most vocal of these critics point to not one instance in 280 years where a conflict of interest has been established between a judge and a prosecutor,' McGuigan said.

McGuigan then told lawmakers that if they wanted change, they should add (it,ibid,d061225) an amendment that would give an independent commission the authority to hire and fire prosecutors. This was not a new suggestion. McGuigan told the legislature the state's attorneys had been making it since 1979.

The Judiciary Committee adopted that suggestion and by May 1984 the legislature had approved a seven-member Criminal Justice Commission consisting of the chief state's attorney, two Superior Court judges and four gubernatorial appointees.

Fairfield State's Attorney Donald A. Browne, chairman of the Council of State's Attorneys, says at the time the legislature was debating the amendment, it never considered how the commission would carry out its job.

The voters approved the amendment later that year and the legislature enacted the commission's rather skimpy guidelines the following year.

'The reason those procedures were adopted was to comply with the uniform procedures act,' Murphy says. 'That was the advice we had from the Attorney General's office at the time.'

Murphy says while the rules do not specifically state that members of the public can file complaints, the commission always intended to leave that avenue open. And, he says it always intended to give state's attorneys a formal hearing prior to disciplining them.

But that is not amplified upon in C.G.S. §51-278, which gives the commission the authority to hire and fire state's attorneys. The law only says that no state's attorney 'may be removed from office except by order of the criminal justice commission after due notice and hearing.'

That's it for legislative guidance.

The only other source for information on how to proceed with a complaint appears to come from part of the statute dealing with removing the chief state's attorney and from an opinion from the attorney general concerning removing assistant state's attorneys.

The chief state's attorney statute requires the commission to conduct an investigation and prepare in writing a statement of the charges and a summons to appear at a hearing to explain why he or she should not be removed from office. At this hearing, the chief state's attorney can have counsel, examine witnesses and submit evidence. The commission then must issue a formal opinion.

The AG's opinion also does not directly apply to state's attorneys. Instead, the 1986 opinion refers to assistant state's attorneys, which means the decision no longer has practical effect because the collective bargaining agreement requires state's attorneys to assume disciplinary functions for their assistants. But even this opinion lays down a framework that the commission lacks. It requires the commission to state the time and place of the hearing, the legal authority under which the hearing is being held, the statutes, regulations or policies implicated, and a concise statement of the charges. The opinion also requires the commission to conduct an open hearing, at which the employee has the opportunity to cross-examine witnesses and present his or her case.

This lack of guidance is in stark contrast to other agencies in the criminal-justice arena. The Judicial Review Council, for instance, has detailed rules that it must follow. These include a two-stage process: the first is a secretive probable cause hearing and the second is an open adversarial hearing.

The Statewide Grievance Committee also has established rules that set a strict structure for all complaints, which include a secret probable-cause hearing and a more open formal hearing if the committee finds probable cause.

Allen soon may learn first-hand about this grievance process. Abramowitz says Allen still plans to pursue his grievance, and he is considering a civil action against Maco.

--- INDEX REFERENCES ---

COMPANY: AG; ANGLO GULF LTD

NEWS SUBJECT: (Legal (1LE33); Government (1GO80); Local Government (1LO75); Judicial (1JU36))

REGION: (Connecticut (1CO13); New England (1NE37); North America (1NO39); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (AG; COMMISSION; COUNCIL OF STATE; CRIMINAL JUSTICE COMMISSION; JUDICIAL REVIEW COUNCIL; JUDICIARY COMMITTEE; JUSTICE COMMISSION; MACO; MURPHY; NORWICH BERBERICK; PROFESSIONAL CONDUCT; STATEWIDE GRIEVANCE COMMITTEE; SUPERIOR COURT; YALE LAW SCHOOL) (A.; Abramowitz; Allen; Assembly; Austin J. McGuigan; Barry K. Stevens; Chatigny; Chief State; Cooper Alcorn; Devine Whitty; Donald A. Browne; Elkan Abramowitz; Elliot; Fairfield State; Frank S. Maco; Geoffrey C. Hazard Jr.; Horton; Horton Rice; Jason Silberberg; James A. Wade; James F. Stapleton; James J. Murphy Jr.; John M. Bailey; Litchfield State; Maco; McGuigan; Mottolese; Ralph G. Elliot; Robert N. Chatigny; Stapleton; Wade; Wesley W. Horton; William Mottolese; Woody Allen)

Word Count: 2284
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Robert N. Chatigny
United States Courthouse
450 Main Street - Room 135 Annex
Hartford, Connecticut 06103

September 13, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire and supplemental submissions I previously filed in connection with my nomination on February 24, 2010, to be United States Circuit Judge for the Second Circuit.

I have attached an update to the list of opinions I have issued (responsive to Question 13b). Also, in the matter of United States v. Julius, 610 F.3d 60 (2010), the Second Circuit vacated an order I had issued and remanded for reconsideration in light of an intervening Supreme Court decision (responsive to Question 13f).

I certify that, incorporating these updates, the information contained in my prior submissions is, to the best of my knowledge, true and accurate. I am forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



Robert N. Chatigny

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Robert N. Chatigny
Update to Senate Judiciary Committee Questionnaire, Question 13b
September 13, 2010

1. Murray v. Mitsubishi Motors of N. Am., Inc., 3:08-CV-1729(RNC), 2010 U.S. Dist. LEXIS 84921 (D. Conn. August 13, 2010).
2. Golder v. Murphy, 3:10-CV-1085(RNC), 2010 U.S. Dist. LEXIS 82888 (D. Conn. August 13, 2010).
3. Dejesus v. State Dep't of Corr., 3:10-CV-564(RNC), 2010 U.S. Dist. LEXIS 80907 (D. Conn. August 11, 2010).
4. Riles v. Bannish, 3:10-CV-652(RNC), 2010 U.S. Dist. LEXIS 80920 (D. Conn. August 11, 2010).
5. Alston v. Cahill, 3:07-CV-473(RNC), 2010 U.S. Dist. LEXIS 76759 (D. Conn. July 29, 2010).
6. Chylinski v. Martin Rosol's, Inc., 3:08-CV-1231(RNC), 2010 U.S. Dist. LEXIS 70382, (D. Conn. July 14, 2010).
7. Jarecke v. Murphy, 3:10-CV-621(RNC), 2010 U.S. Dist. LEXIS 46727 (D. Conn. May 12, 2010).
8. Klein v. Dir. of the United States PTO, 3:10-CV-425(RNC), 2010 U.S. Dist. LEXIS 39855, (D. Conn. April 22, 2010).
9. Currin v. Arista Records, Inc., 3:07-CV-1069(RNC), 2010 U.S. Dist. LEXIS 37592 (D. Conn. April 14, 2010).
10. Crumrine v. Buffalo Pumps, Inc., CASE NO. 3:09-CV-367(RNC), 2010 U.S. Dist. LEXIS 35112 (D. Conn. March 31, 2010).
11. Santaniello v. Sweet, 3:04-CV-806 (RNC), 2010 U.S. Dist. LEXIS 35208 (D. Conn. March 31, 2010).
12. Morales v. Rooney, 3:06-CV-1556 (RNC), 2010 U.S. Dist. LEXIS 35115 (D. Conn. March 31, 2010).
13. Kennedy v. Chamberland, 3:07-CV-214 (RNC), 2010 U.S. Dist. LEXIS 30335 (D. Conn. March 30, 2010).
14. Int'l Strategies Group, Ltd. v. Ness, 3:04-CV-696 (RNC), 2010 U.S. Dist. LEXIS 3148 (D. Conn. March 30, 2010).

15. Johnson v. Lantz, 3:07-CV-1908(RNC), 2010 U.S. Dist. LEXIS 29430 (D. Conn. March 26, 2010).
16. Swain v. Murphy, 3:08-CV-1394(RNC), 2010 U.S. Dist. LEXIS 29454 (D. Conn. March 26, 2010).
17. Burke v. Miron, 3:08-CV-641(RNC), 2010 U.S. Dist. LEXIS 26815 (D. Conn. March 22, 2010).
18. Gipson v. Santinni, 3:09-CV-1134(RNC), 2010 U.S. Dist. LEXIS 14681 (D. Conn. February 19, 2010).
19. Gipson v. LaPlante, 3:09-CV-1188(RNC), 2010 U.S. Dist. LEXIS 14685 (D. Conn. February 19, 2010).
20. Stein v. Immelt, 3:09-CV-808 (RNC), 2010 U.S. Dist. LEXIS 14283 (D. Conn. February 18, 2010).
21. Servello v. Sieminski, 3:07-CV-248(RNC), 2010 U.S. Dist. LEXIS 13763 (D. Conn. February 17, 2010).
22. Gooden v. Dep't of Corr., 3:07-CV-1859(RNC), 2010 U.S. Dist. LEXIS 12471 (D. Conn. February 12, 2010).
23. Beverly v. Murphy, 3:09-CV-1921 (RNC), 2010 U.S. Dist. LEXIS 14324 (D. Conn. February 10, 2010).
24. Kalican v. Turner, 3:09-cv-1154 (RNC), 2009 U.S. Dist. LEXIS 121152 (D. Conn. December 30, 2009).
25. Kalican v. Schimelman, 3:09-CV-1150 (RNC), 2009 U.S. Dist. LEXIS 121153 (D. Conn. December 30, 2009).

AO 10
Rev. 1/2008

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Chaigny, Robert N.	2. Court or Organization 2nd Circuit	3. Date of Report 9/13/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 9/13/2010 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2009 to 9/13/2010
7. Chambers or Office Address U.S. District Court 450 Main Street Hartford, CT 06103	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

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

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	_____
2.	_____
3.	_____

FINANCIAL DISCLOSURE REPORT
Page 2 of 13

Name of Person Reporting Chatigny, Robert N.	Date of Report 9/13/2010
--	------------------------------------

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

A. Filer's Non-Investment Income

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

	<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1.			
2.			
3.			
4.			

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

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

	<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	2010	Kingswood-Oxford School Teacher
2.	2009	Kingswood-Oxford School Teacher
3.		
4.		

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

NONE *(No reportable reimbursements.)*

	<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1.	EXEMPT				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT
Page 3 of 13

Name of Person Reporting Chatigny, Robert N.	Date of Report 9/13/2010
--	------------------------------------

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

NONE (No reportable gifts.)

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

VI. LIABILITIES. (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1. American Express	Credit Card		J
2. American Express	Credit Card		K
3. Simsbury Bank	Business Loan		L
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 13

Name of Person Reporting Chaigny, Robert N.	Date of Report 9/13/2010
---	------------------------------------

VII. INVESTMENTS and TRUSTS - Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rem., or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Bank of America Checking Acct.		None			Exempt				
2. Fax-Pax U.S.A., Inc. Shares		None	K	W					
3. Savin Groves		None							
4. Vanguard Windsor II Fund SEP IRA	A	Dividend	J	T					
5. Vanguard International Group Fund SEP IRA	A	Dividend	J	T					
6. Vanguard Windsor II Fund IRA	A	Dividend	J	T					
7. Vanguard International Growth Fund IRA	A	Dividend	J	T					
8. IRA Rollover - Cash	A	Interest	J	T					
9. Bernstein Intermediate Duration Portfolios	D	Dividend	N	T					
10. Bernstein International Value Portfolio II		None							
11. Bank of America Corp.	A	Dividend							
12. Bernstein Diversified Municipal Portfolio	A	Dividend							
13. Alliance Bernstein WLT APP-AD		None	N	T					
14. Bernstein Custodian Cash	A	Interest							
15. Horse - 15% Ownership		None							
16. Bernstein Short Dur DVSD Municipal Portfolio	A	Dividend							
17. Bernstein Short Dur DVSD Municipal Portfolio	A	Dividend							

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

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Name of Person Reporting Chaigny, Robert N.	Date of Report 9/13/2010
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Wisconsin Energy Corp.	A	Dividend							
19. Bank of America Checking Acct		None							
20. Stock - Conoco Phillips	A	Dividend							
21. Simsbury Bank - Checking Account		None							
22. Simsbury Bank - Savings Account	A	Interest	J	T					
23. Simsbury Bank - Savings Account	A	Interest	J	T					
24. Stock - Travelers Companies	A	Dividend							
25. Stock - Sprint Nextel Corp.		None							
26. Stock - Citigroup Inc.	A	Dividend							
27. Stock - Kroger	A	Dividend							
28. Stock - General Electric	A	Dividend							
29. Stock - Sanmina Corp.		None							
30. Stock - BP PLC	A	Dividend							
31. Stock - JP Morgan Chase & Co.	A	Dividend							
32. Stock - Chevron Corp.	A	Dividend							
33. Stock - Amer International Group		None							
34. Stock - Hartford Financial Services	A	Dividend							

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

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Name of Person Reporting Chaigny, Robert N.	Date of Report 9/13/2010
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VII. INVESTMENTS and TRUSTS -- Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Stock - Time Warner Inc.	A	Dividend							
36. Stock - Exxon Mobil Corp.	A	Dividend							
37. Stock - Genworth Financial Inc.		None							
38. Stock - XL Capital	A	Dividend							
39. Stock - Goldman Sachs Group	A	Dividend							
40. Stock - AT&T Inc.	A	Dividend							
41. Stock - Verizon Communications	A	Dividend							
42. Stock - CBS Corp.	A	Dividend							
43. Stock - Merck & Co.	A	Dividend							
44. Stock - Pfizer Inc.	A	Dividend							
45. Stock - Verizon Communication	A	Dividend							
46. Stock - Black & Decker Corp.	A	Dividend							
47. Stock - Nokia Corp.	A	Dividend							
48. Stock - Allstate Corp.	A	Dividend							
49. Stock - Deutsche Bank	A	Dividend							
50. Stock - Fidelity National	A	Dividend							
51. Stock - Morgan Stanley	A	Dividend							

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

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Name of Person Reporting Chatigny, Robert N.	Date of Report 9/13/2010
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VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of spouse and dependent children; see pp. 14-68 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month- Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
52. Stock - McKesson Corp.	A	Dividend							
53. Stock - Autoliv Inc.	A	Dividend							
54. Stock - Macy's Inc.	A	Dividend							
55. Stock - Caterpillar Inc.	A	Dividend							
56. Stock - Tyco Intl	A	Dividend							
57. Stock - Royal Dutch	A	Dividend							
58. Stock - McKesson Corp.	A	Dividend							
59. Stock - Macy's Inc.	A	Dividend							
60. Stock - Supervalu Inc.	A	Dividend							
61. Stock - BP - PLC	A	Dividend							
62. Stock - Chevron Corp.	A	Dividend							
63. Stock - ConocoPhillips	A	Dividend							
64. Stock - Exxon Mobil	A	Dividend							
65. Stock - Travelers	A	Dividend							
66. Stock - JP Morgan	A	Dividend							
67. Bernstein Diversified Munciple Portfolio	A	Dividend							
68. Stock - Fifth Third Bancorp.	A	Dividend							

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

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Name of Person Reporting Chatigny, Robert N.	Date of Report 9/13/2010
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VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
69. Stock - Gannett Co.	A	Dividend							
70. Stock - Bristol-Myers Squibb Co.	A	Dividend							
71. Stock - Sanofi Synthelabo	A	Dividend							
72. Stock - Wyeth	A	Dividend							
73. Stock - Cardinal Health Inc.	A	Dividend							
74. Stock - Tyson Foods Inc. - CL A	A	Dividend							
75. Stock - Archer-Daniels-Midland Co.	A	Dividend							
76. Stock - Toyota Motor Corp.	A	Dividend							
77. Stock - JC Penney Co. Inc.	A	Dividend							
78. Stock - Safeway Inc.	A	Dividend							
79. Stock - TTX Companies Inc.	A	Dividend							
80. Stock - Eastman Chemical Co.	A	Dividend							
81. Stock - General Electric Co.	A	Dividend							
82. Stock - Corning Inc.	A	Dividend							
83. Stock - Nokia Corp.	A	Dividend							
84. Stock - Ericsson LM TEL Co.	A	Dividend							
85. Stock - Motorola Inc.	A	Dividend							

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

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Name of Person Reporting Chatigny, Robert N.	Date of Report 9/13/2010
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	86. Stock - Dell Inc.		None						
87. Stock - Western Digital Corp.		None							
88. Stock - Apache Corp.	A	Dividend							
89. Stock - Devon Energy Corp.	A	Dividend							
90. Stock - Occidental Petroleum Corp.	A	Dividend							
91. Stock - Hartford Financial Services Group	A	Dividend							
92. Stock - Amgen Inc.		None							
93. Stock - Amgen Inc.		None							
94. Stock - Schering-Plough CP	A	Dividend							
95. Stock - Bunge LTD	A	Dividend							
96. Stock - Limited Brands Inc.	A	Dividend							
97. Stock - Home Depot Inc.	A	Dividend							
98. Stock - ACE LTD	A	Dividend							
99. Stock - News Corp.	A	Dividend							
100. Stock - Gap Inc.	A	Dividend							
101. Stock - EOG Resources Inc.	A	Dividend							
102. Stock - Lincoln National Corp.	A	Dividend							

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

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Name of Person Reporting Chaligny, Robert N.	Date of Report 9/13/2010
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VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
103. Stock - Lowe's Cos Inc.	A	Dividend							
104. Stock - Proctor & Gamble Co.	A	Dividend							
105. Stock - Capital One Financial Corp.	A	Dividend							
106. Stock - Eli Lilly & Co.	A	Dividend							
107. Stock - DuPont (E.I.) De Nemours	A	Dividend							
108. Stock - Northrup Grumman Corp.	A	Dividend							
109. Stock - ENSCO Intl Inc.	A	Dividend							
110. Stock - Regions Financial Corp.	A	Dividend							
111. Stock - Nexen Inc.	A	Dividend							
112. Stock - GlaxoSmithKline PLC - Spon AD	A	Dividend							
113. Stock - US Bancorp	A	Dividend							
114. Stock - Vodafone Group PLC - SP ADR	A	Dividend							
115. Stock - Masco Corp.	A	Dividend							
116. Stock - Unum Corp.	A	Dividend							
117. Stock - DR Horton Inc.	A	Dividend							
118. Stock - Cimarex Energy Co - W/I	A	Dividend							
119. Stock - Ingersoll-Rand PLC	A	Dividend							

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$30,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$5,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P2 = \$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 P3 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

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VII. INVESTMENTS and TRUSTS -- Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
120. Stock - Wells Fargo & Company	A	Dividend							
121. Stock - Valero Energy Corp.	A	Dividend							
122. Stock - Textron Inc.	A	Dividend							
123. Stock - SPX Corp.	A	Dividend							
124. Stock - BB&T Corp.	A	Dividend							
125. Stock - Nisource Inc.	A	Dividend							
126. Stock - AK Steel Holding Corp.	A	Dividend							
127. Stock Garmin LTD	A	Dividend							
128. Stock - Huntsman Corp.	A	Dividend							
129. Stock - Tyco Electronics LTD	A	Dividend							
130. Stock - Steel Dynamics Inc.	A	Dividend							

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$5,000,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I1 = \$1,000,001 - \$5,000,000 M = \$50,001 - \$100,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000 I2 = More than \$5,000,000 N4 = \$1,000,001 - \$25,000,000
2. Value Codes (See Columns C1 and D3)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	
3. Value Method Codes (See Column C2)					

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Name of Person Reporting	Date of Report
Chatigny, Robert N.	9/13/2010

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

Part III.A. - Non-Investment Income was received during the reporting period as salary from the United States Government for services as a United States District Judge.

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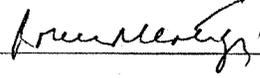
Name of Person Reporting	Date of Report
Chatigny, Robert N.	9/13/2010

IX. CERTIFICATION.

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

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

Signature _____



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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

Robert Chatigny Update

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		15	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured		54	000
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities-add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		59	293
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		417	000
Real estate owned-add schedule		950	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		25	000	Credit Line		270	000
Cash value-life insurance							
Other assets itemize:							
See attached		691	352				
				Total liabilities		800	293
				Net Worth		881	059
Total Assets	1	681	352	Total liabilities and net worth	1	681	352
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)			
On leases or contracts				Are you a defendant in any suits or legal actions?			
Legal Claims				Have you ever taken bankruptcy?			
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

<u>Other Assets</u>	
AllianceBern Wealth Apprec (AWAYX)	\$ 297,814
Bernstein Intermediate Duration (SNIDX)	265,838
Thrift Savings Plan account	23,400
Vanguard SEP-IRA Account	23,537
Vanguard IRA Account	69,574
TIAA CREF Account	11,189
Total Mutual Funds	\$ 691,352
<u>Real Estate Owned</u>	
Personal residence	\$ 950,000
<u>Real Estate Mortgages Payable</u>	
Personal residence	\$ 417,000

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

John Adrian Gibney, Jr.

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

United States District Judge for the Eastern District of Virginia

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

ThompsonMcMullan, P.C.
100 Shockoe Slip
Richmond, Virginia 23219

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

1951; Coatesville, PA

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

1973 – 1976, University of Virginia; J.D., 1976
1969 – 1973, College of William & Mary; B.A., 1973

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

2003 – present
ThompsonMcMullan, P.C.
100 Shockoe Slip
Richmond, Virginia 23219
Shareholder

2005 – Present

University of Richmond School of Law
28 Westhampton Way
Richmond, Virginia 23173
Adjunct Professor

1987 – 2003

Shuford, Rubin, & Gibney, P.C., Suite 1250
Seven Hundred Building
Richmond, Virginia 23218
Shareholder

1999 - 2004

Town of Ashland, Virginia
101 Thompson Street
Ashland, Virginia 23005
Town Attorney (this is a part-time position)

1984 – 1987

Lacy & Mehfood, P.C. (since dissolved)
P.O. Box 1454
Richmond, Virginia 23219
Associate

1982 – 84

Office of the Attorney General
Commonwealth of Virginia
Litigation Section
900 East Main Street
Richmond, Virginia 23219
Assistant Attorney General of Virginia

1978 – 82

Bell, Lacy & Baliles (since dissolved)
P.O. Box 1454
Richmond, Virginia 23219
Associate

1976 – 78

Supreme Court of Virginia
100 North Ninth Street
Richmond, Virginia 23219
Law Clerk to the Honorable Harry L. Carrico, Justice, (now retired Chief Justice)

Summers 1974 and 1975
 Gordon & Ashton (since dissolved)
 315 East Street
 Coatesville, Pennsylvania 19320
 Summer Clerk

Other Affiliations (uncompensated)

2002 – Present
 Lawyers Helping Lawyers
 600 East Main Street, Suite 2035
 Richmond, Virginia 23219
 Director (2002 – Present)
 President (2007 – 2008)

Chesterfield County Bar Association
 Box 215
 Chesterfield, VA 23832
 President (1992-93)

Governor's Substance Abuse Services Council
 Department of Behavioral Health and Developmental Services
 Jefferson building
 1220 Bank Street
 Richmond, Virginia 23219
 Member, Vice-Chairman, 2005-present

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

I registered for Selective Service in 1969. I did not serve in military.

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

Super Lawyer in Richmond
 Best Lawyers in America (local government law)
 Martindale-Hubbell, AV rating
 Resolution of Lawyers Helping Lawyers recognizing service to the organization, 2008
 Resolution of Chesterfield County Board of Supervisors recognizing service to
 Chesterfield County Committee on the Future, 2003
 Outstanding Achievement Award, Washington Lawyers Committee for Civil Rights and

Urban Affairs, 1997
Distinguished Service Award, Office of the Attorney General of Virginia, 1983
Phi Beta Kappa, 1972
Phi Eta Sigma, 1970

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

American Bar Association
Bar Association of the City of Richmond
Chesterfield County Bar Association
President (1992-93)
Local Government Attorneys Association of Virginia
United States District Court for the Eastern District of Virginia
Chair, Advisory Panel to recommend appointment of U.S. Magistrate
(approximately 1991-2001)
Virginia Bar Association
Virginia State Bar (admitted 1976)
Third District Committee (1992-98, 2004-05)
Faculty, Professionalism Course for New Attorneys (2003-2007)
Member, Continuing Legal Education Board (2009-present)
Virginia Trial Lawyers

10. **Bar and Court Admission:**

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

Admitted to the Bar of the Commonwealth of Virginia, 1976

There has been no lapse in membership.

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

Supreme Court of the United States, 1980
United States Court of Appeals for the Fourth Circuit, 1978
Temporary Emergency Court of Appeals, 1982
United States District Court for the Eastern District of Virginia, 1977
United States District Court for the Western District of Virginia, 1978
United States Bankruptcy Court for the Eastern District of Virginia, 1981
Supreme Court of Virginia (1976)

My membership in the bar of the Temporary Emergency Court of Appeals was allowed to lapse because, when I left the Office of the Attorney General, I no longer practiced before that court. There has been no other lapse in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Lawyers Helping Lawyers (1998 – present)

Member, Board of Directors (2002 – present)

President (2007 – 2008)

Bon Air Community Association (1983 – present)

ACAC Health Club (1985 – present; some years under previous ownership)

United States Tennis Association (1992 – present)

Downtown Club of Richmond (1979-1990)

YMCA of Richmond (1976-1980)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of these organizations discriminates or has discriminated on the basis of race, sex, religion, or national origin during the time I have been a member and I have no knowledge of any prior discrimination.

12. Published Writings and Public Statements:

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

Author, "Tort Liability of Local Officials," *Virginia Town and City*, October, 1983. No copies available.

Virginia Law Foundation, Committee on Continuing Legal Education, author of section of outline and speaker at seminar, *A Practical Approach to Civil Rights Litigation*, 1987. I did not retain copies and could locate no other copies.

Author, "Ethics and Professionalism: Mental Wellness 101," *The Journal of the Virginia Trial Lawyers Association*, Vol. 21, Number 2, 2009, p. 10.

Letters to the Editor

The Richmond *Times-Dispatch* has published three letters to the editor by me. I have written a fourth letter which was not published. Copies are attached. The letters are as follows:

May 12, 1996. Letter in support of the management of the Richmond City Jail by then Sheriff Michelle Mitchell. This letter outlined problems caused by the overcrowded jail and praised the sheriff for her management of the jail despite those problems.

April 6, 2005. Letter regarding Terri Schiavo. This letter criticized Senator George Allen and Congressman Eric Cantor both for supporting legislation that granted Federal Courts jurisdiction to address issues about Terri Schiavo and for abandoning the principles of their political party.

September 30, 2008. Letter regarding Federal bailouts. This letter criticized efforts to bail out poorly run companies and said that political figures should not condemn welfare for indigent people while providing relief to the wealthy.

January 19, 2009. Unpublished letter regarding inaugural activities. The letter responded to an op-ed piece by a University of Virginia student who objected to the cancellation of classes to allow students to watch the inauguration of President Obama and said that she would not watch during scheduled class times. I argued that the inauguration was an important historic event, that a university should encourage members of the community to observe and participate in such events, and that the op-ed writer was missing an educational opportunity.

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

Chesterfield County Committee on the Future: *Today's Youth Tomorrow's Leaders*, August 1999. Principal Author of Report. Four copies attached.

Chesterfield County Committee on the Future: *Choices, Options, and Benefits of Aging*, January 2003. Principal Author of Report and Chairman of Committee. Four copies attached.

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

I do not recall having offered any such testimony.

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

1999 Talk to History Club at William and Mary about Vietnam War and its effect on the William and Mary campus. Williamsburg, VA (no materials exist)

3/26/01 Talk with Students at Governor's School regarding legal issues, Richmond, VA (no notes exist)

1/9/02 Richmond Bar Association CLE speech on Use of Depositions at Trial, Richmond, VA (no materials available)

3/15/02 CLE Seminar on Substance Abuse Issues, Richmond, VA (no materials available)

4/23/03 CLE Presentation to Local Government Attorneys Association of Virginia on self-insurance issues, Norfolk, VA (no materials available)

5/7/04 Seminar for Virginia Law Enforcement Professional Standards Commission on liability issues, Charlottesville, VA (no materials available)

10/15/04 Local Government Attorneys Association lecture on defamation, Portsmouth, VA (outline attached)

3/3/05 Conduct class for Virginia State Bar Professionalism Course, Richmond, VA (no materials available)

- 4/13/05 Seminar for Richmond Bar Association on Trends in Employment Law, Richmond VA (no materials available)
- 12/1/05 Teach Class at Virginia State Bar Professionalism Course, Richmond, VA (no materials available)
- 2005 Teach Class on Federal Court Jurisdiction and Related Issues, Virginia Commonwealth University, Richmond, VA (no materials available)
- 1/27/06 Speech to Virginia Bar Leaders Institute about substance abuse and mental health issues and Lawyers Helping Lawyers, Williamsburg, VA (no materials available)
- 3/9/07 Presentation to King George County management on management issues, King George, VA (no materials available)
- 3/30/313/07 Moderator at Lawyers Helping Lawyers Educational Program, Williamsburg, VA (no materials available)
- 9/27/07 Professionalism Course for Virginia State Bar, Richmond, VA (no materials available)
- 3/4/08 Speech on Substance Abuse and Mental Health Issues, Washington & Lee Law School, Lexington, VA (no notes available)
- 6/20/08 Talk on Substance Abuse and Lawyers Helping Lawyers, Virginia State Bar Convention, Virginia Beach, VA (no notes available)
- 6/10/09 Teach Class on Federal Court Jurisdiction and related Issues, Virginia Commonwealth University (notes attached)
- 9/29/09 Ethics and Risk Management Lecture, Virginia Association of Commissioners of Revenue, Wintergreen, VA (no materials available)
- 10/14/09 Speech on Substance Abuse and Mental Health Issues, College of William & Mary Law School, Williamsburg, VA (no materials available)
- 4/2/10 Talk to Virginia Commonwealth University Honors College about employment opportunities for attorneys, Richmond, Virginia (no materials available)

In addition to the above, I frequently speak at seminars for groups of law enforcement officials, public employees, and elected officers in the Commonwealth of Virginia. Most of the lectures deal with issues of public employment law and law enforcement liability. I routinely prepare materials for

these talks, which are typically handed out to each of the participants. Over the years the contents of these materials has changed, and I have not kept every version. I am attaching all of the sets of handouts that I have retained in my files, which are representative of the documents I have written over time. Individual attendees may have kept copies of the original materials, but I did not retain them all.

I have listed below all of the talks reflected in my calendars, going back to 1999. I do not have records before that time. There may have been other such seminars, and I will provide that information to the Committee if I locate other records.

5/11-13/99 Liability Seminar for Law Enforcement Officers, Division of Risk Management, Virginia Beach, VA

5/18/29/99 Liability Seminar for Law Enforcement Officers, Division of Risk Management, Roanoke, Virginia

6/24/99 Lecture at Central Shenandoah Police Academy on liability issues, Weyers Cave, VA

3/8/00 Speech on Employment Issues to Hampton Roads Police Chiefs Association, Hampton, VA

5/8-11/00 Liability Seminar for Law Enforcement Officers, Division of Risk Management, Virginia Beach, VA

5/22-24/00 Liability Seminar for Law Enforcement Officers, Division of Risk Management, Virginia Beach, VA

3/20-21/01 Lawful employment Seminar for Constitutional Officers, Virginia Compensation Board, Roanoke, VA

3/22-23/01 Lawful Employment Seminar for Constitutional Officers, Virginia Compensation Board, Richmond, VA

3/29/01 Liability Seminar for Western Regional Jail Association, Roanoke, VA

4/24-27/01 Lawful Employment Seminar for Constitutional Officers, Virginia Compensation Board, Roanoke, VA

5/8-10/01 Liability Seminar for Law Enforcement Officers, Virginia Compensation Board, Roanoke, VA

- 5/21-23/01 Liability Seminar for Law Enforcement Officers, Virginia Compensation Board, Virginia Beach, VA
- 6/21/01 Employment Law Seminar for Commonwealth's Attorneys' Office Administrators, Virginia Compensation Board, Richmond, VA
- 9/26/01 Employment Law Seminar for Constitutional Officers, Virginia Compensation Board, Blacksburg, VA
- 10/24-26/01 Liability Law Seminar for Fairfax Criminal Justice Academy, Chantilly, VA
- 12/10/01 New Officers Training on Employment Issues, Virginia Compensation Board, Richmond, VA
- 3/27-28/02 Liability Seminar for Constitutional Officers, Virginia Compensation Board, Roanoke, VA
- 4/25/02 Liability Seminar for Sheriffs
- 5/7-9/02 Liability Seminar for Law Enforcement Officers, Virginia Compensation Board, Virginia Beach, VA
- 5/21-23/02 Liability Seminar for Law Enforcement Officers, Virginia Compensation Board, Roanoke, VA
- 8/13/02 Liability Law Seminar for Local Government Officials Conference, Weldon Cooper Center, Charlottesville, VA (no materials available)
- 11/19/02 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Staunton, VA
- 11/20/02 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA.
- 2/26-27/03 Jail Liability Seminar Fairfax Criminal Justice Academy, Chantilly, VA
- 5/1/03 Lawful Employment Class for Local Government Officials, Virginia Compensation Board, Richmond, VA
- 5/14/03 Lecture at Central Shenandoah Police Academy on liability issues, Weyers Cave, VA
- 9/25/03 Seminar for Local Government Officials on Employment Liability Issues, Virginia Compensation Board, Richmond, VA

- 12/8/03 New Officer Training on Employment Issues, Virginia Compensation Board, Richmond, VA
- 1/26-27/04 Employment Liability Presentation to Virginia Association of Locally Elected Constitutional Officers, Richmond, VA
- 3/23-24/04 Seminar for Local Government Officials on Employment Liability Issues, Virginia Compensation Board, Richmond, VA
- 5/24/04 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA
- 10/5-6/04 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA
- 11/29-30/04 Liability Law Seminar for Fairfax Criminal Justice Academy, Chantilly, VA
- 12/8/04 New Officer Training on Employment Issues, Virginia Compensation Board, Richmond, VA
- 3/31/05 Presentation of Litigation Techniques to Virginia Regional Jail Association, Virginia Beach, VA
- 5/9/05 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA
- 9/29/05 Risk Management Talk, Virginia Association of Commissioners of Revenue, Wintergreen, VA
- 10/5/05 Employment Law Presentation at Richmond Management Institute, Richmond, VA
- 11/28-29/05 Jail Liability Seminar for Fairfax Criminal Justice Academy, Chantilly, VA
- 12/6/05 New Officer Training on Employment Issues, Virginia Compensation Board, Richmond, VA
- 3/22-23/06 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA
- 3/30/06 Liability Lecture to Western Regional Jail Association, Roanoke, VA

4/3-4/06 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA

4/5-6/06 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Roanoke, VA

10/24/06 Employment Liability Presentation to Local Constitutional Officers Virginia Compensation Board, Williamsburg, VA

10/31/06 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Roanoke, VA

11/27-28/06 Jail Liability Seminar for Fairfax Criminal Justice Academy, Chantilly, VA

3/8/07 Employment Liability Presentation to Local Constitutional Officers, Richmond, VA

4/16-17/07 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Roanoke, VA

4/18-19/07 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA

5/17/07 Liability Lecture for Local Government Officials, Virginia Compensation Board, Richmond, VA

10/18/07 Speech to Western Regional Jail Association on liability issues, Roanoke, VA

11/16/07 Seminar for Virginia Sheriffs' Association on employment issues, Richmond, VA

11/19-20/07 Jail Liability Seminar for Fairfax Criminal Justice Academy, Chantilly, VA

12/10/07 New Officer Training on Liability Issues, Virginia Compensation Board, Richmond, VA

4/2-3/08 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Roanoke, VA

4/17-18/08 Employment Liability Presentation to Local Constitutional Officers, Virginia Compensation Board, Richmond, VA

12/8/08 New Officers Training on Employment Issues, Virginia Compensation Board, Richmond, VA

12/30/08 Employment Liability Presentation to Local Sheriffs, Virginia Sheriffs Association, Richmond, VA

3/19/09 Employment Liability Presentation to Local Sheriffs, Virginia Sheriffs Association, New Kent, VA

3/31/09 Employment Liability Presentation to Local Sheriffs, Virginia Sheriffs Association, Augusta County, VA

5/28/09 Risk Management Speech to Local Officials, Virginia Department of Risk Management, Richmond, VA

9/29/09 Risk Management Speech to Career Development Classes for Commissioners of the Revenue Association of the Commonwealth of Virginia

10/8/09 Employment Liability Presentation to Local Law Enforcement Management, Crater Criminal Justice Academy, Prince George, VA

11/30/09 Employment Liability Presentation to Local Law Enforcement Management, Crater Criminal Justice Academy, Prince George, VA

12/8/09 New Officer Training on Liability Issues, Virginia Compensation Board, Richmond, VA

12/28-29/09 Employment Liability Presentation to Local Sheriffs, Virginia Sheriffs Association, Winchester, VA

3/18/10 Speech on Litigation Issues to Western Regional Jail Association, Roanoke, VA

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

I have given dozens of informal interviews to reporters about cases in which I have participated. I do not know the dates of those interviews, and do not believe that transcripts exist. The interviews were all related to pending or recently concluded litigation.

Matt Sabo, "Supervisors' Defamation Suits Against Hicks to Go Forward," Daily Press, Apr. 9, 2010, at A1.

Brian McNeill, "Fluvanna Police Brutality Suit Advances," The Daily Progress, Mar. 13, 2010, reprinted in The Clover Herald. Also posted at: http://www2.dailyprogress.com/cdp/news/local/fluvanna/article/fluvanna_police_brutality_suit_advances/53551/

Tamara Dietrich, "Gloucester Splatter Zone Widens," Jan. 15, 2010, Daily Press, as A2.

Chris Dumond, "6 Nelson County Deputies Suing Sheriff for Back Pay, The News & Advance, Aug. 21, 2009.

Frank Green, "Virginia High Court Rules in Death-Sentence and Lottery Cases," Richmond Time Dispatch, June 5, 2009, at B01.

"Top State Court Upholds Life Term for Mentally Retarded Inmate," The Virginian-Pilot, June 5, 2009, at B2.

Larry O'Dell, "Life For Man Who Led to Ban on Executing Retarded," AP, June 4, 2009.

Frank Green, "Accessibility to Lottery is Argued before Virginia Supreme Court," Richmond Times Dispatch, Feb. 25, 2009, at B1.

Alan Cooper, "Supreme Court of Virginia: Commutation Authority of York County Circuit Court Disputed," Virginia Lawyers Weekly, Feb. 24, 2009.

Frank Green, "Clerk Loses Virginia High Court Case," Richmond Times Dispatch, Jan. 17, 2009.

"Virginia High Court Sides with Chesterfield Judge in Spat With Clerk," Richmond Times Dispatch, Jan. 16, 2009

Mike Gangloff, "Ex-Inmate Wins Against Guard," The Roanoke Times, Oct. 22, 2008, at B1.

Elliott Robinson, "Church Must Get Outside Audit," The Progress-Index, Oct. 12, 2008, at A1.

Laurence Hammack, "Sheriff's Office Asked to Pay \$290,000 in Legal Fees," The Roanoke Times, July 3, 2008, at B1.

CBS News/ AP, "\$10M Settlement in Prison Sex Abuse Case," April 19, 2008, posted at: <http://www.cbsnews.com/stories/2008/04/19/national/main4029273.shtml>

Frank Green, "Ex-Inmates Settle Sex Abuse Suit," Richmond Times Dispatch, Apr. 19, 2008.

Mike Gangloff, "State Division Says McMillan is Responsible for Suit Payout," The Roanoke Times, Jan. 18, 2008, at B1.

Rex Bowman, "Former Sheriff is Found Guilty of Harassment," Richmond Times Dispatch, Jan. 17, 2008, at B4.

AP, "Jury Sides With Former Deputy in Sex-Harass Suit," AP, Jan.17, 2008.

Mike Gangloff, "Jury Awards King \$325,000 in Damages Against McMillan, Sheriff's Office," The Roanoke Times, Jan. 16, 2008. Also posted at <http://www.roanoke.com/news/breaking/wb/147273>

Mike Gangloff, "Former Sheriff Denies Charges," The Roanoke Times, Jan.15, 2008, at A1.

A.J. Hostetler, "Judge Dismisses Barber's Suit Against School Board," Richmond Times Dispatch, Dec., 29, 2007, at B1.

Danielle Zielinski, "Woman Settles for \$2,500 in Sex Assault," Daily Press, July 11, 2007, at B4.

Lindsey Nair, "Harassment Claims Transfer to New Sheriff," The Roanoke Times, Aug. 1, 2006, at B2.

David Royer, "Hazlett Takes Case to Virginia's Supreme Court," The Daily News Leader, June 8, 2006, at 1A.

Michael Hardy, "Sheriff's Convictions Reversed," Richmond Times Dispatch, July 28, 2005, at B3.

Brian Baer, "Inmate's Family Sues Regional Jail," Fredericksburg Times, June 22, 2004. Also posted at: <http://fredericksburg.com/News/FLS/2004/062004/06222004/1406490>

Lindsay Kastner, "Hospital Nearer to Relocation," Richmond Times Dispatch, May 12, 2004, at B1.

Lea Setegn, "Ashland Posed to Hire New Attorney," Richmond Times Dispatch, Dec. 9, 2003, at B5.

Lea Setegn, "Ashland Approves Revised Proffers," Richmond Times Dispatch, Aug. 13, 2003, at B1.

Lea Stegn, "Apartments May Open," Richmond Times Dispatch, Aug. 11, 2003, at B4.

"Judge Slams Sheriff Over Deputy's Reassignment," AP, July 13, 2003.

Becky Krystal, "Judge: Sheriff Violated Virginia Law Cited for Cutting Security at Court," Richmond Times Dispatch, July 12, 2003.

Meredith Fischer and Will Jones, "Firm Has 17 Days to Comply," Richmond Times Dispatch, May 21, 2003, at B1.

Michael Martz and Meredith Fischer, "State, Nursing Homes to Use Loophole for U.S. Funds," Richmond Times Dispatch, Jan. 24, 2003, at B1.

Meredith Fischer, "Senior Citizens' Numbers are on the Rise," Richmond Times Dispatch, Jan. 8, 2003.

Lou Misselhorn, "Virginia Offers Crash Course in 'Firing People'," The Virginian-Pilot, Nov. 21, 2002, at B1.

Bob Piazza, "Impact Worries Hanover Leaders Jurisdictions Seek Compromise," Richmond Time Dispatch, Sep. 11, 2002.

Meredith Fischer, "Lucy Corr Outlook Improves," Richmond Times Dispatch, Jan. 9, 2002, at B1.

Tim McCloud, "Middlesex Pays in Zoning Agreement," Daily Press, Nov. 28, 2001, at C1.

Kiran Krishnamurthy, "Middlesex Settles Case," Richmond Times Dispatch, Nov. 28, 2001, at B9.

Meredith Fischer, "Chance Lost for Loophole," Richmond Times Dispatch, Nov. 2, 2001, at B1.

Meredith Fischer and Michael Martz, "Nursing Home in Trouble?," Richmond Times Dispatch, Oct. 30, 2001, at B1.

Meredith Fischer, "Panel to Vote Again on Deal," Richmond Times Dispatch, Oct. 20, 2001, at B1.

Meredith Fischer and Gordon Hickey, "Effort to Reach Agreement Fails," Richmond Times Dispatch, Oct. 19, 2001, at B1.

Meredith Fischer, "Official Defends Legal Medicaid Loophole," Richmond Times Dispatch, Oct. 16, 2001, at A1.

"To State Medicaid Scam, They Just Said No," The Virginian-Pilot, Oct. 12, 2001, at B10.

Meredith Fisher, Gordon Hickey and Jeremy Redmon, "Nursing Home to Forgo Windfall," Richmond Times Dispatch, Oct. 10, 2001, at B1.

Tom Campbell, "Suit Probes Shooting by Deputy," Richmond Times Dispatch, Sep. 11, 2001, at B1.

Susan Friend and Kimberly Lenz, "Hush Money for Sex," Daily Press, Apr. 8, 2001.

Carrie Johnson, "Sheriff Sues Over \$28,000 Vacation Pay," Richmond Times Dispatch, Feb. 21, 2001, at B1.

Betty Booker, "Like Walking in a Cloud," Richmond Times Dispatch, Feb. 12, 2001, at E1.

Betty Booker, "Localities Grapple with Aging Issues," Richmond Times Dispatch, Feb. 12, 2001, at E2.

Siobhan Roth, "4th Circuit Surprise," Legal Times, Jan. 1, 2001.

Bob Piazza, "Fight with Local Judge May End," Richmond Times Dispatch, Apr. 12, 2000, at J1.

Peter Krouse, "Keeping Workers Out of Court," News & Record, Mar. 19, 2000, at E1.

Bob Piazza, "Hanover to Appeal Conflict with Judge," Richmond Times Dispatch, Dec. 22, 1999, at J1.

Bob Piazza, "Hanover Lawsuit Protesting Judge's Rulings Thrown Out," Richmond Times Dispatch, Nov. 24, 1999, at B7.

Carrie Johnson, "4 Cited in Boxing Scandal," Richmond Times Dispatch, Nov. 5, 1999, at D1.

Carrie Johnson, "Jail Suite Alleges 'Unhealthy Conditions'," Richmond Times Dispatch, Oct. 14, 1999, at B7.

Tom Campbell, "New Discrimination Suit Filed Against Circuit City," Richmond Times Dispatch, Dec. 1, 1998, at B6.

Tom Campbell, "New Trial is Ordered in Gun Case," Richmond Times Dispatch, Nov. 19, 1998, at B6.

Tom Campbell, "Ex-Deputy Awarded \$40,000," Richmond Times Dispatch, May 7, 1998, at B1.

Tyler Whitley, "GOP Rules Elections, Not House," Richmond Times Dispatch, Jan. 14, 1998, at A1.

Andrew Cain, "Republicans Sweep Virginia Races But May Not Get to Lead," The Washington Times, Jan. 14, 1998, at A1.

Tyler Whitney, "GOP Bid for Quick Tally Denied," Richmond Times Dispatch, Jan. 13, 1998, at A1.

Warren Fiske and Laura LaFay, "Judge Says Elections Board Can Meet Friday," The Virginian-Pilot, Jan. 13, 1998, at A1.

Ellen Nakashima and Spencer S. Hsu, "Virginia GOP Rebuffed on Vote Tallies," The Washington Post, Jan. 13, 1998, at A1.

Andrew Cain, "Judge Trips Virginia GOP's House Bid," The Washington Times, Jan. 13, 1998, at A1.

Warren Fiske, "State Sues to Force Election Decision," The Virginian-Pilot, Jan. 12, 1998, at A1.

Ellen Nakashima, "Certification Battle Heads to Virginia Court," The Washington Post, Jan. 12, 1998, at C1.

Tom Campbell, "Circuit City Ordered to Promote Black," Richmond Times Dispatch, Jan. 10, 1998, at B3.

Tom Campbell, "2nd Fired Henrico Deputy Files Suit Against Mathews," Richmond Times Dispatch, Dec. 10, 1997, at B5.

Judith Haynes, "Fired Principal Wins \$300,000," Daily Press, June 6, 1996, at C1.

Deborah Kelly, "\$300,000 Award for Ex-Principal is Anti-Discrimination Message," Richmond Times Dispatch, June 5, 1996, at B1.

Randolph Good, "Monroe's Insurance Response Asserts Her Innocence," Richmond Times Dispatch, Mar. 15, 1996, at B5.

Randolph Good, "De La Burde Estate Seeks Disputed Funds," Richmond Times Dispatch, Mar. 9, 1996, at B6.

Wes Allison, "Ex-Teacher Sues Over Drug Ad," Richmond Times Dispatch, June 13, 1995.

Marc Davis, "Judge Urges Chesapeake to Settle Suite Over Jail Rape," The Virginian-Pilot, Oct. 4, 1994, at 1.

Susan Winiecki, "Area Builder Fined \$2,000," Richmond Times Dispatch, Oct. 14, 1993.

Sonya Weakley, "Ettrick Native is Bound for Bench Accessibility," Richmond Times Dispatch, Mar. 31, 1993.

Terri Shaw, "Consumer vs. Contractor," The Washington Post, Mar. 25, 1993, at T9.

Frank Green, "Drug-Money Case Ends in Convictions for 7 Defendants," Richmond Times Dispatch, August 3, 1991.

Frank Green, "Surprise Opens Cocaine Ring Trial Accountant Slated as a Crucial Witness," Richmond Times Dispatch, July 30, 1991.

"Some UMW Fines in Pittston Strike Set Aside by Virginia Appeals Court," Lexington Herald-Leader, March 27, 1991.

"Local Bar Association Cited for Project," Richmond Times Dispatch, Aug. 15, 1990.

Betsy Powell, "Town Meeting Airs Judicial Concerns," Richmond Times Dispatch, Mar. 10, 1990.

"Public Forum to Focus on Local Judicial System," Richmond Times Dispatch, Feb. 28, 1990.

"Virginia Teachers Sue on Smoking Rule," The Washington Post, Dec. 25, 1986, at B2.

"Barrier to Practice," Legal Times,

Jean McNair, AP, Apr. 22, 1983.

Douglas B. Peaver, "Hopewell Fined for Pollution, Says It Couldn't Be Helped," The Washington Post, Dec. 16, 1981, at A29.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including

positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not held judicial office.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____

i. Of these, approximately what percent were:

jury trials: _____%
bench trials: _____% [total 100%]

civil proceedings: _____%
criminal proceedings: _____% [total 100%]

- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide 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, provide copies of the opinions.
- i. Provide citations to all cases in which you sat by designation on a federal court of

appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

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

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

I have not served as a judge.

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

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

Member, Vice-Chairman, Governor's Substance Abuse Services Council, 2005-present, appointed by Governor Mark R. Warner and re-appointed by Governor Timothy M. Kaine.

Member, Chesterfield County Health Care Commission, 2001-2009, appointed by Chesterfield County Board of Supervisors.

Member, Chesterfield County Committee on the Future, 1997-2003, Chairman, 2000-03, appointed by Chesterfield County Board of Supervisors.

Member, Virginia State Board for Contractors, 1989-96, appointed by Governor Gerald L. Baliles and reappointed by Governor L. Douglas Wilder.

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

I have served on the Richmond City (approximately 1978-1982) and Chesterfield County (Mid-1980's) Democratic Committees. I am not currently a member of either.

16. **Legal Career:** Answer each part separately.

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

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

Law clerk to the Honorable Harry L. Carrico, Justice (now retired Chief Justice), Supreme Court of Virginia, 1976-78.

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

I have not practiced alone.

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

1978 – 82
Bell, Lacy & Baliles (since dissolved)
P.O. Box 1454
Richmond, Virginia 23219
Associate

1982 – 84
Office of the Attorney General
Commonwealth of Virginia
Litigation Section
900 East Main Street
Richmond, Virginia 23219
Assistant Attorney General

1984 – 1987
Lacy & Mehfoud, P.C. (since dissolved)
P.O. Box 1454
Richmond, Virginia 23219
Associate

1987 – 2003
Shuford, Rubin, & Gibney, P.C., Suite 1250
Seven Hundred Building
Richmond, Virginia 23218
Shareholder

2003 – present
ThompsonMcMullan, P.C.
100 Shockoe Slip
Richmond, Virginia 23219
Shareholder

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have been trained in both mediation and arbitration. About ten years ago, I have mediated one personal injury case, involving an accident on a tram at Dulles Airport. About 15 years ago, I arbitrated approximately five securities cases involving disputes between customers and brokers and do not have any records of them.

b. Describe:

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

My practice has centered on trial work. Many of my clients have been public entities or officials. Throughout my career, I have also handled criminal, commercial, and domestic relations cases. In addition, for most of my career, I have had a general practice advising clients about business and personal affairs. After my clerkship, it is fair to divide my career into five segments:

From 1978 to 1982, I was in private practice as an associate at a small firm. My work was assigned by partners. We represented a variety of private and public entities in complex litigation. Most of my work consisted of administrative matters before state agencies, litigation

involving environmental matters, and litigation representing school boards.

From 1982 to 1984, I was an assistant attorney general of Virginia, in the litigation section of the Attorney General's Office. I handled a wide variety of matters. I represented individuals and agencies in civil rights and employment matters, represented Virginia in multi-state litigation, did the bulk of the work in litigation stemming from redistricting following the 1980 census, and represented judges and legislators who were sued arising from their official duties.

From 1984 to 1987, I was in private practice as an associate at a small firm. Most of our work involved representing school boards. My tasks consisted of representing the boards in employment cases and matters relating to students.

From 1987 to 2003, I was a shareholder in a small firm. I represented many local governments and officials throughout Virginia in civil litigation. Much of my work involved representation of law enforcement agencies and officers. I represented localities in many employment cases. I was often appointed by the Attorney General to handle cases in which a conflict arose. I also handled some commercial and domestic relations cases. I had an active criminal practice, and took both Federal and State appointed cases. In 1989, I stopped taking appointed cases in state court.

During this period, I served for several years as the Town Attorney of Ashland, and addressed the Town's day-to-day legal needs, including zoning matters and regulatory compliance.

In addition, I participated in our firm's general practice representing clients in business, estate planning, and real estate matters.

Since 2003, I have been a shareholder in a firm that now has 29 attorneys. My work continues to involve the representation of many public entities and officials in employment, law enforcement, and other matters. In addition, our firm represents many businesses, and I handle commercial litigation. I continue to be appointed by the Attorney General of Virginia in cases in which he has a conflict. During this period, the number of criminal cases that I handle has dropped off, as I have stopped doing any appointed work. In addition, our firm has attorneys who specialize in business transactions, estate planning, and real estate, and I no longer work as much in those areas.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1978 to 1982, I was in private practice as an associate at a small firm. We represented a variety of private and public entities in complex litigation. I also represented individuals in small civil and criminal cases.

From 1982 to 1984, I was an assistant attorney general of Virginia, representing the Commonwealth of Virginia, its agencies, and state employees.

From 1984 to 1987, I was in private practice as an associate at a small firm. We represented many local school boards. In addition, I handled some litigation and other matters on behalf of small businesses and individuals.

From 1987 to 2003, I was a shareholder in a small firm. I represented many local governments and officials throughout Virginia in civil litigation. I also represented state agencies and employees as appointed by the Attorney General when his office has a conflict. I also represented individuals in civil and criminal matters, and small businesses.

Since 2003, I have been a shareholder in a firm of 29 attorneys. My work continues to involve the representation of many public entities and officials, as well as small to medium sized businesses. I continue to represent individuals in civil and criminal matters, and to represent state employees and agencies in cases in which the Attorney General of Virginia has a conflict.

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

For most of my career, 80% of my work has involved litigation. I frequently appear in court.

- i. Indicate the percentage of your practice in:

1. federal courts:	75%
2. state courts of record:	20%
3. other courts:	4%
4. administrative agencies:	1%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	80%
2. criminal proceedings:	20%

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

counsel.

I estimate that I have handled approximately 500 cases to final decision. In all but a few of those cases, I was lead counsel. In 90% of them, I was sole counsel.

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

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

I have responded to a number of petitions for certiorari in the Supreme Court, but have never fully briefed or argued a case there. The last occurred around fifteen years ago. I do not have copies of the responses.

I helped to represent the United Mine Workers in litigation arising from a 1989 strike in the Virginia coalfields. That litigation led to the decision, *United Mine Workers v. Bagwell*, 512 U.S. 821 (1994). Although I assisted in the litigation in state court, I did not play a role in the appeal to the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- the date of representation;
 - the name of the court and the name of the judge or judges before whom the case was litigated; and
 - the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. *Figg v. Schroeder*, 312 F. 3d 625 (4th Cir. 2002).

In this case, I was lead trial counsel. We represented a Hanover County deputy sheriff who shot and killed a drunk driver in the course of an arrest. Other deputy sheriffs were accused of unlawfully incarcerating unruly family members of the deceased. The case was politically controversial in Hanover County. The jury

rendered a verdict that the officer used reasonable force in apprehending the driver. The jury imposed a small verdict against the other officers on the detention counts, but the verdict was reversed on appeal. Our representation lasted from approximately 2000 through 2002.

The trial court was the United States District Court for the Eastern District of Virginia, Richmond Division. The Honorable James R. Spencer presided. Opposing counsel was James Loots, Esquire, current address P.O. Box 76852, Washington DC 20013-6852. (202) 359-0442. Co-counsel was Robert A. Dybing, ThompsonMcMullan, P.C., 100 Shockoe Slip, Richmond, VA 23219. (804)649-7545.

2. *Smith v. Hampton*, Record No. 980063 (Supreme Court of Virginia, Jan. 13, 1998).

This case involved the political control of the Virginia House of Delegates. I represented two members of the Virginia Board of Elections. The petitioners sought to compel one of our clients, the Executive Secretary of the Virginia State Board of Elections, to certify the results of a special election. The petitioners wanted the results certified more quickly than usual, because the outcome would allow the Republican delegates to control the chamber and elect the Speaker. The Court ruled that the timing of certification of an election lay in the discretion of the Executive Secretary, and denied the requested relief. As a result, the Democrats controlled the House for one more session.

The case was filed in the Circuit Court of the City of Richmond, was heard by the Honorable Randall Johnson, and was appealed to the Virginia Supreme Court. This case was filed in early January, 1998, tried in the circuit court two days later, and argued before the Supreme Court the day after the circuit court trial. Opposing counsel was Robert Brooks, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, VA 23219. (804) 788-8200.

3. *Nelson v. Warden*, 262 Va. 276, 552 S.E. 2d 73 (2001).

The Supreme Court of Virginia appointed me to represent the prisoner in this habeas corpus case. The case involved the failure to notify both parents of a juvenile criminal defendant before certifying the juvenile to be tried as an adult. The specific legal question was whether this failure deprived the circuit court of jurisdiction over the juvenile. At stake were hundreds of convictions in which only one parent had received notice. The Court ruled that the conviction was valid, clarifying a legal issue that had led to many habeas corpus petitions.

The case was heard in 2001. It was heard only by the Virginia Supreme Court under its original jurisdiction over habeas corpus cases. Opposing counsel was Michael Judge, Assistant Attorney General, 900 East Main Street, Richmond, VA 23235. (804)786-2071.

4. *Lowery v. Circuit City Stores*, 206 F. 3d 431 (4th Cir. 2000).

In this case, the Washington Lawyers Committee for Civil Rights and Urban Affairs recruited our firm to assist in the representation of a group of African-American employees in Circuit City's headquarters in Richmond. I served as local counsel and actively worked planning the strategy of the case and in the trial itself, handling many direct and cross examinations. The case involved a number of complex issues on class certification, racial discrimination, and the proper remedies. The trial alone lasted thirty days. Although a number of plaintiffs did not prevail, some did, and Circuit City was compelled to reexamine its promotional policies. Our representation of the plaintiffs lasted for five years, from 1998-2003.

The case was heard in the United States District Court, Eastern District of Virginia, Richmond Division. The trial judge was the Honorable James R. Spencer. Lead counsel for the plaintiffs were Phillip D. Bostwick and David J. Cynamon, Pillsbury Winthrop Shaw Pittman, LLP, 2300 N Street NW, Washington, DC 20037. (202)663-8000. Lead counsel for the defendants was Gerald S. Hartman, now with Drinker Biddle & Reath, LLP, 1500 K Street NW, Washington, DC 20005. (202)842-8881.

5. *Commonwealth of Virginia v. Epps*, 273 Va. 410, 641 S.E. 2d 77(2007).

I represented an elected official in Petersburg, Virginia, who became embroiled in a dispute with a judge and was held in contempt. The official's conviction was overturned on appeal. The Supreme Court of Virginia's decision resolved important questions about the nature of contempt of court and the competence of a judge to testify about matters observed outside the courtroom. My representation of the defendant lasted from 2003 through 2007.

The trial court was the Circuit Court of the City of Petersburg, Virginia. The Honorable Robert G. O'Hara presided. Opposing counsel on appeal was John H. McLees, Senior Assistant Attorney General, Office of the Attorney General of Virginia, 900 East Main Street, Richmond, VA 23235. (804)786-2071. Trial counsel for the prosecution was Larry Hogan, Deputy Commonwealth's Attorney for Chesterfield County, 9500 Courthouse Road, P.O. Box 25, Chesterfield, VA. (804)748-1221.

6. *International Union, United Mine Workers v. Clinchfield Coal Corp.*

I served on a legal team representing the International Union, United Mine Workers, in a series of contempt proceedings initiated by coal companies. I worked on a number of interlocutory and final appeals. Ultimately, the Supreme Court of Virginia affirmed awards that were of such magnitude as to destroy the Union. The Virginia Supreme Court's opinion addressed a number of new

questions regarding contempt, chief among them whether contempt sanctions continue to exist after the parties settle the litigation leading to the sanctions. The Union appealed the ruling of the Virginia Supreme Court to the Supreme Court of the United States, which reversed the decision. I did not participate in the appeal to the Supreme Court of the United States. My representation of the Union went lasted from 1989 through 1992.

The trial court was the Circuit Court of Russell County, the Honorable Donald A. McGlothlin, Jr., presiding. Lead trial counsel for the Union was James J. Vergara, Jr., Vergara and Associates, 100 Main Street Plaza, Hopewell, VA 23860. (804)458-6394. Lead appellate counsel before the Supreme Court of Virginia and the Supreme Court of the United States was Andrew P. Miller, Dickstein Shapiro, LLP, 1825 Eye Street, Washington, DC 20006. (202)420-2200. Lead trial counsel for Covenant Coal Corp. was Robert M. Galumbeck, 104 West Main Street, Tazewell, VA. (276)988-6561. Lead trial counsel for Clinchfield Coal Corp. was Karl Kindig, 110 Fairway Drive, Abingdon, VA 24211. (276)628-6500. Lead opposing counsel on appeal was William B. Poff, Woods Rogers, PLC, 10 South Jefferson Street, Suite 1400, Roanoke, VA 24011. (540)983-7600.

Bagwell v. International Union, 244 Va. 463, 423 S.E. 2d 349 (1992).

United Mine Workers v. Covenant Coal Corporation, 12 Va. App. 135, 402 S.E. 2d 906 (1991).

United Mine Workers v. Clinchfield Coal Corporation, 12 Va. App. 123, 402 S.E. 2d 899 (1991).

International Union, United Mine Workers v. Bagwell, 512 U.S. 821 (1994).

7. *Taylor v. Waters*, 81 F. 3d 429 (4th Cir. 1996).

I represented a police officer who was sued under 42 U.S.C. §1983 for wrongful arrest. The lower court dismissed the case against the officer. On appeal, the United States Court of Appeals for the Fourth Circuit made significant rulings in the area of qualified immunity. This case is frequently cited as definitive authority on issues of the immunity of police officers and other governmental officials. My representation of Officer Waters lasted from 1994 through 1996.

The case was heard in the United States District Court for the Eastern District of Virginia, Newport News Division, the Honorable James E. Bradberry presiding. Opposing counsel was Sa'ad El-Amin, Esquire. Mr. El-Amin has been disbarred and no longer practices law.

8. *In Re: Commonwealth of Virginia*.

I represented the Honorable Prentis Smiley, Judge of the Circuit Court of York County. In a capital murder case, Judge Smiley ruled that prosecutors had concealed evidence they should have given to defense counsel. After making this

ruling, he held that the prosecution could not seek the death penalty against the defendant. The prosecutors filed a petition for mandamus in the Supreme Court of Virginia, asking the Court to compel Judge Smiley to conduct proceedings that could lead to capital punishment. The Court ruled that Judge Smiley had the authority to make his ruling, and that the Commonwealth, therefore, could not seek the death penalty in the case. My representation of Judge Smiley lasted from 2008 through 2009.

Opposing counsel were Melissa Hoy, Assistant Commonwealth's Attorney, and Mark Krueger, Deputy Commonwealth's Attorney. 9500 Courthouse Road, P.O. Box 25, Chesterfield, VA 23832. (804)748-1221.

9. *Thompson v. Walker*, 758 F. 2d 1004 (4th Cir. 1985).

I represented the Virginia judicial retirement plan in a suit challenging the constitutionality of the plan's restriction of retirement benefits to retired judges who returned to litigation practices. The court held that the Commonwealth had a reasonable basis to discourage retired judges from appearing in court, and upheld the validity of the plan. I represented the plan from 2003-2005.

The case was heard in the United States District Court, Eastern District of Virginia, Alexandria Division, the Honorable Albert Bryan, Jr., presiding. Opposing counsel was George F. West, Jr., Richards McGettigan Reilly & West P.C., 1725 Duke Street Suite 600, Alexandria, VA 22314. (703)549-5353.

10. *Cosner v. Robb*, 541 F. Supp. 613 (E.D. Va. 1982)
Cline v. Robb, 548 S. Supp 128 (E.D. Va. 1982).

I was second chair in these two cases representing the Commonwealth in a challenge to the 1980 redistricting of Virginia. I wrote the State's summary judgment briefs, which resulted in dismissal of the actions. These cases established the precedent that the Equal Protection Clause does not require compactness, contiguity, and community of interest in legislative districts. The court also ruled that the legislature could legitimately reapportion part, but not all, of the state, in response to objections raised by the Department of Justice under the Voting Rights Act. My representation in these cases occurred in 1982.

The cases were heard before three judges in the United States District Court for the Eastern District of Virginia. The panel consisted of the Honorable John Butzner, Circuit Judge, the Honorable D. Dortch Warriner, Judge, and the Honorable Glenn Williams, Judge. Lead counsel for the defendants in the case was Deputy Attorney General Elizabeth B. Lacy, now senior justice of the Supreme Court of Virginia, 100 North Ninth Street, Richmond, Virginia 23219. (804)741-5301. Lead opposing counsel were Robert Fitzgerald, Fairfax, Virginia, retired, address unknown, and Raymond R. Robrecht, Salem, retired, address unknown.

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

From 2006 to 2009, I represented a local government in a matter arising under the Fair Labor Standards Act. The locality had failed to maintain any time records for a group of 250 employees, who claimed that they had not been compensated for overtime for a period of three years. The workers claimed over \$500,000 in overtime wages, plus attorneys' fees. We were able to reconstruct the time of workers. These efforts persuaded plaintiffs' counsel to accept a settlement for a small fraction of the amount claimed.

This year, I represented a major Richmond law firm whose managing partner had allegedly sexually harassed an office manager. I assembled a comprehensive package of the employee's emails, and obtained witness statements from a number of co-workers. This evidence showed that the claims of harassment fell on the heels of a bad evaluation. We were then able to persuade plaintiff's counsel to settle the case, rather than file suit.

While the Town Attorney for Ashland, Virginia, I handled the rezoning of property to allow a Wal-Mart Supercenter to open. This matter was highly controversial, with opponents constantly railing at Town Council meetings about the propriety of the Town's actions. Although the opponents of Wal-Mart hired a number of attorneys to examine the Town's actions in detail, all requirements were met, and ultimately no one challenged the rezoning.

In 2007, I handled a civil case for a former politician who had resigned in disgrace after pleading guilty to sexual battery against his step-daughter. The father of the step-daughter sued him for \$10 million in damages. We developed evidence that a) showed that our client had pled guilty in order to avoid the risks of trial, and b) called into question whether the event had actually occurred. We were able to settle the case for a very low amount.

In 2007-08, I represented a regional jail in the Tidewater region. One of its correctional officers had pled guilty to forcible sodomy on a female inmate. The inmate sued the facility. We developed evidence that the jail had properly trained its officers, and, more importantly, that the inmate had enticed the officer to have sexual relations with her. We presented this evidence to counsel for the inmate, who settled the case for \$2,000.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a

syllabus of each course, provide four (4) copies to the committee.

Since 2005, I have taught as an adjunct professor at the University of Richmond School of Law. I teach a clinical placement course in which students work from sixteen to twenty-four hours each week in local law offices and courts. We meet each week to discuss their experiences, and to discuss short weekly essays they write. I convey to them some "real life" aspects of legal practice, and show them that the practice of law is only part of a balanced life. Attached are syllabi for the past four years.

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

I have a buy-out agreement with my current firm if my employment terminates. It calls for a lump sum payment when I leave.

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

I would hope to continue to serve as an adjunct professor at the University of Richmond School of Law, as time and ethical rules allow.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, 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.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Local governments and their officials are frequent litigants in Federal Court. I have represented many clients in these categories, and have also conducted training courses for them. I will recognize my former clients and will not hear their cases. For other localities and local officials, I propose to inquire of counsel whether I have taught courses for them, and, if so, will recuse myself.

Although I have not represented Chesterfield County or any of its agencies, I have served on several County commissions and boards. For at least two years, I would recuse myself from any cases involving Chesterfield County.

I will also recuse myself from cases involving the Hanover County Attorney's Office, because I have handled many cases as co-counsel with the attorneys there and have developed personal relationships that would give rise to the appearance of a conflict.

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

If confirmed, I will continue to follow the recusal statutes and Canon 3 of the Code of Conduct for United States Judge. I will recuse myself when necessary to resolve any real or apparent conflict of interest.

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

Throughout my career, I have tried to provide pro bono services as part of my ethical obligation as an attorney.

As part of this effort, I have provided services to Lawyers Helping Lawyers, a charity that assists lawyers with problems involving substance abuse and mental illness. I serve on the state board of LHL, and am a past president. In addition, I serve as a mentor and monitor to attorneys who are recovering from difficulties. Through LHL, I have worked individually with six lawyers, on average for two years each, to help them in recovery from substance abuse problems.

I serve on a local government commission that operates a publically owned nursing home in Chesterfield County.

I am a member of the Governor's Substance Abuse Services Council, which provides advice and guidance to the administration and General Assembly on issues involving drug and alcohol abuse.

In the area of litigation, the Washington Lawyers Committee for Civil Rights and Urban Affairs calls on me periodically to serve as local counsel on major discrimination cases. Within the past five years, I have served as local counsel in a case alleging a pattern and practice of racial discrimination in providing service at Waffle House restaurants. I spent approximately one hundred hours working on that case. Previous to that, I served as local counsel in a suit that alleged a pattern of employment discrimination in Circuit City's central office. The Circuit City case resulted in a month-long trial, and after the case the Washington Lawyers Committee awarded my firm the Outstanding Achievement Award. In both these cases, a small fee was awarded at the end as part of a settlement, but the fee was well below our normal rates.

In my practice I frequently represent indigent individuals. Most recently, I represented an unemployed former member of a local board of supervisors who had been civilly sued for allegedly molesting his step-daughter. Another attorney at my firm and I spent over 200 hours in his defense, without compensation. Currently, I am representing an elderly woman in an attempt to obtain clear title to her home, which has gone several generations in her family without estates being probated.

26. Selection Process:

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

My state does not have a judicial selection commission to recommend candidates for nomination to the federal courts. However, local and state bar associations interview candidates and make recommendations to Virginia's U.S. Senators.

On February 18, 2009, the Richmond Bar Association, the Metropolitan Richmond Women's Bar Association, the Richmond Criminal Bar Association, the Chesterfield Bar Association, and the Richmond Old Dominion Bar Association held a joint interview in which approximately twenty lawyers questioned me for fifty minutes.

On February 20, 2009, state-wide bars held interviews. The Asian Pacific American Bar Association and the Virginia Hispanic Bar Association jointly interviewed me for approximately thirty minutes. The Virginia State Bar and the Virginia Women Attorneys Association interviewed me separately.

I also submitted written materials to the Virginia Bar Association, the Virginia Association of Defense Attorneys, and the Virginia Trial Lawyers Association.

In April 2009, the staffs of Senators Webb and Warner interviewed me. In September, I had an individual personal meeting with Senators Webb and Warner.

Since November 2009, I have been in contact with pre-nomination officials at the Department of Justice. On January 20, 2010, I was interviewed in Washington by attorneys from the White House Counsel's Office and the Department of Justice.

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

No.

AO 10
Rev. 1/2009

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Gibney, John A.	2. Court or Organization Eastern District of Virginia	3. Date of Report 04/11/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge-Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 04/14/2010 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2009 to 04/30/2010
7. Chambers or Office Address ThompsonMcMullan, P.C. 100 Shockoe Slip Third Floor Richmond, VA 23219	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

	POSITION	NAME OF ORGANIZATION/ENTITY
1. Director		Lawyers Helping Lawyers
2. Trustee		Trust #1
3. Trustee		Trust #2
4. Trustee		Trust #3
5. Adjunct Professor		University of Richmond Law School
6. Attorney		ThompsonMcMullan, P.C.

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

NONE (No reportable agreements.)

	DATE	PARTIES AND TERMS
1.	2008	Buy out agreement with ThompsonMcMullan PC law firm
2.		
3.		

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Name of Person Reporting Gibney, John A.	Date of Report 04/11/2010
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III. NON-INVESTMENT INCOME (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

A. Filer's Non-Investment Income

NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2010	ThompsonMcMullan, P.C. - Salary	\$34,583.32
2. 2009	ThompsonMcMullan, P.C. - Salary	\$123,333.32
3. 2008	ThompsonMcMullan, P.C. - Salary	\$153,480.00
4. 2009	University of Richmond	\$5,000.00
5. 2010	University of Richmond	\$2,000.00

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

NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2010	Virginia Commonwealth University
2. 2009	Virginia Commonwealth University
3. 2009	Crater Hospice
4.	

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

NONE (No reportable reimbursements.)

	<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt					
2.					
3.					
4.					
5.					

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Name of Person Reporting Gibney, John A.	Date of Report 04/11/2010
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. Exempt			
2.			
3.			
4.			
5.			

VI. LIABILITIES. (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

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Name of Person Reporting Gibney, John A.	Date of Report 04/11/2010
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., trust, or fee)	(1) Value Code 2 (J-P)	(2) Value Method Code 1 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Wachovia Bank Account	A	Interest	J	T	Exempt				
2. Bank of America Account	A	Interest	J	T					
3. ThompsonMcMullan, P.C. Stock		None	K	U					
4. Wellpoint, Inc. Common Stock	A	Dividend	K	T					
5. AMCAP Fund Inc. Mutual Fund	B	Dividend	K	T					
6. New Perspective Mutual Fund	B	Dividend	K	T					
7. Washington Mutual Investment Fund	C	Dividend	K	T					
8. IRA Held at Scott & Stringfellow	C	Int/Div.	M	T					
9. - AES Corp Common Stock	A	Dividend	J	T					
10. - Apollo Investment Corp	A	Dividend	J	T					
11. - Bank of America	A	Dividend	J	T					
12. - Cisco Systems Common Stock	A	Dividend	J	T					
13. - Carring, Inc. Common Stock	A	Dividend	J	T					
14. - Corrections Corporation of America C ommon Stock	A	Dividend	J	T					
15. - General Electric Company Common Stock	A	Dividend	J	T					
16. - Gladstone Capital Corp. Common Stock	A	Dividend	J	T					
17. - International Business Machine Common Stock	A	Dividend	J	T					

1. Income Code:	A = \$1,000 or less	B = \$1,001 - \$3,000	C = \$3,001 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$30,000
(See Column B1 and D3)	F = \$30,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I = \$5,000,001 - \$10,000,000	J = More than \$10,000,000
2. Value Code:	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	N = \$250,001 - \$500,000
(See Column C1 and D3)	O = \$500,001 - \$1,000,000	P = \$1,000,001 - \$5,000,000	Q = \$5,000,001 - \$25,000,000	R = \$25,000,001 - \$50,000,000	S = More than \$50,000,000
3. Value Method Code:	Q = Appraised	R = Cost (Real Estate Only)	S = Assessment	T = Dual Market	U = Estimated
(See Column C2)	V = Book Value	W = Other	X = None	Y = None	Z = None

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Name of Person Reporting Gibney, John A.	Date of Report 04/11/2010
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset except those prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code I (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code J (1-9)	(2) Value Method Code J (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month- Day	(3) Value Code J (1-9)	(4) Gain Code J (A-H)	(5) Identity of buyer/seller (if private transaction)
18. -Johnson & Johnson Common Stock	A	Dividend	J	T					
19. -Microsoft Corp. Common Stock	A	Dividend	J	T					
20. -Nabors Industries Common Stock	A	Dividend	J	T					
21. -Pretor and Gamble Company Common Stock	A	Dividend	J	T					
22. -Qiagen NV Common Stock	A	Dividend	J	T					
23. -Smithfield Foods Inc. Common Stock	A	Dividend	J	T					
24. -Target Corp. Common Stock	A	Dividend	J	T					
25. -Teva Pharmaceutical Industries, LTD. Common Stock	A	Dividend	K	T					
26. -Triangle Capital Corp	A	Dividend	K	T					
27. -Walgreen Company Common Stock	A	Dividend	J	T					
28. IRA Vanguard Explorer Fund(mutual fund is sole asset of IRA)		None	K	T					
29. 401K Held by ING	C	Dividend	N	T					
30. -Pioneer Strategic Income Mutual Fund	B	Dividend	K	T					
31. -Income Fund of America Mutual Fund	B	Dividend	K	T					
32. -American Century Corp. Growth fund	B	Dividend	K	T					
33. -The Growth Fund of America Mutual Fund	B	Dividend	K	T					
34. -Lord Abbett Small-Cap Mutual Fund	B	Dividend	K	T					

1. Income Gain Codes (See Column B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$2,000,000	D = \$5,001 - \$10,000 I = \$2,000,001 - \$5,000,000	E = \$10,001 - \$50,000 J = More than \$5,000,000
2. Value Codes (See Column C1 and D3)	J = \$4,800 or less N = \$250,001 - \$500,000 O = \$500,001 - \$1,000,000 P = \$1,000,001 - \$50,000,000	K = \$12,001 - \$50,000 Q = \$100,001 - \$1,000,000	R = \$1,001 - \$100,000 S = \$100,001 - \$1,000,000	T = \$1,000,001 - \$5,000,000 U = More than \$50,000,000	V = \$500,001 - \$25,000,000 W = \$25,000,001 - \$50,000,000
3. Value Method Codes (See Column C2)	Q = Appraised U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessed W = Unassessed	T = Cash Market	

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Name of Person Reporting Gibney, John A.	Date of Report 04/11/2010
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (I-F)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month- Day	(3) Value Code 2 (I-F)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if parties to transaction)
35. - Lord Abbett Mid-cap Value Mutual Fund	A	Dividend	K	T					
36. - Allianz CCM Mid-Cap Mutual Fund	B	Dividend	K	T					
37. - EuroPacific Growth Fund	B	Dividend	L	T					
38. Northwestern Mutual Whole Life Insurance Policies		None	M	T					
39. Davenport IRA #1	B	Int/Div.	M	T					
40. - Advisors Inner Circle Fund II	A	Int/Div.	J	T					
41. - Eagle Ser Mid Cap Stock Fund	A	Dividend	J	T					
42. - Fleming Cap Mutual Fund	A	Dividend	J	T					
43. - Ivy Funds Inc. Mutual Fund	A	Dividend	K	T					
44. - Keeley Funds Inc Mutual Fund	A	Dividend	J	T					
45. - Pioneer Series Trust III Mutual Fund	B	Dividend	K	T					
46. - T Rowe Price Intl Funds Emerging Mkts	A	Dividend	J	T					
47. - Thornburg Invt Tr - Intl Value Mutual Fund	A	Dividend	K	T					
48. Davenport IRA #2	C	Dividend	K	T					
49. - Disney Co.	A	Dividend	J	T					
50. - Southwest Airlines	A	Dividend	J	T					
51. - Cisco Systems, Inc	A	Dividend	J	T					

1. Income Code Codes: (See Columns B1 and D1)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less	B = \$1,001 - \$1,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000	D = \$5,001 - \$15,000 I = \$1,000,001 - \$5,000,000 M = \$100,001 - \$250,000	E = \$15,001 - \$50,000 N = More than \$5,000,000 O = \$250,001 - \$500,000
2. Value Codes (See Columns C1 and D3)	M = \$250,001 - \$500,000 P = \$25,000,001 - \$50,000,000	Q = Appreciated U = Bank Value	R = \$500,001 - \$1,000,000 V = Other	S = \$1,000,001 - \$5,000,000 W = Estimated	T = \$5,000,001 - \$25,000,000 X = Annuity Y = Cash Market
3. Value Method Codes (See Column C2)					

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Name of Person Reporting Gibney, John A.	Date of Report 04/11/2010
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VII. INVESTMENTS and TRUSTS -- Income, value, transactions (Excludes those of spouse and dependent children; see pp. 34-48 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "XX" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or loss)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month- Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of beneficial owner (if private transaction)
52. - Dell Inc	A	Dividend	J	T					
53. - Oracle Corp.	A	Dividend	J	T					
54. - Legg Mason Capital Mgmt Spl Invt Tr	A	Dividend	J	T					
55. Wachovia 401K	B	Dividend	M	T					
56. - Money Market	A	Dividend	J	T					
57. - Europacific Growth Fund	B	Dividend	K	T					
58. - Wells Fargo	A	Dividend	J	T					
59. - Dodge & Cox	B	Dividend	K	T					
60. - Enhanced Stock Market Mutual Fund	B	Dividend	K	T					
61. - Evergreen Growth Mutual Fund	A	Dividend	K	T					
62. - Fidelity Spartan Mutual Fund	C	Dividend	L	T					
63. Carmax Inc Common Stock	A	Dividend	J	T					
64. Fidelity National Financial Inc Common Stock	A	Dividend	J	T					
65. Comcast Corp Common Stock	A	Dividend	J	T					
66. Wells Fargo & Co Common Stock	A	Dividend	J	T					
67. Johnson & Johnson Common Stock	A	Dividend	J	T					
68. Medco Health Solutions Common Stock	A	Dividend	J	T					

1. Income Code (See Columns D1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	D = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$3,000,000	J = \$5,001 - \$15,000 M = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Code (See Columns C1 and C3)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$51,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	P2 = \$5,000,001 - \$25,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000
3. Value Method Code (See Column C2)	Q = Appraised U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessed W = Estimated	T = Cash Market	

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VII. INVESTMENTS and TRUSTS - income, value, transactions (includes those of spouse and dependent children; see pp. 34-48 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (1-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month- Day	(3) Value Code 2 (1-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
69. Norfolk Southern Corp Common Stock	A	Dividend	J	T					
70. NCR Corp Common Stock	A	Dividend	J	T					
71. ITC Holdings Corp Common Stock	A	Dividend	J	T					
72. Wells Fargo & Co. New Preferred Stock	A	Dividend	J	T					
73. Franklin Gold & Precious Metals Fund	A	Dividend	J	T					
74. Trust # 1	B	Dividend	M	T					
75. - Amcap Fund Cl. A	B	Dividend	K	T					
76. - Citigroup Inc. Common Stock	A	Dividend	J	T					
77. - Walt Disney Company Common Stock	A	Dividend	J	T					
78. - Exxon Mobil Corp Common Stock	B	Dividend	K	T					
79. - Ford Motor Company Common Stock	A	Dividend	J	T					
80. - Motors Liquidation Common Stock	A	Dividend	J	T					
81. - New Perspective Fund Cl A	B	Dividend	K	T					
82. - Washington Mutual Inv Fund Cl A	A	Dividend	K	T					
83. - Scott & Stringfellow Money Market	A	Interest	J	T					
84. Trust # 2	B	Dividend	L	T					
85. - Amcap Fund Cl A	B	Dividend	K	T					

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

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VII. INVESTMENTS and TRUSTS -- Income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-I)	(2) Type (e.g., div., rest, or fee.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-B)	(5) Identity of buyer/seller (if private transaction)
86. - Walt Disney Company Common Stock	A	Dividend	J	T					
87. - Ford Motor Company Common Stock	A	Dividend	J	T					
88. - New Perspective Fund CL A	B	Dividend	K	T					
89. - Washington Mutual Inv. Fund CI A	A	Dividend	K	T					
90. - Scott and Stringfellow Money Market	A	Interest	J	T					
91. Trust # 3	F	Int./Div.	PI	T					
92. - Allegheny Energy Inc. Common Stock	A	Dividend	K	T					
93. - AT&T Inc Common Stock	B	Dividend	K	T					
94. - Coca-Cola Company Common Stock	A	Dividend	K	T					
95. - CSX Corporation Common Stock	B	Dividend	M	T					
96. - Dominion Resources Common Stock	B	Dividend	K	T					
97. - DuPont Common Stock	A	Dividend	K	T					
98. - Evergreen Municipal Bond Fund Class A	A	Interest	K	T					
99. - Exelon Corporation Common Stock	D	Dividend	M	T					
100. - Exxon Mobil Corp. Common Stock	D	Dividend	N	T					
101. - Fairfax Virginia Bonds 5.0	A	Interest	J	T					
102. - Fairfax Virginia Bonds 4.25	A	Interest	K	T					

1. Income Gains Codes: (See Column B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 Q = General U = Book Value	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I1 = \$1,000,001 - \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000 I2 = More than \$5,000,000 N = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000
2. Value Codes (See Column C1 and D3)					
3. Value Method Codes (See Column C2)		R = Cost (Real Estate Only) V = Other	S = Assessed W = Estimated	T = Cash Market	

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Name of Person Reporting Gibney, John A.	Date of Report 04/11/2010
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VII. INVESTMENTS and TRUSTS -- Income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rest, or fac.)	(1) Value Code 2 (J-J)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month Day	(1) Value Code 2 (J-J)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
103. - Fortune Brands Inc. Common Stock	A	Dividend	K	T					
104. - Loudoun County Virginia Bonds 4.75	B	Interest	K	T					
105. - Merck & Company, Inc. Common Stock	A	Dividend	J	T					
106. - Nuveen 1 Virginia Municipal Bond Fund	B	Interest	K	T					
107. - Nuveen Select Tax Free Fund 2	A	Interest	K	T					
108. - Nuveen Select Tax Free Fund 3	A	Interest	K	T					
109. - Nuveen Select Mat Municipal Fund	A	Interest	K	T					
110. - Nuveen Virginia Premium Fund	B	Interest	K	T					
111. -Pepco Holdings Inc. Common Stock	A	Dividend	J	T					
112. -Plum Creek Timber Common Stock	A	Dividend	J	T					
113. - PNC Financial Services Group, Inc. Co mmon Stock	A	Dividend	K	T					
114. - PPL Corp. Common Stock	C	Dividend	L	T					
115. - Progress Energy Inc. Common Stock	A	Dividend	J	T					
116. - Southwest Virginia Jail Authority Bonds 4.75	A	Interest	K	T					
117. - Virginia State Commonwealth Bonds 4.75	A	Interest	K	T					
118. - Virginia State Public School Bonds 4.5	A	Interest	K	T					
119. - Fairfax Water Bonds 5.0	B	Interest	K	T					

1. Income Code:	A = \$1,000 or less	D = \$1,001 - \$2,500	G = \$2,501 - \$5,000	H = \$5,001 - \$10,000	I = \$10,001 - \$25,000	J = \$25,001 - \$50,000	K = \$50,001 - \$100,000	L = \$100,001 - \$250,000	M = \$250,001 - \$500,000	N = \$500,001 - \$1,000,000	O = \$1,000,001 - \$2,500,000	P = \$2,500,001 - \$5,000,000	Q = \$5,000,001 - \$10,000,000	R = More than \$10,000,000
2. Value Code (See Column C1 and D3):	F = \$50,001 - \$100,000	J = \$15,000 or less	N = \$250,001 - \$500,000	P = \$25,001 - \$50,000	T = \$1,000,001 - \$5,000,000	V = \$500,001 - \$1,000,000	X = \$100,001 - \$250,000	Z = \$50,001 - \$100,000	AA = \$10,001 - \$25,000	BB = \$5,001 - \$10,000	CC = \$1,001 - \$5,000	DD = \$501 - \$1,000	EE = \$51 - \$100	FF = \$1 - \$50
3. Value Method Code: (See Column C2)	Q = Appraisal	U = Book Value	V = Other	R = Cost (Real Estate Only)	S = Assessment	T = Cash Market	W = Estimated	X = Fair Market	Y = Liquidation	Z = Other	AA = Other	BB = Other	CC = Other	DD = Other

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Name of Person Reporting Gibney, John A.	Date of Report 04/11/2010
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VII. INVESTMENTS and TRUSTS – Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain/ Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	120. - Verizon Communications Common Stock	A	Dividend	J	T				
121. - Wal-Mart Stores Common Stock	A	Dividend	J	T					
122. - Wells-Fargo & Co. Common Stock	A	Dividend	J	T					
123. - Money Market	A	Dividend	J	T					

1. Income Code:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Column D1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H1 = \$1,000,001 - \$5,000,000	H2 = More than \$5,000,000	
2. Value Codes	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	
(See Column C1 and C3)	N = \$250,001 - \$500,000	D = \$500,001 - \$1,000,000	P1 = \$1,000,001 - \$5,000,000	P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes	Q = Appraisal	R = Cost (Real Estate Only)	P3 = More than \$50,000,000	S = Assessment	T = Cash Market
(See Column C2)	U = Book Value	Y = Other	W = Estimated		

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

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IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that no information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

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

Signature _____



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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:
Committee on Financial Disclosure
Administrative Office of the United States Courts
Suite 2-301
One Columbus Circle, N.E.
Washington, D.C. 20544

FINANCIAL STATEMENT

NET WORTH

ASSETS				LIABILITIES			
Cash on hand and in banks		15	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	029	133	Notes payable to relatives			
Unlisted securities-add schedule		40	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		328	704
Real estate owned-add schedule		525	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		19	000				
Cash value-life insurance		215	026				
Other assets itemize:							
				Total liabilities		328	704
				Net Worth	1	514	455
Total Assets	1	843	159	Total liabilities and net worth	1	843	159
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)			No
On leases or contracts				Are you defendant in any suits or legal actions?			No
Legal Claims				Have you ever taken bankruptcy?			No
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES**Listed Securities

Wellpoint, Inc.	\$	38,622
AMCAP Fund, Inc.		28,299
New Perspective Fund		36,183
Washington Mutual Investment Fund		26,274
AES Corp.		2,200
Apollo Investmnet Corp.		3,819
Bank of America		10,710
Cisco Systems		10,412
Corning Inc.		6,063
Corrections Corp of America		3,972
General Electric Company		3,640
Gladstone Capital Corp.		3,540
IBM		12,825
Johnson & Johnson		6,520
Microsoft		8,786
Nabors Industries Ltd.		3,926
Procter & Gamble Company		6,327
Qiagen NV		13,794
Smithfield Foods, Inc.		4,148
Target Corp.		10,520
Teva Pharmaceutical Industries, Ltd.		18,924
Triangel Capital Corp.		3,510
Walgreen Company		7,418
Money Market Scott and Stringfellow		1,691
Vanguard Explorer Fund		23,900
Pioneer Strategic Income Fund		33,053
Income Fund of America		38,247
American Centur4y Large Co Value Fund		30,218
The Growth Fund of America		40,857
Lord Abbett Small Cap Fund		31,037
Lord Abbett Mid Cap Value Fund		17,464
Allianz CMM Mid Cap Fund		15,754
EuroPacific Growth Fund		55,910
Carmax Inc		10,048
Comcast Corp.		3,446
Fidelity National Financial		7,410
Wells Fargo		25,798
Johnson & Johnson		6,520
Medco Health Solutions		6,456
Norfolk Southern		8,384

300

NCR	6,900
ITC Holdings	8,250
Franklin Gold Fund	6,402
Davenport Money Market	11,316
Wachovia Money Market	421
Europacific Growth Fund	30,944
Wells Fargo	14,099
Dodge & Cox	45,698
Enhanced Stock Market Fund	37,812
Evergreen Growth	21,284
Fidelity Spartan Fund	59,393
Advisors Inner Circle Fund	6,562
Eagle Ser Fund	11,151
Fleming Cap Fund	11,691
Ivy Funds	28,034
Keeley Funds	6,841
Pioneer Series Trust III	33,034
T Rowe Price Intl.	7,575
Thornburg Inv. Tr.	30,820
Money Market	2,849
Walt Disney Co.	35
Southwest Airlines	1,919
Cisco Systems	2,303
Dell, Inc.	300
Oracle Corp	5,142
Legg Mason Spec. Inv. Trust	10,941
Money Market	772

Total Listed Securities 1,029,133

Unlisted Securities

ThompsonMcMullan P.C. 40,000

Real Estate Owned

Residence	295,000
Rental Property	230,000
Total Real Estate Owned	525,000

Real Estate Mortgages Payable

Residence	258,704
Rental Property	70,000
Total Mortgages Payable	328,704

AFFIDAVIT

I, **JOHN ADRIAN GIBNEY, JR.**, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

4/13/10
(DATE)

J. A. Gibney, Jr.
(NAME)



Kelly E. Arnett
(NOTARY)

My commission expires May 31, 2011

QUESTIONS AND ANSWERS

Responses of Robert N. Chatigny
 Nominee to be U.S. Circuit Judge for the Second Circuit
 to the Written Questions of Senator Tom Coburn, M.D.

1. **What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?**

Response: In any given case, I look to relevant precedents of the Supreme Court and the Second Circuit to determine the principles of constitutional interpretation that should be applied.

2. **Please describe in your own words the criteria and legal methodology the Supreme Court employs to determine whether a right is a “fundamental right?”**

Response: Generally speaking, the Supreme Court considers a right to be fundamental only if it is expressly guaranteed in the Constitution and deeply rooted in our history and legal tradition.

3. **In a 5-4 majority opinion, the U.S. Supreme Court recently held in *District of Columbia v. Heller*, 554 U.S. ____ (2008), that the Second Amendment of the United States Constitution “protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.” As Justice Scalia’s opinion in *Heller* pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Do you personally believe the right to bear arms is a fundamental right?**

Response: This issue is currently pending before the Supreme Court in *McDonald v. City of Chicago* (No. 08-1521). Accordingly, I do not believe it would be appropriate for me to express a view at this time. In my work as a judge, I will faithfully follow the Supreme Court’s decisions in *Heller* and *McDonald*.

- a. **Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.**

Response: I look to Supreme Court precedent to determine which explicitly guaranteed substantive rights are fundamental. The Court has recognized that some but not all such rights are fundamental. If I were called upon to decide whether an explicitly guaranteed substantive right should be deemed to be fundamental, I would resolve the issue by faithfully and impartially applying relevant Supreme Court and Second Circuit precedent.

- b. **Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.**

Response: Yes. If the Supreme Court decides that a right is fundamental, the right applies against the States.

- c. ***Heller* further stated that “it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right.” Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.**

Response: Yes. *Heller* makes it clear that the Second Amendment codifies a preexisting right.

- d. **Some have criticized the Supreme Court’s decision in *Heller* saying it “discovered a constitutional right to own guns that the Court had not previously noticed in 220 years.” Do you believe that *Heller* “discovered” a new right, or merely applied a fair reading of the plain text of the Second Amendment?**

Response: I believe the Court’s decision is based on a fair reading of the plain text of the Second Amendment.

- e. **During his State of the Union address, the President said the Supreme Court’s decision in *Citizens United v. FEC*, 558 U.S. ____ (2010), “reversed a century of law” and others have stated that it abandoned “100 years of precedent.” Do you agree that the Court reversed a century of law or 100 years of precedent in the *Citizens United* decision? Please explain why or why not.**

Response: In *Citizens United*, the Court stated that it was overruling its decision in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and part of its decision in *McConnell v. Federal Election Comm’n*, 540 U.S. 93 (2003). I have no reason to question the Court’s statement.

4. **At your hearing when discussing the proper role of a judge, you testified that they would “avoid injecting their own policy preferences into the matter.” Do you believe Judge Stephen Reinhart avoided injecting his own policy preferences in his March 11, 2010 dissent in *Newdow v. Rio Linda Union School District* (05-17257) when he ruled that including “Under God” in the pledge was unconstitutional? Please explain.**

Response: I have not had an opportunity to consider the opinions in *Newdow*. If a future case required me to decide an issue like the one presented there, I would give the majority opinion careful consideration as a precedent of a court of appeals, although it would not be binding on me.

a. Do you believe Judge Diane Wood avoided injecting her own policy preferences in her decision in the case of *NOW v. Scheidler*? Please explain.

Response: I have not had an opportunity to consider Judge Wood's opinion but it was reversed by the Supreme Court in *Scheidler v. National Organization for Women*, 547 U.S. 9 (2006). I will follow the Supreme Court's decision in *Scheidler* in cases that come before me.

b. Do you believe Judge Reinhardt avoided injecting his own policy preferences in his decision in *Silveira v. Lockyer*, 312 F.3d 1052, which held that the right to bear arms is a collective right? Please explain.

Response: I have not had an opportunity to consider Judge Reinhardt's opinion but the Supreme Court's decision in *Heller* makes it clear that the right to bear arms is an individual right. I will follow the Supreme Court's decision in *Heller* in cases that come before me.

c. Do you believe Judge Reinhardt avoided injecting his own policy preferences in his decision in *Gonzales v. Carhart*, 435 F.3d 1163, striking down the Partial Birth Abortion Ban? Please explain.

Response: I have not had an opportunity to consider Judge Reinhardt's opinion but it was reversed by the Supreme Court in *Gonzales v. Carhart*, 550 U.S. 124 (2007). I will follow the Supreme Court's decision in *Carhart* in cases that come before me.

5. Please provide a summary of and citations for all the death penalty cases, other than the matters involving Michael Ross, in which you were involved as a lawyer.

Response: I was not involved in any such cases as a lawyer.

6. Please provide a summary of and citations for all the death penalty cases, other than the matters involving Michael Ross, in which you participated as a judge.

Response: I was not involved in any such cases as a judge.

7. Please list and provide citations for and a summary of all materials you have written that relate to the death penalty. If not publicly available, please provide copies.

Response: The only materials I have written relating to the death penalty are the following opinions in the Ross litigation: *Ross ex rel. Smyth v. Lantz*, 392 F. Supp. 2d 236 (D. Conn. 2005), motion to vacate stay denied and appeal dismissed, 396 F.3d 512 (2d Cir. 2005), stay vacated, 543 U.S. 1134 (2005); and *Ross v. Reil*, Case No. 05-CV-130, 2005 WL 181883 (D. Conn. Jan. 26, 2005), order vacated, 398 F.3d 203 (2d Cir. 2005), stay vacated, 534 U.S. 1134 (2005).

- 8. Please list and provide citations for and a summary of all statements, talks, and speeches you have made that relate to the death penalty. If not publicly available, please provide copies.**

Response: I have given no talks or speeches relating to the death penalty. With regard to public statements relating to the death penalty, I have testified before this Committee that I would have no problems applying the death penalty or upholding capital punishment. During a telephone conference with counsel in the Ross litigation, I similarly stated that I have no moral or philosophical opposition to the death penalty per se, nor any beliefs that would stand in the way of implementing a death penalty in circumstances where the law called for it to be done. *Ross v. Rell*, Case No. 05-CV-130, 1/26/05 Transcript at 25-26. To the best of my recollection, I have made no other public statements relating to the death penalty.

- 9. Please provide a summary of and citations for all the child pornography cases in which you were involved as a lawyer, including the sentencing range called for under the guidelines, the sentence for which you argued and the reasons therefore, and the sentence that was ultimately issued by the court.**

Response: I was not involved in any such cases as a lawyer.

- 10. Please provide a summary of and citations for all the child pornography cases, in which you participated as a judge, not limited to those in which you departed downward. Please include the sentencing range called for under the guidelines and the sentence that you issued.**

Response:

United States v. John Salmon, Case No. 97-CR-77. The defendant pleaded guilty to publishing a notice online seeking to exchange child pornography. The guideline range was 15 to 21 months. The defendant was sentenced to 9 months followed by supervised release for 2 years with a special condition requiring him to spend the first 6 months on home confinement with electronic monitoring. Substituting 6 months of home confinement with electronic monitoring for 6 months of imprisonment comported with the statutory requirement that the sentence be sufficient but not greater than necessary partly because of the impact of the case on the defendant (he had resigned from his position as a police officer, his wife had divorced him and he had been hospitalized as a protection against suicide). The Government did not appeal.

United States v. Mark Clark, Case No. 99-CR-33. The defendant pleaded guilty to possession of child pornography. The guideline range was 15 to 21 months. The defendant was sentenced to 15 months followed by supervised release for 3 years.

United States v. Paul Musacchio, Case No. 99-CR-120. The defendant pleaded guilty to possession of child pornography. The guideline range was 15 to 21 months. The defendant was placed on probation for two years with a special condition that he spend the first 4 months on home confinement with electronic monitoring. In addition, he was

required to pay a fine of \$4,000. A downward departure to a sentence of probation was recommended by the Probation Office based in part on the defendant's diminished capacity resulting from his extraordinarily traumatic upbringing. I do not believe the Government opposed the departure.

United States v. Philip Bunker, Case No. 00-CR-85. The defendant pleaded guilty to possession of child pornography. The guideline range was 15 to 21 months. The defendant was sentenced to 15 months followed by supervised release for 3 years and a fine of \$4,000.

United States v. James Chitty, Case No. 01-CR-231. The defendant pleaded guilty to possession of child pornography. The applicable guideline range was 27 to 33 months. The defendant was sentenced to 21 months followed by supervised release for 3 years. The sentence was based on the defendant's reduced mental capacity. The Government did not appeal.

United States v. Stephen Festa, Case No. 04-CR-233. The defendant pleaded guilty to possession of child pornography. The guideline range was 21 to 27 months. The defendant sought a below-guideline sentence based on the effects of abuse he experienced as a child. I sentenced him to 18 months followed by supervised release for 3 years. The Government did not appeal.

United States v. Wayne Coleman, Case No. 04-CR-289. The defendant pleaded guilty to possession of child pornography. The guideline range was 24 to 30 months. The defendant was sentenced to 24 months followed by supervised release for 3 years.

United States v. Matthew Dole, Case No. 06-CR-262. The defendant pleaded guilty to possession of child pornography. The guideline range was 33 to 41 months. The defendant was sentenced to one year and one day followed by supervised release for 10 years. A traumatic brain injury substantially reduced the defendant's ability to appreciate the wrongfulness of his offense conduct. The Government did not appeal.

United States v. Louis Graziani, Case No. 07-CR-281. The defendant pleaded guilty to possession of child pornography. The guideline range was 51 to 63 months. The defendant was sentenced to 24 months followed by supervised release for 10 years. The sentence was based on the defendant's extraordinary post-arrest rehabilitation from drug addiction and alcoholism and family circumstances. The Government did not appeal.

United States v. Dennis Hartigan, Case No. 08-CR-15. The defendant pleaded guilty to possession of child pornography. The guideline range was 60 to 71 months. The defendant was sentenced to 60 months followed by supervised release for 10 years.

United States v. Roger Chappell, Case No. 09-CR-10. The defendant pleaded guilty to possession of child pornography. The guideline range was 37 to 46 months. The defendant was sentenced to 14 months followed by supervised release for 5 years and a fine of \$3,000. The sentence was based on the following combination of factors: the defendant committed the offense while suffering from a significantly reduced mental

capacity stemming from sexual abuse and neglect he experienced as a child; his offense conduct was in marked contrast to his record of prior good works, which had resulted in significant benefit to the community; for 15 months prior to the sentencing, he had devoted himself to rehabilitation through intensive individual and group therapy; he was extraordinarily remorseful and appeared to pose no threat to the community; and he had a number of significant medical conditions. The Government did not appeal.

United States v. Christopher House, Case No. 09-CR-26. The defendant pleaded guilty to possession of child pornography. The guideline range was 37 to 46 months. The defendant was sentenced to one year and one day followed by supervised release for 10 years. The sentence was based on the following combination of factors: with one exception the images possessed by the defendant were of children in poses in contrast to pictures of children being sexually assaulted; the defendant, who was very remorseful, had been unusually cooperative with law enforcement; and, as a result of his offense conduct, the defendant had been discharged from the U.S. Navy, which was significant because he had planned on a military career. The Government did not appeal.

- 11. Please provide a summary of and citations for all the sex tourism cases in which you were involved as a lawyer, including the sentencing range called for under the guidelines, the sentence for which you argued and the reasons therefore, and the sentence that was ultimately issued by the court.**

Response: I was not involved in any such cases as a lawyer.

- 12. Please provide a summary of and citations for all the sex tourism cases, in which you participated as a judge, not limited to those in which you departed downward. Please include the sentencing range called for under the guidelines and the sentence that you issued.**

Response:

United States v. Dennis Calheim, Case No. 01-CR-77. The defendant pleaded guilty to interstate travel for the purpose of engaging in illicit sexual conduct with a minor. The guideline range was 30 to 37 months. The defendant was sentenced to 34 months followed by supervised release for 3 years.

United States v. Michael Albertson, Case No. 05-CR-10. The defendant pleaded guilty to interstate travel for the purpose of engaging in illicit sexual conduct with a minor. The guideline range was 63 to 78 months. The defendant was sentenced to 78 months followed by supervised release for 10 years and required to pay restitution in the amount of \$8,600.

United States v. Jason Palmeira, Case No. 07-CR-116. The defendant pleaded guilty to interstate travel for the purpose of engaging in illicit sexual conduct with a minor. The guideline range was 57 to 71 months. The defendant was sentenced to 36 months followed by supervised release for 10 years. The sentence was based on the following combination of factors: the defendant did not misrepresent his age to the 15-year old

victim or groom her to engage in sexual activity; there was no sexual intercourse; the illicit sexual conduct took place in the course of one night without significant planning on the part of the defendant; the defendant informed the victim in writing the next day that he deeply regretted his wrongdoing; the defendant subsequently discouraged the victim from having any further sexual contact with him; and the defendant's offense conduct represented a marked deviation from an otherwise law-abiding life, which included service as a youth counselor without incident. The Government did not appeal.

- 13. Please provide a summary of and citations for all the sex crime cases not previously requested above in which you were involved as a lawyer, including the sentencing range called for under the guidelines, the sentence for which you argued and the reasons you provided, and the sentence that was ultimately issued by the court.**

Response: I was involved in one such case as a lawyer. In that case, my firm represented a defendant who pleaded guilty in state court to a misdemeanor involving sexual conduct with a minor. There were no sentencing guidelines. We urged the state court to impose a sentence of probation on the grounds that the defendant had a record of providing valuable service to the community, he was truly remorseful for his wrongful conduct, the victim misled him concerning her age and he did not realize the victim was a minor. A sentence of probation was imposed.

- 14. Please provide a summary of and citations for all the sex crime cases not previously mentioned in which you participated as a judge, including the sentencing range called for under the guidelines and the sentence that you issued.**

Response:

United States v. William Guilmette, Case No. 04-CR-259. The defendant pleaded guilty to one count of using a facility of interstate commerce to attempt to entice an individual under 18 to engage in sexual activity and one count of attempted transfer of obscene material to a minor. The guideline range was 51 to 63 months. The defendant was sentenced to 63 months followed by supervised release for life.

United States v. Thomas Donaldson, Case No. 04-CR-234. The defendant pleaded guilty to using an interstate facility to attempt to persuade a minor to engage in sexual activity. The defendant was sentenced to a mandatory minimum 60 months (which exceeded the otherwise applicable guideline range of 33 to 41 months) followed by supervised release for 5 years.

United States v. Scott Lape, Case No. 08-CR-55. The defendant pleaded guilty to using an interstate facility to contact a minor with the intent to entice the minor to engage in sexual activity. The guideline range was 46 to 57 months. The defendant was sentenced to 60 months followed by supervised release for 15 years.

United States v. Anthony Lowenstein, Case No. 09-CR-99. The defendant, a Connecticut resident, was convicted in the U.S. District Court for the District of Arizona of interstate travel with intent to engage in illicit sexual conduct with a juvenile and

possession of child pornography. He was sentenced to prison for 60 months followed by lifetime supervised release. Following his release from prison, he was supervised by the U.S. Probation Office in Connecticut. In July 2009, he admitted violating conditions of his supervised release prohibiting him from having contact with minors and possessing pornographic materials and requiring him to provide truthful information to the Probation Office and abstain from drinking alcohol. The revocation table in the guidelines suggested a sanction of 3 to 9 months in prison. I revoked his supervise release, sentenced him to 6 months in prison, reinstated the lifetime supervised release term and required him to spend the first three months of his supervised release in a halfway house. In April 2010, he admitted violating the condition requiring him to reside in the halfway house. The revocation table suggested a sanction of 3 to 9 months in prison. I revoked his supervised release and sentenced him to 5 months in prison followed by lifetime supervised release.

15. **You testified at your hearing that you were “contacted by a friend who asked [you] if [you] would file, on behalf of the Connecticut Criminal Defense Lawyers Association, a motion in the State Supreme Court for leave to file an *amicus* brief on an evidentiary issue.” Did the Connecticut Criminal Defense Lawyers Association ever ask you to file any other *amicus* briefs?**

Response: No.

- a. **If so, please describe the nature of the litigation and a summary of the issues you briefed.**

Response: n/a

- b. **Did any other organization ever ask you to file an *amicus* brief in a case?**

Response: Not that I recall.

- i. **If so, please describe the nature of the litigation and a summary of the issues you briefed.**

Response: n/a

16. **You testified at your hearing that your prior involvement in the Ross case “didn’t extend beyond essentially acting as local counsel for my friend for the purpose of filing an application to file a motion” and “some very limited research.” However, you also admitted that Ross sent you a letter and you responded by writing him a letter stating you were no longer involved in the litigation, which was in July 1992. Did your appearance remain on the Connecticut Supreme Court’s file?**

Response: Yes. Though my involvement in the litigation was limited to filing the *amicus* application on behalf of the CCDLA, no withdrawal of my appearance was filed.

- a. **Did you receive any orders following your filing an application to file a motion? If so, how many and for how many years?**

Response: Yes. Soon after the amicus application was filed, I received an order granting the application. I do not recall receiving any other orders. However, my former firm's file relating to the amicus application, when retrieved from storage by my former partner in 2005, contained service copies of various documents filed in the case in 1992, 1993 and 1994. I do not recall seeing any such documents at any time and do not believe I did see them.

- b. **Did you receive the state's 300 page brief and appendix in the *Ross* case?**

Response: Not to my knowledge.

- c. **Did you receive the defendant's 300 page brief and appendix in the *Ross* case?**

Response: Not to my knowledge.

17. **At your hearing, Senator Klobuchar mentioned the Supreme Court case of *Atkins v. Virginia*, and stated that "the death penalty is, of course, the ultimate punishment. We have to be very careful when it's applied." Was the case of *Atkins v. Virginia* relevant to the matters before you in the *Ross* case? Please explain.**

Response: In *Atkins v. Virginia*, 536 U.S. 304 (2002), the Supreme Court held that the Eighth Amendment prohibits the execution of mentally retarded defendants. The Court's holding in *Atkins* did not govern the issue presented to me in the *Ross* litigation, which was whether a mentally ill defendant was competent to waive legal challenges to his death sentence.

- a. **Was *Atkins v. Virginia* relevant to the lower courts' inquiry in the *Ross* case? Please explain.**

Response: Please see my response above.

- b. **In *Atkins v. Virginia*, the Supreme Court ruled that the imposition of the death penalty on mentally retarded defendants constituted cruel and unusual punishment. In its majority opinion, Justice Stevens stated that the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures," and that the majority first reviewed "the judgment of legislatures that have addressed the suitability of imposing the death penalty on the mentally retarded." The majority cited the fact that 18 States, less than half of the 38 States that permitted capital punishment, had recently enacted legislation barring execution of the mentally retarded as evidence that a "national consensus" existed about the propriety of executing the mentally retarded. Do you believe that the legislative acts of 47% of the country equates to a national consensus?**

Response: The Supreme Court's decision in *Atkins* is binding on me and I do not believe it would be appropriate for me to comment on the correctness of the Court's reasoning.

- c. Do you believe Justice Stevens avoided injecting the policy preferences of the Court in this case? Please explain.**

Response: Please see my response above.

- d. In its majority opinion, the Court stated: "Moreover, within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved. Brief for The European Union as Amicus Curiae in *McCarver v. North Carolina*, O. T. 2001, No. 00—8727, p. 4." Do you personally believe it was appropriate for the Court to consider the opinion of the "world community" when interpreting the Eighth Amendment?**

Response: Please see my response above.

- 18. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy's analysis?**

Response: I am bound by the Supreme Court's decision in *Roper* and do not believe it would be appropriate for me to comment on the correctness of the Court's reasoning.

- a. How would you determine what the evolving standards of decency are?**

Response: I would review legislative enactments to determine if there is objective evidence of consensus.

- 19. During the January 28, 2005, teleconference, you stated: "There is abundant literature, some of which I've read, . . . that gives great weight to the notion that a person who is in that setting can lose his ability to make a knowing, intelligent and voluntary choice. In fact, most European countries -- I want to be careful to be as accurate as I can -- I believe most European countries have recognized that to the point where their courts will not permit extradition of people from their countries to this country if the person's going to wind up in that setting." And, in response to a question from Senator Kyl, you stated that you cited European extradition experience because "they relied upon empirical evidence regarding the effect of long-term solitary confinement on inmates." Please list and provide copies of the literature or studies you read or consulted, including the empirical evidence you noted in your testimony.**

Response: I did not refer to this “literature” as a basis for a ruling of any kind, but simply to provide context for my remarks to Mr. Paulding. Prior to my involvement in the Ross litigation, I had occasion to read about the potential effects of long-term solitary confinement on inmates in supermax prisons. These are the writings I referred to when I spoke with Mr. Paulding. I recall reading the following articles prior to the Ross case: McCord, *Imagining a Retributivist Alternative to Capital Punishment*, 50 Fla. L. Rev. 1 (1998); Romano, *If the SHU Fits: Cruel and Unusual Punishment at California’s Pelican Bay State Prison*, 45 Emory L.J. 1089 (1996); Lillich, *The Soering Case*, 85 Am. J. Int’l L. 128 (1991); *Soering v. The United Kingdom*, 161 Eur. Ct. H.R. (1989); Grassian, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. Psychiatry 1450 (1983).

a. Did any of the books and literature you consulted in the Ross case involve mitigating factors, sexual sadism, or other mental or emotional disorders?

Response: The materials indicate that long-term solitary confinement can lead to various mental and emotional disorders.

20. At your hearing, I asked you why Michael Ross testified before the state court in his last competency hearing that the only reason he was participating in the competency hearing was to protect Paulding’s law license. After first denying that Ross made that statement, you then corrected the record and acknowledged that he gave that testimony in the subsequent state court proceeding. According to a news report, Ross testified: “I will participate in any competency hearing that this Court orders to protect [Paulding’s] license, and that’s the only reason I am doing it.”¹ Why do you think Ross made that statement?

Response: I do not know why Ross made the statement. At the confirmation hearing, I was initially asked why he made the statement “in front of [me].” In response to that question, I testified that he did not make the statement in the proceeding before me. I later clarified that he did make the statement in state court. I never denied that he made the statement. I apologize for any misunderstanding in this regard.

a. Do you agree that it implies that Paulding believed his law license had been threatened?

Response: I do not know what Ross meant to imply his statement. In my opinion, the statement most likely reflects a desire on his part to have others understand that he was cooperating only because of concern for Mr. Paulding.

h. Do you agree that it certainly implies that Paulding told Ross that you had threatened his law license if Ross did not agree to file a motion to reopen the competency issue?

¹ U.S. States News, “State of Connecticut v. Michael Ross: State Objects to Motion for Appointment as Special Counsel,” (May 2, 2005).

Response: Please see my response above.

21. You testified at your hearing that “the evidence that concerned [you] at the very beginning was this evidence proffered at the emergency hearing, including expert psychiatric evidence, which had not been part of the competency hearing in the State court.” Was this expert Dr. Stuart Grassian?

Response: The proffered evidence included expert testimony by Dr. Grassian and another psychiatrist, Dr. Eric Goldsmith. Dr. Grassian testified at the hearing, based on his review of an extensive record, including psychiatric evaluations of Ross and Ross’s own statements and writings, that Ross’s decision to drop his appeals was not the product of a voluntary decision process but instead an attempt to end pain that had become increasingly unbearable. Dr. Grassian also criticized the opinion of the psychiatrist who had testified in the state competency proceeding, Dr. Michael Norko, because Dr. Norko’s opinion did not focus on the issue of Ross’s volitional capacity, among other things. Dr. Goldsmith did not testify at the hearing but a written proffer of his proposed testimony showed that he was prepared to testify that Dr. Norko had failed to adequately explore the voluntariness of Ross’s decision to accept execution and that the voluntariness of Ross’s waiver of further appeals was open to serious question. In addition to this psychiatric testimony, the petitioner proffered numerous affidavits of persons who had known Ross for years and whose interactions with him caused them to believe he was not competent.

a. If not, to whom were you referring?

Response: Please see my response above.

b. Had Mr. Grassian examined Ross prior to you first seeing the evidence he presented on death row syndrome?

Response: No.

c. Had the Connecticut Supreme Court ever considered Dr. Grassian’s testimony previously? If so, what was their analysis of his assertion?

Response: The Connecticut Supreme Court reviewed a written offer of proof that included a summary of Dr. Grassian’s proposed testimony. The Court found that his proposed testimony was “speculative and not supported by the record” and did not constitute “meaningful evidence” of incompetence required to establish next friend standing under *Demosthenes v. Baal*, 495 U.S. 731, 732 (1990). See *State v. Ross*, 272 Conn. 577, 611 (2005).

d. Did you interrupt the prosecution’s cross examination of Dr. Grassian and state you were ready to issue your ruling?

Response: Following a recess in the hearing, before cross-examination of Dr. Grassian resumed, I stated that I thought we needed to clarify the procedural

posture of the case. I pointed out that the State's motion for summary dismissal of the petition based on lack of standing had been denied prior to the recess and that a stay of the execution pending further proceedings appeared to be inevitable. Based on subsequent comments by counsel for the State, I understood that the State did not want to cross-examine Dr. Grassian further at that time.

- 22. In *Boumediene v. Bush*, the Supreme Court held that the detainees at the U.S. Naval Base at Guantanamo Bay, Cuba, "are entitled to the privilege of habeas corpus to challenge the legality of their detention." Slip Op. at 42. The Court based its holding on Article I, Section 9, Clause 2, of the Constitution (the Suspension Clause), which allows for suspension of habeas corpus rights only in cases of rebellion or invasion. Do you personally believe that the Supreme Court's decision in *Boumediene* was correctly decided? Please explain.**

Response: The Court's decision is binding on me and I will follow it in any cases that come before me. I do not believe it would be appropriate for me to comment on the correctness of the Court's reasoning.

- a. In contrast, the Solicitor General's office under the Obama Administration recently argued against habeas jurisdiction at the Bagram internment facility in Afghanistan. What constitutional distinctions do you see between those enemy combatants held at Guantanamo and those at Bagram? Please explain.**

Response: I have not had occasion to study the matter. Moreover, because a future case may require me to decide a similar issue, I do not believe it would be appropriate for me to express an opinion at this time.

- 23. In *Washington v. Glucksberg*, 521 U.S. 702 (1997), in which the Supreme Court held that a right to assistance in committing suicide was not protected by the Due Process Clause, the Court reasoned: "we have always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this unchartered area are scarce and open-ended. By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore 'exercise the utmost care whenever we are asked to break new ground in this field,' lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the members of this Court."**

- a. Do you agree with the Court's assessment of the importance of public debate and legislative action?**

Response: The decision of the Court is binding on me and I will follow it in cases that come before me. I do not believe it would be appropriate for me to comment on the correctness of the Court's reasoning.

24. Do you believe the President has the constitutional authority as commander-in-chief to override laws enacted by Congress and to immunize people under his command from prosecution if they violate these laws passed by Congress?

Response: I have not had occasion to study the matter. Moreover, because a future case may require me to decide a similar issue, I do not believe it would be appropriate for me to express an opinion at this time.

a. Do you believe the President has the authority to circumvent the Foreign Intelligence Surveillance Act (FISA), and bypass the FISA court to conduct warrantless electronic surveillance that may include spying on Americans?

Response: Please see my response above.

25. How would you determine Congressional intent in cases of statutory interpretation?

Response: I look first to the plain meaning of the statute itself, which provides the clearest evidence of legislative intent. When statutory text is ambiguous, I apply rules of statutory construction to resolve the ambiguity. If the meaning of the text remains uncertain, I examine the statute's legislative history for reliable evidence of legislative intent.

a. Should presidential signing statements be considered by a court in construing Congressional intent?

Response: By its nature, a signing statement would not be expected to provide evidence of legislative intent.

26. Do you believe the President has the constitutional authority to preventively detain noncitizen terrorist suspects?

Response: I have not had occasion to study the matter. Moreover, because a future case may require me to decide the issue, I do not believe it would be appropriate for me to express an opinion at this time.

a. Must such detentions occur in the United States?

Response: Please see my response above.

b. Does the United States have no authority to detain except after Article III court determinations?

Response: Please see my response above.

i. What in your view constitutes the minimum of due process that should be required for tribunals that authorize or affirm detentions?

Response: Please see my response above.

ii. Would detainees before those tribunals enjoy a presumption of innocence or of guilt?

Response: Please see my response above.

iii. What evidentiary threshold would have to be met in those tribunals that review such cases? A preponderance of the evidence? Clear and convincing evidence? Beyond a reasonable doubt?

Response: Please see my response above.

iv. Should evidence be admission in such tribunals that is not admissible in civilian courts?

Response: Please see my response above.

v. Would detainees have to be either released *or* brought to the United States? If not, please describe the other options.

Response: Please see my response above.

**Responses of Robert N. Chatigny
Nominee to be U.S. Circuit Judge for the Second Circuit
to the Written Questions of Senator Cornyn**

- 1. You departed from the minimum Sentencing Guidelines sentence in six child pornography prosecutions and in one case involving sex tourism. Despite the horrible nature of the crimes, you cut the sentences of the child pornography offenders to less than half of what the Sentencing Commission recommended. In the sex tourism case, you cut the recommended sentence by nearly 40 percent.**

a. Do you believe the Sentencing Guidelines are too harsh on child sex crimes?

Response: In my work as a district judge, I have faithfully applied the Guidelines in accordance with Supreme Court and Second Circuit precedent and will continue to do so.

- b. In the case involving sex tourism, you cut the recommended sentence from 57 months to 36 months. The maximum sentence was 30 years. The defendant in the case had taken a 15 year old girl across state lines overnight to have sexual contact with her. The primary reason you cited in cutting the sentence was: "Nature and circumstances of the offense/history of the defendant."**

i. What was it about the "nature and circumstances" of that offense that justified reducing the sentence?

Response: This was the third sex tourism case to come before me for sentencing. In the previous cases, I gave one defendant the maximum guideline sentence (78 months) and the other defendant a sentence above the midpoint of the guideline range (34 months). In this instance, I concluded that a below-guideline sentence was sufficient based in part on the following facts concerning the nature and circumstances of the offense: there was no sexual intercourse; the illicit sexual conduct took place in the course of one night without significant planning on the part of the defendant; the defendant did not misrepresent his age to the victim or groom her to engage in sexual activity; the defendant informed the victim in writing the next day that he deeply regretted his wrongdoing; and the defendant subsequently discouraged the victim from having any further sexual contact with him.

ii. Was there something about the "history of the defendant" that encouraged you to reduce his sentence? If so, do you frequently reduce the sentences of defendants with similar histories?

Response: The defendant appeared to be truly remorseful and his offense conduct represented a marked deviation from an otherwise law-abiding life, which included service as a youth counselor without incident. I reduce a defendant's sentence based on his or her history and characteristics to comport with the statutory requirement that a sentence be sufficient but not greater than necessary to fulfill the purposes set forth in 18 U.S.C. § 3553.

iii. In your opinion, does the “history of the defendant” matter more or less in child sex crimes?

Response: Under 18 U.S.C. § 3553, the history of the defendant must receive careful consideration in all cases.

c. What is the total number of child pornography cases in which you have sentenced a defendant? Please submit to the Committee a transcript of the sentencing phase for each of these cases.

Response: Review of available records shows that I have sentenced 12 defendants convicted of child pornography offenses. Transcripts are available in 2 of these cases: United States v. Salmon, No. 97-CR-77 (partial transcript) and United States v. Chappell, No. 09-CR-10. Copies of these transcripts were provided to the Committee on April 15, 2010 (along with copies of all other available transcripts of my sentencing hearings). As mentioned in the cover letter accompanying that submission to the Committee, the explanation for the small number of available transcripts is that transcripts typically are prepared only in the event of an appeal and none of these sentencings was the subject of an appeal.

- 2. A secondary reason you provided for reducing the sentence in the sex tourism case, as well as in many of the child pornography cases, was the “mental and emotional conditions” of the defendant. A defendant’s “mental and emotional conditions are not ordinarily relevant in determining whether a departure is warranted,” U.S.S.G. § 5H1.3, and thus a court may depart “only if the factor is present to an exceptional degree or in some other way makes the case different from the ordinary case,” *Koon v. United States*, 518 U.S. 51, 96 (1996). The Second Circuit has held that to be a proper basis for departure, a mental or emotional condition must “rise to the extraordinary level that it can be assumed to cause mental or emotional pathology.” *United States v. Rivera*, 192 F.3d 81, 86 (2d Cir. 1999). The Second Circuit also has ruled that in a child pornography case that a defendant does not warrant a downward departure for a “mental or emotional condition” where he “shows no evidence of psychosis,” “his sense of morality is significantly intact,” and “he appreciates both the societal and moral constraints of his behavior.” *United States v. Barton*, 76 F.3d 499, 502 (2d Cir. 1996).**
- a. What factors do you look for when considering whether a person convicted of a child sex crime has a mental or emotional condition that warrants a downward departure from his or her applicable Sentencing Guidelines range?**

Response: In *United States v. Silleg*, 311 F.3d 557, 563 (2d Cir. 2002), the Second Circuit held that “the diminished capacity of a defendant in a child pornography case may form the basis for a downward departure where the requirements of U.S.S.G. § 5K2.13 are satisfied.” Accordingly, I apply the standard of § 5K2.13 and consider

whether the defendant had a “significantly reduced mental capacity” that “contributed substantially to the commission of the offense.”

- b. Please describe in detail the relevant mental or emotional conditions of the child pornography crime defendants to whom you gave a lesser sentence on the basis of their “mental and emotional conditions.”**

Response: Review of available records discloses the following: United States v. Chappell, Case No. 09-CR-10: the defendant received a lesser sentence due to the effects of abuse and neglect he experienced as a child; United States v. Dole, Case No. 06-CR-262: the defendant’s capacity was reduced by a traumatic brain injury; United States v. Festa, Case No. 04-CR-233: the defendant received a lesser sentence due to the effects of abuse he experienced as a child; United States v. Chitty, Case No. 01-CR-231: the defendant’s capacity was reduced due to an impairment in functioning associated with a frontal lobe abnormality; United States v. Musacchio, Case No. 99-CR-120: the defendant received a lesser sentence due to the effects of a traumatic childhood.

- c. Did any of the child pornography defendants to whom you gave a lesser sentence on account of “mental and emotional conditions” show signs of psychosis, lack a sense of morality, or fail to appreciate “both the societal and moral constraints” of their behavior? If so, which ones and to what extent?**

Response: Based on available records, I believe the defendants had a reduced capacity to appreciate the wrongfulness of their conduct or control their conduct.

- d. In the federal sentencing statute, Congress specifically directed judges not to rely on anything as a mitigating factor in a child crimes case unless it has been “affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines.” 18 U.S.C. § 3553(b)(2)(A)(ii). Do you believe that your multiple downward departures in child sex crime cases adhered to the letter and spirit of Congress’s child sex crime laws?**

Response: Yes.

- 3. During the pendency of the Feeney Amendment to the PROTECT Act (2003-2005), which increased appellate and congressional scrutiny of sentencing departures and which you called “very controversial,” you did not depart from the Sentencing Guidelines in a single child pornography case. But immediately after the decision in *United States v. Booker*, 543 U.S. 220 (2005), which nullified the PROTECT Act guidelines and appellate standards, you began departing downward from the Sentencing Guidelines in child sex crime cases.**
- a. Before the *Booker* decision, did you have any child pornography cases in which you wanted to depart from the Sentencing Guidelines range but did not?**

Response: No.

b. Under what circumstances would you consider a sentence within the appropriately calculated Guidelines range to be “substantively unreasonable”?

Response: I can think of no circumstances where a sentence within a properly calculated guideline range, imposed in accordance with sound procedure, could be set aside as substantively unreasonable. In the Second Circuit, a sentence may be set aside as substantively unreasonable “only in exceptional cases where the trial court’s decision cannot be located within the range of permissible decisions.” *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008)(en banc). As the Second Circuit has recognized, “in the overwhelming majority of cases, a Guidelines sentence will fall comfortably within the broad range of sentences that would be reasonable in the particular circumstances.” *United States v. Fernandez*, 443 F.3d 19, 27 (2d Cir. 2006).

c. Would you, if confirmed as an appellate judge, ever think it appropriate to rule a within-Guidelines-sentence “substantively unreasonable” on the basis of a policy disagreement with Congress? If so, under what circumstances?

Response: I cannot envision such a case.

d. The Second Circuit has one of the most deferential standards for reviewing sentencing orders. See *United States v. Cavera*, 550 F.3d 180 (2d 2008) (stating the Second Circuit would set aside a sentencing order “only in exceptional cases”). What is your understanding of what constitutes an “exceptional case” for sentencing purposes? If confirmed, when would you set aside the sentencing order of a district judge?

Response: In *Cavera*, the Second Circuit indicated that a case is “exceptional” if the sentencing judge relies on “invidious factors,” 550 F.3d at 191, or imposes a sentence outside the applicable range based on a factor that cannot “bear the weight assigned to it.” *Id.* If confirmed, I would set aside a sentence only when required to do so by Supreme Court or Second Circuit precedent.

4. In 2003, you spoke at the inaugural meeting of the American Constitution Society chapter at the University of Connecticut School of Law. The topic of your speech was “judicial independence and accountability in sentencing.” You were highly critical of mandatory minimum sentences, calling them “dehumanizing” and noted that they were “at odds” with “our common law tradition.” You also remarked that, when sentencing a defendant, “[e]mpathy’ for individuals involved in [a] case inevitably comes into play, as it should.” And you said: “One person’s fairness may be another’s leniency, especially if the other . . . doesn’t have to explain the sentence to the defendant.”

- a. **Please explain how you understand “our common law tradition” to influence your responsibilities when sentencing a defendant.**

Response: My sentencing decisions are based on applicable statutes and guidelines. Any policy views I have expressed on the subject of mandatory minimum sentences have not affected my sentencing decisions.

- b. **Do you still believe that minimum sentences are “dehumanizing”? Will you, if confirmed, have any reservations in enforcing mandatory minimum sentences set by Congress?**

Response: The sentencing process can be machinelike when a mandatory minimum sentence is imposed. I recognize, however, that mandatory minimum sentences are valid and have no reservations about enforcing the law set by Congress.

- c. **How does the responsibility of “explain[ing] the sentence to the defendant” affect your calculation of the defendant’s sentence?**

Response: It does not affect the calculation of the sentence.

- d. **Have you ever reduced the sentences of defendants to make the process of explaining their sentence to them less intense or difficult?**

Response: No.

- e. **At your confirmation hearing, you said that your “empathy” remark “referr[ed] to not just the defendant, but also the victims, as well as witnesses . . .” How does your empathy for defendants influence your handling of criminal proceedings and sentencings? Please give an example of a case in which your empathy for a defendant, victim, or witness affected your ruling(s) in the case.**

Response: Empathy does not influence my sentencing decisions.

5. **You also stated in your 2003 American Constitution Society speech that “[u]nder the Constitution, a judge can’t be impeached for judicial acts.”**

- a. **Do you think that Congress can impeach a judge if he or she rules in unlawful ways or consistently defies the will of Congress as expressed in the laws of the United States?**

Response: A lawless act by a judge deliberately undertaken to defy the will of Congress would not be a “judicial act” as I used the phrase in my speech.

- b. **In your opinion, are the judicial acts of a judge never relevant to a determination of their “good Behavior”? U.S. Const., art. 3, sec. 1.**

Response: A “judicial act,” as I used the phrase in my speech, does not include unlawful acts that would properly subject a judge to a risk of impeachment.

6. **You further noted in your 2003 American Constitution Society speech that “the Constitution does not entitle Congress to tell a judge how to apply the law on departures in a given case, and Congress should not attempt to intimidate judges into refusing to depart, or punish judges for departing.”**

- a. **In what ways has Congress “intimidate[d] judges into refusing to depart, or punish[ed] judges for departing” from the Sentencing Guidelines?**

Response: Congress has not done so.

- b. **Do you think that the Sentencing Guidelines improperly tell judges how to apply the law on departures in given cases?**

Response: No.

7. **President Obama has stated: “[W]hile adherence to legal precedent and rules of statutory or constitutional construction will dispose of 95 percent of the cases that come before a court . . . what matters . . . is those 5 percent of cases that are truly difficult. In those cases, adherence to precedent and rules of construction and interpretation will only get you through the 25th mile of the marathon. That last mile can only be determined on the basis of one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy. In those 5 percent of hard cases . . . the critical ingredient is supplied by what is in the judge’s heart.”**

- a. **Do you agree with the President that legal precedent and rules of statutory or constitutional construction sometimes fail to provide an answer in hard cases? If so, what percentage of cases do you think constitute “hard cases”?**

Response: I agree that federal courts are sometimes called upon to decide difficult cases. In these instances, judges must be particularly careful to ensure that the case is decided in accordance with the law and evidence.

- b. **Assuming for the sake of argument that there is a “hard case” where the law is indeterminate, what factors and concerns would you, as a judge, consider in deciding the case?**

Response: If presented with such a case, I would bear in mind that my duty to decide the case should be discharged with due regard to the limits on my role in a federal system of separated powers and with appropriate sensitivity and deference to the responsibilities and prerogatives of the legislative and executive branches of government. As in any case, I would pay close attention to the presentations of the parties, study the applicable legal authorities, focus on the legally relevant facts

disclosed by the record, and issue a holding no broader than necessary to resolve the parties' dispute.

- c. **In your 2003 speech to the American Constitution Society chapter at the University of Connecticut School of Law, you said that, in sentencing a defendant, “[e]mpathy” for individuals involved in [a] case inevitably comes into play, as it should.” How do you distinguish your appeal to judicial “empathy” from that of President Obama?**

Response: As a judge, I associate empathy with a desire and ability to approach each case with an open mind free of preconceptions, provide all people who come before the court with a respectful hearing for the purpose of understanding their positions, and render an unbiased decision reflecting impartial application of the law.

8. **During your January 28, 2005 conference call with T.R. Paulding, the attorney for the convicted serial murderer and rapist, Michael Ross, you made the remarkable statement that: “Ross never should have been convicted. Or if convicted, he never should have been sentenced to death because his sexual sadism, which was found by every single person who looked at him, is clearly a mitigating factor” You also remarked that “Michael Ross may be the least culpable, the least, of the people on death row.”**

At you confirmation hearing, you tried to explain these extraordinary remarks by saying: “I addressed [the issue of Ross’s sexual sadism] in connection with the issue of competence. The defendant had a long history of mental illness, several disorders These were relevant to the question of his competence to waive legal rights.”

- a. **In what way was your opinion about whether Ross should have been convicted and sentenced to death relevant to determining Ross’s competency? How was Ross’s culpability related to his competency?**

Response: As I explained at the confirmation hearing, I had no opinion about whether Ross should have been convicted or sentenced to death and regret very much my choice of words. My sole concern was his competence to waive legal rights. The Office of the Chief Public Defender, who had represented Ross for many years, proffered substantial evidence that his waiver was not voluntary but resulted from mental illness exacerbated by the conditions of his confinement. Dealing with this claim on short notice and in a tightly compressed time frame, I had to consider Ross’s history of mental illness as disclosed by the record before me.

- b. **Have you ever ruled that a defendant was not mentally competent to stand trial or waive his rights on account of “sexual sadism”? Are you aware of any other court that has ever found a defendant’s “sexual sadism” to render him mentally unfit to waive his appellate rights?**

Response: No.

- c. **Can you explain in detail Michael Ross’s “long history of mental illness” that you reviewed at the time you issued the stay of his execution? What mental illnesses relevant to his competency had Ross been diagnosed with at the time you reviewed his record? Who made these diagnoses and when?**

Response: It was undisputed that Ross was mentally ill. He had been diagnosed with various depressive, personality and anxiety disorders, as well as sexual sadism. He had made three suicide attempts since 1994, one of which almost succeeded. His statements and writings showed that he had vacillated about whether he wanted to pursue legal remedies or accept execution. I do not have the names of the doctors who evaluated him or the dates of their diagnoses.

9. **At your confirmation hearing, you stated that your initiation of, and comments during, the January 28, 2005 teleconference regarding the Ross case were driven by the production of “evidence on the subject of the defendant’s competence, including expert testimony, which had not been considered by the State court.” If this evidence was convincing, indeed if it was powerful enough to make you declare “I see this happening and I can’t live with it myself,” why didn’t you issue another stay of Ross’s execution on January 28, 2005?**

Response: At the time, I thought the best course of action was to urge Ross’s lawyer to speak with his expert witness, Dr. Norko, concerning the new evidence. I did not consider issuing another stay.

10. **You noted at your confirmation hearing that the Connecticut courts’ consideration and rejections of Michael Ross’s mental competency were not binding on your review of his competency to waive further appeals to his execution “[b]ecause the procedure that was followed was limited and I was presented with evidence raising a substantial issue on a matter of life and death.” Section 2254(d) of the Antiterrorism and Effective Death Penalty Act (“AEDPA”), however, states that “[a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication . . . was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or . . . resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.” Moreover, § 2254(e) of AEDPA states that in considering the habeas petition of a state prisoner “a determination of a factual issue made by a State court shall be presumed to be correct.” And the Second Circuit has explained:**

The standard of review set forth in AEDPA is not conditional. It is stated in mandatory terms—habeas relief “shall not be granted with respect to *any claim* that was adjudicated on the merits in State court proceedings Accordingly, a habeas claim, even if subject to a federal evidentiary hearing, is still a “claim that was adjudicated on

the merits in State court proceedings,” and is subject to the highly deferential standard of review established therein. . . . And new evidence uncovered in the federal proceeding is relevant only insofar as it assists the habeas court in determining whether the state court reached an unreasonable application of law.

Wilson v. Mazzuca, 570 F.3d 490, 499-500 (2d Cir. 2009) (internal citations omitted).

- a. **In light of the relevant AEDPA provisions and rulings of the Second Circuit, please explain more fully why the Connecticut courts’ determinations of Michael Ross’s competency were not binding on your review of his competency.**

Response: In the Ross case, the State argued that the Connecticut courts’ determination of competency required summary dismissal of the habeas petition for lack of standing. I concluded that a hearing on the issue of Ross’s volitional capacity was necessary, and therefore denied the State’s motion to dismiss, primarily because the issue of Ross’s volitional capacity had not been adequately addressed by the state courts and no particularized finding had been made concerning his volitional capacity as required by *Rees v. Payton*, 384 U.S. 312 (1966).

- b. **In your review of the Ross case, did you determine that the Connecticut courts’ adjudication of Ross’s competency “was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined the Supreme Court of the United States, or . . . resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding”?**

Response: I concluded that a hearing was required to determine whether Ross lacked volitional capacity under *Rees*, an issue that had not been adequately addressed in the state courts. In reaching this conclusion, I reviewed the Connecticut Supreme Court’s determination that the evidence proffered to it by the Office of the Chief Public Defender was not “meaningful evidence” under *Demosthenes v. Bard*, 495 U.S. 731 (1990). Based on the record before me, I concluded that the Connecticut Supreme Court’s determination reflected an unreasonable application of *Demosthenes*.

- c. **How exactly did the new evidence that you reviewed call into question whether the Connecticut courts reached an unreasonable application of clearly established Federal law?**

Response: The evidence presented to me cast doubt on Ross’s volitional capacity, a critical factor under *Rees*, which had not been adequately addressed in the state courts.

11. **In your teleconference with the parties in the Ross case on January 28, 2005, you said: “I believe that as a result of Ross’s transfer to [Northern Correctional**

Institute] . . . his life changed very dramatically for the worse . . . [and] a fair amount of literature which I have read . . . gives great weight to the notion that a person who is in that setting can lose his ability to make a knowing, intelligent, and voluntary choice.”

- a. **What was the “literature” that you referred to in this statement? Please provide citations to the Committee for any articles or books that you were referencing.**

Response: I referred to this “literature,” not as a basis for a ruling of any kind, but simply to provide context for my remarks to Mr. Paulding. Prior to my involvement in the Ross litigation, I had occasion to read about the potential effects of long-term solitary confinement on inmates in supermax prisons. These are the writings I referred to when I spoke to Mr. Paulding. I recall reading the following materials prior to the Ross case: McCord, *Imagining a Retributivist Alternative to Capital Punishment*, 50 Fla. L. Rev. 1 (1998); Romano, *If the SHU Fits: Cruel and Unusual Punishment at California’s Pelican Bay State Prison*, 45 Emory L.J. 1089 (1996); Lillich, *The Soering Case*, 85 Am. J. Int’l L. 128 (1991); *Soering v. The United Kingdom*, 161 Eur. Ct. H.R. (1989); Grassian, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. Psychiatry 1450 (1983).

- b. **Do you think that it is appropriate for a judge to research, reference, and rely upon empirical sources not cited or presented by the parties when deciding a case?**

Response: As a rule, no.

12. **You lamented at your hearing that “the Ross case gets in the way of the record of my work day-to-day in all kinds of cases over the course of 15 years.” You said, “[i]t is not a reliable indication of my character as a judge or my work as a judge.” Would you please provide five cases that you think are indicative of your character and work as a judge?**

Response: Summaries of the following cases appear in my responses to the Committee’s Questionnaire: *Emily J. v. Rowland*, Case No. 93-CV-1944; *United States v. Bryce*, Case Nos. 97-CR-249, 99-CR-238; *United States v. Richards*, Case No. 99-CR-266; *Cowan v. Breen*, Case No. 00-CV-52; *United States v. Harris*, Case No. 04-CR-360.

13. **To what extent is foreign law or practices relevant to the interpretation and application of the laws and Constitution of the United States? Have you ever relied on foreign law or practices to decide a case?**

Response: A judge should not rely on foreign law to decide a case except when the law of the United States requires him or her to do so, for example, to adjudicate a case involving a treaty. I have not relied on foreign law to decide a case.

**Responses of Robert N. Chatigny
Nominee to be U.S. Circuit Judge for the Second Circuit
to the Written Questions of Senator Grassley**

1. **At the hearing, Senator Coburn asked you about your speech at the Inaugural meeting of the American Constitution Society at the University of Connecticut School of Law, where you criticized mandatory minimums because “Empathy for individuals involved in a case inevitability comes into play, as it should.” I would like to get a little more information on this speech.**

- a. **Could you please elaborate on what you meant by this statement on empathy?**

Response: When I used the term “empathy” in my speech, I meant respectful attention to, and careful consideration of, the legitimate interests of all concerned. I did not mean sympathy.

- b. **Does empathy play a role in your decision-making process? Could you please explain how empathy factors into your decision making process?**

Response: No. Empathy plays no role in determining the applicable law, finding the relevant facts, or applying the law to the facts to reach a decision.

2. **During the 2008 presidential campaign, President Obama described the kind of judge that he would nominate to the federal bench as follows: “We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”**

- a. **Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit the President’s criteria for federal judges, as described in this quote?**

Response: I do not know what the President meant by his statement. As I use the term “empathy,” it refers to paying respectful attention to, and carefully considering, the positions of all people who come before the court.

- b. **During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: I agree that a judge must put aside all personal feelings and impartially apply the law to the facts.

- c. **Do you believe that it is ever appropriate for judges to indulge their own subjective sense of empathy in determining what the Constitution and the laws mean? If so, under what circumstances?**

Response: No.

- d. **Do you believe that it is ever appropriate for judges to indulge their empathy for particular groups or certain people? For example, do you believe that it is appropriate for judges to favor those who are poor? Do you believe that it is appropriate for judges to disfavor corporations?**

Response: No. The judicial oath requires every judge to “administer justice without respect to persons,” “do equal right to the poor and to the rich,” and “impartially discharge and perform” “all the duties” of the judicial office. 28 U.S.C. § 453.

- e. **After Justice Stevens announced his retirement, President Obama stated that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe that judges should base their decisions on a desired outcome?**

Response: No. A judge’s responsibility is to decide a case by impartially applying governing law to legally relevant facts determined through sound procedure.

3. **Following the *Ross* case, a news article reported that the “standard” you seemed to “cite most frequently” is “the Golden Rule.” The article stated that “in dealing with a criminal defendant from the margins of society, Chatigny will frequently discuss explicitly how he would want to be treated if he were in the defendant’s circumstances.” Your Golden Rule standard sounds very much like “empathy” to me and also very similar to Justice Sotomayor’s assertion that “personal experiences affect the facts that judges choose to see.” This empathy standard is at odds with the proper role of a judge because we expect a judge to be a neutral arbiter, and not to sympathize with one party over another. In fact, in that same article, a lawyer said that you “shape[] the issues more than the advocates” and “follow[] a ‘managerial’ model of judging rather than the ‘referee or umpire model.’” Given your statements and other attorneys’ statements about your courtroom manner, why shouldn’t I be concerned that you will permit your empathy for certain litigants to affect your decisions, rather than ruling simply on the law and facts?**

Response: Based on my overall record as a district judge for more than 15 years, my reputation among my colleagues on the federal and state bench, and my reputation among the Bar as a whole, I respectfully submit there is no cause for concern in this regard.

4. **What, in your view, is the role of a judge? Please describe your judicial philosophy.**

Response: Article III, section 2 of the Constitution extends the “judicial power” to “cases” and “controversies.” These words restrict the role of the judiciary to deciding questions presented in an adversary context and in a form historically deemed appropriate for judicial resolution. They also serve to define the role of the judiciary in a manner intended to ensure that the judiciary will not intrude into areas committed to the executive and legislative branches of government. When a case is properly brought before a federal court for adjudication, the role of the judge is to put aside any preconceptions and decide the issues in the case in accordance with the applicable law and evidence.

5. How do you define “judicial activism”?

Response: “Judicial activism” refers to exceeding the proper limits on the role of a judge in our system. The term encompasses a variety of actions across a broad spectrum. A “judicial activist” can overreach by invalidating legislation, reversing controlling precedent, creating new rights or imposing onerous obligations on governmental institutions through remedial decrees. Less dramatically, a “judicial activist” can simply fail to defer to relevant precedent, overlook material facts to reach a desired outcome or issue a broader decision than necessary to resolve the parties’ dispute.

6. Could you identify three recent Supreme Court cases that you believe are examples of “judicial activism”? Please explain why you believe these cases are examples of “judicial activism”.

Response: As a sitting district judge and nominee to the Second Circuit, I do not believe it would be appropriate for me to identify any recent Supreme Court decisions as examples of “judicial activism.” All Supreme Court precedents are binding on judges of lower courts.

7. How do you define “judicial restraint”?

Response: A judge displays “judicial restraint” when he or she engages in principled decision making with appropriate deference to the prerogatives of other branches and levels of government and issues holdings no broader than necessary to resolve the parties’ dispute.

8. Could you identify three Supreme Court cases that you believe are examples of “judicial restraint”? Please explain why you believe these cases are examples of “judicial restraint”.

Response: As a sitting district judge and nominee to the Second Circuit, I do not believe it would be appropriate for me to identify any recent Supreme Court decisions as examples of “judicial restraint.” All Supreme Court precedents are binding on judges of lower courts.

9. Do you believe that it is ever appropriate for judges to indulge their own values and/or policy preferences in determining what the Constitution and the laws mean? If so, under what circumstances?

Response: No.

10. Should the courts, rather than the elected branches of government, ever take the lead in creating a more “just” society?

Response: No. The elected branches must be relied on to take the lead.

- 11. In your speech at the inaugural meeting of the American Constitution Society at the University of Connecticut School of Law, you stated, “We shouldn’t try to drastically reduce departures. Departures are essential.” Why do you believe that departures are “essential”? What factors do you consider in deciding whether or not a downward departure is appropriate?**

Response: Departures are essential in view of the overarching statutory requirement that a sentence be sufficient but not greater than necessary. In deciding whether to depart in a given case, I consider the parties’ presentations in light of departure authority provided by sentencing statutes and guidelines as construed by the Supreme Court and the Second Circuit.

- 12. I would like to get a better understanding of how you would interpret statutes and what your judicial method would be if you were confirmed to be a judge on the Second Circuit.**

- a. In cases involving a close question of law, what would you look to when determining which way to rule?**

Response: I would look first to the text of the statute, which provides the clearest evidence of legislative intent. If presented with an ambiguous statute (one whose meaning was not plain), I would apply conventional rules of statutory construction to help resolve the ambiguity. If proper application of these rules failed to resolve the ambiguity, I would look to legislative history for reliable evidence of legislative intent. If the meaning of the statute still remained uncertain, I would acknowledge the uncertainty and undertake to decide the case on the narrowest ground and in a manner most consistent with the apparent purpose of the statute.

- b. Would you agree that the meaning of a statute is to be ascertained according to the understanding of the law when it was enacted?**

Response: I agree that the meaning of a statute should be ascertained in accordance with the objective meaning of the words in the text of the statute at the time the statute was enacted.

- c. How would you use legislative history when interpreting a statute? What kind of weight would you give legislative history, if any, when interpreting a statute?**

Response: As discussed above, I would turn to legislative history only in the event an ambiguity in the text of the statute could not be resolved using conventional rules of statutory construction. In doing so, I would look for reliable evidence of legislative intent regarding the meaning of the ambiguous provision. If such evidence could not be found, I would look for reliable evidence of the legislature’s purpose in enacting the statute.

**Responses of Robert N. Chatigny
Nominee to be U.S. Circuit Judge for the Second Circuit
to the Written Questions of Senator Jeff Sessions**

1. **The *Ross* case initially came before you after the Public Defender filed a motion on the defendant's behalf arguing he was not competent to waive further appeals because he suffered from "death row syndrome," even though he was found competent by the state trial courts, the Connecticut Supreme Court, and U.S. District Court Judge Christopher Droney. You granted the Public Defender standing because the defendant was "unable to litigate his own case due to mental incapacity," and stayed the execution pending another competency hearing. During this hearing you permitted the Public Defender to question the expert witness at length on direct examination, but you announced your ruling after only minutes of the State's cross-examination. When the State objected, you responded: "having listened to the witness, there is no doubt in my mind that we have a genuine issue here that needs to be fully explored."**

- a. **Do you believe it was appropriate for you to issue your ruling before the State had finished its cross-examination?**

Response: Yes. At the time I made my ruling denying the State's motion to dismiss the petition, I had all the information I needed to determine that further proceedings in federal court were required. I did not think further cross-examination of Dr. Grassian was needed. Counsel for the State did not object.

- b. **Do you understand why it may look to some like you had pre-judged the issue, even before the teleconference with Mr. Paulding?**

Response: Yes, although I understand that it may appear this way to some, I did not prejudge the issue. At the time I issued my ruling declining to dismiss the petition, I had all the information I thought was necessary.

2. **The day after you granted the Public Defender's Motion to Stay the execution – and while that motion was still pending appellate review – you granted a Temporary Restraining Order to Stay the execution filed by the defendant's father. At this point, one of the prosecutors felt compelled to ask you in open court whether you had any personal objections to the death penalty, or whether there was any other reason that they should "question your partiality." Do you understand why one would find it difficult to believe that, even after the State's Attorney questioned your partiality, you still failed to remember your involvement in one of the most notorious death penalty cases in the State's history?**

Response: Yes, I understand that a person unfamiliar with the facts regarding my prior involvement might question my failure to recall it. But the truth is I did not recall it. Had I recalled it, I would have recused myself.

3. After you had issued both rulings, you received a letter from an inmate questioning Mr. Ross's competence. After the State declined your invitation to voluntarily seek a stay based on the letter, you called another teleconference, which included the defendant's lawyer, Mr. Paulding. Initially, Mr. Paulding told you that he had read the letter from the inmate, discussed it with his client, and nonetheless had "somewhat a difference of opinion" from yours. It was after he resisted your efforts that your rhetoric grew more heated and you ultimately told him, "I'll have your law license." Only then did Mr. Paulding ask for "a little bit of time" to "process" what you had said. During your confirmation hearing, in response to a question from Senator Klobuchar regarding the competency hearing that was held the following week, you said: "As a result of the events that occurred during that week, the defendant's own counsel moved in the State court for a stay so that a full hearing could be held on the issue."

- a. Do you believe Mr. Paulding moved for a stay because of "the events that occurred during that week," or because of what you told him during that teleconference?

Response: I do not know what Mr. Paulding was thinking at the time. In the motion itself, however, he set forth the "specific facts" he relied on to support a stay -- conversations he had with Dr. Norko and Martha Elliott after the telephone conference. *See State v. Ross*, Nos. CR 84 20300, 20355, 20356, Motion for Stay of Execution, Jan. 31, 2005 at 3-4. In an affidavit dated October 31, 2005 (copy on file with the Committee), he similarly stated that his "principal reasons" for filing the motion were the phone call he received from Dr. Norko on January 29, and the meetings he had with Dr. Norko and Ms. Elliott on January 30. *See id.* ¶ 35. I have no reason to question Mr. Paulding's statements.

- b. In retrospect, is there any doubt in your mind that Mr. Paulding understood your statements to mean that if he did not heed your directive, his license to practice law would be in jeopardy?

Response: I do not know what Mr. Paulding's understanding was at the time. My statements were intended to convey to him my firm belief that he had an ethical duty to act.

- c. In your letter-submission to the Second Circuit, you maintained that your "warning to Attorney Paulding . . . should have been phrased in terms of the obligation I would have to refer him to the grievance authorities." Do you still maintain that your warning to Mr. Paulding was meant to convey nothing more than your duty to refer him to the grievance authorities?

Response: Yes.

- d. The District of Connecticut's local rules make clear that federal judges have "inherent authority" to enforce "the standards of professional conduct." In fact, in an article criticizing your conduct in the *Ross* case, the co-chairman of the Connecticut Bar Association's federal practice section was quoted as saying: "All judges have the inherent authority to discipline the attorneys who appear before them." Given that you personally possessed the inherent authority to discipline Mr. Paulding, do you agree that Mr. Paulding likely saw your threat as even that much more viable?

Response: I do not know what was in Mr. Paulding's mind at the time. I tried to make it clear to him that if he failed to act and a subsequent investigation determined that his client had been executed in violation of constitutional rights, I would refer the matter to the grievance committee.

4. During your hearing, you testified that "At the emergency hearing on the application for the Stay, the plaintiffs proffered evidence on the subject of the defendant's competence, including expert testimony, which had not been considered by the State court." In fact, the Connecticut Supreme Court had considered and rejected Dr. Grassian's testimony:

"We also conclude that Grassian's proposed testimony on the effect of segregated confinement on the defendant's ability to make a rational and voluntary choice is speculative. Grassian has neither examined the defendant nor inspected the conditions of the defendant's confinement. . . . Moreover, Grassian's proposed testimony that Norko had failed to recognize that the defendant's intelligence would allow him to conceal a "hidden agenda" is not supported by the record. . . . Finally, we conclude that much of the proposed testimony by many of the witnesses is conclusory in that it suggests that the defendant's decision to take control of his fate by forgoing further legal challenges to his death sentences and his ambivalent feelings over the consequences of that decision are, in and of themselves, evidence of his incompetence. We see no basis for that proposition in logic, experience or the law." *State v. Ross*, 272 Conn. 577, 592 (Jan. 14, 2005).

- a. Given that the Connecticut Supreme Court considered and rejected Dr. Grassian's testimony, do you still contend that Dr. Grassian's testimony was new evidence not considered by the courts at the state level?

Response: In my testimony at the confirmation hearing, I was referring to the competency proceeding conducted by Judge Clifford. I apologize for any misunderstanding in this regard.

- b. Aside from Dr. Grassian, did any other witnesses testify at the initial hearing?

Response: No other live testimony was presented.

- c. **Not including Dr. Grassian and his testimony, was there any other evidence offered at the initial hearing that was not considered by the state courts?**

Response: Not to my knowledge.

- d. **Had Dr. Grassian ever examined Mr. Ross?**

Response: No.

- e. **Did you examine Mr. Ross, as U.S. District Judge Droney had?**

Response: No.

5. **Approximately three hours before the scheduled execution, you directed the clerk of your court to call the execution command center and request the phone number of Judge Patrick Clifford, the state court trial judge in the Ross case. The Assistant State's Attorney told the clerk that he could not provide Judge Clifford's phone number because of a standing order of the Chief Justice of the State Supreme Court. Thirty-five minutes later, your clerk called back and asked whether the State could call Judge Clifford and give him your phone number. At your hearing, you testified:**

"I wanted the judge to know that I was available in case he wanted to speak with me. I thought there was a chance he might hear from Mr. Paulding and he might want to seek clarification from me."

Senator Kyl also asked you whether "tr[ie]d to contact the Chief Justice of the Supreme Court, Justice Sullivan." You testified: "No." Did the clerk of your court call the clerk of the Connecticut Supreme Court to obtain Justice Clifford's phone number?

Response: Not to my knowledge.

6. **On January 10, 2005, two weeks before your involvement in the case, U.S. District Judge Droney made an inquiry into Mr. Ross's competence. Judge Droney held the hearing in a state facility so that he could see and speak with Mr. Ross directly via closed circuit television. Judge Droney "made an independent finding that [Ross was] competent to proceed on his own behalf." After speaking with Mr. Ross extensively, Judge Droney found that, "[g]iven Michael Ross' amply demonstrated competence before this Court and other courts, there is no basis for ordering a full evidentiary hearing on the issue of his competency." Like the motions before you, the issue arose before Judge Droney in the context of whether certain parties had standing to litigate on Ross's behalf as "next friends." Did you believe you gave Judge Droney's decision proper consideration, especially given that he had personally examined Mr. Ross, when you rendered your own?**

Response: Yes.

7. According to Mr. O'Hare, your conduct during the teleconference

"created an immediate conflict of interest between Attorney Paulding and his client. Attorney Paulding had to either do Judge Chatigny's bidding or face being disbarred. . . . Consequently, the State . . . was faced with executing Ross when counsel was encumbered by a potentially insoluble conflict."

During your hearing, you testified:

"I believe Mr. Paulding has stated that he did not feel threatened and that he sought the Stay based mainly on his conversation with Dr. Norko and his duty to the courts to bring to their attention new information or evidence bearing on the issue of his client's competence."

I recognize that, according to the Second Circuit's opinion, Mr. Paulding stated that he reversed course "in part" because of your statements to him. But the fact is that your statements placed Mr. Paulding in a very difficult position ethically.

- a. After Mr. Paulding reversed course, he had to explain why he did so, and why that reversal was consistent with his prior statements. Do you agree that if Mr. Paulding had taken the position that he had reversed course solely because of your statements, that it would have operated as an admission that he was acting to protect his own interests, at the expense of his own?**

Response: No. My remarks to Mr. Paulding called upon him to take action consistent with his ethical obligations to his client and his prior statements to the state courts that he would immediately notify them if information or evidence came to his attention casting doubt on his client's competence.

- b. In first instance, do you agree that your actions created an "insoluble conflict" for Mr. Paulding?**

Response: No.

8. Following Mr. Ross's eventual execution, seven Assistant State's Attorneys filed an ethics complaint against. Only after they had filed their initial complaint did they learn that you had been involved in the case while in private practice. At your confirmation hearing, you testified that you reviewed a motion on behalf of the Connecticut Criminal Defense Lawyers Association for leave to file an amicus brief on "an evidentiary issue." You testified that you reviewed the motion that someone else had prepared and "and that was the end of my involvement in the case." Later in your testimony, you admitted that you had exchanged letters with Ross.

- a. At what point did you recall that you had been involved in the case? Please specify whether it was before or after the initial ethics complaint.**

Response: I recalled my prior involvement only after one of the complainants amended his initial complaint to include a claim based on my prior involvement. Until then, I had no recollection of it.

- b. At what point did you recall that you had also corresponded with the defendant?**

Response: After the complainant amended his complaint to include this claim, my former partner retrieved a file from storage and found that it contained copies of this correspondence. Until then, I had no recollection of it.

- c. Did you continue to receive all the orders issued in the case because your appearance remained in the Supreme Court file?**

Response: Because my name was not removed from the appearance list, orders were received by my former firm after my involvement ended. I do not know which orders were received. The only order I recall seeing was the order granting the application to file an amicus brief. Once the decision was made that no amicus brief would be filed, I had no interest in the matter.

- d. Were you served with a copy of the state's 300-page brief and accompanying appendix totaling several hundred pages?**

Response: I do not know whether it was served. To my knowledge, I did not receive it.

- e. Were you served with a copy of the defendant's 300-page brief and multiple volume appendices?**

Response: I do not know whether it was served. To my knowledge, I did not receive it.

- 9. During the January 28th teleconference, while discussing Ross' mental state, you stated, "his sexual sadism, which was found by every single person who looked at him, is clearly a mitigating factor." At your hearing, you testified that the history of the Ross case is replete with psychiatric issues informing your concern about Mr. Ross's competency. But your statements during the teleconference and your testimony during your hearing seem to ignore the very important distinction between insanity and competency. Mr. Ross's sexual sadism went to the former and was presented at trial and sentencing as a mitigating factor. Prior to approximately 2004 when Mr. Ross decided not to pursue any further appeals, had any expert or any motion ever suggested that Mr. Ross was not competent?**

Response: Not to my knowledge.

10. Your decision during the initial hearing relied heavily on the testimony of Dr. Grassian, who testified that the defendant understood his legal position and available options, but that he was not able to “make[] a rational choice to forego further legal proceedings.” You also stated during the January 28th teleconference that “death row syndrome” is a well-recognized phenomenon.

a. Do you still believe that “death row syndrome” is a well-recognized phenomenon?

Response: I do not know how this “syndrome” is currently viewed.

b. You have been nominated to the Second Circuit, where you will hear appeals from, among other districts, the Southern District of New York. As of today, the Department of Justice still intends to try 9-11 mastermind Khalid Sheikh Mohammed (KSM) in the Southern District of New York. While he was being held at GITMO, KSM reportedly requested to be executed. If he is convicted in New York and waives his appeals and again requests to be executed, do you believe he would be competent to make that decision, or would he be incompetent based on “death row syndrome”?

Response: As a sitting district judge and nominee to the Second Circuit, I do not believe it would be appropriate for me to comment on a hypothetical question based on a pending case.

11. In unanimously reversing your decision in *Doe v. Lee*, the Supreme Court stated,

“Sex offenders are a serious threat in this nation....The victims of sex assault are most often juveniles and when convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sex assault.”

a. Are you uncomfortable, generally, with the constitutionality of a Megan’s law?

Response: No.

i. If so, why?

Response: n/a

ii. Are you worried that such a law may violate the rights of a convicted sex offender?

Response: No.

iii. Are you uncomfortable with the idea of requiring convicted sex offenders to register with the police?

Response: No.

12. In *Walczyk v. Rio*, a plaintiff who was charged with criminal threatening filed a §1983 action against police officers who arrested the plaintiff and searched his home for firearms. You denied the officers' motion for summary judgment despite the plaintiff's long history of using firearms to threaten others and his potential threat to an officer when he stated "the police aren't taking the action necessary to avoid a bloodbath." The Second Circuit reversed your decision holding that the magistrate "certainly had a substantial basis" to conclude probable cause existed.

a. Can you explain your ruling and whether you agree with the Second Circuit's decision reversing your decision?

Response: My ruling denying the officers' motion for summary judgment on the unlawful arrest and search claims (the ruling granted their motion on other claims) was based primarily on a prior ruling by the Connecticut Appellate Court (on the direct appeal in the underlying criminal case) that the warrant affidavit fell well short of establishing probable cause. *See Walczyk v. Rio*, 339 F. Supp. 2d 385, 390 (D. Conn. 2004). The Connecticut Appellate Court reasoned that "[a] statement to a police officer that *the police* needed to act to avoid a 'bloodbath' cannot be the basis of probable cause to believe that the defendant, at the time or in the immediate future, would engage in threatening behavior." *See State v. Walczyk*, 76 Conn. App. 169, 180-82 (2003)(emphasis in original). I thought the Connecticut Appellate Court's determination was incorrect but reluctantly concluded that it required me to deny summary judgment. The Second Circuit disagreed with the Connecticut Appellate Court's determination, noted it was not binding, and reversed. *Walczyk v. Rio*, 496 F.3d 139, 159-60 (2d Cir. 2007).

b. One of the factors you considered when rejecting the officers' assertion of qualified immunity was that they had failed to inform the magistrate that they had not spoken directly with the officer who filed the report about the "bloodbath" remark. In reversing your decision, the Second Circuit stated:

"we observe that the law permitting one law enforcement officer to rely on the report of another in applying for a warrant nowhere requires direct consultation to ensure that the officer reviewing the report ascribes no more weight to the described facts than the report intended..."

Why did you not consider this factor when the Second Circuit found that the law does not require direct consultation?

Response: I do not believe the officers relied on this factor when the case was before me.

13. Please describe with particularity the process by which these questions were answered.

Response: I drafted the answers, sent them to the Office of the White House Counsel, received comments, then put my answers in final form.

14. Do these answers reflect your true and personal views?

Response: Yes.

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
450 MAIN STREET
HARTFORD, CONNECTICUT 06103-9998

CHAMBERS OF
ROBERT N. CHATIGNY
U.S. DISTRICT JUDGE

(860) 240-3659

May 25, 2010

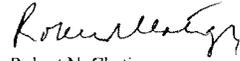
The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to additional supplemental written questions
from Senator Cornyn.

Thank you for your consideration.

Sincerely,


Robert N. Chatigny

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

May 25, 2010

The Honorable John Cornyn
United States Senator
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Cornyn,

I am writing in response to your letter of May 24, which contains supplemental questions relating to child pornography sentencing.

Questions 1-3

1. I do not believe that individuals who view images of child pornography pose no threat to children.
2. I do not believe that enforcing child pornography laws destroys lives unnecessarily.
3. I do not believe that possessors of child pornography should receive at most treatment and supervision.

Question 4

In *Polizzi*, the Second Circuit stated, "Our precedent forecloses the conclusion that Polizzi had a Sixth Amendment right to trial by a jury that had been instructed on the applicable mandatory minimum sentence." *United States v. Polouizzi*, 564 F.3d 142, 161 (2d Cir. 2009). I will faithfully follow Supreme Court and Second Circuit precedents in this area in cases that come before me.

Question 5

I have never asked jurors whether they would have voted to convict a defendant had they known about the minimum sentence. I cannot comment on the propriety of Judge Weinstein's doing so because this is an issue that may come before me if I am confirmed to the Second Circuit. For the same reason, I am unable to comment on whether a judge should overturn a verdict if jurors state they would have changed their votes had they known about the minimum sentence.

Question 6

I cannot comment on the defendant's statements but I do believe it is important that a defendant see a federal district judge as a "judge," rather than a father figure.

Question 7

I cannot comment because Judge Weinstein's rulings may come before me if I am confirmed to the Second Circuit.

Question 8

I cannot comment specifically on the propriety of the sentence imposed by Judge Graham. My 2003 remark was merely intended to suggest that a sentencing decision should reflect consideration of all the relevant facts and circumstances.

Question 9

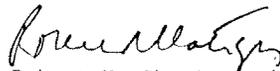
Yes, I believe that federal child pornography laws, and the criminal penalties associated with them, do deter individuals from producing, distributing and possessing child pornography.

Question 10

In the case you inquire about, the defendant pleaded guilty to possession of child pornography. The advisory guideline range suggested a minimum sentence of imprisonment of 21 months. The defendant sought a sentence of probation based in part on his mental and emotional condition resulting from abuse he experienced as a child. I sentenced him to 18 months in prison followed by 3 years of supervised release subject to numerous special conditions. The sentence was justified by a combination of factors, specifically, the defendant's reduced capacity to control his offense conduct, progress he had made in treatment, and the substantial length of time that had elapsed since his offense conduct.

Thank you for your consideration.

Very truly yours,


Robert N. Chatigny

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
450 MAIN STREET
HARTFORD, CONNECTICUT 06103-9998

CHAMBERS OF
ROBERT N. CHATIGNY
U.S. DISTRICT JUDGE

(860) 240-3659

May 24, 2010

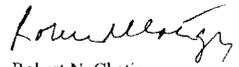
The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to supplemental written questions from
Senator Sessions, Senator Comyn and Senator Coburn.

Thank you again for your consideration.

Sincerely,



Robert N. Chatigny

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Responses of Robert N. Chatigny
 Nominee to be U.S. Circuit Judge for the Second Circuit
 to the Supplemental Written Questions of Senator Cornyn

- 1) **In my previous Question 1, I asked whether you “believe the Sentencing Guidelines are too harsh on child sex crimes.” I appreciate your statement that you have faithfully applied the Guidelines and will continue doing so, but you did not answer the question. Please do so now.**

Response: As a district judge, my role is to faithfully apply the guidelines, rather than evaluate them from a policy standpoint. I would note, however, that the Sentencing Commission has observed an increase in below-guidelines sentences in child pornography cases and, as a result, has undertaken a review of the child pornography guidelines. See U.S. Sentencing Commission, *The History of the Child Pornography Guidelines* 54 (October 2009).

- 2) **In answering Question 2(a), you noted that the standards of § 5K2.13 require you to consider whether the defendant had a “significantly reduced mental capacity” that “contributed substantially to the commission of the offense.” But in answering Question 2(c) you stated that you merely concluded that “the defendants had a reduced capacity to appreciate the wrongfulness of their conduct or to control their conduct.” How do you square these answers? Didn’t you need to conclude that the defendants to whom you gave reduced sentences had a “significantly reduced mental capacity” that “contributed substantially to the commission of the offense”?**

Response: Yes, § 5K2.13 requires findings that the defendant had a significantly reduced mental capacity that substantially contributed to the commission of the offense. Throughout my 15 years as a district judge, it has been my practice to faithfully apply the sentencing statutes and guidelines, including the requirements of § 5K2.13, and I believe I did so in each of these cases.

- 3) **In responding to Question 9, you stated that you thought “the best course of action was to urge Ross’s lawyer to speak with his expert witness, Dr. Norko, concerning the new evidence” and you noted that you “did not consider issuing another stay.”**

- a) **Where in the transcript of your January 28, 2005 conference call with Ross’s attorney, T.R. Paulding, did you ask him to talk with Dr. Norko about the “new evidence”?**

Response: Please see pages 7-8 and 25 of the transcript.

- b) **Wasn’t Dr. Norko the court’s expert—not Mr. Paulding’s?**

Response: Like the state courts, Mr. Paulding was relying on Dr. Norko.

- c) **Given that the “new evidence” was powerful enough to lead you to conclude that Ross “might be the least culpable” person on death row and declare that “I see this**

happening and I can't live with it myself," why did you not even consider issuing another stay?

Response: The new evidence prompted me to urge Mr. Paulding to reassess his position. The new evidence did not prompt me to think in terms of issuing another stay.

i) On January 28, 2005, was there a legal claim before you on which you could have issued another stay?

Response: There was no motion pending before me on that date. I did not consider whether there were other grounds for issuing a stay at that time.

ii) If not, what was the basis for your calling of the teleconference on January 28, 2005?

Response: I convened the telephone conference to discuss unresolved issues in the case pursuant to my authority under Fed. R. Civ. P. 16(a).

4) In answering Question 10(a), you stated that you denied the State's motion to dismiss "primarily because the issue of Ross's volitional capacity had not been adequately addressed by the state courts and no particularized finding had been made concerning his volitional capacity as required by *Rees v. Payton*, 384 U.S. 312 (1966)." But in staying Ross's execution, you wrote: "[T]he state court did not adequately inquire into the volitional capacity prong of the *Rees* standard, as implemented in *Rumbaugh and Smith*." *Ross v. Rell*, 392 F.Supp.2d 236, 240 (D.Conn. 2005). *Rumbaugh v. Procunier*, 753 F.2d 395, 398 (5th Cir. 1985), and *Smith ex rel. Mo. Pub. Defender Comm'n v. Armontrout*, 812 F.2d 1050, 1057 (8th Cir. 1987), are not decisions of the Supreme Court of the United States, nor are they binding on Connecticut courts in any way. Accordingly, how was Connecticut court's determination of Ross's competency "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States"?

Response: I recognize that under 28 U.S.C. § 2254(d)(1) habeas relief is not available for any claim adjudicated on the merits in state court unless the state court decision is "contrary to, or involve[s] an unreasonable application of, clearly established Federal law, as determined by the Supreme Court," rather than by a circuit court. In the Ross case, I considered whether the Connecticut Supreme Court's adjudication of the issue of next friend standing was contrary to or involved an unreasonable application of *Demosthenes*. In considering the state court's treatment of the issue of next friend standing under *Demosthenes*, I did observe that the state court did not adequately inquire into the volitional capacity prong of the *Rees* standard, as implemented in *Rumbaugh and Smith*. I believe it was appropriate to refer to *Rumbaugh and Smith* in this manner. The limitations imposed by § 2254(d)(1) did not apply because I was not adjudicating the petitioner's challenge to the state courts' ultimate determination that Ross was competent under *Rees*. Moreover, even when § 2254(d)(1) does apply, circuit court decisions may be referred to in assessing the reasonableness of the state court's application of Supreme Court precedent.

- 5) During your teleconference with Mr. Paulding, you said: “I would urge you to say, Michael, I can bring you in off this limb that we’re both out on. I can bring you in. . . . In fact, I’m saying that what you’re doing is a mistake. You don’t have to cause any victims’ families any pain. . . . I cannot be a party to this anymore. And, in fact, I object. I won’t let you do it. . . . You say, I’m not letting you. I’m standing next to you on the bridge and I’m holding you and I’m preventing you from jumping”
- a) Why did you encourage Paulding to plea and reason with Ross if you believed, based on the new evidence discussed during the teleconference, that Ross lacked the capacity to make rational choices regarding his litigation strategy?

Response: I believed that if Ross’s volitional capacity was significantly impaired, a plea along the lines I suggested might encourage him to agree to a stay.

- b) Do you think that it would have been appropriate for Paulding to address Ross in the manner you recommended?

Response: Yes, given the circumstances that existed at the time.

- 6) One day before you stayed Michael Ross’s execution in *Ross v. Rell*, 392 F.Supp.2d 236, 240 (D.Conn. 2005), Judge Droney of the District Court for the District of Connecticut denied a similar motion made by Ross’s father. Unlike you, Judge Droney had the benefit of interacting with Michael Ross and observing him in court. Judge Droney concluded that “[t]he plaintiff has provided no affirmative evidence of incompetence, incapacity, or other disability suffered by Michael Ross.” *Ross v. Rell*, 392 F.Supp.2d 224, 227 (D.Conn. 2005). He also noted:

the only evidence offered by plaintiff to support th[e] assertion [that Ross was incompetent] is that by waiving his right to further appeal his death sentence, Michael Ross is endangering his health by committing “state-assisted suicide.” Whatever the wisdom of Michael Ross’ decision to forgo additional appeals, that decision standing alone does not suffice to establish his incompetence. . . . While the proffered evidence provided information on Michael Ross’ history of mental health treatment, it did not support a conclusion that he currently is incompetent. Michael Ross is not unable to litigate his own cause, as *Whitmore* requires; Michael Ross simply has chosen not to exercise his right to litigate. . . . Given Michael Ross’ amply demonstrated competence before this Court and other courts, there is no basis for ordering a full evidentiary hearing on the issue of his competency. Nor, given Michael Ross’ reasoned and rational decision not to pursue this action, is there any basis for allowing a “next friend” to pursue it on his behalf.

Id. at 227-29.

- a) **Did you read Judge Droney's opinion before issuing your stay of Michael Ross's execution?**

Response: I do not recall when I first read Judge Droney's opinion.

- b) **Given that you and Judge Droney reviewed substantially similar evidence, how do you explain the marked difference between your rulings?**

Response: I do not believe the evidence we reviewed was substantially similar. Judge Droney's opinion states that the plaintiff in the case before him, Ross's father, "provided no affirmative evidence of incompetence, incapacity, or other disability suffered by Michael Ross." 392 F. Supp. 2d at 227. In the case before me, in contrast, the Office of the Chief Public Defender, Ross's longtime counsel, proffered extensive evidence, including expert psychiatric testimony, in support of the claim that Ross lacked volitional competence. It is apparent from Judge Droney's opinion that he was not provided with the evidence that was presented to me. Judge Droney's opinion specifically notes that the Connecticut Supreme Court had entered an order three days earlier permitting Ross's former public defenders to file a written offer of proof. *Id.* at 228 n.5. Judge Droney's opinion states, "no similar written offer of proof is required here." *Id.* The offer of proof Judge Droney referred to was presented to me along with additional evidence. Judge Droney's opinion lists materials he did review: Dr. Noriko's evaluations of Ross in 1995 and 2004; an affidavit filed by Ross in 2004; transcripts of proceedings before Judge Clifford in 2004; and transcripts of proceedings before Judge Fuger in 2005. See *Id.* at 228-29. These materials formed only part of the evidence presented to me.

- c) **How do you distinguish Judge Droney's consideration of whether Ross was committing "state-assisted suicide" from your consideration of whether he was suffering from "death row syndrome"?**

Response: Judge Droney's decision did not bear directly on the issue presented to me. The claim presented to me was that Ross lacked volitional capacity to waive legal challenges to his death sentence due to suicidal despair caused by "death row syndrome." This claim was not presented to Judge Droney. The claim presented to him was that the State's lethal injection protocol violated the Eighth Amendment's prohibition of cruel and unusual punishment. The two cases were similar because both involved an issue of next friend standing, which required consideration of Ross's competence to litigate on his own behalf. Even as to this shared feature, however, the cases were different. In the case before Judge Droney, the next friend's claim that Ross could not care for himself was based on an assertion that he was "endangering his health by committing 'state-assisted suicide.'" 392 F. Supp. 2d at 227. Judge Droney rejected this assertion stating, "[w]hatever the wisdom of Michael Ross' decision to forego additional appeals, that decision standing alone does not suffice to establish his incompetence." *Id.* In the case before me, the next friend's claim that Ross could not care for himself was based not on his decision to waive appeals "standing alone," *id.*, but rather on evidence that he was suffering from suicidal despair caused by "death row syndrome."

7) **In your opinion staying Ross's execution, you stated: "my analysis of the issues presented by the petition has been aided by Judge Berzon's concurring opinion in *Dennis ex rel. Butko v. Budge*, 378 F.3d 880, 895 (9th Cir. 2004)." *Ross*, 392 F.Supp.2d at 238 n.1.**

a) **What relevance did Judge Berzon's concurrence have to your determination of whether the Connecticut courts' competency rulings were "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States"?**

Response: As discussed above in my response to question 4, I considered whether the Connecticut Supreme Court's decision on the issue of next friend standing was binding under § 2254(d)(1), as the State contended. I concluded it was not, in part because the evidence contained in the written proffer, if credited, supported a finding that Ross lacked volitional competence under *Rees*, and the issue of Ross's volitional competence under *Rees* had not been adequately addressed in the state courts. Judge Berzon's concurrence was relevant to my determination because it analyzes the *Rees* standard of volitional competence.

b) **Do you consider your views on criminal and sentencing matters generally to be in line with those of Judge Berzon?**

Response: I am not familiar with Judge Berzon's views on criminal and sentencing matters (apart from the ones expressed in the concurrence in *Butko*) and, accordingly, I am not in a position to comment. Moreover, I do not believe it would be appropriate for me to comment on whether I consider another judge's views regarding criminal and sentencing matters generally to be in line with my own. Were I to do so, it could create an appearance of bias on my part in favor of or against the other judge's views. In addition, I believe it would be inappropriate for me to comment on another judge's views regarding matters of this nature because such matters are likely to come before me in future cases and I do not want to appear to have prejudged them.

c) **Even assuming that Judge Berzon's concurrence was relevant to your determination, how do you square your interpretation of *Rees* with her statement that: "it makes much more sense to read *Rees* as requiring an actual, demonstrated inability to make rational choices because of a volitional impairment that is the product of a mental disorder"? *Butko*, 378 F.3d at 900. What "actual, demonstrated inability to make rational choices" had Michael Ross shown at the time that you stayed his execution?**

Response: Dr. Grassian testified that Ross's decision to forego legal remedies appeared to be driven by suicidal despair, which prevented him from making a rational choice to forego legal remedies. Dr. Grassian's testimony was supported by, among other things, Ross's history of multiple suicide attempts since 1994 as well as correspondence and other writings in which Ross expressed a strong desire and serious intention to commit suicide. See 392 F. Supp. 2d at 239-40.

8) In the January 28, 2005 teleconference regarding the *Ross* case, you stated:

I toured [Northern] with an eye toward trying to grasp what its effect would be on the individual inmates. And I found it to be a very striking experience, one that I remember vividly years later. There is abundant literature ... not half of which, but a fair amount of which I have read, and that gives great weight to the notion that a person who is in that setting can lose his ability to make a knowing, intelligent and voluntary choice.

- a) Given that *all* inmates facing execution are housed on death row, and given that death row facilities around the country are substantially similar, can any death row inmate competently decide to abandon an appeal of a death sentence?

Response: Yes.

- b) What factors could justify a finding that a decision to waive appeals is voluntary, in light of your statement in the January 28 teleconference that an inmate suffering from "death row syndrome" could look and sound rational but in fact be "at the end of his rope"?

Response: Under *Rees*, an inmate under a sentence of death is competent to waive legal remedies if "he has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation." 384 U.S. at 314.

- c) Do you believe that inmates suffering from "death row syndrome" are competent to be executed even if forced to exhaust all appeals?

Response: If presented with the issue whether an inmate allegedly suffering from "death row syndrome" who had been forced to exhaust all appeals was competent to be executed, I would apply the standard in *Rees*.

9) In *Doe v. Lee*, 2001 U.S. Dist. LEXIS 7281 (D. Conn. May 17, 2001), you held that Connecticut's "Megan's Law" was unconstitutional, yet in response to Senator Sessions' question 11(a)(i) you stated that you were not uncomfortable generally with the constitutionality of Megan's Law. Please explain your answer to Senator Sessions in greater detail, squaring it with your ruling in *Doe v. Lee*.

Response: There is no doubt in my mind that Megan's Law is constitutional. I have implemented and enforced Megan's Law by sentencing criminal defendants to comply fully with Megan's Law and have had no difficulty doing so. This is not inconsistent with my decision in *Doe v. Lee*. That case involved a challenge to an undifferentiated registry by an individual who claimed he was not dangerous. For reasons explained in my decision, I concluded that applicable precedents of the Supreme Court and Second Circuit entitled the plaintiff to a hearing to prove he was not dangerous. The Court of Appeals agreed. The Supreme Court disagreed. I have no difficulty accepting the Supreme Court's decision.

10) In his March 5, 2010 letter to the Chairman and Ranking Member of the Senate Judiciary Committee, Connecticut State Attorney Michael O'Hare described a January 26, 2005 teleconference concerning Dan Ross's §1983 complaint on behalf of his son in which you "[R]econfigured the plaintiff's claim from one based on equal protection to one based on due process" before granting a temporary restraining order blocking Michael Ross's execution.

a) Please explain your switch from hearing a claim under Equal Protection Clause to granting a motion under a Due Process claim?

Response: The complaint alleged a deprivation of the plaintiff's relationship with his son in violation of the Fourteenth Amendment. I construed the complaint as alleging a due process claim. Plaintiff's counsel confirmed that the complaint was intended to assert a due process claim as well as an equal protection claim.

b) Was your shift in the characterization of the claim at the request of Mr. Ross' father or his attorney? If not, what motivated you?

Response: In accordance with legal requirements, I construed the allegations of the complaint in a manner most favorable to the plaintiff. Construed in this manner, I believed the allegations supported a due process claim.

c) To what Constitutional doctrine did you look to establish the cited "constitutionally protected bond with [a] son"?

Response: I looked to the doctrine that extends due process protection to the liberty interest in the parent-child relationship and applied that to the relationship between Mr. Ross and his son.

**Responses of Robert N. Chatigny
Nominee to be U.S. Circuit Judge for the Second Circuit
to the Supplemental Written Questions of Senator Jeff Sessions**

1. **In Question 10(a), I asked you whether you still believed as you did in 2005 that “death row syndrome” is a well-recognized phenomenon. You did not answer, stating, “I do not know how this ‘syndrome’ is currently viewed.” Please provide an answer to this question.**

Response: In the years since the Ross litigation, I have not had occasion to revisit the topic of “death row syndrome” and, as a result, I previously answered that “I do not know how this ‘syndrome’ is currently viewed.” To my knowledge, although “death row syndrome” has been recognized by courts outside the United States, no court in the United States has recognized it. Nor has it been recognized by the American Psychiatric Association or listed in the Diagnostic and Statistical Manual of Mental Disorders. Accordingly, it appears to me that “death row syndrome,” although recognized by courts outside the United States, is not a well-recognized phenomenon in the United States.

2. **In response to Senator Cornyn and Senator Coburn’s questions, you cite the *Soering* case as part of the literature you were referencing in the Ross teleconference when you said, “a fair amount of literature which I have read . . . gives great weight to the notion that a person who is in that setting can lose his ability to make a knowing, intelligent, and voluntary choice.”**

- a. **Do you believe that American judges should consider foreign law regarding the death penalty in deciding whether to impose the death penalty in an American court?**

Response: No. In deciding whether to impose the death penalty in a given case, an American judge must apply the governing law of the particular forum. Foreign law should not affect the decision.

- b. **In the *Soering* case, the U.K. refused extradition of German national Jens Soering to Virginia for trial after a grand jury indicted him for capital murder. The European Court of Human Rights determined the U.K. was required to refuse extradition based on the “death row phenomenon,” which is defined as cruel and unusual punishment due to “exceptional delay in the carrying out of the death sentence.”**

- i. **Do you believe “death row phenomenon” is a valid concern?**

Response: I am not aware of any legal authority to support the proposition that delay in carrying out a death sentence renders the sentence unconstitutional under the Eighth Amendment.

- ii. **Do you believe delay in carrying out the death penalty, even if the delay is based on numerous appeals on the part of the defendant, amounts to cruel and unusual punishment?**

Response: I know of no legal authority for the proposition that delay in carrying out a death sentence arising from a defendant's appeals amounts to cruel and unusual punishment under the Eighth Amendment.

- iii. **Do you believe prolonged detention on death row, even if the prolonged detention is based on the defendant's numerous appeals, could render an individual mentally incompetent?**

Response: I am not aware of any legal authority for the proposition that prolonged detention on death row renders an individual mentally incompetent. If a future case came before me raising this issue, I would want the benefit of a full adversarial presentation of views focused on the facts and circumstances presented by the case and would faithfully follow applicable Supreme Court and Second Circuit precedent.

- iv. **Did you believe that this phenomenon was present in the *Ross* case?**

Response: I believed that under *Rees v. Payton*, 384 U.S. 312 (1966), the evidence proffered by the Office of the Chief Public Defender was sufficient to require a hearing on the claim that Ross was incompetent to waive challenges to his death sentence due to severe mental illness exacerbated by the conditions of his confinement.

3. **At your hearing, Senator Cornyn asked: "How does your empathy for defendants influence your handling of criminal proceedings and sentencing?" You responded: "Empathy does not influence my sentencing decisions." How does empathy for defendants influence your handling of criminal proceedings?**

Response: Empathy influences me to do my best to give all persons who come before the court a full and fair hearing, including criminal defendants.

4. **In your speech at the inaugural meeting of the American Constitution Society at the University of Connecticut School of Law, you said "[e]mpathy for individuals involved in a case inevitability comes into play, as it should." At your hearing, you testified that your "empathy" remark "refer[red] to not just the defendant, but also the victims, as well as witnesses." In response to one of Senator Grassley's questions for the record, you stated: "When I used the term 'empathy' in my speech, I meant respectful attention to, and careful consideration of, the legitimate interests of all concerned." Please explain the inconsistency between the above statements and your answer to Senator Cornyn's question (referenced in question 3 above).**

Response: I do not believe there is an inconsistency. As a district judge, I am required to impose a sentence that is sufficient but not greater than necessary. In making this individualized determination, I try to understand the positions of all concerned. This is where empathy, as I use the term, enters into the sentencing process. But empathy does not determine the sentence. Rather, once I have gained an understanding of the positions

of all concerned, I determine the sentence that should be imposed by applying the law to the facts of the case.

May 21, 2010

The Honorable Tom Coburn, M.D.
United States Senator
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Coburn,

I am writing in response to your letter of May 19. I have carefully reviewed the questions in your letter and will do my best to be as responsive as possible within the limits that apply to me as a sitting district judge and circuit nominee.

Question 1

In your letter, you ask for a more thorough response to question 1 of your original set of written questions, concerning the principles of constitutional interpretation I would look to in analyzing whether a statute infringes upon an individual right. More specifically, you ask me to describe the precedents I would consider, the principles they embody, and how these principles would inform my analysis.

Response:

In any given case, I would start with the text of both the constitutional provision guaranteeing the individual right and the text of the statute at issue. Next I would look to precedent dealing with the individual right and the statute. In particular, I would look for authority regarding the applicable standard of judicial review, the nature and weight of the interest advanced by the statute and any limits on the scope of the individual right. In the absence of such authority, I would look to authority regarding analogous rights and statutes. After identifying the nature and weight of the interest advanced by the statute and the scope of the individual right, I would apply the appropriate standard of judicial review to determine whether the statute comports with applicable law. Though I cannot say with specificity what principles these hypothetical precedents would embody, I trust that they would comport with the judiciary's obligation to afford adequate protection to individual rights while respecting the responsibilities and prerogatives of other branches of government.

Question 3

a. In your letter, you ask for an explanation of why I believe I should refrain from expressing a view on whether the right to bear arms is a fundamental right.

Response:

I do not believe it would be appropriate for me to express a view on whether the right to bear arms is a fundamental right because the issue is currently pending before the Supreme Court in *McDonald*. Depending on how the Court decides the case, any view I express now could be construed as a comment on the correctness of the Court's decision.

b. You also ask whether I believe the right to bear arms is a right "expressly granted in the Constitution and deeply rooted in our history and legal tradition."

Response:

This question is before the Court in *McDonald*. Accordingly, I do not believe it would be appropriate for me to express an opinion.

Question 3(a)

In your letter, you ask a series of questions regarding fundamental constitutional rights.

Response:

Understanding your questions to refer to "explicitly guaranteed substantive rights," as stated in your original question 3(a), the Supreme Court has ruled explicitly or by clear implication that almost all the individual rights guaranteed by the Bill of Rights are fundamental and therefore enforceable against the States. These include the provisions of the First, Fourth, Sixth and Eighth Amendments and most provisions of the Fifth Amendment. See *Duncan v. Louisiana*, 391 U.S. 145, 147-50 (1968). The Court has indicated that certain aspects of the rights guaranteed by the Bill of Rights are not fundamental: the right to indictment by a grand jury, see *Hurtado v. California*, 110 U.S. 516 (1884); the right to a unanimous jury verdict in a criminal case, see *Johnson v. Louisiana*, 406 U.S. 356 (1972); and the right to jury trial in a civil case, see *Minneapolis v. St. Louis R. Co. v. Bombolis*, 241 U.S. 211 (1916). The Third Amendment prohibition on quartering soldiers in private houses

has not been the subject of litigation in the Supreme Court that would determine whether it is fundamental. If called on to decide this issue, I would follow the Second Circuit's decision in *Engblom v. Carey*, 677 F.2d 957 (2d Cir. 1982), which holds that the Third Amendment guarantee is a fundamental aspect of the right of privacy. This leaves the Second Amendment guarantee of the right to bear arms. Whether this right is fundamental is an issue before the Supreme Court in *McDonald*.

Question 3(d)

1. You ask whether I believe a fair reading of the plain text of the Second Amendment could result in a holding that there is no constitutional right to own guns.

Response:

In its opinion in *Heller*, the Supreme Court engages in a detailed textual analysis of the "operative clause" of the Second Amendment. See 128 S. Ct. at 2790-97. The Court then states, "[p]utting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation." *Id.* at 2797. Continuing, the Court states: "This meaning is strongly confirmed by the historical background of the Second Amendment," which "codified a pre-existing right." *Id.* I will faithfully apply *Heller* in cases that come before me.

2. You ask whether I believe there is a fundamental right to self-defense.

Response:

Heller makes it clear that the Second Amendment protects an individual right to keep and bear arms for self-defense. Observing that "the inherent right of self-defense has been central to the Second Amendment right," the Court struck down the District of Columbia's ban on handguns because "it amount[ed] to a prohibition of an entire class of 'arms' that is overwhelmingly chosen by the American society for that lawful purpose." 128 S. Ct. at 2817. I will faithfully apply *Heller* in cases that come before me.

Questions 4, 4a, 4b, 4c

In your letter, you ask me to familiarize myself with Judge Reinhardt's opinions in *Newdow v. Rio Linda School District*, 597 F.3d 1007, 1042 (9th Cir. 2010), *Silveira v. Lockyer*, 312 F.3d

1052 (9th Cir. 2002) and *Planned Parenthood Federation of America, Inc. v. Gonzales*, 435 F.3d 1163 (9th Cir. 2006), and Judge Woods' opinion in *National Organization for Women, Inc. v. Scheidler*, 267 F.3d 687 (7th Cir. 2001). You also ask me to state whether I believe these judges avoided injecting their own policy preferences into their opinions.

Response:

I have reviewed the opinions as requested. Having done so, I accept each opinion at face value as a complete expression of the basis for the judge's decision.

Question 10

With regard to the sentencing in the case of *United States v. Salmon*, you point out that 18 U.S.C. § 3553(b)(2)(A)(ii) limits downward departures in child pornography cases to mitigating factors that have been "affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines." You ask whether the considerations I noted regarding the impact of the case on the defendant constituted such mitigating factors and, if not, you ask me to explain why they were relevant. You also ask whether I sympathized or empathized with the defendant.

Response:

The defendant in *United States v. Salmon* was sentenced in December 1997. At that time, § 3553 did not limit the availability of downward departures in cases involving child pornography. The limiting provision now found in the statute, § 3553(b)(2)(A)(ii), was added in April 2003. See PROTECT ACT, Pub. L. No. 108-21, Title IV, § 401(a), 117 Stat. 650, 667 (2003). Moreover, the downward departure in *United States v. Salmon* was based on diminished capacity, a mitigating factor specifically identified as a permissible basis for a downward departure in U.S.S.G. § 5K2.13. The impact of the case on the defendant was relevant to the statutory criteria that the sentence be sufficient but not greater than necessary to punish the defendant, deter him from offending again and provide him with needed treatment in the most effective manner. See 18 U.S.C. § 3553(a)(2). I did not sympathize or empathize with the defendant. The sentence he received (9 months' imprisonment followed by 6 months' home confinement with electronic monitoring) was higher than the one recommended by the Probation Office (5 months' imprisonment followed by 5 months' home confinement with electronic monitoring).

Question 17(b)

In your letter, you ask for an explanation of why I believe it is not appropriate for me to comment on the correctness of the Court's reasoning in *Atkins*. You also ask me to comment on what constitutes objective evidence of consensus, whether legislative acts of 47% of the country constitute objective evidence of consensus, the analysis I would perform in a case of first impression to determine whether there was a national consensus and what factors I would find persuasive.

Response:

As a district judge, I have a duty to faithfully apply *Atkins* in all cases that come before me. If I am confirmed, I will have a duty to faithfully apply *Atkins* in all cases that come before as an appellate judge. I do not believe it would be appropriate for me to comment on the correctness of a decision that I am duty-bound to follow. If I were to comment on the reasoning underlying binding precedents of the Supreme Court it could create an appearance that I believe some decisions are more or less worthy of respect than others and that I would not faithfully apply all Supreme Court precedents notwithstanding my duty to do so.

My approach to determining whether there is objective evidence of consensus would be governed by the Supreme Court's precedents, which instruct lower courts to consider "legislative enactments and state practice." *Graham v. Florida*, 2010 WL 1946731, at *9 (May 17, 2010) (citing *Roper v. Simmons*, 543 U.S. 551, 572 (2005)). Accordingly, in a case of first impression, I would consider whether legislative enactments and state practices demonstrated the existence of a national consensus. The number of states in agreement on the issue would be an important factor. Legislative enactments of fewer than half the States, standing alone, would be insufficient to establish the existence of a national consensus. I cannot speculate about other factors I would find persuasive or comment on the weight I would give them because I do not want to appear to be commenting on the correctness of the decision in *Atkins* or prejudging an issue that could come before me.

Questions 17(c), 17(d) and 18

You ask me to comment on whether I believe Justice Stevens avoided injecting the policy preferences of the Court into the opinion in *Atkins*, whether I believe it was appropriate for the Court in *Atkins* to consider the opinion of the "world community"

when interpreting the Eighth Amendment and whether I agree with Justice Kennedy's analysis in *Roper*.

Response:

As explained above, I have a duty to faithfully apply Supreme Court precedents in cases that come before me and, accordingly, I must respectfully decline to comment on the correctness of these decisions.

Question 19

a. You ask whether Dr. Stuart Grassian, the author of the article on the effects of solitary confinement on inmates, is the same Dr. Stuart Grassian who was involved in the Ross case.

Response:

Yes.

b. You ask whether this is the same Dr. Grassian whose cross-examination I cut off to issue my ruling.

Response:

It is the same person. I did not cut off the cross-examination to issue a ruling. The cross-examination was interrupted for a mid-day recess. Following the recess, before the cross-examination resumed, I stated that I thought we needed to clarify the procedural posture of the case, which was important because of the tight time constraints under which we were proceeding. I pointed out that the State's motion for summary dismissal had been denied and stated that a stay of the execution pending further proceedings appeared to be inevitable. Based on subsequent comments by counsel for the State, I understood that the State did not want to conduct further cross-examination. There was no objection that I had cut off the cross-examination nor any request for an opportunity to conduct further cross-examination.

c. You ask whether I informed the attorneys in the Ross litigation that I had read Dr. Grassian's writings prior to the Ross matter.

Response:

I told the attorneys that I had read a number of articles. I did not tell them I had read Dr. Grassian's article.

d. You refer to a statement in a law review article about Pelican Bay State Prison in California and ask whether I agree with the author of the article that psychiatric risks violate the Eighth Amendment.

Response:

If such a case were to come before me, I would follow the Supreme Court's precedents under the Eighth Amendment. The Eighth Amendment's protection against cruel and unusual punishment applies to prison conditions. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). Under the Eighth Amendment, a state must not deprive prisoners of "basic human needs - e.g., food, clothing, shelter, medical care, and reasonable safety." *Helling v. McKinney*, 509 U.S. 25, 32 (1993). To prove an Eighth Amendment violation, a prisoner must prove both an objective element - that a deprivation is "sufficiently serious" - and a subjective element - that the defendant acted with "deliberate indifference to inmate health and safety." *Farmer*, 511 U.S. at 834. A prison official acts with deliberate indifference if he "knows of and disregards an excessive risk to inmate health and safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer*, 511 U.S. at 837. This culpable state of mind is equivalent to criminal recklessness. *Id.* at 839-40.

e. You ask whether I believe that psychiatric risks could ever lead the Supreme Court to rule that conditions of confinement violate the Eighth Amendment.

Response:

I do not believe it would appropriate for me to speculate about what the Supreme Court would do if it were presented with this issue. Moreover, because the issue may be presented to me in a future case, I do not believe it would be appropriate for me to comment.

f. You ask whether I agree with the following analysis: "The Eighth Amendment simply does not guarantee that inmates will not suffer some psychological effects from incarceration or segregation. However, if the particular conditions of confinement cause a serious mental illness, greatly exacerbate mental illness or deprive inmates of their sanity, then prison officials have deprived inmates of a basic necessity of human existence - indeed, they have crossed into the realm of psychological torture."

Response:

In accordance with the Eighth Amendment principles set forth above, I believe the Constitution protects against deliberate indifference by prison officials to conditions of confinement that cause serious harm to the health of inmates.

g. You ask whether I believe that Ross's treatment crossed into the realm of psychological torture.

Response:

No.

h. You ask why I read the article about the *Soering* case.

Response:

I read the article in connection with a case brought by an inmate challenging the conditions of his confinement.

I. You ask what weight I believe judges should give law review articles when considering matters before them.

Response:

Law review articles should be given no weight as precedential authority.

j. You ask whether I agree with the author of the article that the reaction to the *Soering* case was an "overreaction."

Response:

I am not familiar with the United States Government's response to the *Soering* case and therefore cannot comment on whether it was an overreaction.

k. You ask whether I agree with the author of the article that the "*Soering* understanding" to the Torture Convention was "petulant and useless" and "establishe[d] precedents that will become major obstacles to effective participation by the United States in other human rights treaty regimes."

Response:

No, I do not agree. The "*Soering* understanding" was appropriate under the law of the United States and consistent

with historical practice. See Restatement (Third) of Foreign Relations Law of the United States § 313 (1987) (“(1) A state may enter a reservation to a multilateral international agreement unless (a) reservations are prohibited by the agreement, (b) the agreement provides that only specified reservations not including the reservation in question may be made, or (c) the reservation is incompatible with the object and purpose of the agreement.”). See also International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976) (the United States ratified the ICCPR in 1992 with five reservations, five understandings and four declarations).

Question 21(d)

You ask whether the prosecutor who cross-examined Dr. Grassian stated that he had additional questions.

Response:

Before the mid-day recess, the attorney said he had more questions. However, his comments after the recess indicated to me that the State was electing to forego further cross-examination of Dr. Grassian at that time.

Question 22

You ask whether I believe the Supreme Court’s decision in *Boumediene* was correctly decided.

Response:

I do not believe it would be appropriate for me to comment on the reasoning of binding Supreme Court precedent.

Question 22(a)

You ask whether there are constitutional distinctions between enemy combatants held at Guantanamo and those held at Bagram.

Response:

I do not believe it would be appropriate for me to offer an opinion on this issue because it may come before me in a future case.

Question 23(a)

You ask whether I agree with the Supreme Court's assessment in *Glucksberg* of the importance of public debate and legislative action.

Response:

I am unable to comment on the correctness of the Court's reasoning.

Question 24 and 24(a)

You ask whether I believe the President has constitutional authority as commander-in-chief to override laws enacted by Congress, immunize from prosecution people under his command, circumvent FISA and bypass the FISA court.

Response:

I do not believe it would be appropriate for me to offer an opinion at this time because these issues may come before me in a future case.

Questions 26, 26(a) and 26(b)

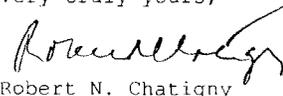
You ask a series of questions concerning preventive detention of noncitizen terrorist suspects.

Response:

In *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), the Supreme Court held that a United States citizen may be detained by the Government as an enemy combatant provided he is given "a meaningful opportunity to contest the factual basis for that detention before a neutral decisionmaker." *Id.* at 509. I will faithfully follow *Hamdi* in cases that come before me. I am unable to comment further on the issues you raise because these issues may come before me in a future case and I do not want to appear to have prejudged them.

Thank you for your consideration.

Very truly yours,



Robert N. Chatigny

Responses of John A. Gibney
Nominee to be United States District Judge for the Eastern District of Virginia
to the Written Questions of Senator Tom Coburn, M.D.

- 1. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No.

- 2. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: In *Gonzales v. Raich*, 545 U.S. 1, 3 (2005), the Supreme Court explained that *Lopez* and *Morrison* are consistent with earlier Commerce Clause decisions.

- 3. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: I have not had occasion to consider the analysis referred to here. Justice Kennedy’s decision in *Roper* is binding precedent that district judges must follow.

- a. How would you determine what the evolving standards of decency are?**

Response: I would follow the applicable precedents of the Supreme Court and the United States Court of Appeals for the Fourth Circuit.

- b. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: No. The Supreme Court has held that the death penalty is a constitutional punishment, so a district judge could not find that capital punishment is unconstitutional in all cases.

c. What factors do you believe would be relevant to the judge's analysis?

Response: The relevant factors are those set forth in controlling precedent of the Supreme Court and the United States Court of Appeals for the Fourth Circuit.

4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No, unless the Supreme Court or Fourth Circuit ever say otherwise.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" to legal problems?

Response: No.

b. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Unless instructed to do so by binding precedent, I would not do so.

c. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No. The customs and mores of other countries play no role in the interpretation of our laws.

d. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, unless the Supreme Court or Fourth Circuit ever instruct otherwise.

**Responses of John A. Gibney
Nominee to be United States District Judge for the Eastern District of Virginia
to the Written Questions of Senator Jeff Sessions**

1. In 2009, you represented Virginia state court Judge Smiley who set aside the death penalty for Daryl Renard Atkins. Before that case reached your client, it went up on appeal to the U.S. Supreme Court (*Atkins v. Virginia*), which held that it was unconstitutional to execute an individual found to be mentally retarded. On remand, a new jury found that the defendant was not mentally retarded and reimposed the death penalty, but the Virginia Supreme Court ordered another hearing on the retardation issue.

At this new hearing, your client, Judge Smiley, changed the sentence to life without parole after finding that prosecutors hid evidence. The prosecution then petitioned the Virginia Supreme Court for a writ of mandamus, arguing that Judge Smiley improperly considered this newly raised claim, and that he should be compelled to conduct proceedings that would allow for the imposition of the death penalty. In Judge Smiley's defense, you argued that he had the power to commute the death sentence and the Virginia Supreme Court agreed with you.

- a. Do you have any personal views on the death penalty?

Response: My personal views on the death penalty would play no role in any decisions made by me if I am confirmed to be a judge. If confirmed, I would follow the applicable statutes and binding judicial precedents.

- b. Do you think that the death penalty is constitutional?

Response: Yes.

- c. If confirmed, will you have any reservations about imposing the death penalty where appropriate?

Response: No.

2. In 2009, you were disqualified as defense counsel from a case pursuant to Virginia State Bar Rule of Professional Conduct 1.7, which provides that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." At that time, you represented multiple defendants who were accused of violating a hospital patient's rights and causing his death. The judge disqualified you from representing all of the defendants after concluding that the conflicts presented "real risks of serious, adverse consequences for the rights of the litigants."¹ Specifically, the judge found that several positions you had taken in the case favored the interest of one client while presenting the prospect of real harm for others.

¹ *Sanford v. Commonwealth*, 2009 WL 4430295, at *11 (E.D. Va. Dec. 2, 2009).

- a. **You said that you thought you could represent all the defendants because they had consented to your representation. In retrospect, do you still believe you could have represented all the defendants without violating the rules of professional conduct? Why or why not?**

Response: After long discussions with the police officers I represented about the facts in the case, I believed that I could represent them without a conflict. The court held otherwise, and I accept that decision.

- b. **In your questionnaire, you stated that if confirmed, you “will recuse [yourself] when necessary to resolve any real or apparent conflict of interest.” Can you assure the Committee that, if confirmed, you will abide by the pertinent rules regarding conflict of interest?**

Response: Yes.

3. **In the questionnaire that you submitted to the Committee, you indicated that only 20 percent of the cases you have handled involved criminal law. Criminal cases account for a substantial portion of the federal district court docket.**

- a. **How has your professional experience prepared you for the position to which you have been nominated?**

Response: I have tried cases for over thirty years, and this experience has prepared me for many issues encountered in criminal proceedings. In addition, although the majority of my cases have been civil, I have handled many criminal cases, dozens of them in federal court. I have a working familiarity with the Federal Rules of Criminal Procedure and with the Federal Sentencing Guidelines.

- b. **If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?**

Response: I plan to make use of the extensive resources provided by the Administrative Office of the United States Courts. In addition, I will continue my practice of reading the advance sheets of the United States Court of Appeals for the Fourth Circuit. As specific issues arise under the guidelines, I will read the text of the guidelines, the commentary, and the relevant precedents.

- i. **Now that the guidelines are advisory rather than mandatory, a judge may impose any sentence ranging from probation to the statutory maximum. What are your views of the guidelines?**

Response: The guidelines are an important tool in assuring that sentences in all federal courts are consistent. Under Fourth Circuit precedent, the guidelines are considered presumptively reasonable and therefore are entitled to great deference.

ii. Do you commit to follow the guidelines?

Response: I commit to adhering to the guidelines as required by binding precedent from the Supreme Court and Fourth Circuit.

iii. Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?

Response: Yes.

4. During the 2008 presidential campaign, President Obama described the types of judges that he will nominate to the federal bench as follows:

“We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”

a. Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit President Obama’s criteria for federal judges, as described in his quote?

Response: Given that President Obama has nominated me, I conclude that I fit his criteria for federal judges.

b. During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?

Response: Yes.

c. What role do you believe empathy should play in a judge’s consideration of a case?

Response: None.

d. Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means?

Response: No.

i. If so, under what circumstances?

Response: None.

- e. **As you know, Justice Stevens recently announced his retirement. The President said that he will select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe judges should base their decisions on a desired outcome, or solely on the law and facts presented?**

Response: Judicial decisions should be based solely on the law and the facts in evidence.

- 5. Please describe with particularity the process by which these questions were answered.**

Response: On May 5, 2010, a copy of the questions was sent to me by email. I drafted answers and discussed my answers with attorneys at the Department of Justice. I made revisions I deemed appropriate and asked the Department to submit them to the Committee on my behalf.

- 6. Do these answers reflect your true and personal views?**

Response: Yes

SUBMISSIONS FOR THE RECORD

April 27, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
152 Dirksen Senate Office Building
United States Senate
Washington, D.C. 20510

Via UPS for next day delivery

Re: Nomination of Judge Robert N. Chatigny

Dear Chairman Leahy and Ranking Member Sessions:

We are former Assistant United States Attorneys who write to express our support of the nomination of Judge Robert N. Chatigny to serve on the United States Court of Appeals for the Second Circuit.

Although the ways in which we have come to know Judge Chatigny are varied, we share a conviction in his integrity and fitness to serve on the Court of Appeals.

As former colleagues of Judge Chatigny and/or as lawyers appearing before him, each of us has found him to be fair, patient and open-minded. In our experience, he is unfailingly respectful of others and their views; he has no axe to grind. His temperament recommends him just as strongly for the Court of Appeals bench as do his superior analytical ability, intellectual rigor and excellent judgment.

We are aware, from public sources, that a lawyer in the Connecticut Chief State's Attorney's Office has written to the Committee, questioning Judge Chatigny's nomination on the basis of a particular case. We have no first-hand knowledge of that matter and therefore cannot comment on it. We are, however, confident that in criminal as well as civil matters Judge Chatigny has proven himself over the course of 15 years on the bench to be unbiased, compassionate and temperate. Several of the authors of this letter have appeared before Judge Chatigny on either the prosecution or the defense side of criminal cases, and have been impressed by his evenhandedness and the courtesy he has shown to litigants, lawyers and victims of crime. We also note that the American Bar Association unanimously found Judge Chatigny to be well qualified, the Association's highest rating.

The Honorable Patrick J. Leahy
The Honorable Jeff Sessions

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April 27, 2010

In sum, we all strongly support the President's nomination of Judge Chatigny to the Second Circuit and are confident that if confirmed by the Senate, Judge Chatigny would be an outstanding member of that Court.

Sincerely,

Ronald S. Apter, D.T.

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The Honorable Patrick J. Leahy
The Honorable Jeff Sessions

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April 27, 2010

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The Honorable Patrick J. Leahy
The Honorable Jeff Sessions

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April 27, 2010

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2nd Circuit Nominee Gets High-Profile Support
Connecticut Law Tribune
Monday, April 26, 2010
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2nd Circuit Nominee Gets High-Profile Support

Chatigny called 'very qualified' in letter from three former U.S. attorneys

By DOUGLAS S. MALAN

There has been no shortage of opinions about Judge Robert N. Chatigny, a Hartford-based federal court judge.

Nominated in February for a seat on the Second Circuit Court of Appeals, Chatigny's "suitability to serve" was called into question last month in a letter from Senior State's Attorney Michael O'Hare to the U.S. Senate Judiciary Committee. O'Hare was critical of Chatigny's participation in the case of Michael Ross, a convicted serial killer who was executed in 2005.

The letter resulted in a delay in Chatigny's confirmation hearing as Republican senators asked for more time to review Chatigny's career. The hearing is now scheduled to take place Wednesday. Last week, three high-ranking supporters of Chatigny came to his defense with their own letter to the Judiciary Committee.

Alan H. Nevas, Kevin J. O'Connor and Stanley A. Twardy Jr., all former U.S. attorneys for the state appointed by Republican presidents, wrote that they are "strong believers" that Chatigny, a Democrat, should be elevated to the 2nd Circuit.

"I want to be clear that this letter was not written because we were told his nomination is in trouble," O'Connor told the Law Tribune last week. "We thought the powers that be could benefit from hearing from others" about Chatigny's legal career, which includes 16 years on the federal bench.

O'Connor is a partner in the Hartford office of Bracewell & Giuliani where he represents companies under government investigation. Before that, he was U.S. associate attorney general from 2008-09.

Nevas, who retired last year as a federal judge in Connecticut, said the pro-Chatigny letter, which is about a page long and dated April 16, "speaks for itself."

The letter was sent to Vermont Sen. Patrick J. Leahy, the Judiciary Committee's chairman, and Alabama Sen. Jeff Sessions, the committee's top Republican.

Twardy, a white collar defense partner in Day Pitney's Stamford office, said of the trio's motivation to write the letter, "We just wanted the members of the Judiciary Committee to appreciate [Chatigny] as a judge and try to move away from any ideological battles or party-line battles that might be brewing."

The co-authors state they have known Chatigny in various capacities as an attorney and judge going back to the early 1980s when Chatigny set up his own law firm in Hartford.

"We have found him to be even-tempered, thorough and without agenda," the letter states. "We believe that he is a fair minded and impartial judge who has the appropriate fitness and temperament for the appellate court."

Recusal Question

That's contrary to what O'Hare claimed in his March letter to the Senate Judiciary Committee leaders. O'Hare said Chatigny committed "judicial misconduct" when he criticized Ross's defense attorney, T.R. Paulding of Manchester, for failing to take steps to delay Ross's execution due to questions about his mental competency.

During a 2005 conference call, Chatigny told Paulding, "I'll have your law license," if Paulding didn't effectively work to prevent Ross's execution, according to a transcript.

In 2006, Chatigny was cleared of any wrongdoing by a panel of the Judicial Council of the 2nd Circuit after state prosecutors, including O'Hare, filed a complaint against the judge. Paulding did not return a call seeking comment for this story.

The co-authors of the letter supporting Chatigny did not comment on the Ross case because they had no involvement. But they stated that an examination of Chatigny's years on the federal bench "shows that he is appropriately sensitive to the facts of the person before him and the rights of victims of the crimes that have been committed."

O'Connor said he sees nothing out of the ordinary about Chatigny's situation, pointing out the importance of thoroughly examining nominees to the circuit courts. And he said he does not believe that Chatigny has been unfairly criticized.

"I certainly don't," O'Connor said. "I don't have any reason to question or criticize the motives of anyone who has criticized him. I think everyone is acting out of a sense of duty."

The American Bar Association's Standing Committee on the Federal Judiciary already has endorsed Chatigny, giving him a rating of "unanimously well qualified" for the 2nd Circuit, which hears appeals from New York, Connecticut and Vermont.

Once a hearing commences, judicial nominees engage in a question-and-answer session with the Judiciary Committee members. Those members also have an opportunity to send written follow-up questions to the nominee.

After all follow-up questions have been answered, the committee decides whether to endorse the nominee to be considered by the entire Senate. If a majority of the Senate votes in favor of the nominee, the president confirms the nomination. •

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September 23, 2005

Michael Zachary
Supervisory Staff Attorney
United States Court of Appeals, Second Circuit
40 Foley Square
New York, NY 10007

Re: Hon. Robert N. Chatigny

Dear Mr. Zachary:

Enclosed, as you requested, is an Affidavit setting forth my knowledge of Judge Chatigny's participation (before he became a judge) in Michael Ross's Connecticut state court appeal from his original convictions and death sentences and attaching documents from my files relevant to such participation. ~~As I have not withheld any relevant documents, I am not submitting a "privilege log."~~

If I can provide any further information, please feel free to contact me.

Very truly yours,


DAVID S. GOLUB

DSG/ds
Enclosure

VIA UPS OVERNIGHT DELIVERY

AFFIDAVIT

DAVID S. GOLUB, being duly sworn, does depose and say:

1. I am a member of the law firm of Silver Golub & Teitell LLP, 184 Atlantic Street, Stamford, CT, and am a member of the Bar of the United States Court of Appeals for the Second Circuit. I am submitting this Affidavit at the request of Michael Zachary, Supervisory Staff Attorney for the United States Court of Appeals for the Second Circuit, to set forth my knowledge concerning the participation of Judge Robert N. Chatigny, prior to his becoming a federal judge, in Michael Ross's Connecticut state court criminal appeal proceedings and to provide any non-privileged documents relevant to such participation.

2. In mid-1992, I was involved in coordinating the submission of *amicus curiae* briefs to the Connecticut Supreme Court in connection with Michael Ross's then pending direct appeal from his (original) convictions and death sentences. I helped arrange the participation of a number of different organizations and individuals as *amici*.

3. More than 24 organizations and individuals expressed an interest in participating as *amici*. I obtained information from the *amici* about their background and interest in participating in the case, as is necessary for inclusion in *amici* applications. I also helped identify the issue(s) to be addressed by these potential *amici*, in some instances suggesting that a number of *amici* with similar or related interests combine to file one brief. I then contacted attorneys in an effort to obtain representation for the organizations and individuals that expressed an interest in *amici* participation. I worked with the attorneys and the *amici* to coordinate the submission of the applications for permission to file an *amicus* brief, providing the participating attorneys with draft applications based on the background information and statement of interest my office had obtained from each of the participating *amici*. I also coordinated the filing of necessary pleadings on behalf of the *amici* (*i.e.*, a joint motion for

extension of time for filing the briefs), and provided technical and substantive support in the preparation of the *amicus* briefs.

4. One of the organizations that expressed an interest in filing an *amicus* brief was the Connecticut Criminal Defense Lawyers Association ("CCDLA"). I spoke with William A. Dow, Esq., the president of the CCDLA in this regard, and Dow wrote me a letter on May 13, 1992 inquiring about my efforts to arrange the filing of an *amicus* brief for the CCDLA.¹

5. I contacted then-Attorney Chatigny in May 1992 and asked him to represent the CCDLA in connection with an *amicus* submission in the Ross appeal. It was (and is) my understanding that he (and his partner, James T. Cowdery, Esq.) had had no prior involvement with Mr. Ross's case. I discussed with Mr. Chatigny the potential issue that the CCDLA brief would address – which involved a challenge to Connecticut's statutory procedures for establishing mitigating factors at a capital sentencing proceeding and, in particular, the constitutionality of the requirement that a capital defendant establish a mitigating factor by a preponderance of the evidence. Mr. Chatigny agreed to represent the CCDLA on the *amicus* application and to research the mitigating factors issue.

6. On May 19, 1992, I forwarded to Mr. Chatigny materials pertaining to the mitigating factors issue, including the portion of the Public Defender's brief raising the issue. As with the other participating attorneys, I (or other attorneys in my firm) subsequently prepared and forwarded Mr. Chatigny a draft of an *amicus* application for filing with the Connecticut Supreme Court containing information about the background of the CCDLA and its interest in filing an *amicus* brief.

¹ To the extent that any attorney-client privilege or requirement of confidentiality exists between the CCDLA and me, the CCDLA has authorized me to disclose the information and documents referred to in this Affidavit.

7. In June 1992, Mr. Chatigny advised me that, based on his research, he did not believe that the case law supported the argument we had discussed, and we agreed that he would do no further work on an *amicus* brief and that no *amicus* brief would be filed on behalf of the CCDLA. No *amicus* brief was ever filed on behalf of the CCDLA. To my knowledge, neither Mr. Chatigny or Mr. Cowdery (or their firm) had any further involvement with Mr. Ross's direct appeal. All of Mr. Chatigny's (and Mr. Cowdery's) communications about the brief were with me, and neither Mr. Chatigny or Mr. Cowdery had any dealings about the brief directly with the CCDLA.

8. At the same time as the CCDLA's and other *amicus* applications were filed, I filed an *amicus* application on behalf of the NAACP Legal Defense Fund ("LDF"). For reasons unrelated to Mr. Chatigny, I did not file an *amicus* brief on behalf of the LDF. Even though Mr. Chatigny and I did not file *amicus* briefs in the case, our names were never removed from the appearance list in the Ross appeal.

9. In July 1992, Mr. Chatigny sent me a copy of a letter he had written to Mr. Ross, evidently responding to an inquiry from Mr. Ross about the status of the CCDLA *amicus* brief. Mr. Chatigny advised Mr. Ross that he was no longer involved in the matter and suggested that Mr. Ross contact me for further information. Mr. Ross did, in fact, write me shortly thereafter, and in early August 1992, I wrote to Mr. Ross explaining my involvement in helping coordinate the *amicus* filings on his appeal and why Mr. Chatigny and other attorneys had referred him to me. In my letter I told Mr. Ross that it was likely no brief would be filed on behalf of the CCDLA or the LDF.

10. The few documents in my file relevant to the specific issue of Judge Chatigny's participation in Mr. Ross's case are attached, as follows:

- a. Exhibit A – May 13, 1992 letter from William Dow to me concerning the submission of an *amicus* brief on behalf of the CCDLA;
- b. Exhibit B – May 19, 1992 facsimile transmission to Mr. Chatigny of materials pertaining to the mitigating factors issue;
- c. Exhibit C – Copy of Mr. Chatigny's July 22, 1992 letter to Mr. Ross;
- d. Exhibit D – Copy of Mr. Ross's August 1, 1992 letter to me.
- e. Exhibit E – Copy of my August 3, 1992 letter to Mr. Ross (from my office computer files).
- f. Exhibit F – Draft covers for each of the potential *amicus* briefs (including the CCDLA *amicus* brief), which my office prepared and distributed to the various attorneys.
- g. Exhibit G – Facsimile transmission records of a joint motion I filed on behalf of all of the *amici* seeking an extension of time for submission of the *amicus* briefs.

While my file contains other materials pertaining to the various *amici* submissions (including transcripts, pleadings and briefs relating to Mr. Ross's case), I do not believe they are relevant to Judge Chatigny's particular involvement in the case.



DAVID S. GOLUB

Subscribed and sworn to before me, this 23rd day of September, 2005.



NOTARY PUBLIC
ATASHA E. GIOIELLI
NOTARY PUBLIC
MY COMMISSION EXPIRES OCT. 31, 2006

CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION

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Richard Emanuel
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William Bless
 James Cowdery
 Richard Reese
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May 13, 1992

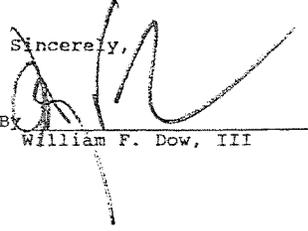
David Golub, Esq.
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 P. O. Box 389
 Stamford, CT 06901

Dear David:

What's the story on the Amicus brief and the death penalty case? Did you ever get that fellow from Zeldes office to pick up the ball? Please let me know.

Sincerely,

Bx


 William F. Dow, III

WFD/lhm

Senator Grassley's Statement on Robert Chatigny, Nominee to the Second Circuit Court of Appeals, April 28, 2010

I apologize to my colleagues, but I have other appointments scheduled this afternoon and may not be able to attend this hearing in its entirety. If I have to leave early, I intend to carefully review the hearing transcript and submit written questions for the record.

I want to express my concerns with Judge Chatigny's nomination, in particular with the nominee's behavior in the *Ross* case – also known as the “Roadside Strangler” case - and the nominee's record of being lenient in criminal cases and frequent downward departures in sentencing. I'm concerned that the nominee's judicial record on the district court indicates he is willing to allow his personal policy preferences to influence his judicial rulings.

In addition, I'm concerned with how the nominee handled the *Ross* case. The Second Circuit panel may have cleared Judge Chatigny of misconduct, but I agree that Senators should consider whether this conduct merits a promotion to the appellate bench. In fact, I've always had concerns about the process by which judges review allegations of judicial misconduct and ethics violations. That's one of the reasons why I introduced a bill, the Judicial Transparency and Ethics Enhancement Act, which would create an Inspector General for the federal judiciary to root out alleged misconduct and waste, fraud and abuse within the judicial branch.

Thank you for allowing me to make these brief comments.

**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
April 28, 2010**

Today we welcome to the Committee Judge Robert Chatigny of Connecticut, a well-respected district court judge for 16 years who has been nominated by President Obama for elevation to fill one of the three current vacancies on the Second Circuit, all of which are judicial emergencies. Judge Chatigny was originally scheduled to appear before this Committee on March 10, but I accommodated a request from the Ranking Member, Senator Sessions, to postpone his hearing.

I was disappointed that in the wake of that accommodation Republican Committee sources unfairly smeared Judge Robert Chatigny in the press. Like the attacks on Professor Goodwin Liu from the moment he was nominated, the attacks against Judge Chatigny came at a time when he was not able to answer them. Today we will get to hear from Judge Chatigny. I hope that all Senators treat Judge Chatigny fairly today and consider his nomination expeditiously.

The other nominee before us today, John A. Gibney, is nominated for a seat on the Eastern District of Virginia. Mr. Gibney is a distinguished lawyer in private practice in Richmond who has also served as Town Attorney for the Town of Ashland, Virginia. He earned degrees from the College of William & Mary and the University of Virginia.

I had tried to include additional nominees on the hearing today, but the Republicans were not prepared to proceed. I look forward to working together with them to schedule confirmation hearings for a full panel of nominees in two weeks. I thank Senator Klobuchar, a former prosecutor and a valued member of this Committee, for chairing the hearing today. I know there is a district court nominee from Minnesota pending before the Committee she would like to see included in our next hearing.

Judge Chatigny and Mr. Gibney each come to the Committee with impressive experience and the strong support of their home state Senators. Judge Chatigny is a long-serving district court judge whose nomination was unanimously rated "well qualified" by the American Bar Association's Standing Committee on the Federal Judiciary, the highest possible rating. Mr. Gibney has been rated unanimously "qualified" for the position to which he was nominated.

Judge Chatigny's nomination has also been endorsed by former high-ranking Federal law enforcement officials from Republican administrations. The efforts by one disgruntled former litigant in Connecticut to derail Judge Chatigny's nomination by sending the Committee incomplete information should not be taken at face value. In fact, Judge Chatigny's challenged conduct was reviewed by the Second Circuit, which ruled in Judge Chatigny's favor. That is one of the aspects of this matter that the complainant failed to acknowledge.

I know Senators today may ask Judge Chatigny about this matter, so we should be clear on the facts. They show that Judge Chatigny acted appropriately in ensuring that the justice system considered all relevant evidence before taking irreversible action to carry out a death penalty.

Michael O'Hare sent the Committee a letter on March 5 containing materials essentially identical to those included in a 2006 ethics complaint filed against Judge Chatigny. The complaint challenged Judge Chatigny's role in ensuring that Michael Ross was competent to waive appeals to his death sentence before he was ultimately executed in 2005. The materials submitted by Mr. O'Hare were one-sided and incomplete, excluding any mention of Judge Chatigny's exoneration by the Second Circuit Judicial Council which reviewed and dismissed the complaint. In his submission to this Committee, Mr. O'Hare also failed to acknowledge the extensive, publicly available Report of the Special Committee convened by the Judicial Council to investigate the allegations, which was comprised of a panel including then-District Court Judge Michael Mukasey, Chief Judge John M. Walker, a President George H.W. Bush appointee, and Judge Pierre N. Leval. That panel reviewed the claims in detail, found no misconduct by Judge Chatigny, and recommended dismissal of the complaint.

The charges in the dismissed ethics complaint against Judge Chatigny focused on a January 2005 teleconference with counsel, which was convened by Judge Chatigny hours before Ross was to be executed, to discuss new evidence raising questions about Ross's competence to waive his appeals. Judge Mukasey and the Special Committee concluded that Judge Chatigny's actions "were not motivated by any bias in favor of Ross or against the death penalty, but only by the judge's reasonable perception that the discharge of his own judicial duty . . . required that he take forceful steps on Ross's behalf." I agree.

Contrary to charges by some that Judge Chatigny exceeded his role by "threatening" or "berating" Mr. Paulding, the Special Committee found: "While the judge used strong language, there was no misconduct. Under the proper circumstances, a judge may deliver a warning that threatens a misbehaving attorney with disciplinary action--a contempt citation by the judge or referral to another disciplinary authority--without necessarily interfering with any legitimate right of the attorney or the attorney's client." In fact, the Committee concluded it was not only reasonable but necessary for Judge Chatigny to act as he did in light of his view of the evidence and the pending execution. They wrote, "[b]ut in the judge's reasonable view, the circumstances thrust on him called for unusual action in discharge of judicial duty to ensure the fair resolution of the important proceeding before him."

Judge Chatigny's actions did not prevent the execution, but they did serve to bolster the public's confidence that the criminal justice system was thorough and fair before imposing the ultimate penalty. The defendant's lawyer, the target of Judge Chatigny's alleged coercion, testified to the Special Committee that he did not feel pressured, but sought a postponement of the execution primarily based on his own view of the materiality of the evidence and his duties as a lawyer to the court and to his client. As a result, after six additional days of adversary evidentiary hearings, the state court concluded that Ross's decision not to seek further appeals was "both competent and voluntary."

Three former U.S. Attorneys for the District of Connecticut, Kevin J. O'Connor, appointed by President George W. Bush in 2002, Alan Nevas, appointed by President Reagan in 1981, and Stanley A. Twardy Jr., appointed by President Reagan in 1985, wrote to the Committee that they

“support, without any reservation, the nomination of Judge Robert Chatigny to the U.S. Court of Appeals for the Second Circuit.” In their April 16 letter, they also write that they “have found him to be even tempered, thorough and without agenda” as well as “a fair minded and impartial judge” whose “record in sentencing federal criminal defendants shows that he is appropriately sensitive to the facts of the person before him and the rights of the victims of the crimes that have been committed.”

In addition, 17 former Federal prosecutors who worked with or appeared before Judge Chatigny have also written to the Committee about their “conviction in his integrity and fitness to serve on the Court of Appeals.” In their April 27 letter, they describe Judge Chatigny as “unfailingly respectful of others and their views . . . [with] no axe to grind” and asserted that, “in criminal as well as civil matters Judge Chatigny has proven himself over the course of 15 years on the bench to be unbiased, compassionate and temperate.”

I welcome the nominees and their families to the Committee today, and I look forward to prompt, and I trust favorable, consideration of their nominations.

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Office of the Chief State's Attorney
300 Corporate Place
Rocky Hill, Connecticut 06067
March 5, 2010

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirkson Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Member, Senate Judiciary Committee
152 Dirkson Senate Office Building
Washington, DC 20510

Re: Nomination of Judge Robert N. Chatigny to the United States Court of
Appeals for the Second Circuit

Dear Chairman Leahy and Ranking Member Sessions:

I am an assistant state's attorney in the Office of the Chief State's Attorney for the State of Connecticut. In 2005, I represented the state in federal habeas corpus proceedings filed by individuals attempting to block the execution of convicted serial killer Michael B. Ross. Judge Robert N. Chatigny presided over the proceedings in the United States District Court for the District of Connecticut. I provide the following information to the committee because I believe that Judge Chatigny's conduct in that case, in other litigation relating to Ross, and in the days leading up to Ross's scheduled execution call into question his suitability to serve on the United States Court of Appeals for the Second Circuit.

On October 6, 2004, Connecticut Superior Court Judge Patrick Clifford issued a death warrant to execute Michael Ross on January 26, 2005 or within five days thereafter. At this hearing, Ross was represented by the counsel of his choice, Attorney T.R. Paulding. Ross represented that it was his desire to forgo all further post-conviction relief and accept his execution. *State v. Ross*, 272 Conn. 577, 579-592 (2005). A series of "next friend" actions were instituted by Ross's former lawyers from the Chief Public Defender's Office and Ross's father, Dan Ross, seeking to block the execution. Each action claimed that Ross was incompetent and thus incapable of forgoing further legal review of his convictions and the death sentences imposed on him. Efforts to interfere based on Ross's competence were rejected by state trial and habeas courts and the state supreme court. The United States Supreme Court denied an application by the Chief Public Defender's Office to file a petition for certiorari on Michael Ross's behalf *in forma pauperis*. Order, *Ross v. Connecticut*, United States Supreme Court Case No. 04M35. A §1983 action was also filed on Ross's behalf in the United States District Court. After canvassing Ross, Judge Christopher F. Droncy dismissed the §1983 action, ruling that the plaintiff lacked standing because Ross was competent. *Ross v. Rell*, Case No. 3:04 CV 2186 (CFD).

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On January 21, 2005, the Chief Public Defender filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 and a request for an emergency stay of execution as “next friend” of Michael Ross. *Ross v. Lantz*, Case No. 3:05 CV 116 (RNC). Chief Judge Robert N. Chatigny heard the case because Judge Droney was sitting by designation in the Second Circuit. The state objected to the stay and moved to dismiss the petition. At the hearing on the state’s motion to dismiss and the petitioner’s request for a stay, Judge Chatigny refused to apply the presumption of correctness to the state court factual findings; *see* 28 U.S.C. § 2254(c); stating that the finding that Ross was competent was “not binding on me. It can’t be.” T. 1/24/05 at 37-38.¹ Judge Chatigny then held his own competency hearing for Ross. After allowing the Chief Public Defender to present the testimony of Dr. Stuart Grassian, a psychiatrist who had never examined Ross; *id.* at 46-74; he issued his ruling before the state had even finished its cross-examination of Grassian. *Id.* at 75-79. Judge Chatigny granted the Chief Public Defender “next friend” status, denied the motion to dismiss and granted a stay of execution. *Id.* at 79-84. Judge Chatigny made these rulings without ever questioning Ross himself, as Judge Droney had done.

After issuing his ruling, Judge Chatigny invited State’s Attorney Kevin Kane, who was questioning Dr. Grassian for the state, to continue his cross-examination. T. 1/24/05 at 87. Attorney Kane expressed doubt about the utility of further cross-examination given the fact that the court had already ruled. *Id.* In response, Judge Chatigny stated that:

I may have ... couched my statement in terms that allowed some room for me to come to a different conclusion after hearing more this afternoon, but I am quite satisfied that whatever characterization one might make of the written proffer, whether it’s meaningful or not, having listened to the witness, there’s no doubt in my mind that we have a genuine issue here that needs to be fully explored.

Id. at 87. Judge Chatigny then informed Attorney Kane that if he wanted to “recognize the reality of that and accept that, then we can simply talk about how best to proceed.” *Id.* at 88. Attorney Kane concluded that, under the circumstances, further cross-examination of the witness would be pointless, and declined Judge Chatigny’s invitation to continue. *Id.* At that point, I informed Judge Chatigny that the state intended to seek review of his ruling in the Second Circuit and, if necessary, in the United States Supreme Court. *Id.* at 91-92. The hearing then concluded. *Id.* at 92. On January 25, the Second Circuit reversed the granting of “next friend” status but affirmed the stay of execution. *Ross ex rel. Smyth v. Lantz*, 396 F.3d 512, 514 (2nd Cir. 2005).

On January 25, Michael Ross’s father, Dan Ross, filed a §1983 action against Governor Jodi Rell and other state officials seeking a temporary restraining order and an injunction against Ross’s execution. *Ross v. Rell*, Case No. 3:05 CV 130 (RNC). In the complaint, Mr. Ross alleged that his right to equal protection of the law would be violated by the execution of his son. T. 1/26/05 at 5. In a telephone conference on Mr. Ross’s § 1983 action, before counsel for either party had even

¹ References to the transcripts of the proceedings before Judge Chatigny are denoted by T. followed by the date on which the transcribed proceedings took place.

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addressed the issue, Judge Chatigny expressed skepticism regarding the merits of the equal protection claim. *Id.* at 5-6. He indicated, however, that he believed Mr. Ross would have a viable due process claim. Judge Chatigny stated that:

It seems to me that under the due process clause, Mr. Ross can plausibly claim a liberty interest in his relationship with his son, one that is obviously threatened with extinction by the proposed execution of the son.

Id. at 6-7. Judge Chatigny then stated that, as a result of his determination in the habeas litigation that there was meaningful evidence of Ross's incompetency; *Id.* at 6; it seemed to him that:

[T]here's a procedural due process claim that just jumps right off the page. So that's where I'm coming from.

Id. at 8. Judge Chatigny continued, stating that:

[H]aving laid it out for you that way, I will tell you that I am very much inclined to issue the requested restraining order. In fact, unless you can give me a good explanation why I shouldn't, I going to do it.

Id.

Then, after reconfiguring the plaintiff's claim from one based on equal protection to one based on due process, and expressing his strong inclination to grant the restraining order requested by the plaintiff, Judge Chatigny offered counsel for the plaintiff and the state "an opportunity to comment." T. 1/26/05 at 8. Before doing so, however, Judge Chatigny stated that:

I don't want to foreclose anybody from making whatever arguments that they feel obligated to make. But I do want to say that to my mind in the face of a judicial determination that there is sufficient cause to doubt this person's competency, for people to prevent a full and fair hearing on that issue raises serious questions under the due process clause, questions that become more conspicuous the harder people fight to prevent the hearing from being held.

Id. at 8-9.

At that point, Attorney Antonio Ponvert, counsel for the plaintiff, stated that:

I think Your Honor has articulated that claim as correctly and succinctly as it could be, *and I can't obviously quibble with anything that you've said in support of it*, and I agree wholeheartedly with the comments that you've made.

(Emphasis added.) T. 1/26/05 at 11.

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When finally given an opportunity to speak, Assistant Attorney General Terrence O'Neill stated that:

I have to admit up front that speaking for the defendants, we're at a significant loss to understand or begin to appreciate that there is a due process claim in this case. We certainly don't read the complaint that way.

More critically, we're not aware of any case law that would support such a claim in this context.

T. 1/26/05 at 13. Attorney O'Neill continued, stating that:

I do have to assert strongly that the state certainly does not read the complaint in the way that the court did. And in all candor, I'm not sure that the plaintiffs would concede that they pled it that way.

Id. In spite of the state's strong objections, Judge Chatigny granted a temporary restraining order requested by the plaintiff. *Id.* at 20. Judge Chatigny indicated that his restraining order in the § 1983 action protected Mr. Ross, the plaintiff in that case, in the event that the United State Supreme Court "does vacate my stay [in the habeas corpus case]." *Id.* at 22-23.

At approximately 5:00 p.m. on January 27, the United States Supreme Court vacated the stay in the habeas proceeding. *Lantz v. Ross*, 543 U.S. 1134 (2005). Shortly thereafter, Judge Chatigny asked counsel for the parties in both the habeas case and the §1983 action to participate in a teleconference. Judge Chatigny did not ask Michael Ross's attorney, T.R. Paulding, to participate. During the teleconference, Judge Chatigny referred to a letter that he had received from Connecticut inmate Ramon Lopez. In the letter, Lopez accused two state mental health professionals of being "sociopaths in disguise" and of brainwashing Ross. The letter, which was not part of the record, had been received in chambers before the Supreme Court had vacated the stay. *See Lopez letter, attached.* Judge Chatigny urged counsel for the state to seek a stay of the execution to enable them to investigate the allegations in Lopez's letter. T. 1/27/05 at 3-8.

On the afternoon of January 28, the Second Circuit vacated the temporary restraining order in the §1983 action with a modification staying the execution, now scheduled for 2:00 a.m. on January 29, until January 31, the last day the death warrant was valid. *Ross v. Rell*, 398 F.3d 203, 205 (2nd Cir. 2005). When it became likely that the Supreme Court would vacate the Second Circuit's temporary stay and the execution could proceed on January 29, the parties seeking to halt the execution stated that they contemplated no further legal challenges. *See Articles, attached.* Judge Chatigny then called for another teleconference.

At 3:00 p.m. on January 28, Judge Chatigny convened a teleconference with counsel for the parties in both the habeas proceeding and the §1983 action. There were no motions pending before Judge Chatigny and decisions by higher courts had eliminated his ability to rule further in either

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case. Although Michael Ross was not a party to either proceeding, Judge Chatigny asked T.R. Paulding, Ross's attorney, to participate. When the conference began, Judge Chatigny said "Mr. Paulding ... I want to speak with you, as Mr. Ross's counsel." T. 1/28/05 at 5. Judge Chatigny recapped his understanding of Paulding's role as Ross's counsel. Judge Chatigny then told Paulding that if Ross were executed "you will have been a substantial factor in bringing it about." *Id.* at 5. After Paulding told Judge Chatigny that he disagreed with the import of the Lopez letter and had spoken to Michael Ross about it, Judge Chatigny asked Paulding if he had spoken to Lopez. *Id.* at 6. Paulding stated that he was not obligated to speak to Lopez. *Id.* at 6-7. Judge Chatigny then detailed what he would do if he were representing Michael Ross and "facilitating the execution of his client..." *Id.* at 7. He would speak to Lopez and speak to Dr. Michael Norko, the psychiatrist who had examined Ross for the state trial court and had found him to be competent. *Id.* at 7-8.

Attorney Paulding also advised Judge Chatigny that he had a difference of opinion with him regarding whether the conditions of confinement at Northern Correctional Institute created despair in Ross. *Id.* at 8-9. Paulding discussed Ross's history of confinement in the Connecticut prisons, and his understanding that for many years the death row inmates, especially Ross, were not subject to highly restrictive conditions. *Id.* at 11-12. With respect to whether those conditions could have coerced Ross in particular, Paulding stated that he worked closely with Ross in 1995 and formulated his present opinions based on his historic knowledge and Ross's present affect. *Id.* at 13-14. Paulding reiterated that he had discussed appellate alternatives with Ross, that Ross was aware of them and did not wish to pursue them. *Id.* at 14. Judge Chatigny then interrupted Paulding and said:

I feel strongly that you're way out on a limb, and I want to be sure that I discharge my responsibilities as the chief judge of the court dealing with you as an officer of this court making sure that you don't commit a very grave error.... I believe Mr. Ross is effectively boxed in now. He would be hard-pressed to change his mind. Even if he changed his mind, he would be hard-pressed to admit it. He doesn't want to go back to Northern and be the subject of ridicule for somebody who had backed out at the end.... But my point here is for now, the only hope he has, in my opinion, at this point lies with the people on this conference. You first and foremost.

Id. at 15. Judge Chatigny stated that all of the players in this matter were relying heavily on Paulding to make sure that Ross's decision was intelligent and voluntary. *Id.* at 16. Judge Chatigny stated that he understood that Ross had been transferred to Northern in the spring of 1995 and, based on his outside-the-record knowledge of the conditions at Northern, stated:

I believe that as a result of [Ross's transfer to Northern] ... his life changed very dramatically for the worst [sic], and that was again April of 1995. So we're going back almost ten years.... So he spent the better part of ten years in those conditions. And I toured the place with an eye toward trying to grasp what its effect would be on the individual inmates. And I found it to be a very striking experience, one that I remember vividly years later. There is abundant literature ... not half of which, but a fair amount of which I have read, and that gives great weight to the notion that a

Chairman Leahy and Ranking Member Sessions, March 5, 2010, page 6

person who is in that setting can lose his ability to make a knowing, intelligent and voluntary choice.

Id. at 16-17. Judge Chatigny referred to improprieties that allegedly occurred during his prior tour of Northern. He accused the staff there of altering conditions in the cell of a death row inmate." I believed then and I believe now that the allegation was well-founded." *Id.* at 18-19.

Attorney Hubert Santos, counsel for the Chief Public Defender in the habeas proceeding, interrupted to inform Judge Chatigny that he had taken the affidavit of a retired Deputy Commissioner of Correction who had knowledge of Ross's conditions of confinement and who believed that the conditions were a substantial factor in Ross's decision to forgo further litigation. *Id.* at 19-21. This document, like the Lopez letter, was never part of the record and was not offered during the telephone conference as a reason to stay the execution. Judge Chatigny stated that it "makes my blood pressure climb even higher...." *Id.* at 21. This amounted, he opined, to "more than the critical amount of information" necessary to make a state official act. Judge Chatigny then addressed Paulding directly and said "I'm not going to try to lay that on them anymore. I tried to do that yesterday. *I'm laying it on you now.*" (Emphasis added.) *Id.* at 21-22. However, despite Judge Chatigny's stated concern that the Lopez letter and the affidavit from the retired Correction Department official constituted a sufficient basis to stay the execution, he entered no order based on these documents.

Rather, Judge Chatigny stated that he wished to look at Ross in the best light, and to "bring a fresh eye to it." *Id.* at 22. In that light, and despite the findings of two Connecticut juries and decisions of the Connecticut Supreme Court affirming the conviction and the death sentence, Judge Chatigny stated that:

[Ross] never should have been convicted. Or if convicted, he never should have been sentenced to death because his sexual sadism, which was found by every single person who looked at him, is clearly a mitigating factor....

(Emphasis added.) *Id.* at 22. Judge Chatigny discussed at length his understanding of the circumstances of Ross's murder of a young woman in New York "because he has this affliction, this terrible disease." *Id.* at 22-23. He gave his rendition of Ross's remorse and his desire to kill himself. *Id.* at 22-23. "I suggest to you that Michael Ross may be the least culpable, the least, of the people on death row." (Emphasis added.) *Id.* at 23. After further discussion of Ross's "obsessional bouts with sexual sadism," *Id.* at 23-24, Judge Chatigny stated, "So is he a sick man? Boy, oh, boy. So when he says, I feel that I'm the victim of a miscarriage of justice because they didn't treat it as a mitigating factor, I can well understand where he's coming from." *Id.* at 24.

So I don't know how anybody in your position honestly, Mr. Paulding, I do not know how anybody in your position could be accepting of this responsibility to proceed in the face of this record to be the proximate cause of this man's death. I put it to you, Mr. Paulding, I think you are way out on a limb.

Chairman Leahy and Ranking Member Sessions, March 5, 2010, page 7

(Emphasis added.) *Id.* at 24-25. Judge Chatigny chastised Paulding for what the judge viewed as the poor investigation that Paulding had done, saying that Judge Chatigny had done more work in injury cases than Paulding had done here. *Id.* at 25. Despite the fact that Dr. Grassian, like Judge Chatigny, had never seen Ross, Judge Chatigny endorsed Grassian as a "nationally recognized expert" who said that Ross is trying to kill himself." And you're going to take it upon yourself to say that Grassian's wrong? I know better." *Id.* at 25.

Once again, Judge Chatigny referred to Ross's stated reasons for choosing to forgo further challenges, stating that it made no sense to him in light of "the Callahan litigation." *Id.* at 25-26. "He doesn't have to cause any victim any pain ... That's the situation. Let's be very, very clear. That's the situation." *Id.* at 26-27. Contradicting the judgment of every court and doctor who had ever examined Ross, Judge Chatigny stated that "[h]is explanation makes no sense, no sense." *Id.* at 27. "If I were his lawyer, I'd be in his face telling him that." *Id.* at 27. Challenging Paulding's concept of his professional role, Judge Chatigny stated that Paulding should be calling Ross an "idiot" and telling him that his rationale made no sense. *Id.* at 27. Judge Chatigny stated that:

[I]nstead you seem to be saying, He's perfectly rational ... And you don't know what you're talking about. And you're an officer of this court. And I see this happening and I can't live with it myself, which is why I'm on the phone right now. It's wrong. What you're doing is wrong. ... And I tell you that, Mr. Paulding, because it is true. *What you are doing is terribly, terribly wrong. No matter how well motivated you are, you have a client whose competence is in serious doubt and you don't know what you're talking about.*

(Emphasis added.) *Id.* at 28. Judge Chatigny then threatened Attorney Paulding's livelihood.

So I warn you, Mr. Paulding, between now and whatever happens Sunday night [this was prior to the Supreme Court vacating this Court's temporary stay] you better be prepared to live with yourself for the rest of your life. And you better be prepared to deal with me if in the wake of this an investigation is conducted and it turns out that what Lopez says and what this former program director says is true, because I'll have your law license.

(Emphasis added.) *Id.* at 29.

Judge Chatigny warned Paulding and the State's Attorney that now that the "can of worms" was opened, it was going to get "very messy." *Id.* at 29-30. Paulding asked for time to consider what the judge had said. Judge Chatigny encouraged him to tell Ross what the judge had said, stating that Paulding had a duty to stop the execution. He stated:

I would urge you to say, I think he's right. And I would urge you to say, Michael, *I can bring you in off this limb that we're both out on.* I can bring you in.... In fact, I'm saying that what you're doing is a mistake. You don't have to cause any victims'

Chairman Leahy and Ranking Member Sessions, March 5, 2010, page 8

families any pain.... I cannot be a party to this any more. And in fact, I object. I won't let you do it.... You say, I'm not letting you. I'm standing next to you on the bridge and I'm holding you and I'm preventing you from jumping and I'll take the heat for it.... But I'm not going to stand by here and take it upon myself to watch you go to your death when all of these questions have been raised. I cannot do it as an officer of the court. I cannot do it. That's what I would tell him.

Id. at 31-32. Judge Chatigny also threatened Paulding by suggesting that he have a court reporter present when advising Ross because “*you're going to need it.*” (Emphasis added.) *Id.* at 29. The conference call then concluded. There were no motions before Judge Chatigny when he convened the conference and he entered no orders when it concluded. Thus, there was no controversy before the court that would have enabled him to act in a judicial capacity during the teleconference.

At 10:00 p.m. on January 28, the United States Supreme Court granted the Connecticut Attorney General's motion to vacate the stay; *Rell v. Ross*, 543 U.S. 1134 (2005); and denied Dan Ross's application for stay or temporary restraining order, thus eliminating the last legal impediment to the execution. *Ross v. Rell*, 543 U.S. 1134 (2005). See Logs, attached. At 10:50 p.m. on January 28, hours before the scheduled execution, Kevin Rowe, clerk of the district court, called the execution command center at the Chief State's Attorney's Office and asked for the telephone number of Judge Patrick Clifford, the state trial court judge, for Judge Chatigny. See Logs, attached. At 11:25 p.m., I called Mr. Rowe and informed him that, pursuant to the order of the Chief Justice of the Connecticut Supreme Court, the state's attorney's office could not provide the phone number of any state judge. At 11:30 p.m., Mr. Rowe called again, and inquired whether the state could call Judge Clifford and give him Judge Chatigny's phone number. See Logs, attached. I informed Mr. Rowe that pursuant to the order of the Chief Justice, the state's attorney's office could not contact state judges pertaining to the matter. Based on information and belief, Mr. Rowe also called the Connecticut Supreme Court on behalf of Judge Chatigny.

As a result of Judge Chatigny's tirade – something readily appreciated as threatening and intimidating by those who heard the judge during the January 28 teleconference – he succeeded in stopping the execution through extra-judicial means when he was unable to do so by his legal rulings. He created an immediate conflict of interest between Attorney Paulding and his client. Attorney Paulding had to either do Judge Chatigny's bidding or face being disbarred. Paulding was no longer free to act as Michael Ross's counsel of choice and respect his obviously competent client's desires. Consequently, the state, which was willing to enforce Ross's decision to volunteer, in part, because he had retained competent counsel, was faced with executing Ross when counsel was encumbered by a potentially insoluble conflict. Having no desire to strip Ross of his counsel of choice, the state postponed the execution until Monday, January 31 at 9:00 p.m. to resolve the conflict. Thereafter, Ross and the state moved for an additional stay to resolve the conflict. The Connecticut Supreme Court granted Ross's motion, provided a one-day stay, and the death warrant expired. On February 3, 2005, at a hearing before the Judge Clifford in the state trial court, Ross reiterated that he had wanted the execution to proceed, but agreed to a delay solely to protect Attorney Paulding's career. T. 2/3/05 at 33-36.

Chairman Leahy and Ranking Member Sessions, March 5, 2010, page 9

After further proceedings in state court, Judge Clifford again ruled that Michael Ross was competent. Judge Clifford's ruling was upheld by the Connecticut Supreme Court on May 9, 2005. *State v. Ross*, 273 Conn. 684, 713 (2005). On May 12, 2005, Judge Droney ruled that Ross's sister, Donna Dunham, did not have standing to pursue a legal challenge to Ross's execution as "next friend" and dismissed the federal habeas corpus petition that she filed on behalf of Ross. *Ross v. Lantz*, Case No. 3:05 CV 758 (CFD). That same day, the Second Circuit denied Dunham's motion for a stay; *Ross ex rel. Dunham v. Lantz*, 408 F.3d 121, 124 (2nd Cir. 2005); and the United States Supreme Court denied certiorari. *Ross ex rel. Dunham v. Lantz*, 544 U.S. 1028 (2005). Michael Ross was executed on May 13, 2005.

As a result of Judge Chatigny's conduct while presiding over the habeas corpus case and the § 1983 action, as well as his actions in the days leading up to Ross's first scheduled execution, six other prosecutors from the Chief State's Attorney's Office and I filed a complaint against Judge Chatigny with the Judicial Council of the Second Circuit. See *In re Charges of Judicial Misconduct*, 465 F.3d 532, 535 (2006). After my colleagues and I filed the complaint, Senior Assistant State's Attorney Harry Weller, one of the complainants, received information that Judge Chatigny had participated in Michael Ross's direct appeal from his capital convictions. Attorney Weller reviewed his files and discovered that in 1992, while he was still a practicing attorney in Connecticut, Judge Chatigny had submitted an application for permission to file an *amicus curiae* brief on behalf of the Connecticut Criminal Defense Lawyers Association in Ross's original appeal to the Connecticut Supreme Court. See "Application of the Connecticut Criminal Defense Lawyers Association for Permission to Appear and File a Brief as Amicus Curiae," *State v. Ross*, Connecticut Supreme Court Case Nos. 13224, 13225 and 13226, dated June 4, 1992. Attorney Weller also discovered the Connecticut Supreme Court's order granting Judge Chatigny permission to file an *amicus* brief in the case. "Order," *State v. Ross*, Connecticut Supreme Court Nos. 13224, 13225 and 13226, dated June 18, 1992. In addition, Attorney Weller found copies of numerous orders issued by the Connecticut Supreme Court that were transmitted to Judge Chatigny as a result of his appearance in the case until as late as October 13, 1994. See Connecticut Supreme Court Orders in *State v. Ross*, attached. After discovering these documents, Attorney Weller transmitted these documents to the Second Circuit Judicial Council and amended the complaint by the members of my office to include an allegation that Judge Chatigny had improperly failed to disqualify himself from presiding over the litigation relating to Ross's execution because of his prior participation in the case as required by 28 U.S.C. § 455(b). *In re Charges of Judicial Misconduct*, 465 F.3d at 538.

In a letter dated July 7, 2005 responding to the allegations of misconduct, Judge Chatigny admitted that he had filed the application for permission to file the *amicus* brief in the Connecticut Supreme Court. *In re Charges of Judicial Misconduct*, 465 F.3d at 538. In addition, he admitted that Michael Ross sent him a letter regarding his appearance in the case and that he had sent Ross a letter in response. *Id.* at 538-39. Nevertheless, despite the extensive knowledge of the facts of the case and the firmly held conviction that Ross was wrongfully sentenced to death that were revealed by his comments during the teleconference on January 28, 2005, and his admission that he had corresponded with the most notorious serial killer in Connecticut history, Judge Chatigny maintained that he had simply forgotten his prior participation in the Ross case. *Id.* at 538.

Chairman Leahy and Ranking Member Sessions, March 5, 2010, page 10

Judge Chatigny's actions while presiding over the habeas corpus petition and the §1983 action constituted judicial misconduct for four reasons. First, Judge Chatigny completely abandoned the role of neutral and detached magistrate and instead became an advocate for the position held by the parties who were seeking to stop the execution of Michael Ross. Second, Judge Chatigny's attempt to direct the manner in which Attorney Paulding advised his client constituted blatant interference with Michael Ross's constitutional right to representation by counsel of his choice. Third, after having been reversed by higher courts, Judge Chatigny chose to defy those rulings and effectively overturn them through the use of threats and intimidation. Finally, Judge Chatigny's failure to disqualify himself from a case in which he had participated as an attorney, or at least notify the parties of his prior participation, violated the requirements of 28 U.S.C. § 455(b). These actions certainly call into questions Judge Chatigny's fitness to serve on the United States Court of Appeals for the Second Circuit.

If the committee believes that our testimony would be helpful in evaluating Judge Chatigny's nomination, both Senior Assistant State's Attorney Harry Weller and I would be willing to appear before the committee to provide such testimony. If you would like us to appear, you may contact me by telephone at (860) 258-5881 or (860) 794-1404, or by e-mail at michael.ohare@po.state.ct.us.

Thank you for your time and consideration in this matter.

Very truly yours,

Michael E. O'Hare
Supervisory Assistant State's Attorney
Office of the Chief State's Attorney

ATTACHMENTS

Transcripts:

January 24, 2005 hearing before Judge Chatigny in habeas corpus action

January 26, 2005 teleconference in § 1983 action before Judge Chatigny

January 27, 2005 teleconference with lawyers from both cases and Judge Chatigny

January 28, 2005 teleconference with lawyers from both cases, Ross's lawyer, Attorney T.R. Paulding and Judge Chatigny

February 3, 2005 excerpt of hearing in *State v. Ross* in Connecticut Superior Court.

Exhibits:

Letter from Connecticut inmate Ramon Lopez, dated January 24, 2005

Articles pertaining to litigation relating to the execution of Michael Ross

Contemporaneous logs of communications in Chief State's Attorneys execution command center with District Court and United States Supreme Court on January 28-29, 2005.

Judicial Rulings:

Opinion of the Connecticut Supreme Court in *State v. Ross*, 272 Conn. 577 (2005), dated January 14, 2005

Order of the United States Supreme Court in *Ross v. Connecticut*, United States Supreme Court No. 04M35, dated January 10, 2005

Decision of Judge Christopher F. Droncy, United States District Court, District of Connecticut, in *Ross, etc. v. Rell, et al.*, 3:04 CV 2186 (CFD), dated January 10, 2005

Decision of Judge Robert N. Chatigny, United States District Court, District of Connecticut, in *Ross, etc. v. Lantz, et al.*, 3:05 CV 116 (RNC)

Opinion of the United States Court of Appeals for the Second Circuit in *Ross ex rel Smyth v. Lantz*, 396 F.3d 512 (2nd Cir. 2005), dated January 25, 2005

Order of the United States Supreme Court in *Lantz, et al. v. Ross, etc.*, 543 U.S. 1134 (2005), dated January 27, 2005

Opinion of the United States Court of Appeals for the Second Circuit in *Ross v. Rell, et al.*,
398 F.3d 203 (2nd Cir. 2005), dated January 28, 2005

Orders of the United States Supreme Court in *Rell, et al. v. Ross, etc.*, 543 U.S. 1134 (2005),
and *Ross v. Rell, et al.*, 543 U.S. 1134 (2005), dated January 28, 2005

April 16, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
152 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

We write as former Presidentially Appointed Department of Justice officials in support of the nomination of Judge Robert Chatigny to serve on the U.S. Court of Appeals for the Second Circuit.

Each of us knows Judge Chatigny in different capacities. While in private practice, Judge Chatigny represented clients in matters involving the United States Attorney's Office under the leadership of Judge Nevas. He also appeared before and then served on the bench with Judge Nevas.

While in private practice, Judge Chatigny represented clients in matters involving the United States Attorney's Office under Stanley Twardy. Subsequently, Mr. Twardy has appeared in numerous matters before Judge Chatigny.

Finally, Kevin O'Connor was United States Attorney for more than five years during Judge Chatigny's tenure on the bench and had frequent interactions with Judge Chatigny in his capacity as Chief Judge of the District.

While each of us has dealt with Judge Chatigny under different circumstances, we have found him to be even tempered, thorough and without agenda. We believe that he is a fair minded and impartial judge, who has the appropriate fitness and temperament for the appellate court.

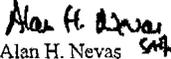
We are aware that a letter has been sent to the Committee from an attorney in the Connecticut Chief States Attorney's Office raising an issue about Judge Chatigny's candidacy. While we are not in a position to comment on the merits of that letter, we believe that a close

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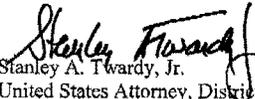
examination of Judge Chatigny's record in sentencing federal criminal defendants shows that he is appropriately sensitive to the facts of the person before him and the rights of victims of the crimes that have been committed. Indeed, it is our understanding that the Government has never filed an appeal from Judge Chatigny's sentencings and that there has only been one defendant who has appealed from an upward departure. We are of the strong opinion that Judge Chatigny's record on the bench makes him an outstanding and very qualified nominee.

In short, we support, without any reservation, the nomination of Judge Robert Chatigny to the U.S. Court of Appeals for the Second Circuit.

Sincerely,


Alan H. Nevas
United States Attorney, District of Connecticut 1981-1985
United States District Judge, District of Connecticut 1985-2009


Kevin J. O'Connor
United States Attorney, District of Connecticut 2002-2008
United States Associate Attorney General, 2008-2009


Stanley A. Twardy, Jr.
United States Attorney, District of Connecticut 1985-1991

71037991.1



ELIZABETH J. STEWART
2 DIRECT TELEPHONE
2 DIRECT FACSIMILE
COM

March 15, 2010

VIA UPS OVERNIGHT MAIL

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirkson Senate Office Building
Washington, DC 20510

MAR 18 '10 PM 12:43

Senator Jeff Sessions
Ranking Member, Senate Judiciary Committee
152 Dirkson Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

We write to provide your Committee with information relevant to the pending nomination to the United States Court of Appeals for the Second Circuit of Judge Robert N. Chatigny of the District of Connecticut. We are the co-chairs of the Federal Practice Section of the Connecticut Bar Association. The Federal Practice Section is an active group of approximately 400 lawyers with a special interest in the Connecticut federal courts, principally the United States District Court, typically because their practice is concentrated in those courts. The Section is a widely diverse group with a common professional focus, and its membership is open to all members of the Connecticut Bar Association. We are the lawyers who best know Connecticut's federal judges, including Judge Chatigny.

We have seen the letter to your Committee dated March 5, 2010, from Assistant State's Attorney Michael E. O'Hare. The claims contained in that letter had previously been circulated over five years ago, in a letter dated February 5, 2005, signed by five Republican members of the Connecticut legislature and addressed to Representative F. James Sensenbrenner, Jr. On February 14, 2005, the then-co-chairs of the Section, Frank J. Silvestri, Jr., and James T. Shearin, wrote a response to that letter to express the views of the Section's leadership at that time, based on the facts, and without any political agenda. We enclose a copy of Mr. Silvestri and Mr. Shearin's letter. We respectfully ask that it be included (together with this letter as well as the original cover letter) in the public record in connection with Judge Chatigny's pending nomination.

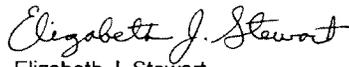
Murtha Cullina LLP | Attorneys at Law

BOSTON HARTFORD MADISON NEW HAVEN STAMFORD WOBURN
Two Whitney Avenue, P.O. Box 704 | New Haven, CT 06503-0704 | Phone 203.772.7700 | Fax 203.772.7723 | www.murthalaw.com

Senator Patrick J. Leahy
Senator Jeff Sessions
March 15, 2010
Page 2

We also enclose a letter written at the time by Jacob D. Zeldes, a senior member of the Section, and published in the Connecticut Law Tribune. We request that this letter be placed in the public record as well.

Sincerely,


Elizabeth J. Stewart


David N. Rosen

Enclosures

PULLMAN & COMLEY, LLC
Attorneys At Law

ELIZABETH J. ANTHONY MICHAEL W. BAKER COLLEEN B. BARNUM DOROTHY E. BUCKLE CHRISTINE E. CAMPBELL, JR. FRANK B. CLARKE JAMES H. POWELL, JR. DOROTHY E. FRY ANDREW C. GILFILLAN LAWRENCE J. GILROY TERRY J. HEDGECOCK NANCY D. O'BRIEN NANCY A. O'HANESKY WILLIAM OFE. MARSHALL STEPHEN A. BISHOP-LANDAU DEBORAH J. KAPFER JAMES J. SANG MICHAEL A. FOLEY NANCY BETHUNE LAUREA MICHAEL M. LOVELL	SCOTT M. LOBATO MATTHEW B. LINDY STEPHEN BALDOROUGH THOMAS B. MANNING, III ANDREW J. MCDONALD ROBERT H. MITCHELL TIMOTHY W. MURPHY A. BRIGIT MURPHY ALAN W. PARKER NANCY V. PULLMAN SILVIO B. PULLACE MICHAEL D. POCOCK LEWIS BARNHART JOHN B. ROBERTSON, JR. MICHAEL E. ROSSIGNOL THOMAS D. SCHEIDT SEYMOUR S. SHAPIRO EDWARD GARY SHAW MARGARET M. PIERAGIAN	JAMES T. SHEARIN IL WILLIAM SELBY JOHN B. SPENTZAKIS, JR. JAMES B. STEINBERG STEPHEN W. FROSTBARGER MARGARET J. TROVATORE JAMES W. VORONOFF WILLIAM J. WENZEL NANCY H. WINTERS NANCY B. WINTERS, JR. BRUCE W. WINTERS MARGARET WELSER KELLY L. ANASTASAKIS MICHAEL J. ANTONIANNI LAUREN A. BELLUCCI ROBERTSON C. CALAPPELLA ADAM S. COHEN JACOB C. DAVIS JOSHUA A. DELOACH	JEROME CLARIBARTH LEE D. FORTMAN MICHAEL S. HARRINGTON DANIEL G. HARTSHORN MEL I. HOFFER GORDON C. HUI, JR. NANCY BETH KAPFER RAVICH WILLIAM E. KOCHE WYNNEF H. KOWALIK ANANDA BALLOO RAMSAY STEPHEN A. RICHMOND JESSICA A. RUPPEN LOUI L. SHAPIRO PETER J. VECIOLA STEVEN B. WINTERCO MICHAEL W. WOLF ALAN J. WOOD *Admitted to practice in New York State and the District of Columbia only
--	--	--	--

Reply to: Bridgeport
Telephone: [REDACTED]
E-Mail: [REDACTED]

February 18, 2005

The Honorable John Larson
United States House of Representatives
1419 Longworth House Office Building
Washington, DC 20515-0701

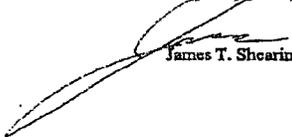
Dear Congressman Larson:

I enclose a copy of a letter that Frank Silvestri and I sent to the Republican Congressional Delegation in response to the letter sent Representative F. James Sensenbrenner by the Connecticut Republican leadership dated February 2, 2005. (The February 2, 2005 letter and accompanying press release are attached for your information.)

While we recognize that the death penalty is obviously a subject on which many people disagree, the issue here is the independence of the federal judiciary – an issue that is fundamental to our Constitution. We thought you would like to know our position.

If you have any comments or questions, please let me know.

Very truly yours,



James T. Shearin

JTS:ljb
Enclosure
cc: Frank Silvestri, Esq.
Fred Ury, President of the Connecticut Bar Association

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LEVETT ROCKWOOD
P.C.
Attorney-at-Law

FRANK J. SILVESTRI, JR.
[REDACTED]

DIRECT DIAL
[REDACTED]

February 14, 2005

Via Facsimile and Regular Mail

Honorable Nancy L. Johnson
2409 Rayburn Bldg.
Washington, D.C. 20515

Honorable Christopher Shays
1126 Longworth Bldg.
Washington, D.C. 20515-0704

Honorable Rob Simmons
215 Cannon House Office Bldg.
Washington, D.C. 20515

Dear Representatives Johnson, Shays and Simmons:

We are co-chairs of the Federal Practice Section of the Connecticut Bar Association. Between us, we have practiced law in the federal courts for almost fifty years. We are writing to you about the important issue of the independence of the federal judiciary, which we believe has been threatened by recent actions of the Republican Leadership of the Connecticut General Assembly. In a letter dated February 2, 2005, to Representative F. James Sensenbrenner, Chairman of the House Judiciary Committee, the General Assembly's Republican Leadership urged that the House Judiciary Committee investigate United States District Judge Robert N. Chatigny, Chief Judge of the United States District Court for the District of Connecticut, and commence proceedings against the Judge that might include his removal from office. We believe that any such action would be dangerously wrong, and we respectfully urge that you, as Connecticut's Republican delegation to the House, support Judge Chatigny in whatever way you can.

33 RIVERSIDE AVENUE
WESTPORT, CONNECTICUT 06880

TEL: (203) 222-0885
FAX: (203) 226-8025

Honorable Nancy L. Johnson
Honorable Christopher Shays
Honorable Rob Simmons

-2-

February 14, 2005

As you are no doubt aware, the incident giving rise to the Leadership's February 2 letter concerns the efforts of the State of Connecticut to execute Michael Ross. The Leadership's criticism of the Judge focuses on two conference telephone calls on January 27 and 28. In making that criticism, the Leadership has simply gotten some key facts wrong.

For one thing, the Leadership criticizes Judge Chatigny for conducting an "ex parte" discussion on January 27, in that Attorney T. R. Paulding, Mr. Ross's attorney, was not a participant in that conference call. The fact, however, is that Mr. Paulding was not an attorney of record for Mr. Ross in either of the cases before Judge Chatigny at the time of either call; he did not become counsel of record in those cases until January 31, when he filed a motion on Mr. Ross's behalf to intervene and to stay the execution. Since Mr. Paulding was not in the case on January 27, the Judge cannot be faulted for not including him in a conference with all of the lawyers who in fact were in the case – a call in which the Judge simply asked the lawyers for the State to carefully consider new evidence that had just been brought to the Judge's attention.

Another factual error that appears to have affected the Leadership's view is the contention that, at the time Judge Chatigny conducted the conference calls, there was no "case or controversy" before him. This claim – offered as an example of the Judge meddling where he had no business doing anything – is simply not true. There were two full-fledged lawsuits active and pending before Judge Chatigny at the time of the calls. Although the stays of execution issued by the Judge had been reversed, the fact that a preliminary stay may be reversed is hardly the same thing as the dismissal of a lawsuit on its merits. Since there were active cases pending before the Judge, and since he had been presented with new evidence relating to those lawsuits, he had ample authority to convene a conference call to discuss the possible impact of that new evidence.

The Leadership's harshest criticism is delivered at what is claimed to be the Judge's "bullying" of Mr. Paulding. While it is certainly true that the transcript reflects the court's serious concern with Mr. Paulding's factual investigation, we submit that this concern was compelled by the unique circumstances of this case. Connecticut lawyers are obligated, under Rule 1.1 of the Rules of Professional Conduct, to "provide competent representation to a client," which in turn "requires the ... thoroughness and preparation necessary for the representation." And judges are obligated under the Code of Judicial Conduct and in the exercise of their inherent authority to ensure that the rights of the litigants before them are not undermined by a poor or inadequate representation. We are not familiar with all of the details of Mr. Paulding's representation of Mr. Ross, and so we cannot say that he was not providing Mr. Ross with "competent representation" under the Rules. What we do know, based on the transcript and the record of the case, is that on January 28 Judge Chatigny had before him significant new evidence questioning Mr. Ross's competence to consent to his own execution, including an affidavit dated January 28 – the same day as the conference call – from a former Deputy Commissioner of

Honorable Nancy L. Johnson
 Honorable Christopher Shays
 Honorable Rob Simmons

-3-

February 14, 2005

Program and Staff Development in the Connecticut Department of Correction, stating that the conditions of Mr. Ross's confinement may have "played a substantial role in Ross's decision to waive his legal remedies and elect to be executed."

If Judge Chatigny had reason to believe that a lawyer appearing before him who had advocated that his client ought to be executed may not have conducted a thorough investigation of his client's mental competence to make a decision to end his life, we would submit to you that the Judge should be praised, not criticized, for addressing the potential consequences of a less than thorough handling of the case. This was a matter of life and death, with no time for subtlety; if the Judge concluded that strong action was required to prevent a lawyer's possible lack of thoroughness from contributing to his own client's execution, he would have failed to honor his oath of office had he sat back and done nothing.

We emphasize again that we are not claiming that Mr. Paulding failed to do an adequate investigation. That is a judgment we do not have sufficient information to make. It is crucial to note, however, that, once Mr. Paulding did conduct an additional investigation, he filed motions on Mr. Ross's behalf to intervene in one of the cases before Judge Chatigny and to stay the execution, based not only on the new evidence that had been before the Judge on January 28, but also on an affidavit dated January 30 obtained by Mr. Paulding from the psychiatrist who had previously testified that Mr. Ross was competent. In that affidavit – the substance of which was of course not known by any of the State court judges who had previously ruled on Mr. Ross's competence – the psychiatrist stated that, had the new evidence been made available to him at the time of his State court testimony, his opinion might have been different.

We do not mean by this letter to belittle in any way the losses of Mr. Ross's victims and their families. His acts were monstrous, and no one should have to suffer the way his victims and their families suffered. We have never been in the families' situations, and cannot begin to comprehend their pain. But the sad fact is that whether Mr. Ross is executed this month or next month or years from now, or whether he lives the rest of his life in a prison cell until he dies of natural causes – nothing will bring his victims back to life. And so before Connecticut has its first execution in over forty years, shouldn't we at least be sure that the State will never have to worry whether the process of putting a man to death might have been flawed by the fact that somebody involved in that process may not have done his job to the utmost of his ability?

We are proud of Judge Chatigny for his handling of this case. Senator Dodd, who recommended that President Clinton appoint Judge Chatigny, should be proud as well. Indeed, all the citizens of Connecticut should be grateful that a judge with such courage and conviction sits as Chief Judge of the United States District Court.

Honorable Nancy L. Johnson
Honorable Christopher Shays
Honorable Rob Simmons

-4-

February 14, 2005

To investigate Judge Chatigny for his act of judicial heroism would be a blow to the crucial independence of all of our judges. We hope you will give thoughtful consideration to this letter, and do whatever you can to stand in support of Judge Chatigny and judicial independence in the face of this unwise and unwarranted threat.

Respectfully,



Frank J. Silvestri, Jr.



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Attacks on Chatigny Are Spurious, Ill-Founded

Jacob D. Zeldes
The Connecticut Law Tribune
07-18-2005

The continual barrage from columnists, politicians and others for Connecticut U.S. District Court Chief Judge Robert N. Chatigny's judicial scalp for the way he handled a phase of the late Michael Ross' case was heightened just about the time the former FBI official W. Mark Felt disclosed his identity as perhaps history's most memorable informer. As Deep Throat, Felt helped the *Washington Post's* young reporters to propel the 1972 Watergate scandal to the top of the news and to the end of a corrupt presidency.

There are some similarities between the circumstances of the Watergate scandal, including controversial actions by a U.S. District Court judge, and the circumstances of the Ross case.

Shorn of excessive verbiage in several *Connecticut Law Tribune* columns and other publications, attacks by elected officials and the apparent formal complaint filed by certain unidentified state prosecutors, the criticism of Chatigny boils down to this: that the judge should not have expressed concern about the lack of a full adversarial hearing on Ross' competency to "volunteer" for his own death sentence and should not have demanded that Ross' lawyer, T.R. Paulding, further investigate his client's competence.

The judge's comments were made in a now famous Jan. 28, 2005, telephone conference call with Paulding and other counsel. According to the judge's critics, during that conference call, Chatigny "crossed the line" by threatening Ross' counsel and supposedly inserting himself as a participant in the case rather than maintaining the role of neutral umpire.

Perhaps the most interesting aspect of this claim is that, although the critics have taken umbrage about the judge's harsh comments, the one individual to whom the judge's supposed threat was directed, Paulding, has never objected. In fact, Paulding himself, during the telephone conference, told Chatigny, "I really think the suggestions you make [about further investigation of Ross' competency] are well taken," even though Paulding persisted in his beliefs that up to that time Ross was competent.

Three days after the controversial telephone conference and after the state's commendable agreement to postpone the execution in the early hours of Jan. 29, Paulding filed a motion in which he pointed to new evidence that placed the state court's prior findings of his

7/18/05 9:06 A

client's competency in question.

But what the press accounts have largely ignored is that there was new evidence identified in Paulding's motion that had been brought to his attention *after* the Jan. 28 telephone conference with Judge Chatigny. In the Jan. 31 motion, Paulding, with his client's consent, requested the state courts to: (1) issue a stay of Ross' execution and (2) reopen the evidentiary hearing on Ross's competency to forego his appeal rights. At an earlier Supreme Court hearing, Paulding had told the court "he would immediately bring to the attention of the court any information of significance that [he] felt was relevant to the issue of defendant's competency."

And that's what happened: over the weekend of Jan. 29-30, Paulding was contacted by the court-appointed psychiatrist who had testified in the earlier state court hearing that Ross was competent to waive his appeals. The doctor for the first time advised Paulding that he'd recently seen information that put in doubt his earlier opinion testimony. It was that opinion testimony, of course, on which the state courts mainly had relied in refusing to halt Ross' execution.

Not surprisingly, Paulding's motion was granted. The trial court then conducted a second hearing. But this time it did so in a truly adversarial manner, with Ross' lawyers and the state claiming Ross was competent to waive his appeal rights and special counsel appointed by the court advocating that Ross was not competent to do so. After the adversarial hearing, Ross was again found competent and received the execution he desired for the crimes he admitted.

Judge Chatigny's critics seem not to recognize that a truly adversarial examination of Ross' competency to voluntarily end his life with the state's aid was necessary and appropriate. In addition, the reopened competency hearing was not brought about, as some have suggested, by an attorney so cowed by a judge's "threat" that he was unable to exercise his own judgment. Instead, the request to reopen the hearing was the expected and unremarkable act of an advocate in possession of, in addition to the judge's comments, new expert evidence that virtually all agreed materially cast doubt on the courts' prior rulings that the state's first execution in 45 years should proceed.

For the end result of Connecticut's justice system, there were nothing but benefits with no downside: There was a full adversarial hearing -- the bulwark of the American judicial system. If Ross were to be found competent (as he was), the execution could proceed with but a few months' delay (as it did). On the other hand, if Ross would have been found incompetent, Connecticut would not have blood on its hands. It would have avoided the execution of someone legally not eligible for the death sentence.

PAST AS PRECEDENT

Against the multitude of challenges to Chatigny's comments, the disclosure of Deep Throat's identity brought back to mind the Watergate scandal and how a "third-rate burglary" -- with unusually strong action by a U.S. District Court Judge -- brought down a corrupt American president. To be sure, Chatigny used blunt language to show the need for further investigation of Ross' competency. But history reminds us that the steps taken by Connecticut-born U.S. District Court Judge John J. Sirica against the convicted Watergate burglars were far more coercive and threatening than Chatigny's words to Paulding, as *Time* magazine wrote in naming Judge Sirica its 1974 Man of the Year.

Sirica, "going beyond normal procedure ... let the convicted men know that the severity of sentences would depend heavily on the degree to which they cooperated with probation officers and investigators still probing the Watergate crimes ... Sirica's not very veiled hints at severe sentences was too much for one of the previously uncommunicative conspirators ... [and cooperation did follow] ... But the most controversial act in his [Sirica's] entire handling of the Watergate affair, ... [was to] keep the pressure on the other convicted

7/27/2011 9:06

conspirators to talk too by giving them harsh provisional sentences ranging up to 40 years."

Michael Ross' quest for death might not be comparable with the monumental separation of powers issues in the Watergate case. But as with Sirica's controversial actions in 1973, what happened after Chatigny's now famous conference call in 2005 also should be seen as a vindication of the legal system.

Both Sirica and Chatigny resorted to admittedly unorthodox methods not appropriate in all situations. A criminal investigation undermined by secret and duplicitous actions of the president of the United States is far from ordinary. A condemned defendant's decision to volunteer for his own execution is not that usual either. After all, the U.S. Supreme Court has told us, time and again, that "death is different."

Recognizing that, in a capital case, the customary avenues for correcting errors may be lost forever means that in the Ross case Paulding had a heightened ethical obligation to believe his client could competently act in his own interest. Judge Chatigny cannot be legitimately faulted for asking, or even demanding, that Paulding reassess his earlier commitment to bring forth any significant new information about his client's competency.

When all the dust settles, hopefully, the 2nd Circuit judges looking into the complaint against Chatigny will recognize the judge's comments for what they were: a strong reminder to an advocate to consider newly found evidence, to reevaluate an earlier position and to request what the state court ultimately agreed was appropriate: testing Ross' competency in light of the new evidence in an adversarial proceeding.

Judge Sirica received about 40,000 letters about his actions in the Watergate case. A prominent congressman is now publicly talking about "breaking judges with the power of the purse." Sirica's reflection on his critics has special meaning in the content of those words: "When the founding fathers wrote in the Constitution that judicial terms shall be, during good behavior for life ... wasn't that a wonderful thing? They gave us freedom to follow our conscience."

Coincidentally, the attacks on Judge Chatigny were in the news as Justice John Paul Stevens told the 7th Circuit Conference he endorsed a request that elected officials temper the tone of debate on judicial independence and to "repudiate gratuitous attacks on the judiciary." It would have been well if the critics of Judge Chatigny heeded this advice.

Jacob D. Zeldes is a principal of Zeldes, Needle & Cooper. His colleague David P. Atkins was counsel to T.R. Paulding.

7/20/2011 9:06 AM

**Remarks of
The Honorable Jim Webb
Senator from Virginia
Before the
Senate Judiciary Committee
On the Nomination of John A. Gibney, Jr.
April 28, 2010**

MR. CHAIRMAN: I am pleased to join my colleague from Virginia, Senator Mark Warner, for the purpose of introducing to this Committee an outstanding attorney from Virginia, John Gibney, whom the President has nominated for a seat on the United States District Court for the Eastern District of Virginia.

At the outset, I want to thank the Committee for scheduling this hearing today. As this Committee is well aware, more than one hundred Article III court vacancies remain. In addition to the existing vacancies, judges will continue to retire and create an even greater number of open seats. It is critically important to the proper functioning of the court, that these vacancies be filled as expeditiously as possible.

Mr. Chairman, I believe President Obama has made an extraordinary choice in nominating John Gibney. As I have met with candidates for federal judicial vacancies in Virginia, I continue to be impressed at the caliber of candidates that the Virginia Bar has to put forward. The pool which Senator Warner and I had to choose from for this Eastern District seat was excellent, and included judges, legal scholars, and skilled trial attorneys.

From this very competitive field, Senator Warner and I recommended Mr. Gibney because of the overwhelming endorsement he received from his peers across the state, and also because of his professional dedication. We recommended him to the President for nomination in June of last year.

Mr. Gibney is not only known as an excellent trial attorney who has tried hundreds of cases, but also as a standout example of professionalism in the practice of law. He has been repeatedly asked to speak at the Virginia State Bar Young Lawyer's Conference professionalism program for new lawyers. He has devoted countless hours towards teaching ethics continuing legal education classes to his fellow members of the bar. Mr. Gibney has devoted his time to serving his community and helping fellow members of the bar throughout his career.

I am proud to say that Mr. Gibney is a product of Virginia's educational institutions. He is a 1973 graduate of the College of William and Mary, and a 1976 graduate of University of Virginia School of Law. His legal career has includes time spent as an Assistant Attorney General of Virginia and as a Law Clerk to the Honorable Harry L. Carrico former Chief Justice and a current Senior Justice of the Supreme Court of Virginia.

I would now invite my colleague, Senator Warner, to offer some comments.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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Michael B. Ross : No. 3:05CV00116(RNC)
By His Next Friend :
Gerard A. Smyth, :
Gerard A. Smyth, Off, :
Chief Public Defender, :
Office of Chief Public Defender, :
Petitioner :

v.

Theresa C. Lantz, Comm, CT DOC, :
Wayne C. Choinski, Warden, :
Northern Correctional Institute :
David N. Strange, Warden, :
Osborn Correctional Institute, :
Respondents : HARTFORD, CONNECTICUT

COPY

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Dan Ross : No. 3:05CV00130 (RNC)
Plaintiff :

v.

M. Jodi Rell, :
Theresa C. Lantz, :
David N. Strange, :
Christopher L. Morano, :
Richard Blumenthal :
Defendants : HARTFORD, CONNECTICUT
JANUARY 28, 2005

----- x

TELEPHONE CONFERENCE

BEFORE:
HON. ROBERT N. CHATIGNY, CHIEF U.S.D.J.

Darlene A. Warner, RDR-CRR
Official Court Reporter

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APPEARANCES:

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3:00 P.M.

THE COURT: Hello. I want to ask you to please identify yourselves so we know who is on the line.

MS. SEELEY: Hope Seeley and Hubert Santos.

MR. CULLIGAN: Patrick Culligan for the Chief Public Defender as well.

MR. PAULDING: T.R. Paulding for Michael Ross.

MR. O'HARE: Michael O'Hare for the Chief State's Attorney's Office.

MR. O'NEILL: Terrence O'Neill for the defendants in the civil matter.

MS. COBB: And Susan Quinn Cobb for the defendants in the civil matter.

MR. NUGENT: Jim Nugent, Your Honor.

MR. PONVERT: Antonio Ponvert is on also, Your Honor.

THE COURT: Okay. I have received a copy of a letter that Mr. Santos has sent by fax today to Mr. Morano and Mr. O'Hare.

Mr. O'Hare, have you received it?

MR. O'HARE: Yes, I have, Your Honor.

THE COURT: All right. Mr. Paulding, you were not a participant in our conference call last night when we spoke about the Lopez letter, but I understand that

1 you've seen the letter?

2 MR. PAULDING: I have, Your Honor. I was faxed
3 a copy and I took a look at it today, and I've also gone
4 over it with Michael Ross.

5 THE COURT: Okay. This is the letter that the
6 Court of Appeals refers to as troubling. And it certainly
7 seems troubling on its face. And before I call it a day,
8 I wanted to get everybody together.

9 I don't know what's going to come of
10 Mr. Santos's letter, but I want to be clear on the record
11 where we are so that there can be no misunderstandings,
12 there can be no lack of understanding.

13 And Mr. Paulding, I'm going to start with you.
14 I want to speak with you, as Mr. Ross's counsel.

15 MR. PAULDING: Okay.

16 THE COURT: And also as an officer of this
17 court. I want to be frank about the role that you are
18 playing in this situation.

19 Mr. Ross hired you to help him bring about his
20 own execution. You accepted the engagement and you are
21 well on your way to helping him achieve his stated
22 objective. If you succeed, you will have been a
23 substantial factor in bringing it about. I trust you of
24 all people are clear on that.

25 The role you have played has made all the

1 difference. You have assured the courts, Judge Clifford,
2 not least among them, and the public, and indeed the state
3 officials who are on this phone or at least the people
4 these lawyers represent that Ross's decision is a knowing,
5 intelligent and voluntary decision. And that if you had
6 the slightest qualms about it, you would be the first one
7 to step up. You would act immediately. You would be sure
8 that we would know. And everybody has relied very heavily
9 on you.

10 In fact, the defendants in these cases have
11 pointed to you and they have said, nobody else has a right
12 to be heard because you represent Mr. Ross and you are
13 assuring us that he is a-okay and those other people are
14 simply, you know, meddling in a place where they do not
15 belong. So you are the man.

16 Have you spoken to Mr. Lopez?

17 MR. PAULDING: Mr. Lopez?

18 THE COURT: The author of that letter.

19 MR. PAULDING: No. I have not personally --
20 Mr. Lopez I think is in Cheshire. So no, I haven't spoken
21 to Mr. Lopez.

22 THE COURT: As the key player here, do you think
23 you have an obligation to go see Mr. Lopez, the man who
24 says he believes your client has been brainwashed?

25 MR. PAULDING: With all due respect, I don't

1 have -- I have a -- forget the law for a minute, morally
2 and all the other things you're referring to, I don't
3 think it's necessary to speak to Mr. Lopez.

4 THE COURT: How about Dr. Norko? Have you gone
5 back to Dr. Norko with Mr. Lopez's letter and asked him if
6 it affects his opinion of the situation?

7 MR. PAULDING: No, I have not gone back to
8 Dr. Norko. I'm actually spending a lot of time here with
9 Michael.

10 If you'd like me to try to get ahold of
11 Dr. Norko --

12 THE COURT: I would. I believe that as an
13 officer of the court who is facilitating the execution of
14 his client, I as the chief judge of the court have to be
15 sure that you are doing everything that one should do
16 ethically in this situation. And I believe that
17 includes -- and my opinion may be wrong -- but if I were
18 you, before I continued to play this decisive role, I
19 would want to interview Mr. Lopez myself. I would not
20 take somebody else's word for it. I would want to eyeball
21 Mr. Lopez myself. I would certainly want to speak to
22 Dr. Norko. I probably would like him to be with me, in
23 fact, if that were possible, so he could talk to Mr. Lopez
24 himself. I would like Dr. Norko to not only read Lopez's
25 letter, but I would ask Dr. Norko, What is the story?

1 Let's suppose there is some truth to this, how
2 does that factor into your opinion on which I am relying,
3 the opinion on which Judge Clifford relied and thus the
4 State Supreme Court and all the other state officials and
5 the public? What impact does it have on your opinion?
6 And by the way, while we're at it, since you testified in
7 front of Judge Clifford, there have been a number of
8 things that have come to my attention that I didn't know
9 about then. And people say that it should undermine my
10 confidence in your opinion. I would like you to give me
11 an explanation as to why these things do not in fact
12 affect your opinion.

13 But, you know, what? I wouldn't phrase it that
14 way. I would ask him: Do they affect your opinion?
15 Here's Lopez's letter; here's the Ross writings that you
16 didn't have before; and so forth. Because Dr. Norko, you
17 have to understand, I, Attorney Paulding, hold this man's
18 life in my hands. And I want to be sure that I'm not
19 making the worst mistake of my life.

20 So I put it to you as an officer of the court
21 and as the chief judge of the court, what do you think
22 about that, Mr. Paulding?

23 MR. PAULDING: Well, I think that you're -- I
24 really think that the suggestions you're making are
25 well-founded. I will tell you, I do have somewhat of a

1 difference of opinion, which is not necessarily going to
2 make me not do what you're suggesting, but I do have a
3 difference of opinion on whether or not the whole notion
4 of whether the conditions at Northern -- it's -- I don't
5 want to be long-winded, but this is our opportunity to
6 talk so, number one, the conditions at Northern and the
7 death row syndrome phenomenon and all those issues,
8 whether those have somehow created in Michael Ross, these
9 feelings of despair --

10 (Telephone interruption).

11 THE COURT: Mr. Paulding, I'm very sorry, but
12 there's something going on that is interrupting the line.
13 We can't hear you. It's -- it sounds like a clicking
14 noise. And I don't know if anybody can -- you hear that?

15 MR. SANTOS: I hear that, Judge, I hear that.

16 THE COURT: It makes it difficult for Darlene to
17 hear what you're saying and take it down.

18 MR. PAULDING: I don't know, I'm sitting at a
19 phone up here at Osborn right now, and unfortunately from
20 my end, I hear everything everybody's saying perfectly
21 so --

22 THE COURT: Okay. We may need to replace the
23 call. But -- and I don't want to cut you off,
24 Mr. Paulding, but --

25 MS. SEELEY: May I just interrupt?

1 THE COURT: Yeah.

2 MS. SEELEY: T.R., can you take down the call-in
3 number and call -- you and I will hang up and call back in
4 because you're conferenced in through my line and that may
5 be the problem.

6 MR. PAULDING: Sure. I'll do that.

7 MS. SEELEY: 1-888-392-9904. And the pass code
8 to get onto the call, 7315863 and followed by the pound
9 sign.

10 MR. PAULDING: Okay. So I go 7315863 and then
11 the pound sign?

12 MS. SEELEY: Correct, and that will get you on
13 the call.

14 Judge, both of us are going to hang up right now
15 and call back in.

16 THE COURT: We'll wait.

17 (Pause)

18 MS. SEELEY: Judge, Hope Seeley back on.

19 THE COURT: Okay.

20 MS. SEELEY: Mr. Paulding should be back on
21 shortly.

22 THE COURT: Hello.

23 MS. SEELEY: It will beep when he comes on.

24 THE COURT: Okay.

25 (Pause)

1

THE COURT: Mr. Paulding?

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MR. PAULDING: Yes. I'm back on?

4

THE COURT: Yes, you are.

5

MR. PAULDING: Is that a little bit better or --

6

THE COURT: Much better. I can hear you very

7

clearly.

8

MR. PAULDING: Great. Is Hope back on too?

9

MS. SEELEY: I'm here, thanks.

10

MR. PAULDING: Going back to where we were on

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this.

12

Number one, I'll try and address the whole

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situation, on the issue of whether or not he is capable of

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voluntarily making this decision or this choice, I view

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that -- and again this is -- we're just talking here -- I

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view that as something that is separate and distinct from

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whether or not a person is competent to make that choice.

18

That being said, let me just tell you what I've addressed

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on that specific issue and then I'll move over to the

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doctors and Mr. Lopez.

21

On the issue of the coercive nature of Northern

22

and those types of things and their effect that they may

23

have had on Mr. Ross, for most of the time that Michael

24

Ross was housed at Northern Correctional -- and, Judge, I

25

know that you've been up there so you know what kind of a

1 place it is.

2 THE COURT: Yes.

3 MR. PAULDING: When death row was moved from
4 Osborn to Northern, as you know, Northern was instituted
5 for basically jerks or troublemakers within our correction
6 system who needed to be more severely disciplined and had
7 to have much more strict rules and regulations.

8 THE COURT: The worst of the worst.

9 MR. PAULDING: The worst of the worst.

10 That was not the situation with the death row
11 inmates. In fact, for many, many years, the death row
12 inmates while at Northern had far more privileges than any
13 other inmate in the institution, and that included Ross.
14 And those were such things as, you know, presents at
15 Christmas time, much more time out of the cells. He did
16 have the ability to interact and make friendships. And as
17 is reflected in the record, he did such things as starting
18 a law library, et cetera, et cetera.

19 That changed within the last two to three years
20 and I believe -- I don't know exactly why -- it had
21 something to do with Daniel Webb and an escape attempt or
22 at least that's what's being said -- but whatever the
23 cause was, in the last two to three years, the death row
24 inmates at Northern were then I think given the same type
25 of strict structure that every other inmate had or pretty

1 much the same thing. So it has now for the last two to
2 three years been more of a, you know, 22 or a 23 hour
3 lockdown. And certainly no one would ever want to have to
4 live in that place.

5 That being said, his -- that was his existence
6 until October of this year. In October of this year, he's
7 back in what used to be the old death row wing at Osborn
8 where he has his own cell; he has a television; he has
9 other types of things, privileges, but there's nobody else
10 around him in Osborn. He's actually totally by himself.
11 So he doesn't have other prisoners yelling and screaming
12 at him. Which he has indicated that he actually prefers,
13 at least at this stage.

14 But on the issue of has he somehow been coerced,
15 I have to go back, at least in one sense, to the very
16 first discussions that he and I were having in 1995. And
17 the way that -- when I say why I think I'm so strong in
18 thinking that he's competent, a lot of that, it's
19 difficult for me to sometimes put into words, because a
20 lot of it is sometimes intuitive based upon not just what
21 he says but body language, when the emotions go up or
22 down, how he expresses things, intonations of his vocally
23 when he's speaking, reactions to particular things.

24 And that's why I have said -- and I know that
25 the evidence that's been shown to you would show --

1 attempt to show some inconsistency. And believe me, I'm
2 well aware of all that. I'm well aware of his various
3 statements.

4 But what it has said to me over time is that
5 when he professes that the primary motivation for what
6 he's doing is the concern for the victims' families, I
7 believe that he's telling the truth. I've seen that in so
8 many different ways. And we have discussed so many
9 different things that he could do. He is so well aware of
10 them.

11 Just as an aside for example, when we first
12 started talking about six or eight months ago, he was
13 not -- he's always been opposed to the habeas corpuses and
14 the petition for writ of cert, but he was not opposed to
15 the Board of Pardons -- in the beginning when we were
16 first talking, the one thing that he was considering was
17 the Board of Pardons commutation type process. That was
18 actually something that he was thinking about.

19 But again Your Honor I can tell you why. It's
20 because in the -- number one, in the beginning, he thought
21 it was mandatory. There was a proposal last year that
22 that was going to be a mandatory thing, and then I guess
23 that proposed regulation was not passed. So in the
24 beginning he thought he had to have some commutation
25 hearing.

1 Even after he learned that it was not mandatory,
2 he still was considering it at first. And again I can
3 tell you that -- obviously -- maybe -- I don't know
4 whether I don't see the whole Michael Ross, but I can tell
5 you I've seen an awful lot of him.

6 THE COURT: Mr. Paulding, you impress me as a
7 sincere, kind, compassionate person. And I won't try to
8 be even more descriptive than that. I feel strongly that
9 you're way out on a limb, and I want to be sure that I
10 discharge my responsibilities as the chief judge of the
11 court dealing with you as an officer of this court in
12 making sure that you don't commit a very grave error.

13 I began this by underscoring the central
14 importance of your role to date and that is going to
15 continue.

16 I believe Mr. Ross is effectively boxed in now.
17 He would be hard-pressed to change his mind. Even if he
18 changed his mind, he would be hard-pressed to admit it.
19 He doesn't want to go back to Northern and be the subject
20 of ridicule for somebody who had backed out at the end.

21 And I want to come back to that in a second.
22 But my point here is for now, the only hope he has, in my
23 opinion, at this point lies with the people on this
24 conference. You first and foremost.

25 If this man is in fact making a knowing,

1 intelligent and voluntary decision, which as an adult, a
2 healthy adult with autonomy is entitled to make, a
3 decision that we are obliged to respect, then God love
4 him. If that is not the case though, everybody on this
5 call has some responsibility. But mostly you. Because we
6 are relying heavily on you.

7 I don't want to try to challenge you, but I have
8 to.

9 MR. PAULDING: Okay.

10 THE COURT: You mentioned that you think Ross
11 was transferred to Northern a couple or three years ago.

12 MR. PAULDING: He was transferred there probably
13 15 years ago. Within the last 10 to 15 years.

14 THE COURT: Right. I believe it was in the
15 spring of 1995. And I believe that as a result of that
16 his life changed very dramatically for the worst, and that
17 was again April of 1995. So we're going back almost ten
18 years.

19 MR. PAULDING: Your Honor, I'm now losing the
20 sound. I don't know if anybody can hear me. I'm hearing
21 like a ticking noise.

22 THE COURT: I'll try to call back in. Hold on.

23 (Pause)

24 THE COURT: Everybody is still there?

25 MR. SANTOS: Your Honor, excuse me, Hubert

1 Santos.

2 MR. O'NEILL: Terrence O'Neill.

3 MR. CULLIGAN: Patrick Culligan.

4 MR. O'HARE: Michael O'Hare.

5 MR. PONVERT: Antonio Ponvert.

6 MS. SEELEY: Hope Seeley.

7 MR. PAULDING: And T.R. Paulding.

8 MR. NUGENT: Jim Nugent.

9 THE COURT: Okay. So he spent the better part
10 of ten years in those conditions. And I toured the place
11 with an eye toward trying to grasp what its effect would
12 be on the individual inmate. And I found it to be a very
13 striking experience, one that I remember vividly years
14 later.

15 There is abundant literature, some of which I've
16 read, not half of which, but a fair amount of which I have
17 read, and that gives great weight to the notion that a
18 person who is in that setting can lose his ability to make
19 a knowing, intelligent and voluntary choice.

20 In fact, most European countries -- I want to be
21 careful to be as accurate as I can -- I believe most
22 European countries have recognized that to the point where
23 their courts will not permit extradition of people from
24 their countries to this country if the person's going to
25 wind up in that setting.

1 So this is not a flight of fancy on the part of
2 Dr. Grassian. This is a well-recognized phenomenon, one
3 that has reached the point in those places that I just
4 described.

5 I take it that you are no more of an expert on
6 that than I am, and I would not feel comfortable
7 personally sizing up Mr. Ross myself with that in mind.

8 And the fact that Dr. Norko is admittedly
9 ignorant of it would cause me a great sense of unease.
10 I'm speaking very frankly with you here, Mr. Paulding. It
11 would cause me tremendous unease if I were in your
12 position, a position that is unique.

13 I would need to have an expert who knows why the
14 courts of Europe will not extradite people to places like
15 Northern. Look at Mr. Ross and ask whether in fact he is
16 Exhibit A. He looks rational, he sounds rational, but in
17 fact he's at the end of his rope.

18 Beyond that, without meaning to cast aspersions,
19 when I toured Northern -- and Jim Nugent will remember
20 this, because he tried the case, and Ann Lynch will
21 remember this also -- there were allegations about how the
22 staff at Northern had gone into Webb's cell in order to
23 alter the situation before I toured it. And it had to do
24 with heat and cold and vents and this. And I never got
25 into it in depth, but I believed then and I believe now

1 that the allegation was well-founded. I believed, as I
2 looked those people in the eye, that there was a very good
3 chance they had undertaken to move things around in order
4 to strengthen the case for the department in order to
5 weaken the claim of Mr. Webb.

6 Is that surprising? Is that shocking? No. I
7 mean, we know people will do things that maybe aren't
8 exactly right if in their scheme of values they think,
9 well, the end justifies the means.

10 I have had police officers take the witness
11 stand and commit blatant perjury to the point where it was
12 baffling to me that they could think I was that stupid.
13 But it was obvious that they had no qualms about it.

14 So is it possible that somebody who works at
15 Northern could in fact be influenced by the kind of
16 mindset that one might find at a place like Northern?
17 Maybe. You know, that would cause me concern, reasonable
18 concern.

19 MR. SANTOS: Your Honor, this is Hubert Santos.
20 I apologize for interrupting.

21 But in the last 24 hours, I have made certain
22 phone calls, and one of the persons I've talked to was the
23 former deputy commissioner of the Department of
24 Corrections who in fact from '93 to '95 was in charge of
25 the death row inmates and knows Michael Ross quite well.

1 And this morning I conferred with him again. And in front
2 of Attorney Seeley, on her desk, I'm not in the state, is
3 a draft affidavit that he is willing to sign. And his
4 conclusion based upon his contact -- this is a 29-year
5 employee of the Department of Corrections who started as a
6 prison guard and retired in April 2nd, 2003 as deputy
7 commissioner. And I'm sure Mr. O'Neill knows him quite
8 well. And in his opinion, based upon what he observed
9 with Ross, his interactions with Ross -- he helped Ross
10 set up the library at Northern -- his regular contact with
11 Ross, his observations, the prison at Northern, which he
12 describes as living in either a submarine or a cave, all
13 of which are in the draft affidavit, his conclusion is
14 that the conditions at Northern were a substantial factor
15 in Ross's decision to seek to waive his rights to further
16 litigation and to elect to be executed.

17 Now, this has been all typed, it's all prepared
18 and we were waiting for certain -- and I'm speaking as an
19 officer of the court, because as Your Honor knows, I
20 represent the chief Public Defender's Office who are
21 under -- there are various other issues that I can't
22 really discuss because of the privilege. But as an
23 officer of the court, Mr. -- and I'll tell you who the
24 gentleman is because what I did do after I spoke to him, I
25 called Mr. Kane, the State's Attorney in New London, and

1 asked him to call him and speak with this gentleman, which
2 he did do. And this gentleman is a former deputy
3 commissioner of programs at DOC. His name is John Tokarz,
4 and I'm sure Mr. O'Neill knows who I'm talking about. And
5 he is very much troubled by what's going on here, very
6 much troubled.

7 The problem of course is we're looking for a
8 vehicle by which to raise these issues and we're
9 constrained by various and sundry things, including the
10 five to four ruling of the Supreme Court yesterday.

11 THE COURT: Well, Mr. Santos, I very much
12 appreciate your telling me that, although it makes my
13 blood pressure climb even higher, because obviously now
14 it's not just inmate Lopez, but a person who would be
15 speaking in a manner that would create admissions.

16 Let me go on, and I'm not going to keep
17 everybody much longer.

18 But Mr. Paulding, I need to keep the focus on
19 you.

20 MR. PAULDING: Uh-huh.

21 THE COURT: I believe that what we see is more
22 than the critical amount of information that I believe a
23 responsible state official would need in order to feel
24 compelled to act. But I'm not going to try to lay that on
25 them anymore. I tried to do that yesterday. I'm laying

1 it on you now.

2 The way I see it, Ross is boxed in. He has said
3 he's not going to go back like Cobb did and put up with
4 the ridicule about having backed down. But it's more than
5 that, it's more than than that for this man.

6 Let's look at Michael Ross in the best possible
7 light. I am about to draw a picture of him based on the
8 record I've seen.

9 I didn't follow the criminal case as it went on
10 all those years. I've only just gotten to know about
11 these matters. So I bring a fresh eye to it.

12 But looking at the record in a light most
13 favorable to Mr. Ross, he never should have been
14 convicted. Or if convicted, he never should have been
15 sentenced to death because his sexual sadism, which was
16 found by every single person who looked at him, is clearly
17 a mitigating factor. Again we're looking at a record in a
18 light most favorable to him.

19 This is a man who, before he went off to
20 Cornell, was as far as I know okay. He's at Cornell, he
21 has this classmate, this petite Asian girl who is sweet
22 and he likes her and he winds up killing her because he
23 has this affliction, this terrible disease. And having
24 gratified this awful, uncontrollable, impulse to sexually
25 brutalize this person he liked and then kill her, he

1 realizes that he has done evil and he stands on the bridge
2 and is going to kill himself before he does it again. But
3 he doesn't jump. And today, he looks back at those days
4 and he hates himself because he didn't jump. He was a
5 coward. He was like Cobb backing out.

6 So for Michael Ross to be able to back out now,
7 forget it. The only way Michaels Ross is going to get his
8 life back is if somebody like you, and maybe only you,
9 says, We realize you're no longer in a position to change
10 your mind. You're like the guy standing on the bridge
11 back at the gorge in Ithaca, and you're not going to make
12 the same mistake, the one you made back then because you
13 went on and took seven innocent lives, and you know that
14 you are responsible. You know you had sexual sadism. You
15 know that you became a monster because of it. And you
16 have now found a way to end this. And there's no turning
17 back.

18 I suggest to you that Michael Ross may be the
19 least culpable, the least, of the people on death row.

20 Michael Ross, by what I see in the record,
21 suffered from these intolerable obsessional bouts with
22 sexual sadism, which were not relieved until he began that
23 regimen of chemical castration, whereupon they were
24 relieved. And then when it was taken away from him, they
25 came back. And it was only when he got the alternative

1 regimen that he found relief again.

2 He explains that the only people in the system
3 who showed him any kindness were two women. The only ones
4 who didn't treat him like a monster were these two women,
5 yet in the grip of this disease he would lie awake all
6 night thinking about sexually brutalizing them and killing
7 them.

8 So is he a sick man? Boy, oh, boy.

9 So when he says, I feel that I'm the victim of a
10 miscarriage of justice because they didn't treat it as a
11 mitigating factor, I can well understand where he's coming
12 from.

13 Going beyond that, we have a guy who, having
14 gotten beyond the sexual sadism, is nevertheless trapped
15 in this environment at Northern where you have no human
16 contact to speak of, you're locked up in a seven by twelve
17 foot cell where you get to ruminate about all these things
18 that you did, you get to think about how the world hates
19 you, despises you. And is it any wonder that the guy
20 might decide, given his mental illness, given everything
21 he's been through, to go kill himself as he in fact tried
22 to do three times? And we have evidence in the record
23 that says, After my mandatory appeals, I'm going to do it.

24 So I don't know how anybody in your position
25 honestly, Mr. Paulding, I do not know how anybody in your

1 position could be accepting of this responsibility to
2 proceed in the face of this record to be the proximate
3 cause of this man's death. I put it to you, Mr. Paulding.
4 I think you are way out on a limb. And I appeal to you.
5 You need to see what you're doing.

6 When I was in practice as a litigator, my
7 investigation -- I don't mean to pat myself on the back
8 but -- my investigation in a typical run-of-the-mill
9 injury case would be more comprehensive than your
10 investigation of this. I don't mean to offend you, but
11 it's the truth.

12 I mean, you haven't taken Lopez's letter to
13 Norko. You haven't sat Norko down and you haven't put the
14 documents about this disorder in front of him and said,
15 Read these, let's talk about it. Are you sure? We have
16 this fellow Grassian, a nationally recognized expert
17 telling us that Ross can convince anybody because he's
18 that desperate to kill himself. And you're going to take
19 it upon yourself to say Grassian's wrong? I know better?
20 A guy who knows very little about this syndrome, and I'm
21 relying on a psychiatrist Norko who admits he doesn't know
22 anything? I mean, Mr. Paulding, what is going on?

23 You point to his explanation and --

24 MR. PAULDING: Your Honor, if I can just -- I'll
25 wait.

1 THE COURT: Yeah. You need to wait.
2 You point to his explanation, as does the State,
3 and it has superficial appeal. Given that you believe in
4 him, given that you believe he is being sincere when he
5 says he's motivated to avoid causing the victims' families
6 further harm, you accept that. You say that's an
7 honorable choice. That's sort of what I would do if I
8 were in your place. Well, you know what? I believe, if I
9 look at it in a light most favorable to him, that he is
10 telling the truth, okay? That's his motivation. He
11 doesn't want to hurt them anymore. He can't live with
12 himself as it is.

13 He also doesn't want to have another penalty
14 hearing. I mean, if the best he gets is a setting aside
15 of his death sentence so he gets to go back to the penalty
16 hearing and see it all over again in their presence, does
17 he want that? Absolutely not.

18 If that is what he was facing as the only
19 alternative to execution, you could say that makes sense.
20 But we have the Callahan litigation. He doesn't have to
21 cause any victim any pain. He doesn't have to do a thing.
22 He can sit on his hands and sit mute and he may find not
23 only that the death sentence is set aside, he may find the
24 death penalty has been abolished. He may find that he
25 gets the life sentence that he has repeatedly said he

1 would take in an instant if it was offered to him.

2 He doesn't have to cause any victims' family
3 member a second of pain to get the benefit of that
4 Callahan litigation and whatever might happen at the
5 General Assembly starting Monday unless you go forward and
6 see to it on your watch under your counsel that he gets
7 executed. That's the situation. Let's be very, very
8 clear. That's the situation.

9 Does his explanation make any sense at all if in
10 fact he cannot cause these victims' families a moment's
11 distress and get the benefit of the Callahan litigation,
12 and who knows what happens at the General Assembly. His
13 explanation makes no sense, no sense. Because it's not
14 the inevitable alternative to execution that is causing
15 victims' families pain. And if I were his lawyer, I'd be
16 in his face telling him that.

17 We're not in this profession to help people get
18 killed. I'd be in his face saying, Listen, you idiot,
19 this litigation may very well result in the life sentence
20 that you have repeatedly said you would take in a wink and
21 you're going to be dead Sunday. For what? Because you
22 don't want to cause people any pain? You're not going to
23 cause them any pain. Figure it out, you idiot.

24 Do you see what I'm saying?

25 MR. PAULDING: Yeah.

1 THE COURT: But instead you seem to be saying,
2 He's perfectly rational. All of this is beside the point.
3 I've got total confidence in him, there's no problem.
4 Believe me, we can all be content that we have a perfectly
5 rational man here going to his death with our taxpayers'
6 dollars footing the bill because I'm telling you he's
7 right there. And you don't know what you're talking
8 about. And you're an officer of this court. And I see
9 this happening and I can't live with it myself, which is
10 why I'm on the phone right now. It's wrong. What you're
11 doing is wrong.

12 MR. PAULDING: All right. Well --

13 THE COURT: And I tell you that, Mr. Paulding,
14 because it is true. What you are doing is terribly,
15 terribly wrong. No matter how well motivated you are, you
16 have a client whose competence is in serious doubt and you
17 don't know what you're talking about.

18 MR. PAULDING: All right, well --

19 THE COURT: If you had Grassian in here saying,
20 Look, I've interviewed hundreds of these guys and this guy
21 is absolutely competent. Yeah, he's been in that hell
22 hole for ten years, but I'm telling you he's competent.
23 He's never tried to kill himself. You know, he says --
24 he's got this reason that's inarguable. You can't debate
25 it with him because it's there. It's plain. It's

1 compelling. There's no other argument.

2 You have none of that. You have none of that.

3 And it makes no sense.

4 So I warn you, Mr. Paulding, between now and
5 whatever happens Sunday night, you better be prepared to
6 live with yourself for the rest of your life. And you
7 better be prepared to deal with me if in the wake of this
8 an investigation is conducted and it turns out that what
9 Lopez says and what this former program director says is
10 true, because I'll have your law license.

11 MR. PAULDING: Okay. Well, Your Honor, that's a
12 lot to --

13 THE COURT: And you can tell -- I told you the
14 other day, you should go tell Mr. Ross that what we are
15 doing is in his best interest. I doubt you did that. But
16 if --

17 MR. PAULDING: I did, sir.

18 THE COURT: Then you better make a clear record
19 of it. You better have a court reporter there taking down
20 the advice you're giving him, because believe me if --
21 you're going to need it. You're going to need it.
22 Because I think now that the can of worms has been opened,
23 it is not going to be closed. This is going to get to be
24 very messy.

25 People are going to want to know what the story

1 is at Northern and what went on with Michael Ross and who
2 is this guy Lopez. And if Michael Ross is dead, oh, boy
3 it's not going to be nice for anybody. Not for the
4 courts, not for the State's Attorney, not for the
5 Department of Correction, not for the people of our state.
6 It's going to be horrendous. And you're the man. You are
7 the man.

8 So there you go.

9 MR. PAULDING: Well, would you permit me a
10 little bit of time to process this and --

11 THE COURT: Yes. You have between now and
12 whenever to process it. But you've put yourself in a
13 pretty bad place, Mr. Paulding. And again, I'm sorry for
14 you, because you strike me as a very decent person.

15 I think you're a kind-hearted, decent, gentle
16 soul. But you know what? Often times those are the ones
17 who wind up making the worst mistakes.

18 So there you are.

19 MR. PAULDING: I appreciate everything you're
20 saying and I'm taking it with the utmost seriousness and I
21 will -- I will have a response. I just don't think I can
22 respond right at the moment.

23 THE COURT: Well, you may -- I would urge you to
24 tell your client what I have said.

25 MR. PAULDING: I will.

1 THE COURT: And I would urge you to say, I think
2 he's right. And I would urge you to say, Michael, I can
3 bring you in off this limb that we're both out on. I can
4 bring you in. I can say because of what has happened,
5 because of what we've heard, because of this Lopez letter,
6 because of this thing Hubert Santos told me about, man,
7 I'm not ready to go. I don't want to be responsible
8 anymore. In fact, I'm saying what you're doing is a
9 mistake. You don't have to cause any victims' families
10 any pain. All you got to do is go back and be quiet and
11 maybe you'll get the life sentence that you say you would
12 take tomorrow if it were offered to you. I cannot be a
13 party to this anymore. And in fact, I object. I won't
14 let you do it.

15 And he'll say, Well, I can't come back off this
16 limb. I'm like the kid back on the bridge at Cornell,
17 I've got to jump.

18 You say, I'm not letting you. I'm standing next
19 to you on the bridge and I'm holding you and I'm
20 preventing you from jumping and I'll take the heat for it
21 and let's see what happens with the Callahan litigation
22 let's see what happens as this thing unfolds. Meanwhile
23 you will not be to blame for any upset to anybody. It's
24 my fault. But I'm not going to stand by here and take it
25 upon myself to watch you go to your death when all of

1 these questions have been raised. I cannot do it as an
2 officer of the court. I cannot do it.

3 That's what I would tell him.

4 MR. PAULDING: Okay.

5 MR. NUGENT: This is Jim Nugent. Also,
6 Mr. Paulding, I think it's very important for you to
7 understand that for Mr. Ross to be informing you that
8 times have changed at Northern for the past two or three
9 years is grossly inaccurate. The incident with Daniel
10 Webb was more than six years ago. So he is either
11 100 percent off his time frame or more than that. It's
12 either two years being six in reality or three years being
13 six in reality, which leads me to believe that he is a
14 very poor historian or he has an ability to mislead you
15 for whatever reason.

16 MR. PAULDING: I'll check into that too. That
17 was something that I had actually not been told by him. I
18 had actually been told by another source as to when that
19 occurred. And I certainly take you at your word, Jim.

20 MR. CULLIGAN: Your Honor, Patrick Culligan here
21 for the Chief Public Defender.

22 THE COURT: Yes, sir.

23 MR. CULLIGAN: Your Honor, if we needed to reach
24 you after 5:00, is there a way that that can be
25 accomplished?

1 THE COURT: I'll be here. I'll be here. And if
2 I'm not here, somebody will be here who knows how to get
3 me. But I'm not going anywhere.

4 MR. CULLIGAN: Thank you, Your Honor.

5 THE COURT: This is more important than whatever
6 other plans I might have made.

7 MR. PAULDING: Okay, Your Honor.

8 MR. CULLIGAN: Thank you, Your Honor.

9 THE COURT: I'm going to sign off now.

10 MR. O'NEILL: Your Honor, Terrence O'Neill, may
11 we once again ask for a transcript so that we can fully
12 and accurately convey your remarks to our client?

13 THE COURT: Yes, sir.

14 MR. O'HARE: Your Honor, I'd also like to order
15 a transcript.

16 THE COURT: Okay. That's as good as done.
17 Darlene will do that.

18 MR. PONVERT: Antonio Ponvert. And Darlene, I
19 know that you have limitations, but if at all possible to
20 get me a transcript ASAP, I'd appreciate it very much,
21 because my papers are due in the Supreme Court at 5:30 and
22 if at all possible, I'd like to attach this transcript.

23 THE COURT: Okay. Thank you all. I'll be here.
24 Keep me in informed, would you please.

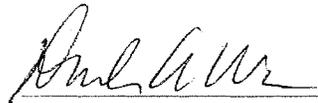
25 (Proceedings adjourned at 3:55 p.m.)

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C E R T I F I C A T E

In Re: Ross v. Reil/Ross v. Lantz

I, Darlene A. Warner, RDR-CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

 COPY

DARLENE A. WARNER, RDR-CRR
Official Court Reporter
450 Main Street, Room #223
Hartford, Connecticut 06103
(860) 547-0580

**NOMINATIONS OF SCOTT M. MATHESON, JR.,
NOMINEE TO BE UNITED STATES CIRCUIT
JUDGE FOR THE TENTH CIRCUIT; JOHN J.
MCCONNELL, JR., NOMINEE TO BE UNITED
STATES DISTRICT JUDGE FOR THE DIS-
TRICT OF RHODE ISLAND; JAMES K.
BREDAR, NOMINEE TO BE UNITED STATES
DISTRICT JUDGE FOR THE DISTRICT OF
MARYLAND; ELLEN LIPTON HOLLANDER,
NOMINEE TO BE UNITED STATES DISTRICT
JUDGE FOR THE DISTRICT OF MARYLAND;
AND, SUSAN RICHARD NELSON, NOMINEE
TO BE UNITED STATES DISTRICT JUDGE
FOR THE DISTRICT OF MINNESOTA**

THURSDAY, MAY 13, 2010
U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 2:30 p.m., Room SD-226, Dirksen Senate Office Building, Hon. Benjamin L. Cardin, presiding.

Present: Senators Feingold, Whitehouse, Klobuchar, Franken, Sessions, Hatch, and Kyl.

**OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S.
SENATOR FROM THE STATE OF MARYLAND**

Senator CARDIN. The Judiciary Committee will come to order. I am going to acknowledge in the beginning that we may get interrupted with a vote on the floor of the U.S. Senate. So we are going to try to expedite this hearing as quickly as we can, from the point of view that we have a lot of our Senators that want to be heard in introducing their nominees.

Today, the Committee will consider five judicial nominations. I want to thank Senator Leahy for giving me the opportunity to chair this hearing.

Panel one will consist of Scott Matheson of Utah to be U.S. Circuit Judge for the Tenth Circuit. Panel two consists of four district court nominees; John McConnell of Rhode Island, Susan Nelson of Minnesota, Ellen Hollander of Maryland, and James Bredar of Maryland.

Let me take this opportunity to particularly talk about, with pride, the two Maryland nominees that are before us. I want to commend and congratulate Senator Mikulski for the process that she initiated in the State of Maryland for making recommendations to the President on our nominees to the bench.

I believe the process that she established brought forward the best possible candidates for judicial appointment, and I think the Committee is going to be very pleased by the two that are before us today.

I look forward to Senator Mikulski formally introducing our two nominees, Judges Hollander and Bredar.

Judge Ellen Hollander currently serves as judge on the Maryland Court of Special Appeals, which is our second highest court, that hears mandatory appeals from the state courts of Maryland. She has served as a judge on that court since 1994. She has broad experience on the bench, and she would be replacing Judge Andre Davis, who was recently appointed to the Court of Appeals for the Fourth Circuit.

I was pleased to attend last month's investiture with Senator Mikulski for Judge Davis, and we now are bringing forward Judge Hollander for that position.

She has been an active member of the bar since 1974 and has received the highest possible rating from the American Bar Association.

I also want to comment that she is extremely active in our community, served on Goucher Board. I served on Goucher Board, had a chance to personally observe her activism in our community. She is very active in the Jewish charity issues, and will make a great addition, I believe, to the Maryland District Court.

Judge Jim Bredar comes to this Committee with a wide range of courtroom and litigation experience. He served as a Federal prosecutor in Colorado for 4 years before coming to Maryland and serving as a Federal public defender for 6 years. And since 1998, he has served as a U.S. magistrate judge for the U.S. District Court for the District of Maryland. So he is very familiar with the workload of our Federal bench.

He would be replacing Judge J. Frederick Motz from Baltimore. Judge Motz has taken senior status. Let me thank Judge Motz for his 15 years of service on the bench, particularly as our chief judge from 1994 to 2001. I would also like to mention that Judge Motz's wife continues to serve with great distinction on the Fourth Circuit, and it is fitting, indeed, that Judge Motz was the official that swore in Judge Bredar as a U.S. magistrate judge in 1998.

Judge Bredar also comes with a great deal of experience in helping our community and has been well recognized for that, and we very much, again, appreciate his background and willingness to continue to serve.

I need to point out, if you look at his background, I am particularly impressed that he worked as a park ranger and ski patroller in Colorado. That makes me very jealous.

Let me also mention the three nominees that are before us that will be introduced formally by their home state Senators. Scott Matheson of Utah comes to this Committee with experience of being a prosecutor, a law firm attorney, professor of law, and dean

of a law school. And he comes from a very distinguished family of public servants, and I have had the opportunity of serving with his brother, Jim, who has been a member of the House of Representatives.

John McConnell of Rhode Island is a distinguished lawyer with more than 25 years of private practice in Rhode Island. He has focused on complex litigation and comes to this Committee with a broad background for the district court.

Our final nominee is Susan Nelson of Minnesota. Judge Nelson has served as a U.S. magistrate judge for the District of Minnesota for the past 10 years. As a magistrate judge, she has handled hundreds of cases and is very well familiar with the workload of our district court.

So I want to welcome all five of our nominees. I want to thank them and their families, because I know this is a team effort, for their willingness to, in most cases, continue to serve in a public position of trust on behalf of the people of our country.

At this point, I am going to turn to the members of the Senate to introduce their nominees, starting with Senator Hatch, who has been a very active member of this Committee, a leader of this Committee, and a great friend of all.

Senator Hatch.

PRESENTATION OF SCOTT M. MATHESON, JR., NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE TENTH CIRCUIT BY HON. ORRIN HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman, and thank you for your kind remarks. I am quite thrilled here today to be able to present our nominee for the Tenth Circuit Court of Appeals, Scott Matheson.

Scott Matheson is nominated by President Obama to the U.S. Court of Appeals for the Tenth Circuit. He continues his family's dedicated service to our State of Utah and its educational institutions. His father was Governor of Utah, one of the great Governors that we had, and had had great experience in his prior work.

Scott brings to this nomination both personal qualities of character and integrity and a variety of relevant experiences. He has degrees from Stanford, Oxford, and Yale.

His three decades of legal experience includes private practice with the distinguished law firm of Williams and Conley here in Washington; public service as a deputy county attorney, and as U.S. Attorney for Utah, and long-time experience as a very thoughtful scholar.

He has been on the faculty of the S.J. Quinney College of Law at the University of Utah since 1985, where he is currently the Hugh B. Brown Presidential Endowed Chair in law, and he holds that chair.

Over the years, he has taught civil procedure, constitutional law, evidence, First Amendment, and intellectual property. In addition to being in the classroom, Scott also serves the law school as an associate dean for academic affairs and for 8 years as dean of the law school.

He also served on the advisory and governing boards of the Hinkley Institute of Politics at the University of Utah, and the se-

lection committees for different fellowships and prizes granted by the university.

He also served for 7 years on the Committee overseeing the Tanner Lecture on Human Values, one of several nationally and internationally renowned forums sponsored by the Tanner Humanity Centers at the University of Utah.

The Tanner Lectures are given several times a year at renowned institutions, including Oxford and Cambridge, Harvard, Yale and Princeton, and the Universities of Michigan, California and, most importantly, of course, Utah.

The range of lecturers is breathtaking, including Richard Dawkins, Marion Wright-Edelman, and Solomon Ruschke, to Charles Freid, Judge Richard Posner, and Supreme Court Justices Stephen Breyer and, one of all of our favorites, I am sure, Anthony Scalia; and I have to say Breyer is certainly in that category, as well. Utahns are all very proud of this fine institution.

Scott has received a number of awards for his service in this and other capacities, including the faculty achievement and services award from the university and awards for his service to the Federal Bar Association and the Utah Minority Bar Association.

Scott is not the first of President Obama's judicial nominees to come from the world of academia. Scott, however, has as greater variety of experience, including the real world practice of law, especially his service as a Federal prosecutor. He is a man of integrity, ability and dedication, and I personally know him very, very well and have nothing but the highest opinion of him. He is a person who will distinguish himself on the court, as he has in every other endeavor of his life.

By the way, I am happy to see his wonderful mother here today. It was not long ago she went through some trying times and we were all praying for her. She is a wonderful leader in Utah, one of the great women that we have out in our state; and, also, his beautiful wife and other members of the family.

Above all, I am really happy to have his brother here. Jim Matheson has been a Congressman in the House of Representatives for a decade, and I think he is one of the finest people I know and he is just a good person and a hard worker and a very good Member of Congress.

So I am pleased to introduce this man of integrity and ability and dedication as a nominee to the Tenth Circuit Court of Appeals.

Mr. Chairman, I want to thank you for your kind courtesy to me and I naturally expect kind courtesies to all these nominees here today, and I know you are the type that will make sure that happens.

Thanks so much.

Senator CARDIN. Senator Hatch, thank you. You are always very cordial in your introductions, and I do acknowledge Congressman Matheson, who is here, who I had the opportunity to serve with in the House.

We will now turn to Senator Mikulski.

PRESENTATION OF ELLEN LIPTON HOLLANDER, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND AND JAMES K. BREDAR, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND BY HON. BARBARA MIKULSKI, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MIKULSKI. Thank you very much, Mr. Acting Chairman.

It is with a great deal of pride and enthusiasm that I present, along with you, two outstanding Marylanders to be nominated to the District Court of Maryland. I am proud to be here today to introduce Judge Ellen Hollander and Judge James Bredar.

It is a great honor that both you and I recommended these two outstanding people to President Obama and we thank him for their nomination.

I also wish to thank Senators Leahy and Sessions for agreeing to such a prompt hearing on this matter.

Mr. Chairman, as you know, I take my advice and consent responsibilities very seriously and the opportunity to recommend to a President of the United States a nominee for the Federal bench is indeed a great honor, but it is a great responsibility.

My criteria are that any nominee must have absolute integrity, judicial competence and temperament, a commitment to core constitutional principles, and a history of civic engagement in our own State of Maryland.

I am happy to report to the Committee that Judges Hollander and Bredar meet these standards and they meet them in an extraordinary way.

I want to also bring to the Committee's attention that it is not just my opinion or even your opinion, Mr. Chair, but the opinion of the American Bar Association. The ABA gave them a unanimous—both of them—a unanimous well qualified recommendation.

One looks at their background and sees that they bring unquestionable competence and preparedness and a deep understanding of how ordinary Americans live. They bring seasoning in the law and sensibility in the application of the law.

Judge Ellen Hollander, who was elevated in November—Judge Hollander has the experience that makes her a top-notch nominee. She has served Maryland state courts at both the trial and the appellate level for more than 20 years.

She has served in a leadership role on the Maryland Court of Appeals' Rules Committee and as a chair of the Appellate Rules Committee.

Prior to taking the bench, Judge Hollander practiced law in both the public and private sectors, including 4 years as a prosecutor. She is a graduate of Georgetown Law, where she was the editor of the American Criminal Law Review. She has received her Bachelor of Arts from Goucher.

I know both of you are on the Goucher board. I have an honorary degree from Goucher. I do not know if that counts, but I will tell you, what Hollander does—Judge Hollander—really does count.

Judge Hollander has received numerous community awards. I will not list them, but what I want to bring to the Committee, it is not the number of awards, it is the number of things that she has done to get the awards; a strong advocate of women and chil-

dren; on the board of the Jewish Council, Community Relations Council; making sure that we do many things to advocate for the poor, the disenfranchised, and the marginalized. She is, again, a very top nominee.

Judge Bredar, if confirmed, will fill the seat of Judge Motz, as you have indicated. In him, we have a highly qualified nominee, who has served the justice system from both sides, a defense attorney and a prosecutor.

But he brings some unique background in the sense that he was a Federal public defender for 6 years, where he revitalized and expanded the office; and, before that, he was a prosecutor. He would be the first Federal public defender to serve on the Maryland Federal bench.

He also brings 12 years of judicial experience as a Federal magistrate, and Chief Justice Roberts recently appointed him to the Committee on Federal-State Jurisdiction.

He, too, is a graduate of Georgetown Law Center. He has got a bachelor's degree from Harvard. I am sure he will get an honorary degree from Goucher, as well.

[Laughter.]

Senator MIKULSKI. And he has himself been active in the community, whether it is volunteering at children's schools, being at PTA, he has been a soccer dad, and he has been an advocate for keeping the courthouse door open for everyone.

Again, both bring the characteristics that one expects in a judge, but I think, again, I will say they are so well seasoned, but they are so sensible in the application of the law, and that is what we are looking for in judges.

So I hope that the Committee unanimously reports them out, and I hope that we can confirm them expeditiously.

Thank you very much.

Senator CARDIN. Senator Mikulski, thank you very much. As the Senator from Maryland, I just want to concur in Senator Mikulski's comments about Judge Hollander and Judge Bredar. We are very proud to submit our recommendations to the President.

We think we have brought forward two of the most talented people we have in our state and the Nation to serve on our Federal bench and we are very proud that they are willing to step forward in public service.

With that, I want to recognize Senator Jack Reed.

**PRESENTATION OF JOHN J. MCCONNELL, JR., NOMINEE TO BE
U.S. DISTRICT JUDGE FOR THE DISTRICT OF RHODE ISLAND
BY HON. JACK REED, A U.S. SENATOR FROM THE STATE OF
RHODE ISLAND**

Senator REED. Thank you very much, Mr. Chairman and Senator Hatch and my colleagues on the Committee. I also want to thank Senator Leahy and Senator Sessions for their prompt attention to this nomination by the President of Jack McConnell to be Rhode Island's next U.S. District Court Judge.

Senator Whitehouse and I are extraordinarily proud that the President accepted our recommendation. And this is a proud day for Jack's family, also, and his colleagues. More than 20 of them are here today.

Rhode Island is vastly underpopulated, but it is worth the effort.
[Laughter.]

Senator REED. They all have reason to be proud. Jack's mother, Jane, is here; his father-in-law and mother-in-law, Justice Donald and Ursula Shea. I might say that Justice Shea is a retired member of our Rhode Island Supreme Court, one of the most distinguished members of our Rhode Island Supreme Court, whose example of integrity and intelligence continues to resonate through the legal chambers of Rhode Island.

Jack himself matches that sense of integrity and intellectual excellence. He is extraordinarily qualified as an attorney. He is perhaps one of the handful of attorneys in Rhode Island who have ranked among the very best in the United States.

There is no doubt, in my mind, about his ability to be a district judge. He has exceptional skills, impartiality, and professionalism, and I fully expect Jack to be an outstanding jurist.

Indeed, a broad array of Rhode Islanders, clergy, business people, Republicans, Democrats, corporate attorneys, defense attorneys, have come forth voluntarily and recognized and expressed their support for Jack.

They support him because he is an outstanding attorney. He has represented a variety of clients. He has done so with great, great legal skill and great integrity, and he will do that as a district court judge, represent the people of the United States with skill and integrity.

You can read his resume and find out all the cases and all the professional data, but I want to talk about Jack McConnell as a person. He is someone who is deeply committed to helping his community, not simply by donating and attending social events and charitable events.

You will find Jack in the community. He, every Monday, serves breakfast at Amos House, our soup kitchen, our biggest soup kitchen. We have something in common. I started out as the pro bono lawyer for Amos House about 25 years ago.

It is not attention-getting. It is just innately decent and caring of his community, and that is Jack.

He has learned his lessons from his father and mother. His father was a Marine in Korea, came home, built a strong family, and gave Jack, along with his mother, Jane, the inspiration to work hard, but not simply for his own ambition, but for a better community.

He has done this. He has juggled his family life. He has made time to be a big brother for about a decade to a young man in the poorer part of our capital city of Providence. He has taught First Communion classes. He has been a volunteer at the homeless legal clinics in Providence and Pawtucket.

He has served as a key member of the board of Crossroads, which is our largest homeless organization in the state. He has been a chair of the Providence Tourism Council. He has worked tirelessly not only as an attorney, but as a citizen. And these are the type of contributions that give him the perspective to sit on a court, to be a judge who understands the people who are before them; not just the wealthy, but every person who stands before him.

His innate sense of fairness, his innate sense of decency will make him a superb judge, and I am very enthusiastic in my support.

I join my colleague, Senator Whitehouse. I thank him for his excellent work here and his collaboration in this nomination. Senator Whitehouse, thank you.

Today, we are here proudly to ask this Committee for its consideration of a great lawyer and a great man.

Thank you, Mr. Chairman.

Senator CARDIN. Thank you, Senator Reed. And, Senator Reed, you are certainly excused to leave.

The remaining introductions will be done from the dais, since they are members of the Judiciary Committee, starting with Senator Whitehouse.

**PRESENTATION OF JOHN J. McCONNELL, JR., NOMINEE TO BE
U.S. DISTRICT JUDGE FOR THE DISTRICT OF RHODE ISLAND
BY HON. SHELDON WHITEHOUSE, A U.S. SENATOR FROM
THE STATE OF RHODE ISLAND**

Senator WHITEHOUSE. Thank you, Mr. Chairman. I am very proud to join my senior Senator, Jack Reed, in introducing Jack McConnell to the Committee.

As was the case with Judge Rogeiree Thompson, who was confirmed in March to a seat on the First Circuit Court of Appeals, it was a great pleasure for me to participate in Senator Reed's process to identify the best candidate for a judgeship on the U.S. District Court for the District of Rhode Island.

I was proud to join him in recommending Jack McConnell to President Obama, and thank the President for recognizing in Jack McConnell the qualities that will make him a tremendous addition to the Federal bench in our state.

Jack McConnell's life has been a classic American story of success through hard work. As Senator Reed mentioned, Jack was born in Providence, grew up in Warwick, Rhode Island, graduated from Brown University, and, after college, earned his J.D. from Case Western Reserve University School of Law, before returning to Rhode Island in 1983 to clerk for Associate Justice Donald F. Shea of the Supreme Court of Rhode Island.

This clerkship was more eventful than Jack expected, as he later married Justice Shea's daughter in 1986. Jack has since become a leading light in Rhode Island's bar and a leader within our community. He has generously supported and served on countless boards of educational, charitable, and artistic institutions across our state, including Save the Bay, the Genesis Center, the Providence Tourism Council, Crossroads Rhode Island, the Trinity Repertory Theater, and Roger Williams University. Our state has benefited greatly from that public service.

Jack now is nominated to undertake another type of service for which he is impeccably qualified. There is no question that he has the legal expertise and experience necessary for service as a district court judge.

He has tried scores of cases nationwide, an ideal qualification for a district court nominee. He understands motion practice. He has

experience in criminal and civil cases, and he quickly grasps the most complex and novel legal issues.

I know Jack's qualifications are first rate, because I worked with him when I served the people of Rhode Island as their attorney general. At the time, Rhode Island faced a public health crisis from lead poisoning. Providence was described by our lead newspaper as the "lead paint capital of America." This was attributed to high levels of lead in paint in older homes.

As attorney general, I sought relief from lead paint manufacturers to help Rhode Island families whose children bore the brunt of this scourge.

When I worked with Jack in a case where I was deeply involved as leader of the litigation team, I saw a capable attorney of the highest integrity and character, who understands and follows the highest principles of our legal profession.

Jack also has been active for years in Rhode Island democratic politics. Over the years, he has been with me and he has been against me. He understands now that those days of politics are over. He understands very closely, from his father-in-law's experience, also a Democrat-turned-judge, how important it is that he put aside those things as he enters this higher calling.

It is this principled understanding of the role of our courts that particularly recommends Jack to the Committee's consideration and that has called forth such extensive and remarkable support from the Republican community in Rhode Island.

I have no doubt that Jack will be an impartial judge and that he will uphold the law and apply it conscientiously to the facts of each case.

The touchstone of our legal system is equal justice under law. I am confident that Jack McConnell will meet that standard as a judge.

In sum, Jack is an exceptionally qualified nominee who will make a fair, talented, and honorable judge.

I thank the Committee for holding this hearing. I thank the Chairman. And I look forward to Jack's ultimate confirmation and service on our local district court.

**PRESENTATION OF SUSAN RICHARD NELSON, NOMINEE TO BE
U.S. DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA BY
HON. AMY KLOBUCHAR, A U.S. SENATOR FROM THE STATE
OF MINNESOTA**

Senator KLOBUCHAR. [Presiding.] Thank you very much, Senator Whitehouse. Senator Cardin went to vote, and so we are all going to be rotating in and out here, as a vote has been called.

But it is my distinct pleasure to introduce and endorse Susan Richard Nelson as the President's nominee to become a Federal district court judge for the district of Minnesota.

She is here with her husband, Tom, way back there behind all the people from Rhode Island, Sheldon, I think, right there.

I always like to tease Senator Whitehouse that the State of Rhode Island is always used for comparative purposes, like the iceberg that let loose was the size of Rhode Island. Now we can say there are enough people in here to fill the State of Rhode Island.

She is also here with her oldest son, Rob, and her younger son, Michael, who I understand is a junior at St. Olaf College in Minnesota, who should be studying for his finals. So I was picturing the two of them last night, he is studying for his finals, while his mom is studying for this hearing. So I do not know what would be harder.

Susan Richard Nelson has been a magistrate judge in the district of Minnesota for the last 10 years, where she has earned the respect of litigants, lawyers, and judicial colleagues alike.

I can say unequivocally that she has the judicial temperament, the personal integrity, and the keen legal mind that are absolute prerequisites for being a great judge.

Judge Nelson was born in Buffalo, New York and graduated from Oberlin College with high honors in 1974. She received her law degree from the University of Pittsburgh, where, by the way, Senator Hatch attended. She received her law degree in 1978, where she was a member of the esteemed Order of the Barristers.

Prior to becoming a magistrate judge in 2000, Judge Nelson was a civil litigator in private practice for 22 years. Judge Nelson is extremely qualified to be a district court judge in Minnesota. She has more than three decades of legal experience, though, of course, the last 25 were really the best, because they occurred in Minnesota.

Her decade of experience as a magistrate judge has given her excellent preparation for the role of district court judge. In addition to conducting hearings, ruling on motions, and conducting settlement negotiations, she has also presided over multiple trials.

In essence, she will be ready to fill her position her first day on the job.

Throughout her tenure as a magistrate judge, Judge Nelson has gained a reputation as a fair, but stern judge, one who is thorough and prepared. She has been described as a judge who favors neither plaintiffs nor defendants, who listens carefully to both sides of every matter she hears, and who can be relied upon to give articulate, well reasoned explanations for her decisions.

Judge Nelson was highly recommended to this Committee. She was initially recommended by a judicial selection committee, consisting of Minnesota attorneys, judges, and members of law schools. That judicial selection Committee received countless letters and e-mails in support of Judge Nelson.

Moreover, the ABA standing Committee on the Federal Judiciary unanimously rated Judge Nelson as well qualified. This is the highest rating that the Committee awards.

Judge Nelson is also involved in a variety of civic and bar activities. She is currently a member of the Minnesota Women's Lawyers Advisory Board and served as the group's president. She often represents the organization at speaking engagements and has written a column for the group's monthly newsletter for quite a while.

In addition to her work with the Minnesota Women's Advisory Board, Judge Nelson has served as a mentor for disadvantaged kids.

I also wanted to mention the importance of this nomination to the district of Minnesota generally. Our district's caseload has increased significantly in recent years. From 2008 to 2009, the district saw a 54 percent jump in the number of civil cases filed.

With over 5,000 civil cases currently pending and only six judges on full-time status to deal with those cases, not to mention the docket of criminal cases on top of that, our district really needs Judge Nelson to be confirmed quickly.

I believe that Susan Richard Nelson will make a fine Federal district court judge for the district of Minnesota. It is my honor to introduce her to the Committee, and I urge her swift confirmation.

At this point, because of the vote and because I need to vote, we are going to recess the hearing for a few minutes for Senator Cardin to return, and then I know that Senator Franken is also going to give an introduction for Judge Nelson.

So I recess this hearing, subject to the call of the chair. I am missing a gavel, so I guess I will use Senator Specter's name thing. There we are.

[Whereupon, at 3 p.m., the hearing was recessed.]

PRESENTATION OF SCOTT M. MATHESON, JR., NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE TENTH CIRCUIT BY THE HON. RUSS FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. [Presiding.] Call the Committee back to order.

When Senators come back from vote, we will start the hearing again. I am Senator Feingold from Wisconsin, and it is my pleasure to speak in support of Scott Matheson, Jr., who President Obama has nominated to fill a vacancy on the U.S. Court of Appeals for the Tenth Circuit.

I have known Scott as a close friend for many, many years. We first met as students together at Oxford. Scott has a rare combination of intellect, legal knowledge, experience, and probity that makes him perfect for an appellate court judgeship.

I could not possibly recommend anybody more strongly. From 1993 to 1997, Scott served as U.S. Attorney for the District of Utah. Faced with challenging cases, he developed legal positions that revealed his extensive knowledge of the law and unwavering fair-mindedness.

A particularly revealing example is when a U.S. Supreme Court decision, *Hagen v. Utah*, in 1994, threatened the viability of Federal criminal convictions for crimes committed on the Indian reservation in eastern Utah. The Court found that the reservation was a patchwork of mixed state, private and Federal land.

So the issue facing the courts after Hagen was whether the Federal Government had jurisdiction when the crimes were committed. Scott recognized that it would have been legally improper to sustain convictions rendered by a court without subject matter jurisdiction, but it also would have been manifestly unfair to void otherwise valid convictions and force victims to go through new trials.

Scott was able to find an answer that honored the Supreme Court decision, but protected all of the otherwise valid convictions, stretching back decades. So in the words of Scott's first assistant, David Schwendiman, with whom my staff communicated, quote, "It was brilliant legal work, but typical of Scott. Scott's excellence was well recognized among his colleagues." According to David Schwendiman, "When it came down to it, Scott was the finest law-

yer in the office and, in my view, probably the best tenth circuit advocate. When we were in the courtroom in the trial that we did together in the tenth circuit, he was truly the person who knew more than anyone else in the courtroom both about the law and the facts. It will be the same if he is appointed to the bench.”

There are many judges in the Federal Court of Appeals with excellent academic credentials, and Scott’s match up with the best of them. I know Senator Hatch has already reviewed those, so I will not go over that again. But I am, of course, very aware of his accomplishments.

Scott has been deeply involved, as well, in Utah politics, and, in my opinion, he was born to be a judge. Beyond his outstanding intellect and experience, his fair-mindedness and probity make him perfect for the role.

Scott never hesitates to do the right thing, even when it is unpopular. I believe Scott Matheson is an outstanding nominee and will be an outstanding judge, and so I am very pleased that the President has nominated him and I am proud to support him today.

Thank you, Mr. Chairman.

Senator HATCH. Mr. Chairman.

Senator CARDIN. [Presiding.] Senator Hatch.

Senator HATCH. After listening to Senator Feingold, I am starting to have some doubts here.

[Laughter.]

Senator FEINGOLD. That was my only hesitation.

Senator HATCH. No. That is great praise and I am very grateful that you would take time to come and talk about our great nominee.

Senator CARDIN. Senator Franken.

**PRESENTATION OF SUSAN RICHARD NELSON, NOMINEE TO BE
U.S. DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA BY
THE HON. AL FRANKEN, A U.S. SENATOR FROM THE STATE
OF MINNESOTA**

Senator FRANKEN. I told you to finish before he got here.

[Laughter.]

Senator FRANKEN. Mr. Chairman, I am just very proud in joining my senior Senator, Senator Klobuchar, in introducing Judge Susan Richard Nelson, the nominee for the U.S. District Court for the District of Minnesota.

I would like to thank Chairman Leahy and Senator Sessions for moving quickly to schedule this hearing. I would also like to congratulate all the nominees here today on this great honor, and thank you and your families for being with us today.

Judge Nelson, I am just so pleased that you can be with us today. You are an extraordinarily qualified nominee and you make our state proud. I also want to welcome your husband, Tom, and your sons, Rob and Michael, to this hearing today.

Judge Nelson graduated from Oberlin College, and I missed Senator Klobuchar’s introduction. I hope I am not covering a lot of the same territory, but this is the day this is happening, so why not hear that you graduated with high honors twice, and went on to the University of Pittsburgh Law School.

She practiced law for more than 20 years, gaining experiences in many areas of the law during her time as a partner at Robins, Kaplan, Miller and Ciresi in Minneapolis.

Judge Nelson was named a Super Lawyer, one of Minnesota's leading lawyers, for five consecutive lawyers. For the past 10 years, she has served as a U.S. magistrate judge in the Minnesota district court. Judge Nelson's decisions while serving as a magistrate judge illustrate her strong commitment to justice and to the rule of law.

She has decided a wide range of cases on topics ranging from employment discrimination to deceptive trade practices. She conducts settlement conferences nearly every week, and has presided over several cases to verdict.

Minnesota has a strong tradition of fighting for access to justice and Judge Nelson has upheld this principle during her time as magistrate judge. In 2005, the Hennepin County Bar Association gave her the judicial professionalism award, which is given to the judge who, quote, "best exemplifies the pursuit of the practice of law as a profession, including the spirit of public service and promotion of the highest level of competence, integrity, and ethical conduct."

Are you still with us, Senator Hatch? That is good, right?

Senator HATCH. I have to admit, you have been stultifying me a wee bit here.

Senator FRANKEN. All right. I am sorry.

Senator HATCH. But I want you to know I am all ready for your nominee, because she—

Senator FRANKEN. Then why am I even continuing?

Senator HATCH. Wait, wait, wait. She graduated from the University of Pittsburgh and I think Senator Cardin might very well be, too.

Senator CARDIN. We sort of have a bias toward University of Pittsburgh up here.

[Laughter.]

Senator FRANKEN. Well, I do not feel one way or the other about it, frankly.

[Laughter.]

Senator HATCH. That is typical. I understand that.

Senator CARDIN. The Senator's time has expired.

[Laughter.]

Senator FRANKEN. I ask for another 2 minutes.

Judge Nelson is also a former president of Minnesota Women Lawyers and deeply involved in her community. She has supported a wonderful organization that I have worked closely with, Minnesota Advocates for Human Rights. She is also involved with the Bloomington, Minnesota American Legion, the Minneapolis Jewish Community Center, and the Bloomington Classic Baseball League, among other civic organizations.

This diversity of experiences has helped her understand law and the community from many different perspectives, a quality that will serve her well as a district court judge.

As a district court judge, Judge Nelson will continue to have many of the responsibilities she has performed so admirably for the past decade. Judge Nelson has been rated, quote, "unanimously

well qualified” by the American Bar Association, the highest rating possible.

I urge my colleagues on the Committee to support her nomination, and I look forward to quick action both in Committee and in the full Senate.

Thank you, again, Judge Nelson, for being here. And thank you, Mr. Chairman, for the opportunity to introduce her.

Senator CARDIN. Thank you, Senator Franken.

We now will proceed to our first panel, which will be Scott Matheson.

[Witness sworn.]

Senator CARDIN. Mr. Matheson, you may proceed. But as is the tradition of our Committee, if you have family members that are with you, it would be appropriate to introduce your family. We know this is a family effort.

STATEMENT OF SCOTT MATHESON, NOMINEE TO BE UNITED STATES CIRCUIT COURT JUDGE FOR THE TENTH CIRCUIT

Mr. MATHESON. Well, thank you very much, Mr. Chairman. And it's an honor to be here and I'm delighted to introduce family members who are with me this afternoon.

I will start with my wife, Robyn, who is seated directly behind me. And to her left is my daughter, Heather. My son, Briggs, is here in spirit, but he's a first year law student at Stanford and I told him he had to stay in California and go to class. And I hope I can get some Committee support on that decision, because he wasn't happy about that.

My mother is here. She's been mentioned several times during the course of these proceedings. She arrived in Washington last night, promptly slipped at the Metro and dislocated her finger. But she's OK. I just hope that isn't an omen for the hearing. But I'm pleased that she could join us.

I'd like to mention my father. We lost my father almost 20 years ago. We think about him and we miss him every day and especially on this day.

My brother, Jim, was here earlier. He was introduced. He had to ask to be excused. And I'd like to mention my brother, Tom, who lives in Tucson, Arizona, and my sister, Lu, who lives in Salt Lake City.

Also joining us today are many friends, colleagues, former colleagues, students, former students, and, via online, many colleagues and friends out in the State of Utah, and I appreciate their interest and support.

I'd also like to thank and acknowledge the introductions on my behalf by Senator Hatch. That's the kind of introduction that would make anybody's mother blush, and I think she did, and then Senator Feingold did the same thing.

So I appreciate very much what both of them had to say, and especially the bipartisan support that those statements represent.

With that, Mr. Chairman, I'll turn it back to you and I look forward to answering the Committee's questions.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Scott Milne Matheson, Jr.

(Note: After my grandfather, Scott Milne Matheson, died in 1958, my father dropped the "Jr." from his name and replaced the "III" in mine. I was originally named Scott Milne Matheson, III)

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

United States Circuit Judge for the Tenth Circuit

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

University of Utah
S.J. Quinney College of Law
332 South 1400 East Room 101
Salt Lake City, Utah 84112-0730

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

1953; Salt Lake City, Utah

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

1977-1980, Yale Law School; J.D., 1980
1975-1977, Oxford University; M.A. (B.A., 1977, Oxford converted to M.A., 1984)
(Rhodes Scholar)
1971-1975, Stanford University; A.B. (with distinction), 1975

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

1985 – Present

S.J. Quinney College of Law, University of Utah
 332 South 1400 East Room 101
 Salt Lake City, Utah 84112-0730
 Hugh B. Brown Presidential Endowed Chair in Law (2009 – Present)
 Professor of Law (1991 – Present)
 Dean (1998 – 2006)
 Associate Dean for Academic Affairs (1990 – 1993)
 Associate Professor (1985 – 1991)

2006 – 2007 (on sabbatical leave from University of Utah)

Woodrow Wilson International Center for Scholars
 Ronald Reagan Building
 One Woodrow Wilson Plaza
 1300 Pennsylvania Avenue, NW
 Washington, D.C. 20004
 Public Policy Scholar

1993 – 1997 (on leave from University of Utah)

Office of the United States Attorney for the District of Utah
 185 South State Street #400
 Salt Lake City, Utah 84111
 United States Attorney, District of Utah

1989 – 1990 (on leave from University of Utah)

Joan Shorenstein Barone Center on the Press, Politics and Public Policy
 John F. Kennedy School of Government
 Harvard University
 Cambridge, Massachusetts 02138
 Visiting Associate Professor in the Frank Stanton Chair on the First Amendment

1988 – 1989 (on leave from University of Utah)

Salt Lake County Attorney's Office
 231 East 400 South (now at 111 East Broadway #400)
 Salt Lake City, Utah 84111
 Deputy County Attorney

1981 – 1985 & 1979

Williams & Connolly LLP
 839 17th St. NW (now at 725 12th St. NW, 20005)
 Washington, D.C. 20006
 Associate Attorney (1981 – 1985)
 Summer Associate (1979)

1976 and 1980
 Matheson for Governor
 430 East South Temple
 Salt Lake City, Utah 84102
 Campaign Manager

1978
 Van Cott, Bagley, Cornwall & McCarthy
 36 South State Street, Suite 1900 (current address)
 Salt Lake City, Utah 84111
 Summer Associate

1975
 Department of Transportation
 Office of Aviation Economic Policy
 1200 New Jersey Avenue, SE
 Washington, D.C. 20590
 Economic Researcher (Summer)

Other Affiliations (uncompensated)

2007 – 2008
 Utah Mine Safety Commission
 1594 West North Temple, Suite 1210
 Salt Lake City, Utah 84114
 Chair

1992 – 1993
 TreeUtah
 740 South 300 West, Suite 301
 Salt Lake City, Utah 84101
 Trustee

1986 – 1993
 Legal Aid Society of Salt Lake
 205 North 400 West
 Salt Lake City, Utah 84103
 President (1987)
 Trustee (1986-1993) (on leave 1989-90 academic year)

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

I have not served in the military. I registered for selective service.

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

S.J. Quinney College of Law, Hugh B. Brown Presidential Endowed Chair in Law (2009)
 S.J. Quinney College of Law, Faculty Service Award (2009)
 Chicago-Kent College of Law, Roy C. Palmer Civil Liberties Prize (2009)
 Utah Minority Bar Association, Special Recognition Award (1999)
 Federal Bar Association, Utah Chapter, Service to the Federal Bar Award (1998)
 Zions Bank, "Up'n Comers" Award (Education) (2001)
 University of Utah College of Law, Faculty Achievement Award (teaching award) (1993)
 Golden Key National Honor Society, Honorary Member (1990)
 Note Editor, *Yale Law Journal* (1979 – 1980)
 Rhodes Scholarship (1975 – 1977)
 Stanford University, Anna Laura Myer's Prize (outstanding undergraduate economics thesis) (1975)

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

Utah State Bar (1986-Present)
 District of Columbia Bar (1981-Present) (currently inactive)
 Salt Lake County Bar Association (1986-Present)
 American Bar Association (1981-Present)
 Acting Co-Director, Utah Criminal Justice Center (Fall 2007) (program at University of Utah)
 American Bar Foundation Fellow, Utah Chapter (2000-Present)
 "and Justice for All" Leadership Committee (1999-2006) (fundraising committee for legal aid service providers Utah)
 Utah State Bar Board of Bar Commissioners (ex officio) (1998-2006)
 Advisory Comm. on Local Rules of Practice, U.S. District Court (Utah) (1993-97)
 Strategic Planning Committee for Law Enforcement (Utah) (1994-96)
 Criminal Justice Act Advisory Committee, U.S. District Court (Utah) (1994-95)
 Board of Trustees, Legal Aid Society of Salt Lake (1986-93,* President in 1987)**
 Utah Constitutional Revision Commission (1987-93*)**
 Utah Supreme Court Adv. Comm., Rules of Evid. (1987-93,* Chair, 1991-93)**
 Executive Committee, Salt Lake County Bar Association (1986-92*)
 Chair, Section on Mass Communication Law, Ass'n of Amer. Law Schools (1993)
 Service on the following University of Utah S.J. Quinney College of Law committees:
 Accreditation/Self-Study, Admissions, Curriculum (currently chair), Faculty
 Recruitment, New Building Case Statement, Programs, Stegner Center, other ad
 hoc committees
 Women Lawyers of Utah (joined one or two times in early 1990s)
 Federal Bar Association (joined one or two times in early 1980s)

*On leave academic year 1989-90

**Resigned upon 1993 nomination as U.S. Attorney for Utah

10. **Bar and Court Admission:**

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

District of Columbia, 1981 (currently inactive)
Utah, 1986

There have been no lapses.

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

United States Court of Appeals for the District of Columbia, 1981
United States Court of Appeals for the Tenth Circuit, 1993
United States District Court for the District of Columbia, 1981
United States District Court for the District of Utah, 1986
District of Columbia Court of Appeals, 1981
Utah Supreme Court, 1986

I am not aware of any lapses.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Utah Mine Safety Commission (Chair, 2007- 2008)
Chair, Search Committee for Director, Institute of Public and Int'l Affairs,
University of Utah (2005-2006)
University Neighborhood Partners, Advisory Board (2002-06); Chair (2002-04)
Deans' Representative to the Academic Senate, University of Utah (1999-2001)
Marriner S. Eccles Fellowship in Political Economy Selection Committee,
University of Utah (1999-2006)
Development Oversight Committee, University of Utah (1999-2003)
Dean Search Committee, College of Business, University of Utah (1999)

Rosenblatt Prize for Excellence Selection Committee, University of Utah (1999)
 Council of Academic Deans, University of Utah (1998-2006)
 Hinckley Institute of Politics Governing Board, University of Utah (1998-2006)
 University of Utah Committee on the Tanner Lectures on Human Values (1993-2000)
 Rhodes Scholarship Selection Committee for the State of Utah (1996, 1998, 1999, 2002)
 Honors Program Advisory Committee, University of Utah (1986-88)
 Advisory Board, Hinckley Institute of Politics, University of Utah (1990-93)**
 Bd of Directors, Scott M. Matheson Leadership Forum, Univ. of Utah (1990-93)**
 Chair, United Nations Day for the State of Utah, 1991
 Board of Trustees, TreeUtah (1992-93)**

I have paid membership dues to the Association of American Rhodes Scholars, the NAACP, the United Nations Association of Utah, and the United States Tennis Association, and may have paid dues to the Stanford and/or Yale Clubs of Utah. I have made contributions (e.g., local public television station KUED) or subscribed to magazines (e.g., The Wilson Quarterly) where the donors/subscribers are referred to as members.

*On leave academic year 1989-90

**Resigned upon 1993 nomination as U.S. Attorney

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the listed organizations discriminated on any of the bases when I served on or was a member of them, and I am not aware that any of them did so before I served on or became a member of them.

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

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

Book

Presidential Constitutionalism in Perilous Times (Harvard University Press, 2009)

Law Review Articles

Note, Indian Water Rights: The Winters of Our Discontent, 88 Yale L.J. 1689 (1979).

Procedure in Public Person Defamation Cases: The Impact of the First Amendment, 66 Tex. L. Rev. 215 (1987).

Eligibility of Public Officers and Employees to Serve in the State Legislature: An Essay on Separation of Powers, Politics, and Constitutional Policy, 1988 Utah L. Rev. 291.

The Working Relationship Between Judges and Journalists in Salt Lake County: An Attitudinal Study, 14 J. Contemp. L. 211 (1988).

The Prosecutor, the Press, and Free Speech, 58 Fordham L. Rev. 865 (1990).

Federal Legislation to Elevate and Enlighten Political Debate: A Letter and Report to the 102d Congress about Constitutional Policy, 7 Journal of Law & Politics 73 (1990).

Constitutional Status and Role of the State Attorney General, 6 Fla. J. of L. & Public Policy 1 (1993).

The State of Utah's Role in Coal Mine Safety: Federalism Considerations, 29 J. Land, Resources, & Envtl. L. (2009)

Other Publications

Legal/Constitutional Aspects of Changing Patterns of Access, in Proceedings of the Symposium on Public Access to Federal Government Information 55 (1986) (published by the Utah Library Association Government Documents Round Table).

Jury Surveys and Pretrial Publicity: Two Case Studies, 3 Utah Bar J. 8 (June/July 1990) (co-authored with Randy Dryer).

In Memoriam: Alfred C. Emery, 2002 Utah L. Rev. 705.

In Memoriam: Ronald N. Boyce, 2002 Utah L. Rev. 711.

Remembering Lee, 7 Journal of Law & Family Studies 489 (2005).

Looking Ahead: Preparing for Life's Challenges, Clark Memorandum (BYU Law School alumni magazine) at 2 (Fall 2005).

Introduction: Equal Access to Justice in Utah, 2006 Utah L. Rev. 921.

The Utah Minority Bar Association and Ripples of Hope, 23 Utah Bar J. 16 (Jan./Feb. 2010).

Newspaper Articles

Constitutional Snag Could Keep Hatch Off Supreme Court, The Salt Lake Trib., June 14, 1987, at A19.

Hatch Downed, Nat'l L. J., July 13, 1987 at 13.

Letter of the Law? Let People Decide, Salt Lake Trib., Feb. 7, 1988, at 18A.

Tax Initiative May Cloud Separatism, Salt Lake Trib., Sept. 18, 1988, at 10A.

Media, Candidates Must Join to Improve Campaign Tactics, Salt Lake Trib., August 18, 1990, at 10A.

Americans Lacking Basics of Life Cannot Enjoy Benefits of Bill of Rights, Salt Lake Trib., Dec. 15, 1991, at A27.

Bicentennial of Landmark Supreme Court Decision, Salt Lake Trib., Feb. 23, 2003, at AA4.

Separation of Prosecution and Politics, Salt Lake Trib., March 25, 2007, at O1.

Digs at Mine Safety Commission Unwarranted, Salt Lake Trib., Dec. 22, 2007 (online version, paper version published Dec. 23, 2007).

State-Federal Partnership Best Way to Improve Mine Safety, Salt Lake Trib., Jan. 27, 2008.

Security, Liberty and the Limits of Presidential Power, Salt Lake Trib., Jan. 16, 2009, at A11.

Other

Letter to the Editor, Deseret News, June 1, 2009.

Letter to the Editor, 10 Utah Bar J. 4 (Nov. 1997).

Letter to the Editor, Salt Lake Tribune, Aug. 15, 1989.

Letters from the Dean published in Res Gestae, the alumni magazine for the University of Utah S.J. Quinney College of Law (Summer/Fall 1999, Spring/Summer 2000, Spring 2001, Autumn 2001, Spring 2002, Autumn 2002, Spring 2003, Spring 2004, Spring 2005, Autumn 2005)

Bench/Press Relations, For the Record – Newsletter of the Utah Administrative Office of the Courts (vol. 1, no. 3, p. 1) (June 1987) (co-authored with Randy Dryer).

Legal Aid Society of Salt Lake: A Landmark Year in Protecting the Legal Rights of Families, Salt Lake County Bar, Bar & Bench Bulletin, 1987.

I compiled the above list, which includes all of my significant substantive writings, based on a search of my records and online databases. This search may not have found some minor items written in my capacity as a law professor, law dean, or statewide political candidate.

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

Report of the Utah Mine Safety Commission (2008)

Policy Papers, Matheson for Governor (2004) (distributed and/or posted on the campaign website)

I served as a member and then as chair of the Utah Supreme Court Advisory Committee on the Rules of Evidence. I have not retained copies of any reports. The Committee's address is: 450 South State, P. O. Box 140241, Salt Lake City, UT 84114-0241.

I served as a member of the Utah Constitutional Revision Commission. I have not retained copies of any reports. The Commission's address is: Utah State Capitol Complex, House Building, Suite W210, PO Box 145210, Salt Lake City, Utah 84114.

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

I have not found responsive material other than the policy papers provided from my gubernatorial campaign. I generally recall a few presentations about twenty years ago to state legislators in connection with, for example, my service on the Utah Constitutional Revision Commission, but I have not retained notes or records of any such communications.

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

All speeches and talks in Salt Lake City except where otherwise noted:

Roy C. Palmer Civil Liberties Prize Lecture, Chicago-Kent College of Law, Chicago, IL, Presentation on receipt of book award (Nov. 20, 2009)
 Utah Minority Bar Association Annual Banquet, "The Utah Minority Bar Association and Ripples of Hope," Keynote speech (Oct. 23, 2009)
 Program: Freedom From Religion by Amos Guiora, Comments (Oct. 23, 2009)
 Salt Lake Rotary Club, Book presentation (Aug. 4, 2009)
 Google, Inc., Mountain View, CA, Book presentation (June 24, 2009)
 Woodrow Wilson International Center for Scholars, Washington, D.C., Book presentation (May 27, 2009) (note: made brief introductory presentation at the Wilson Center describing this project in October 2006, no text or notes retained)
 S.J. Quinney College of Law Pro Bono Dinner, Remarks (April 2009)
 King's English Bookstore, Book reading (Feb. 25, 2009)
 Hinckley Institute of Politics, University of Utah, Book discussion (Feb. 20, 2009)
 Memorial for John Duder, Remarks (Dec. 12, 2008)
 Utah Minority Bar Association Dinner, Introduction of President Young (Oct. 17, 2008)
 25th Annual Utah Conference on Safety and Industrial Hygiene, "The Crandall Canyon Mine Tragedy and the State's Role in Coal Mine Safety," Remarks (Oct. 17, 2008)
 International Mining Health & Safety Symposium, "The Crandall Canyon Mine Disaster and the State's Role in Safety," Remarks (July 22, 2008)
 Huntsman Seminar/Hinckley Institute of Politics, University of Utah, "The Bill of Rights – Some Observations," Presentation (June 27, 2008)
 Society of Petroleum Engineers (Salt Lake Chapter), "The Crandall Canyon Mine Disaster and the State's Role in Safety," Remarks (May 29, 2008)

University of Utah S.J. Quinney College of Law, Faculty Lunch Series, "The Crandall Canyon Mine Disaster and the State's Role in Safety" (Feb. 20, 2008)

Utah Mine Safety Commission Report to Governor Huntsman, Statement of Chair, Utah Mine Safety Commission (Jan. 23, 2008)

Utah Commission on Civic and Character Education, Annual Dinner, Introduction of the Honorable Lee Hamilton (Oct. 30, 2007)

Eleanor Roosevelt Award – Karen Hale, Award Presentation (Oct. 26, 2007)

Remarks at Induction of Wayne Owens into the Hinckley Institute of Politics Hall of Fame, University of Utah (Spring 2007)

Huntsman Seminar/Hinckley Institute of Politics, University of Utah, "The Bill of Rights – Some Observations," Presentation (June 14, 2006)

Commencement Scenario, S. J. Quinney College of Law, University of Utah, Welcome and remarks (May 12, 2006)

S.J. Quinney College of Law, University of Utah, Alumni Lunch, Honoring David K. Winder, Remarks (May 2006)

Utah Criminal Justice Center Kick-Off, Remarks (Apr. 2006)

Memorial Service – John Rokich, Magna, UT, Remarks (Mar. 27, 2006)

S. J. Quinney College of Law, Class of 2008 Orientation, Remarks (Aug. 2005)

S. J. Quinney College of Law, Law Student Oath Ceremony, Remarks (Aug. 22, 2005)

S.J. Quinney College of Law, University of Utah, Alumni Lunch, Honoring Harold G. Christensen et al., Remarks (May 2005)

Commencement Scenario, S. J. Quinney College of Law, University of Utah, Remarks (May 13, 2005)

J. Reuben Clark Law School, Brigham Young University, Provo, UT, Commencement address (Apr. 22, 2005)

KSL-TV Debate (Oct. 25, 2004)

KUED Debate (Oct. 29, 2004)

KUTV Debate (Oct. 18, 2004)

Salt Lake Rotary Club Debate (Oct. 2004)

KSL-Radio, Remarks (June 2004)

Salt Lake Convention and Visitors Bureau (Oct. 12, 2004)

Memorial Service – Lee E. Teitelbaum, Remarks (Oct. 8, 2004)

Provo-Orem Chamber of Commerce Debate, Provo, UT (Sept. 2004)

Utah Mining Association Annual Conference, Remarks (Aug. 26, 2004)

Message for KUED (Aug. 23, 2004)

Stump Speech – Short Version (Aug. 16, 2004)

Ski Utah – Tourism Meeting, Remarks (July 14, 2004)

Hooper Flag Raising Ceremony, Hooper, UT, Independence Day speech (July 5, 2004)

Community Solutions 2004 29th Annual Conference on Poverty, Remarks (June 10, 2004)

Utah Farm Bureau Convention, Park City, UT, Remarks (June 2004)

Wasatch Front Economic Forum, Remarks (May 19, 2004)

Commencement Scenario, S. J. Quinney College of Law, University of Utah, Welcome and Remarks (May 14, 2004)

S.J. Quinney College of Law, University of Utah, Alumni Lunch, Honoring Earl Wunderli et al., Remarks (May 2004)

Utah State Democratic Party Convention, Speech (May 8, 2004)

Salt Lake County Democratic Convention and Davis County Democratic Convention (Farmington, UT), Speeches (April 24, 2004) (same speech from notes)

Weber County Democratic Convention, Ogden, UT, Speech (Apr. 17, 2004) (note: I made similar remarks at other county conventions (e.g., Box Elder, Carbon, Emery, Juab, Millard, Sanpete, Summit, Tooele, Utah) but do not have the text or notes from them)

Cache County Democratic Convention, Logan, UT, Speech (Apr. 3, 2004)

Campaign Kick-Off, East High School, Speech (Mar. 27, 2004)

Cache County Jefferson Jackson Day Dinner, Logan, UT, Speech (Feb. 28, 2004)

Utah Farmers Union, Remarks (Jan. 2004)

Utah Information Technology Association, Remarks (Jan. 28, 2004)

Young Democrats of Utah Convention, Keynote speech (Nov. 14, 2003)

Utah State Democratic Convention, Keynote speech (Aug. 23, 2003)

S. J. Quinney College of Law, Law Student Oath Ceremony, Remarks (Aug. 18, 2003)

S. J. Quinney College of Law, Class of 2006 Orientation, Remarks (Aug. 18, 2003)

Southern Utah Bar Association, St. George, UT, CLE Presentation on Scientific Evidence (Aug. 12, 2003) (note: I gave a similar presentation to the Logan Rotary Club on Aug. 15, 2002, but do not have text or notes)

Sanpete County Democratic Party Convention, Manti, UT, Remarks (June 7, 2003)

Davis County Democratic Party Convention, Farmington, UT, Remarks (May 3, 2003)

S.J. Quinney College of Law, University of Utah, Alumni Lunch, Honoring Anne Milne et al., Remarks (May 2003)

Commencement Scenario, S. J. Quinney College of Law, University of Utah, Welcome and Remarks (May 24, 2003)

Sawbuck Club Dinner, Ogden, UT, Speech (May 2, 2003)

Governor Bill Richardson, Introduction (Spring 2003)

Wallace Stegner Center for Land, Resources and the Environment, S. J. Quinney College of Law, Eighth Annual Symposium, Welcome remarks (Apr. 18, 2003)

Investiture of Michael W. McConnell, United States Court of Appeals for The 10th Circuit, University of Utah, S. J. Quinney College of Law, Introductory and welcome remarks (Jan. 3, 2003)

Memorial Service – Ronald N. Boyce, Introductory and welcome remarks (Nov. 11, 2002)

Memorial Service – Ronald N. Boyce, Veterans Memorial Park, Camp Williams, Riverton, UT, Remarks (Nov. 1, 2002)

S. J. Quinney College of Law, Law Student Oath Ceremony, Remarks (Aug. 19, 2002)

S. J. Quinney College of Law, Class of 2005 Orientation, Remarks (Aug. 19, 2002)

18th Summer Institute in the Human Services, "Society's Response to Crime" Graduate School of Social Work, University of Utah, Remarks (July 8, 2002)

Investiture of Judge Paul G. Cassell, Remarks (July 2, 2002)

Commencement Scenario, S. J. Quinney College of Law, University of Utah, Welcome and Remarks (May 25, 2002)

S.J. Quinney College of Law, University of Utah, Alumni Lunch, Honoring Herbert J. Livsey et al., Remarks (May 17, 2002)

S. J. Quinney College of Law, Unveiling of new signage, Talking points/remarks (May 17, 2002)

Memorial Service – Walter E. Oberer, Remarks (Apr. 19, 2002)

Wallace Stegner Center for Land, Resources and the Environment, S. J. Quinney College of Law, Annual Symposium, "Powell and Stegner: Fifty Years after the Hundredth Meridian," Welcome (Apr. 2002)

Native American Law Symposium, Welcome remarks (Mar. 2002) (same on Oct. 16, 1998, but do not have text/notes)

Memorial Service – Alfred C. Emery, Remarks (Mar. 22, 2002)

Memorial Service – Lionel Frankel, Remarks (Jan. 2002)

University of Utah College of Law, Quinney Foundation announcement, Introductory remarks (Nov. 2, 2001)

University of Utah College of Law, Introduction of Akhil Amar (Oct. 2001)

University of Utah College of Law, First Year Orientation, Remarks (Aug. 13, 2001)

University of Utah College of Law, Commencement Scenario, Remarks (May 19, 2001)

University of Utah College of Law, Annual Alumni Event Honoring Gordon L. Roberts et al., Remarks (May 23, 2001)

University of Utah College of Law, Rosenblatt Foyer Dedication, Remarks (May 23, 2001)

Chicano Scholarship Banquet, Remarks (May 1, 2001)

U.S. Attorneys Office Retreat, District of Utah, Park City, UT, Remarks (May 2001)

University of Utah College of Law dinner, Introduction of Guido Calabresi (Mar. 2001)

Central Utah Bar Association, Trends in Legal Education, Provo, UT, Power point presentation (Jan. 25, 2001)

O'Hara Honors Program Announcement, Utah State Capitol, Remarks (Dec. 19, 2000)

University of Utah College of Law Scholarship and Awards Reception, Remarks (Nov. 29, 2000)

University of Utah College of Law, Pro Bono Initiative Kick-Off, Remarks (Nov. 1, 2000)

University of Utah College of Law, First Year Orientation, Remarks (Aug. 14, 2000)

University of Utah College of Law, Annual Alumni Event Honoring Calvin L. Rampton et al., Remarks (May 16, 2000)

University of Utah College of Law Commencement Scenario, Welcome and Remarks (May 20, 2000)

Fordham Debate, University of Utah College of Law, Introductory Remarks (Mar. 2, 2000)

Utah Bar Foundation Luncheon, Trends in Legal Education, Presentation (Nov. 23, 1999)

First Year Orientation, University of Utah College of Law, Welcome Remarks (Aug. 16, 1999)

University of Utah College of Law, Commencement Scenario, Welcome and Remarks (May 22, 1999)

University of Utah College of Law, First Year Orientation, Remarks (Aug. 17, 1998)

Perspectives on the Bill of Rights, Hinckley Institute of Politics – University of Utah, Presentation (Apr. 18, 1996)

Logan Kiwanis Club, Logan, UT (Oct. 11, 1995), Remarks (Note: I recall giving similar remarks about serving as U.S. Attorney to other community groups, such as the Salt Lake Kiwanis and the Exchange Club, but I do not recall specific dates and have not been able to locate text or notes.)

University of Utah College of Law, Commencement address (May 20, 1995)

College of Eastern Utah, Price, UT, Commencement address (June 10, 1994)

University of Utah, Taft Institute/Hinckley Institute of Politics, “That Special Treasure – the Bill of Rights,” Remarks (June 23, 1993)

Memorial Service – Scott M. Matheson (father) (Oct. 13, 1990)

Women’s State Legislative Council, “The US Constitution and the Role of the Supreme Court,” Remarks (Feb. 26, 1987)

March of Dimes Constitutional Ball, Bicentennial Commentaries, “The Constitution: More Than a National Pastime” Utah Valley Community College, Orem, UT, Speech (Sept. 29, 1987)

I spoke at the following events but do not have text or notes of the remarks:

Utah County Democratic Party, Provo, UT, Dinner Speaker (June 27, 2008)

Federal Bar Association (Utah Chapter), Presentation about Utah Criminal Justice Center (May 2, 2008)

Rowland Hall St. Marks High School Dialogue Series, Remarks on First Amendment Issues (Feb. 4, 2008) (note: I have been invited to present at other schools. I recall a history class at East High School and elementary schools in Salt Lake and Tooele Counties, UT.)

Utah Commission on Criminal and Juvenile Justice, Presentation about Utah Criminal Justice Center (Oct. 12, 2007)

Davis County Democratic Convention, Farmington, UT, Speech (April 22, 2006)

Salt Lake City Peer Court (student program), Remarks (Sept. 9, 2003) (note: I have done this on more than one occasion, but do not have more specific information.)
 Brigham Young University Pre-Law Program, Provo, UT, Presentation about law school (Oct. 27, 2000) (note: I have done this on more than one occasion, but do not have more specific information)
 Utah State Bar Convention, San Diego, CA, Moderator of panel on the development of young lawyers (July 14, 2000)
 Scott M. Matheson Courthouse, Dedication Remarks (Mar. 27, 1998)
 Dugway Proving Ground, Law Day Presentation, Dugway, UT (May 1994 or May 1995)

This list represents the presentations I have identified through search of my files. In several positions—particularly as law professor, dean, United States Attorney, and gubernatorial candidate—I have been called on to make frequent introductions, brief remarks, and other presentations in a variety of contexts. For example, as dean I introduced speakers and programs at law school events and made presentations about the law school at law offices, alumni events, and bar association functions. As a law professor, I have spoken at bar and judicial functions. As U.S. Attorney, I spoke at prosecutors meetings, law enforcement events, and on a panel at the Tenth Circuit Judicial Conference. As a candidate for Governor of Utah in 2004, I made presentations at schools, service clubs, businesses, and other gatherings.

As to all of these speaking roles, I do not recall the time, place, or circumstances for many of the presentations, and I often spoke without notes or did not retain prepared remarks or notes. Although I have retained some material from the campaign, it is not organized in list form or in any consistent media format.

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

As a law professor, dean, U.S. Attorney, and political candidate, I have been interviewed and quoted in the media many times over the years, most often with a brief comment. I have not maintained a record of every media contact, have a very incomplete file of clips, and do not recall all contacts. Online searching produces numerous items that include my name, but many are not based on an interview.

Quotes from Utahns on Obama's Nobel Prize, Salt Lake Tribune, October 9, 2009
 Matt Canham, Scott Matheson Says He's Interested in Judgeship, Salt Lake Tribune, June 9, 2009
 Pamela Manson, Respected Utah Federal Judge David Winder Dies, Salt Lake Tribune, May 20, 2009

Tom Wharton, Utah Tennis Legend was King of the Court: The Player and Coach Also Organized the Salt Lake Tribune No Champs, Salt Lake Tribune, November 12, 2008

Jennifer Dobner, Feds to Release Report on Utah Mine Disaster, Associated Press, July 24, 2008

Jasen Lee, Mine-Safety Technology is Urged, Deseret News, July 23, 2008

Geoffrey Fattah, Court Shoots Down D.C. Gun Ban, Deseret Morning News, June 27, 2008

Mike Gorrell, Wireless Tracking Technology Could Help Mine Safety, Salt Lake Tribune, February 2, 2008

Jasen Lee, Coal Mine Safety Office Is Deemed Necessary, Jan. 12, 2008, at B1

Jasen Lee, Mine-Safety Proposal is Panned, Deseret Morning News, January 4, 2008

Mike Gorrell, State Commission Recommends 45 Revisions to Mine Safety Document, Salt Lake Tribune, January 24, 2008

Jasen Lee, Whistle-Blower System Sought for Mine Safety, Deseret News, January 24, 2008, at E01

Jasen Lee, MSHA Never Got Warning, Deseret Morning News, Dec. 12, 2007

Jasen Lee, MSHA Refuses to Share Info With Utah, Deseret News, October 12, 2007, at A01

Dan Frosch, Panel to Consider Stronger Regulation of Utah Mines, New York Times, September 25, 2007

Steve Fidel, Family, Friends, Colleagues Pay Tribute, Share Memories, Deseret Morning News, September 18, 2007

Jasen Lee, Utah Panel Requests Mine Data from Feds, Deseret Morning News, September 11, 2007

Mike Gorrell, Mine Probe: Utah Panel Pushing for Access, Salt Lake Tribune, September 11, 2007

Shinika A. Sykes, Matheson to Step Down as U. Law School's Dean, Salt Lake Tribune, June 30, 2005

Matheson to Leave Law School Post Next Year, Deseret News, June 29, 2005 at B05

Paul Foy, Utah Professor, Denver Appellate Judge Among Potential Supreme Court Nominees, Associated Press, June 28, 2005

Dan Harrie, Tough Questions for Governor Candidates at Final Debate, Salt Lake Tribune, October 30, 2009, at B3

Jennifer Toomer-Cook, Guv Hopefuls Woo Teachers, Deseret Morning News, October 29, 2004, at B03

Lisa Riley Roche, Governor Hopefuls Present Their Cases, Deseret Morning News, October 26, 2004 at A01

Lisa Riley Roche, Demo is Committed to Serving Utah, Deseret News, October 24, 2004, at A01

Scott Matheson Jr.'s Response to Deseret Morning News Questionnaire, Deseret News, October 24, 2004, at E03

Dan Harrie, The Academic: Matheson is Thoughtful Deliberate, Detail-Driven, Salt Lake Tribune, October 24, 2004, at A19

Rebecca Walsh, Guv Debate: Yes, There are Differences; Guv Hopefuls Highlight Differences, Salt Lake Tribune, October 19, 2004

Patty Henetz, Huntsman, Matheson Tie Success to Environment, Salt Lake Tribune, October 17, 2004, at A14

Dan Harrie, The Homestretch, WITH JUST OVER TWO WEEKS TO GO, to Election Day, Utahns Still Don't Know Much About the Two Leading Candidates for Governor, Salt Lake Tribune, October 17, 2004, at A1

Stephen Speckman and Lisa Riley Roche, Candidates Sketch Higher-Ed Programs, Deseret Morning News, October 14, 2004, at B08

Dan Harrie, Guv Candidates' Rift Lies in Fine Print, Salt Lake Tribune, October 14, 2004, at B6

Brice Wallace, Candidates Call for More Tourism Funds, Deseret News, October 13, 2004 at E03

Dan Harrie, Matheson: Political Balance Needed, Salt Lake Tribune, October 7, 2004, at A18

Dan Harrie, Sparring Partners: Governor Candidates Swap Light Jabs at Debate; Candidates Push Agendas at Debate, Salt Lake Tribune, October 2, 2004, at B1

Dan Harrie, Matheson Would Beef Up State's Terrorism Defenses, Salt Lake Tribune, September 28, 2004, at C6

Rhina Guidos, Governor Candidates Honor Their Fathers; At Debate, Juniors Say Dads Instilled Good Values, Salt Lake Tribune, September 18, 2004, at B1

Lisa Riley Roche, State Security Council Sought, Deseret Morning News, September 28, 2004, at B08

Bob Bernick, Jr., Matheson Touts Economic Plan, Deseret News, September 11, 2004, at B04

Bob Bernick, Jr., Huntsman Aided by Cancer Ads?, Deseret News, September 1, 2004, B07

Matthew Evans, Matheson Reveals Strategy for Strengthening Utah Health Care, Standard-Examiner, August 2, 2004

Nicole Warburton, Matheson Jr.: 'Bulk-Buy' Drug Plan a Good Idea, Salt Lake Tribune, August 28, 2004

Lisa Riley Roche, Scott Matheson, Jr. Outlines Health Plan, Deseret News, August 28, 2004, at B06

Hardships: Matheson, Huntsman and Larsen Agree that Bush's Education Centerpiece Imposes an Unfair Burden, Associated Press, August 26, 2004

Rebecca Walsh, Huntsman Proposes New Partner Rights, Salt Lake Tribune, August 25, 2004

Ed Kociela, Gubernatorial Hopefuls Discuss Plans for Schools, Spectrum, August 25, 2004

Bob Bernick, Jr., Matheson Opposes Amendment, and Huntsman Backs It, Deseret Morning News, August 24, 2004

Nicole Warburton, Matheson Vows to Keep Hot Waste Out of Utah, and Huntsman Agrees, Salt Lake Tribune, August 18, 2004

Huntsman, Matheson Square Off, Associated Press, Salt Lake Tribune, August 13, 2004

Nancy Perkins, Gubernatorial Foes Back S. Utah Projects, Deseret Morning News, August 12, 2004

Matthew Evans, Chamber Event to Feature Huntsman and Matheson, Standard-Examiner, August 10, 2004

Nicole Warburton, Older Utahns: Governor Hopeful Says He Would Create an Independent Commission for the Aging, Salt Lake Tribune, August 7, 2004

Matthew Evans, Matheson Talks Health Care for Seniors, Standard-Examiner, August 6, 2004

Bob Bernick, Jr., Demo Plan Aims to Help Elderly, Deseret News, August 6, 2004, at B08

Bob Bernick, Jr., Matheson, Jr. Calls for Utah 'Water Bank', Deseret Morning News, July 27, 2004

Nicole Warburton, Matheson Details Plan for Saving Utah Water, Salt Lake Tribune, July 27, 2004

Matthew Evans, Drought Plan Key Issue, Standard-Examiner, July 27, 2004

Doug Alden, Kansas Governor Supports Matheson, Kansas City Star, July 22, 2004

Matheson Makes Pledge to Children, Salt Lake Tribune, July 17, 2004

Matheson, Jr. Unveils Pledge to Utah Students, Deseret News, July 17, 2004

Jerry D. Spangler, Few Undecided on Gov., Deseret Morning News, July 15, 2004

Michael Chandler, Candidates Offer Boost for Tourism, Salt Lake Tribune, July 15, 2004

John Wright, Huntsman Talk Education in Logan, Logan Herald Journal, July 12, 2004

Matthew Evans, Not Much Disagreement at Utah Farm Bureau Get-Together in Park City, Standard-Examiner, July 10, 2004

Dan Harrie, Candidates Back Open-Space Efforts, Salt Lake Tribune, July 10, 2004

Lisa Riley Roche, Duo Put Forth Plans for State's Farms, Farmers, Deseret Morning News, July 10, 2004

Candidates Give Views on Choosing Judges, Salt Lake Tribune, July 4, 2004, at B5

Jennifer Toomer-Cook, Matheson Vows to Find More Cash for Utah Schools, Deseret Morning News, June 29, 2004

Dan Harrie, Matheson Outlines His Plans for Utah Education Reform, Salt Lake Tribune, June 29, 2004

Patty Henetz, Matheson Offers Education-Economic Plan, Associated Press, June 9, 2004

Candidate Matheson Outlines Education Plan, KSL News Online, June 28, 2004

Dan Harrie, Matheson Says It's a Horse Race, Salt Lake Tribune, June 24, 2004

Rampton is Chairman of Matheson Campaign, Deseret News, May 23, 2004

Hillary Gubler, Matheson Mirrors Life of His Father, Spectrum, May 8, 2004

Bryon Saxton, Matheson Ready to Take on GOP This Fall, Standard-Examiner Davis Bureau, April 25, 2004

Donna Kemp Spangler, S. Matheson Enters Race for Governor, Deseret Morning News, March 28, 2004

Rebecca Walsh, Matheson Summons Demos; Salt Lake Tribune, March 28, 2004, at B1

Dan Harrie, Another Matheson to Try for Governor's Mansion, Salt Lake Tribune, July, 2003

Bob Bernick, 2 Brothers on Utah Ballot?, Deseret News, July 9, 2003

Paul Foy, Matheson Files Campaign Papers for Governor's Race, Associated Press, July 8, 2003

Elizabeth Neff, Russon Ends Long Service to Judiciary, Salt Lake Tribune, May 16, 2003, at B1

U's Robert Swenson Dies at 83, Deseret News, November 19, 2002

Pneumonia Claims U.S. Judge Boyce, Deseret Morning News, October 28, 2002

Dawn House, Anderson Program to Help Accused, Salt Lake Tribune, April 21, 2002

BYU, U. Schools Make List, Deseret Morning News, April 6, 2002

Alfred C. Emery Dies, Former U. President, Deseret Morning News, March 19, 2002

Marta Murvosh, \$26M Gift for U Law School, Salt Lake Tribune, November 3, 2001, at B1

Kirsten Stewart, U. Law School Program Promotes Pro Bono Work, Salt Lake Tribune, November 2, 2000, at B2

Theresa Desmond, Raising the Bar, Continuum, University of Utah Magazine, Winter 1998-1999

Dan Egan, Scott Matheson Jr. Named Dean of U's College of Law, Salt Lake Tribune, June 12, 1998, at B2

Brian Maffly, Newly Dedicated S.L. Courthouse Fitting Tribute to Matheson, Salt Lake Tribune, March 28, 1998, at B1

Sheila R. McCann, U.S. Attorney Matheson Resigning, Salt Lake Tribune, November 8, 1997, at D3

Ted Cilwick, Feds Pushing to Prosecute Immigrant Felons in Utah, Salt Lake Tribune, December 16, 1996, at A1

U.S. Sues Utah Counties, Associated Press, Las Vegas Review, October 19, 1996, at 3B

Jim Woolf, San Juan Halts Work on Disputed Land, Salt Lake Tribune, October 3, 1996 at A1

Brian Maffly, Sides Settle Kolob Suit; Hikers Fear Fallout Kolob Suit, Salt Lake Tribune, June 20, 1996, at A1

Matheson Defends Fewer Cases, Salt Lake Tribune (AP), Feb. 26, 1996, at D3.

Ted Cilwick, Circuit Court Reverses on Police Searches, Salt Lake Tribune, Jan 8, 1996, at D1.

Utah Pothunter Sentenced to Federal Prison, Associated Press, Las Vegas Review, December 16, 1995, at 5B

Ted Cilwick, Drop in Federal Cases Prompts Delay of Public-Defender Plan, Salt Lake Tribune, May 2, 1994, at D1

Joan O'Brien, Salt Lake Attorney Returns to Oxford, Salt Lake Tribune, April 17, 1994, at D6

Amanda Dixon, Matheson Misses Teaching Almost as Much as We Miss Him, The NeO-Analyst, Dec. 1993, at 1.

Sheila R. McCann, U Professor Nominated for U.S. Attorney Post, Salt Lake Tribune, August 8, 1993 at E1

Marianne Funk, Matheson Nominated as U.S. Attorney, Deseret News, August 8, 1993, at B1

Marianne Funk & Lee Davidson, Matheson Top Contender for U.S. Attorney's Job, Deseret News, March 5, 1993, at B1

Susan Lyman-Whitney, Balancing Career and Private Life, Deseret News, August 30, 1991, at C1

Bob Bernick, Matheson Says He Won't Run for Senate in 1992 Race, Deseret News, August 24, 1991

Paul Rolly, Owens, Orton May Run Since Matheson Won't, Salt Lake Tribune, August 24, 1991

Dawn House, Prayer Debate Graduates to Top Court, Salt Lake Tribune, March 19, 1991, at A1

Suzanne Dean, Taking the Opportunity to Give Something Back, University of Utah Review, December 1990/January 1991

Suzanne Dean, Prof. Scott Matheson Jr. is Committed to "Aggressively Pursuing" Opportunities to Contribute, Res Gestae, University College of Law Alumni Magazine, Fall/Winter 1990

Mike Carter, Utah Ex-Governor's Son Suspects A-Bomb Test Fallout in Cancer Death, Associated Press, October 9, 1990

Paul Rolly & Dawn House, Bangerter Avoids Van Dam in Prayer Dispute, Salt Lake Tribune, July 28, 1990, at B1

Jan Thompson, U. Professor, Prosecutor Trading Places for a Year, Deseret News, June 29, 1988, at B1

Lori Bona, Hard Work Is What Law School Is About, Utah Chronicle, April 9, 1987, at 3

Paul Rolly, Expert: Legal Win Shows Courts May Back Aggressive Reporting, Salt Lake Tribune, April 6, 1987, at 8B

JoAnn Jacobsen-Wells, He's Rising Demo Star, But Matheson Jr. Is in No Hurry to Run, Deseret News, January 4, 1987

Douglas Parker, Will Political Genes Take Root in 2 Demos' Sons?, Salt Lake Tribune, 1986

On April 10, 2009, I appeared on the local public station KUED program "Utah Now." The topic was "Boundaries of Presidential Power." The program can be viewed online at <http://www.kued.org/productions/utahnow/?action=viewShowDetails&id=153>.

I recall participating in the late 1980's or early 1990's on two or three public issue programs on local television but cannot recall the specific dates or topics. I also recall being interviewed on local television when my father died in 1990,

moderating a panel discussion on "The Press and Politics" broadcast on KUED in 1992, and being interviewed by KSL-TV in 2002 about my family's sourdough cooking start. I also gave brief newspaper, radio, and television comments when I was chair of the Utah Mine Safety Commission in 2007 and 2008.

The media outlets that hosted political debates in October 2004 were KUTV, KTVX, KSL-TV, KSL-Radio, and KUED. All are located in Salt Lake City. I also was interviewed during the campaign by various newspapers and radio stations in Utah.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have not served as a judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
 - i. Of these, approximately what percent were:
 - jury trials? ___%; bench trials ___% [total 100%]
 - civil proceedings? ___%; criminal proceedings? ___% [total 100%]
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
 - h. Provide 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, provide copies of the opinions.
 - i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself;
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have not served as a judge.

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

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

From 1993 until 1997, I served as United States Attorney for the District of Utah. I was appointed by President Clinton.

In 2004, I was the Democratic candidate for Governor of Utah and was not elected. I have had no other unsuccessful candidacies for elective office and I have had no unsuccessful nominations for appointed office.

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

I have been involved in the Utah political process for many years. I was the Democratic candidate for Governor of Utah in 2004.

Between 1974 and 1992, I assisted in the various campaigns of Wayne Owens for U.S. House of Representatives, U.S. Senate, and for Governor of Utah.

In 1976 and 1980, I served as campaign manager for Democratic gubernatorial candidate for my father, Scott Matheson.

In 1992, I was co-chair of the Karen Shepherd for Congress campaign and was the volunteer state director for Clinton/Gore in Utah.

Starting in 2000, I helped my brother, Jim Matheson, on his campaigns for the U.S. House of Representatives.

I also have participated as a volunteer, supporter, and advisor for Utah candidates for a variety of local, state, and national offices and have served as the Democratic chair of my voting district.

16. **Legal Career:** Answer each part separately.

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

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

I did not clerk for a judge.

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

I have not practiced alone.

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

1985 – Present

S.J. Quinney College of Law, University of Utah
 332 South 1400 East Room 101
 Salt Lake City, Utah 84112-0730
 Hugh B. Brown Presidential Endowed Chair in Law (2009 – Present)
 Professor of Law (1991 – Present)
 Dean (1998 – 2006)
 Associate Dean for Academic Affairs (1990 – 1993)
 Associate Professor (1985 – 1991)

2006 – 2007 (on sabbatical leave from the University of Utah)

Woodrow Wilson International Center for Scholars
 Ronald Reagan Building
 One Woodrow Wilson Plaza
 1300 Pennsylvania Avenue, NW
 Washington, D.C. 20004
 Public Policy Scholar

1993 – 1997 (on leave from the University of Utah)

Office of the United States Attorney for the District of Utah
 185 South State Street #400
 Salt Lake City, Utah 84111
 United States Attorney, District of Utah

1989 – 1990 (on leave from the University of Utah)

Joan Shorenstein Barone Center on the Press, Politics and Public Policy
 John F. Kennedy School of Government
 Harvard University
 Cambridge, Massachusetts 02138
 Visiting Associate Professor in the Frank Stanton Chair on the First
 Amendment

1988 – 1989 (on leave from the University of Utah)

Salt Lake County Attorney's Office
 231 East 400 South (now at 111 East Broadway #400)
 Salt Lake City, Utah 84111
 Deputy County Attorney

1981 – 1985

Williams & Connolly LLP
 839 17th St. NW (now at 725 12th St. NW, 20005)
 Washington, D.C. 20006
 Associate Attorney

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not been a mediator or arbitrator.

b. Describe:

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

The general character of my practice as a lawyer has been litigation and the supervision of attorneys engaged in litigation. As a law professor (1985-Present), I have performed teaching, scholarship, and service. As a law dean (1998-2006), I led and managed a law school at a major research university and addressed a wide range of issues in legal education.

From 1981 to 1985, I was an associate at the law firm of Williams & Connolly in Washington, D.C. Most of my litigation experience was civil. My experience was typical of the firm's civil litigation practice, with much time devoted to pretrial matters, including numerous depositions and motion practice, and with most cases settling.

From July 1988 to July 1989, I took a leave of absence from law teaching to serve as a Deputy County Attorney for the Salt Lake County Attorney's Office, where I engaged in felony prosecution practice, including jury trials. All of my practice was in criminal proceedings. This work involved each step in felony prosecution, from the defendant's initial appearance to preliminary hearing to arraignment to trial or other disposition and to sentencing.

From August 1993 through December 1997, I was the United States Attorney for the District of Utah. Most of my time was devoted to supervising the legal work of the office, implementing Department of Justice programs and initiatives, coordinating with law enforcement, working with state and local prosecutors, and other administrative tasks. A majority of my work involved criminal proceedings, but I participated in civil matters as well. I was involved in the major charging and case disposition decisions made by the office.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As United States Attorney for the District of Utah, I was responsible for representation of the United States in federal court in criminal and civil cases. I was involved in deciding whether federal felony charges would

be filed and in deciding the resolution of these cases. The variety of cases ranged from drugs to white collar to archeological resource protection. I also participated in major decisions in a variety of civil cases, including settlements.

Before serving as United State Attorney, the general character of my law practice was litigation. At the Salt Lake County Attorney's Office, the sole nature of my practice was criminal prosecution.

At Williams & Connolly, the majority of the work was in civil litigation, although I worked on some criminal defense matters as well. My practice at the firm combined the opportunity to be exposed to many areas of the law and to concentrate on a few. The cases on which I worked involved antitrust, banking, contract, criminal defense, employment, medical malpractice, personal injury, securities, and other areas of the law. I spent a substantial portion of my time working on cases involving claims of defamation and invasion of privacy against the news media. Accordingly, although the variety of work precludes a description of "typical clients," much of my work involved representation of news organizations with respect to a spectrum of issues in media law. I also spent considerable time on a First Amendment Establishment Clause case that culminated in a five-week federal court bench trial.

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

I have spent the substantial majority of my time in practice in litigation-related work. At Williams & Connolly (1981-1985), I appeared in court occasionally. At the Salt Lake County Attorney's Office (1988-1989), I appeared in court almost daily. At the U.S. Attorney's Office (1993-1997), although most of my time involved supervising the work of the office, I appeared in court occasionally.

- i. Indicate the percentage of your practice in:

1. federal courts:	80%
2. state courts of record:	20%
3. other courts:	0%
4. administrative agencies:	0%

- ii. Indicate the percentage of your practice in:

1. civil proceedings:	45%
2. criminal proceedings:	55%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather

than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried to verdict, judgment or final decision approximately eight cases. Of these, I was sole counsel in four cases, co-counsel in two cases (lead counsel in both), and associate counsel in two cases.

- i. What percentage of these trials were:
 - 1. jury: 75%;
 - 2. non-jury: 25%

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

At Williams & Connolly, I assisted with writing some preliminary filings (jurisdictional statement, motion to dismiss) but otherwise have not been involved in Supreme Court practice.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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. Tavourlareas v. Piro and The Washington Post, 759 F.2d 90 (D.C. Cir.), vacated in part, reh'g granted en banc, 763 F.2d 1472 (1985), aff'g 567 F. Supp. 651 (D.D.C. 1983), 817 F.2d 762 (D.C. Cir. 1987) (en banc), cert. denied, 484 U.S. 870 (1987). This defamation case, brought by the President of Mobil Oil and his son, involved a team of defense lawyers from Williams & Connolly, including myself, representing The Washington Post and individual Post editors and reporters. Between 1981 and 1985, I spent considerable time on pretrial motions and discovery, trial motions, and briefing for the appeal. I did not have a courtroom role at trial, though I continued to take discovery and provide other evidence gathering and briefing support during the trial for our trial team

Irving Younger (now deceased) was lead counsel for the Post defendants in the 1982 jury trial in the United States District Court for the District of Columbia, Judge Oliver Gasch presiding. The lawyer at Williams & Connolly who had the most extensive involvement in the case and with whom I worked is David E. Kendall, 725 12th St., NW, Washington, D.C. 20005, (202) 434-5145. Lead counsel for the plaintiffs was John J. Walsh, Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York, NY 10038, (212) 504-6000 (last known information).

2. Wamble v. Bell, 598 F. Supp. 1356 (W.D. Mo. 1984). This case was an Establishment Clause challenge to the U.S. Department of Education's Title I program in Missouri. Williams & Connolly represented intervenor parties in support of the constitutionality of the program. I was involved in the pretrial discovery and served as second chair at trial (where my role was limited). I had substantial responsibility for post-trial briefing in the case. The five-week bench trial before Judge Joseph E. Stephens occurred in 1982 and 1983.

The lead attorney from Williams & Connolly was Charles H. Wilson, whose most recently available business address is 1400 20th St., N.W., Washington, D.C. 20036, (202) 457-0800. The lead attorney from the Department of Justice was Robert D. Nesler, who is located at the United States Attorney's Office, 888 S.W. 5th Ave., Portland, Oregon 97204, (503) 727-1000. Pro se plaintiff was G. Hugh Wamble, 4840 N.E. Chouteau Dr., Kansas City, MO 64119 (deceased). Attorney for plaintiff intervenors was Lee Boothby, 1050 17th St. #1000, N.W., Washington, D.C. 20036, (202) 776-0642.

3. National Foundation for Cancer Research v. Newsweek, Civil Action No. B81-353 (D. Md.). From 1981 to 1985 I devoted substantial time to this libel case brought by the NFCR and its top officials against Newsweek and Jane Bryant Quinn. This matter involved extensive discovery and work on summary judgment and trial preparation. The case proceeded to the eve of trial and settled.

I worked closely with David E. Kendall at Williams & Connolly representing the defendants. Lead counsel for the plaintiffs was Mac Dunaway, 1100 Connecticut Ave, NW, Washington, D.C., (202) 862-9700.

4. Other cases at Williams & Connolly – I devoted significant time to a number of other cases during my years at Williams & Connolly. One was a major antitrust case brought by the short line railroads against all of the major national railroads. We represented Union Pacific. The case involved substantial pretrial litigation and settled after considerable discovery. Another was a medical malpractice case in which we defended Georgetown Hospital and several doctors. The case was actively litigated to the eve of trial and settled. I do not have the case numbers for these cases. I also worked on matters involving banking, contract, employment, personal injury, securities, and other areas of law as well as criminal defense. I have no independent recollection of case docket information for these matters.

5. State v. Quas, 837 P.2d 565 (Utah App. 1992). This case was a homicide prosecution in which the defendant was accused of killing his wife. It was tried before a jury in 1989 in Third District Court in Utah, Judge Kenneth Rigtrup presiding. I was assigned to this case after it had been dismissed once at the preliminary hearing and refiled. The case included substantial firearms identification and medical examiner evidence. I presented the case at preliminary hearing, obtained a bindover for trial, and then secured a jury conviction for second degree murder at trial (I did not handle the appeal).

Co-counsel at trial was Richard G. MacDougall, who is located at the Federal Public Defenders Office, 46 West 300 South #110, Salt Lake City, Utah 84101, (801) 524-4010. Defense counsel were Lisa J. Remal, Salt Lake Legal Defenders, 424 East 500 South #300, Salt Lake City, Utah 84111, (801) 532-5444, and Candice A. Johnson, 10 W Broadway #210, Salt Lake City, Utah 84101, (801) 532-5297.

6. Other cases at the Salt Lake County Attorney's Office. During my time as a deputy county attorney, I was in court most days handling initial appearances, preliminary hearings, plea dispositions, and sentencings. The Quas case was the most significant case that I handled, but I was also the sole lawyer on several other trials that were tried to conviction. Judges on the Third District Court in Utah before whom I have cases include Judge J. Dennis Frederick (retired), Judge Kenneth Rigtrup (now retired), Judge Leonard H. Russon (retired as justice on the Utah Supreme Court), and Judge Homer Wilkinson (deceased).
7. West v. Thomson Newspapers, 872 P.2d 999 (Utah 1994). During 1991 and 1992, I was the lead author of amicus curiae briefs on behalf of the Utah Chapter of the Society for Professional Journalists that were filed in the Utah Court of Appeals and the Utah Supreme Court. This defamation case concerned critical op-ed columns about Mr. West, the Mayor of La Verkin, Utah. The case raised important issues of federal and state constitutional law and state common law. A significant portion of the amicus briefs argued for recognition of a state constitutional privilege for the expression of opinion based on the "freedom of speech or of the press" clause in the Utah Constitution. This argument required research on the history of Utah's constitutional provision on freedom of expression. After the briefs were filed and while the case was pending before the Utah Supreme Court, I was appointed U.S. Attorney and asked the Utah Supreme Court to withdraw my representation in the case. The Utah Supreme Court's decision in favor of the defendants recognized a state constitutional opinion privilege and relied on the amicus brief's historical analysis to support this position.

The plaintiff Mr. West was a lawyer and represented himself. I had no contact with him. The defendant newspaper and editors were represented by Randy Dyer, Parsons Behle & Latimer, 201 South Main St. #1800, P.O. Box 45898, Salt Lake City, UT 84145, (801) 536-6843. My amicus co-counsel was Patrick A. Shea, 215 South State St. #200, Salt Lake City, UT 84111, (801) 305-4180. The opinion of the Utah Court of Appeals can be found at 835 P.2d 179 (Utah Ct. App. 1992).

8. United States v. Botero-Ospina, 71 F.3d 783 (10th Cir. 1995) (en banc), cert. denied, 518 U.S. 1007 (1996). This case addressed the Tenth Circuit standard for analyzing the constitutionality under the Fourth Amendment of the initial stop of vehicles by law enforcement officials. I became involved at the appellate level when the U.S. Court of Appeals for the Tenth Circuit on its own motion ordered supplemental briefing and scheduled an en banc argument on whether the standard previously established by that court should be overruled. I was the principal author of the government's brief arguing that the previous standard should be overruled and proposing a Fourth Amendment rule for traffic stops in the Tenth Circuit. I argued the appeal before all of the Tenth Circuit judges in an en banc proceeding. The Tenth Circuit overruled its previous standard and adopted the position advanced by the government.

Co-counsel were First Assistant United States Attorney David J. Schwendiman and Assistant United States Attorney Bruce C. Lubeck, 185 South State St, #400, Salt Lake City, Utah 84111, (801) 524-5682. Mr. Lubeck handled the case at the District Court level. He is now a judge on the Third Judicial District Court for Utah. Counsel for the defendant was R. Steven Chambers, 5217 South State #400, Salt Lake City, Utah 84107, (801) 327-8200.

9. United States v. Cuch, 79 F.3d 987 (10th Cir. 1996), aff'g 875 F. Supp. 767 (D. Utah 1995), cert. denied, 519 U.S. 963 (1996). In 1994, the United States Supreme Court decided in Hagen v. Utah, 510 U.S. 399 (1994), that the Uintah and Ouray Reservation in Utah had been diminished in 1905. This decision disagreed with prevailing Tenth Circuit law and thereby placed outside the reservation numerous crimes that had occurred at locations previously thought to be within the reservation. Hagen therefore presented the difficult issue of the status of convictions based on those crimes. Numerous convictions for serious violent offenses were put into question. This difficult issue confronted my office when I was the U.S. Attorney, and I spent considerable time working with officials at the highest levels of state and federal government trying to address it. The issue was litigated through motions filed under 28 U.S.C. § 2255 challenging convictions on the ground that the sentencing court lacked jurisdiction as a result of Hagen. I took primary responsibility for briefing and arguing the issue before Judge David Sam in the District Court and again before the Tenth Circuit, arguing that the convictions should be preserved and Hagen given prospective effect. Although a Magistrate Judge's Report and Recommendation suggested that the collateral attacks on the convictions should be accepted, the District Court and the Court of Appeals agreed with our position and the Supreme Court of the United States denied certiorari.

Co-counsel in these cases were Assistant United States Attorneys Barbara Bearson and Matthew Howell. Ms. Bearson is located at 185 South State St, #400, Salt Lake City, Utah 84111, (801) 524-5682. Mr. Howell is now at 3301 North University Ave., Provo, Utah, (801) 426-8200. Counsel for the movants were Manny Garcia, 150 South 600 East #5C, Salt Lake City, Utah 84102, (801) 322-1616, and Wendy

Hufnagel, 190 North Main Street #200, Heber City, Utah 84032, (435) 654-5700 (last known information).

10. United States v. Benally and Hatatley, 95-CR-0252S (D. Utah) and 130 F.3d 1399 (10th Cir. 1997). This homicide prosecution was based on conduct occurring on the Utah portion of the Navajo Reservation. For the first time in the District of Utah, the case was tried to two juries to avoid legal problems from the use of co-defendants' out-of-court statements as evidence. The eight-day trial featured significant scientific forensic evidence, including DNA identification. The juries both returned verdicts of voluntary manslaughter. The case was tried before Judge David Sam. I took a lead role at the trial, presenting the opening statements and closing arguments to both juries and examining many witnesses. Only defendant Hatatley appealed. I took primary responsibility for the government's appellate brief and argued the case before the Tenth Circuit, which affirmed the conviction.

Co-counsel was First Assistant David J. Schwendiman, 185 South State St. #400, Salt Lake City, Utah 84111, (801) 524-5682. Counsel for the defendants were Deirdre A. Gorman, 205 26th St., #32, Ogden, Utah 84401, (801) 394-9700, and Charles F. Loyd, 1096 South 800 East, Salt Lake City, Utah 84105, (801) 595-0534.

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

Much of my activity has been focused on law reform, law teaching, legal scholarship, and law administration.

My law reform activities have included service on the Utah Constitutional Revision Commission, which studies and makes recommendations regarding the Utah Constitution; the Utah Supreme Court Advisory Committee on the Rules of Evidence, which studies and makes recommendations to the Utah Supreme Court regarding the Rules of Evidence; and the Utah Mine Safety Commission, which examined the state's role in coal mine safety and produced a 100-page report with forty-five recommendations for reform. I chaired the Evidence Committee and the Mine Safety Commission. I also served for eight years as an ex officio member of the Utah State Bar Commission, which has been involved in numerous law reform matters.

I started law teaching in 1985 and have taught a range of subjects and many students. One of my classes – Scientific Forensic Evidence – was created as a result of my experience with scientific evidence issues when I served as U.S. Attorney. I always have considered law teaching to be a special privilege, and hope I have contributed to my students' understanding of the law and their preparation for the profession.

As a law professor, I have written on a number of legal matters. My work has focused on constitutional law and civil procedure issues, in many cases has been closely tied to my teaching, and in some instances has been inspired by my law reform and service activities. I have won my law school's teaching award as well as its service award. Also, in recognition of teaching, scholarship, and service accomplishments, I was appointed last year to the Hugh B. Brown Presidential Endowed Chair in Law.

I have significant experience in law-related administration, including as Dean and as Associate Dean for Academic Affairs at the University of Utah S.J. Quinney College of Law, United States Attorney for the District of Utah. My experience as U.S. Attorney exposed me to a broad range of public law issues—civil and criminal—and to the working relationships among the federal courts, prosecutors, defense bar, law enforcement agencies, state and local prosecutors and law enforcement, and the community. My experience as dean exposed me to a broad range of issues facing legal education and the legal profession—locally, nationally, and internationally.

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

I have taught the following courses at the S.J. Quinney College of Law, University of Utah: Civil Procedure, Constitutional Law, Evidence, First Amendment and the Press, Intellectual Property, Introduction to Law, The Making of the Constitution (seminar), and Scientific Forensic Evidence. I taught First Amendment and the Press during my visiting year at the Harvard Kennedy School of Government.

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

I entered a book contract in 2007 with Harvard University Press (HUP). The book was published in 2009. HUP has notified me that I will receive royalties for the first time in late March 2010. I do not know if any further royalties will be forthcoming, but it is possible.

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

If confirmed, I may seek to teach occasionally at the University of Utah S.J. Quinney College of Law, as other federal judges in Utah have done, but I have not made any commitments or agreements to do so.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, 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.

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

See attached Statement of Net Worth.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I have reviewed the Code of Conduct for United States Judges and appreciate the importance of impartiality and avoidance of the appearance of impropriety. As the U.S. Attorney for the District of Utah, I was sensitive to these issues and, after consultation with ethics officials at the Department of Justice, recused myself from certain matters. If I am confirmed, my longstanding association with the University of Utah, for example, may raise a potential issue if a matter affecting the University's interests were to come before the court. Also, although I left the U.S. Attorney's Office at the end of 1997, any case or investigation that I supervised as U.S. Attorney would present a conflict if it were to come before the Tenth Circuit. I would take conflicts and potential conflicts seriously and comply with the Code of Conduct and any other applicable laws, rules, and guidelines.

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

As a general matter, I would continue to study the recusal statutes and the Code of Conduct to ensure that I have a thorough understanding of their requirements and, to the extent possible, how they have been applied in specific situations. I also would seek advice and counsel from judges who serve on the Tenth Circuit and other courts on how they address conflict issues, and I would participate in any pertinent training offered by the Administrative Office of the U.S. Courts. If a potential conflict issue arises, I would carefully analyze it under the applicable

Code of Conduct and any other applicable considerations. I would seek counsel, where appropriate, from my judicial colleagues. I also would seek advice from the General Counsel's Office at the Administrative Office of the U.S. Courts. I would disqualify myself from a case if recusal is warranted and would follow all formal procedures in reaching and implementing this decision. Finally, I would ensure that my law clerks and other staff understand the conflict rules as they apply to me and to them, and that we all follow those rules accordingly.

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

After the Crandall Canyon Mine disaster in August 2007, Governor Jon Huntsman, Jr., asked me to chair the Utah Mine Safety Commission to evaluate the state's coal mine safety policies and to make recommendations to improve coal mine safety in Utah. The Commission conducted hearings in Carbon, Emery, and Salt Lake Counties; collected significant information; and prepared a 100-page report with forty-five recommendations to Utah State government. The creation of a Utah Coal Mine Safety Office was one of the products of this work. This work consumed considerable time and was done pro bono as a community service.

As dean of the University of Utah S.J. Quinney College of law, I worked with my staff to establish the Pro Bono Initiative, now in its ninth year, which brings law students and lawyers together in community service. More than one-third of our students have participated, contributing over 22,500 hours of volunteer work on a wide variety of pro bono projects with over 85 lawyers, law firms, and public service agencies participating. We have raised the funds every year to support the program. I recruited thirteen law students from this program to help with the aforementioned coal mine safety project. The Legal Aid Society of Salt Lake has recognized the Pro Bono Initiative and our clinical placement program with its annual Outstanding Service Organization Award. Over the years, I also have organized community service activities for the law school students, faculty, and staff. One of my goals has been to develop a service ethic among law students before they enter the profession.

I recently served on the Leadership Committee of "and Justice for All," which was organized to secure support from the Utah legal community for legal services provided to the poor by Utah Legal Services, Legal Aid Society of Salt Lake City, and the Disability Law Center. This effort has produced significant support from law firms, individual lawyers, and various community organizations.

I served on the Board of Trustees of the Legal Aid Society of Salt Lake, a non-profit law office that provides legal services to indigent clients in the domestic law area, including work on behalf of victims of domestic violence. I joined the Board in 1986 and served as President in 1987. I continued to serve until I was appointed United States Attorney in

1993. During this period of service the office grew in number of attorneys and instituted its domestic violence program to protect spouses and children. The office is well respected among the judges in particular and the community in general.

Because of my litigation experience and academic interest in the First Amendment and the press, I have provided counsel on occasion to a person or publication on a pro bono basis in this area. Shortly before I was appointed as United States Attorney, I was the primary writer of amicus briefs submitted to the Utah appellate courts in a defamation case on behalf of the Utah Headliners Chapter of the Society of Professional Journalists. The briefs addressed constitutional questions under the free expression provisions of both the federal and state constitutions, and my work was performed on a pro bono basis.

Other service activities have concentrated in the law reform area. From 1987 to 1993, I was a member of the Utah Constitutional Revision Commission, which studies and recommends to the Utah State Legislature improvements to the Utah Constitution. I was elected Vice-Chair of the Commission before my appointment as United States Attorney. Also from 1987 to 1993, I served on the Utah Supreme Court Advisory Committee on the Rules of Evidence, and was the Chair from 1991 to 1993. From 1993 to 1997, I served on the Advisory Committee on the Local Rules of Practice, U.S. District Court for the District of Utah.

Service to the bar has included my position as an ex officio member of the Utah State Bar Commission from 1998 to 2006. From 1986 to 1992, I served on the Executive Committee of the Salt Lake County Bar Association. My responsibilities at one point included coordination of a program for local judges – state and federal – to meet informally with journalists to discuss issues about the relationship between the bench and press and news coverage of the judiciary.

When I was an associate at Williams & Connolly, I accepted an assignment from a District of Columbia Superior Court judge to represent an indigent individual under the court's Inmate Civil Assistance Program. I conducted legal and factual research. No court claim was filed.

I recently have been working with a group of community partners, including a juvenile court judge, to establish a tennis and tutoring program for at-risk youth.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department

regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in Utah to recommend candidates for nomination to the federal courts.

After I learned there would be an opening on the United States Court of Appeals for the Tenth Circuit, I sent a letter and biographical materials to the President (attention to White House Counsel) on May 7, 2009, expressing interest in consideration for the position. I also communicated my interest to Members of Congress. Leaders in the legal and public service community recommended me to the White House and to the U.S. Senators from Utah. I sent updated biographical information to the White House Counsel on October 2, 2009.

On October 30, 2009, I was contacted by the Office of Legal Policy at the Department of Justice and told that I was under consideration for the position. Since that time, I have been in contact with pre-nomination officials at the Department of Justice. On December 21, 2009, I interviewed in Washington with attorneys from the White House Counsel's Office and the Department of Justice. On March 3, 2010, the President submitted my nomination to the United States Senate.

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

No.

AO 10
Rev. 1/2008

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Matheson, Jr., Scott M.	2. Court or Organization Tenth Circuit	3. Date of Report 03/03/2010
4. Title (Article III judges indicate active or senior status; magistrates judges indicate full- or part-time) Circuit Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 03/03/2010 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2009 to 02/28/2010
7. Chambers or Office Address 332 South 1400 East Room 101 Salt Lake City, UT 84112	8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Professor of Law	University of Utah S.J. Quinney College of Law
2.	
3.	
4.	
5.	

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. July 2007	Book contract, Harvard Press. Book published 2009. First royalty due late March 2010. More royalties possible.
2.	
3.	

FINANCIAL DISCLOSURE REPORT
Page 2 of 6

Name of Person Reporting Matheson, Jr., Scott M.	Date of Report 03/03/2010
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

A. Filer's Non-Investment Income

NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2008	University of Utah - Gross Income	\$166,458.37
2. 2009	University of Utah - Gross Income	\$183,000.08
3. 2009	Illinois Institute of Technology - Book Award - Roy C. Palmer Civil Liberties Prize	\$10,000.00
4. 2010	Woodrow Wilson International Center for Scholars - Honorarium for service on fellowship selection committee	\$1,000.00
5. 2010	University of Utah - Gross Income	\$29,666.68

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

NONE (No reportable non-investment income.)

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

IV. REIMBURSEMENTS - transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; see pp. 23-27 of filing instructions.)

NONE (No reportable reimbursements.)

	<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1. Exempt					
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT
Page 3 of 6

Name of Person Reporting Matheson, Jr., Scott M.	Date of Report 03/03/2010
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1. Exempt			
2.			
3.			
4.			
5.			

VI. LIABILITIES. (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Matheson, Jr., Scott M.	Date of Report 03/03/2010
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. U.S. Savings Bonds (face value)		None	J	T	Exempt				
2. Johnson & Johnson Common	A	Dividend	K	T					
3. Prudential Financial, Inc. Common	A	Dividend	J	T					
4. University Federal Credit Union - Money Fund and Checking	A	Interest	K	T					
5. IRA - Merrill Lynch	A	Dividend	K	T					
6. - AIM Constellation									
7. - Eaton Vance Strategic									
8. - Blackrock Fundamental									
9. - Blackrock Basic									
10. - Putnam Equity Income									
11. IRA - University Federal Credit Union	A	Interest	J	T					
12. Utah State Retirement 401(k)		None	K	T					
13. TIAA Deferred Retirement Plans		None	P1	T					
14. Equitable Variable Life Insurance #1		None	J	T					
15. Equitable Variable Life Insurance #2		None	J	T					
16.									
17.									

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

FINANCIAL DISCLOSURE REPORT
 Page 5 of 6

Name of Person Reporting	Date of Report
Matheson, Jr., Scott M.	03/03/2010

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

II. and III.A. I entered a book contract with Harvard University Press in 2007. The book was published in 2009. The first royalty payment of \$1,965.41 is due to be paid at the end of March 2010. This matter is reported as an agreement in Part II, but the payment is not listed in Part III-A, because it has not been received as of the date of this report.

VII. My spouse and I both have TSP retirement accounts from previous federal employment, but, per instructions for this form, they are not included in section VII.

FINANCIAL DISCLOSURE REPORT
 Page 6 of 6

Name of Person Reporting	Date of Report
Matheson, Jr., Scott M.	3/3/2010

IX. CERTIFICATION.

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

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

 Signature
 

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

Scott Matheson

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		38	366	Notes payable to banks-secured			
U.S. Government securities-add schedule		1	600	Notes payable to banks-unsecured			
Listed securities-add schedule		27	609	Notes payable to relatives			
Unlisted securities--add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule		448	400	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		59	360	Credit Line			
Cash value-life insurance		13	691				
Other assets itemize:							
IRA Accounts		46	512				
Utah State Retirement 401(k)		24	928				
TSP - deferred retirement plans		138	993	Total liabilities		0	
TIAA- deferred retirement plans	1	090	908	Net Worth	1	890	367
Total Assets	1	890	367	Total liabilities and net worth	1	890	367
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

U.S. Government Securities
Series EE Bonds (face value) \$1,600

Listed Securities
Johnson & Johnson common \$ 25,080
Prudential Financial 2,529
Total Listed Securities \$ 27,609

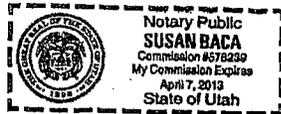
Real Estate Owned
Personal residence \$ 448,400

AFFIDAVIT

I, SCOTT MILNE MATHESON, JR., do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 2, 2010
(DATE)

Scott M Matheson
(NAME)



Susan Baca 3/2/10
(NOTARY)

Scott M. Matheson, Jr.
1846 Michigan Ave.
Salt Lake City, UT 84108

April 15, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am providing updated and additional information in response to the Judiciary Committee questionnaire for the Committee's consideration.

When preparing my initial submission to the Committee, I searched my files and, using electronic search engines, identified and produced voluminous materials. Further research has identified additional news clips that mention me. Some of them report on public presentations that I have already provided to the Committee. Others are duplicative of previously provided clips, while still others contain brief quotes or no quotes from me. Nonetheless, in endeavoring to be complete, and with a better understanding of the information requested, I have included the following additional items under question 12(e), even if some are not required. I apologize that these materials were not produced earlier.

Updates to my Questionnaire

Q. 12(a)

I wish to mention a work in progress. University of Utah Distinguished Professor of Biology James Ehleringer and I are co-authoring a law review article that addresses admissibility issues for stable ratio isotope evidence. We plan to publish it in the Utah Law Review, which is preparing a symposium issue on forensic science.

Further searching located this additional response:
Legal Community Releases Statement Regarding Rule of Law in Pakistan, Yale Law School, www.law.yale.edu/news/5866.htm.

Q. 12(d)

I discovered that my law school had posted clips of me introducing speakers at two symposia and giving a brief summary of my book. These clips can be accessed at the websites below:

Book summary (Mar. 5, 2009)

<http://www.ulaw.tv/watch/672/prof-scott-matheson-book-ad>

Introduction of speakers at symposium on non-state governance (Feb. 6, 2009)

<http://www.ulaw.tv/watch/641/non-state-governance-symposium-patrick-garry>

Introduction of speaker at environmental crime symposium (Jan. 22, 2009)

<http://www.ulaw.tv/watch/628/environmental-criminal-prosecution-symposium-michael-ohear>

The following items, including text or notes, were included in my original submission, but I have since discovered Internet links to recordings of the following speeches or presentations:

Program: Freedom From Religion by Amos Guiora, Comments (Oct. 23, 2009)

<http://www.ulaw.tv/watch/793/freedom-from-religion-rights-and-national-security>

Google, Inc., Mountain View, CA, Book presentation (June 24, 2009)

<http://www.youtube.com/watch?v=z-7F4B4uR4I>

Woodrow Wilson International Center for Scholars, Washington, D.C., Book presentation (May 27, 2009)

<http://www.wilsoncenter.org/ondemand/index.cfm>

I was also reminded recently that I made some comments at a neighborhood July 4 flag-raising event sometime in the early to mid-1990's. I do not have related text or notes.

Q.12(e)

Electronic database searches have produced the following items that mention me. A number of them report on public presentations that I previously have reported and provided to the Committee. Also, it is not clear whether a number of them are based on a media interview or public comment. Some are duplicative of clips originally submitted or are duplicative of each other.

1. Articles relating my service as Dean of the University of Utah Law School

Steve Gehrke, "U. Utah College of Law Dean to Revisit Role as Professor," University Wire, Daily Utah Chronicle, July 5, 2005.

"Utah Briefs," The Associated Press State & Local Wire, June 28, 2005.

Lisa Riley Roche and Bob Bernick Jr., "Matheson Leaving U. Law Post," Deseret Morning News, June 28, 2005.

"Stegner Center is a Place for Ideas," The Salt Lake Tribune, Nov. 25, 2005.

Shinika A. Sykes, "Longtime Professor of Law at U. to Retire," The Salt Lake Tribune, Nov. 19, 2005.

"U Law School Prof May Have a Shot at Top Court," The Salt Lake Tribune, Oct. 28, 2005.

Robert Gehrke, "In Utah, Miers' Exit Surprising to Some, Expected by Others," Salt Lake Tribune, Oct. 28, 2005.

Bob Mims, "Utah: A Pretty Inventive Place," Salt Lake Tribune, August 28, 2005.

Thomas Burr and Elizabeth Neff, "McConnell Pick Has Appeal For Both Sides," Salt Lake Tribune, July 2, 2005.

"O'Connor an Example for Utah Justice," Salt Lake Tribune, July 2, 2005.

John Heilprin, "Leavitt, a Good GOP Soldier," The Associated Press, Dec. 13, 2004.

"Young Will Join U On Aug. 1" Salt Lake Tribune, May 11, 2004.

"A Campus Institution," Salt Lake Tribune, Dec. 15, 2003.

"U. Law School Graduates 126," Deseret News, May 25, 2003.

"Eldest Matheson Calls Run Uncertain," The Deseret News Publishing Co., Apr. 10, 2003.

"Jurors Visit Site Where Women Fell to Her Death," The Associated Press State & Local Wire, Nov. 16, 2002.

"Jurors' Field Trip to Death Scene an Unusual One," Deseret News, Nov. 16, 2002.

"University of Utah Receives \$26 Million Endowment for Law School," The Associated Press State & Local Wire Nov. 3, 2001.

"U. School of Law is Named Quinney," Deseret News, Nov. 3, 2001.

Bob Bernick Jr., "Politics Aren't Expected to Affect Trial," Deseret News, July 21, 2000.

"Circuit Court Nominee Built Reputation on Religious Cases," Santa Fe New Mexican, May 11, 2001.

"Modest McConnell Built a Reputation on Religious Cases," The Associated Press State & Local Wire, May 10, 2001.

"New U. Program to Help Poor Obtain Legal Advice," Deseret News, Nov. 7, 2000.

"U. Utah College of Law Launches Pro-Bono Program," University Wire, Nov. 2, 2000.

"U. Students to Help Represent Clients Who Can't Pay Lawyers," Deseret News, Oct. 31, 2000.

"Is Law School Hot?" Deseret News, August 23, 2000.

"Plaudits Go to U. School of Medicine," Deseret News, Mar. 31, 2000.

"Leavitt Says Qualification, Not Race or Gender, Is His Top Priority for High Court Appointments," Salt Lake Tribune, Jan. 3, 2000.

"Students Offer to Pay More," Salt Lake Tribune, Dec. 8, 1999.

"Cassell Poised to Challenge Standard of Criminal Law," The Associated Press State & Local Wire, Dec. 7, 1999.

"Court's Balance About to Change," Salt Lake Tribune, Oct. 4, 1999.

Sheila R. McCann, "Justice Stewart Will Sheathe His Powerful Pen," Salt Lake Tribune, Sep. 1, 1999.

"Former Utah Law Dean to Head Cornell Law School," The Associated Press State & Local Wire, Apr. 20, 1999.

"Former U. Law School Dean Will Take a Similar Post at Cornell," Salt Lake Tribune, Apr. 20, 1999.

"Former U. of U. Law Dean to Head Cornell Law School," The Associated Press State & Local Wire Apr. 19, 1999.

"Matheson Jr. is Named Dean of U. Law College," Deseret News, June 10, 1998.

"Utah Criminal Justice Center Established," Apr. 5, 2006,
<http://www.unews.utah.edu/p/?r=040506-5> AND http://www.alumni.utah.edu/u-news/may06/justice_center.htm

"Law Prof, Former Dean Lee Teitelbaum Dies," Sep. 23, 2004,
<http://www.unews.utah.edu/p/?r=022806-9>

"Longtime professor of law at U. to retire,"
http://www.hinckley.utah.edu/events/media/2005-2008_media_archives/longtimeprofessorflaw.pdf

"Former U President, Emeritus Law Professor Dies," Mar. 18, 2002,
<http://web.utah.edu/news/releases/02/mar/emery.html>

"University of Utah Makes Big Footprint in National Rankings," Apr. 1, 2005,
<http://www.unews.utah.edu/p/?r=022106-19> AND
<http://web.utah.edu/news/releases/05/apr/rankings.html>

"Law School Named After Prominent Lawyer S.J. Quinney Following Historic Endowment Gift," Nov. 2, 2001,
<http://www.web.utah.edu/unews/releases/01/nov/quinney.html>

"U Law School Dedicated to Pro Bono Work," Oct. 2003,
http://privatweb.law.utah.edu/_webfiles/PROBONO/articles/fall03kickoff.pdf AND
<http://www.alumni.utah.edu/u-news/Oct.03/lawschool.htm>

"Hiram E. Chodosh Named Dean of S.J. Quinney College of Law," Feb. 28, 2006,
<http://www.unews.utah.edu/p/?r=022806-37>

2. Articles relating to my candidacy for Governor of Utah

"On Civility, Common Sense," Deseret Morning News, Nov. 4, 2004.

Dan Harrie and Nicole Warburton, "Huntsman Gets to Work Immediately," Salt Lake Tribune, Nov. 4, 2004.

Lisa Riley Roche, "Huntsman Jr. is the Next Governor of Utah," Deseret Morning News, Nov. 3, 2004.

Dan Harrie, Tough Questions for Governor Candidates at Final Debate, Salt Lake Tribune, October 30, 2004, at B3 (previously reported, corrected date)

Lisa Riley Roche, "Matheson 'Mild Attack Ad' Criticized," Deseret Morning News, Oct. 27, 2004.

Dan Harrie, "Prison Move Plan Again Surfaces in Governor Debate," Salt Lake Tribune, Oct. 26, 2004.

Kirsten Stewart and Rebecca Walsh, Prospective First Ladies Supportive in Very Different Ways," Salt Lake Tribune, Oct. 25, 2004.

Doug Smeath, "Habla Espanol? Candidates Do -- At Forum," Deseret Morning News, Oct. 24, 2004.

Mark Eddington, "Candidates Sound Familiar Themes at Latino Forum," Salt Lake Tribune, Oct. 24, 2004.

Dan Harrie, "Candidates Speechless on Gay 'Sin' Question," Salt Lake Tribune, Oct. 23, 2004.

Travis Reed, "'Juniors' From Famous Utah Families Battle to Become Governor," The Associated Press, Oct. 22, 2004.

Travis Reed, "Scions of Utah Royalty Vie for Governor," Associated Press Online, Oct. 22, 2004.

"Utah: Down To the Wire," The Hotline, Oct. 21, 2004.

Lisa Riley Roche, "Rhetoric Growing Sharper in Gubernatorial Campaign," Deseret Morning News, Oct. 20, 2004.

Travis Reed, "Matheson, Huntsman Pound Education, Economy in Debate," The Associated Press State & Local Wire, Oct. 19, 2004.

"Walker's Tax Reform Plan Could Be Dead on Arrival," The Associated Press State & Local Wire, Oct. 13, 2004.

Dan Harrie, "Walker Tax Plan Appears Doomed," Salt Lake Tribune, Oct. 13, 2004.

"Governor Candidates Debate Transportation," The Associated Press State & Local Wire, Oct. 12, 2004.

"Amendment 1 Receives Backing of Huntsman," Deseret Morning News, Oct. 9, 2004.

Dan Harrie, "Huntsman: Gun Issue Up to Schools," Salt Lake Tribune, Oct. 8, 2004.

Lisa Riley Roche, "Differences Are Outlined in Friendly Debate," Deseret Morning News, Oct. 2, 2004.

Bob Bernick Jr., "Huntsman Wants State Prison Moved," Deseret Morning News, Sep. 28, 2004.

Dan Harrie and Christopher Smart, "Huntsman Proposes Relocating the Prison," Salt Lake Tribune, Sep. 28, 2004.

Mark Thiessen, "Huntsman Calls to Move Prison to Open Up Real Estate," The Associated Press State & Local Wire, Sep. 27, 2004.

"NAACP is Sponsoring Candidate 'Meet, Greet,'" Deseret Morning News, Sep. 26, 2004.

Rebecca Walsh, "Fathers & Sons," Salt Lake Tribune, Sep. 26, 2004.

"Utah: Amending Some Fences," The Hotline, Sep. 24, 2004.

Laura Warner, "Hannity Backed by Gov Hopeful," Deseret Morning News, Sep. 23, 2004.

"Campaign 2004: Utah Gubernatorial Candidate Unveils New Anti-Nuclear Waste Ad," Greenwire, Sep. 21, 2004.

"Utah: Friendly Fire," The Hotline, Sep. 20, 2004.

"Gubernatorial Candidates Optimistic About Utah's IT Industry," PR Newswire, Sep. 20, 2004.

Bob Bernick Jr., "Candidates Tear Into Utah Tax Code," Deseret Morning News, Sep. 18, 2004.

Travis Reed, "Huntsman, Matheson Spar Little in First Debate," The Associated Press State & Local Wire, Sep. 17, 2004.

Brice Wallace, "Matheson, Huntsman Favor a High-Tech Future for Utah," Deseret Morning News, Sep. 17, 2004.

"UT: Huntsman Well Ahead In Fundraising," The Frontrunner, Sep. 17, 2004.

"Gubernatorial Candidates Disclose Campaign Funding," The Associated Press State & Local Wire, Sep. 16, 2004.

Dan Harrie, "Huntsman Running Far Ahead in Fund Raising," Salt Lake Tribune, Sep. 16, 2004.

"Utah Hispanics Urged to Make Voices Heard," Deseret Morning News, Sep. 12, 2004.

"Mathesons on the March," Deseret Morning News, Sep. 12, 2004.

"Utah: Matheson Addresses UT County Dems," The Hotline, Sep. 12, 2003.

"Matheson Wants Stronger Economy Through Education," The Associated Press State & Local Wire Sep. 10, 2004.

"Sutherland Attorney Disputes Amendment Would Affect Gay Rights," The Associated Press State & Local Wire, Sep. 3, 2004.

"Huntsman: Tax Relief for Citizen Soldiers," Salt Lake Tribune, Sep. 1, 2004.

Lisa Riley Roche, "Huntsman Backs Guard Relief," Deseret Morning News, Sep. 1, 2004.

"UT: Walker Mum on Gay Marriage Ban," The Frontrunner, Aug. 30, 2004.

"Governor Takes No Stand on Amendment Banning Gay Marriage," The Associated Press State & Local Wire, August 27, 2004.

"Shurtleff Says Amendment Would Prevent Huntsman From Ensuring Gay Couples' Rights," The Associated Press State & Local Wire August 26, 2004.

"UT: Huntsman To Forego GOP Convention To Stay And Campaign," The Frontrunner, Aug. 26, 2004.

"Utah Gubernatorial Candidates Slam No Child Left Behind," The Associated Press State & Local Wire, Aug. 25, 2004.

"Marriage Measure Dividing Utah Race," Deseret Morning News, Aug. 24, 2004.

"Campaign 2004 II: Utah Not a Dumping Ground," Greenwire, Aug. 18, 2004.

"Walker Works on Tax Reform," Deseret Morning News, August 17.

"Students Put Youth Power in Utah Campaigns," Salt Lake Tribune, August 16, 2004.

"Matheson Has Plan for Elderly Health Care," The Associated Press State & Local Wire, August 6, 2004.

"Tourism Needs a Bigger Ad Budget," Deseret Morning News, August 5, 2004.

"Demos Get Bounce From Convention," Salt Lake Tribune, August 1, 2004.

"Campaign 2004 II: Utah Gubernatorial Candidates Outline Water Policies," Greenwire July 28, 2004.

"UT: Matheson Outlines Initiative To Save Utah Water," The Frontrunner July 27, 2004.

"Utah Candidate for Governor Details Plan for Saving State's Water," The Salt Lake Tribune, July 27, 2004.

"Karras Endorses Huntsman in Governor's Race," The Associated Press State & Local Wire, July 16, 2004.

"Symposium Aims to Ignite Utah Tourism," Standard-Examiner, July 15, 2004.

"UT: Both Candidates Support "Open Space" Provisions," The Frontrunner, July 12, 2004.

"2 Hopefuls Sound Same Note," Deseret Morning News, July 10, 2004.

"Huntsman, Matheson in Campaign Appearance at Farm Bureau," The Associated Press State & Local Wire July 9, 2004.

Dan Harrie, "Another Matheson to Try For Governor's Mansion," Salt Lake Tribune, July 9, 2003.

"UT: Candidates Outline Criteria on Judicial Nominations," The Frontrunner, July 6, 2004.

"Utah: Matheson 'All Hale Education,'" The Hotline June 29, 2004.

"Matheson, Hale Roll Out Education-Economic Development Initiative," The Associated Press State & Local Wire, June 28, 2004.

"Huntsman Aims to Make Utah Economically Competitive," The Associated Press State & Local Wire, June 25, 2004.

"Despite Lame-Duck Status, Walker Charges Ahead on Tax Reform," The Associated Press State & Local Wire, June 24, 2004.

"Feisty Battle of 2 Jrs. Begins," Deseret Morning News, June 24, 2004.

"UT: Huntsman, Matheson Get Ready for General Election Fight," The Frontrunner June 24, 2004.

"Governor's Race on Hold While Huntsman Takes Breather," The Associated Press State & Local Wire, June 23, 2004.

"A Third of Huntsman's \$1.5 million is From Huntsmans and Company," The Associated Press State & Local Wire June 16, 2004.

"GOP Primary Costing Millions," Deseret Morning News, June 16, 2004.

Dan Harrie and Judy Fahys, "Officials Look to an Uncertain Job Future," Salt Lake Tribune, June 7, 2004.

- "Utah: A Hunstman For \$\$," The Hotline, June 4, 2004.
- "Friends, Family Fatten War Chests," Salt Lake Tribune, June 3, 2004.
- "Huntsman: Legislature's General Sessions Should Convene Every Other Year," The Associated Press State & Local Wire, May 28, 2004.
- "Gov. Walker Posed a Brief Dilemma for Top Democrats," Salt Lake Tribune, May 26, 2004.
- "Is Pay Too Low In Utah?" Deseret Morning News, May 23, 2004.
- "Envirocare A Hot Issue for Karras," Salt Lake Tribune, May 19, 2004.
- "Huntsman Holds Big Early Lead," Deseret Morning News, May 16, 2004.
- "Democrats Pick Candidates For State, National Office," The Associated Press State & Local Wire, May 8, 2004.
- "Scott Matheson Selects Hale as Gubernatorial Running Mate," Deseret Morning News, May 6, 2004.
- "Matheson Taps Hale as Running Mate," Salt Lake Tribune, May 6, 2004.
- "Matheson Names Running Mate In His Race For Governor," The Associated Press State & Local Wire, May 5, 2004.
- "Governor Hopefuls Awash in Funds," Deseret Morning News, May 4, 2004.
- "Lampropoulos Spends More Than \$1.2 Before State GOP Convention," The Associated Press State & Local Wire, May 3, 2004.
- "Demos Overflow Conclave," Deseret Morning News, Apr. 22, 2004.
- "Do What's Best for State," Deseret Morning News, Apr. 17, 2004.
- "Patriot Act Foes Still Patriots," Salt Lake Tribune, Apr. 15, 2004.
- "UT: Matheson Jumps Into Gubernatorial Race as Sole Democrat," The Frontrunner Mar. 29, 2004.
- "Matheson Officially Joins Gubernatorial Race," The Associated Press State & Local Wire, Mar. 28, 2004.
- "Matheson Way Out Front," Deseret Morning News, Mar. 25, 2004.

- "Utahns Mass at Mass Meetings," Deseret Morning News, Mar. 24, 2004.
- "Walker Says She Will Seek Full Term as Governor," The Associated Press State & Local Wire, Mar. 6, 2004.
- "Utah Information Technology Association (UITA) Holds Roundtable Meeting With Gubernatorial Candidates," PR Newswire, Feb. 9, 2004.
- "Governor Race Getting Costly," Deseret News, Jan. 6, 2004.
- "Hansen Says He's The Guy to Save Hill Air Force Base, The Associated Press State & Local Wire, Dec. 10, 2003.
- "Davis Demos Hosts A Dinner," Deseret News, Dec. 10, 2003.
- "Former Governor's Son Files to Enter Utah Governor's Race," Paul Foy, The Associated Press, July 8, 2003.
- "Former Rep. Jim Hansen Seeks GOP Nomination for Governor," The Associated Press State & Local Wire, Sep. 19, 2003.
- "Hansen Decides to Join Race for Utah's Chief Executive Job," Salt Lake Tribune, Sep. 19, 2003.
- "Utah County Demos Rally Behind Scott Matheson," Deseret Morning News, Sep. 12, 2003.
- "Will New Boss Energize Utah's Demos?" Deseret Morning News, Aug. 31, 2003.
- "Democrats Embrace a Feisty Future," Salt Lake Tribune, Aug. 24, 2003.
- "Race Bursts Open," Deseret Morning News, Aug. 12, 2003.
- "Leavitt Headed to EPA," Salt Lake Tribune, Aug. 12, 2003.
- "Environmentalists Unhappy To See Leavitt Head to EPA," The Associated Press State & Local Wire, Aug. 11, 2003.
- "Utah," Roll Call Aug. 11, 2003.
- "UT: Scott Matheson Jr. Officially Files Paper For Gubernatorial Run," The Bulletin's Frontrunner, July 10, 2003.
- "U. Utah Law Dean May Run for Governor," University Wire, July 10, 2003.
- "Utah: Matheson Files, Hansen Will Decide After Labor Day," The Hotline July 9, 2003.

"Former Governor's Son Files to Enter Utah Governor's Race," The Associated Press July 8, 2003.

"Ex-Utah Gov.'s Son May Run for Governor," Associated Press Online, July 8, 2003.

"UT: Scott Matheson Jr., May Make Gubernatorial Run," The Bulletin's Frontrunner, July 7, 2003.

"Utah Governor: Matheson Jr. Giving It Some Thought," The Hotline, May 5, 2003.

"Scott Matheson Jr. Considers Gubernatorial Bid," The Associated Press State & Local Wire, May 4, 2003.

"Davis Demos Elect Officers," Salt Lake Tribune, May 4, 2003.

"Utah Governor: Brothers Matheson," The Hotline Apr. 11, 2003.

"Eldest Matheson Calls Run Uncertain," Deseret News, Apr. 10, 2003.

"An Agent of Change," Desert News, Jan. 4, 2005.

3. Articles relating to my service as Utah's United States Attorney

"U.S. Attorney Quits To Return To Teaching," Deseret News, Nov. 8, 1997.

"Looters Destroy Cave's Archaeological Treasure Trove," Deseret News, May 23, 1997.

"Looters Destroy Cave's 'Library of Antiquity,'" Deseret News, May 22, 1997.

"Archaeological Looters Get Sentences, Fines," Salt Lake Tribune, May 21, 1997.

"Utah Navajos Stuck in Law Enforcement Limbo," Salt Lake Tribune, Mar. 24, 1997.

"Security Guard Thwarts Effort to Burn Down Weber Fur Firm," Deseret News, Mar. 20, 1997.

"Utah Receives \$3.8 Million for Crime Victims," Deseret News, Feb. 27, 1997.

"Trail Mix: News and Notes from Utah's 1996 Political Campaigns," Salt Lake Tribune, Nov. 03, 1996.

"Hearing Puts Garfield's Road Work on Hold," Deseret News, Oct. 23, 1996.

Jerry Spangler, "Go To Polls, NAACP Chief Urges," Deseret News, Sep. 16, 1996.

"U.S. Attorney Speaks At 1st Unitarian," Deseret News, Aug. 24, 1996.

"Feds Sue to Halt Road Work in Wild Utah Areas Feds Sue to Halt County Road,"
Graders Salt Lake Tribune, Oct. 19, 1996.

"Illegal Storage of Waste Brings Prison Sentence," Deseret News, Oct. 10, 1996.

"How to Strengthen Utah Demos? Matheson Passes," Salt Lake Tribune, Aug. 26, 1996.

"Both Sides Made Errors, Lawyers Say," Deseret News, June 20, 1996.

"Cops Downplay Possible Link Between Assault, Freeman," Salt Lake Tribune, Apr. 11,
1996.

"Federal Prosecutor Pleads His Case," Deseret News, Feb. 25, 1996.

"Is Matheson's Native Reticence a Flaw?" Deseret News, Feb. 25, 1996.

"Looter of Graves Gets Prison Term," Salt Lake Tribune, Dec. 16, 1995.

"For The Record," Salt Lake Tribune, Oct. 13, 1995.

"Social Graces," Salt Lake Tribune, May 2, 1994.

4. Articles relating to my service on the Utah Mine Safety Commission

Ana Breton, "U. Utah Professors Make Mine Safety Recommendations," University
Wire, Jan. 7, 2008.

Robert Gehrke, "State Mine Safety Panel Stalls On Key Reform," The Salt Lake Tribune,
Dec. 12, 2007.

Jasen Lee, "Mine-Safety Panel Hears Guv's Ideas," Deseret Morning News, Nov. 15,
2007.

Jasen Lee and Lisa Riley Roche, "MSHA's Stickler Willing To Testify Before Utah
Panel, Guv Says," Deseret Morning News, Oct. 26, 2007.

Donald W. Meyers, "Professor: West Needs Own Mining Rules," The Salt Lake Tribune,
Oct. 24, 2007.

Suzanne Struglinski, Lisa Riley Roche and Jasen Lee, "Mine-Probe Data Withheld,"
Deseret Morning News, Sep. 27, 2007.

Jasen Lee and Lisa Riley Roche, "Hearing Is Today on Safety Of Mines," Deseret
Morning News, Sep. 25, 2007.

Steve Fidel, "Panel To Evaluate U.S.-Utah Mine Roles," Deseret Morning News, Sep. 10, 2007.

Jasen Lee, "If Boreholes Don't Work, Mine May Be Sealed," Deseret Morning News, Aug. 30, 2007.

Lisa Riley Roche, "New Mine Safety Commission Starting With Rite To Laud Miners," Deseret Morning News, Aug. 28, 2007.

Patty Henetz, "New State Mine-Safety Panel Meets," The Salt Lake Tribune, Aug. 28, 2007.

Lisa Riley Roche, "Huntsman Names A Utah Mine Safety Panel," Deseret Morning News, Aug. 24, 2007.

Glen Warchol, "Huntsman Lashes At The Mine Boss For Being Insensitive To The Grieving Relatives," The Salt Lake Tribune, Aug. 24, 2007.

Robert Gehrke, "Mine Disaster Probe: Panel Questions Agency's Failure To Raise Red Flag," The Salt Lake Tribune, Dec. 11, 2007.

The Utah Mine Safety Commission conducted public hearings and made recommendations. The Commission's report was previously provided to the Committee. Other materials relating to the Utah Mine Safety Commission can be found at <http://minesafetycommission.utah.gov/>. For the convenience of the Committee, paper copies accessible from this site accompany this letter.

5. Other

Ted McDonough, "Rocky On?" Salt Lake City Weekly, July 6, 2006.

Joseph M. Dougherty, "Davis Demos Look To Change," Deseret Morning News, Apr. 23, 2006.

Bob Bernick Jr. and Lisa Riley Roche, "Huntsman Likes Job – and Utahns Like Job He's Doing," Deseret Morning News, July 5, 2005.

John Heilprin, "Leavitt, A Good GOP Soldier, Wistful About Leaving EAP for HHS," The Associated Press, Dec. 13, 2004.

Bob Bernick Jr., "Liquor Laws, Taxes Likely Legacy for Huntsman," Deseret Morning News, Aug. 10, 2009.

Matt Canham "Legal Experts From Left and Right Weigh In On Sotomayor," The Salt Lake Tribune, July 11, 2009.

"Longtime Utah Federal Judge David Winder Dies," Pamela Manson, The Salt Lake Tribune, May 19, 2009.

"Wayne Owens Praised As A Politician Without Peer," Josh Loftin, Deseret Morning News, Apr. 13, 2007.

"Rampton's Legacy Praised by Utah Luminaries," Salt Lake Tribune, Sep. 17, 2007.

"The Promise of Life, Liberty, and the Pursuit of Happiness. A discussion with Chief Justice Christine M. Durham, Utah Lieutenant Governor Gary R. Herbert, Senator Ross Romero, and Professor Scott Matheson, Jr. Moderator" S.J. Quinney College of Law, Apr. 20, 2009, <http://www2.kuer.org/hinckley.html>.

Lori Butters, "Davis Demos Elect Officers," Salt Lake Tribune, May 4, 2003.

"Utah Supreme Court Chief Justice Christine Durham Is Sworn In," The Associated Press State & Local Wire, Apr. 3, 2002.

"State Dignitaries Turn Out to Dedicate new Courthouse," Deseret News, Mar. 28, 1998.

"Judicious Design: Scott Matheson's Influence Lives on in His Appointees and New Court Complex," Deseret News, Mar. 26, 1998.

"Utah: Matheson Rules Out Senate Bid," The Hotline Aug. 26, 1991.

"Utah: Dem Chair Sees Matheson As 80 Percent Sure," The Hotline June 4, 1991.

"Ex-governor's Son Links Atomic Tests, Dad's Death," Chicago Tribune, Oct. 10, 1990, Associated Press.

"Nuclear Test Critic Dies of Cancer," USA Today, Oct. 10, 1990.

"Pres Bush Trampled U.S. Law, Writer Says," Deseret Morning News, May 28, 2009.

Tom Wharton, "Utah Tennis Legend Lee Hammel Dies at 87," The Salt Lake Tribune, Nov. 11, 2008.

"Tears of Laughter Pepper Boyce Memorial Service," Deseret News, Nov. 12, 2002.

"U.S. Magistrate Ronald Boyce," Deseret News, Oct. 30, 2002.

"'Irreplaceable' Judge Boyce Dead At Age 69," Salt Lake Tribune, Oct. 29, 2002,

"U.S. Magistrate Judge Ronald Boyce Dies," The Associated Press State & Local Wire Oct. 28, 2002.

"U. of U.'s Alfred C. Emery," Deseret News, Mar. 21, 2002.

"Walter E. Oberer, Former U. Dean, Dies," Deseret News, Dec. 11, 2001.

"Former University Of Utah President Dies At 83," The Associated Press State & Local Wire, Mar. 18, 2002.

"U.'s Lee Teitelbaum Dies at 63," Deseret Morning News, Sep. 24, 2004.

Woodrow Wilson International Center for Scholars, Balance of Powers: The President and National Security, Spotlight on Scholar Scott Matheson, *Centerpoint*, Jan. 2007
http://www.wilsoncenter.org/index.cfm?fuseaction=news.item&news_id=215053

New Republic writer Zvika Krieger interviewed me in April 2009 for a profile on then-Governor Jon Huntsman, Jr. The article, "Huntsman Interrupted," was published in the May 20, 2009 issue. I was not quoted or mentioned.

Q. 20 and 21

In connection to my with my answer to questions 20 and 21, I recently was asked and have agreed to be a co-author on an evidence law casebook published by Foundation Press. I believe this work will complement and not conflict with my judicial responsibilities, and I will reassess this issue to ensure my judicial responsibilities come first. I will follow all applicable guidelines regarding acceptance of any book royalties.

Q. 22

In connection to my answer to question 22, I mentioned in my Financial Disclosure Report (and in response to Question 20) that expected to receive a book royalty payment from Harvard University Press. I recently received that payment in the amount of \$1,965.41.

Sincerely,



Scott M. Matheson, Jr.

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Scott M. Matheson, Jr.
1846 Michigan Ave.
Salt Lake City, UT 84108

May 5, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Since my last submission to the Committee, I participated in a public event that may be responsive to Question 12.d. of the Senate Questionnaire. On April 30, 2010, I presented several awards at the annual Utah State Bar Law Day Luncheon in Salt Lake City. My mother was supposed to present the awards (one of which is named for my father) but was called out of town and asked me to take her place.

I have enclosed a copy of the program from the event, which notes the four award categories I presented. I presented the information in the program (names/biographies of award recipients) and did not have a prepared text, outline, or notes.

Sincerely,



Scott M. Matheson, Jr.

Enclosure

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Senator CARDIN. Well, thank you. And we certainly do appreciate the introductions and support that has already been shown on this Committee.

Let me start with a question I think is relevant, considering that the President recently nominated Elena Kagan to the Supreme Court and then she would be coming to the Supreme Court without judicial experience; that your nomination is to the court of appeals, the appellate court, and you have not served in a judicial capacity.

One is very impressed with your background and your experience in the positions that you have held in the legal community.

Do you think it is a concern that you have not served on the district court or in a circuit court going to the court of appeals?

Mr. MATHESON. Well, thank you, Mr. Chairman. I am pleased to be able to address that question.

I would start out by saying that I feel that I have been extremely fortunate in my career to have some extraordinary opportunities, ranging from private practice at a leading law firm to prosecuting in our State courts in Utah, to serving as the U.S. attorney, serving as dean of a law school, and participating in a multitude of law reform efforts.

I couldn't have asked for better opportunities than that. It's been a very satisfying career up to this point, and I think that that blend of experience and those opportunities to make judgments and to work hard on legal issues and to work with others on a variety of law-related projects will serve me well on the bench.

And I think that those experiences will serve as a substitute, I suppose, for having served as a judge. I understand that that's very good and relevant experience leading into a position of this nature.

Senator CARDIN. As a judge, you have to decide cases based upon the law. But the oath that you take indicates that you will execute justice to the poor and to the wealthy, that there be no distinction.

The fairness of our system sometimes is skewed when someone does not have the ability to pursue their case in court. How do you interpret your position as a judge carrying out the oath that you would take to dispense justice equally to the poor?

Mr. MATHESON. Well, I think, Senator, that the oath requires a critical quality, and that quality is impartiality. And it also means that a judge has to have a full commitment to the rule of law, to impartial application of law to the evidence that has been admitted in the particular case, a commitment to procedural due process, and to open mindedness.

And I think it also requires deference to the other branches of government and, also, I think, constant vigilance to ensure that the law is applied and that the judge's personal and political views are not involved in the application of the law to a particular case.

I think if the judge follows those principles, that equal justice and meeting a judge's responsibilities and, most importantly, as you started out, meeting the oath will be fulfilled.

Senator CARDIN. I am not familiar with Utah, I am with Maryland, as to the responsibilities of lawyers to participate in pro bono and to provide help to those who otherwise would be denied access to our courts.

Do you see a role that the courts can play in promoting adequate representation for all people in our system?

Mr. MATHESON. I think there is, Mr. Chairman. First, let me say that the Utah Bar has a strong record in this area and the legal community in my State has stepped up and fulfilled the responsibility that you just described in many, many ways.

I've had the privilege to participate in a number of those activities, such as the And Justice for All campaign in our community that supports our legal services agencies. As dean of the law school, I was involved in developing a pro bono initiative, which matches up students with practicing lawyers to meet under-served legal needs of our community. And our judges in the State have stepped forward and encouraged programs and lawyers to participate in these activities.

And I feel that I've been part of that tradition and to the extent that it is consistent with the judicial role, would like to continue in that respect.

Senator CARDIN. Thank you.

Senator Hatch.

Senator HATCH. Let me just ask one question, and it is an important one, certainly, and we are welcoming you to the Judiciary Committee of the U.S. Senate. And I want to thank you and your family for your commitment to service to our State and to our country, as well.

Let me just ask you a question concerning judicial philosophy, because I know that this has to be asked. I understand that to mean your understanding of the power and proper role of judges in our system of government involves judicial philosophy.

Now, in 1991, for the 200th anniversary of the Bill of Rights, you wrote a piece for the Salt Lake Tribune arguing that, quote, "There is an unmistakable link between our established constitutional values and basic human needs," unquote.

Because you referred to, underlined, constitutional values, that naturally raises this question—whether judges, as opposed to legislators, may act to help meet those needs.

For example, one scholar has argued that constitutional provisions, such as the guarantee of equal citizenship, make the Constitution literally a generative source of substantive rights. Now, that sounds as if judges can recognize new rights that they think will meet human needs.

Would you care to comment on that?

Mr. MATHESON. Yes. Thank you, Senator Hatch, for that question, and I think it raises a very important issue.

I would say, first of all, that I have never taken the position that you just described and that the provision of opportunity mentioned in the article that you just described is a responsibility for the legislature to address.

I've always viewed the Constitution as providing for protection for individual rights against government interference as opposed to providing affirmative rights, and that has been my consistent position as a constitutional law teacher and scholar.

I think you put it well last week in the speech that you gave to the Cato Institute, where you said that it's important to recognize the principle that it isn't judges who control the Constitution, it's the Constitution that controls the judges, and that resonated with

me. I believe in that principle and it's one that I would take to the bench.

Senator HATCH. Well, thank you. If we have any other questions, we will submit them in writing.

Mr. MATHESON. Thank you.

Senator CARDIN. Thank you.

Senator Feingold.

Senator FEINGOLD. Nothing.

Senator CARDIN. Senator Kyl.

Senator Kyl.

Senator KYL. Thank you, Mr. Chairman.

Let me first begin by asking you a question about your book, *Presidential Constitutionalism in Perilous Times*. You argued, and I am quoting here, "The Presidency requires a constitutional conscientiousness that was lacking in the George W. Bush administration that must be inculcated in the future."

Could you give me some examples?

Mr. MATHESON. Well, my concern that was expressed in that statement, Senator, is a separation of powers concern and the relationship between separation of powers and individual rights.

The book, by the way, is a book about several Presidents that faced security and liberty interests in times of war and national security threat.

Senator KYL. Let me just get to the point here. You are accusing them of not caring about the Constitution. Constitutional conscientious, a lack of consciousness about or thought about or concern about. That is kind of a tough charge against people who tried very hard to be good public servants.

Can you give me an example?

Mr. MATHESON. Well, the examples talked about in the book occurred during the first—mostly during the first term of the Administration and had to do with the lack of collaborative policymaking effort in the areas of torture, national security surveillance, and detention.

And the analysis speaks mostly to the question of why the Administration didn't work more closely with Congress in developing those policies.

Senator KYL. With all due respect, though, if the President has constitutional authority to execute a war, it may not be a good idea or good policy not to communicate more robustly with the Congress, but that doesn't mean that it lacks constitutional conscientiousness or, in other words, that it is overriding its powers.

Let me just give you an example of what I thought you were getting at. You wrote that when President Bush issued his November 13, 2001 military commission order, he claimed lawmaking, adjudicating, and prosecuting authority, conflating separation of powers under the commander-in-chief mantel. Historically, this planting of executive, legislative, and judicial powers in one person or, even in one branch of government is ordinarily regarded as the very acme of absolutism.

Now, are you contending or did you contend in that book that the President, in the exercise of his authority as commander-in-chief of our armed forces in the middle of a military conflict, must require

Congress' approval when dealing with foreign enemy combatants on enemy soil?

Mr. MATHESON. Senator, let me try to clarify that point a little bit more. What I was trying to get at with respect to military commissions, which eventually was recognized by the Supreme Court in 2006 in the *Hamdan* case, is that the President ended up acting unilaterally in establishing the commissions and, as it turned out, under the Uniform Code of Military Justice, there was a Congressional limitation on how those commissions could or should be established.

And that was challenged and then, of course, several years later, the Supreme Court struck down the commissions—

Senator KYL. But the Supreme Court did not strike down the President's authority to establish a military commission.

Mr. MATHESON. Well, they left that question open.

Senator KYL. Right. But that is what you were criticizing him of doing here, of setting it up. Now, there may have been some infirmities in it, and it may have been a better idea for him to—and, in fact, ultimately, Congress did work with him and modify it somewhat and this Administration currently believes that we can operate under that authority.

So, part of what you wrote here suggests that he does not have the authority to do it. That is the thing that I am wondering about. It is not maybe that it was not a great idea, it is exactly how he did it or that he should have consulted with Congress.

Mr. MATHESON. Well, Senator, I think what I was trying to suggest is that, as the Court explained in *Hamdan*, we didn't have a situation where Congress had not spoken. Congress had spoken.

And if we were in the hypothetical situation where Congress had said nothing on this issue, it's in that context that the Court left the question open whether the President could act.

But even in that context, Justice Kennedy was very careful to point out that an executive establishment of a court and the rules of that court and the sanctions of that court should raise issues of constitutional concern concerning separation of powers. That's the point I was trying to make.

Senator KYL. You argued, from the same source, "The executives claimed that it could arrest and lock up individuals suspected of terrorist ties without charge, without counsel, without due process, and without any prospect of release until the war on terror is over evaded the rule of law in a war that is supposed to preserve the rule of law."

Did it turn out that the Supreme Court agreed with you?

Mr. MATHESON. Well, they did, actually, up to a point in the *Hamde* case.

Senator KYL. Did not the *Hamde* court say that you could hold a prisoner until the end of the conflict?

Mr. MATHESON. They did, but not without the provision of a due process hearing to challenge the validity of the detention.

Senator KYL. So what you are saying is they are only without due process, as later the *Hamde* court ruled—in other words, you do not deny that the President has the authority to hold and to arrest, to lock up, as you put it, terrorists without charge.

Mr. MATHESON. Well, I would include the issue of charge and the validity of detention as part of the due process consideration.

Senator KYL. So you think a person has to be charged, that a terrorist who is captured on a battlefield has to be charged with a crime?

Mr. MATHESON. No. What I was trying to explain is that a person in *Hamdee*'s position—of course, he was a citizen, we know.

Senator KYL. Right.

Mr. MATHESON. Would have an opportunity to contest the detention and, as part of contesting the detention, the reason for the detention would, I think, be part of that discussion.

Senator KYL. Well, that is different from what you said. They do have the right to contest and there is a review even under the original authority that the President exercised with respect to terrorists held at Guantanamo on status.

But what you are saying here is that the executive's claim that it could arrest and lock up individuals suspected of terrorist ties without charge and without counsel—now, you say without due process, that later got interpreted—and without any prospect of release until the war is over evaded the rule of law.

But the Court says that all three of those things are appropriate.

Mr. MATHESON. Well, I suppose that, Senator, I'm trying to put those concepts together and I see a due process interest maybe a little more broadly that you're suggesting.

But I would cite to the *Hamdee* case as validating that point.

Senator KYL. I would cite to the *Hamdee* case as contesting it. I am over my time. I just had one other series of questions, but I am happy to yield.

Senator CARDIN. Senator Whitehouse.

Senator WHITEHOUSE. First of all, welcome, Dean Matheson. It is good to have you with us. You served as United States attorney. We have, obviously, confirmed you before for positions of significant responsibility, and I welcome you back.

Could you describe a little bit the nature and extent of your appellate court practice during the course of your career?

Mr. MATHESON. Well, I'd be happy to do that, Senator. And it's good to see you again. We overlapped as U.S. attorneys, and Senator Whitehouse was clearly one of the leaders of our U.S. attorney group. So it's good to be back with you this afternoon.

Senator WHITEHOUSE. He only says that now.

Mr. MATHESON. As to your question about appellate practice, as the U.S. attorney, I argued a number of cases before the Tenth Circuit. Senator Feingold described one of the more significant cases involving the preservation of a multitude of convictions against collateral attack that were being challenged as the result of a Supreme Court case. And we worked very closely with the Justice Department, because it was a challenging issue.

I argued other cases before the Tenth Circuit, including an en banc case involving a Fourth Amendment issue, and I argued a case that I was also involved as the trial lawyer. It was a homicide case that we tried in Federal district court in Salt Lake City. And what made the case particularly interesting is it was the first case in the history of our state where we used two juries, because of an evidentiary issue.

There was a problem under the Supreme Court decision of *U.S. v. Boutin*, and rather than severing the cases, we tried them together, and that was an interesting experience and we took that case up on appeal to the tenth circuit.

I have to say that my practice experience before that court has been some of the most professionally satisfying of my career. I thoroughly enjoyed it. It's how I've gotten to know that court and come to respect it so much and why it's such an honor to be nominated to serve on that court.

Senator WHITEHOUSE. Well, you have magnificent accomplishments and I am delighted that you are here. I wish you well.

My last question is how many of you there are who are sixth generation Utahans.

Mr. MATHESON. Well, you'd be surprised how many there are.

[Laughter.]

Senator WHITEHOUSE. I will leave it at that.

Senator CARDIN. Senator Franken.

Senator FRANKEN. Thank you, Dean. I am very impressed that you have taken time from your work as a professor and a dean to serve both as a local prosecutor and a U.S. attorney, as Senator Whitehouse mentioned.

What impact do those experiences have on your understanding of the criminal justice system and how will that impact or influence you, if you are confirmed, at the appellate court?

Mr. MATHESON. Well, I've learned a great deal from those experiences and I think I'll mention just a few of the lessons learned. But I think one of the most important is that I have great confidence in our system of criminal justice in this country at both the state and Federal levels.

For one thing, we have such a strong bench in our state, as Senator Hatch knows, in the state courts and the Federal courts, just outstanding judges.

But perhaps most important is a sense, a very deep sense of how conscientious and how committed all the participants in the process almost always are, very professional, take their roles very seriously, whether it's a prosecutor, a defense attorney, a clerk, jurors.

I think that there's a seriousness that is needed in the criminal justice system and I've seen it in action, and I have a lot of respect for each and every person who is involved in that process, because they come to it each day and they come to it to do as good a job as possible, because they recognize that whatever their role is, if they do it well, that contributes to how effective the system is.

So I came away from experience as a prosecutor and as a U.S. attorney with that lesson in mind.

Senator FRANKEN. As Senator Cardin referenced, you have written about the importance of responding to the legal needs of low income and middle class people in our society. How did you develop your commitment to access to justice? Is there any one series of events or is this something that you observed or a value that you got from your parents?

Mr. MATHESON. Well, thank you, Senator. I think I'd start out by saying all of the above. I think growing up in my family, we were always taught about commitment to service. That was inculcated early on, but that continued through law school and during the

early years of practice and it's just always been a part of my commitment, my priority, and what I've wanted to do.

And I've had some terrific opportunities to participate in that area, going back quite a few years, when I was actually quite a young lawyer. I was asked to serve on the Legal Aid Society of Salt Lake City and became the president of their board.

And during the time I served with them, we developed a domestic violence program for our community that I think is a model to this day and I'm very proud of having been involved in programs like that.

Senator FRANKEN. Well, thank you. I have heard enough. No more questions. And you are very impressive, sir. Thank you.

Mr. MATHESON. Thank you, Senator.

Senator CARDIN. Just as a follow-up to Senator Kyl's point, the book that Senator Kyl was referring to, *Presidential Constitutionalism in Perilous Times*, you analyzed Presidents, if I understand it, Lincoln, Wilson, Franklin Roosevelt, Truman, and George W. Bush. That was all five, I guess, that you were comparing.

And then you draw a conclusion, which is very similar to the 9/11 Commission's report, that I just really want to put in the record, because I agree with it and there might be some interest in that, that Presidents generally have focused on national security in times of crisis and not on civil liberties, and they need to focus on both, which is exactly some of the findings of the 9/11 Commission.

I would hope that I will find the time to be able to read that book. It sounds very interesting.

Mr. MATHESON. Thank you.

Senator CARDIN. Senator Kyl, did you want a second round?

Senator KYL. Yes, I do, Mr. Chairman. I have a set of questions. Just as a final point, and maybe since I asked you if you could give me some examples, that might have caught you just a little bit unawares, I will just ask a question for the record and you are free to take time and provide a written answer, if you would like to do that.

But the final point on this question, the little debate you and I were having about *Hamdee* and so on. Assume that there is an initial determination of status and that there is an at least one time habeas review, which the Court said would exist.

Do you believe that criminal charges, provision of counsel, and some other prospect of relief is required for due process or required by due process for foreign terrorists who are captured on the battlefield and detained in place like Guantanamo?

Mr. MATHESON. Well, Senator, as you'll recall, Justice O'Connor addressed, in part, what she thought due process might require, but didn't go into great detail on that issue and I think that issue may still be with us up to a point in terms of how detainees—and, again, the distinction in that case was drawn between a citizen detainee as opposed to a non-citizen detainee.

So I think my answer, Senator, would, as so often happens in these matters, depend on a combination of facts and circumstances and if asked to confront it in a judicial capacity, would do so with an open mind.

And these are difficult issues, as you know. They've been debated back and forth now for quite a number of years and it has continued into this administration.

Senator KYL. Did the habeas or the resulting requirement for habeas depend upon citizenship status?

Mr. MATHESON. Well, as you know, after *Hamdee*, there were other cases and there was the *Rasoul* case, which recognized a habeas opportunity for the Guantanamo detainees, but under the Federal habeas statute.

Then we had legislation that stripped jurisdiction for habeas review, but the administration did institute the combat status review tribunals. But then we moved up to the *Boumediene* case, which has resolved some issues, but raised several others.

So we're talking about a fluid situation in this area.

Senator KYL. But further established the habeas right.

Mr. MATHESON. In *Boumediene*.

Senator KYL. Right.

Mr. MATHESON. Yes.

Senator KYL. Let me just switch total subjects. This book Professor Carlin co-authored, I am just going to quote from it, argued that interpreting—I am quoting now—"Interpreting the Constitution requires adaptation of its broad principles to the conditions and challenges faced by successive generations. The question is not how the Constitution would have been applied at the founding, but rather how it should be applied today in light of changing needs, conditions, and understandings of our society."

Are you generally familiar with that?

Mr. MATHESON. Well, I haven't read that book, Senator, or what she wrote.

Senator KYL. Well, I would just ask you what you think about it, then, or do I need to repeat it?

Mr. MATHESON. No. I think I understand the question and I hope I can be helpful with a response.

I view the Constitution as establishing, in its text, and everything, I think, starts with the text, but establishing a structure of government and a set of relationships within and between governments and between the government and individuals.

I think those principles were established at the beginning and that the framers intended that document and those principles to endure and to serve us in addressing situations that would be new and unanticipated, and I think that that document has served us well in that respect.

I don't see the structure or principles changing. I see circumstances that have to be confronted as changing. I recently was reading the Second Amendment case, the majority opinion in *Heller*, and Justice Scalia was responding to a claim that the Second Amendment should only apply to those arms that were in existence in the 18th century. And, of course, he rejected that claim and pointed out that the First Amendment has been applied to modern forms of communication and the Fourth Amendment has had to be applied to modern forms of search, and the Second Amendment, likewise, has to be interpreted in light of new forms of arms, and I think that that approach is a sensible approach.

Senator KYL. Creative lawyers, of course, will come up with an infinite number of new circumstances. I agree with you that circumstances change and, also, even if they do not, lawyers will think of new ways of presenting cases on behalf of their clients.

But the word, also, "needs" was in here, in light of changing needs, and I was just thinking, for example, of the free exercise of religion clause and was wondering if you could maybe just give me an idea about how you think there might be a changing need that would require a different interpretation than how the Constitution would have been applied at the founding.

And, again, that may be unfair just to put you on the spot.

Mr. MATHESON. Well, no, Senator. It's a great question. I suppose my initial reaction to it is that I understand what changed circumstances are, but I'm not sure I understand what a changed need is.

Senator KYL. I kind of was thinking the same thing. Maybe that is something you and I might agree on.

Mr. MATHESON. Well, I'll take it then.

Senator KYL. Thank you very much.

Mr. MATHESON. Thank you, Senator.

Senator CARDIN. Does any other member of the Committee wish to inquire?

[No response.]

Senator CARDIN. If not, thank you very much and that will complete your testimony and questioning.

Mr. MATHESON. Thank you, Mr. Chairman. Thank you to the Committee. It's been an honor to be with you today. And thank you, again, Senator Hatch, for your kind words.

Senator CARDIN. We also, again, express our appreciation to you and your entire family.

We will now move to our second panel, which will consist of John McConnell for U.S. District Judge for the District of Rhode Island; Susan Nelson to be U.S. District Judge for the District of Minnesota; Ellen Hollander to be U.S. District Judge for the District of Maryland; James Bredar to be U.S. District Judge for the District of Maryland.

If you all would, remain standing to be sworn.

[Witnesses sworn.]

Senator CARDIN. Thank you. Please have a seat.

As I pointed out with the previous panel, that the tradition of our Committee, if you would take the time to introduce your family members or other guests that are here, we would certainly appreciate that. And I will start off with John McConnell.

**STATEMENT OF JOHN J. MCCONNELL, JR., NOMINATED TO BE
U.S. DISTRICT JUDGE FOR THE DISTRICT OF RHODE ISLAND**

Mr. MCDONNELL. Thank you, Mr. Chairman. I am truly blessed with a large family and friends and supporters, many of whom are actually here today. My wife, Sara; my daughter, Catherine, who next weekend graduates from Brandeis University and was just accepted to teach in the D.C. Public Schools with Teach for America, and she'll start there this fall; my daughter, Margaret, "Maggie," who is a sophomore at George Washington University here in the

District; and, my son, John, who is a seventh grader at the Gordon School in East Providence.

My mom, Jane McConnell, is here with me. My in-laws, retired Rhode Island Supreme Court Justice Donald Shea and my mother-in-law, Ursula Shea, are here with me. And I have the privilege of having grown up with five brothers, four of whom are here with me. My brother, Tom, and his wife, Amy Matthews; my brother, Bob; my brother, Paul; and, my brother, Joe. My brother, Pete, I think is watching at home, unable to make it down here today.

A few of my nieces and nephews are here, Will and Robbie and Brendon McConnell, and my niece, Jessica Reinhardt. A couple of my law partners are here, Aileen Sprague, Don Migliori, Vin Greene, Fidelma Fitzpatrick, and some very excellent friends who always are there to support me, Donna D'Aloia, Rita Pratt, who is actually celebrating her birthday with us here today, Jacky Beshar, and Dan Roacha.

Thank you, Mr. Chairman.

Senator CARDIN. Thank you.

Judge Bredar.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

John James McConnell, Jr.

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

United States District Judge for the District of Rhode Island

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

321 South Main Street
Providence, RI 02903

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

1958; Providence, Rhode Island

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

1980 – 1983, Case Western Reserve University School of Law; J.D., 1983

1976 – 1980, Brown University; A.B., 1980

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

2003 - Present
Motley Rice LLC
321 South Main Street
Providence, RI 02903
Member

1986 – 2003
Motley Rice Inc. (and predecessor firms)
321 South Main Street
Providence, RI 02903
Partner/Member (1991 – 2003)
Associate Attorney (1986 – 1991)

2000
University of Rhode Island
Department of Political Science
Kingstown, RI 02881
Adjunct Professor (part-time)

1984 - 1986
Mandell, Goodman, Famiglietti & Schwartz
One Park Row
Providence, RI 02903
Attorney

1985
American Institute of Paralegal Studies
600 Mount Pleasant Avenue
Providence, RI
Instructor (part-time)

1983 – 1984
Supreme Court of Rhode Island
Associate Justice Donald F. Shea
250 Benefit Street
Providence, RI 02903
Law Clerk

1983
Jordan Marsh Department Store
Warwick Mall
Warwick, RI 02886
Holiday Sales Person

1982 – 1983
Case Western Reserve University School of Law Library
11075 East Blvd.
Cleveland, OH 44106-7148
Law Library Clerk (part-time)

1981 – 1983
 Law Offices of Roger D. Heller
 820 West Superior Ave., Suite 510
 Cleveland, Ohio 44113
 Legal Assistant (part-time)

1981 – 1983
 Vernon's Restaurant
 Shaker Square
 Cleveland, OH
 Waiter (part-time)

1980
 W.A.G.E. (Workers' Association to Guarantee Employment)
 Charles Street
 Providence, RI
 Summer Community Organizer

Other Affiliations

2009 – Present
 Martha's Vineyard Colonial Inn, LLC
 c/o Colonial Inn
 PO Box 68
 Edgartown, MA 02539
 Limited Partner

2008 – Present
 Roger Williams University
 One Old Ferry Road
 Bristol, RI 02809
 Trustee (uncompensated)

2007 - Present
 York Resources, Inc.
 48 Lloyd Ave.
 Providence, RI 02906
 Director

2007 – Present
 Catalist L.L.C.
 1101 Vermont Avenue, NW
 Suite 900
 Washington, DC 20005
 Limited Partner

2006 – Present
 Children’s Environmental Health Center
 Department of Community and Preventive Medicine
 Mount Sinai Medical Center
 One Gustave L. Levy Place
 New York, New York 10029-6574
 Director (uncompensated)

2006 - Present
 DSF Capital Partners III L.P.
 c/o The DSF Group
 24 Federal Street
 Boston, MA 02110
 Limited Partner

2006 – Present
 Crossroads RI
 160 Broad Street
 Providence, RI 02903
 Vice-Chair of the Board of Directors (2007 – Present) (uncompensated)
 Director (2006 – Present) (uncompensated)

2004 – Present
 Rhode Island Association for Justice
 400 Reservoir Avenue, Suite 3G
 Providence, RI 02907
 Director (uncompensated)

2003 – Present
 Providence Tourism Council
 P.O. Box 6565
 Providence, RI 02940-6565
 Chair (uncompensated)

2000 – Present
 Trinity Repertory Company
 201 Washington Street
 Providence, RI 02903
 Chair, Board of Directors (2006 – Present) (uncompensated)
 Director (2000 – Present) (uncompensated)

2003 – 2006
 Genesis Center
 620 Potters Avenue
 Providence, RI 02907
 Director (uncompensated)

2002 – 2009
 ULF-Edgartown LLC
 c/o Colonial Inn
 PO Box 68
 Edgartown MA 02539
 Limited Partner

2002 – 2008
 Knowtribe Films, LLC
 40 Forest Street
 Providence, RI 02903
 Limited Partner

1997 – 2009
 NEMLORP LLC
 28 Bridgeside Blvd.
 PO Box 1792
 Mt. Pleasant, SC 29465
 Limited Partner

1997 – 2001
 Planned Parenthood of Rhode Island
 111 Point Street
 Providence, RI 02940
 Director (uncompensated)

1985 – 1988
 George Wiley Center
 32 East Avenue
 Pawtucket, RI 02860
 Director (uncompensated)

1985 – 1986
 Greater Providence YMCA, Providence Division
 160 Broad Street
 Providence, RI 02903
 Member, Board of Management (uncompensated)

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

I have not served in the military and I was not required to register for the Selective Service.

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

Mayor's Special Recognition Award, "A Celebration of Housing – Together We Achieve our Goals" (2007)

Rhode Island Department of Health, Childhood Lead Poisoning Prevention Program Award for Public Health Partnership (2006)

Childhood Lead Action Project "Above and Beyond the Call of Duty" Award (1998; 2006)

Rhode Island Public Health Association, Bertram Yaffe Award (2006)

Rhode Island Bar Association's Dorothy Lohmann Public Service Award (1998)

Best Lawyer – Mass Tort Litigation, U.S. News/Best Lawyers (2007 – 2010)

Trial Lawyer of the Year finalist, Trial Lawyers for Public Justice (2006)

Rhode Island Trial Lawyers Association, "Case of the Year Award" (2006)

Member, The Academy of Trial Advocacy (2007 – Present)

Advocate, National College of Advocacy (2001)

Hope Award, Rhode Island Democratic State Committee (2006)

Trial Lawyer of the Year, Lawyers USA (2006)

Top Attorneys in Rhode Island, Rhode Island Monthly (2007)

Rhode Island Super Lawyer (2008 – 2009)

New England Super Lawyer (2008 – 2010)

Outstanding Partner in Philanthropy (2004)

National Association of Attorneys General "President's Award" (1998)

Rhode Island Arc "Silver Bullet Award" (1998)

Martin Luther King Award, Case Western Reserve University School of Law (1983)

Cambridge Who's Who Registry Among Executives and Professionals (2008 – 2009)

Martindale-Hubbell Law Directory rating of "av"

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

Ohio Association for Justice

National College of Advocacy

Rhode Island Bar Association

Rhode Association for Justice

Director, 2004 - Present

South Carolina Bar Association

South Carolina Association for Justice

The Academy of Trial Advocacy

10. **Bar and Court Admission:**

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

Rhode Island, 1983
 Massachusetts, 1984
 South Carolina, 1987
 District of Columbia, 1999
 Ohio, 2004

There has been no lapse in any membership.

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

United States Court of Appeals for the First Circuit, 1986
 United States Court of Appeals for the Third Circuit, 1991
 United States District Court for the District of Massachusetts, 1984
 United States District Court for the District of Rhode Island, 1984
 United States District Court for the District of Columbia, 2000
 Supreme Court of Rhode Island, 1983
 Massachusetts Supreme Judicial Court, 1984
 Supreme Court of South Carolina, 1987
 District of Columbia Court of Appeals, 1999
 Supreme Court of Ohio, 2004

There has been no lapse in any membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

George Wiley Center, 1985 – 1988
 Director, 1985 – 1988
 Southern Poverty Law Center, 1989 – Present
 Amnesty International USA, 1989 – Present
 Save the Bay, early 1990s – Present

Rhode Island School of Design Museum, 2000 – Present
 Providence Mediation Center Advisory Board, 2000 – 2002
 Trinity Repertory Company, 2000 – Present
 Chair, Board of Directors, 2006 – Present
 Director, 2000 - Present
 Rhode Island Association for Justice , 2001 – Present
 Director, 2001 – Present
 Rhode Island Historical Society, 2001 – 2004
 Providence Tourism Council, 2003 – Present
 Chair, 2003 – Present
 National Association for the Advancement of Colored People, 2004 – Present
 The Smithsonian Institute, 2005
 National Association of Railroad Passengers, 2005 – Present
 WRNI Advisory Board, 2006 – 2007
 Crossroads Rhode Island, 2006 – Present
 Vice-Chair of the Board of Directors, 2007 – Present
 Director, 2006 – Present
 Weckapaug Foundation for Conservation, 2008 – Present
 American Constitution Society, 2008 - Present
 American Association of Retired People, 2008 – Present
 Brandeis University Arts Council, 2008 – Present
 Public Justice Foundation, 2008 – 2009

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the organizations identified in my response to this question currently discriminates on the basis of race, sex, religion or national origin. To the best of my knowledge, if any of these organizations in the past did so, it was well before the time I became a member.

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

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

“Genetic Disorders and Medical Malpractice,” *Dermatological Clinics*, January 1987 (co-authored with Mark S. Mandell)

- “The Insurance Industry’s Crisis in Profitability,” *Rhode Island Bar Journal*, June/July 1987
- “Paint Makers Acted Sluggishly on Lead,” *The Providence Journal*, July 26, 1999
- “The Right Principles for Democrats,” *The Providence Journal*, January 7, 2003
- “Letter from the Chairman of the Board,” *The Trinity Square Magazine*, Fall 2006 – Spring 2010
- “The RI Supreme Court Got it Terribly Wrong,” *The Providence Journal*, August 19, 2008 (co-authored by Fidelma Fitzpatrick and Robert McConnell)
- “Corporations should remember their responsibilities to public,” *Providence Business News*, September 2008

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

None.

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

None.

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

- “Lessons Learned: How to Litigate A Case Against 121 Industry Lawyers,” American Association for Justice, Justice Counts Seminar: 21st Annual “Weekend with the Stars,” New York City, New York, December 2008
- Lead Paint,” The Gordon School, East Providence, Rhode Island, April 2008 and April 2007
- “Lead Paint Litigation: Shared Responsibility Corporate Accountability,” Roger Williams University School of Law, Bristol, Rhode Island, February 2007

Chair and Speaker, Mealey's "Lead Litigation Conference," Boston, Massachusetts, June 2006
 Speaker, National Crime Victims Bar Association, George Washington University Law School, Washington, DC, May 12, 2006
 Chair, Mealey's "Lead 101 Conference," St. Louis, Missouri, October 2000. No notes or transcript is available of my introductory remarks.

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

In the course of my law practice, and my involvement in politics and public service, I periodically commented to the media. I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. I have located the following:

1. *Witness in Ng death to be released, Ng transfer video sought*, The Providence Journal, Apr. 8, 2009.
2. *Lawyer seeks video in Wyatt lawsuit*, The Providence Journal, Mar. 31, 2009.
3. *U.S. probes death at Wyatt*, The Providence Journal, Mar. 13, 2009.
4. *Ng case witness to remain in U.S.*, The Providence Journal, Feb. 27, 2009.
5. *Family sues over death of inmate of Wyatt, Other investigations into Ng's death at Wyatt facility*, The Providence Journal, Feb. 10, 2009.
6. *D.C.-bound to cheer a new era*, The Providence Journal, Jan. 18, 2009.
7. *R.I.'s Electoral College makes presidential vote official*, The Providence Journal, Dec. 16, 2008.
8. *Group home wins reprieve*, The Providence Journal, Aug. 30, 2007.
9. *An outpouring of generosity - Readers respond to family devastated by vultures*, The Providence Journal, Feb. 18, 2007.
10. *Politicians fined over insurance for workers*, The Providence Journal, Jan. 9, 2004.
11. *Laurie J. Loveland, 43, a lead lawyer in tobacco deal*, The Providence Journal, Apr. 19, 2002.
12. *R.I. redistricting: Crossing the party line*, The Providence Journal, Oct. 6, 2001.
13. *Political Scene: Pisaturo to run for secretary of state on issue of cronyism in Rhode Island*, The Providence Journal, Aug. 20, 2001.
14. *Political Scene: Waiver lets Reed stay as member of other major Senate committees*, The Providence Journal, Aug. 6, 2001.
15. *At the Statehouse - Kennedy's security-guard case might be settled out of court*, The Providence Journal, Jun. 25, 2001.

16. *Bill to ease primary voting draws some opposition*, The Providence Journal, Apr. 18, 2001.
17. *Clintons to attend R.I. fundraiser - \$1,000-per-person reception for the former first couple to be held Friday in East Greenwich*, The Providence Journal, Apr. 18, 2001.
18. *Campaign 2000 - Supporters happy to have taken high ground*, The Providence Journal, Mar. 10, 2000.
19. *Weygand: Use tobacco settlement for health initiatives*, The Providence Journal, Feb. 27, 1999.
20. *Political Scene: Double duty for candidate James*, The Providence Journal, Aug. 18, 1997.
21. *Political Scene: R.I. Democrats may always be indebted to Mancini*, The Providence Journal, Feb. 3, 1997.
22. *Judge: Reopen home for retarded*, The Providence Journal – Bulletin, Sep. 28, 1995.
23. *Lawyer rests case in hearing on group home for retarded*, The Providence Journal, Sep. 1, 1995.
24. *City & Town report*, The Providence Journal – Bulletin, Aug. 11, 1995.
25. *The Call takes ex-carriers to court*, The Providence Journal – Bulletin, Aug. 11, 1995.
26. *Journal to stop selling papers to carriers who don't sign pact*, The Providence Journal, Dec. 23, 1992.
27. *Activists, parents ask for enforcement of lead-abatement rules*, The Providence Journal, Dec. 17, 1992.
28. *28 Landlords Named in Suits over Lead Damage*, The Providence Journal, Nov. 25, 1992.
29. *Carriers File Suit Against Journal Co.*, The Providence Journal, Nov. 17, 1992.
30. *A Look at the Staples Store in Providence*, The Providence Journal, Jun. 26, 1988.
31. *Quahogger sues city for alleged police brutality*, The Providence Journal, Sep. 16, 1985.
32. *Wife of laborer killed in cave-in sues state, firm for \$20 million*, The Providence Journal, Aug. 1, 1985.
33. *R.I. judge, lawyer selected for federal judgeships*, The Providence Journal, Apr. 14, 2009.
34. *Pawtucket first with arts slogan*, The Providence Journal, Mar. 31, 2009.
35. *R.I.'s Electoral College makes presidential vote official*, The Providence Journal, Dec. 16, 2008.
36. *ACLU pushes to obtain records on dead inmate*, The Providence Journal, Dec. 9, 2008.
37. *John Edwards: Mr. Smooth is a phony*, The Providence Journal, Aug. 14, 2008.
38. *High court OKs Webcast of paint case*, The Providence Journal, Apr. 21, 2008.
39. *Lead-paint companies appeal verdict*, The Providence Journal, Feb. 2, 2008.

40. *Smiley joins Cicilline camp*, The Providence Journal, Aug. 19, 2007.
41. *At 40, still climbing the Hill*, The Providence Journal, Jul. 15, 2007.
42. *A good year at Trinity*, The Providence Journal, Jun. 17, 2007.
43. *Lead paint battle spreads*, The Providence Journal, Apr. 8, 2007.
44. *DuPont's cleanup costs have doubled*, The Providence Journal, Mar. 27, 2007.
45. *Judge refuses to overthrow lead-paint convictions*, The Providence Journal, Feb. 27, 2007.
46. *Obama in the land of Lincoln*, The Providence Journal, Jan. 28, 2007.
47. *Paint lawsuits filed in Ohio*, The Providence Journal, Oct. 7, 2006.
48. *Questions persist over Lynch's deal with DuPont*, The Providence Journal, Aug. 9, 2006.
49. *Lynch fined \$5,000 for contempt of court*, The Providence Journal, May 6, 2006.
50. *Right move for Kennedy and constituents*, The Providence Journal, May 6, 2006.
51. *Jurors in lead-paint trial say they're proud of verdict*, The Providence Journal, Mar. 12, 2006.
52. *Insurer tries to cut coverage of paint firms*, The Providence Journal, Mar. 9, 2006.
53. *Jack McConnell: Taking on the bad guys*, The Providence Journal, Mar. 7, 2006.
54. *No punitive damages for lead-paint companies*, The Providence Journal, Mar. 1, 2006.
55. *People: Jack McConnell to head Trinity's board of trustees*, The Providence Journal, Feb. 2, 2006.
56. *Columbus: He's a theatrical rarity*, The Providence Journal, Nov. 6, 2005.
57. *New Trinity director picked from Chicago's Steppenwolf Theatre*, The Providence Journal, Nov. 1, 2005.
58. *Theater in Providence: Trinity Rep narrows search for director*, The Providence Journal, Oct. 21, 2005.
59. *Political Scene: Murphy wants Palumbo to apologize for unauthorized voting*, The Providence Journal, Oct. 10, 2005.
60. *Marquee names: Pell, Chafee*, The Providence Journal, Oct. 2, 2005.
61. *Trinity Rep expects new director by November*, The Providence Journal, Aug. 12, 2005.
62. *Pyrotechnics return Sunday night*, The Providence Journal, Jul. 1, 2005.
63. *R.I., DuPont reach deal on lead paint*, The Providence Journal, Jul. 1, 2005.
64. *Mayor fires back on campaign donations*, The Providence Journal, May 16, 2005.
65. *Biz Bits & Quips*, The Providence Journal, Feb. 20, 2005.
66. *Could 2006 be the year a woman wins?*, The Providence Journal, Feb. 15, 2005.
67. *Trinity forms committee to conduct director search*, The Providence Journal, Feb. 4, 2005.

68. *2004 Democratic Convention – Boston: Edwards keeps hopes very alive*, The Providence Journal, Jul. 30, 2004.
69. *Sen. Clinton adds \$100,000 to war chest*, The Providence Journal, May 25, 2004.
70. *Campaign 2004: In primary campaigning, leading Democrats skip R.I.*, The Providence Journal, Feb. 29, 2004.
71. *Culture capital - Providence's newest department to support arts groups financially*, The Providence Journal, Nov. 26, 2003.
72. *Tourism agencies will work together*, The Providence Journal, Sep. 23, 2003.
73. *Carciari's minimum wage turnabout*, The Providence Journal, Jul. 27, 2003.
74. *Campaigns didn't insure their workers*, The Providence Journal, May 24, 2003.
75. *Cicilline pulls the plug on Cianci's side-room wet bar*, The Providence Journal, Jan. 7, 2003.
76. *Gore Exits the Race - R.I. Democratic leaders back decision not to run*, The Providence Journal, Dec. 17, 2002.
77. *Al Gore again? In best state, mixed views*, The Providence Journal, Nov. 21, 2002.
78. *Election 2002: York disappointed but has no regrets*, The Providence Journal, Nov. 7, 2002.
79. *Election 2002: ANALYSIS - Suburban voters help catapult Carciari to the State House*, The Providence Journal, Nov. 6, 2002.
80. *Election 2002: A voter's guide to the candidates and issues - At wire, Carciari finishes strong*, The Providence Journal, Nov. 3, 2002.
81. *York-Carciari governor race a close one?*, The Providence Journal, Oct. 17, 2002.
82. *Surveying York's inner circle*, The Providence Journal, Oct. 13, 2002.
83. *Primary 2002: Close contest decided by mail ballots*, The Providence Journal, Sep. 11, 2002.
84. *Cianci & Co.: In court and facing election*, The Providence Journal, May 12, 2002.
85. *Kennedy pays, ending suit over shove at airport*, The Providence Journal, Apr. 13, 2002.
86. *Political Scene: Whitehouse campaign finds fault with poll results that favor York*, The Providence Journal, Jan. 28, 2002.
87. *For York, auction outcome is half a loaf*, The Providence Journal, Dec. 7, 2001.
88. *Janikies buys Creamery for \$1.55 million*, The Providence Journal, Dec. 7, 2001.
89. *Political Scene: York moves closer to run*, The Providence Journal, Nov. 12, 2001.
90. *York associate sees her joining governor race*, The Providence Journal, Aug. 9, 2001.
91. *Kennedy staff shakeup has politicians abuzz*, The Providence Journal, Apr. 13, 2001.

92. *An opportunity to save lives if we care*, The Providence Journal, Apr. 12, 2001.
93. *Chafee is right on big tax cut and on Cianci*, The Providence Journal, Apr. 10, 2001.
94. *Who's out, who's in: Political junkies and presidential change*, The Providence Journal, Dec. 21, 2000.
95. *Law bans Internet tobacco sales to minors*, The Providence Journal, Oct. 26, 2000.
96. *Mrs. Clinton misses R.I. fundraiser*, The Providence Journal, Oct. 10, 2000.
97. *Campaign 2000: Hillary Clinton, Tipper Gore to visit R.I.*, The Providence Journal, Sep. 28, 2000.
98. *Jeffrey Wigand: Enemy of tobacco, friend of truth*, The Providence Journal, Apr. 2, 2000.
99. *Up close: NYC Mayor Rudy Giuliani, Senate candidate*, The Providence Journal, Mar. 26, 2000.
100. *Bradley pulls out: Terrific message, flawed candidate*, The Providence Journal, Mar. 10, 2000.
101. *Campaign 2000: Analysis - McCain owes his R.I. victory to independents*, The Providence Journal, Mar. 8, 2000.
102. *Gore focuses on Bush rivalry*, The Providence Journal, Mar. 6, 2000.
103. *Primary whirl: Meet the state's presidential chairmen*, The Providence Journal, Mar. 5, 2000.
104. *Final buzzer near, Bradley plays on without bitterness*, The Providence Journal, Mar. 4, 2000.
105. *Campaign 2000: Bradley to campaign in R.I. tomorrow*, The Providence Journal, Feb. 16, 2000.
106. *Campaign 2000: Independents hold key to R.I. primary*, The Providence Journal, Feb. 14, 2000.
107. *Focus shifts to N.H. for first primary*, The Providence Journal, Jan. 25, 2000.
108. *R.I.'s elected Democrats gather in show of force for Gore*, The Providence Journal, Jan. 15, 2000.
109. *Hillary Rodham Clinton in Rhode Island - A double-duty day*, The Providence Journal, Dec. 14, 1999.
110. *Raising the bucks: Hillary Clinton on the East Side*, The Providence Journal, Dec. 14, 1999.
111. *Jack McConnell: Host to first lady is lawyer, operative*, The Providence Journal, Dec. 2, 1999.
112. *First lady to raise money in R.I.*, The Providence Journal, Nov. 19, 1999.
113. *In Rhode Island and nationwide, Bradley presses Gore*, The Providence Journal, Oct. 3, 1999.
114. *Candidate Coyne-McCoy says Langevin doesn't scare her*, The Providence Journal, Aug. 15, 1999.
115. *Lost at Sea - Few knew JFK Jr., but he was a part of everyone's lives*, The Providence Journal, Jul. 18, 1999.

116. *Langevin, York top Democrats' list for Chafee seat*, The Providence Sunday Journal, Mar. 7, 1999.
117. *Almond 51% - York 42% Almond outruns polls, cruises to 2nd term as governor*, The Providence Journal, Nov. 4, 1998.
118. *Political Scene: A House divided suits Almond and Cianci*, The Providence Journal, Jun. 15, 1998.
119. *In a race made for him, Almond poised to launch bid for reelection*, The Providence Sunday Journal, Jun. 7, 1998.
120. *For U.S. attorney, the guess here is Teitz edges Lynch*, The Providence Journal, Apr. 14, 1998.
121. *Dropping in polls, Kennedy needs to rethink his message*, The Providence Journal, Oct. 5, 1997.
122. *One year to primary: York is running, Kelly is mulling*, The Providence Journal, Sep. 14, 1997.
123. *White House packs a big wallop for the politically connected*, The Providence Journal, Feb. 18, 1997.
124. *Political Scene: Jackvony's plan to practice law draws partisan fire*, The Providence Journal, Feb. 17, 1997.
125. *Political Scene: In Washington, Pell's office has become the hot property*, The Providence Journal, Dec. 2, 1996.
126. *Charges swapped about PAC funding*, The Providence Journal, Nov. 2, 1996.
127. *Chafee vs. Kennedy: A race you'd love to see*, The Providence Journal, Sep. 29, 1996.
128. *Clinton to visit Providence, Fall River*, The Providence Journal, Sep. 26, 1996.
129. *Dick Gephardt runs for House speaker, maybe president, too*, The Providence Journal, Sep. 17, 1996.
130. *Wild's 'real test' looms in match with favored*, The Providence Journal, Sep. 12, 1996.
131. *Democrats are confident after smooth convention*, The Providence Journal, Sep. 1, 1996.
132. *Political Scene: A 'friendship' adrift on political currents*, The Providence Journal, Jun. 24, 1996.
133. *Paolino, Weygand top 2nd District House race*, The Providence Journal, Jun. 9, 1996.
134. *Almond agrees: Holmes no help on shipyard*, The Providence Journal, May 9, 1996.
135. *2nd District update: A plus for Sullivan, but watch Paolino*, The Providence Journal, Apr. 9, 1996.
136. *Visit by Scalfaro stirs Italo thoughts*, The Providence Journal, Apr. 7, 1996.
137. *R.I. primary was too lackluster for*, The Providence Journal, Mar. 7, 1996.
138. *R.I. may play role in GOP*, The Providence Journal, Feb. 21, 1996.
139. *Blizzard Of 96: The Aftermath Coast may get disaster relief*, The Providence Journal, Jan. 14, 1996.

140. *Hillary Clinton coming with storm clouds swirling*, The Providence Journal, Jan. 14, 1996.
141. *Almond in storm: What you saw is the way the Gov is*, The Providence Journal, Jan. 11, 1996.
142. *Waiting for Joe: What's the story with Paolino?*, The Providence Journal, Jan. 9, 1996.
143. *Political Scene: Buchanan battling to get on primary ballot*, The Providence Journal, Jan. 8, 1996.
144. *Senate race update: Reed's campaign shows some range*, The Providence Journal, Dec. 14, 1995.
145. *Political Scene: Violet considers race, Chafee's Nobel cause*, The Providence Journal, Oct. 16, 1995.
146. *Kennedy's PAC makes him a big-time fund-raiser*, The Providence Journal, Oct. 5, 1996.
147. *Political Scene: Mall boosters sans DiPrete, Medicare politics*, The Providence Journal, Oct. 9, 1995.
148. *Democratic Party paid Dufault's firm \$47,000*, The Providence Journal, May 22, 1995.
149. *R.I. gets grant of \$3.9 million to eliminate lead paint*, The Providence Journal, Dec. 24, 1992.
150. *R.I. paint cos. await decision on lawsuit costs*, Associated Press, Mar. 28, 2009.
151. *Lawyers in R.I. lead paint case argue court costs*, AFX Asia, Aug. 15, 2008.
152. *State Court Throws Out Jury Finding In Lead Case*, New York Times, Jul. 2, 2008.
153. *Should paint makers pay?*, Columbus Dispatch, May 11, 2008.
154. *Court upholds lead-paint dismissal*, Plain Dealer Jun. 22, 2007.
155. *Sherwin-Williams denied new lead-paint trial*, Plain Dealer, Feb. 2, 2007.
156. *Columbus rethinking lead-paint lawsuit*, Columbus Dispatch, Dec. 1, 2006.
157. *Akron exits lead paint suit, won't state why*, Plain Dealer, Nov. 16, 2006.
158. *Attorney General defends payment from DuPont in lead paint case*, Associated Press Aug. 9, 2006.
159. *Group Asks States To Sue For Cleanup Of Lead Paint*, Boston Globe, Jun. 29, 2006.
160. *The Nuisance That May Cost Billions*, New York Times, Apr. 2, 2006.
161. *Sherwin, insurers fighting over lead*, Plain Dealer. Mar. 23, 2006.
162. *DuPont to Donate \$12.5M to Settle Lead-Paint Suit*, The Wall Street Journal, Jul. 1, 2005.
163. *Law Firms in Tobacco Suit Seek \$1.2b More Move Against Bay State Rankles Legal Community*, Boston Globe, May 4, 2003.
164. *Lifting the lid on lead paint's fearful legacy*, Sunday Herald, Jul. 29, 2001.
165. *Woes aside, Gregoire still ahead GOP rival admits he's not a strong candidate*, Seattle Times, Oct. 20, 2000.
166. *City's Lead Paint Suit Is Almost Identical To One in Rhode Island: Team Handling That Case Was Rejected Here, Harmon Selected More Costly Firm*, St. Louis Post-Dispatch, Feb. 24, 2000.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? _____
 - i. Of these, approximately what percent were:
 - jury trials? ___%; bench trials ___%
 - civil proceedings? ___%; criminal proceedings? ___%
- b. Provide citations for all opinions you have written, including concurrences and dissents.
- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).
- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
- e. Provide a list of all cases in which certiorari was requested or granted.
- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.
- h. Provide 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, provide copies of the opinions.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.
14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:
- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
 - b. a brief description of the asserted conflict of interest or other ground for recusal;
 - c. the procedure you followed in determining whether or not to recuse yourself;
 - d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have never held judicial office.

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

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

In 1998, I was appointed by New York Attorney General Dennis Vacco to be a Special Assistant Attorney General for the State of New York for purposes of representing the State of New York in tobacco litigation.

In 2000, I was appointed by North Dakota Attorney General Heidi Heitkamp to be a Special Assistant Attorney General for the State of North Dakota for purposes of representing the State of North Dakota in tobacco litigation. My appointment was renewed in 2002 by Attorney General Wayne Stenehjem, and ended in 2009.

In 2003, I was appointed by Providence Mayor David N. Cicilline to be the Chair of the Providence Tourism Council, and I continue to serve.

I was appointed by the Rhode Island Democratic State Committee to be on the slate of electors for presidential candidate Barack Obama for the general election in 2008. As a result of election results on November 4, 2008, I served as a member of the Electoral College on January 15, 2009.

I have never run for elected office, except for the Electoral College, and I have not been unsuccessful in any nominations for appointed office.

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

In 1984, I was the Rhode Island Coordinator for Americans for Mondale-Ferraro. From 1992 through 1996, I was a member of the Business Leadership Forum of the Democratic National Committee.

From 1995 through 2009, I served as Treasurer of the Rhode Island Democratic State Committee. I was the volunteer acting Executive Director from 1995 through 1998.

From 1995 through 2010, I was the Treasurer of Rhode Island PAC (federal) and Rhode Island PAC (state), and from 2004 until March 2010, I was the Treasurer of Providence PAC.

From 1999 through 2000, I was the Rhode Island Chair for Bill Bradley for President.

From 2001 through 2001, I was Chair of the Myrth for Governor Committee. From 2003 until 2009, I was Chair of the Cicilline for Mayor Committee. I was Finance Chair for the Myrth York for Governor Committee from 1997 through 1998, and a member of the finance committee for the York for Governor Committee in 1994.

From 2004 through 2006, I was a member of the national finance committee for Hillary Clinton for Senate.

Additionally, since I was an adolescent, I have been a volunteer in numerous state and federal political campaigns. In addition to the campaigns listed above, the other campaigns I recall are: I volunteered for Hillary Clinton for President and Obama for America in 2008 and for Senator Sheldon Whitehouse's election campaign in 2006.

I did not receive compensation for any of the positions listed above.

16. **Legal Career:** Answer each part separately.

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

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

I clerked for Associate Justice Donald F. Shea of the Rhode Island Supreme Court from September 1983 through August 1984.

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

I have never practiced alone.

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

1984-1986

Mandell, Goodman, Famiglietti & Schwartz
One Park Row
Providence, RI 02903
Associate Attorney

1986 – 2003

Motley Rice Inc. (and predecessor firms)
321 South Main Street, Suite 200
Providence, RI 02903
Associate Attorney (1986 – 1991)
Partner/Member (1991 – 2003)

This firm has also been known by the following names:

Ness Motley, P.A. (2002 – 2003)
Ness, Motley, Loadholt, Richardson & Poole, P.A. (1991 – 2002)
Motley, Loadholt, Richardson & Poole, P.A. (1988 – 1991)
Blatt & Fales, P.A. (1986 – 1988)

2003 – Present

Motley Rice LLC
321 South Main Street, Suite 200
Providence, RI 02903
Member (2003 – Present)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I was a court-appointed arbitrator in the Rhode Island Superior Court Court-Annexed arbitration program. In that capacity, I arbitrated many cases that were selected by a party or the Superior Court for arbitration. These were typically routine matters involving minor personal injury or breach of contract damages generally resolved through settlement during or shortly after a brief hearing over which I presided.

In addition, I have served on the Advisory Board of the Providence Mediation Center that established a system of mediations throughout the city in areas of neighbor disputes, school conflicts, and the like.

I also have worked closely with the Institute for the Study and Practice of Non-Violence in Providence on dispute resolution issues involving mostly inner city youth problems.

b. Describe:

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

I spent my first year after law school in a judicial clerkship with Associate Justice Donald F. Shea of the Rhode Island Supreme Court.

Upon the completion of my clerkship until today, I primarily have been a litigator in state and federal courts throughout the country.

My first two years of law practice were with the Providence law firm of Mandell, Goodman, Famiglietti & Schwartz. I had an eclectic caseload that included representing people injured in a variety of ways, from automobile accidents to medical negligence. I also represented a local bank in small commercial matters, cable franchises seeking licensing, and doctors being disciplined by hospital boards.

In 1986, I opened the Providence, Rhode Island office for a law firm based in South Carolina, then called Blatt & Fales and later Motley Rice, Inc. In 1993 the majority of the lawyers and staff working at Motley Rice formed a new law firm Motley Rice LLC. In the late 1980s and 1990s my practice was focused on representing plaintiffs in asbestos litigation and other mass torts. In the 1990s, I litigated and ultimately helped in the settlement of claims against the tobacco industry on behalf of the states' Attorneys General. In the late 1990s, I became involved in lead poisoning litigation on behalf of lead-poisoned children and government entities.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

While at Mandell, Goodman, Famiglietti & Schwartz, I represented individuals and small businesses entities. At Motley Rice LLC, and its predecessor firms, I have represented a broad spectrum of individuals and class members in the fields of personal injury and consumer fraud law.

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

Approximately 90% of my law practice over the last 25 years has been in litigation, often complex litigation. During my years in private practice, I have appeared in court very frequently, and have participated in trials in 13 states.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 50% |
| 2. state courts of record: | 50% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 0% |

- ii. Indicate the percentage of your practice in:

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

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

I have tried approximately a dozen cases to verdict. I was chief counsel in half of them and co-counsel in the remaining six. I tried 90% of these cases to a jury.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 90% |
| 2. non-jury: | 10% |

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

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

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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. *Barbara Smith v. Celotex et al.*, Civil Action No.: 81-2768 (R.I. Super. Ct), reported at 489 A.2d 336 (R.I. 1985). This was a wrongful death action brought in 1984 by a young widow and her minor daughter arising from the early death of her husband from mesothelioma caused by his exposure as a child to asbestos while he was in grammar school. It is also the only asbestos case in Rhode Island to be tried, and it was my first trial experience. The trial court initially dismissed the action against one defendant based on lack of personal jurisdiction. The Rhode Island Supreme Court reversed with instructions allowing plaintiffs to conduct jurisdictional discovery. 489 A.2d 336 (R.I. 1985). The trial court declared a mistrial in the first month of trial and a re-trial started one month later. The trial resulted in a defendants' verdict and the plaintiff appealed. The trial was presided over by Rhode Island Superior Court Associate Justice John Boucier (deceased). The case settled on appeal and an annuity was established for the decedent's disabled minor daughter. I did much of the discovery work on this case, the independent investigation of the facts, witness preparation, legal research. I assisted at both trials. In addition, I handled the appeal and final settlement.

My co-counsel: Mark Mandel, One Park Row, Providence, RI 02903; 401-273-8330; and Ronald L. Motley, 26 Bridgeside Ave., Mt. Pleasant, SC 29465; 843-216-9111.

Defense counsel: Kenneth R. Neal, Capitol Place, 21 Oak Street, Hartford, CT 06106; 860-493-5749; Joyce A. Lagnese, Capitol Place, 21 Oak Street, Hartford, CT 06106; 860-493-5725; and Thomas C. Angelone, One Turks Head Place, Suite 810, Providence, RI 02903; 401-274-0200.

2. *Ulrike Wundrack v. Armstrong World Industries, Inc. et al.*, Civil Action No. 89-1912 (D. N.J.) reported at 1991 U.S. Dist. LEXIS 14526 (D. N.J. May 28, 1991) and 958 F.2d 366 (3d Cir. 1992). This was a wrongful death action that was brought by a young widow and her two minor sons arising from the early

death of her husband from mesothelioma at the age of 47 caused by his exposure to asbestos while he served in the U.S. Navy. I represented the widow and her children. This was my first trial in the first chair position. It resulted in a verdict of \$5.8 million, allocating liability among four defendant corporations. The trial judge issued a post-trial opinion, 1991 U.S. Dist. LEXIS 14526, denying defendants' motions for judgment notwithstanding the verdict. The U.S. Court of Appeals for the Third Circuit affirmed the verdict. 958 F. 2d 366 (3rd Cir 1992). I handled all aspects of the case, from 1989 through 2002, from initial client intake through trial, appeal to the Third Circuit, and execution of the judgment. The trial was presided over by U.S. District Judge H. Lee Sarokin (retired).

My co-counsel: Jon L. Gelman, 1700 State Route 23 North, Suite 120, Wayne, NJ 07470-7537; 973-696-7900; Susan Nial, 1780 Chelwood Circle, Charleston, SC 29407-3702; 917- 974-4525

The lead opposing counsel: Nancy McDonald, 1300 Mt. Kemble Ave., PO Box 2075, Morristown, NJ 07962-2075; 973-425-8703.

3. *State of Rhode Island v. Lead Industries Association*, Civil Action No. 99-5526 (R.I. Super. Ct.) reported at 951 A.2d 428 (R.I. 2008). I represented the State of Rhode Island in litigation against the lead pigment industry. We litigated this precedent-setting public health matter for nine years (1998 through 2009). I was engaged in all aspects of the case from start to finish. After a seven-week trial, the jury was deadlocked and the trial judge declared a mistrial. In 2005 and 2006, I became the lead trial attorney for the State. The second trial, spanning four months, was the longest civil jury trial in Rhode Island's history and concluded in February 2006 when a jury found three of the four defendant manufacturers liable under a public nuisance theory. Rhode Island Superior Court Justice Michael A. Silverstein presided over the trials. I was involved with researching, drafting and arguing the appeal for several years after verdict. The Rhode Island Supreme Court overturned the jury's verdict in July 2008. 951 A.2d 428 (R.I. 2008).

My co-counsel: Neil F.X. Kelly, One Smith Hill, Providence, RI 02903; 401-272-1110; Neil T. Leifer, 100 Summer Street, 30th Floor, Boston, MA 02110; 800-431-4600; Robert J. McConnell, 321 South Main St., Providence, RI 02903; 401- 457-7703; Fidelma Fitzpatrick, 321 South Main St., Providence, RI 02903; 401- 457-7728.

The lead opposing counsel: John A. Tarantino, Adler Pollock & Sheehan, One Citizens Plaza, 8th Floor, Providence, RI, 02903-1345; 401-274-7200; Joseph A. Kelly, 1 Turks Head Pl # 400, Providence, RI, 02903; 401-331-7272; Gerald C. Demaria, 123 Dyer St., Providence, RI 02903; 401-272-3500; Joseph V. Cavanagh, Jr., 30 Exchange Terrace, Providence, Rhode Island, 02903-1765; 401-831-8900; Paul Michael Pohl, Jones Day 500 Grant Street, Suite 4500 Pittsburgh, PA 15219-2514 (412) 394-7917; Donald Scott, Bartlit, Beck, Herman, Palenchar

& Scott, LLP, 1899 Wynnopp Street, Eighth Floor, Denver, CO 80202
303.592.3140; Michael T. Nilan, Halleland, Lewis, Nilan & Johnson, Pillsbury
Center South 220 South Sixth Street, Suite 600 Minneapolis, MN 55402(612)
338-1838.

4. *Steven Thomas v. Mallett* 701 N.W.2d 523 (Wis. 2005). From 2005 until 2009, I represented the plaintiff in a lawsuit against the manufacturers of lead pigment for injuries that he suffered because of severe lead poisoning. The case proceeded against the defendants on the theory of risk contribution that the Wisconsin Supreme Court adopted specifically for this case. 285 Wis. 2d 236, 701 N.W. 2d 523 (2005). I was lead trial counsel for the plaintiff. The trial justice was Milwaukee County Circuit Court Judge Richard J. Sankovitz. The trial ended with a jury verdict for the defendants. The case is on appeal at present.

My co-counsel: Peter Earle, 839 North Jefferson, Suite 300, Milwaukee, WI 53202; 414-276-1076; Robert J. McConnell, 321 South Main St., Providence, RI 02903; 401-457-7703; Fidelma Fitzpatrick, 321 South Main St., Providence, RI 02903; 401-457-7728; Steven Thomas' Guardian Ad Litem: Susan M. Gramling, 2266 North Prospect Avenue, Suite 505, Milwaukee, WI 53202-6306 (414) 224-8780

The lead opposing counsel: Peter K. Bleakley, 555 Twelfth Street, NW, Washington, DC 20004-1206; 202-942-5888; James T. Murray, Jr., Peterson, Johnson & Murray, S.C. 733 N. Van Buren Street, Sixth Floor, Milwaukee, WI 53202; 414-278-8800; Michael T. Nilan, 600 U.S. Bank Plaza South, 220 South Sixth Street, Minneapolis, Minnesota 55402-4501; 612-204-4129; Richard H. Dean, Jr., 1420 Peachtree Street, N.E., Suite 800, Atlanta, Georgia 30309-3053; 404-581-8502; Joy C. Fuhr, Christian Hennecke, R. Trent Taylor, Jonathan P. Harmon, McGuire Woods LLP, One James Center, 901 East Cary Street Richmond, VA 23219-4030 (804) 775-1000.

5. *Patrick Brennan v. Lincoln Almond*, Cause Action No. 95-4284 (R.I. Super. Ct.). I represented (pro bono) four plaintiffs (through their parents and guardians) who previously had been institutionalized because of their developmental disabilities. The state had moved them to a state-owned group home where by 1997 they had continually lived together as a family for more than 12 years. The State moved them out of their home, without affording them of their statutory procedural rights. We filed suit after a week-long preliminary hearing, we won a permanent injunction requiring the state to move them back home and afford them their procedural rights. They lived in the home for the next 12 years when the state tried to move them again in 2007. We filed for another preliminary injunction and again prevailed. The residents continue to live as a family in their home today. Rhode Island Superior Court Justice Patricia Hurst and Justice Netti Vogel presided over the injunction hearings.

My co-counsel: Robert J. McConnell, 321 South Main St., Providence, RI 02903; 401-457-7703

The lead opposing counsel: Richard B. Woolley, Assistant Attorney General of Rhode Island, 150 South Main Street, Providence, RI 02903; (401) 274-4400; Paul J. Pisano, The R.I. Department of Mental Health Retardation & Hospitals, 14 Harrington Rd., Cranston, RI 02920; 401-462-6014.

6. *Lin Li Qu v. Central Falls Detention Facility Corporation*, Case No. CA-09-CV-0053-S (D. R.I.). In 2008, I started representing a family of a Chinese immigrant that the Immigration and Customs Enforcement agency detained and sent to the Wyatt Detention Facility in Central Falls, Rhode Island. While in detention, he received inadequate medical care and was subjected to gruesome treatment. His spine was fractured and he died at the age of 34 from undiagnosed cancer while in custody. His family filed a federal civil rights claim in 2009. U.S. District Judge William E. Smith is presiding.

My co-counsel: Robert J. McConnell, 321 South Main St., Providence, RI 02903; (401) 457-7703; and Fidelma Fitzpatrick, 321 South Main St., Providence, RI 02903; (401) 457-7728

Lead defense counsel: Richard R. Beretta, Jr., One Citizens Plaza, 8th Floor, Providence, RI, 02903-1345; 401-274-7200; Helene Kazanjian, United States Attorney's Office, District of Maine, 100 Middle Street Plaza, East Tower, Sixth Floor, Portland, Maine 04101; 207-780-3257.

7. *Abate v. ACandS, Inc. et al.*, on appeal *ACandS, Inc v. Goodwin*, Consolidated File No.: 89236704 (Circuit Court of Baltimore County, 1992) reported as 667 A.2d 116 (Md. 1994). From 1991 through 1995, along with my two law partners, I was trial counsel for plaintiffs in the largest civil trial in American jurisprudence history in Baltimore, Maryland. It was a single trial conducted in 1992, with a record 8,600 plaintiffs, 14 defendants, 40 lawyers and more than 7 million documents. The workers were injured by asbestos, mostly in shipyards in the Baltimore area. The trial lasted almost eight months and resulted in a verdict against all the remaining defendants. The trial judge was Baltimore Circuit Court Judge Marshall A. Levin (deceased). In addition to extensive pre-trial work, I was one of the trial counsel for the Plaintiffs. I successfully argued its appeal to the State of Maryland's highest court. 667 A.2d 116 (Md. 1994).

My co-counsel: Peter G. Angelos, One Charles Center, 100 N. Charles St., Baltimore, MD 21201-3804; 800-556-5522; Armand J. (Dino) Volta, One Charles Center, 100 N. Charles St., Baltimore, MD 21201-3804; 800-556-5522; Clifford N. Cuniff, 207 East Redwood Street, Magill-Yerman Building, Suite 612, Baltimore, MD 21202; Peter T. Nicholl, Ashcraft & Gerel, Suite 805, 10 East Baltimore Street, Baltimore, MD 21202; John T. Enoch, Goodman, Meager & Enoch, 111 North Charles Street, Baltimore, MD 21202

The lead opposing counsel: Edward F. Houff, Suntrust Bank Building, 120 E. Baltimore Street, Suite 1300, Baltimore, MD 21202; 443-573-8510; B. Ford Davis, Whiteford, Taylor & Preston, Suite 1400, Seven St. Paul Street, Baltimore, MD 21202; 410-347-8700; Gerry H. Tostanoski, Tydings & Rosenberg, 100 East Pratt Street, Baltimore, MD 21202; 410-752-9733.

8. *The State of New York v. Philip Morris*, New York County Supreme Court Case No. 97- CIV-0794. I represented the State of New York, through its Attorney General, in its lawsuit against the tobacco industry. From 1997 through 2000, I investigated the case, filed the complaint and conducted discovery and motion practice in a very hotly contested case in New York City. New York Supreme Court Judge Stephen Crane presided over the matter, which ultimately settled as part of a 46-state settlement that I help draft and negotiate.

My co-counsel: Nicholas Papain, 120 Broadway, 18th Floor, New York, NY 10271; 212-732-9000; Brian J. Shoot, 120 Broadway, 18th Floor, New York, NY 10271; 212-732-9000; Dale M. Thuillez, 20 Corporate Woods Blvd. 6th floor, Albany, NY 12211; 518-455-9952; Steve W. Berman, Hagens, Berman, Sobol, Shapiro, LLP, 2425 East Camelback Road, Suite 650, Phoenix, AZ 85016 (206) 623-7292.

The lead opposing counsel: Meyer G. Koplou, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019; 212-403-1224; Jeffrey M. Wintner, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019; 212-403-1270; Peter C Hein, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street New York, NY 10019; 212-403-1237

9. *In Re: San Juan DuPont Plaza Hotel Fire Litigation*, Master File MDL-721 (D. P.R.). After a New Years Eve fire in a San Juan, Puerto Rico hotel in 1986 that killed 97 people and injured many more, I represented a number of injured people and families of some of the deceased. This case contained unusual breadth and extent of discovery on scores of potential defendants. I was a junior associate at the time, 1987 – 1996, and I was able to work on a mass disaster case with some of the best attorneys in the country on very complex and serious litigation. The case settled as to most defendants. The case was presided over by United States District Judge Raymond L. Acosta.

My co-counsel: Gerardo Pavia, PO Box 9066612, San Juan, PR 00906-6612; 787-289-0305. I do not recall the name of the defense counsel.

10. *Lucy Rinaldo v. AC&S*, Civil Action No.: 93-5592 (R.J. Super. Ct.). I represented the estate and widow of a former asbestos worker who died of mesothelioma, alleging claims against asbestos manufacturers. From 1993 through 1997, we litigated the case. After long and intensive negotiations, we

achieved a significant settlement for the family on the eve of trial. Rhode Island Superior Court, Justice Alice B. Gibney presided over the matter.

My co-counsel: Robert J. McConnell, 321 South Main St., Providence, RI 02903; (401) 457-7703.

Opposing counsel: Catherine A. Mohan, City Place 1, 185 Asylum St., Hartford, CT 06103; 860-275-6713.

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

One of the most significant legal activities that I have been involved in was the Master Settlement between 46 states and the tobacco industry. The negotiations took nearly six months. I was one of two outside attorneys involved in the negotiations. I worked with the Solicitor General of North Dakota representing the States in drafting the settlement agreement. The result, after many months of negotiations, was a 147-page agreement, with 22 appendices that was valued at \$246 billion dollars and was applicable for all time.

Another significant legal activity has been my work on behalf of Rhode Island Arc ("RI Arc"). Beginning in the mid 1980's, I began providing pro bono legal services and advice to RI Arc, an organization that provides advocacy for people with developmental disabilities. RI Arc was a plaintiff in a federal court class action challenging the constitutionality of the services provided to people at a state institution. I assisted the organization in the closing of a state institution, the transfer of people into group homes, and the subsequent issues concerning oversight and implementation.

I have never conducted any lobbying activities.

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

In addition to continuing legal education courses, and serving as guest lecturer at law school classes, I was an adjunct professor at the University of Rhode Island, Department of Political Science in Spring Term 2000. I taught a course pertaining to the American legal system.

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

Pursuant to contractual arrangements with MRRM, P.A., which owns various assets and liabilities including attorneys' fees arising from settled litigation, I anticipate receiving deferred compensation for work performed and completed of approximately \$2.5 million to \$3.1 million each year through 2024.

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

No.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, 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.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I do not foresee any recurrent basis for disqualification, except possibly in connection with matters in which my firm or my brother is counsel for a party. If confirmed, I will carefully review and address any real of potential conflicts in accordance with the Code of Conduct for United States Judges and all laws, rules, and practices governed by such circumstances.

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

If confirmed, I will carefully review and address any real or potential conflicts in accordance with the Code of Conduct for United States Judges and all laws, rules, and practices governed by such circumstances. I also will seek the advice of colleagues and of the Judicial Conference as needed.

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

Beginning in the mid-1980s through the present, I have represented RI Arc (formerly known as the RI Association of Retarded Citizens) pro bono. I have been its trial counsel in the federal court class action against the State of Rhode Island, first to close an institution and then to monitor the services provided to the former residents now in the community. I have been called upon to negotiate on behalf of former residents who challenged their services and their rights, litigate their disputes, and work with RI Arc's corporate structure. I received the R.I. Bar Association's "Dorothy Lohmann Public Service Award" for this work 1998.

In 1991 and 1992, I received recognition from the RI Bar Association for "serving the highest traditions of the legal profession by contributing legal services to the economic disadvantaged of Rhode Island" through its Volunteer Lawyer program.

Beginning in 1996, I represented four citizens with developmental disabilities in their fight to keep their group home in Lincoln, Rhode Island open. We filed for a preliminary injunction and after a lengthy multi-week evidentiary hearing we prevailed. Then again, in 2007 the state attempted to move these residents out of their home. We again litigated the issue and won another injunction stopping their transfer and keeping them in their home.

I have served as an attorney at the RI Homeless Legal Clinic. I have staffed a Coalition for the Homeless legal table at the organization's fairs, handling a wide variety of legal issues presented by people currently homeless.

In addition to these large cases that have spanned multiple years, I routinely represent people in smaller pro bono matters including homeowners worried about foreclosures, consumer disputes with big retailers, immigration civil rights matters and legal work that arises from my involvement on the boards of RI non-profits, including Crossroads RI and Trinity.

26. Selection Process:

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

On November 17, 2008, I sent a letter to Senators Jack Reed and Sheldon Whitehouse asking to be considered for a recommendation for a vacancy on the U.S. District Court for the District of Rhode Island. On February 2, 2009, I interviewed with Senator Jack Reed and a member of his staff. On February 27, 2009, I interviewed with Senator Sheldon Whitehouse and a member of his staff. On March 3, 2009, I submitted my Questionnaire for Judicial Nominees to Senator Reed. On April 10, 2009, Senator Reed called to inform me that he intended to recommend me to the White House for the nomination. I then received a call from Senator Whitehouse.

Since April 2009, I have been in contact with pre-nomination officials at the Department of Justice, and Senators Reed and Whitehouse. I spoke via telephone with the White House Counsel on two occasions. On September 21, 2009, I was interviewed by representatives of the Justice Department and the White House Counsel's Office. On November 3, 2009, I met with the White House Counsel and two representatives from that office. The President submitted my nomination to the Senate on March 10, 2010.

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

No.

AO 10
Rev. 1/2007

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) McConnell, Jr., John J	2. Court or Organization District of Rhode Island	3. Date of Report 03/09/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 03/10/2010 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2009 to 02/28/2010
7. Chambers or Office Address 321 South Main St. Suite 200 Providence, RI 02903	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 an last page.		

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

NONE (No reportable positions.)

	<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
1.	Board Member	Children's Environmental Health Center
2.	Director	Copy Center at Crossroads LLC
3.	Officer & Board Member	Crossroads Rhode Island
4.	Board Member	Entry 1 (Friend's entity)
5.	Board Member	Foundation 1 (Friend's foundation)
6.	Employee	Motley Rice LLC
7.	Officer & Board Member	Providence Tourism Council
8.	Director	Providence Tourism Fund
9.	Board Member	Rhode Island Association for Justice
10.	Board Member	Roger Wilhams University
11.	Officer & Board Member	Trinity Repertory Company
12.	Custodian	Alliance Capital 529 College Fund #1
13.	Custodian	Alliance Capital 529 College Fund #2
14.	Custodian	Alliance Capital 529 College Fund #3
15.	Trustee	Family Trust 1
16.	Trustee	Family Trust 2

17. Trustee	Family Trust 3
18. Co-Trustee	Friend Trust A
19. Co-Trustee	Friend Trust B
20. Co-Trustee	Friend Trust C
21. Co-Trustee	Friend Trust D
22. Trustee	Friend Trust E
23. Trustee	Friend Trust F
24. Member	Martbas Vineyard Colonial Inn LLC

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

NONE *(No reportable agreements.)*

<u>DATE</u>	<u>PARTIES AND TERMS</u>
1. 01/30/03	Noss Motley, P.A. Employment and Compensation Agreement (see Section VII for further details)
2.	
3.	
4.	

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Name of Person Reporting McConnell, Jr., John J	Date of Report 03/09/2010
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of instructions.)

A. Filer's Non-Investment Income

NONE (No reportable non-investment income.)

<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> (yours, not spouse's)
1. 2008	MRRM PA - deferred compensation	\$ 3,457,219.00
2. 2009	MRRM PA - deferred compensation	\$ 3,720,944.00
3. 2010	MRRM PA - deferred compensation	\$ 674,642.00
4. 2008	Motley Rice LLC - salary	\$ 350,000.00
5. 2009	Motley Rice LLC - salary	\$ 300,000.00
6. 2010	Motley Rice LLC - salary	\$ 0.00
7. 2008	Entity 1 (Friend's entity) - paid Board Member	\$ 8,000.00
8. 2009	Entity 1 (Friend's entity) - paid Board Member	\$ 8,000.00
9.		

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

NONE (No reportable non-investment income.)

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

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

NONE (No reportable reimbursements.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>
1.	EXEMPT	

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- 2. _____
- 3. _____
- 4. _____
- 5. _____

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

NONE *(No reportable gifts.)*

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

VI. LIABILITIES. *(Includes those of spouse and dependent children. See pp. 32-33 of instructions.)*

NONE *(No reportable liabilities.)*

	CREDITOR	DESCRIPTION	VALUE CODE
1.	American Express	Credit Card	K
2.			
3.			
4.			
5.			

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VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Brokerage Account #1 (Family Trust 2)					EXEMPT				
2. --Wells Fargo Money Fund	A	Interest	M	T					
3. --3M Company	A	Dividend	K	T					
4. --Abbott Laboratories	B	Dividend	K	T					
5. --Alcoa Inc		None							
6. --Alexander & Baldwin Inc		None							
7. --Altera Corporation	A	Dividend	M	T					
8. --Angon		None	L	T					
9. --Analog Devices	B	Dividend	L	T					
10. --Applied Materials	A	Dividend	K	T					
11. --Bed Bath & Beyond		None	K	T					
12. --Best Buy	A	Dividend	K	T					
13. --Burlington Northern Santa Fe	B	Dividend							
14. --Cabelas		None	K	T					
15. --Cardinal Health	A	Dividend	J	T					
16. --Centennial Money Mkt Tr		None							
17. --Cisco Systems		None	K	T					

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less	B = \$1,001 - \$2,500 G = \$10,001 - \$1,000,000 K = \$15,001 - \$50,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only)	Q = Appraised U = Book Value	P2 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	M = \$100,001 - \$250,000 P3 = \$5,000,001 - \$25,000,000 T = Cash Market

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VII. INVESTMENTS and TRUSTS — income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-69 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-I)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. --Coca-Cola	A	Dividend	K	T					
19. --Colgate-Palmolive	A	Dividend	K	T					
20. --Costco Wholesale	A	Dividend	K	T					
21. --CVS Caremark	A	Dividend	K	T					
22. --Dell		None							
23. --Diamonds TR Unit	A	Dividend							
24. --Dolby		None	L	T					
25. --EMC		None	M	T					
26. --Embarq	A	Dividend							
27. --Emerson Electric	A	Dividend	L	T					
28. --Financial Select Sector	A	Dividend	K	T					
29. --Freeport McMoran Copper & Gold	A	Dividend	L	T					
30. --General Electric Company	A	Dividend	K	T					
31. --Genzyme		None	K	T					
32. --Goldman Sachs Group	A	Dividend	L	T					
33. --Hansen Medical		None	J	T					
34. --Harley Davidson	A	Dividend	K	T					

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

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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-50 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div, rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. --Hitachi		None							
36. --Home Depot	B	Dividend	L	T					
37. --Illinois Tool Works	A	Dividend	K	T					
38. --International Business Machines	A	Dividend	K	T					
39. --Internet Holders Trust	A	Dividend							
40. --Ishares Trust FTSE Xinhua HK China 25 Index Fund	A	Dividend							
41. --Ishares Trust FTSE Xinhua HK China 25 Index Fund	A	Dividend							
42. --Ishares Trust S&P Topix 150 Index Fund	A	Dividend							
43. --Ishares TR NASDAQ Biotech Index Fund		None	L	T					
44. --Ishares Trust DJ --US Aerospace & Defense Index Fund	A	Dividend	L	T					
45. --Ishares Trust DJ -- US Energy Sector	A	Dividend	K	T					
46. --Johnson & Johnson	B	Dividend	L	T					
47. --Kyocera	B	Dividend	L	T					
48. --Lowe's	A	Dividend	K	T					
49. --Metabolix		None	J	T					
50. --Microsoft	A	Dividend	K	T					
51. --Mosaic	B	Dividend	L	T					

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	N = \$250,001 - \$500,000 P1 = \$25,000,001 - \$50,000,000	Q = Appraised U = Book Value	O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	P2 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessed W = Estimated	Y2 = \$5,000,001 - \$25,000,000 T = Cash Market

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VII. INVESTMENTS and TRUSTS – Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-I)	(5) Identity of buyer/seller (if private transaction)
52. --Novartis AG Sponsored ADR	A	Dividend	K	T					
53. --Orbital Sciences		None							
54. --Panasonic	A	Dividend	K	T					
55. --Paychex	A	Dividend							
56. --Pepsico	B	Dividend	L	T					
57. --Powershares Exchange FD TR Golden Dragon Halter	A	Dividend	L	T					
58. --Powershares Private Equity Portfolio	A	Dividend	K	T					
59. --Qualcomm	C	Dividend	M	T					
60. --Schlumberger	A	Dividend	L	T					
61. --Schwab Charles	A	Dividend	L	T					
62. --Shanda Interactive Entertainment		None	K	T					
63. --Smith International Inc	A	Dividend	L	T					
64. --Sony	A	Dividend	K	T					
65. --SPDR Gold Trust Gold Shares		None	L	T					
66. --Texas Instruments	A	Dividend	K	T					
67. --Trinity Industries	A	Dividend	K	T					
68. --United Natural Foods		None	K	T					

1. Income Code Codes (See Column D1 and D4)	A = \$1,000 or less F = \$55,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value		S = Assessment W = Estimated		

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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (I-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
69. --United Parcel Service	A	Dividend	L	T					
70. --Verisign		None	L	T					
71. --Vodafone Group	B	Dividend	K	T					
72. --Whole Foods Market		None	K	T					
73. --Williams Companies		None	K	T					
74. --Williams Soureina	A	Dividend	J	T					
75. --Xilinx	C	Dividend	M	T					
76.									
77. Brokerage Account #2 (Family Trust 2)									
78. --Wells Fargo Money Fund	A	Interest	L	T					
79. --Dickson Cnty TN Bond	A	Interest	J	T					
80. --Myrtle Beach SC Wtr & Swr Bond	A	Interest							
81. --Rhode Island HSG & MTG Fin Corp Bond	A	Interest	K	T					
82. --Rhode Island HSG & MTG Fin Corp Bond	A	Interest	L	T					
83. --South Kings RI	B	Interest							
84. --Tennessee St. School Bond	A	Interest	K	T					
85.									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,000 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$100,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,001 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000
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VII. INVESTMENTS and TRUSTS — income, value, transactions (includes those of the spouse and dependent children. See pp. 34-68 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gross Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
86. Brokerage Account 3 (Family Trust 1)									
87. --Wells Fargo Money Fund	A	Interest	K	T					
88. --Abbott Laboratories	B	Dividend							
89. --Altera	A	Dividend	M	T					
90. --Amazon.Com		None	K	T					
91. --Amgen		None	K	T					
92. --Analog Devices	B	Dividend	L	T					
93. --Applied Materials	A	Dividend	K	T					
94. --Bed Bath & Beyond		None							
95. --Broadvision		None							
96. --Cabelas		None	K	T					
97. --Cardinal Health	A	Dividend							
98. --Cisco Systems		None	K	T					
99. --Coca-Cola	B	Dividend	L	T					
100. --Colgate-Palmolive	A	Dividend							
101. --Costco Wholesale	A	Dividend	K	T					
102. --CVS Caremark	A	Dividend	L	T					

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

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VII. INVESTMENTS and TRUSTS - income, value, transactions (includes those of the spouse and dependent children. See pp. 34-50 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "XX" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
103. --Dell		None							
104. --Diamonds Tr Unit Ser 1	B	Dividend							
105. --Dolby Laboratories		None	L	T					
106. --EMC		None	M	T					
107. --Embarq		None							
108. --Emerson Electric	A	Dividend	L	T					
109. --Financial Select Sector	A	Dividend							
110. --General Electric	A	Dividend	K	T					
111. --Genzyme		None	K	T					
112. --Goldman Sachs	A	Dividend	K	T					
113. --Hansen Medical		None							
114. --Harley Davidson	A	Dividend							
115. --Home Depot	B	Dividend							
116. --Illinois Tool Works	C	Dividend	L	T					
117. --International Business Machines	B	Dividend							
118. --Internet Holders Trust	A	Dividend							
119. --Ishares Tr S&P/Topix	A	Dividend							

1. Income Code:	A = \$1,000 or less	B = \$1,001 - \$7,500	C = \$7,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Columns B1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I = \$5,000,001 - \$25,000,000	J = More than \$25,000,000
2. Value Codes	I = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	N = \$250,001 - \$500,000
(See Columns C1 and D3)	O = \$500,001 - \$1,000,000	P = \$1,000,001 - \$5,000,000	Q = \$5,000,001 - \$25,000,000	R = More than \$25,000,000	S = Cash Market
3. Value Method Codes	P1 = \$25,000,001 - \$50,000,000	R = Cash (Real Estate Only)	P8 = More than \$50,000,000	S = Assessment	T = Estimated
(See Column C2)	Q = Appraisal	V = Other	S = Assessment	W = Estimated	
	U = Book Value				

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VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "OO" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-F)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
120. --Ishares Tr Nasdaq Biotech		None	L	T					
121. --Ishares Tr Russell 2000	A	Dividend	K	T					
122. --Ishares Trust DJ --US Aerospace & Defense Index Fund	A	Dividend							
123. --Ishares Trust DJ -- US Energy Sector	A	Dividend							
124. --Ishares MSCI Singapore IDX	A	Dividend							
125. --Johnson & Johnson	B	Dividend	L	T					
126. --Kann Software		None							
127. --Kinross Gold	A	Dividend							
128. --Kyocera	A	Dividend	K	T					
129. --Lowe's	B	Dividend	L	T					
130. --Metablix		None							
131. --MetLife		None							
132. --Microsoft	B	Dividend							
133. --Mosaic	B	Dividend	L	T					
134. --Newmont Mining	A	Dividend							
135. --Novartis	A	Dividend	K	T					
136. --Orbital Sciences		None							

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D1)	J = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes: (See Column C2)	P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	P4 = More than \$50,000,000 S = Assessment W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting McConnell, Jr., John J	Date of Report 03/09/2010
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "XJ" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
137. --Pepsico	B	Dividend	L	T					
138. --Powershares QQQ Trust	A	Dividend							
139. --Powershares Exchange FD TR Golden Dragon Halber	A	Dividend	K	T					
140. --Powershares Global ETF TR Global Clean Energy	A	Dividend	L	T					
141. --Powershares Private Equity Portfolio	A	Dividend	K	T					
142. --Qualcomm	C	Dividend	M	T					
143. --Schlumberger	B	Dividend	L	T					
144. --Schwab Charles	B	Dividend	L	T					
145. --Shanda Interactive Entertainment		None	K	T					
146. Smith International	A	Dividend	K	T					
147. --Standard & Poors	A	Dividend							
148. --Texas Instruments	A	Dividend							
149. --3M	B	Dividend							
150. --Trinity Industries	A	Dividend		T					
151. --United Natural Foods		None	M	T					
152. --United Parcel Service	B	Dividend	L	T					
153. --Verisign		None	K	T					

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

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Name of Person Reporting McCannell, Jr., John J	Date of Report 03/09/2010
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VII. INVESTMENTS and TRUSTS — income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	154. --Verifone Group	B	Dividend	K	T				
155. --Williams Companies		None	K	T					
156. --Williams Sonoma	A	Dividend							
157. --Xiflux	C	Dividend	M	T					
158.									
159. Citizens Bank (Family Trust 3)		None	J	T					
160.									
161. IRA #1									
162. --Wells Fargo Money Fund	A	Interest	J	T					
163. --Powershares QQQ Trust		None	K	T					
164.									
165. IRA #2									
166. --Wells Fargo Money Fund	A	Interest	K	T					
167. --Powershares QQQ Trust		None	K	T					
168.									
169. Bank RI Accounts #1	B	Interest	J	T					
170. Bank RI Accounts #2	A	Interest	M	T					

1. Income Code Codes (See Columns D1 and D4)	A = \$1,000 or less F = \$10,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000 Q = Appraisal U = Book Value	B = \$1,001 - \$2,000 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cost (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000 S = Assessment W = Estimated	D = \$5,001 - \$15,000 I1 = \$1,000,001 - \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000 I2 = More than \$5,000,000
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Name of Person Reporting McConnell, Jr., John J	Date of Report 03/09/2010
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
171. Bank RI Accounts #3	A	Interest	J	T					
172. Bank RI Accounts #4	A	Interest	J	T					
173. Bank RI Accounts #5	A	Interest	K	T					
174.									
175. Alliance Capital 529 College Fund #1									
176. --CBF Portfolio 1996-98 ALT RA		None	K	T					
177. Alliance Capital 529 College Fund #2									
178. --CBF Portfolio 1996-98 ALT RA		None	K	T					
179. Alliance Capital 529 College Fund #3									
180. --CBF Portfolio 1996-98 ALT RA		None							
181.									
182. Catalyst LLC		None	K	U					
183. DSF Capital Partners III LP		None	N	T					
184. Nemlorp LLC Distribution		None							
185. Nemlorp LLC Note Receivable		None	O	T					
186. ULF-Edgartown LLC		None							
187. ULF-Edgartown Notes & Loans Receivable		None							

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$10,001 - \$100,000 J = \$15,000 or less	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 M = More than \$5,000,000 N = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	N = \$250,001 - \$500,000 F3 = \$25,000,001 - \$50,000,000	R = Cost (Real Estate Only) V = Other	W = Estimated		
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value			S = Accrual T = Cash Market	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting McConnell, Jr., John J	Date of Report 03/09/2010
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VII. INVESTMENTS and TRUSTS – income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
188.									
189. Trinity Repertory Theater Loan Receivable		None							
190.									
191. ING Variable Life:ing Stock Index Portfolio 1 Class		None	M	T					
192. MassMutual:Strategic Group Universal Life Insurance		None	J	T					
193.									
194. U.S. Savings Bonds	A	Interest	J	T					
195.									
196. Motley Rice LLC Employee Retirement Savings Plan									
197. --American Funds Europacific		None	M	T					
198. --Nouberger Berman Genesis		None	M	T					
199. --Scudder S&P 500 Index		None	M	T					
200. --Model 09 Program		None							
201. --Motley Rice Aggressive Program		None	O	T					
202.									
203. Wells Fargo CD Account	C	Interest							
204.									

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

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Name of Person Reporting McCannell, Jr., John J	Date of Report 03/09/2010
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VII. INVESTMENTS and TRUSTS - income, value, transactions (Includes those of the spouse and dependent children. See pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g. div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g. buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
205. Martha's Vineyard Colonial Inn LLC		None	PI	U					

1. Income Gain Codes: (See Column B1 and D4)	A = \$1,000 or less F = \$10,001 - \$100,000 J = \$15,000 or less	B = \$1,000 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Column C1 and D3)	N = \$250,001 - \$500,000 P3 = \$25,000,001 - \$50,000,000	R = Cost (Real Estate Only) Y = Other			
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value				
					W = Estimated

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
McConnell, Jr., John J	03/09/2010

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

Part I Positions

- A) Family Trust 1 is an unfunded life insurance trust
 B) Family Trust 2 is an unfunded life insurance trust
 C) Friend Trust A was not created directly by the reporting person, his spouse, or any dependent child and they have no interest in the underlying assets
 D) Friend Trust B was not created directly by the reporting person, his spouse, or any dependent child and they have no interest in the underlying assets
 E) Friend Trust C was not created directly by the reporting person, his spouse, or any dependent child and they have no interest in the underlying assets
 F) Friend Trust D was not created directly by the reporting person, his spouse, or any dependent child and they have no interest in the underlying assets
 G) Friend Trust E was not created directly by the reporting person, his spouse, or any dependent child and they have no interest in the underlying assets
 H) Friend Trust F was not created directly by the reporting person, his spouse, or any dependent child and they have no interest in the underlying assets

Part II Agreements

- A) Ness Motley, P.A. Employment and Compensation Agreement, dated January 30, 2003 by and between Ness Motley, P.A. (f/k/a Ness, Motley, Loadholt, Richardson & Poole, Professional Association) and its attorney signatories, setting forth the disbursement of net income received by the firm as compensation for services previously rendered.

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Name of Person Reporting	Date of Report
McConnell, Jr., John J	03/09/2010

IX. CERTIFICATION.

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

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

Signature  Date 3/9/2010

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		214	636	Notes payable to banks-secured			
U.S. Government securities-add schedule		4	811	Notes payable to banks-unsecured			
Listed securities-add schedule	6	840	352	Notes payable to relatives			
Unlisted securities--add schedule	1	722	500	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends		962	410	Unpaid income tax			
Due from others		521	959	Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule			
Real estate owned-add schedule	4	899	700	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	000				
Cash value-life insurance		143	452				
Other assets itemize:							
MRRM, P.A. Deferred Comp. -- see schedule							
				Total liabilities			0
				Net Worth	15	339	820
Total Assets	15	339	820	Total liabilities and net worth	15	339	820
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosmaker or guarantor *				Are any assets pledged? (Add schedule)			
1. GUARANTOR OF LINE OF CREDIT AT CITIZENS BANK FOR TRINITY REPERTORY COMPANY (NON-PROFIT THEATRE CO.)	1	000	000				
2. GUARANTOR OF NOTES WITH THE MARTHA'S VINEYARD SAVINGS BANK FOR MARTHA'S VINEYARD COLONIAL INN, LLC	4	900	000		NO		
On leases or contracts				Are you a defendant in any suits or legal actions?	NO		
Legal Claims				Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

U.S. GOVERNMENT SECURITIES - U.S. SAVINGS BONDS 4,811

LISTED SECURITIES

3M CO	44,083
ABBOTT LABORATORIES	37,996
ALTERA CORP.	218,649
AMAZON.COM	35,520
AMERICAN FUNDS EUROPEAN FUND	227,711
AMGEN	93,407
ANALOG DEVICES	108,919
APPLIED MATERIALS	56,916
BED BATH & BEYOND	43,691
BEST BUY CO INC.	36,500
CABELAS	46,380
CARDINAL HEALTH	5,945
CISCO SYSTEMS	57,176
COCA COLA	105,440
COLGATE PALMOLIVE CO	37,323
COSTCO WHOLESALE	88,407
CVS CAREMARK	81,000
DICKSON COUNTY TENN G/O UNLTD B/E MBIA-RE FGIC BOND	10,006
DOLBY LABORATORIES	159,810
EMC	209,880
EMERSON ELECTRIC	118,350
FINANCIAL SELECT ET SECTOR FUND	44,040
FREEPORT-MCMORAN COPPER & GOLD INC	75,160
GENERAL ELECTRIC	88,330
GENZYME	77,220
GOLDMAN SACHS	117,263
HANSEN MEDICAL INC	1,145
HARLEY DAVIDSON INC	17,227
HOME DEPOT	63,180
ILLINOIS TOOL WORKS	116,531
INTERNATIONAL BUSINESS MACHINE	47,685
ISHARES DOW JONES US AEROSPACE & DEFENSE INDEX FUND	77,471
ISHARES TR DOW JONES US ENERGY SECTOR INDEX FUND	17,804
ISHARES TR NASDAQ BIOTECH INDEX FUND	119,560
ISHARES TRUST RUSSELL 2000	37,680
JOHNSON & JOHNSON	126,000
KYOCERA	102,281
LOWE'S	128,034
MARGIN BALANCE	324
METABOLIX INC	9,540
MICROSOFT CORP	47,306
MOSAIC	113,861
MOTLEY RICE AGGRESSIVE PROGRAM	535,868
NEUBERGER BERMAN GENESIS FUND	106,854
NOVARTIS	59,469
PANASONIC CORP	37,422
PEPSICO	114,008

FINANCIAL STATEMENT

NET WORTH SCHEDULES

POWERSHARES EXCHANGE FD TR GOLDEN DRAGON HALTER	120,075
POWERSHARES GLOBAL ETF TR GLOBAL CLEAN ENERGY	68,410
POWERSHARES PRIVATE EQUITY PORTFOLIO	55,020
POWERSHARES QQQ ET SERIES 1 FUND	73,854
QUALCOMM	322,810
RHODE ISLAND HOUS & MTG FINL CORP OWNERSHIP OPP BOND	52,665
RHODE ISLAND HOUSING & MTG FINL CORP BOND	31,166
SCHLUMBERGER	125,255
SCHWAB CHARLES	131,832
SCUDDER S&P 500 INDEX FUND	132,679
Section 529 Plan - CBF PORTFOLIO 1996-98 ALT RA PROGRAM	60,966
SHANDA INTERACTIVE ENTERTAINMENT	90,600
SMITH INTERNATIONAL	122,970
SONY CORP	37,521
SPDR GOLD TRUST	82,073
TENN STATE SCHOOL BD AUTHORITY HIGHER ED BOND	15,130
TEXAS INSTRUMENTS	36,570
TRINITY INDUSTRIES	47,124
UNITED NATURAL FOODS	237,897
UNITED PARCEL SERVICE	142,445
VERISIGN	87,220
VODAFONE GROUP	55,230
WELLS FARGO BANK DEPOSIT SWEEP ACCOUNT	253,594
WHOLE FOODS MKT	24,843
WILLIAMS COMPANIES	51,696
WILLIAMS SONOMA	12,876
XILINX	263,466
TOTAL LISTED SECURITIES	6,840,352
<u>UNLISTED SECURITIES</u>	
CATALIST, LLC	43,000
DSF CAPITAL PARTNERS III, L.P.	450,000
MARTHA'S VINEYARD COLONIAL INN, LLC	1,229,500
TOTAL UNLISTED SECURITIES	1,722,500
<u>REAL ESTATE OWNED</u>	
PERSONAL RESIDENCE - Rhode Island	1,906,500
VACATION HOME - Rhode Island	2,993,200
TOTAL REAL ESTATE OWNED	4,899,700

DEFERRED COMPENSATION

Pursuant to contractual arrangements with MRRM, P.A., which owns various assets and liabilities including attorneys' fees arising from settled litigation, I anticipate receiving deferred compensation for work performed and completed of approximately \$2.5 million to \$3.1 million each year through 2024.

AFFIDAVIT

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

3/10/2010 (DATE) John J. McConnell Jr. (NAME)

R J McConnell (NOTARY)

Robert J. McConnell
Notary Public
My Commission Expires: 11/15/11

**STATEMENT OF JAMES K. BREDAR, NOMINATED TO BE U.S.
DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND**

Judge BREDAR. Thank you, Mr. Chairman. And if the Committee will permit, I'm going to ask my family members to stand, since they're in the back of the room and I think they should be recognized, given the labor that they have committed to this endeavor.

First, I'd like to introduce my wife, Stacey Sewell Bredar, who teaches fifth grade in the Baltimore County Public Schools; my son, Thomas, who is a sophomore at Northwestern University in Evanston, Illinois. Next, my son, Daniel, who in 2 weeks will graduate from McDonough School and is headed to Harvard in the fall; and, then, my daughter, Sophie, who is five and is headed to kindergarten in the fall.

We are also joined today by my brother, John, who lives here in the District, and my nephew, Henry, who is 13 and in the seventh grade at St. Alban's School. My mother-in-law, Ann R. Sewell, is here, as is my career law clerk, Beverly Peyton Griffith.

My parents are not able to be with us. I'm sure they're watching with great interest from Denver, where they still live.

Thank you, Mr. Chairman.

Senator CARDIN. Judge Hollander.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

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

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

Office: United States Courthouse
101 West Lombard Street, Chambers 8C
Baltimore, MD 21201

Residence: Reisterstown, MD
4. **Birthplace**: State year and place of birth.

1957; Omaha, Nebraska
5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1981 – 1982, Yale Law School; Visiting Third Year Student

1979 – 1981, Georgetown University Law Center; J.D. with honors, 1982

1975 – 1979, Harvard University; B.A. with honors, 1979
6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1998 – Present
United States District Court for the District of Maryland
101 West Lombard Street, Chambers 8C
Baltimore, MD 21201
United States Magistrate Judge

1992 – 1998
Office of the Federal Public Defender for the District of Maryland
100 South Charles Street, Tower II, Ninth Floor
Baltimore, MD 21201
Federal Public Defender

1991 – 1992
Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279
Director, London Office, UK

1989 – 1991, 1992 (March – November)
Office of the Federal Public Defender for the District of Colorado
633 17th Street, Suite 1000
Denver, CO 80202
Assistant Federal Public Defender

1985 – 1989
Office of the United States Attorney for the District of Colorado
1225 17th Street, Suite 700
Denver, CO 80202
Assistant United States Attorney

1984 – 1985
Office of the District Attorney, 14th Judicial District
Moffat County Courthouse
221 West Victory Way
Craig, CO 81625
Deputy District Attorney

1983 – 1984
The Honorable Richard P. Matsch, United States District Judge
United States Courthouse
901 19th Street
Denver, CO 80294-3589
Law Clerk

September 1982 -- December 1982
Perkins, Coie, Stone, Olsen & Williams (now, Perkins Coie)
Suite 300
1029 West Third Avenue
Anchorage, AK 99501-1981
Legal Intern

July 1982 -- September 1982
Perkins, Coie, Stone, Olsen & Williams (now, Perkins Coie)
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Summer Associate

June 1982 -- July 1982
Perkins, Coie, Stone, Olsen & Williams (now, Perkins Coie)
1029 West Third Avenue, Suite 300
Anchorage, AK 99501-1981
Summer Associate

October 1981 -- May 1982
Jacobs, Jacobs & Grudberg (now, Jacobs, Grudberg, Belt, Dow & Katz)
350 Orange Street
New Haven, CT 06511
Law Clerk

1981
Winthrop, Stimson, Putnam & Roberts (now, Pillsbury, Winthrop)
1540 Broadway
New York, NY 10036
Summer Associate

October 1980 -- May 1981
Morgan, Lewis & Bockius
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
Law Clerk

1976 -- 1980 (summers)
National Park Service, U.S. Department of the Interior
Rocky Mountain National Park
Estes Park, CO 80517
Ranger

Other Affiliations (Uncompensated)

2007 – Present

Vera Institute of Justice
 233 Broadway, 12th Floor
 New York, NY 10279
 Trustee (member, Audit Committee)

2002 – 2009

Tufts Springs Architectural Committee (neighborhood association)
 Reisterstown, MD
 Member (and de facto Chair)

1994 – 1998

National Ski Patrol
 Whitetail Resort
 13805 Blairs Valley Road
 Mercersburg, PA 17236
 Volunteer Ski Patroller, EMT

1972 – 1992 (on leave or intermittent, 1976 – 1982)

National Ski Patrol
 Winter Park Resort
 Winter Park, CO 80482
 Volunteer Ski Patroller, EMT

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

I have not served in the military. I registered for selective service in 1975.

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

Special Recognition for Commitment to Effective Assistance of Counsel and Equal Access to Justice, Defender Services Committee of the Judicial Conference of the United States and the Administrative Office of the United States Courts, Defender Services Division, 1997

Special Achievement Award, United States Department of Justice, 1987

Cum Laude – J.D., Georgetown University Law Center, 1982

Selection for Law Review, American Criminal Law Review, Georgetown University Law Center, 1980

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

Committee on Federal-State Jurisdiction, Judicial Conference of the United States
 Federal Public/Community Defenders Representative and Spokesperson before the
 Committee on Criminal Law, Judicial Conference of the United States (1996 – 1997)
 Federal Bar Association, Maryland Chapter (Governor, 1994 – present)
 Maryland State Bar Association
 Baltimore City Bar Association
 Colorado Bar Association
 Denver Bar Association
 American Bar Association
 District of Columbia Federal Public Defender Selection/Reappointment Committee
 Criminal Justice Act Committee for the District of Maryland (Co-Chair, 1998 – present)
 Selection Committee, Criminal Justice Act Supervising Attorney for the District of
 Maryland
 Criminal Practice Working Group, U.S. District Court for the District of Maryland,
 1995 – 1998 (organizing member together with then-U.S. Attorney Lynne Battaglia)

During my tenure as a U.S. Magistrate Judge, I have served on multiple local court committees including the Long-Range Planning Committee, the Bench-Bar Liaison Committee, the Security Committee, and the Court Operations Committee. Security Committee Chair, 2010 – present.

10. **Bar and Court Admission:**

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

Colorado, May 25, 1983 (inactive status since approximately 2001 as I no longer practice there)

Maryland, June 15, 1995

There have been no lapses in membership.

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

Colorado Supreme Court, 1983, inactive since approximately 2001 as I no longer practice there.

United States District Court for the District of Colorado, 1983

United States Court of Appeals for the Tenth Circuit, 1985

United States Court of Appeals for the Fourth Circuit, 1992
 United States District Court for the District of Maryland, 1993
 Supreme Court of the United States, 1993
 Court of Appeals of Maryland, 1995

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Tufts Springs Architectural Committee (neighborhood association) (2001 – present)
 Meadow Mill Athletic Club (1994 – 2007)
 The International Athletic Club of Denver (1985 – 1988)
 Denver Place Athletic Club (1988 – 1992)
 The Rocky Mountain Harvard Club (1983 – 1992)
 Member of Schools Committee (applicant interview committee 1983 – 1992)
 The National Association of Criminal Defense Lawyers (1990 (approx.) – 1998)
 The Harvard Club of Maryland (1993 – present)
 Lawyers' Round Table Law Club, Baltimore, Maryland (2000 – present)
 Secretary (presiding member) (April 2009 – present)
 Serjeants Inn Law Club, Baltimore, Maryland (2002 – present)
 Tred Avon Yacht Club (2007 – present), member
 Catalina 320 International Association (2004-2010), member
 Chesapeake Bay Maritime Museum, St. Michaels, Maryland, "Contributing Member" (1994 – present)
 The Sierra Club, 1980 – 1985 (approximate)
 Downtown Denver Democratic Club, "Century Club Member" (1985 – 1992)
 Community Alternative Placement Services (community corrections program), Craig, Colorado
 Board Member (1984 – 1985)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations listed above currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin either through formal membership requirements or the practical implementation of membership policies.

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

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee. (See Attachment #1, Published Writings, Senate Questionnaire, Question #12a.)

Defense News, Newsletter for Maryland CJA Panel Attorneys, published periodically by me from April 1996 to October/November 1997 during my tenure as Federal Public Defender for the District of Maryland

The Reno Retreat: New Department of Justice Bluesheet DOA, 6 Fed. Sent. R. 313 (May/June 1994) (coauthored with Jeffrey E. Risberg)

Moving Up the Day of Reckoning: Strategies for Attacking the "Cracked Trials" Problem, 1992 Crim. L. Rev. 153 (1992)

Justice Informed: The Pre-Sentence Report Pilot Trials in the Crown Court, Vera Institute of Justice, and Her Majesty's Home Office, published 1992 (2 vol.) (title page only -- actual volumes on file with nominee and accessible by Internet at <http://www.vera.org/content/justice-informed-pre-sentence-report-pilot-trials-crown-court>)

The New Federal Sentencing Guidelines: Some Practice Tips, Off the Cuff (Colorado Criminal Defense Bar, Inc.), Spring 1989

Sentence Guide Throws Justice Out of Balance (Op-Ed. piece), Rocky Mountain News, February 8, 1989.

Watch the Western Sky . . ., Spinsheet Magazine, July 2005, Annapolis, Maryland

Brief statements of mine appearing in publications of the Institute for the Advancement of the American Legal System, University of Denver

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the

name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

During my service as Federal Public Defender for the District of Maryland, between 1992 and 1998, I served as a member of the Defender Services Advisory Group under the umbrella of the Judicial Conference of the United States. This group, made up of seven federal defenders and seven Criminal Justice Act panel members, met several times each year. We represented the interests of the federal defender community before the Judicial Conference and other bodies. We regularly took positions and made requests on budgetary and administrative issues. We annually met with the Judges of the Defender Services Committee of the Judicial Conference. These many years later, I do not have copies or specific memories of any particular reports or statements that we issued. In general, we urged the judiciary to seek adequate funding for our offices and to approve logical and appropriate work rules for our colleagues and subordinates in the federal defender system.

Since 2007, I have served as a member of the U.S. Judicial Conference Committee on Federal-State Jurisdiction. That committee meets semiannually to consider policy issues within its jurisdiction on behalf of the U.S. Courts, and then it makes recommendations to the full Conference. I have not been the author of any specific report of this body, although I have been a faithful participant in its deliberations since my appointment to its membership. Reports of the Committee prepared while I have been a member are on file with the Secretariat of the U.S. Judicial Conference, Administrative Office of the U.S. Courts, and are supplied in Attachment #2.

Since 2007, I have served as a Trustee of the Vera Institute of Justice in New York, New York. This non-profit institute regularly conducts studies and publishes analyses of problems afflicting the justice system and urban communities, both in the U.S. and abroad. Other than the report that I edited (and partially authored) when an employee of this institute in 1992, *Justice Informed: The Pre-Sentence Report Pilot Trials in the Crown Court*, Vera Institute of Justice, and Her Majesty's Home Office, available at: <http://www.vera.org/content/justice-informed-pre-sentence-report-pilot-trials-crown-court>, I have not prepared statements or publications for this organization.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials. (See Attachment #3, Testimony and Official Statements to Public Bodies, Senate Questionnaire, Question #12c.)

Statement of James K. Bredar, Federal Public Defender for the District of Maryland, before the Sub-Committee on Intellectual Property and Judicial

Administration, United States House of Representatives, Washington, D.C.,
July 29, 1993

Statement of James K. Bredar, Former Director of the London Office, Vera Institute of Justice, before the Royal Commission on Reform of the [British] Criminal Justice System (“the Runciman Commission”), London, England, June 1992. Note: I provided written and oral testimony before the Royal Commission in relation to the advisability of requiring presentence reports as part of the British sentencing process. I also addressed the mechanics of “plea bargaining” in the British criminal courts. I no longer have in my possession copies or transcripts of this testimony.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke. (See Attachment #4, Speeches and Talks, Senate Questionnaire, Question #12d.)

This list represents the presentations I have identified through searches of my files and internet databases. While Federal Public Defender, and since my appointment as a Federal Magistrate Judge, I have made a number of brief speeches and introduced a variety of people at public gatherings; I have tried my best to list all of them here, although there may be some that I have not been able to identify or locate.

June 3, 2009 – Speech to introduce Senator Benjamin Cardin at the Annual Dinner of the Federal Bar Association, Maryland chapter, Baltimore, Maryland

May 15, 2009 – Speech in connection with the presentation of the *John Adams Award*, before the members of the Maryland Criminal Justice Act panel, Baltimore, Maryland

November 2008 – *A (Former) Criminal Lawyer's Perspective on the Civil Justice System*, speech delivered to the Lawyers' Round Table Law Club, Baltimore, Maryland

August 2007 – *The American Plea Bargaining Process from the Perspectives of a Prosecutor, a Defense Attorney, and a Judge as Revealed Through the Examination of a Hypothetical Case*, presentation at a Ford Foundation event for academics and government lawyers, Beijing, China (presentation prepared by me but delivered by a colleague after I was unexpectedly hospitalized in Beijing)

January 2007 – Presentation notes - judicial administration issues, presentation to academics and government officials, Ankara, Turkey

January 20, 2006 – *The Judicial Role in Dispute Resolution: A View from the U.S. District Court for the District of Maryland*, speech delivered to the Virginia Bar Association, Williamsburg, Virginia

November 3-4, 2005 – Participant in panel discussion addressing labor and employment issues, Georgetown University, Washington, D.C.

November 2, 2005 – Untitled speech before a meeting of lawyers convened to consider their undertaking the representation of state death row inmates seeking habeas corpus relief in the federal courts, United States Courthouse, Baltimore, Maryland

May 14, 2004 – *Offensive and Unproductive Behavior in Mediation and Settlement Conferences -- Why Some Mediation Efforts Fail*, speech delivered to members of the Federal Bar, Baltimore, Maryland

March 3, 2004 – Maryland State Court Bail System Task Force meeting -- I was a guest invited to give comments during discussion of potential reforms

January 2004 – Participant in panel discussion of labor and employment issues, Yale Club, New York, New York

2004 – Participant in Continuing Legal Education seminar, “Advice from the Experts: Successful Strategies for Winning Commercial Cases in Federal Court,” Baltimore, Maryland

March 5, 2003 – Untitled speech on the South African criminal justice system, delivered to the Serjeants Inn Law Club, Baltimore, Maryland

September 2002 – Untitled presentation on plea bargaining, Port Elizabeth, Pretoria, and Kwazulu-Natal, South Africa

February 26, 2001 – *Defending the Indigent in Federal Court: A Brief History and Current Practice in Maryland*, speech delivered to the Lawyers’ Round Table Law Club, Baltimore, Maryland

Naturalizations speech (delivered approximately five times annually since 1998 during naturalization ceremonies). This speech was written by others before I became a judge and was passed on to me by more senior colleagues. I have made some amendments and sometimes do not deliver every paragraph, particularly when there are time constraints.

May 8, 1998 – Transcript of my speech upon being installed as United States Magistrate Judge, Baltimore, Maryland

May 30, 1997 – Outline of speech during admissions ceremony for law clerks to the judges of the United States District Court and the United States Court of Appeals for the Fourth Circuit, Baltimore, Maryland

June 1995 – Outline of speech during admissions ceremony for law clerks to the judges of the United States District Court and the United States Court of Appeals for the Fourth Circuit, Baltimore, Maryland

November 19, 1994 – Outline of presentation at 1994 Federal Criminal Practice Seminar, “Nuts and Bolts of Practice in the District of Maryland,” Greenbelt, Maryland

November 14-15, 1994 – Participant in the Middle Atlantic State-Federal Judicial Relationships Conference addressing issue of simultaneous representation of defendants in state and federal proceedings, Williamsburg, Virginia (reported at 162 F.R.D. 173, 188-92)

August 16-18, 1993 – Participant in panel discussion on the role of the probation officer, Tenth Circuit Sentencing Institute, Denver, Colorado

May 13-14, 1993 – Special Administration of Justice Seminar on Federal-State Challenges, presented by The Brookings Institution Center for Public Policy Education, Easton, Maryland – I was a panelist in a discussion of the topic, “The Federal Role in Criminal Justice: When Does a Necessary Responsibility Become an Unwarranted Intrusion?”

April 1993 – Participant in panel discussion on the topic of the war on drugs, The Dartmouth Club of Maryland, Baltimore, Maryland

February 5, 1993 – Transcript of my speech upon being installed as the Federal Public Defender for the District of Maryland, Baltimore, Maryland

1993 – *Plea Bargaining: An Overview of What Can Be Done*, presentation before Wyoming Criminal Justice Act panel of attorneys, Jackson, Wyoming

July 23, 1992 – *The British Criminal Justice Process: An American Lawyer’s Perspective*, presentation at the Western Trial Advocacy Institute, Laramie, Wyoming

Five speeches delivered at ceremonies to honor colleagues (James Wyda, January 22, 1999, upon his investiture as Federal Public Defender; the Hon. Daniel E. Klein, Jr., after his death and for the memorial minutes of the Baltimore City Circuit Court, spring 2002; the Hon. J. Frederick Motz, upon his receiving

the Heeney Award from the Maryland State Bar Association, summer 2002; William Henry, upon his installation as the Chief Probation Officer for the District of Maryland, June 13, 2001; and Gary Jordan, First Assistant United States Attorney, at the court memorial service after his death, 1996)

March 11, 1989 – Participant in panel discussion on the topic of white-collar crime, Dartmouth Lawyers Association, Colorado

March 1988 – Outline of presentation at the Colorado Law Enforcement Training Academy on the subject of case preparation, Golden, Colorado

Date unknown – Participant in panel discussion of ethical issues, University of Baltimore Law School, Baltimore, Maryland (no notes or outline in my possession)

Date unknown – Outline of presentation made at U.S. Probation Officer Training in Baltimore, Maryland, after I became Federal Public Defender for the District of Maryland

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.
(See Attachment # 5, Newspaper Articles, Senate Questionnaire, Question #12e)

Throughout my career I have had many occasions to be interviewed by various media outlets. I have thoroughly searched my files and internet databases in an effort to produce as complete a list of these as I could, but it is still possible there are some I was not able to locate.

Mark Abromaitis, *Colorado Ski Hall of Famer Still Chasing the Powder*, The Erickson Tribune, December 2009, at 1

Matthew Dolan, *Halfway House Let 10 Inmates Leave at Night*, The Baltimore Sun, January 31, 2008, at 1A

Halfway House Workers Fired after Security Breach, The Capital (Annapolis, MD), January 31, 2008, at A4

Matthew Dolan, *A New Push to Build Federal Jail in Maryland*, The Baltimore Sun, January 31, 2006, at 1A

Baltimore Housing Discrimination Case Back in Court after Settlement Talks Fail, The Associated Press (news feed), April 7, 2005

Talks Unravel in Public Housing Discrimination Settlement, The Associated Press (news feed), April 7, 2005

Stephanie Hanes, *High Court Upsets Rules on Sentencing; Evidence that Affects Term Must Be Presented to Jury; Federal Guidelines Long Debated; Decision Might Open Door to Rollback of Sentences*, The Baltimore Sun, January 13, 2005, at 1A

Stephanie Hanes, *Attorney Award Gives Credit Where It Is Due*, The Baltimore Sun, July 19, 2004, at 1B

Peter Geier, *Md. Panel Attorney Program Honors Member Joshua Treem for Service to Criminal Justice System*, The Daily Record (Baltimore, MD), May 12, 2001, at 13

Rachel Elbaum, *Diane L. Bredar, 40, Manager of Hospital Diabetes Program* (Obituary), The Baltimore Sun, August 7, 1998, at 5B

Michael James, *Judge Allows IRA Member to Finish Sentence in Ireland; He Was Convicted in Smuggling Plot*, The Baltimore Sun, August 15, 1997, at 3B

Tim Doran, *Bomb Judge Sets No-nonsense Tone*, Detroit Free Press, April 24, 1997, at 5A

Maurice Possley, *Oklahoma City Bombing Trial; Star on the Bench Sings Lawyers*, Austin American-Statesman (Texas), April 20, 1997, at H1

Maurice Possley, *Bombing Case Judge Known for Intensity, Tight-fisted Control*, Fort Worth Star-Telegram (Texas), April 13, 1997, at 1

Maurice Possley, *Oklahoma Bomb Trial Judge Known for Pursuing Truth*, Chicago Tribune, April 13, 1997, at 4C

Sandy Banisky, *Bomb Trial Judge is the "Anti-It0"; Order: A No-nonsense Judge Is Presiding at the First Oklahoma City Bombing Trial*, The Baltimore Sun, April 1, 1997, at 2A

Joseph Mallia, *Emotions Key as Bomb Trial Set to Start*, The Boston Herald, March 30, 1997, at 16

Valerie Richardson, *Bombing Judge Noted for Courage*, The Washington Times, March 30, 1997, at A1

Karen Abbott, *Doing the Right Thing Paramount to Matsch; Judge in Bomb Case Known for Weathering Pressure from Public*, Rocky Mountain News (Denver, CO), March 23, 1997, at 4A

Why the Public Defender Opposes an Impending Execution, Maryland Church News, January/February 1997, at 5

Lee Hancock, *Order in the Court; Judge Makes Clear He's the Boss at Bombing Trial, Getting Praise for Firmness but Criticism for Secrecy*, The Dallas Morning News, January 22, 1997, at 1A

Scott Higham, *Courthouse Flaws Featured in Film; Design: The Cramped Federal Garmatz Building in Downtown is Called One of the Worst in the Nation by Jurists and Engineers. It Is Being Used to Show What Not to Construct*, The Baltimore Sun, September 6, 1996, at 1A

Steve Twomey, *A Searing Reminder of Prejudice*, The Washington Post, February 12, 1996, at D1

Kevin Johnson, *Colo. Judge Takes Over Bomb Trial // Strict but Fair, Colleagues Say*, USA Today, December 5, 1995, at 2A

Brian Mooar, *Ex-Club Owner Pleads Guilty to Hiring Hit Man in Md. Case*, The Washington Post, September 29, 1995, at C3

Norris P. West, *Prisoner Transfer Denied Amid Continued Heat*, The Baltimore Sun, August 5, 1995, at 3B

Marcia Myers, *3 Languish in Jail Awaiting INS Action*, The Baltimore Sun, August 26, 1994, at 1A

Lyle Denniston, *Justices Allow Extra Penalty for Persistent Recidivists*, The Baltimore Sun, May 24, 1994, at 12B

Joan Biskupic, *Supreme Court Limits Sentencing Challenges; Ruling May Affect "Three Strikes, You're Out,"* The Washington Post, May 24, 1994, at A6

Glenn Small, *Thanos Apt to Die Next Week*, The Baltimore Sun, May 11, 1994, at 1B

Paul W. Valentine, *Relatives Drop Death Penalty Fight; Thanos's Execution Could Come Monday, but ACLU Is Still at Work*, The Washington Post, May 11, 1994, at B4

Glenn Small, *Thanos Stay of Execution Set to Expire Thursday*, The Baltimore Sun, February 27, 1994, at 2B

[Editorial] *For the Record*, The Washington Post, March 5, 1993, at A20 (I did not submit this for publication. The Post took it from my investiture speech listed in Q12a. above.)

Amy Lignitz, *Arkansas Prison Fugitive Convicted of Air Piracy*, The Associated Press (news feed), September 17, 1992

Sue Lindsay, *White-collar Handcuff Rules Raise Hackles*, Rocky Mountain News, March 4, 1990, at 10

United Press International (news feed), February 13, 1989

Girardi Sentenced to Three Years Probation, PR Newswire (news feed), January 17, 1989

Girardi Pleads Guilty to Filing False Income Tax Return, PR Newswire (news feed), December 12, 1988

Jim Eaton, *Local Prosecutor Is On His Way Up*, Northwest Colorado Daily Press, January 31, 1985, at 1

Jim Eaton, *5 Counts Filed in Weekend Shooting*, Northwest Colorado Daily Press, August 22, 1984, at 1

Harry Printz, *Tonto and the Ranger Hit the Jackpot at 10,000 Feet, or Diamond Jim Cleans Out the Moffat Tunnel*, The Harvard Crimson, March 11, 1978, at (<http://www.thecrimson.com/article/1978/3/11/tonto-and-the-ranger-hit-the/?print=1>)

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On January 26, 1998, I was appointed to serve as a United States Magistrate Judge for the District of Maryland. I was reappointed on January 26, 2006. My current term of office expires on January 25, 2014. I am assigned to the Northern Division in Baltimore.

This position is "appointed," not "elected." Magistrate Judges conduct preliminary proceedings in felony cases, all proceedings in petty offense cases, and all proceedings in misdemeanor and civil matters (including entry of final judgment) upon consent of the parties. Magistrate Judges also conduct civil mediation and settlement conferences, oversee civil discovery, and rule on nondispositive motions in civil cases. In the District of Maryland, Magistrate Judges routinely handle Social Security appeals and, upon consent of the parties in those cases, enter final judgment.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

Magistrate Judges mainly conduct preliminary proceedings, in both their assigned civil and criminal cases, and are usually not the judicial officer who enters final judgment. The exception is the misdemeanor/petty offense caseload, which for me numbers in the hundreds annually, in which I as a Magistrate Judge routinely enter final judgment.

Some civil cases are handled by Magistrate Judges to their conclusion, upon consent of the parties. In that regard, I have conducted 18 civil jury trials and approximately 15 to 25 bench trials after which I have entered final judgment, and, over 12 years, I have probably entered final judgment in another 100 to 200 civil matters. Including dispositions after trial and dispositions on motion, and including both civil and misdemeanor/petty offense criminal cases, I estimate that I have presided over at least a thousand cases that have proceeded to verdict or judgment since becoming a Magistrate Judge in 1998.

- i. Of these, approximately what percent were:

jury trials:	5% (18 civil jury trials)
bench trials:	95% (almost all were misdemeanor/petty offense criminal matters, but approximately 15 to 25 were civil cases)
civil proceedings:	20%
criminal proceedings:	80%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

Gross v. Astrue, No. JKB-09-1456, 2010 U.S. Dist. LEXIS 29876 (D. Md. Mar. 26, 2010)

Stahl v. Comm'r of SSA, No. JKB-09-1884, 2010 U.S. Dist. LEXIS 29887 (D. Md. Mar. 26, 2010)

Robertson v. Astrue, No. JKB-09-31, 2010 WL 597206 (D. Md. Feb. 17, 2010)

Kane v. Lewis, No. BEL-08-1157, 2009 U.S. Dist. LEXIS 99390 (D. Md. Oct. 26, 2009)

Tsai v. Md. Aviation Admin., No. JKB-08-0142, 2009 WL 2900346 (D. Md. Sept. 9, 2009)

Brecheen v. Astrue, No. JKB-08-998, 2009 WL 2923076 (D. Md. Sept. 9, 2009)

St. Annes Dev. Co., LLC v. Trabich, No. WDQ-07-1056, 2009 U.S. Dist. LEXIS 64735 (D. Md. July 28, 2009)

Muhammad v. Provident Bankshares Corp., No. WDQ-08-1290, 2009 U.S. Dist. LEXIS 62683 (D. Md. July 21, 2009)

Bowden v. Stakem-Hornig, No. MJG-08-1572, 2009 WL 2058577 (D. Md. July 9, 2009)

Kona Props., LLC v. United States, No. WDQ-08-1010, 2009 U.S. Dist. LEXIS 52821 (D. Md. Mar. 9, 2009)

Saint Annes Dev. Co., LLC v. Trabich, No. WDQ-07-1056, 2009 WL 324054 (D. Md. Feb. 9, 2009)

Wyckoff v. Maryland, No. JKB-07-58, 2008 U.S. Dist. LEXIS 85022 (D. Md. Oct. 22, 2008)

United States v. Cooper, No. BEL-08-0239, 2008 WL 2331051 (D. Md. June 4, 2008), as amended (June 16, 2008)

U.S. v. Doe, 564 F. Supp. 2d 480 (D. Md. 2008)

In re Yoder's Slaughterhouse Site, Grantsville, Garrett County Md., 519 F. Supp. 2d 574 (D. Md. 2007)

Maryland State Conference of NAACP Branches v. Maryland State Police, No. JKB-98-1098, 2007 WL 2914913 (D. Md. Oct. 3, 2007)

U.S. v. Zarate, 492 F. Supp. 2d 514 (D. Md. 2007)

In re Allegheny Energy, Inc., No. AMD-03-1518, 2007 U.S. Dist. LEXIS 39920 (D. Md. May 31, 2007)

U.S. v. Carson, No. PWG-07-0415, 2007 WL 1101175 (D. Md. Apr. 5, 2007)

Tarquini v. Superior Products, Inc., No. JKB-05-3292, 2007 WL 763186 (D. Md. Mar. 12, 2007)

Maryland State Conference of NAACP Branches v. Maryland State Police, 454 F. Supp. 2d 339 (D. Md. 2006)

In Re Application for an Order Authorizing the Installation and use of a Pen Register and Directing the Disclosure of Telecommunications Records for Cellular Phone assigned the Number Sealed, 439 F. Supp. 2d 456 (D. Md. 2006)

Steiner v. County Com'rs of Caroline County, No. WDQ-05-1517, 2006 WL 2265103 (D. Md. May 18, 2006)

In re U.S. for Orders Authorizing Installation and Use of Pen Registers and Caller Identification Devices on Telephone Numbers, 416 F. Supp. 2d 390 (D. Md. 2006)

Rutherford v. CRU Bldg. Corp., No. MJG-03-1329, 2006 WL 559215 (D. Md. Feb. 6, 2006)

In re Application of U.S. for an Order Authorizing Installation and Use of a Pen Register and a Caller Identification System on Telephone Numbers (Sealed), 402 F. Supp. 2d 597 (D. Md. 2005)

Fox v. Encounters Int'l, Inc., 402 F. Supp. 2d 592 (D. Md. 2005)

Kurtz v. Wal-Mart Stores, Inc., 338 F. Supp. 2d 620 (D. Md. 2004)

In re Washington Post Motion to Open Juvenile Detention Hearing, No. 02-MC-355, 2003 WL 1239410 (D. Md. Mar. 12, 2003)

In re Washington Post Motion to Open Juvenile Detention Hearing, 247 F. Supp. 2d 761 (D. Md. 2003)

Jackson v. Hensley, No. SKG-01-00923, 2003 WL 25696587 (D. Md. Jan. 16, 2003)

U.S. v. Doe, 230 F. Supp. 2d 662 (D. Md. 2002)

Sewell v. Maryland Dept. of Transp., 206 F.R.D. 545 (D. Md. 2002)

Paul Revere Life Ins. Co. v. Jafari, 206 F.R.D. 126 (D. Md. 2002)

Jackson v. Hensley, No. SKG-01-00923, 2002 WL 34382980 (D. Md. Jan. 11, 2002)

U.S. v. Wallen, 177 F. Supp. 2d 455 (D. Md. 2001)

Higginbotham v. KCS Int'l, Inc., 202 F.R.D. 444 (D. Md. 2001)

Rogovin v. Mayor and City Council of Baltimore, 164 F. Supp. 2d 684 (D. Md. 2001)

In re Application of United States of America for an Order Pursuant to 18 U.S.C. § 2703(D) Directed to Cablevision Systems Corp. 1111 Stewart Avenue Bethpage, New York 11714, 158 F. Supp. 2d 644 (D. Md. 2001)

Sutton v. Harrison, No. AW-99-3193, 2001 U.S. Dist. LEXIS 10635 (D. Md. June 25, 2001)

Smith v. Continental Ins. Co., No. BEL-00-526, 2001 WL 418720 (D. Md. Apr. 11, 2001)

Coogan v. Cornet Transp. Co., Inc., 199 F.R.D. 166 (D. Md. 2001)

U.S. v. Johnson, 131 F. Supp. 2d 721 (D. Md. 2001)

Ricks v. Abbott Labs., 198 F.R.D. 647 (D. Md. 2001)

In re Bay Runner Rentals, Inc., 113 F. Supp. 2d 795 (D. Md. 2000)

Bailey v. Apfel, 80 F. Supp. 2d 535 (D. Md. 1999), *aff'd*, 225 F.3d 653 (4th Cir. 2000) (unpublished)

Murphy v. Apfel, No. AW-99-471, 1999 U.S. Dist. LEXIS 22076 (D. Md. Oct. 6, 1999), *aff'd*, 225 F.3d 655 (4th Cir. 2000) (unpublished)

Blue Ridge Ins. Co. v. Puig, 64 F. Supp. 2d 514 (D. Md. 1999)

U.S. v. Hammond, 44 F. Supp. 2d 743 (D. Md. 1999)

Washington v. Apfel, 40 F. Supp. 2d 326 (D. Md. 1999)

Kerbow v. Frostburg State University Foundation, Inc., 40 F. Supp. 2d 724 (D. Md. 1999)

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Mr. Mattress v. Sealy Mattress*, No. WMN-95-1157

This was a breach of contract/antitrust matter brought by a mattress retailer against a mattress manufacturer alleging contractual violations as well as unlawful collusion between the manufacturer and another retailer. There were counterclaims. The trial lasted just under two weeks. Jury verdicts for the

defendant and counterclaim defendant. No reported opinion. (See Attachment #6, Copies of Opinions or Judgments in Unreported Cases, Senate Questionnaire, Question #13c.)

Counsel for Plaintiff: John Henry Lewin, Jr. (retired)
Venable LLP
750 E. Pratt Street, Suite 900
Baltimore, MD 21202
410.244.7400

Counsel for Defendant: Randall L. Speck
Kaye, Scholer, Fierman, Hays & Handler
901 15th Street, Suite 1100, N.W.
Washington, DC 20005
202.682.3500

2. *In re Bay Runner Rentals*, WMN-97-2399, 113 F. Supp. 2d 795 (D. Md. 2000).

In this case, a personal watercraft rental agency, having obtained a stay of an injured renter's tort suit against it, sought exoneration from or limitation of any liability it might have in relation to the accident, pursuant to the Ship-Owners Limitation of Liability Act of 1851. I held after a bench trial that 1) the owner's employees were negligent in failing to warn the renter of limitations on the craft's steerability, and 2) that the owner was in privity with such negligence. I denied exoneration from or limitation of liability after a hotly contested bench trial lasting about one week.

Counsel for Petitioner/Defendant: Robert L. Ferguson, Jr.
Ferguson Schetelich and Ballew
100 South Charles Street, Suite 1401
Baltimore, MD 21201
410.837.2200

Counsel for Respondent/Plaintiff: Guerdon Macy Nelson
Law Office of G. Macy Nelson
401 Washington Avenue, Suite 803
Towson, MD 21204
410.296.8166

3. *Mollica v. Salisbury University*, JKB-04-1542

This was a claim of gender discrimination in employment brought by a male executive against the female president of Salisbury University and against the University itself. After a jury trial of one week, a verdict was returned in favor of the University president and the University. No reported opinion. (See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.)

Counsel for Plaintiffs: Suzanne M. Tsintolas
 Law Office of Suzanne Tsintolas
 14724 Westbury Road
 Rockville, MD 20853
 301.460.4000

Counsel for Defendants: Anne Love Donahue
 State of Maryland Office of the Attorney
 General
 200 Saint Paul Place, 17th Floor
 Baltimore, MD 21202-2021
 410.576.6450

4. *McNeil v. Corcoran*, AMD-97-3675

This civil rights case, claiming excessive force, was brought by a Maryland state prisoner against various correctional officials. After a bench trial, I concluded that the plaintiff's evidence was insufficient because of a lack of credibility. Accordingly, I rendered judgment for the defendants. No reported opinion. (*See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.*)

Counsel for Plaintiff: Stephen Z. Meehan
 Prisoner Rights Information System of
 Maryland, Inc.
 P. O. Box 929
 Chestertown, MD 21620
 410.778.1700

Counsel for Defendants: Angela M. Eaves
 Courthouse
 20 West Courtland Street
 Bel Air, MD 21014
 410.638.3264

Wendy A. Kronmiller
 Maryland Department of Health & Mental
 Hygiene
 55 Wade Avenue
 Catonsville, MD 21228
 410.402.8101

5. *Kreider v. Barlett*, JFM-99-3846

In this declaratory judgment action, the issue before the jury was whether or not the defendant, Robert J. Barlett, was a resident of his parents' home at the time of

the accident. Based on the jury's verdict that he was not a resident, I rendered judgment for the defendant Nationwide Mutual Insurance Company since Barlett was not its insured; I also rendered judgment for the plaintiffs under the decedent's uninsured motorist insurance coverage. No reported opinion. (*See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.*)

Counsel for Plaintiffs: Paul D. Bekman
Salsbury Clements Bekman Marder &
Adkins, LLC
300 West Pratt Street, Suite 450
Baltimore, MD 21201
410.539.6633

Counsel for Defendants: Patricia McHugh Lambert
Hodes, Pessin & Katz, P.A.
901 Dulaney Valley Road, Suite 400
Towson, MD 21204
410.938.8800

Alan B. Gnapp
Duane, Hauck & Gnapp, P.C.
10 East Franklin Street
Richmond, VA 23219-2106
804.644.7400

Thomas Vincent McCarron
Semmes, Bowen & Semmes, P.C.
25 South Charles Street, Suite 1400
Baltimore, MD 21201
410.576.4854

6. *Cline v. Christy*, JKB-03-529

This wrongful death case ended in a jury verdict for the plaintiffs. However, the small amount of damages awarded, \$8,000 to each plaintiff, prompted the plaintiffs to file a motion to alter or amend the judgment. I concluded that the jury, in keeping with Maryland law, had exercised its discretion to render a compromise verdict based upon evidence that could have been interpreted by the jury as showing some negligence on the part of the decedent as well as evidence indicating that the decedent's adult children, who were plaintiffs, had only a distant relationship with him and, therefore, did not deserve a large damage award. No reported opinion. (*See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.*)

Counsel for Plaintiffs: Elliot N. Lewis
 Elliot N. Lewis, P.A.
 111 North Charles Street, Seventh Floor
 Baltimore, MD 21201
 410.962.1442

Counsel for Defendants: Lawrence E. Ballantine
 One West Pennsylvania Avenue, Suite 500
 Towson, MD 21204
 410.832.8012

7. *Sutton v. Harrison*, AW-99-3193, 2001 U.S. Dist. LEXIS 10635 (D. Md. June 25, 2001).

Sutton sued various Maryland state prison officers and officials after he received lacerations to his head from a heavy chain swung by Officer Harrison. Sutton had disobeyed Harrison's order to return to his cell after the cell door had been accidentally opened. Although the extent of Harrison's action was not justifiable in light of the circumstances, which included the lack of real danger posed by a much smaller Sutton against the 250-pound Harrison, I concluded that Sutton had failed to prove that Harrison "wantonly and unnecessarily inflicted pain," the Eighth Amendment standard for imposition of liability. This case turned on its particular circumstances and applied well-established precedent.

Counsel for Plaintiff: Anthony F. Vittoria
 Ober, Kaler, Grimes & Shriver, P.C.
 120 East Baltimore Street
 Baltimore, MD 21202-1643
 410.685.1120

Counsel for Defendants: Gloria Wilson Shelton
 State of Maryland, Office of the Attorney
 General
 200 Saint Paul Place
 Baltimore, MD 21202-2021
 410.576.6300

8. *Smith v. Continental Ins. Co.*, No. BEL-00-526, 2001 WL 418720 (D. Md. Apr. 11, 2001).

In a case arising under the court's admiralty jurisdiction, Smith made an insurance claim for damage to his boat. Defendant denied the claim on the basis that the marine survey supplied by Smith prior to the underwriting of the policy had misrepresented the condition of the boat. I rendered judgment for the insurance company because I concluded that Smith had violated his duty under the doctrine

of *uberrimae fidei* to disclose all material information so as to render the insurance contract voidable at Continental's option.

Counsel for Plaintiff: J. Stephen Simms
Simms Showers, LLP
20 South Charles Street, Suite 702
Baltimore, MD 21201
410.783.5795

Counsel for Defendant: Ranji Martelli Garrett
Law Offices of Ranji M. Garrett
15200 Shady Grove Road, Suite 202
Rockville, MD 20850
301.296.4474

9. *Conaway v. Gladstone*, JKB-06-1193

This case involved a claim of excessive force against police officers. The jury rendered a verdict for the defendants, and I entered judgment accordingly. No reported opinion. (See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.)

Counsel for Plaintiff: Randall James Craig, Jr.
Craig and Henderson, LLC
19 East Fayette Street, Suite 401
Baltimore, MD 21202
410.727.0406

Counsel for Defendants: Joseph E. Spicer
Jones and Associates, P.C.
111 South Calvert Street, Suite 2700
Baltimore, MD 21202
410.385.5240

10. *Lawing v. Wal-Mart Stores East*, BEL-97-2721

The plaintiff, an elderly woman, brought this personal injury case under the court's diversity jurisdiction. After a three-day trial, the jury found in favor of the defendant. No reported opinion. (See Attachment #6, Copies of Opinions or Judgments in Unreported Cases.)

Counsel for Plaintiff: Michael J. Kopen
Kopen and Collison, LLP
P. O. Box 1028
Easton, MD 21601
410.822.3900

Counsel for Defendant: Jeffrey M. Kotz
 Kandel, Klitenic, Kotz & Betten, LLP
 502 Washington Avenue, Suite 610
 Towson, MD 21204
 410.339.7100

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *In re Application of the United States*, 416 F. Supp. 2d 390 (D. Md. 2006)

Counsel for Government: Barbara Sale, Supervisory Assistant United States Attorney
 United States Attorney's Office
 36 South Charles Street, Fourth Floor
 Baltimore, MD 21201
 410.209.4902
 and
 Paul M. Tiao, Assistant United States Attorney
 410.209.4916

Counsel for the Defendant: None. *Ex parte* proceeding.

2. *Maryland State Conference of NAACP Branches, et al. v. Maryland State Police*, 454 F. Supp. 2d 339 (D. Md. 2006)

Counsel for Plaintiffs: Douglas R.M. Nazarian (then a partner at Hogan & Hartson, and now Chair, Maryland Public Service Commission)
 William Donald Schaefer Tower
 Six St. Paul Street, 16th Floor
 Baltimore, MD 21202
 410.767.8039

Counsel for Defendants: David Reid Moore
 Office of the Attorney General, Civil Litigation
 200 St. Paul Place, 20th Floor
 Baltimore, MD 21202
 410.576.7906

3. *In Re Yoder's Slaughterhouse Site, Grantsville, Garrett County, Maryland*, 519 F. Supp. 2d 574 (D. Md. 2007)

Counsel for Government: Larry D. Adams, Assistant U.S. Attorney
Office of the United States Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
410.209.4801

Counsel for the Defendant: None. *Ex parte* proceeding.

4. *United States v. Doe*, 564 F. Supp. 2d 480 (D. Md. 2008)

Counsel for the Government: Rod Rosenstein, United States Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
410.209.4800

Counsel for the Defendant: None. *Ex parte* proceeding.

5. *In re: Washington Post Motion to Open Juvenile Detention Hearing*, 247 F. Supp. 2d 761 (D. Md. 2003)

Counsel for Movant: Adam L. Pearlman, Dane H. Butswinkas,
Lisa M. Duggan, Williams & Connelly, LLP
725 12th Street, N.W.
Washington, DC 20005
202.434.5244

Counsel for Government: David Copperthite, Assistant United States
Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
410.209.4800

6. *In re Bay Runner Rentals*, 113 F. Supp. 2d 795 (D. Md. 2000)

Counsel for Petitioner/Defendant: Robert L. Ferguson, Jr.
Ferguson, Schetelich and Balfew, P.A.
1401 Bank of America Center
100 South Charles Street
Baltimore, MD 21201
410.837.2200

Counsel for Respondent/Plaintiff: G. Macy Nelson
401 Washington Avenue, Suite 803
Towson, MD 21204
410.296.8166

7. *Higginbotham v. KCS Int'l, Inc.*, 202 F.R.D. 444 (D. Md. 2001)

Counsel for Plaintiff: Mark T. Mixter
20 South Charles Street, Ninth Floor
Baltimore, MD 21201
410.539.8415

Counsel for Defendant: Mary Malloy Dimaio,
Maher & Associates
502 Washington Avenue, Suite 410
Towson, MD 21204
410.769.8100

J. Christopher Boucher
Boucher & Denman, LLP
126 Cathedral Street
Annapolis, MD 21401
410.263.9775

8. *Fox v. Encounters Int'l, Inc.*, 402 F. Supp. 2d 592 (D. Md. 2005) (report and recommendation of Magistrate Judge Bredar ADOPTED as Opinion and Order of the Court)

Counsel for Plaintiffs: Randall K. Miller, David M. Orta, Brian
Eric Bowcut, Ross S. Goldstein
Arnold & Porter
1600 Tysons Boulevard, Suite 900
McLean, VA 22102
703.720.7000

Counsel for Defendant: Paul Howard Zuckerberg
1790 Lanier Place, N.W.
Washington, DC 20009
202.232.6400

Gloria Wilson Shelton, Assistant Attorney
General
200 St. Paul Place, 20th Floor
Baltimore, MD 21202
410.576.6300

John Walter Sippel, Jr., Assistant U.S.
Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
410.209.4807

9. *United States v. Hammond*, 44 F. Supp. 2d 743 (D. Md. 1999)

Counsel for the Government: Lynne Battaglia, United States Attorney
36 South Charles Street, Fourth Floor
Baltimore, MD 21201
410.209.4800

Counsel for Defendant: Beth M. Farber, Acting Federal Public
Defender
Office of Federal Public Defender
Tower II, Ninth Floor
100 South Charles Street
Baltimore, MD 21201
410.962.3962

10. *Kerbow v. Frostburg State Univ. Found., Inc.*, 40 F. Supp. 2d 724 (D. Md. 1999)

Counsel for Plaintiffs: Andrew J. Graham
Kramon & Graham, P.A.
One South Street, Suite 2600
Baltimore, MD 21202
410.752.6030

Counsel for Defendant: James B. Sarsfield (formerly of Hamilton &
Hamilton, now Judge, State of Maryland
District Court, Sixth Judicial District)
2700 Courthouse Square
Rockville, MD 20850
301.279.1373

e. Provide a list of all cases in which certiorari was requested or granted.

Certiorari has not been requested in any of my cases to the best of my knowledge.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. *A.B. v. Lawson*, No. WMN-02-0079, Docket # 18 (D. Md. Dec. 2, 2002), *rev'd*, 354 F.3d 315 (4th Cir. 2004). (See Attachment #7, Reversed Cases, Senate Questionnaire, Question #13f.)

This lawsuit under the Individuals with Disabilities Education Act (“IDEA”) and other federal laws sought reimbursement for the expense of placement of A.B., a minor child with learning disabilities, in a private school on the ground that the Anne Arundel County Public Schools failed to provide him with a free, appropriate, public education for two school years. The standard employed in IDEA is that the prescribed program need only be sufficient to confer some educational benefit. Although I determined that A.B. could have achieved some benefit from the prescribed program, I also concluded that, in other areas, he either would have received no benefit or experienced detriment; consequently, I determined that the net balance to A.B. was not beneficial.

2. *Medimmune Oncology, Inc. v. Sun Pharm. Indus., Ltd.*, No. MJG-04-2612, Docket # 171 (D. Md. Dec. 10, 2007), *partly rev'd*, Docket # 204 (D. Md. Apr. 2, 2008). (See Attachment #7, Senate Questionnaire, Question #13f.)

Defendant moved to compel Plaintiff to disclose various documents, including nine draft patent applications. Concluding that certain published opinions from other courts were persuasive and in line with existing Fourth Circuit philosophy pertaining to the attorney-client privilege, I granted the motion with respect to the draft patent applications.

3. I have made many hundreds if not over one thousand rulings in criminal release/detention hearings. On probably three or four occasions, I have been reversed by District Judges. While I can remember that I have been reversed, I cannot recall any particular case, date, or issue.
- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

During my tenure as a Magistrate Judge, the majority of my decisions (80-90%) have been unpublished. They appear in the court files of the cases to which they pertain. They are probably four hundred to five hundred in number. In recent years, some “unpublished” Magistrate Judge opinions have also been listed on the District Court’s web site. I file all decisions on our Court’s electronic CM/ECF system (operational since 2002), making them available to the public. The majority of my decisions addressing significant motions and/or resolving noncriminal cases on the merits has been downloaded from the Court’s web site by Westlaw and/or LEXIS and published electronically.

- h. Provide 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, provide copies of the opinions.

Sutton v. Harrison, No. AW-99-3193, 2001 U.S. Dist. LEXIS 10635 (D. Md. June 25, 2001)

Maryland State Conference of NAACP Branches v. Maryland State Police, 454 F. Supp. 2d 339 (D. Md. 2006)

In re Washington Post Motion to Open Juvenile Detention Hearing, 247 F. Supp. 2d 761 (D. Md. 2003)

U.S. v. Wallen, 177 F. Supp. 2d 455 (D. Md. 2001)

McNeil v. Corcoran, No. 97-3675 (D. Md. Sept. 17, 1999) (unpublished) (See Attachment #8, Opinion on Federal or State Constitutional Issues, Senate Questionnaire, Question #13h).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

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

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

1. All cases in which the Office of the Federal Public Defender represented a party between November 29, 1992, and January 23, 1998. I recused myself sua sponte. Having served as the Federal Public Defender for the District of Maryland between these dates, I did not believe it appropriate for me to preside in cases in which I had previously represented a party.
2. *Maryland State Conference of NAACP Branches, et al. v. Maryland State Police*, JKB-98-1098. I recused myself sua sponte after ruling on the defendants' motion for summary judgment. An excerpt of the recusal order follows:

The pretrial phase of this case has ended. Two sons of the United States Marshal for the District of Maryland remain as defendants in actions still to be tried in this case. Now, the judge presiding over those trials likely will be required to issue a number of discretionary rulings, including some that might relate to the credibility of the Marshal's sons. All of the judges of this Court have a significant working relationship with the Marshal.

Under these circumstances the undersigned and the Chief Judge of this Court, after consulting with the other judges, have concluded that in order to avoid any appearance of impropriety, a judge (or, if necessary for scheduling reasons, more than one judge) from outside the district should be appointed to preside during the trial phase of the case. Accordingly, the undersigned hereby recuses himself from further participation in this case.

3. Consistent with Court policy, I maintain a "conflicts list" with the Clerk of Court. The current version of that list is attached (Attachment #9, List of Conflicts, Senate Questionnaire, Question #14d). Should a party on my list appear in an action, I am automatically disqualified. For instance, my career law clerk's husband is a partner in a Baltimore law firm and, accordingly, I handle no matters in which that firm is involved.

15. Public Office, Political Activities and Affiliations:

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

Deputy District Attorney, State of Colorado, 14th Judicial District, 1984 – 1985, appointed by Gregory F. Long, District Attorney.

Assistant United States Attorney for the District of Colorado, 1985 – 1989, appointed by Robert N. Miller, United States Attorney.

Assistant Federal Public Defender, 1989 – 1991, 1992 (six months), appointed by Michael G. Katz, Federal Public Defender for the District of Colorado.

Federal Public Defender for the District of Maryland, 1992 – 1998, appointed by majority vote of the active judges then serving on the United States Court of Appeals for the Fourth Circuit

I have had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

Delegate to the Colorado State Democratic Convention, 1984, from Moffat County, pledged to Presidential candidate Gary Hart.

Downtown Denver Democratic Club, "Century Club Member," 1985 – 1992.

16. **Legal Career:** Answer each part separately.

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

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

1983 – 1984; I served as a law clerk to The Honorable Richard P. Matsch, United States District Judge for the District of Colorado

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

I have never practiced law alone.

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

1982

Perkins, Coie, Stone, Olsen & Williams (now, Perkins Coie)
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

and

1029 West Third Avenue, Suite 300
Anchorage, AK 99501-1981
Summer Associate and Legal Intern

1983 – 1984

The Honorable Richard P. Matsch, United States District Judge
United States Courthouse
901 19th Street
Denver, CO 80294-3589
Law Clerk

1984 – 1985

Office of the District Attorney, 14th Judicial District, State of Colorado
Moffat County Courthouse
221 West Victory Way
Craig, CO 81625
Deputy District Attorney

1985 – 1989

Office of the United States Attorney for the District of Colorado
1225 17th Street, Suite 700
Denver, CO 80202
Assistant United States Attorney

1989 – 1991, 1992

Office of the Federal Public Defender for the District of Colorado
633 17th Street, Suite 1000
Denver, CO 80202
Assistant Federal Public Defender

1991 – 1992

Vera Institute of Justice
233 Broadway, 12th Floor
New York, NY 10279
Director, London Office, UK

1992 – 1998

Office of the Federal Public Defender for the District of Maryland
100 South Charles Street, Tower II, Ninth Floor
Baltimore, MD 21201
Federal Public Defender

1998 – Present
 United States District Court for the District of Maryland
 101 West Lombard Street, Chambers 8C
 Baltimore, MD 21201
 United States Magistrate Judge

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

Provide either a response that you have not served or a response that indicates such service, with a listing (and short description) of 10 matters.

While serving as a U.S. Magistrate Judge in the United States District Court for the District of Maryland, I have conducted approximately 700 mediation and settlement conferences. Here are short descriptions of ten such matters:

1. *In re Baltimore Harbor Shuttle, LLC*, No. 04-1575 (the Baltimore Inner Harbor Water Taxi Disaster)

This litigation arose after a water taxi with 24 persons on board capsized off Ft. McHenry in the midst of a sudden spring storm. There were multiple fatalities and serious injuries. Twenty-three claims were brought in our court, with admiralty jurisdiction invoked under the Ship-Owners Limitation of Liability Act of 1851 (“the Act”). There were multiple disputes: (1) Liability and fault were contested, (2) the quantum of damages was not agreed, and most significantly, (3) there was a dispute among claimants as to how any settlement fund should be divided. With the assistance of seasoned counsel, I was able to resolve all 23 claims in a single, marathon 20-hour settlement conference. My prior experience with the Act, with maritime matters in general, and with litigants in distress was invaluable as I mediated this legally complex and emotionally fraught dispute.

2. *Anne C. Fischer, M.D., Ph.D. v. Johns Hopkins Hospital and Health System*, No. 08-1073.

This tense dispute between a prominent surgeon and Hopkins involved complicated employment contract and civil rights issues. The dispute had a high profile and was being followed closely by the media and the academic medical community. With the assistance of skilled attorneys, and building on substantial advance preparation, I was able to bridge the significant gaps that divided the parties and craft a detailed, multipart agreement that resolved the case.

3. *Moxley v. Town of Walkersville*, No. 08-1763.

This was a dispute between the Town of Walkersville, Maryland, and a land developer, who had identified an Islamic sect interested in purchasing a large farm within the Town. The developer accused the Town of unlawfully denying him and his potential purchasers necessary building and development permits, driving away the potential purchasers and thus scuttling the project. The developer sued the Town, its elected and appointed leaders, and several citizens for religious discrimination and tortious interference with a contract. I met with the parties on multiple occasions over five months and succeeded in negotiating an agreement wherein the Town purchased the farm for a price acceptable to the developer and all claims were dismissed. This was a multimillion dollar matter.

4. *Equal Employment Opportunity Commission v. Chesapeake Academy*, No. 09-2342.

This was an employment discrimination dispute wherein a teacher claimed that he was denied reappointment because he was infected with HIV/AIDS. The school vehemently denied this alleged motivation and instead pointed to substandard performance. After a difficult negotiation process, an agreement was reached resulting in the entry of a consent decree resolving the case.

5. *Franco v. Richardson*, No. 08-1062.

This dispute arose out of a bus/pedestrian collision at Baltimore Washington International Airport. The plaintiff was struck by the right front portion of a large bus as the bus operator attempted to pass by the plaintiff's stopped vehicle in the passenger unloading area. The plaintiff sustained serious injuries. There was a question as to whether the plaintiff had been contributorily negligent. After substantial discussion, an agreement was reached resolving all claims and resulting in the dismissal of the suit.

6. *Glotfelty v. Seamons*, No. 08-910.

This case concerned a head-on automobile collision where there were significant injuries. Following substantial negotiations, an agreement was reached resolving all claims, and the case was dismissed.

7. *Webster v. Transflo*, No. 08-3418.

This was a personal injury matter where a truck driver sustained injuries after falling while exiting his tractor cab on the defendant's premises. Plaintiff alleged that he slipped on an oily steel rail onto which it was intended that he step after parking his vehicle on defendant's scale. The defendant argued that all surfaces were clean and dry and that the plaintiff fell as a result of his own negligence. Plaintiff's injuries were substantial. After vigorous negotiations, an agreement was reached resolving all claims. The case was dismissed.

8. *St. Agnes Healthcare, Inc. v. R.D.A. Sterling Holdings*, No. 08-358.

This was a complicated business dispute wherein a hospital filed claims against a medical services corporation, alleging that the defendant, upon purchasing the assets of a failed corporation that had previously supplied emergency physician services at the hospital, itself subsequently failed to provide sufficient medical malpractice insurance for the physicians who continued to work under the defendant's authority at the hospital. Further, the hospital contended that the defendant had failed to indemnify the hospital in relation to a particular malpractice claim, in violation of a contractual provision. After lengthy and detailed negotiations, I assisted the parties in reaching an agreement that resolved all claims. Subsequently, the matter was dismissed.

9. *Empire Fire and Marine Insurance Company v. Winchester Medical Center*, No. 06-2437.

This was a complicated insurance coverage dispute. I mediated this dispute over a period of two years. The parties were deeply divided over the question of who owed insurance coverage in relation to an automobile collision that resulted in fatalities and multiple injuries. One of the vehicles involved was an ambulance transporting a pregnant woman whose fetus was in distress. Damages were substantial. After negotiations broke down, I suggested terms on which the matter could be resolved, and those terms were accepted by all parties, resolving the case. The matter was dismissed.

10. *Petrone v. Royer*, No. 08-2655.

This was a motor tort matter in which there was little dispute about the defendant's probable liability, but a substantial argument over the extent of the plaintiff's damages. After extensive negotiation, an agreement was reached resolving all claims. The matter was dismissed.

b. Describe:

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

Provide a short narrative of your law practice. One or two paragraphs should generally be sufficient.

1984 – 1985 Line state prosecutor in rural jurisdiction
 1985 – 1989 Line prosecutor (AUSA) in busy federal district
 1989 – 1991 Line public defender (AFPD) in busy federal district
 1991 – 1992 Not practicing; criminal justice consultant in the UK
 1992 – 1998 Agency head and lead attorney in charge of federal public defender agency serving two court locations in the District of Maryland. Four intermediate attorney supervisors, chief investigator, and administrative officer – each of whom supervised between five and twelve staff members – all reported to me. Also handled a reduced personal caseload.
 1998 – 2009 U.S. Magistrate Judge. Caseload 75% civil and 25% criminal.

Before commencing service as a U.S. Magistrate Judge, most of my legal experience was as a criminal practitioner (both prosecuting and defending). I have prosecuted crimes ranging from homicide, bribery, income tax evasion, sexual assault, and the robbery of \$2.3M in bearer bonds to drunk driving and “dog-off-leash” in a National Park. I prosecuted a significant espionage case. I have represented defendants on criminal charges ranging from air piracy and murder to domestic assault and drunk driving, from racketeering and wire fraud to failure to file income tax returns. As I was a public defender, my typical clients were the indigent criminally accused. I have both prosecuted and defended a significant number of “white collar” cases involving fraud.

Since commencing service as a U.S. Magistrate Judge in 1998, most of my experience has been in civil cases. I have presided in the full range of cases that come before federal courts. Less than 12 months after taking the bench, I presided in a complex antitrust jury trial. I have presided in employment discrimination and auto-tort cases, in commercial disputes, in civil rights cases, and in significant admiralty matters, to give a few examples. I have managed discovery in my own cases and in cases referred by district judges. I have conducted many hundreds of civil settlement conferences. I have presided in the jury trials of almost 20 cases and have ruled on scores of dispositive motions (e.g., motions for summary judgment; motions to dismiss).

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

When I was a prosecutor, I represented the State of Colorado and the U.S. Government. While serving as a public defender, my clients were indigent criminally accused people.

Before commencing service as a U.S. Magistrate Judge, I was a criminal lawyer. Since becoming a judge, most of my work has been civil, across the full range of matters falling within the jurisdiction of the federal courts.

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

Almost all of my legal experience is as a litigator. Since leaving my clerkship in 1984, my work has been in court. Before I became a magistrate judge, I appeared in court frequently (except from early 1991 until mid-1992 when I was working as a criminal justice consultant in the UK).

- i. Indicate the percentage of your practice in:

1. federal courts:	90%
2. state courts of record:	10%
3. other courts:	0%
4. administrative agencies:	<1%

- ii. Indicate the percentage of your practice in:

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

(Percentages are based on my work before I became a U.S. Magistrate Judge. Before becoming a U.S. Magistrate Judge, I did little civil work. Since my appointment as a U.S. Magistrate Judge, about 75% of my work has been in civil cases and about 25% in criminal cases.)

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

Before becoming a magistrate judge, I had tried approximately 40 cases to jury verdict and a much larger number of mostly misdemeanor cases to the bench, almost always as "sole" or "chief" counsel. I have handled at least eight appeals as "sole" or "chief" counsel (eight reported opinions; additional unreported). As

the Federal Public Defender for Maryland, I supervised attorneys who litigated thousands of cases during my tenure. Although my name appears as counsel in all of those thousands of cases, the data I supply here relate only to matters I personally handled before, and while, I was the Federal Public Defender.

i. What percentage of these trials were:

1. jury: 25% (mostly felonies, some quite lengthy);
2. non-jury: 75% (mostly petty offenses and misdemeanors, usually of very short duration)

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

Custis v. United States, 511 U.S. 485 (1994) (Argued by one of my assistants when I was serving as the Federal Public Defender for the District of Maryland; I was on the brief, which I edited) (see Attachment #10, Supreme Court Brief, Senate Questionnaire, Question #16e).

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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. Buglisi*, Criminal Case No. PJM-95-0265. United States District Court for the District of Maryland, Hon. Peter J. Messitte, 301.344.0632; 1995 – 1997.

Marcello Buglisi and several associates were implicated in a scheme to kill the cousin and former business partner of a Prince George's County land developer. My client owned adult entertainment clubs in Charles County. His associates asked him to introduce them to an individual who would be prepared to commit a contract murder. My client then linked them to a Prince George's County police officer who, when off duty, worked for my client as a bouncer. The police officer then twice attempted to shoot and kill the target. In a negotiation that lasted over one year, I represented my

client as he agreed to cooperate with the authorities in exchange for favorable treatment. Although there was evidence that my client was deeply involved in this scheme, I was able to negotiate a disposition wherein he served less than five years in federal prison. I was able to leverage his cooperation to dispose of multiple charges pending against him in multiple jurisdictions.

Co-counsel: Paul Hazlehurst, Assistant Federal Public Defender
Tower II, Ninth Floor
100 South Charles Street
Baltimore, MD 21201
410.962.3962

Opposing counsel: I. Matthew Campbell, Jr., Assistant State's Attorney, Montgomery County
(now, Counsel, NASD Market Regulation)
9509 Key West Avenue
Rockville, MD 20850
240.386.5251

Brent Gurney, Assistant U.S. Attorney
(now, Partner in WilmerHale)
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006
202.663.6525

2. *United States v. White*, Criminal Case No. JFM-94-0442. United States District Court for the District of Maryland, Hon. J. Frederick Motz, 410.962.0782; 1994 – 1995.

Mannix White was suspected of being an “enforcer” for a street-level drug gang operating in the Westport section of Baltimore City. He was accused of executing a competing drug dealer by shotgun blast to the head. Mr. White was suspected of committing other murders on behalf of the organization that employed him and, although he was only 18 at the time, the government considered seeking the death penalty against him. While there were multiple aggravating factors, possibly the most difficult was that the murder victim had been raised in the same foster home as had Mr. White, and they had known each other since early childhood with the victim serving as a surrogate “big brother” to my client. During the course of lengthy negotiations, I convinced the government not to seek the death penalty against Mr. White, and I then persuaded the sentencing judge not to impose a life term. Mr. White received 35 years imprisonment for his offense. In anticipation of the sentencing hearing, with the assistance of two attorneys on my staff, I prepared a detailed sentencing memorandum that charted Mr. White's life until his date of arrest. My investigation revealed that Mr. White had been introduced to heroin by his addicted mother, that he had been abandoned soon after, that he had lived as a homeless child for over a year, that he had dropped out of school at about age ten, and

through adolescence his street drug gang had been the only real “family” in his life. Despite a forceful presentation by the government at sentencing, which included the passionate and distraught testimony of the victim’s sister, I persuaded the court to resist the urge to impose a life sentence. I demonstrated that Mr. White had considerable and untapped talents, that with counseling he had become remorseful for his misconduct, and that, most significantly, after incarceration until he was nearly 50, criminology data indicated it was unlikely he would remain dangerous.

Co-counsel: Steven F. Reich, Assistant Federal Public Defender (now, Partner in Manatt Phelps) Seven Times Square, # 23 New York, NY 10036-6524 212.790.4500

Opposing counsel: Bonnie Greenberg, Assistant U.S. Attorney Greg Welch, Assistant U.S. Attorney 36 South Charles Street, Fourth Floor Baltimore, MD 21201 410.209.4800

3. *United States v. Nutter*, Criminal Case No. 90-CR-131. United States District Court for the District of Colorado, Hon. Edward Nottingham (resigned; no telephone number available); June 1990.

Douglas K. Nutter was accused of attempting to ignite a fire (attempted arson) inside a large, vacant, and dilapidated building in downtown Denver for the purpose of assisting the owner in fraudulently collecting insurance proceeds. Agents of the Federal Bureau of Alcohol, Tobacco, and Firearms had detected this scheme before ignition and had infiltrated the plot. The agents had recorded my client making statements during a “walk through” of the building on the day before the planned fire, during which he explained how he would ignite the building so as to ensure its total destruction. On the day of the offense, Mr. Nutter was arrested, either just before setting the fire or immediately after setting it – I cannot remember which, now. If there was a fire, it was quickly extinguished without significant damage. While there was no credible defense, the government also did not make a significant plea offer, and my client elected to proceed to trial. As the government presented its case, I realized that it was neglecting its jurisdictional obligation to show that my client’s conduct had a significant impact on interstate or foreign commerce. As I recall, the insurance policy under which my client’s patron hoped to collect had lapsed, and even if the building had been destroyed as planned, it was unlikely that the owner could have collected any insurance proceeds. My pretrial investigation had revealed this circumstance and I assumed the government was aware of the same and would compensate with alternative proof of a nexus to interstate commerce, but it never did. After the government rested its case, I argued that it had failed to prove the interstate commerce nexus, the Court agreed, judgment of acquittal was entered pursuant to Rule 29 of the Federal Rules of Criminal Procedure, and my client was discharged.

Co-counsel: None

Opposing counsel: David Conner, Assistant U.S. Attorney
F. Joseph Mackey, Assistant U.S. Attorney
1225 17th Street, Suite 700
Denver, CO 80202
303.454.0100

4. *United States v. Smith*, Criminal Case Number 85-CR-171 (appellate opinion reported at 797 F.2d 836 (10th Cir. 1986)). United States District Court for the District of Colorado, Hon. Zita L. Weinshienk, 303.844.2784; July 1985.

As an Assistant U.S. Attorney, I prosecuted Timothy Grayson Smith in connection with his transshipment by light aircraft of a load of marijuana and archeological artifacts from the state of Durango, Mexico, to the District of Colorado. Mr. Smith was a prominent businessperson in La Plata County, Colorado, and he maintained an extravagant life style. He regularly piloted his own aircraft to exotic locations in the Caribbean and Mexico. On the day in question, he was the subject of an air pursuit by the U.S. Customs Service that began at the Mexican border and continued across two states. He landed his contraband-laden aircraft in southwestern Colorado and fled on foot before federal agents could themselves land and attempt to apprehend him. He was the subject of a manhunt for two weeks after which he surfaced in Oklahoma and then surrendered to federal authorities, denying any connection to the contraband found in his airplane. After indictment, the matter proceeded to trial in the city of Durango, Colorado, where the court decided to sit specially. After a week-long trial, Mr. Smith was convicted as charged.

Co-counsel: Robert G. Chadwell, Assistant U.S.
Attorney (now, Partner in McKay-
Chadwell)
600 University Street
Seattle, WA 98101-4124
206.233.2804

Opposing counsel: Frank Courbois, Attorney at Law
120 North Robinson Avenue, Suite 2900
Oklahoma City, OK 73102
405.524.7507

5. *United States v. McDonald*, No. CR-93-125-B, CA-97-1176-HNM. United States District Court for the District of Maryland, Hon. Herbert N. Maletz (deceased).

As Federal Public Defender, I was appointed to defend Mr. Dwayne I. McDonald on a charge of armed robbery of a federal credit union located on the grounds of the National Institutes of Health. This was a "bank takeover, vault job" type of robbery

during which great fear was instilled in the victims. After a trial, during which Mr. McDonald vigorously denied his involvement in the offense, but during which it was proven that his palm prints were found in a nonpublic area near the vault of the credit union, he was convicted.

Co-Counsel: Donna M. D'Alessio, Assistant Federal
Public Defender
(now, Assistant Public Defender, State of
Maryland)
P.O. Box 230
Centreville, MD 21617
410.819.4020

Opposing counsel: Geoffrey Garinther, Assistant U.S. Attorney
(now, Partner at Venable, LLP)
750 East Pratt Street, Suite 900
Baltimore, MD 21202
410.244.7400

6. *United States v. Roe*, No. JFM-93-0355. United States District Court for the District of Maryland, Hon. J. Frederick Motz, 410.962.0782.

As Federal Public Defender, I was appointed to represent this executive in a waste-hauling business who, along with several colleagues, was accused of executing a scheme to defraud a number of commercial entities and public institutions by systematically inflating the volume and weight of garbage and other waste hauled from these customers. The weight of the evidence against my client was overwhelming and with his agreement, I persuaded the prosecutors to grant him a favorable plea agreement in exchange for his truthful testimony against multiple other officers and employees of the corrupt business. Negotiations leading to this favorable result for my client occurred over a 12-month period. As a result of his cooperation, my client received a sentence that was less than half of what he was otherwise facing under the U.S. Sentencing Guidelines.

Co-Counsel: None

Opposing counsel: Jane Barrett, Assistant U.S. Attorney (now,
Associate Professor, University of
Maryland School of Law)
500 West Baltimore Street
Baltimore, MD 21201
410.706.8074

7. *United States v. Patterson*, No. 92-CR-211 (appellate opinion reported at 20 F.3d 809 (10th Cir. 1994)). United States District Court for the District of Colorado, Hon. Jim R. Carrigan (retired); 1992 - 1993.

As an Assistant Federal Public Defender, I was appointed to represent Mr. Patterson after he was accused of hijacking an aircraft over Colorado. Mr. Patterson denied his involvement in this offense and claimed that he had been framed, and I defended him by challenging the Government's proof against him. However, he was convicted, largely based upon his fingerprints, which were found inside the aircraft.

Co-Counsel: None

Opposing counsel: Gregory C. Graf, Assistant U.S. Attorney
(now, Partner in Bertram & Graf, LLC)
8400 East Prentice Avenue, Penthouse Suite
Greenwood Village, CO 80111
303.409.7711

8. *United States v. Schroeder*, No. 89-CR-70 (appellate opinion reported at 902 F.2d 1469 (10th Cir. 1990)). United States District Court for the District of Colorado, Hon. Zita L. Weinshienk, 303.844.2784; 1989.

As an Assistant Federal Public Defender, I was appointed to represent Mr. Schroeder after he was accused of telephoning the Civil Division of the United States Attorney's Office in Denver and, while in negotiations over a veterans' benefits dispute, threatened to travel to the main post office in Denver and commit mass murder if he was not granted the relief he demanded. (He also frequently demonstrated in the plaza between the courthouse and the post office, marching to and fro with an AR-15 semiautomatic assault rifle, and, while this was not reflected in the charges against him, his odd and frightening behavior added credibility to his threat in the minds of prosecutors.) I defended Mr. Schroeder by challenging the Government's proof at trial. However, he was convicted. On appeal, I gained a significant reduction in his sentence by noting and arguing a District Court error in the application of the U.S. Sentencing Guidelines.

Co-Counsel: None

Opposing counsel: Thomas M. O'Rourke, Assistant U.S.
Attorney
1225 17th Street, Suite 700
Denver, CO 80202
303.454.0100

9. *United States v. Steed*, No. 86-CR-196. United States District Court for the District of Colorado, Hon. Richard P. Matsch, 303.844.4627; 1986.

As an Assistant United States Attorney, I prosecuted Mr. Steed for manufacturing and distributing methamphetamine. During trial, a DEA agent and I completely reconstructed Mr. Steed's methamphetamine laboratory in the courtroom before the jury. Mr. Steed was convicted and his conviction was affirmed on appeal.

Co-Counsel: None

Opposing counsel: Charles Szekely, Assistant Federal Public Defender (retired)
633 17th Street
Denver, CO 80202-3610
303.294.7002

10. *United States v. Homa*, No. 86-CR-357. United States District Court for the District of Colorado, Hon. Zita L. Weinshienk, 303.844.2784; 1986.

As an Assistant United States Attorney, I prosecuted Mr. Homa on explosives charges. Mr. Homa, a former Denver police officer, had previously been convicted of a felony offense and was thereby forbidden from possessing or using explosives. Mr. Homa was convicted after trial and his conviction was affirmed on appeal.

Co-Counsel: None

Opposing counsel: Brian Holland, Assistant Federal Public Defender (now Partner, Recht & Kornfeld, P.C.)
1600 Stout Street, Suite 1000
Denver, CO 80202
303.573.1900

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

I have performed no lobbying activities on behalf of any client or organization.

During my career, I have worked to ensure that the indigent, criminally accused have had zealous and effective representation in our criminal courts. For over ten years I have co-chaired the Criminal Justice Act Committee of the U.S. District Court for the District of Maryland. In this role, and especially during my prior tenure as Federal Public Defender, I have worked to ensure that indigent defendants are afforded qualified legal counsel as well as additional resources, such as investigators and appropriate experts, so that their

Sixth Amendment right to counsel is fully satisfied. I have encouraged other lawyers to undertake the representation of indigent people accused of serious offenses such as capital murder. When Federal Public Defender, I mentored younger lawyers and trained them in the effective representation of criminal defendants.

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

Trial Practice, University of Colorado School of Law, 1986-89, winter intersession. I was an instructor in the law school's trial practice course taught during an intersession each winter. I do not possess a syllabus of the course.

I have not been an active Continuing Legal Education (CLE) instructor in recent years. However, from time to time, I have been recruited to appear on panels during CLE courses. I accepted an invitation from the Dartmouth Lawyers Association in Colorado to appear in a March 1989 panel discussion of the topic of white-collar crime. At the invitation of The Dartmouth Club of Maryland, I served as a panelist in April 1993 on the topic of the war on drugs. In August 1993, I participated in a panel discussion, hosted by the Tenth Circuit Sentencing Institute in Denver, on the role of the probation officer. In November 1994, while serving as the Federal Public Defender for the District of Maryland, I participated in the Middle Atlantic State-Federal Judicial Relationships Conference and addressed the issue of simultaneous representation of defendants in state and federal proceedings; this conference, including my extensive comments, is reported at 162 F.R.D. 173, 188-92. I have vague memories of appearing on a panel addressing ethical questions with attorney Andrew D. Levy (410.962.1030) at the University of Baltimore Law School approximately ten years ago. I also have vague memories of appearing on panels at the request of my colleague, Magistrate Judge Paul W. Grimm, addressing labor and employment issues, at Georgetown University (November 3-4, 2005) and at the Yale Club in New York (one occasion several years ago).

While I have no recollection of it, a LEXIS/NEXIS search reveals that I participated in a CLE seminar titled, "Advice from the Experts: Successful Strategies for Winning Commercial Cases in Federal Court." According to LEXIS/NEXIS, this occurred in 2004.

While serving as the Federal Public Defender for the District of Maryland between 1992 and 1998, I led and participated in numerous training programs for public defenders and Criminal Justice Act (CJA) lawyers in Maryland and at national conferences.

I received no compensation for any of this instructional work (except, of course, my regular salary as a federal employee); my transportation expenses may have been paid in relation to at least one seminar (e.g., the CLE seminar at the Yale Club in New York).

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

Two of my children receive financial benefits under the terms of a structured settlement negotiated after their mother was killed in an automobile accident.

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

I plan to continue my service as an unpaid Trustee of the nonprofit, nonpartisan Vera Institute of Justice in New York.

I plan to continue my service as a member (and *de facto* Chair) of the Tufton Springs Architectural Committee (my neighborhood association) in Baltimore County.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, 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.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I would not sit in any cases that were pending during my tenure as Federal Public Defender for the District of Maryland and in which that office then represented the defendant. As it has been over 12 years since I left that position, there are now few such cases. Normally, the conflict arises when a defendant is brought before the Court to answer an accusation that he/she has violated the terms of supervised release after completing a substantial term of imprisonment.

I maintain a “conflicts list” on file with the Clerk of this Court and my chambers staff. Parties such as the Baltimore County Public Schools, where my wife is employed, are on this list. So, too, is the law firm of DLA Piper where my career law clerk’s husband is a partner. A number of other individuals and entities are listed there as a result of my personal or family interests that would give rise to a conflict. I have provided a copy of the list (Attachment #9). The Clerk provides me with a list monthly of any potential conflicts in my caseload, based on the content of my conflicts list.

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

When possible conflicts arise, I follow the recusal statutes and Canon 3 of the Code of Conduct for United States Judges, and consider carefully not only whether there is an actual conflict, but also appearance issues. I do not and will not sit in cases where I have a conflict or an appearance issue.

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

As a sitting judge, I am precluded from undertaking the representation of any person, including one who is “disadvantaged.” Nonetheless, I am deeply involved in efforts to ensure that the disadvantaged have equal and appropriate access to our courts. For over ten years, I have served as Co-Chair of this Court’s Criminal Justice Act (“CJA”) Committee. This Committee is charged with ensuring that poor and disadvantaged individuals in criminal cases are provided with quality legal representation, whether or not they can afford it. In this regard, I led the complete reconstitution of our Criminal Justice Act panel over ten years ago. I have overseen the training of lawyers admitted to the Criminal Justice Act panel. For over a decade, I have supervised the Criminal Justice Act Supervising Attorney who recruits lawyers, investigators, paralegals, and experts to serve clients qualifying for free legal services under the Criminal Justice Act. I have regularly spoken before bar association and other meetings in order to recruit lawyers to perform this work. I created the “John Adams Award,” an annual honor bestowed on an outstanding CJA attorney. My work overseeing the appointed counsel program in this District has occupied five to ten hours each month since I became a judge in 1998. I have made a significant contribution to the effort to ensure that all Marylanders charged in federal court, regardless of income or financial status, are represented by competent counsel and that those counsel have access to sufficient resources to fully discharge their responsibilities under the Sixth Amendment to the United States Constitution.

I serve as a Trustee of the nonprofit Vera Institute of Justice in New York. Quoting the Vera mission statement, the Institute “combines expertise in research, demonstration

projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.” Vera’s projects and reform initiatives, typically performed in partnership with local, state, or national officials, are located across the United States and around the world. Vera plans and implements demonstration projects to test and refine new solutions to problems like violent crime and chronic truancy. The Institute is currently operating projects to ensure fairness in immigration proceedings, to assist offenders in successfully reintegrating into their communities upon release from prison, to ensure that juveniles receive mental health and drug treatment to the extent that those conditions are contributing to their chronic involvement in the judicial system, to ensure racial justice in criminal prosecution, and to achieve other positive reforms in the justice process. Vera is a nonpartisan organization devoted to making justice systems fairer and more effective through research and innovation. The beneficiaries of Vera’s efforts are almost always people who are otherwise disadvantaged. As a Trustee, I am not directly involved in the daily operation of the Institute or its projects. I provide general oversight and advice on the overall administration of the Institute, and I serve on its Audit Committee. You may learn more about Vera by going to www.vera.org.

From 1986 until 1989, before I had children myself, I was a volunteer reading tutor in the Lincoln Park Scholars program within the Denver Public Schools. I tutored disadvantaged third graders at Greenlee Elementary School for two hours weekly during the school year.

26. Selection Process:

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

Senators Mikulski and Cardin appointed a Selection Committee to recommend candidates for nomination to the federal courts. That Committee solicited applications from interested lawyers and judges, with the applications due on July 1, 2009. I was interviewed by the Committee on September 28, 2009. I believe that the Committee recommended me favorably because, in November 2009, I was contacted by Senator Mikulski’s staff and invited to an interview with the Senator and Senator Cardin on November 17, 2009. On December 10, 2009, Senator Mikulski contacted me by telephone and advised that she and Senator Cardin were recommending that President Obama nominate me for this position.

Since mid-December 2009, I have been in contact with pre-nomination officials at the U.S. Department of Justice. On February 22, 2010, I travelled to the U.S. Department of Justice ("DOJ"), Office of Legal Policy ("OLP") in Washington, D.C., where I met with DOJ lawyers and an Associate White House Counsel. The President submitted my nomination to the Senate on April 21, 2010.

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

No.



**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) BREDAR, JAMES K.		2. Court or Organization U.S. DISTRICT COURT - MARYLAND	3. Date of Report 4/20/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. DISTRICT JUDGE - NOMINEE		5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 4/21/2010 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	
6. Reporting Period 01/01/2009 to 3/31/2010		7. Chambers or Office Address 8C UNITED STATES COURT HOUSE 101 WEST LOMBARD STREET BALTIMORE, MARYLAND 21201	
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. Revering Officer _____ Date _____		<p>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.</p>	

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. VOLUNTEER SKI PATROL ALUMNI (JOINED 12/72)	NATIONAL SKI PATROL (CHAPTER: WINTER PARK SKI RESORT, WINTER PARK, CO)
2. GOVERNOR, FEDERAL BAR ASSOCIATION	FEDERAL BAR ASSOCIATION, MARYLAND CHAPTER
3. TRUSTEE	VERA INSTITUTE OF JUSTICE, NEW YORK, NY
4. MEMBER	ARCHITECTURAL COMMITTEE TUFTON SPRINGS NEIGHBORHOOD, BALTIMORE COUNTY, MD
5.	

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1.	
2.	
3.	

FINANCIAL DISCLOSURE REPORT
Page 2 of 7

Name of Person Reporting BREDAR, JAMES K.	Date of Report 4/20/2010
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-18 of filing instructions.)*

A. Filer's Non-Investment Income

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

DATE	SOURCE AND TYPE	INCOME <i>(yours, not spouse's)</i>
1.		
2.		
3.		
4.		

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

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

DATE	SOURCE AND TYPE
1. 2009-2010	BALTIMORE COUNTY PUBLIC SCHOOLS - SALARY
2.	
3.	
4.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children, see pp. 23-27 of filing instructions.)*

NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. EXEMPT				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
Page 3 of 7

Name of Person Reporting BREDAR, JAMES K.	Date of Report 4/20/2010
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

VI. LIABILITIES. (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE</u>	<u>CODE</u>
1.	WR PROPERTY MANAGEMENT, LLC 107 Green Bay Road, Wilmette, IL 60091	GUARANTOR ON CHILD'S LEASE (COLLEGE LEASE)		J
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting BREDAR, JAMES K.	Date of Report 4/26/2010
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (includes those of spouse and dependent children; see pp. 34-58 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "00" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-F)	(1) Type (e.g., div., rent, or int.)	(1) Value Code 2 (I-F)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. BROKERAGE ACCOUNT #1					Exempt				
2. T.ROWE PRICE HEALTH SERVICES		None	J	T					
3. T.ROWE PRICE PRIME RESERVE	A	Dividend	J	T					
4. BROKERAGE ACCOUNT #2									
5. T.ROWE PRICE - UNISTRN INC	A	Dividend	J	T					
6. IRA #1	A	Dividend	L	T					
7. T.ROWE PRICE BLUE CHIP GROWTH - IRA									
8. T.ROWE PRICE PRIME RESERVE - IRA									
9. IRA #2	A	Dividend	J	T					
10. WELLS FARGO - LARGE CO CORE - INV - IRA									
11. 403(B) #1 (IRA)	A	Dividend	K	T					
12. VALIC (AIG) - BLUE CHIP GROWTH FUND									
13. VALIC - ARIEL APPRECIATION FUND									
14. VALIC - SM CAP AGGRESSIVE GROWTH									
15. VALIC - VANGUARD LONG-TERM TREASURY									
16. VALIC - VANGUARD LT INV - GRADE FUND									
17. VALIC - AMER FUNDS GROWTH FUND									

1. Income Code:	A = \$1,000 or less	B = \$1,001 - \$2,500	C = \$2,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Column H1 and D4)	F = \$50,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I = \$5,000,001 - \$25,000,000	J = More than \$25,000,000
2. Value Code:	J = \$15,000 or less	K = \$15,001 - \$50,000	L = \$50,001 - \$100,000	M = \$100,001 - \$250,000	N = \$250,001 - \$500,000
(See Column C1 and D3)	O = \$500,001 - \$1,000,000	P = \$1,000,001 - \$5,000,000	Q = \$5,000,001 - \$25,000,000	R = \$25,000,001 - \$50,000,000	S = More than \$50,000,000
3. Value Method Code:	Q = Appraised	R = Cost (Real Estate Only)	S = Assessed	T = Cash Market	U = Other
(See Column C2)	V = Book Value	W = Fair Market	X = Other		

FINANCIAL DISCLOSURE REPORT
Page 5 of 7

Name of Person Reporting BREDAR, JAMES K.	Date of Report 4/20/2010
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-I)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-I)	(5) Identity of buyer/seller (if private transaction)
18. -VALIC - ARTISAN MID CAP VALUB									
19. -VALIC - BARON SCAP FUND									
20. -VALIC - AMCENT INF-ADJ BOND INV									
21. -VALIC - PIMCO TOTAL RETURN A									
22.									
23. HARTFORD INS CO ANNUITY #1		None	M	T					
24. HARTFORD INS CO ANNUITY #2		None	M	T					
25. HARTFORD INS CO ANNUITY #4		None							
26. HARTFORD INS CO ANNUITY #5		None							
27. COLLEGE SAVINGS PLAN OF MD - 529 PLAN		None	K	T					
28. BANK OF AMERICA (VARIOUS ACCOU NTS)		None	M	T					
29.									
30.									
31.									
32.									
33.									
34.									

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$300,000 P2 = \$25,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$10,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000 M = \$100,001 - \$250,000 P3 = \$5,000,001 - \$25,000,000	E = \$15,001 - \$50,000 I1 = \$1,000,001 - \$5,000,000 P = \$1,000,001 - \$5,000,000 P5 = More than \$50,000,000
2. Value Codes (See Columns C1 and C2)	Q = Reported U = Book Value	R = Cost (Real Estate Only) V = Other	W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 6 of 7

Name of Person Reporting BREDAR, JAMES K.	Date of Report 4/20/2010
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VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*

PART I. POSITIONS:

LINE 3: HERE THE ROLE OF "TRUSTEE" IS EQUIVALENT TO THAT OF A "DIRECTOR". I AM A MEMBER OF A BOARD OF TRUSTEES FOR A NON-PROFIT ORGANIZATION.

PART III-A. NON-INVESTMENT INCOME:

NON-REPORTABLE NON-INVESTMENT INCOME WAS RECEIVED FROM THE U.S. DISTRICT COURT FOR MARYLAND AS SALARY FOR THE POSITION OF FULL TIME MAGISTRATE JUDGE.

PART VII. INVESTMENTS AND TRUSTS

IRA # 1 CONSISTS OF THE FOLLOWING FUNDS: T. ROWE PRICE BLUE CHIP GROWTH, T. ROWE PRICE PRIME RESERVE

IRA #2 CONSISTS OF THE FOLLOWING FUNDS: WELLS FARGO LARGE CO CORE - INV

403(B) #1 CONSISTS OF THE FOLLOWING FUNDS: BLUE CHIP GROWTH FUND, ARIEL APPRECIATION FUND, SM CAP AGGRESSIVE GROWTH, VANGUARD LONG-TERM TREASURY, VANGUARD LT INV-GRADE FUND, AMER FUNDS GROWTH FUND, ARTISAN MID CAP VALUE, BARON SCAV FUND, AMCENT INF-ADJ BOND INV, FIMCO TOTAL RETURN A

ALTHOUGH FULLY DISTRIBUTED DURING AUGUST 2009, HARTFORD INS. CO ANNUITY #4 AND #5 HAVE BEEN REPORTED SINCE THEY WERE HELD DURING 2009. THERE WAS NO REPORTABLE INCOME FOR THE PERIOD OF THE REPORT.

FINANCIAL DISCLOSURE REPORT
Page 7 of 7

Name of Person Reporting BREDAR, JAMES K.	Date of Report 4/20/2010
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IX. CERTIFICATION.

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

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

Signature James K. Bredar

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT
NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		139	230	Notes payable to banks-secured		2	182
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule		75	441	Notes payable to relatives			
Unlisted securities-add schedule		15	797	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		134	475
Real estate owned-add schedule	1	156	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		128	000				
Cash value-life insurance		4	000				
Other assets itemize:							
Annuities (p.v. structured settlements)		550	000				
Fed. Gov't TSP account		366	084				
CSRS		68	169				
VALIC Tax Sheltered Annuity (403b)		25	628	Total liabilities		136	657
Wells Fargo IRA		1	355	Net Worth	2	393	047
Total Assets	2	529	704	Total liabilities and net worth	2	529	704
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		8	796	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you a defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Listed Securities

UTR (gift from relative to minor child)	\$ 750
PRHSX	14,240
PRRXX	100
TRBCX (inherited from deceased spouse)	28,428
PRRXX (inherited from deceased spouse)	<u>31,923</u>
Total Listed Securities	\$ 75,441

Unlisted Securities

TRP 529 Plan	\$ 15,797
Total Unlisted Securities	<u>\$ 15,797</u>

Real Estate Owned

Personal residence	\$ 800,000
Second residence	<u>356,000</u>
Total Real Estate Owned	\$ 1,156,000

Real Estate Mortgages Payable

Personal residence	\$ 134,475
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AFFIDAVIT

I, JAMES KELLEHER BREDAR, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 21, 2010
(DATE)

James H. Bredar
(NAME)

State of Maryland
County of Harford

Sworn to and subscribed before me on
the 21st day of April, 2010

James R. Whitmore
James R. Whitmore
My Commission Expires 11-14

James R. Whitmore
(NOTARY PUBLIC)
JAMES R. WHITMORE
Notary Public - Maryland
Harford County
My Commission Expires
1-1-2014

**STATEMENT OF ELLEN LIPTON HOLLANDER, NOMINATED TO
BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF MARYLAND**

Judge HOLLANDER. Thank you, Senator. First, if I may, I'd like to thank the Committee for the opportunity to appear today. I would also like to express my gratitude to you and to Senator Mikulski for the confidence you've expressed in me in recommending me to the President.

I'm also grateful to Senator Mikulski and to you for your kind introduction.

I particularly want to express my profound appreciation to President Obama for the enormous honor that he has bestowed upon me.

I'm especially grateful that my family and so many friends and colleagues are able to share this milestone in my professional life. I do, too, have quite a crew here. They got here early, so they have good seats.

[Laughter.]

Judge HOLLANDER. But nonetheless, I would like to ask them to stand as I introduce them.

I am joined by my husband of almost 38 years—I know I look very young, but I was very—

[Laughter.]

Judge HOLLANDER. Rich Hollander. And those who know Rich will readily agree that in choosing him as my life partner, I have demonstrated my ability for very sound decisionmaking.

We are especially proud of our children. They are surely our greatest accomplishment. Our daughter, Hillary, is a clinical social worker in New York. Our son-in-law, Zachary Shankman, might be the most excited member of our family to be here, as he clerked for a Federal judge in New York City, where he now practices law.

Our son, Craig, is a Ph.D. student at Johns Hopkins, and I think today it might be worth noting that he is the recipient of a Congressional research award from the Dirksen Center. His fiancée, Jenifer Steinhardt, is here, as well. She works in finance in New York.

Our youngest, Brett, is a sports broadcaster in Baltimore, and I'm proud to admit that in several news reports announcing my nomination, I was identified as the mother of Brett Hollander.

[Laughter.]

Judge HOLLANDER. I'm also thrilled to be joined by my brother, Dr. Andrew Lipton, and my sister-in-law, Dr. Helene Lipton, who traveled from San Francisco to attend these proceedings.

I'm also delighted by the presence of Shondell Spiegel, a lifelong family friend, who flew in from Los Angeles to be here, as well.

I'm very sorry my sister, Rhoda Lipton, could not be here. She is watching the Webcast, but she was unable to attend, as it's the last day of classes for the students she teaches at Columbia University.

I also wish to acknowledge Karen Warren, my invaluable administrative assistant of 25 years. And I'm deeply honored by the presence of so many wonderful friends, colleagues, and current and former law clerks, and I have several judicial colleagues, as well. I hope they are standing. I think they didn't follow the instructions very well.

[Laughter.]

Judge HOLLANDER. So I would ask them to stand. They deserve to know that I so very much appreciate how much they have supported me through this very long endeavor.

And, finally, if you'll permit me, Senator Cardin, I do want to mention those whose presence I sorely miss, especially on a day like today. My devoted in-laws, Joseph and Vita Hollander, and my beloved parents, Harold and Hilda Lipton.

And I hope you'll permit a special note about my father. The son of emigrants, he graduated from Harvard Law School and was regarded as a lawyer's lawyer. I was just 17 when he died, but in the brief time that I enjoyed with him, he instilled in me the importance of hard work, integrity, and, most important, I believe, for today, the value of public service.

He also encouraged me to believe that I, too, could be a lawyer, despite the fact that there were not many women attorneys during my youth. The enormous pride he felt for the legal profession has remained with me and has brought me to this day.

Thank you.

Senator CARDIN. Thank you, Judge Hollander.

Judge Nelson.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).
Ellen Lipton Hollander (formerly, Ellen Frances Lipton)
2. **Position:** State the position for which you have been nominated.
United States District Judge for the District of Maryland
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.
Courthouse East, Room 626
111 North Calvert Street
Baltimore, Maryland 21202
4. **Birthplace:** State year and place of birth.
1949; New York, New York
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.
1972-1974, Georgetown University Law Center; J.D., 1974
1971-1972, Hofstra University School of Law (no degree)
1967-1971, Goucher College; B.A., 1971
1969 (Fall), City of London College, London, England (semester abroad; no degree)
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.
1994 to present
Maryland Court of Special Appeals
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard

Annapolis, Maryland 21401
Associate Judge

1989 to 1994
Circuit Court for Baltimore City
Courthouse West
100 North Calvert Street
Baltimore, Maryland 21202
Associate Judge

1983 to 1989
Frank, Bernstein, Conaway & Goldman (dissolved in 1992)
300 East Lombard Street
Baltimore, Maryland 21202
Partner (1985 to 1989)
Associate (1983 to 1985)

1979 to 1983
United States Attorney's Office, District of Maryland
U.S. Courthouse
101 W. Lombard Street
Baltimore, Maryland 21201
Assistant United States Attorney

1979
Office of the Maryland Attorney General
One South Calvert Street
Baltimore, Maryland 21202
Assistant Attorney General, Civil Division

1975 to 1979
Frank, Bernstein, Conaway & Goldman (dissolved in 1992)
1300 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
Associate, Litigation Department

1974 to 1975
The Honorable James R. Miller, Jr.
United States District Court for the District of Maryland
111 North Calvert Street
Baltimore, Maryland 21202
Law Clerk

1973
Occupational Safety and Health Review Commission

1825 K Street, N.W., Washington, D.C. 20006
(now 1120 20th Street, N.W., 9th Floor, Washington, D.C. 20036)
Summer Law Clerk

1971
Herold, Kastor & Gerald
40 Wall Street
New York, New York 10005
Administrative Assistant

Other affiliations

1995 to present
Goucher College
1021 Dulaney Valley Road
Towson, Maryland 21204
Member, Board of Trustees (1996 to present) (uncompensated)
Board Secretary (1999 to 2001) (uncompensated)

1994 to present
Library Company of the Baltimore Bar
618 Courthouse West
100 North Calvert Street
Baltimore, Maryland 21202
Board Member (uncompensated)

1998 to 2004
Roland Park Baseball Leagues, Inc.
4612 Roland Avenue
Baltimore, Maryland 21210
Board Member (uncompensated)

1987 to 2000
Baltimore Jewish Council
101 W. Mount Royal Avenue
Baltimore, Maryland 21201
Executive Committee and Board Member (1987 to 1996) (uncompensated)
Secretary (1994 to 1995) (uncompensated)
Second Vice-President (1993 to 1994) (uncompensated)
Trustee, Holocaust Memorial (approximately 1993 to 1996) (uncompensated)

1994 to 1996
Advocates for Children and Youth, Inc.
8 Market Place, 5th Floor
Baltimore, Maryland 21202
Board Member (uncompensated)

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

I have not served in the military, nor did I register for selective service.

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

Leadership in Law Award, 2008
 ASTAR Science and Technology Fellow (Advanced Scientific and Technological Adjudicative Resource Judge), Oct. 2006
 University of Maryland School of Law "Judges Award," 2006
 Citation, Maryland Trial Lawyers Association, 2002
 Circle of Excellence Award for Sustained Achievement, 2000
 Maryland's Top 100 Women: 1996, 1998, 2000
 Dorothy Beatty Memorial Award, 1998
 Sustaining Life Fellow, American Bar Foundation (elected 1995)
 Fellow, Maryland Bar Foundation (elected 1991)
 Fellow, Baltimore City Bar Foundation (elected 2005)
 Certificate of Appreciation from Lake Clifton-Eastern High School for Law-Related Education Program, 1996
 Certificate of Recognition presented by District 4 Chapter of the National Association of Women Judges, 1994
 Citation from the Bar Association of Baltimore City, 1994
 Certificate of Appreciation from Georgetown University Law Center for Professional Achievement, 1993
 Citation from the National Council of Juvenile and Family Court Judges and the National District Attorneys Association, 1993
 Certificate of Appreciation from the Urban Services Agency for services rendered to the Youth Forum: 1992, 1991
 Citation from the Women Legislators of Maryland, 1990
 Certificate of Appreciation from the Maryland State Bar Association for participation in Law Related Education Program, 1990
 Award from the Northwest Citizens Patrol, 1989
 Award from the Fraternal Order of Correctional Associates, 1989
 Acknowledgement in *The Feminist Papers: From Adams to de Beauvoir*, edited by Dr. Alice S. Rossi, 1988
 AMERICAN CRIMINAL LAW REVIEW (at Georgetown): Editor, 1973-1974; Associate Editor, 1972-1973

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

Advanced Scientific and Technological Adjudicative Resource (“ASTAR”) Judge/Fellow
 Planning Committee (2006-2007) for National Judges’ Science School,
 “Neuroscience & Bio-Behavioral Technologies,” Johns Hopkins University School of
 Medicine (held in Fall 2007)

American Bar Association
 American Bar Foundation
 Sustaining Life Fellow

Baltimore City Bar Foundation
 Fellow

Bar Association of Baltimore City
 Judicial Administration Committee (approximately 1991 to 1994, 1996)
 Special Committee on Fee Abuse (1988)

Circuit Court for Baltimore City
 Civil Courts Committee
 Juvenile and Family Law Committee
 Chair, Sentencing Review Panel (1992 to 1993)

Committee to Revise the Local Rules of the U.S. District Court, District of Maryland
 The Court of Appeals of Maryland Standing Committee on Rules of Practice and
 Procedure
 Chair, Appellate Rules Subcommittee (2008 to present)

Federal Bar Association, Maryland Chapter
 Board of Governors (1987 to 1988)

Fourth Circuit Judicial Conference

J. Dudley Digges Inn of Court, Chapter XIII of American Inns of Court Foundation

Judge Norman P. Ramsey Lecture Committee

Lawyers’ Round Table Law Club

Maryland Alternative Dispute Resolution Commission, Central Maryland Regional
 Advisory Board

Maryland Bar Foundation
 Fellow

Maryland Judicial Conference
 Legislative Subcommittee of the Executive Committee (approximately 1999 to 2000)
 Committee on Juvenile Law (approximately 1993 to 1998)
 Cast Member, “Trial of the Future” (presentation on technology) (1997)

The Maryland State Bar Association, Inc.

Monumental City Bar Association

National Association of Women Judges
 Committee Member, NAWJ 25th Anniversary – Supreme Court Reception (2003)

Rule Day Law Club

United States Magistrate Merit Selection Panel, District of Maryland

University of Maryland School of Law, Judicial Clerkship Advisory Committee

The Women’s Bar Association of Maryland

The Women's Law Center of Maryland, Inc.
Wranglers Law Club
President (1995 to 1996)

10. **Bar and Court Admission:**

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

Maryland, 1974

There has been no lapse in membership.

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

Maryland, 1974

United States District Court for the District of Maryland, 1975

United States Court of Appeals for the Fourth Circuit, 1975

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Advocates for Children and Youth, Inc. (1994 to 1996)

The Associated Jewish Community Federation of Baltimore (1995 to 1996)

Homeland, Roland Park, Guilford Outreach Committee (1995 to 1996)

Baltimore Jewish Council (1987 to 2000)

Chair, World Jewry and International Human Rights Committee (1992 to 1993)

Chair, Holocaust Remembrance Committee (formerly Holocaust Activities Committee) (1988 to 1992)

Delegate-At-Large (1996 to 2000)

Baltimore Women's Forum (1998)

The Black-Jewish Forum of Baltimore (approximately 1989 to 1992)

Goucher College Trustee (1996 to present)

Chair, Goucher College Committee Celebrating 20 Years of Women's Studies (1995 to 1996)
 Coldspring Swim Club (approximately 1979 to 1990)
 Guilford [Neighborhood] Association, Inc. (1987 to present)
 Hadassah
 Life Member (1998 to present)
 Library Company of the Baltimore Bar (1994 to present)
 National Association for the Advancement of Colored People, Inc.
 Life Partner (1998 to present)
 Roland Park Baseball Leagues, Inc. (1998 to 2004)

From time to time in previous years, my husband and I supported various cultural institutions, and may have been considered as "members." The institutions included The Baltimore Museum of Art; The Baltimore Zoo; The Maryland Science Center; The National Aquarium; The Walters Art Gallery; The Smithsonian; The National Geographic Society; The Kennedy Center; and The Holocaust Museum. I do not recall the dates of membership.

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

In 1998, I joined, for one year, the Baltimore Women's Forum, a women's professional and networking organization. Its sole function, to my knowledge, is to host luncheons at which prominent and accomplished persons, male and female, address the group on a variety of topics. To the best of my knowledge, no other organization listed above currently discriminates or previously discriminated on the basis of race, sex, religion, or national origin.

12. Published Writings and Public Statements:

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

Lawrence Rodowsky: A Man of Many Tastes and Talents, 60 MD. L. REV. 788 (2001)

Juvenile Court: The Guardian of Children, 27 MD. BAR J. 9 (1994)

Note, *The Right to Raise a Child*, 26 RES IPSA LOQUITUR: GEORGETOWN REVIEW OF LAW AND PUBLIC INTEREST 24 (Winter 1974)

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

I have searched my files and electronic databases in an effort to locate all reports, memoranda or policy statements that are responsive to this question. I have located the materials listed below, but it is possible there are a few that I have been unable to identify.

What You Need to Know About ASTAR – Advanced Science and Technology Adjudication Resource Project (Apr. 2008) (submitted to the Maryland State’s Attorney’s Association and the Maryland Criminal Defense Attorneys’ Association)

Report for Baltimore Jewish Council, as Chair of World Jewry and International Human Rights Committee (Dec. 2, 1992)

Report for Baltimore Jewish Council meeting, as Chair of World Jewry and International Human Rights Committee (Nov. 1992)

Action Alert for Baltimore Jewish Council, World Jewry and International Human Rights Committee (Summer 1992; no copy; it addressed concerns about ethnic cleansing in Bosnia–Herzegovina)

Report for Baltimore Jewish Council meeting, as Chair of World Jewry and International Human Rights Committee (1992)

Report for Baltimore Jewish Council meeting, as Chair of Holocaust Remembrance Committee (May 7, 1991)

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

None.

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

I have searched my files and electronic databases in an effort to locate information or materials related to all of my speaking engagements over the years. As with my response to Question 12(b), it is possible there are a few I have been unable to identify.

Orientation, Judicial Nominating Commissions: "The Role of the Appellate Court" (Sept. 19, 2007)

Panelist, "The ASTAR PROJECT – Science and Technology Education for Maryland's Judges," Maryland Defense Counsel, Inc., Baltimore (Nov. 14, 2006) (no prepared remarks; no notes)

Panelist, "Appellate Advocacy," Univ. of Balt. School of Law (June 29, 2005)

Panelist, Univ. of Balt. School of Law (June 9, 2004) (no notes; discussion about appellate advocacy, including brief writing and oral argument)

Panelist, "How Judges Calculate Money in Family Law Cases," Maryland Trial Lawyers Association (Apr. 2, 2004)

Moderator, panel discussion on the role of the courts, Goucher College Committee of Visitors (Apr. 10, 2003) (no prepared remarks; no notes)

Introduction of Judge James R. Miller, Jr., Lawyers' Round Table Law Club (Nov. 11, 2002)

Panelist, "The Importance of Oral Argument," Maryland Trial Lawyers Association (June 7, 2002)

Remarks to University of Maryland law students enrolled in Professor Christopher Brown's class on the Maryland appellate courts (Mar. 21, 2002; no notes)

"Terrorism and Executive Power: What Happened to Checks and Balances?," The Lawyers' Round Table Law Club (Feb. 25, 2002)

Introduction of Judge Diana G. Motz, Lawyers' Round Table Law Club (Mar. 19, 2001)

Panelist, "Appellate Advocacy," The Maryland Legal Services Partnership Conference (Jan. 21, 2000) (remarks have not been located)

Panelist, discussion on clerking, Univ. of Balt. School of Law (Oct. 25, 1999)

Remarks at the Retirement Dinner in honor of Judge Richard T. Rombro, The Johns Hopkins Club (Apr. 22, 1999)

Remarks, The Women's Law Center of Maryland, Inc. (Oct. 21, 1998)

Keynote Address, Hadassah Attorneys' Council (Oct. 20, 1998)

"Appellate Practice," Women's Bar Association (May 27, 1998)

Panelist, Attorney General's Appellate Advocacy Program (Nov. 13, 1997; no notes)

Remarks to combined meeting of National Association of Women Judges, Maryland Chapter, and Women Legislators of Maryland (Feb. 19, 1997)

"Physician Assisted Suicide," The Torch Club (Feb. 13, 1997)

Panelist, Attorney General's Appellate Brief Writing Program (Oct. 23, 1996; no notes)

Remarks to students at Goucher College (Mar. 27, 1996)

"Women and Minorities in the Judiciary," American Bar Association Mid Year Meeting, Torts and Insurance Practice Section (Feb. 2, 1996)

Remarks at Federal Bar Association luncheon honoring U.S. District Judges
Andre M. Davis and Catherine C. Blake (Dec. 8, 1995)

“A View from the Appellate Bench,” National Association of Women Judges,
Maryland Chapter (Nov. 15, 1995)

Panelist, Governor’s Third Conference on Child Abuse and Neglect
(Apr. 28, 1995)

Remarks, Investiture of Master Patricia Brown, Circuit Court for Baltimore City
(Jan. 11, 1995)

Remarks at Investiture Ceremony as Judge of the Maryland Court of Special
Appeals (Oct. 3, 1994)

Speaker, “The Nuts and Bolts of a Personal Injury Automobile Case,” American
Bar Association Annual Meeting, Torts & Insurance Practice Section,
New Orleans, Louisiana (Aug. 9, 1994) (remarks have not been located)

Speaker, “Fourth Tuesdays with the Best in the Business” series,
Commercial Real Estate Women of Baltimore, Inc. (June 28, 1994)
(remarks have not been located; I cannot recall the topic)

Presenter, Week of Remembrance (Holocaust), Church of the Redeemer,
Baltimore (Apr. 17, 1994) (no notes)

“Complexities Faced in the Release of NCR Patients Who Have Committed
Very Violent Acts,” Medical Services of the Circuit Court for Baltimore
City (Apr. 13, 1994) (remarks have not been located)

Introduction of Igor Merkoulenko, Odessa Task Force, Baltimore Jewish
Council (May 3, 1993)

Speaker, Child in Need of Assistance Proceedings, American Academy of
Pediatrics, Maryland Chapter, Committee on Substitute Care and Child
Maltreatment (Apr. 1993) (remarks have not been located)

Remarks to Goucher College students enrolled in Professor Marianne Githens’
political science class (Apr. 1993) (no notes or remarks have been
located; I believe that I discussed the role of the judiciary)

Moderator, “Family Violence and Restorative Justice,” 20th National Conference
on Juvenile Justice (sponsored by National Council of Juvenile and Family
Court Judges and National District Attorneys Association) Seattle,
Washington (Mar. 1, 1993) (no notes)

“Just How Strong is an 800 Pound Gorilla – The Kaye, Scholer Fiaseo,” The
Rule Day Law Club (Feb. 8, 1993)

Remarks about Maryland’s Juvenile Court System, presented to lawyers
representing children, Baltimore (Jan. 20, 1993) (no notes)

Remarks, Jewish Community Task Force on Child Abuse (Nov. 19, 1992)

Remarks, Yom Ha’Shoah Public Commemoration (May 3, 1992)

Remarks, Opening of “The Courage to Remember Exhibit,” Baltimore (Apr. 9,
1992)

Remarks, Yom Ha’Shoah Public Commemoration (Apr. 14, 1991)

“Can You Have It All? Women and the Legal Profession,” The Women’s Law
Center of Maryland, Inc. (Nov. 6, 1991)

Introduction of Richard Horowicz, Northwestern High School Social Studies
Head, Baltimore Jewish Council (Oct. 29, 1991; no notes)

Remarks, Baltimore Hebrew University (Apr. 7, 1991)
 Remarks, Baltimore Jewish Council meeting (Mar. 21, 1991)
 Remarks, Gan Yeladin (child care facility) (1991)
 Remarks, Baltimore Jewish Council program featuring Leon Wieseltier
 (Jan. 30, 1990)
 Remarks, Beth El Synagogue Men's Club (Sept. 24, 1989) (no notes; I cannot
 recall the topic)
 Remarks to synagogue group in Baltimore (Mother's Day, either 1989 or 1990)
 Remarks, Independent Republication Coalition, Baltimore (Sept. 12, 1989) (no
 notes; discussion of the legal system in Maryland)
 Remarks to new Maryland bar admittees on behalf of the Circuit Court for
 Baltimore City (July 13, 1989)
 Remarks, Yom Ha'Shoah Public Commemoration (Apr. 30, 1989)
 Discussion Coordinator, "The Quality of Law Practice in the 1990's: Home Life
 & Practice Pressure – What Price Professional Success?," Maryland State
 Bar Association, Columbia, Maryland (Mar. 1989) (no notes)
 Remarks at Investiture Ceremony as Judge of the Circuit Court for Baltimore City
 (Mar. 1, 1989)
 Remarks, Baltimore Jewish Council (Nov. 7, 1988) (no notes; dedication of
 Joseph Shepherd statue at Baltimore's Holocaust Memorial)
 Remarks, Orientation for New Board Members, Baltimore Jewish
 Council (Sept. 23, 1988)
 "The AIDS Crisis," Wranglers Law Club, Baltimore (1988)
 Remarks, Investiture Ceremony of the Honorable Catherine C. Blake as United
 States Magistrate Judge, U.S. Courthouse (Apr. 29, 1987)

Following my appointment to the Circuit Court for Baltimore City by Governor
 William D. Schaefer on February 2, 1989, I became a judicial candidate to retain
 my seat. During the twenty-month campaign, my two running mates and I (the
 incumbent judges) made frequent campaign appearances, at which we generally
 made brief, extemporaneous remarks about our judicial qualifications. No notes
 or copies of these remarks are available, other than as cited above. In addition, as
 a trial judge, I occasionally spoke to elementary, middle, and high school students
 in connection with Law Day events, mock trials, and moot court competitions. I
 do not know the dates, nor have I been able to locate copies of any remarks or
 notes. The topics concerned the role of the judiciary and an explanation of the
 trial process.

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

I have searched my files and electronic databases in an effort to locate each time I
 have spoken on the record to a reporter, but it is possible that I have not been able
 to identify every interview. I possess some of the broadcast interviews listed

below (self-recorded VHS tapes) and transcripts of my remarks will be forthcoming.

Broadcast

WJZ-TV, interview about the ASTAR program (Oct. 26, 2005)
 FOX 45-TV, interview at BWI Airport about being caught at the airport with my family during a blizzard (Mar 1994)
 "Court Talk" radio program (Oct. 19, 1993) (call letters unknown)
 FOX 45-TV, interview about juvenile court (Sept. 10, 1992)
 WMAR-TV, interview about judicial primary election results (Sept. 12, 1990)
 WEA Radio, judicial election campaign appearance (Sept. 5, 1989)
 WCBM Radio, judicial election campaign appearance (July 2, 1989)
 WBAL-TV, interview about *United States v. John Anthony Walker, Jr. and Michael Lance Walker* (July 11, 1985)

Print

Karen Nitkin, *Ellen L. Hollander*, THE DAILY RECORD LEADERSHIP IN LAW 2008, Fall 2008, at 10.
 Rich Shea, *Fatherland*, JOHNS HOPKINS MAGAZINE, Feb. 2008, at 44.
 Ellen L. Hollander, THE WASHINGTON POST, Nov. 2, 2006.
 Thomas L. McCally, Esq., Kelly M. Lippincott, Esq., and Leaelia Banks, Esq., *Back to School: The ASTAR Project Educates Judges on Science and Technology*, CARR MALONEY P.C., LEGALLY SPEAKING, A QUARTERLY REPORT OF IMPORTANT LEGAL MATTERS, late 2006 or early 2007.
 Peter Jensen, *Happy Campers; Deluxe camps and exotic travel programs for kids are flourishing, but there's a catch: Just look at what they cost*, THE BALTIMORE SUN, Apr. 13, 2003, at 1N.
 Joe Surkiewicz, *Commentary: Md. governor criticized for not filling court vacancies*, THE DAILY RECORD, July 17, 2001.
 Peter Geier, THE DAILY RECORD, Dec. 6, 2000, at 1C.
Maryland's Top 100 Women, Supplement to THE DAILY RECORD, May 2000, at 16, 51.
 GOUCHER QUARTERLY, Winter 1999, at 25.
 Elizabeth Large, *In praise of tradition, and holiday memories; Thanksgiving: From Coach Billiek to Judge Hollander, Marylanders just love this day. Here's why*, THE BALTIMORE SUN, Nov. 21, 1999, at 1N.
 Andrea F. Siegel, *Three women take the bench on historic day; They make up a panel to hear appellate cases*, THE BALTIMORE SUN, Sept. 3, 1998, at 2C; photo with quote on page 6C.
Maryland's Top 100 Women, Supplement to THE DAILY RECORD, Mar. 28, 1998, at 40.
 Mary E. Medland, *Alpert Praised Upon Retirement For 'Real Sense of Humanity' Intermediate Appellate Court Jurist Counted Private Practice, Service In Legislature Among Laurels; Helped Create Md. Public Defenders*, THE

- DAILY RECORD, Nov. 22, 1995, at 9.
- Barbara Pash, *Appointment With Destiny: In her new state post, Ferrier Stillman hopes to help people on a broad scale*, BALTIMORE JEWISH TIMES, Mar. 17, 1995, at 40.
- Lisa S. Goldberg, *Monumental Task: Jewish leaders say Baltimore's Holocaust Memorial needs a new design to convey its message*, BALTIMORE JEWISH TIMES, Sept. 30, 1994, at 30.
- Sun Staff Writer, *Baltimore Judge Gets Promotion*, THE BALTIMORE SUN, Sept. 8, 1994, at 2C.
- Mike Klingaman, *Jukebox collectors nostalgic for the 'clunk' of simpler era*, THE BALTIMORE SUN, Feb. 12, 1994, at 1D.
- Erin Murphy, *Price of Success for Women Lawyers Examined at Seminar*, THE DAILY RECORD, Nov. 14, 1991, The Md. Lawyer Section, at 1, 12.
- William Thompson, *Appointment of judge seen easing tensions*, THE EVENING SUN, Oct. 5, 1990, at A12.
- Wiley Hall, *How to Judge City's Judges*, BALTIMORE SUN, Sept. 20, 1990.
- M. Dion Thompson, *Baltimore Judges Race May Be Decided on Nov. 6*, BALTIMORE SUN, Sept. 13, 1990.
- Jef Feeley, *Smith Forces Incumbent City Judges to Run in Nov. Election, Challenger Finished 3rd in Last Week's Dem. Primary*, THE DAILY RECORD, Sept. 17, 1990, at 9.
- Tzvi Dole, *Candidates Show Little Disagreement on Issues*, THE BALTIMORE JEWISH TIMES, Sept. 7, 1990, at 26.
- Patrick Gilbert, *Schaefer vows fight for three judges*, THE EVENING SUN, Aug. 6, 1990, at D1, D3.
- Mary E. Medland, *Quality of life issues break law firms' gender barriers*, BALTIMORE BUSINESS JOURNAL, June 25 to July 1, 1990, at 6.
- Jef Feeley, *Sitting Judges File for Election, Dismiss Claims About Improperly Recruiting Students*, THE DAILY RECORD, Apr. 4, 1990, at A5.
- Amy J. Metler, *Citizens patrol makes Park Heights area safer*, THE BALTIMORE SUN, Mar. 11, 1990, at 8B.
- Jef Feeley, *Smith Challenges Sitting City Circuit Court Judges, District Judge's Bid Sets Up Contested Election*, THE DAILY RECORD, Mar. 5, 1990, at 3.
- Linell Smith, *Her destination was Auschwitz*, THE EVENING SUN, Sept. 1, 1989, at A1.
- Marc D. Minkove, *Personality Profile, New Faces At The Circuit Court*, THE BARRISTER, Summer 1989, at 10-11.
- Inda Schaenen, *Born To The Law - Ellen Hollander: New Judge of the Circuit Court*, BALTIMORE MESSENGER, May 10, 1989.
- Mary Maushard and Kevin Thomas, *Career first vs. family first*, THE EVENING SUN, Mar. 15, 1989, at B1.
- Nora Frenkiel, *The Mommy Track*, THE SUN, Mar. 14, 1989, at C1.
- Jef Feeley, *Woman Named to City Court, Schaefer Taps Hollander and Rombro for Circuit*, THE DAILY RECORD, Feb. 3, 1989, at 6.
- Jef Feeley, *Six Make Cut For Judgeship*, THE DAILY RECORD, Dec. 7, 1988, at A14.

Ann G. Sjoerdsma, *Part-Time Practitioners*, MARYLAND BAR JOURNAL, June 1986, at 19.

Michael Walker Granted Prison Transfer, THE ASSOCIATED PRESS, Aug. 23, 1985.

Patrick Breslin, *Michael Walker Wins Transfer From Maryland Jail To Federal Prison*, THE ASSOCIATED PRESS, Aug. 22, 1985.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was appointed to the Maryland Court of Special Appeals by Governor William Donald Schaefer on September 2, 1994, and took the oath of office on October 3, 1994. (I immediately began sitting with the Court, by designation, pending administration of the oath.) I was confirmed by the Maryland Senate during the 1995 legislative session. In November 1996, I ran, unopposed, in a non-partisan, statewide retention election and was elected to a ten-year term. In November 2006, I was again elected to another ten-year term. The Court of Special Appeals, an appeals court of right, is the second highest court in Maryland's judicial system. The Court's thirteen judges hear oral arguments in Annapolis with respect to cases litigated in the state's circuit courts, orphans' courts, and the Maryland Tax Court. Unless otherwise provided by law, the Court has exclusive initial appellate jurisdiction over reviewable judgments, decrees, and orders of the circuit courts, orphans' courts, and the Maryland Tax Court. (The exceptions include death penalty cases and attorney disbarment proceedings). The Court's opinions are subject to review by Maryland's highest court, the Court of Appeals, by way of certiorari.

I was appointed to the Circuit Court for Baltimore City by Governor William Donald Schaefer on February 2, 1989, and took the oath of office on March 1, 1989. In November 1990, I was elected by the voters of Baltimore City to a fifteen-year term. Maryland's circuit courts are the state's trial courts of general jurisdiction, both civil and criminal, and are the only courts in the Maryland judicial system that conduct jury trials. They also hear appeals from administrative agencies and the State's district courts.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I am unable to answer this question with precision. However, based on my length of service as a trial judge (more than five and a half years), coupled with the high volume of cases handled by the Circuit Court for Baltimore City, I estimate that I have presided over the closing of thousands of cases, and hundreds that have gone to verdict or judgment based on a decision that I made.

- i. Of these, approximately what percent were:

jury trials:	50%;
bench trials:	50%

civil proceedings: 50%;
 criminal proceedings: 50%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

Please see attached list of appellate and trial court opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

Trial

1) *State v. Ricardo Burks*, Circuit Court for Baltimore City, Case No. 191162006, 07 (1991), *aff'd*, 96 Md. App. 173, *cert. denied*, 332 Md. 381 (1993). Ricardo Burks was charged with four homicides and related offenses. Three of the homicide victims were teenagers, and the State sought life without parole. Mr. Burks filed a pre-trial motion to suppress evidence, challenging the warrantless entry into the motel room where he held two hostages, and his custodial statement. Following a lengthy evidentiary hearing, I rendered an oral opinion denying the motion. The jury subsequently convicted Mr. Burks of two second-degree murders and related offenses. The case was affirmed on appeal.

The defense attorney was Bridget Shepherd, Esq., Assistant Public Defender, 201 St. Paul Place, Baltimore, MD 21202; 410-333-4900. The prosecutor was Rex Schultz Gordon, Esq., Office of the Attorney General, 19th Floor, 200 St. Paul Place, Baltimore, MD 21202; 410-576-6300.

2) *Joseph Rolnik v. Union Labor Life Ins. Co. & Sheppard & Enoch Pratt Hosp.*, Circuit Court for Baltimore City, Case No. 87-313071/CL735310. Joseph Rolnik and his daughter sued their insurance company because it denied payment of over \$97,000 in medical expenses incurred as a result of Ms. Rolnik's hospitalization for a mental illness. The plaintiffs alleged that the insurer violated the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461. In turn, the hospital sued the Rolniks for unpaid medical expenses. Following a bench trial in 1991, which included substantial evidence as to the patient's mental illness, I issued a written opinion in favor of the plaintiffs, concluding that the hospitalization was medically necessary and that the insurer improperly denied benefits. I also determined that the plaintiffs were liable to the hospital.

Mark Mixter, Esq., Floor 9, 20 S. Charles Street, Baltimore, MD 21201-3220; 410-539-8415, represented the plaintiffs. Thomas Trezise, Esq., Convergent

Insurance Services, LLC, #295, 76 Cranbrook Road, Cockeysville, MD 21111; 410-472-1422, represented the hospital. Kenneth L. Thompson, Esq., DLA Piper US, LLP, 6225 Smith Ave., Baltimore, MD 21209-3600; 410-580-4272, represented the insurer.

3) *State v. Henry Howard*, Circuit Court for Baltimore City, Case No. 18222514 (1991). Henry Howard murdered four members of his family in 1982, when he was twenty-one years old. He was found not criminally responsible and was committed to a state mental institution. Ten years later, the Maryland Department of Health and Mental Hygiene sought Mr. Howard's conditional release, pursuant to the Health-General Article of the Maryland Code. The State's Attorney for Baltimore City opposed the request. Several psychiatrists and other witnesses testified at the hearing in 1991. In a written opinion, I concluded that the Department met the burden of proof for Mr. Howard's conditional release, with strict supervision.

Defense counsel was Hon. George Lipman (former Assistant Public Defender), Edward F. Borgerding Courthouse, 5800 Wabash Avenue, Baltimore, MD 21215-3330; 410-878-8107. The prosecutor was Edwin Wenck, Esq., Legal Aid Bureau of Maryland, 500 E. Lexington Street, Baltimore, MD 21202; 410-951-7726. Janet Klein Brown, Esq., Assistant Attorney General, 300 W. Preston Street, Suite 302, Baltimore, MD 21201-2308; 410-767-1865, represented the Department.

4) *Robert T. Manfuso v. Joseph A. DeFrancis*, Circuit Court for Baltimore City, Case No. 24-C-92-120052 (1992-1993). This specially assigned case involved a corporate dispute with respect to two Maryland racetracks. In a written opinion, I upheld the enforceability of a "Russian Roulette" buy-sell provision in the parties' Stockholders Agreement. The plaintiffs also sought interlocutory injunctive relief, to enjoin termination of severance payments under the parties' Stockholders Agreement. In an oral ruling, I denied the motion. The case eventually settled.

The Manfuso brothers were represented by Andrew Jay Graham, Esq., and James P. Ulwick, Esq., Kramon & Graham, PA, 1 South Street, Suite 2600, Baltimore, MD 21202; 410-752-6030, and Herbert Garten, Esq., Fedder and Garten Professional Association, 36 S. Charles Street, Suite 2300, Baltimore, MD 21201; 410-539-2800. The DeFrancis group was represented by James E. Gray, Esq., Venable, LLP, 750 E. Pratt Street, Suite 900, Baltimore, MD 21202-3157; 410-244-7400, and Linda S. Woolf, Esq., Goodell, Devries, Leech & Dann, LLP, Floor 20, 1 South Street, Baltimore, MD 21202; 410-783-4011. McGee Grigsby, Esq., Latham & Watkins, 555 11th Street, N.W., Washington, D.C. 20004; 202-637-2200, represented the corporate defendants.

5) *Cylburn Arboretum Ass'n, Inc. v. Mayor & City Council of Balt.*, Circuit Court for Baltimore City, Case No. 93-330046/CL173182 (1993 to 1994), *aff'd*, 106 Md. App. 183, *cert. denied*, 339 Md. 642 (1995). A developer sought to establish

a Planned Unit Development in an area abutting a public park in Baltimore. The Association challenged a decision of the Mayor and City Council, which approved the developer's application for a zoning change. In a written opinion, I concluded that the Association lacked standing and granted the motions to dismiss filed by the City and the developer. The opinion was affirmed on appeal.

Walter Finch, Esq., and Ruth Finch, Esq., represented the Association. I have been unable to obtain contact information for them. Burton Levin, Esq. (then Assistant City Solicitor), was counsel for Baltimore City, P.O. Box 782, 175 Main Street, Edwards, CO 81632; 970-926-3695. The developer was represented by Jeffrey H. Scherr, Esq., Kramon & Graham, PA, 1 South Street, Suite 2600, Baltimore, MD 21202; 410-752-6030.

6) *Francina Arrington v. Jose Rodriguez*, Circuit Court for Baltimore City, Case No. PD70-119070 (1989), *aff'd*, No. 1690, Sept. Term, 1990 (filed July 22, 1991). This case concerned the question of whether a father's due process rights were violated in connection with his purported consent to an enrolled paternity decree. In a written opinion, I concluded that the father's language barrier did not vitiate his consent to paternity. Therefore, I denied his Motion to Strike the Consent Paternity Decree. My opinion was affirmed on appeal.

Counsel for Mr. Rogriguez was Hon. Alfred Nance (now a judge, Circuit Court for Baltimore City), 111 North Calvert Street, Baltimore, MD 21202; 410-396-4020. Sondra H. Crain, Esq., 2509 Velvet Valley Way, Owings Mills, MD 21117; 410-484-4400, represented Ms. Arrington.

Appellate

7) *Christensen v. Philip Morris USA, Inc.*, 162 Md. App. 616 (2005), *aff'd in part, vacated in part*, 394 Md. 227 (2006). In a case of first impression in Maryland, I authored an opinion for the Court of Special Appeals holding that the pendency of a class action tolls the statute of limitations for putative class members who are not named as individual plaintiffs. The opinion also reversed the grant of summary judgment in favor of the one corporate defendant that was not sued in the class action, and remanded to the trial court for reconsideration in light of *Benjamin v. Union Carbide*, 162 Md. App. 173 (2005). The Court of Appeals affirmed as to the class action and also agreed with the reversal. But, having since affirmed *Benjamin*, 394 Md. 59 (2006), it vacated for reconsideration in light of its own decision in *Benjamin*.

The principal attorney for the appellants was Edward J. Lilly, Esq., Law Office of Peter G. Angelos, 100 N. Charles Street, Baltimore, MD 21201; 410-649-2000. Appellees were represented by Bruce D. Ryder, Esq., Thompson, Coburn LLP, One U.S. Bank Plaza, St. Louis, MO; 314-552-6102, and Kathleen McDonald, Esq., Kerr, McDonald LLP, 31 Light Street, Suite 400, Baltimore, MD 21202; 410-539-2900.

8) *Reese v. Dep't of Health & Mental Hygiene*, 177 Md. App. 102 (2007). I authored an opinion concluding that the due process rights of an intellectually disabled person were violated by a state statutory scheme that did not afford an opportunity to be heard with regard to the agency's denial of an application for admission to a state residential center.

Daniel Rabinowitz, Esq., argued for appellant, while at Sidley Austin, LLP, in Washington, D.C.; 202-736-8000. I am unable to obtain his current contact information. Nirali D. Patel, Esq., appeared on the brief for appellant, Willkie Farr and Gallagher LLP, 1875 K Street, N.W., Washington, D.C.; 202-303-1000. Kathleen Ellis, Esq., Assistant Attorney General, 300 W. Preston Street, Room 302, Baltimore, MD 21201; 410-767-1867, represented appellee.

9) *Brandon v. Molesworth*, 104 Md. App. 167 (1995), *aff'd in part, rev'd in part*, 341 Md. 621 (1996). In a case of first impression in Maryland, I wrote the Court's opinion determining that Maryland's Fair Employment Practices Act constituted a clear mandate of public policy prohibiting gender discrimination in employment, and recognizing a common law cause of action for wrongful discharge as to small employers not covered by the State's fair employment statute. The Court of Appeals affirmed. However, it disagreed that the trial court erred by failing to propound a jury instruction as to the "same actor" inference.

The case was argued for the appellants by E. Alexander Adams, Esq., Adams & Adams, 5300 Dorsey Hall Dr., Ellicott City, MD 21042; 410-992-1477. The case was argued for the appellee by Alan H. Legum, Esq., 275 West Street, Annapolis, MD 21401; 410-263-3001.

10) *Davis v. DiPino*, 121 Md. App. 28 (1998) (en banc), *aff'd in part, rev'd in part*, 354 Md. 18 (1999). Pursuant to 42 U.S.C. § 1983, the plaintiff alleged numerous federal and state constitutional claims and common law tort claims arising from his arrest for hindering and obstructing two police officers in the performance of their duties; that the Mayor and City Council of Ocean City were liable for the constitutional violations, based on respondeat superior; and that the Court Commissioner unlawfully issued an arrest warrant. In a seven-to-six decision, I wrote for the majority, vacating the judgments in favor of Officer DiPino on the federal and state constitutional claims; vacating the judgments in favor of Officer DiPino and Ocean City for malicious prosecution; affirming the judgments on other intentional tort claims; affirming another judgment in favor of Ocean City, based on lack of preservation; affirming the judgment for the Commissioner; and finding no error as to an evidentiary issue. With the exception of the ruling in favor of Ocean City, the Court of Appeals affirmed.

The appellant was represented by Peter Ayers Wimbrow, III, Esq., P.O. Box 56, Ocean City, MD 21842; 410-524-3440. Guy R. Ayres, III, Esq., argued for Officer DiPino and Ocean City, Suite 200, 6200 Coastal Highway, Ocean City,

MD 21842; 410-723-1400. Commissioner Turner was represented by Julia M. Freit, Esq., Assistant Attorney General, Office of the Attorney General, 200 St. Paul Place, Baltimore, MD 21202; 410-576-6300.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1) *French v. Hines*, 182 Md. App. 201 (2008). Appellant was represented by Karen J. Kruger, Esq., Senior Assistant County Attorney, Harford County Law Department, 220 S. Main Street, Bel Air, MD 21014; 410-638-3205. Michael P. Tanczyn, Esq., Suite 106, 606 Baltimore Avenue, Towson, MD 21204; 410-296-8823, argued for appellees.

2) *Barber v. Catholic Health Initiatives, Inc.*, 180 Md. App. 409, *cert. denied*, 406 Md. 192 (2008). Appellants were represented by Jeffrey S. Goldstein, Esq., Suite 322, 10320 Little Patuxent Parkway, Columbia, MD 21044; 410-884-6890. I believe that Angus Everton, Esq., Morgan Carlo Downs Everton PA, Executive Plaza IV, Suite 100, 11350 McCormick Road, Hunt Valley, MD 21031; 410-584-2800, argued for appellees. Appellees were also represented by Thomas Marriner, Esq., Wharton Levin Ehrmantraut & Klein, 104 West Street, P.O. Box 551, Annapolis, MD 21404; 410-263-5900.

3) *The Wellington Co, Inc. Profit Sharing Plan & Trust v. Shakiba*, 180 Md. App. 576 (2008). Appellant was represented by Richard Basile, Esq., Suite 416, 6305 Ivy Lane, Greenbelt, MD 20770; 301-441-4900. Brian S. Jablon, Esq., Wellens & Jablon, LLC, #C, 540 Baltimore Annapolis Blvd., Severna Park, MD 21146; 410-647-1493, argued for appellee.

4) *Md.-Nat'l Capital Park & Planning Comm'n v. Anderson*, 164 Md. App. 540 (2005), *aff'd*, 395 Md. 172 (2006). Appellant was represented by William C. Dickerson, Esq., 6611 Kenilworth Avenue, Riverdale, MD 20737; 301-454-1670. Michael L. Marshall, Esq., Schlachman, Belsky, Weiner, PA, Suite 1100, 300 E. Lombard Street, Baltimore, MD 21202; 410-685-2022, argued for the appellee.

5) *Owens v. State*, 170 Md. App. 35 (2006), *aff'd*, 399 Md. 388 (2007), *cert. denied*, 552 U.S. 1144 (2008). Peter F. Rose, Esq., Assistant Public Defender, Suite 1400, 6 St. Paul Street, Baltimore, MD 21202 410-767-2957, argued for the appellant. Mary Ann Ince, Esq., Assistant Attorney General, 200 St. Paul Street, Baltimore, MD 21202; 410-576-6970, argued for the State.

6) *Rios v. Montgomery County*, 157 Md. App. 462 (2004), *aff'd*, 386 Md. 104 (2005). The appellant was represented by Brian C. Johnson, Esq., Greenberg & Bederman LLP, 1111 Bonifant Street, Silver Spring, MD 20910; 301-589-2200. Karen L. Federman Henry, Esq., Office of the County Attorney, Executive Office

Building, 101 Monroe Street, Floor 3, Rockville, MD 20850; 240-777-6700, argued for the defense.

7) *Knapp v. Smethurst, Jr.*, 139 Md. App. 676 (2001). Appellants were represented by Cynthia Young, Esq., 1200 West Street, Annapolis, MD 21401; 410-269-7699. Raymond S. Smethurst, Jr., Esq., One Plaza East, 6th Floor, P.O. Box 4247, Salisbury, MD 21803; 410-749-0161, argued for appellees.

8) *Richman v. FWB Bank*, 122 Md. App. 110 (1998), *aff'd*, 354 Md. 472 (1999). Appellants were represented by Mark L. Schaffer, Esq., The Shaffer Law Firm, Suite 1100, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006; 202-223-3211. Thomas D. Murphy, Esq., Suite 2, Adams Law Center, 31 Wood Lane, Rockville, MD 20850; 301-424-0400, argued for the appellee.

9) *Univ. of Balt. v. Iz*, 123 Md. App. 135, *cert. denied*, 351 Md. 663 (1998). Dawna Cobb, Esq. (former Assistant Attorney General), University of Maryland School of Law, 500 W. Baltimore Street, Baltimore, MD 21201; 410-706-8385, argued for appellants. Peri Iz appeared without counsel. I do not have contact information for her.

10) *Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship*, 109 Md. App. 217, *aff'd*, 346 Md. 122 (1996). The principal attorneys were as follows: Gregory Vangeison, Esq., 201 N. Charles Street, Suite 2000, Baltimore, MD 21201; 410-752-1630, argued for Hartford. Melvin J. Sykes, Esq., 120 E. Baltimore Street, Suite 1700, Baltimore, MD 21202; 410-962-1030, argued for Scarlett Place/Residential Condominium, Inc. Kenneth F. Spence, III, Esq., The Travelers Companies, Inc., 385 Washington Street, St. Paul, MN; 651-310-7911; argued for Scarlett Harbor and Merritt Operations. H. Patrick Donohue, Esq., 204 Monroe Street, Suite 101, Rockville, MD 20850; 301-251-0440, appeared for Security Masonry. Michael P. May, Esq., 7305 Harford Road, Baltimore, MD 21234; 410-444-7606, appeared for D'Leo and Meyers.

e. Provide a list of all cases in which certiorari was requested or granted.

I am aware of three cases for which certiorari was requested to the United States Supreme Court. I am not aware of any case for which certiorari was granted by the Supreme Court.

Owens v. State, 170 Md. App. 35 (2006), *aff'd*, 399 Md. 388 (2007), *cert. denied*, 552 U.S. 1144 (2008)

Whittington v. State, 147 Md. App. 496 (2002), *cert. denied*, 373 Md. 408 (2003), *cert. denied*, 540 U.S. 851 (2003)

Kiley v. First Nat'l Bank of Md., 102 Md. App. 317, *cert. denied*, 338 Md. 116 (1995), *cert. denied*, 516 U.S. 866 (1995)

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Circuit Court for Baltimore City: During my tenure as a trial judge (1989 to 1994), I handled thousands of cases. I believe I was reversed approximately four times. The rulings in issue may have been oral or written, and are not contained in an electronic database. Nor do I recall the particular cases that culminated in unreported reversals. I have found one reported reversal: *In re Victor B.*, 336 Md. 85 (1994). In *Victor B.*, I ruled orally that the Maryland Rules of Criminal Procedure applied to a juvenile delinquency case. The Court of Appeals concluded that the criminal rules are not applicable because a juvenile delinquency proceeding is civil in nature.

Court of Special Appeals: In more than fifteen years on the Court of Special Appeals, an intermediate appeals court of right, I have written more than 1,400 full opinions, of which over 250 are reported. The Court's unpublished opinions do not appear in an electronic database. Moreover, I did not maintain records of reversals, nor am I aware of any judicial system that tracks such information. However, I have endeavored to ascertain the requested information by searching an electronic database for opinions of the Court of Appeals, to identify cases with names similar to those of my unreported opinions.

Reported Opinions

Ametek v. O'Connor, 126 Md. App. 109 (1999), *rev'd*, 364 Md. 143 (2001). My opinion for the Court of Special Appeals concluded that an employer's credit for payments made toward an employee's worker's compensation benefits should be calculated in terms of total money previously paid. The Court of Appeals concluded that, under the statute, the credit for previous payments is determined by weeks, not dollars.

Balt. County v. Wesley Chapel Bluemount Assoc., 110 Md. App. 585 (1996), *rev'd*, 347 Md. 125 (1997), *appeal after remand*, 180 Md. App. 409, *cert. denied*, 406 Md. 192 (2008). In an opinion that I authored for the Court, opponents of a proposed development unsuccessfully sought public consideration of the development plan by the local agency. In a six to one decision, the Court of Appeals reversed, holding that the State's Open Meeting Act applied to the consideration of development plans.

Barber v. Catholic Health Initiatives, Inc., 174 Md. App. 314, *vacated and remanded*, 400 Md. 396 (2007), *appeal after remand*, 180 Md. App. 409, *cert. denied*, 406 Md. 192 (2008). The plaintiffs brought survival and wrongful death claims. My opinion concluded that the trial court erred in granting the defense's motion to dismiss the suit because the plaintiffs' Certificate of Qualified Expert

did not list the names of all defendants in the caption. Without an opinion, and without addressing the merits, the Court of Appeals issued a per curiam order, vacating and remanding for consideration in light of a decision it had just issued in *Carroll v. Konits*, 400 Md. 167 (2007).

Bell v. State, 118 Md. App. 64 (1997), *rev'd and remanded*, 351 Md. 709 (1998). After the defendant waived his right to a jury trial, he claimed that his waiver was defective. My opinion concluded that a state rule required a specific in-court advisement as to jury unanimity as a prerequisite for a defendant's valid waiver of the right to a jury trial. The Court of Appeals disagreed.

Beretta U.S.A. Corp. v. Santos, 122 Md. App. 168 (1998), *rev'd*, 358 Md. 166 (2000). My opinion considered whether a charter county had the authority to enact a statute permitting a county human relations commission to award money damages for humiliation, upon a finding of employment discrimination. The Court of Appeals concluded that the trial court's judgment was not appealable.

Blitz v. Beth Isaac Adas Israel Congregation, 115 Md. App. 460 (1997), *rev'd*, 352 Md. 31 (1998). The prevailing party in a binding arbitration proceeding lodged an action to enforce the arbitration award and sought to recover reasonable attorney's fees under a state statute. My opinion concluded that the terms "costs" and "disbursements" under the statute did not include attorney's fees. The Court of Appeals disagreed.

Brandon, D.V.M. v. Molesworth, D.V.M., 104 Md. App. 167 (1995), *aff'd in part, rev'd in part*, 341 Md. 621 (1996). The Court of Appeals agreed with my opinion that Maryland's Fair Employment Practices Act constitutes a clear mandate of public policy prohibiting gender discrimination in employment, so as to support a common law cause of action for wrongful discharge as to small employers not covered by the statute. But, the Court of Appeals disagreed with my conclusion that the trial court erred by failing to propound a jury instruction as to the "same actor" inference.

Broadcast Equities, Inc. v. Montgomery County, 123 Md. App. 363 (1998), *vacated*, 360 Md. 438 (2000). This employment discrimination case involved, *inter alia*, the issue of a charter county's authority to award money damages for humiliation, contrary to a state statute. My opinion determined that the federal constitutional claims were not ripe. As to State law issues, however, it concluded that the case fell within an exception to the rule requiring exhaustion of administrative remedies. The Court of Appeals determined that the case did not fall within the exception.

Calhoun v. Eagan, 111 Md. App. 362 (1996), *rev'd*, 347 Md. 72 (1997). My opinion determined, as a matter of law, that the doctrine of parent-child immunity did not bar a wrongful death action filed on behalf of minor children against their father, who was convicted of manslaughter in the death of the children's mother.

My opinion reversed and remanded for a new trial, because the jury did not determine whether the father's conduct was intentional. The Court of Appeals concluded that, under the facts of this case, a new trial was not warranted. It reasoned, *sua sponte*, that judicial estoppel precluded the father from denying that his conduct was intentional.

Callaway v. MAMSI Life & Health Ins. Co., 145 Md. App. 567 (2002), *rev'd and remanded*, 375 Md. 261 (2003). My opinion determined that a life insurance company improperly withheld payment of accidental death benefits for an insured who died during an act of autoerotic asphyxiation. In a five to two decision, the Court of Appeals upheld the insurer's refusal to pay.

Christensen v. Philip Morris USA Inc., 162 Md. App. 616 (2005), *aff'd in part, vacated in part*, 394 Md. 227 (2006). My opinion held that the pendency of a class action tolls the statute of limitations for members of the putative class of plaintiffs who were not named as individual plaintiffs. The Court of Appeals affirmed. My opinion also reversed the grant of summary judgment in favor of one defendant that was not sued in the class action case, and remanded for reconsideration in light of a then recent decision, *Benjamin v. Union Carbide*, 162 Md. App. 173 (2005). The Court of Appeals agreed that summary judgment was improper. But, because it had since affirmed *Benjamin*, 394 Md. 59 (2006), it vacated and remanded for reconsideration in light of its own decision in *Benjamin*.

Claggett v. Md. Agric. Land Pres. Found., 182 Md. App. 346, *rev'd*, 412 Md. 45 (2009). A grantor filed a declaratory action, claiming he was not bound by a legislative five-year restriction on transferring land, enacted after he had secured a release from an easement to construct a personal dwelling. My opinion concluded that the landowner was not bound by the legislative change. The Court of Appeals disagreed, holding that the Deed of Easement and Preliminary Release did not reserve to the grantor the right to transfer, free of restrictions.

County Comm'rs of Queen Anne's County v. Soaring Vistas Props., Inc., 121 Md. App. 140 (1998), *rev'd and remanded*, 356 Md. 660 (1999). The Court of Appeals concluded that state law preempted the field of sewage sludge utilization, including sludge storage facilities. On that basis, it found invalid a county zoning ordinance that imposed a six-month moratorium on all sludge storage facilities, and reversed my opinion, which held to the contrary.

County Council of Prince George's County v. Brandywine Enters., Inc., 109 Md. App. 599 (1996), *vacated and remanded*, 350 Md. 339 (1998). On review of the zoning hearing examiner's approval of an application for a special exception, the local administrative agency failed to render a decision within the statutory time provided. My opinion concluded that the inaction resulted in a denial of the appeal from the zoning examiner's decision, and not a denial of the special exception application. The Court of Appeals disagreed.

Davis v. DiPino, 121 Md. App. 28 (1998) (*en banc*), *aff'd in part, vacated in part*, 354 Md. 18 (1999). The plaintiff alleged state and federal constitutional violations, as well as common law torts, arising out of his prosecution for hindering two police officers in the performance of their duties. The circuit court ruled against the plaintiff on all claims. On appeal, my opinion considered numerous legal issues against each defendant, and reversed the circuit court on many issues. The Court of Appeals affirmed all but one issue, regarding the finding of lack of preservation as to claims against Ocean City.

Facon v. State, 144 Md. App. 1 (2002), *rev'd*, 375 Md. 435 (2003). My opinion vacated one of the defendant's robbery sentences, but affirmed his other convictions. Although the defendant had been presented to a Court Commissioner within 24 hours of his arrival in Maryland, as required by Maryland's prompt presentment rule, the Court of Appeals concluded that the delay was solely for interrogation, in violation of the rule. Therefore, it reversed the defendant's convictions and remanded to the trial court.

Frederick Rd., Ltd. v. Brown & Sturm, 121 Md. App. 384 (1998), *rev'd and remanded*, 360 Md. 76 (2000). In this legal malpractice case, the plaintiffs sued their former attorneys in regard to tax advice as to a land transfer. My opinion concluded that the suit was barred by the statute of limitations. In a five to two decision, the Court of Appeals reversed.

Garg v. Garg, 163 Md. App. 546 (2005), *rev'd*, 393 Md. 225 (2006). In this custody dispute, the trial court declined to exercise jurisdiction because of a pending custody case in India. The Court of Appeals concluded that my opinion erred by addressing the trial court's decision deferring appointment of counsel for the child, and in concluding that the Uniform Child Custody Jurisdiction and Enforcement Act applied, rather than the Uniform Child Custody Jurisdiction Act.

Green v. State, 145 Md. App. 360 (2002), *rev'd*, 375 Md. 595 (2003). The defendant moved to suppress drugs found in his vehicle after a routine traffic stop, claiming that his Fourth Amendment rights were violated. My opinion concluded that the defendant did not consent to the search. In a five to two decision, the Court of Appeals determined that the defendant had voluntarily consented to the search and that his consent did not expire.

Hartlove v. Md. School For The Blind, 111 Md. App. 310 (1996), *vacated and remanded*, 344 Md. 720 (1997). The school, the residuary legatee of the testator's estate, sued the personal representative, alleging breach of fiduciary duty and other claims. My opinion upheld the jury's finding of breach of fiduciary duty. Without an opinion, and without reaching the merits, the Court of Appeals vacated and remanded for reconsideration in light an opinion it had recently decided, *Kann v. Kann*, 344 Md. 689 (1997).

In re Levon A., 124 Md. App. 103 (1998), *rev'd and remanded*, 361 Md. 626 (2000). My opinion concluded that a parent of a juvenile who committed the delinquent act of unauthorized use of an automobile may be liable for restitution for damage to the car. In a five to two decision, the Court of Appeals disagreed. It reasoned that the statute did not authorize restitution against the parent.

Mitchell v. State, 132 Md. App. 312 (2000), *rev'd and remanded*, 363 Md. 130 (2001). My opinion affirmed the defendant's conviction for conspiracy to commit second-degree murder, finding that such a crime exists in Maryland. The Court of Appeals disagreed and reversed.

Moore v. Moore, 144 Md. App. 288 (2002), *rev'd sub nom. Moore v. Jacobsen*, 373 Md. 185 (2003). Applying principles of contract and statutory construction, my opinion concluded that a husband's alimony obligation survived the wife's remarriage, based on the particular facts of this case. The Court of Appeals reversed. It determined that parties must explicitly agree, in writing, in order to avoid the statutory presumption that alimony terminates upon remarriage.

Nat'l Corp. for Hous. P'ship, Meadowood Townhouse, Inc. & Injured Workers' Ins. v. Keller, 119 Md. App. 566 (1998), *rev'd and remanded*, 353 Md. 171 (1999). In this workers' compensation case, the employee's adult child was financially dependent upon the employee when the employee died from a cause unrelated to work. My opinion concluded that the adult child was a "surviving dependent" and, as a result, was entitled to receive the disability benefits that would have been awarded to the employee but for her death. The Court of Appeals reversed, concluding that dependency is determined at the time of the accident, not when benefits are awarded.

Neal v. Prince George's County, 117 Md. App. 460, *vacated and remanded*, 348 Md. 329 (1997). The plaintiff filed a negligence action after she fell on an icy sidewalk. My opinion concluded that the trial court erred in granting summary judgment for the defendants, because it was for the jury to determine whether the plaintiff voluntarily assumed the risk of falling. Without an opinion, and without reaching the merits, the Court of Appeals vacated and remanded for reconsideration in light of a case it had recently decided, *ADM P'ship v. Martin*, 348 Md. 84 (1997).

Norville v. Anne Arundel County Bd. of Educ., 160 Md. App. 12 (2004), *vacated and remanded*, 390 Md. 93 (2005). The plaintiff sued a county school board alleging federal and state age discrimination claims. My opinion concluded that the school board is an arm of the State for purposes of sovereign immunity, but that Maryland law waived sovereign immunity for any claim of \$100,000 or less. The Court of Appeals did not reach that issue. It concluded, *sua sponte*, that suit was barred by *res judicata*, because the U.S. District Court had previously dismissed, with prejudice, the federal claims in a related case, after finding that the school board is a state agency with immunity under the Eleventh Amendment.

S. Mgmt. v. Taha, 137 Md. App. 697 (2001), *vacated and remanded*, 367 Md. 564 (2002), *appeal after remand*, 378 Md. 461 (2003). The plaintiff lodged a malicious prosecution suit against his former employer and two former co-workers. The jury found for the employees but against the employer. My opinion held that the verdict against the corporation could not stand because it was inconsistent with the jury's exoneration of the two employees. The Court of Appeals vacated the ruling, concluding that a final and appealable judgment had not been entered. After final judgments were entered, the Court of Appeals determined that the jury's verdict was irreconcilably inconsistent.

Whalen v. Mayor & City Council of Balt., 164 Md. App. 292 (2005), *rev'd and remanded*, 395 Md. 154 (2006). My opinion reversed the trial court's award of summary judgment for the City of Baltimore in a negligence suit filed by a blind pedestrian who fell into an uncovered utility hole. The Court of Appeals reversed, concluding that the City was entitled to governmental immunity.

Unreported Criminal Opinions

Andrews v. State, No. 1321, Sept. Term, 1999, *rev'd and remanded*, 372 Md. 1 (2002). The defendant appealed his conviction for killing his infant daughter by "Shaken Baby Syndrome," claiming the trial court erred in permitting the State's expert to use a doll to demonstrate the amount of force necessary to cause the child's injuries. My opinion affirmed. The Court of Appeals reversed, reasoning that "the differences between the doll and the victim were . . . substantially material to the determination of the amount of force necessary" to cause the baby's injuries. 372 Md. at 25.

Bolden v. State, No. 1629, Sept. Term, 1997, *rev'd and remanded*, 356 Md. 160 (1999). The trial court imposed three sentences totaling 97 years for three distributions of \$20 worth of cocaine. My opinion vacated one 40-year sentence, reasoning that it was part of the same transaction for which the trial court had imposed a sentence of 32 years, and held that the remaining sentence constituted cruel and unusual punishment. The State did not appeal the ruling as to the 40-year sentence. In a four to three decision, the Court of Appeals reversed as to the remaining sentences.

Cole v. State, No. 1151, Sept. Term, 2001, *rev'd and remanded*, 378 Md. 42 (2003). The defendant argued that the trial court improperly prohibited his expert from testifying about the State's laboratory tests, due to lack of a sufficient factual basis, because the State failed during discovery to provide information as to its laboratory procedures. My opinion affirmed. The Court of Appeals reversed, concluding that the Maryland Rules of Procedure required the State to provide some of the requested information.

Craft v. State, No. 201, Sept. Term, 1997, *rev'd and remanded sub nom. Dorsey v. State*, 356 Md. 324 (1999). The defendant was charged with contempt for failing to pay child support. The trial judge denied the defendant's request for a jury trial after it limited his punishment to 179 days in jail. It then found the defendant guilty of criminal contempt, imposed a sentence of 179 days, and reduced it to time served. My opinion affirmed. The Court of Appeals reversed, concluding that the defendant had a statutory right to a jury trial in a constructive criminal contempt prosecution, regardless of the length of sentence.

Haley v. State, No. 1079, Sept. Term, 2004, *rev'd and remanded*, 398 Md. 106 (2007). I authored an opinion concluding that the attorney-client privilege was not breached during a criminal defendant's cross-examination, because the information the defendant gave his lawyer was intended to be disclosed and therefore it was not confidential. The Court of Appeals disagreed.

Lee v. State, No. 1078, Sept. Term, 2005, *rev'd*, 405 Md. 148 (2008). Defendant appealed his convictions on several grounds, including a challenge to the State's summation. My opinion recognized that the prosecutor's remarks "came close to overstepping the bounds of legitimate argument," slip op. at 63, but affirmed the convictions. The Court of Appeals concluded that the prosecutor exceeded the permissible scope of closing argument.

Lewis v. State, No. 851, Sept. Term, 1999, *vacated*, 361 Md. 527 (2000). The defendant was convicted of possession of cocaine. On appeal, he complained that the trial court erred by allowing the prosecutor to argue facts that were not in evidence. My opinion affirmed the conviction. In a per curiam order, without an opinion, the Court of Appeals vacated and remanded for reconsideration in light of its then recent decision in *Skok v. State*, 361 Md. 52 (2000).

Lowery v. State, No. 2019, Sept. Term, 2003, *vacated and remanded*, 390 Md. 514 (2006). My opinion affirmed the trial court's sentence of five years without parole. In a per curiam order, without an opinion, the Court of Appeals vacated and remanded for reconsideration in light of its then recent decision in *Stanley v. State*, 390 Md. 175 (2005).

Smullen v. State, No. 1179, Sept. Term, 2001, *rev'd*, 380 Md. 233 (2004). In this patricide case, my opinion determined that the trial court erred in barring evidence as to Battered Child Syndrome and in failing to instruct the jury as to imperfect self-defense. The Court of Appeals unanimously agreed that Maryland's Battered Spouse Syndrome also applies to battered children. However, in a four to three decision, it concluded that the defense of imperfect self-defense was not generated.

Unreported Civil Opinions

Casey PMN, LLC v. Miller & Smith at Quercus, LLC, No. 1704, Sept. Term, 2007, *rev'd*, 412 Md. 230 (2010). My opinion concluded that the circuit court erred in dismissing appellant's suit regarding interpretation of a "Deferred Purchase Money Promissory Note." The Court of Appeals did not reach the merits. It concluded that there was no final, appealable judgment.

Cherry v. Md. Military Dep't, No. 1135, Sept. Term, 2002, *rev'd and remanded*, 382 Md. 117 (2004). My opinion reversed the circuit court, which had granted the State's motion to dismiss a suit by employees to recover overtime wages on the ground that a grievance review procedure was the exclusive remedy for such claims. The Court of Appeals reversed. It determined that the circuit court lacked jurisdiction because the plaintiffs failed to exhaust their administrative remedies.

G-C P'ship v. Schaefer, No. 1513, Sept. Term, 1998, *rev'd and remanded*, 358 Md. 485 (2000). My opinion recognized that the petitioner's appeal was premature because of lack of a final judgment, but a divided panel determined that the defect could be cured pursuant to Maryland Rule 8-602(e)(1). The Court of Appeals dismissed the appeal as premature.

Lititz Mut. Ins. Co. v. Bell, No. 293, Sept. Term, 1997, *rev'd*, 352 Md. 782 (1999). The insurer filed a declaratory action disputing any obligation to defend and indemnify its insureds and their son in a negligence suit, because the homeowner's insurance policy did not apply to an occurrence involving bodily injury "intended by the insured." My opinion upheld the trial court's denial of the insurer's summary judgment motion, concluding that there was a potentiality of coverage because the insured's son may not have been criminally responsible, and thus could not have formed the requisite intent. The Court of Appeals disagreed.

Miller v. Kirkpatrick, No. 1359, Sept. Term, 2001, *rev'd*, 377 Md. 335 (2003). My opinion held that the defendant fee owners, who were subject to an easement, were entitled to install fences along the right-of-way so long as they did not unreasonably interfere with use of plaintiffs' easement. The Court of Appeals concluded that the defendants could not unilaterally narrow the easement by installing fences.

Mullan v. Bd. of Physician Quality Assur., No. 2359, Sept. Term, 2001, *rev'd and remanded*, 381 Md. 157 (2004). The Maryland Board of Physician Quality Assurance summarily suspended Dr. Mullan's medical license, prior to a hearing, because he had treated patients while under the influence of alcohol. My opinion reversed the Board's finding that the summary suspension was an "emergency action" that was "imperatively required," within the meaning of the statute, because the Board waited several months before initiating such action. The Court of Appeals disagreed.

Smith v. Stein, No. 1855, Sept. Term, 1998, *rev'd and remanded*, 358 Md. 670, 671 (2000). The trial court granted summary judgment to the defendants, on the

ground that the plaintiff's amended suit was barred by limitations. My opinion reversed the trial court, concluding, based on the relation back doctrine, that the amended suit was timely filed. The Court of Appeals disagreed.

Walker v. Morgan State Univ., No. 579, Sept. Term, 2005, *rev'd*, 397 Md. 509 (2007). The plaintiff filed a negligence suit to recover damages for injuries she sustained when she slipped on an icy parking lot. My opinion held that the trial court erred in granting summary judgment based on assumption of the risk. The Court of Appeals reversed, concluding that the plaintiff assumed the risk as a matter of law.

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

Approximately 17% of my appellate opinions have been designated by the Court for publication. Unpublished opinions may be available through Lexis or Westlaw. All opinions are filed with the Clerk of the Court, where they are publicly available. To my knowledge, they are stored in the State archives. As a circuit court judge, I issued oral rulings, generally on a daily basis, and also wrote many opinions. Those opinions are not contained in an electronic database, nor did I retain copies of them in a systematized way. I believe that most of them are maintained in the State archives, by court, case name, and case number.

- h. Provide 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, provide copies of the opinions.

Allen v. State, 158 Md. App. 194 (2004), *aff'd*, 387 Md. 389 (2005)
Behrel v. State, 151 Md. App. 64, *cert. denied*, 376 Md. 546 (2003)
Braxton v. State, 123 Md. App. 599 (1998)
Davis v. DiPino, 121 Md. App. 28 (1998) (*en banc*), *aff'd in part, vacated in part*, 354 Md. 18 (1999)
Elliott v. State, 185 Md. App. 692 (2009)
Freeman v. State, 158 Md. App. 402 (2004)
French v. Hines, 182 Md. App. 201 (2008)
In re Adoption/Guardianship No. T00032005, 141 Md. App. 570 (2001)
In re Christopher T., 129 Md. App. 28 (1999)
In re Joshua David C., 116 Md. App. 580 (1997)
Knapp v. Smethurst, Jr., 139 Md. App. 676 (2001)
Norville v. Anne Arundel County Bd. of Educ., 160 Md. App. 12 (2004),
vacated and remanded, 390 Md. 93 (2005)
Padilla v. State, 180 Md. App. 210, *cert. denied*, 405 Md. 507 (2008)
Powell v. State, 139 Md. App. 582, *cert. denied*, 366 Md. 248 (2001)
Reese v. Dep't of Health & Mental Hygiene, 177 Md. App. 102 (2007)
Rios v. Montgomery County, 157 Md. App. 462 (2004), *aff'd*, 386 Md. 104 (2005)
Samuels v. Tschechtelin, 135 Md. App. 483 (2000)

State v. Cabral, 159 Md. App. 354 (2004)
State v. Fernon, 133 Md. App. 41 (2000)
State v. Jones, 138 Md. App. 178 (2001), *aff'd*, 379 Md. 704 (2004)
Super. Ct. of Cal., County of Stanislaus, Family Support Div.,
o/b/o Jones v. Ricketts, 153 Md. App. 281 (2003)
Walker v. State, 125 Md. App. 48 (1999)
Ware v. State, 170 Md. App. 1, *cert. denied*, 396 Md. 13 (2006)
Whittington v. State, 147 Md. App. 496 (2002), *cert. denied*, 373 Md. 408 (2003),
cert. denied, 540 U.S. 851 (2003)

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

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

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

Throughout my judicial career, I have endeavored to follow Md. Rule 16-813, titled "Maryland Code of Judicial Conduct," including Canon 2, "Avoidance of Impropriety and the Appearance of Impropriety," and Canon 3, "Performance of Judicial Duties." I have also periodically supplied the Clerk of the Court of Special Appeals with a recusal list, which contains the names of attorneys with whom I have a close friendship; cases with those attorneys are not assigned to me. In addition, as each new appellate case is assigned to me, my administrative assistant and I review the names of the parties and the attorneys to assure that I do not have a financial conflict, a relationship that might impair my ability to remain

impartial, or a connection that might give rise to the appearance of impropriety. As a trial judge, I utilized similar safeguards to avoid any conflict of interest.

I do not maintain a list of cases for which I have recused. The following list was prepared based on my best recollection and some internal records that I located.

Maryland Court of Special Appeals

Polly Keyes v. Sheldon Lerman, M.D., __ Md. App. __, No. 2290, Sept. Term, 2008 (filed March 30, 2010). This case was presented to the Court at our monthly conference as part of our publication process. I recused, *sua sponte*, because of my friendship with one of the parties.

John Crane, Inc. v. John Linkus, Pers. Representative of the Estate of George J. Linkus, Sr., 190 Md. App. 217 (2010). This case was presented at our monthly conference as part of our publication process. I recused, *sua sponte*, because John Crane, Inc. is a former client.

Md. Dep't of State Police v. Md. State Conf. of NAACP Branches, 190 Md. App. 359 (2010) (en banc). I declined to participate in this case, *sua sponte*, because I am a Life Partner of the NAACP.

State v. Chris Balbontin, No. 2372, Sept. Term, 2008. I recused, *sua sponte*, because of my personal relationship with one of the attorneys.

Ty Vincent Stanley v. Wells Fargo Bank, N.A., No. 760, Sept. Term, 2008. I recused, *sua sponte*, because our mortgage is with Wells Fargo, and our stockbroker, a former law clerk, now works for Wells Fargo.

Syed Mirjafari v. Edward Cohn, No. 2977, Sept. Term, 2007. I recused, *sua sponte*, because the father of my son's friend was a party in the case.

Bond v. Messerman, 162 Md. App. 93 (2005). I declined to participate, *sua sponte*, because one of the parties was a neighbor.

Md. Dep't of Agric., Bd. of Veterinary Exam'rs v. Kim Hammond, No. 206, Sept. Term, 2005. I recused, *sua sponte*, because Dr. Hammond had been our veterinarian.

Acacia Mut. Life Ins. Co. v. BAA, PLC, No. 2402, Sept. Term, 2003. I participated in oral argument, without knowledge that a publicly traded mutual fund was one of many parties in the case. Unfortunately, the appellate briefs never identified all of the parties by name. Upon examining the record in connection with drafting the opinion, I discovered that this mutual fund was an appellant. Because my husband and I each held shares of this mutual fund (although not a disqualifying "Significant Financial Interest" under Md. Rule 16-813(j)(1) and Canon 3(D)(1)(c)), I notified our Chief Judge of the situation.

Thereafter, the Court issued an Order advising counsel that an unnamed panel member and spouse owned shares in the mutual fund. The parties elected reargument before a new panel.

Attorney Grievance Comm'n v. Bereano, 357 Md. 321 (2000). I was invited to sit with the Court of Appeals in this case. I declined to do so because I am acquainted with Mr. Bereano.

Bereano v. State Ethics Comm'n, 174 Md. App. 146 (2007), *rev'd*, 403 Md. 716 (2008). I declined to participate, *sua sponte*, because I am acquainted with Mr. Bereano.

William Bond v. William Slavin, No. 203, Sept. Term, 2003. I declined to sit, *sua sponte*, because both parties are former neighbors.

Digital Media Techs., Inc. v. Balt. Ravens Football Club, Inc., No. 101, Sept. Term, 2001. I recused, *sua sponte*, because my husband was attempting to do business with one of the parties.

Pantazes v. State, 141 Md. App. 422 (2001), *cert. denied*, 368 Md. 241 (2002). I recused, *sua sponte*, because one of the attorneys is a friend and former law partner. I subsequently added that lawyer's name to my conflict list.

Williams Constr. Co., Inc. v. State Highway Admin., No. 2305, Sept. Term, 2000. I recused, *sua sponte*, because one of the attorneys is a close friend. I subsequently added his name to the conflict list.

Carriage Hill Cabin John, Inc. v. Md. Health Res. Planning Comm'n, 125 Md. App. 183 (1999). Marriott Retirement Communities, Inc. was a party to this appeal. At the time, I held shares in Host Marriott and Marriott International in my IRA account. Although I did not hold a "Significant Financial Interest" under Md. Rule 16-813(j)(1) and Canon 3(D)(1)(c), I offered at oral argument to recuse. All counsel waived any potential conflict.

Anthony Triplin v. Alice Triplin, Court of Special Appeals, No. 5635, Sept. Term, 1998. I declined to participate in this case, *sua sponte*, because the parties are the parents of my son's friend.

Balt. Gas & Elec. Co. v. Commercial Union Ins. Co., 113 Md. App. 540 (1997). Because my son held shares in BGE (not a "Significant Financial Interest" under Md. Rule 16-813(j)(1) and Canon 3(D)(1)(c)), I offered at oral argument to recuse. All counsel waived any potential conflict. To the extent that I may have sat on any other BGE or Constellation Energy cases, I would have followed the same course of conduct.

Eugene Conti, Jr. v. Bd. of Appeals of the Dep't of Labor, Licensing & Regulation, No. 920, Sept. Term, 1998. The family of one of the attorneys in this case served as my host family when I was a college student. Therefore, I recused, *sua sponte*. I subsequently added his name to the Clerk's conflict list.

NationsBank v. State Dep't of Assessments & Taxation, No. 1244, Sept. Term, 1994. Because my husband was attempting to do business with NationsBank, I offered to recuse. All attorneys waived any potential conflict.

Bartholomee v. Casey, 103 Md. App. 34 (1994), *cert. denied*, 338 Md. 557 (1995). Scott Nevin, Esq., then with the law office of Saul E. Kerpelman & Associates, represented the plaintiffs/appellees. He had previously tried a lead paint case before me while I was on the circuit court. Although I do not recall the name of that case, I believe he prevailed. Nevertheless, he sought my recusal in the above appeal, claiming that I was biased against lead paint plaintiffs. Because the allegation was totally baseless, I declined to recuse. Mr. Nevin, Mr. Kerpelman, and others from that office subsequently argued other appeals before me and never requested recusal.

Circuit Court for Baltimore City

I have no specific recollection of any circuit court cases in which I recused, *sua sponte*, or for which I was asked to recuse. However, I am positive that I adhered to all ethical and legal requirements in assessing whether recusal was appropriate. To illustrate, I recall the case of *Donald Reuwer v. Carol & Sheldon Sandler*, Circuit Court for Baltimore City, CL125105, a non-jury case that I tried in 1992. I advised counsel, Paul Vettori, Esq., and Leonard Orman, Esq., of my intent to recuse, because Mr. Vettori and I had worked at the same law firm, and because the Sandlers lived in my neighborhood. However, all counsel and the parties waived any conflict, on the record.

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

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

I have not held public office, other than judicial offices. I have not had any unsuccessful candidacies for elective office. In 1993, I sought appointment to the Maryland Court of Special Appeals. Although I was nominated by the Appellate Judicial Nominating Commission, the Governor selected another nominee.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever

held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

“Keep Our Circuit Court Judges,” Committee to Elect Judges Hollander, Rombro, and Themelis – judicial candidate, Circuit Court for Baltimore City, Feb. 1989 to Nov. 1990. The Committee, composed almost entirely of volunteers, supported the candidacy of the incumbent circuit judges, who faced two challengers. As one of the incumbent judges, I attempted to insulate myself from any direct fundraising.

I was a volunteer for Stephen H. Sachs, Esq., when he successfully ran as the Democratic candidate for Attorney General of Maryland in 1978. In 1986, I volunteered when Mr. Sachs ran, unsuccessfully, in the Democratic primary for Governor. In 1960, as a youngster, I volunteered in the presidential campaign of John F. Kennedy.

16. **Legal Career:** Answer each part separately.

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

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

From August 1974 to August 1975, I clerked for Judge James R. Miller, Jr., United States District Court for the District of Maryland.

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

I never practiced alone.

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

1975 to 1979
Frank, Bernstein, Conaway & Goldman (dissolved in 1992)
1300 Mercantile Bank and Trust Building
2 Hopkins Plaza
Baltimore, Maryland 21201
Associate, Litigation Department

1979
Office of the Maryland Attorney General
One South Calvert Street

Baltimore, Maryland 21202
Assistant Attorney General, Civil Division

1979 to 1983
United States Attorney's Office, District of Maryland
U.S. Courthouse
101 W. Lombard Street
Baltimore, Maryland 21201
Assistant United States Attorney

1983 to 1989
Frank, Bernstein, Conaway & Goldman (dissolved in 1992)
300 East Lombard Street
Baltimore, Maryland 21202
Associate, 1983 to 1985
Partner, 1985 to 1989

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have never served as an arbitrator or a mediator.

b. Describe:

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

From 1975 to 1979, and again from 1983 to 1989, I practiced civil litigation at a large Baltimore law firm, including tort matters, contract and commercial disputes, and insurance cases. On occasion, I also represented the defense in criminal matters, both state and federal. On two occasions, I appeared in Maryland's appellate courts. In 1979, I worked as an Assistant Attorney General for the State of Maryland, handling cases in the Civil Division. As an Assistant United States Attorney from 1979 to 1983, I represented the United States in criminal cases, including mail fraud, bank robbery, tax evasion, conspiracy, rape, and embezzlement. I also sought indictments before federal grand juries, supervised criminal investigations by various federal agents, tried jury cases, and handled numerous evidentiary proceedings. In addition, I represented the interests of the Government in civil matters, such as the defense of medical malpractice cases under the Federal Tort Claims Act. I also participated in three appeals heard by the Fourth Circuit. I returned to private practice, at the same law firm, in 1983, and became a partner in 1985. I left the firm in 1989 when I was appointed to the trial bench.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

In private practice, my typical clients included corporations, partnerships, small businesses, and individuals. As a federal prosecutor, I represented the United States and its agencies. In the Attorney General's Office, I represented the State of Maryland and its agencies.

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

My entire law practice was devoted to litigation, primarily at the trial level. In the private sector (1975 to 1979; 1983 to 1989), I represented the interests of individuals and business entities and appeared in court frequently. In my first six months of practice, for example, I participated in three civil jury trials. As an Assistant United States Attorney (1979 to 1983), I was in court extensively, in both criminal and civil matters, on behalf of the United States and its agencies. In addition to handling several jury trials, I handled numerous evidentiary proceedings and other matters, such as guilty pleas, discovery motions, sentencing hearings, and probation violation proceedings.

- i. Indicate the percentage of your practice in:

- 1. federal courts: 40%
- 2. state courts of record: 59%
- 3. other courts: none
- 4. administrative agencies: 1%

- ii. Indicate the percentage of your practice in:

- 1. civil proceedings: 70%
- 2. criminal proceedings: 30%

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

From 1975 to 1989, I had an active litigation practice and appeared in court regularly. I tried approximately 12 jury trials. I was lead counsel, sole counsel, or "second chair." In addition, I estimate that I tried about 20 non-jury cases to verdict. For cases in state district courts, I was usually sole counsel. I also estimate that I handled approximately 15 cases that were decided by motion.

- i. What percentage of these trials were:

- 1. jury: 37%

2. non-jury: 63%

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

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

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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. John Anthony Walker, Jr. & Michael Lance Walker*, Criminal Nos. H-85-0309 and H-85-0532 (D. Md. 1985 to 1986); Chief Judge Alexander Harvey, II (retired). John Walker, Jr. and his son, Michael Walker, were indicted for delivering classified information to the Soviet Union. Charles Bernstein (now a retired state judge) and I were appointed by Chief Judge Harvey to represent Michael Walker. I prepared numerous motions and legal memoranda and participated in the factual investigation for the defense. On October 28, 1986, Michael Walker pled guilty to conspiracy to deliver national defense information to a foreign government, in violation of 18 U.S.C. § 794, and unlawfully obtaining, retaining or transmitting national defense information, in violation of 18 U.S.C. § 793. He was sentenced to a term of 25 years. Thereafter, I attended his debriefings by the Government.

Charles G. Bernstein, Esq., Law Offices of Peter G. Angelos, One Charles Center, 100 N. Charles Street, 22nd Floor, Baltimore, MD; 410-649-2000, was lead counsel for Michael Walker. The prosecutors were Michael Schatzow, Esq., Venable LLP, 750 E. Pratt Street, Suite 900, Baltimore, MD 21202; 410-244-7592, and Robert N. McDonald, Esq., Chief Counsel, Opinion, Advice, & Legislation Division, Office of the Attorney General, 200 St. Paul Place, Baltimore, MD 21202; 410-576-6327. The late Fred Warren Bennett, Esq. (then the Federal Public Defender for Maryland), represented John Walker, Jr.

2) *United States v. Lemuel Taylor*, Case No. K-81-0096 (D. Md. 1981); Judge Frank Kaufman (deceased). I was lead counsel in the Government's prosecution of Lemuel Taylor. He was charged with misappropriation of about \$40,000 from the bank accounts of intellectually disabled persons who were residents of an institution known as Forest Haven. The jury trial commenced in September 1981 and lasted approximately two weeks. The major points at issue were: (a) identification, by largely circumstantial evidence, of Mr. Taylor as the person who embezzled the monies, and (b) financial analysis of a multitude of records to establish what monies were taken, and from whom. Mr. Taylor was convicted and sentenced to a term of five years in prison.

Edward Norton, Esq., Senior Advisor, TPG Capital, L.P., 345 California Street, Suite 300, San Francisco, CA 94104; 415-743-5402, was co-counsel for the Government. Mr. Taylor was initially represented by Stanley Reed, Esq., Assistant Federal Public Defender, now at Lerch, Early & Brewer, Chartered, Suite 460, 3 Bethesda Metro Center, Bethesda, MD 20814-5330; 301-986-1330, and Thomas Hamilton, Esq., whose last known address is 3613 Stagecoach Terrace, Plano, TX 75023. They were succeeded by Joseph Gibson, Jr., Esq., Suite 210A, 6811 Kenilworth Avenue, Riverdale, MD 20737; 301-209-0453.

3) *United States v. Jay Dennis Gould*, Case No. M-82-00221 (D. Md. 1982); Judge James R. Miller, Jr. (retired). I represented the Government in the prosecution of Mr. Gould for bank robbery. Following a jury trial held in October 1982, Mr. Gould was convicted and sentenced to 10 years in prison. The case was significant because it was, to my knowledge, one of the first cases in federal court in which a defendant asserted a compulsive gambling disorder as a basis for an insanity plea, in reliance on the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders III. The trial court concluded that a pathological gambling disorder could not serve as the basis for an insanity defense to bank robbery. The Fourth Circuit affirmed. See *United States v. Gould*, 741 F.2d 45 (4th Cir. 1984). I did not participate in the appeal, as I had returned to private practice by that time.

My co-counsel was Larry A. Ceppos, Esq., Suite 101, 204 Monroe Street, Rockville, MD 20850; 301-251-0440. Jodie English, Esq. (then Assistant Federal Public Defender), address unknown, was the defense attorney.

4) *James S. Hebb, III v. Holly Lynn Walker*, Circuit Court for Baltimore County, Case No. 86CG320430/3; Judge John Fader, II (retired), *aff'd*, 73 Md. App. 655 (1988); Chief Judge Richard Gilbert (deceased). Fifteen-year-old David Tucker Hebb was killed in a car accident after the decedent and two friends left an unsupervised party hosted by our teenaged client, Robert Johnson, at which alcohol was available. Mr. Johnson did not know Mr. Hebb or his friends, nor were they invited to the party. The parents of the decedent brought suit in 1986 against Mr. Johnson and his parents, alleging negligence and negligent entrustment. They also sued the teenage driver and her mother. Although the

Johnsons had counsel through their homeowners' insurance policy, they retained our firm because the amount in controversy exceeded the limits of the policy. The trial court granted the Johnsons' motion for summary judgment, on the ground that Maryland does not recognize social host liability. The Court of Special Appeals affirmed. I assisted at both the trial and appellate levels, helping to prepare pleadings, investigating the facts, attending court hearings, and assisting in writing the appellate brief.

Allen L. Schwait (now a retired state judge); 410-396-8057, was lead counsel for the Johnsons. William Reynolds, Esq., University of Maryland School of Law, 500 W. Baltimore Street, Baltimore, MD 21201-1710; 410-706-7279, was appellate co-counsel for the Johnsons. The late Byron Berman, along with Irwin Weiss, Esq., Suite 302, 920 Providence Road, Baltimore, MD 21286; 410-821-0001, represented the Johnsons and their insurer. Harry Lord, Esq., DLA Piper US, LLP, 6225 Smith Avenue, Baltimore, MD 21209-3600; 410-580-3000, and John Kuchno, Esq., Kramon & Graham, PA, Suite 2600, One South Street, Baltimore, MD 21202-3201; 410-752-6030, were principal counsel for plaintiffs/appellants. The driver and her mother were represented by Raymond Mullady, Jr., Esq., Orrick, Herrington & Sutcliffe, Columbia Center, 1152 15th Street, N.W., Washington, D.C. 20005; 202-339-8400, and Frederick William Miller, Esq., Suite 104, 8 Reservoir Circle, Baltimore, MD 21208-6362; 410-484-8102.

5) *State of Md. Deposit Ins. Fund Corp., as Conservator for Old Court Savs. & Loan, Inc. v. Donald Berman*, Circuit Court for Baltimore City, Case No. 87112059/CL64567 (1987 to 1988); Judge Joseph H. H. Kaplan (retired). This case was an outgrowth of the Maryland savings and loan crisis in the mid 1980s. Our firm represented the Maryland Deposit Insurance Fund ("MDIF") as Conservator, and later as Receiver, for Old Court Savings & Loan, Inc. The case of *MDIF v. Berman* was one of the Old Court cases that I handled for the firm. MDIF alleged that Berman, the Chief Operating Officer of Jiff Island, Inc., fraudulently induced Old Court and two of its subsidiaries to make loans totaling almost \$2 million to Jiff Island, which Berman then used to obtain a substantial equity position in other entities. The case, which was settled favorably, was one of many initiated in an effort to recoup money for Maryland's taxpayers.

Lead counsel for MDIF was Shale D. Stiller, Esq., DLA Piper LLP, 6225 Smith Avenue, Baltimore, MD 21209; 410-580-4268. Peter H. Gunst, Esq., Astrachan Gunst & Thomas, P.C., 21st Floor, 217 E. Redwood Street, Baltimore, MD 21202; 410-783-3550, was co-counsel. The defense was represented by Thomas L. Crowe, Esq., 1622 World Trade Center, 401 E. Pratt Street, Baltimore, MD 21202; 410-685-9428.

6) *Tinkham v. Prudential Ins. Co. of Am.*, Case No. 6369, Circuit Court for Montgomery County (1987); Judge John F. McAuliffe (retired). Tinkham, a real estate broker, sued Prudential Insurance Company and James Vito to recover a

brokerage commission with respect to an unconsummated, multi-million dollar real estate transaction between the firm's client, Prudential, as seller, and Vito, as buyer. Tinkham asserted claims for breach of contract, conspiracy, and tortious interference with contract. The case was ultimately settled.

John J. Kenny, Esq., Kenny & Vettori, L.L.P., 502 Washington Avenue, Suite 720, Towson, MD 21204; 410-825-1050, and Robert B. Levin, Esq., Shapiro Sher Guinot & Sandler, P.A., 36 South Charles Street, Baltimore, MD 21201; 410-385-0202, were co-counsel for Prudential. Daniel L. Shea, Esq., Brault Graham, LLC, 101 South Washington Street, Rockville, MD 20850; 301-424-1060, represented Tinkham. Steven P. Hollman, Esq., Hogan & Hartson LLP, 555 13th Street, N.W., Washington, D.C. 20004; 202-637-5672, represented Vito.

7) *Fisher Scientific Co. v. Towson State Univ. & Curtin Matheson Scientific, Inc.*, Circuit Court for Baltimore County, In Equity, Case No. 93720 (1979); Judge Walter R. Haile (retired). I represented Curtin Matheson Scientific, Inc. ("CMS"). Fisher Scientific Company ("Fisher") and CMS were among the five leading laboratory supply companies in the United States and direct competitors in all 50 states. Fisher filed suit against Towson State University ("Towson") to compel disclosure of invoices issued by CMS under a laboratory supply contract with Maryland, pursuant to Maryland's Freedom of Information Act. Both Towson and CMS, Defendant-Intervenor, claimed that the information was exempt from disclosure because the invoices constituted confidential commercial or financial data. Following a non-jury trial in 1979, the court found for the defendants. The case was significant because it constituted an early interpretation of an important statute.

Fisher's attorney was D. Warren Donohue, Esq. (now a judge), Circuit Court for Montgomery County, 50 Maryland Avenue, #50, Rockville, MD 20850-2303; 301-217-3960. Towson was represented by William A. Kahn, Esq., 11216 Woodson Avenue, Kensington, MD 20895; 301-949-1753.

8) *United States v. Sys. Eng'g & Dev. Corp.* ("SEDC") (D. Md. 1988-1990); docket number and judge unknown. SEDC was a relatively small but significant company engaged in intelligence research and development on matters related to the security of the United States. It frequently was a sole source supplier. Beginning in 1988, SEDC was under federal criminal investigation for fraud in connection with various Government contracts. I was lead counsel during much of the grand jury investigation and had an active role, for more than a year, in strategy, preparation, and analysis. After I was appointed to the trial bench, SEDC pled guilty to a one count information charging it with filing a false claim. No corporate officers were charged personally, and SEDC was never barred from Government contracts.

The late Gary Jordan, Esq., First Assistant U.S. Attorney, represented the United States. My co-counsel was Peter H. Gunst, Esq., Astrachan Gunst & Thomas, P.C., 21st Floor, 217 E. Redwood Street, Baltimore, MD 21202; 410-783-3550.

9) *Buffalo Waterfront Assocs. Ltd. P'ship v. Equitable Bank, N.A.*, Circuit Court for Baltimore City, Case No. 87-288063/CE72486 (1987 to 1988); judge unknown. I represented the plaintiffs in connection with their efforts to develop a retail waterfront festival center in Buffalo, New York, known as Marina Marketplace. To satisfy financing requirements, Buffalo Waterfront Associates Ltd. was required to obtain an irrevocable letter of credit. We filed suit alleging, *inter alia*, that the defendants improperly called the letter of credit, and obtained an ex parte injunction barring payment. The case later settled.

My co-counsel was Martin B. Ellis, Esq., Shumaker Williams, P.C., 40 West Chesapeake Avenue, Suite 605, Towson, MD 21204; 410-825-5223. Buffalo Enterprise and related entities were represented by Charles E. Hiff, Jr., Esq., Hiff & Meredith, P.C., Patriot's Plaza, Suite 201-203, 8055 Ritchie Highway, Pasadena, MD 21122; 410-685-1166. Russell J. Pope, Esq., Pope & Hughes, 29 West Susquehanna Avenue, Towson, MD 21204; 410-494-7777, represented Equitable Bank.

10) *United States v. Bryant Miller*, 507 F. Supp. 1347 (D. Md. 1981); Judge James R. Miller, Jr. (retired). I was the prosecutor in this bank robbery case, which presented an interesting issue as to the legality of police conduct in effecting an investigatory stop of the defendant. Following an evidentiary hearing on the defendant's motion to suppress, the court denied the defense motion in a reported opinion.

The defense attorney was Stanley Reed, Esq., Lerch, Early & Brewer, Chartered, 3 Bethesda Metro Center, Suite 460, Bethesda, MD 20814; 301-986-1300.

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

My most significant legal activities involve my work as a state trial judge and appellate judge for over twenty-one years. In more than fifteen years as an appellate judge, I have authored over 1,400 full opinions covering a wide variety of issues, many of which were matters of first impression. Similarly, as a trial judge for over five years on Maryland's busiest circuit court, I handled thousands of cases. For one year, I also served as a juvenile court judge, pursuant to Md. Code, § 3-806 of the Courts and Judicial

Proceedings Article. In that capacity, I presided over cases involving child abuse and neglect, juvenile delinquency, and disintegrating families.

Since February 2008, I have been a member of the Court of Appeals of Maryland Standing Committee on Rules of Practice and Procedure (“Rules Committee”), by appointment of the Chief Judge of the Maryland judiciary. The Rules Committee crafts for consideration by the Court of Appeals proposed rules of procedure – civil, criminal, juvenile, appellate, and evidentiary – on matters ranging from death penalty cases to foreclosure proceedings. Proposed rule changes are often preceded by open hearings, at which interested members of the public and the Bar present their positions. In this capacity, I have helped to create court rules that are clear, balanced, and efficient.

In 2005, I was one of 25 Maryland judges (and one of only two Maryland appellate judges) chosen to participate in a pilot project known as ASTAR (Advanced Scientific and Technological Adjudicative Resource Judge). Over an 18-month period, I attended several multi-day courses on a variety of topics in bioscience and related fields. In 2006, upon completion of the National Judges’ Science School, I was certified as an ASTAR Fellow. To my knowledge, there are about 209 judges designated as ASTAR Fellows nationally, located in 38 states and territories. To retain my status as an ASTAR Fellow, I am required to participate in continuing science education courses. In 2006 and 2007, I was a member of the Planning Committee for a national multi-day program titled “Neuroscience & Bio-Behavioral Technologies,” held at the Johns Hopkins University School of Medicine in 2007.

I am especially proud of being one of the first, if not the first, “part time” partners at a large Baltimore law firm. This achievement helped to pave the way for other female attorneys who were trying to balance a demanding legal career with important parental responsibilities attendant to a young family.

I have never performed any lobbying activities for clients or organizations.

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

On several occasions, I was an instructor at the Judicial Institute of Maryland, and participated in teaching the following courses to Maryland judges: “Negligence (Proximate Causation),” Sept. 2008; “Actions Against Public Officials and Employees,” Sept. 2001; “Post Conviction Proceedings,” Oct. 1996; and “Appellate Review” (New Trial Judge Orientation), 1995 and 1996.

I was a panelist in two legal education programs sponsored by The Maryland Institute for Continuing Professional Education of Lawyers, Inc.: “The Inner Workings of the Maryland Courts of Appeal,” June 7, 2001; and “Hot Tips In Family Law,” Feb. 28, 1997.

As an attorney, I was a panelist at two seminars: "Confidentiality of Medical Records" (Sponsored by Lorman Business Center, Inc.), Nov. 1988; Post-Trial Practice (Sponsored by Law Seminars, Inc.), Sept. 1987.

For each of the courses listed above, I believe that course materials were distributed, but I did not prepare syllabi.

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

I have no deferred income arrangements or future benefits from previous business relationships, with the exception of my State judicial pension. I have a vested defined benefit under the Retirement System for Judges of the State of Maryland, for which I will be eligible when I retire from State judicial service. The annual pension payment is equal to two-thirds of the current annual salary for judges serving on the Maryland Court of Special Appeals.

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

I have no plans, commitments, or agreements to pursue outside employment, with or without compensation, if I am confirmed as a district judge.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, 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 (AO-10).

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

See attached Net Worth Statement and Schedules.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest

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

There are a handful of attorneys with whom I am especially close. If they were to appear in a case assigned to me, I would recuse myself. In addition, as I have done for some twenty-one years as a Maryland judge, I would continue to remain vigilant to potential conflicts by examining each matter assigned to me to uncover promptly any potential conflict arising from a relationship with the litigants, or as a result of my financial holdings or those of my husband, or due to my husband's work in advertising and marketing.

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

I would resolve any potential conflict of interest by adhering to 28 U.S.C. § 455, the Code of Conduct for United States Judges, and all applicable policies and procedures of the United States courts. I would recuse in any matter in which either my spouse or I hold a financial interest or have a sufficiently close connection with counsel or the parties (business or social). In the event of uncertainty, I would err on the side of disqualification.

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

Since becoming a judge in 1989, I cannot engage in the practice of law, pro bono or otherwise. Similarly, as an attorney for the Government, I could not represent private persons. As a judge, however, I have participated in several law-related activities for students, such as conducting mock trials for school children and judging mock trial performances for high school students. I have also participated in moot court programs at the University of Maryland School of Law and the University of Baltimore School of Law. In addition, I have served as a panelist for various legal and judicial education programs.

In private practice, I occasionally handled matters without a fee. For example, without a fee, I successfully represented a client who sought to recover from the Client Security Trust Fund (now known as The Client Protection Fund of the Bar of Maryland). I estimate that, while in private practice, I devoted about 1% of my time to matters in which clients were not charged by the firm, or were charged at a reduced rate because of their financial status.

26. **Selection Process:**

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

In April 2009, I wrote to Senator Barbara Mikulski and Senator Benjamin Cardin, expressing my interest in nomination to the U.S. District Court with respect to an anticipated vacancy. Thereafter, I submitted a written application on June 30, 2009, along with detailed supporting materials. In the ensuing weeks, the applicants were considered by a merit selection committee composed of members of the Maryland Bar. My interview with the committee took place on August 24, 2009. Thereafter, I was one of the persons on the committee's "short list" of candidates submitted to the Senators. Senator Mikulski and Senator Cardin interviewed me in Washington, D.C. on November 18, 2009. Senator Mikulski telephoned me on December 10, 2009, to inform me that she and Senator Cardin would be recommending me to the President for nomination to the U.S. District Court.

Beginning on December 17, 2009, I have been in contact with pre-nomination officials at the Department of Justice. Lawyers from the Department of Justice and the White House Counsel's Office interviewed me at the Department of Justice on February 25, 2010. I was nominated on April 21, 2010.

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

No.

FD-10
Rev. 1/2008

FINANCIAL DISCLOSURE REPORT
NOMINATION FILING

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

1. Person Reporting (last name, first, middle initial) Hollander, Ellen L.	2. Court or Organization U.S. District Court - Maryland	3. Date of Report 4/20/10
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 4/21/10 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/09 to 3/31/10
7. Chambers or Office Address 111 North Calvert Street Baltimore, Maryland 21202	8. On the basis of the information contained in this Report and any modifications pertaining thereto, I/We, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
<p>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.</p>		

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. BOARD OF TRUSTEES	GOUCHER COLLEGE
2. BOARD MEMBER	LIBRARY COMPANY OF THE BALTIMORE BAR
3.	
4.	
5.	

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 1989-2010	Retirement System for Judges of the State of Maryland
2.	
3.	

FINANCIAL DISCLOSURE REPORT
Page 2 of 6

Name of Person Reporting Hallander, Ellen L.	Date of Report 4/20/10
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III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 17-24 of filing instructions.)

A. Filer's Non-Investment Income

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE	INCOME (yours, not spouse's)
1. 2010	STATE OF MARYLAND	\$37,389
2. 2009	STATE OF MARYLAND	\$149552
3. 2008	STATE OF MARYLAND	\$145802
4.		

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

NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1. 2010	SELF-EMPLOYED ADVERTISING/MARKETING
2. 2009	SELF-EMPLOYED ADVERTISING/MARKETING
3.	
4.	

IV. REIMBURSEMENTS - transportation, lodging, food, entertainment.
(Include those to spouse and dependent children; see pp. 25-27 of filing instructions.)

NONE (No reportable reimbursements.)

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. EXEMPT				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
Page 3 of 6

Name of Person Reporting Hollander, Ellen L.	Date of Report 4/20/10
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

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

VI. LIABILITIES. (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

NONE (No reportable liabilities.)

	CREDITOR	DESCRIPTION	VALUE CODE
1.			
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Hollander, Ellen L.	Date of Report 4/20/10
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VII. INVESTMENTS and TRUSTS -- Income, value, transactions (includes those of spouse and dependent children; see pp. 34-50 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "(X)" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (I-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (I-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. ATT & T - COMMON STOCK	A	DIV	J	T	EXEMPT				
2. COMCAST - COMMON STOCK	A	DIV	J	T					
3. IBM - COMMON STOCK	C	DIV	M	T					
4. VERIZON COMMUNICATIONS COMMON STOCK	A	DIV	J	T					
5. IDEARC - COMMON STOCK		NONE	J	T					
6. ISRAELI BONDS	A	INT	J	T					
7. METLIFE - TRUST INTERESTS	A	DIV	J	T					
8. BROKERAGE ACCOUNTS									
9. CASH EQUIVALENT	A	INT	J	T					
10. MERRILL LYNCH BANK DEPOSIT	A	INT	K	T					
11. EVERGREEN MM FUND	A	DIV	J	T					
12. CMA TAX EXEMPT FUND	A	INT	L	T					
13. CMA GOV'T SECURITIES FUND		NONE	J	T					
14. ALCON, INC. - COMMON	A	DIV	K	T					
15. ANSYS, INC. - COMMON		NONE	K	T					
16. APACHE CORP - COMMON	A	DIV	K	T					
17. CHICAGO BRIDGE & IRON CO. - NV		NONE	K	T					

1. Income Origin Codes (See Columns D1 and D2)	A = \$1,000 or less P = \$20,001 - \$100,000	B = \$1,001 - \$2,500 Q = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,001,001 - \$5,000,000	D = \$5,001 - \$15,000 I2 = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and C2)	J = \$1,000 or less N = \$230,001 - \$300,000	K = \$15,001 - \$10,000 O = \$300,001 - \$1,000,000	L = \$51,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 R1 = \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C3)	Q = Appraised U = Book Value	R = Cost (Real Estate Only) V = Other	S = Auction W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Hollander, Ellen L.	Date of Report 4/20/10
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (includes those of spouse and dependent children; see pp. 34-49 of filing instructions)

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

A. Description of Assets (including trust assets) Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-I)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. CISCO SYST. - COMMON		NONE	K	T	Exempt				
2. COVANCE, INC. - COMMON		NONE	J	T					
3. CONSOLIDATED ENERGY - COMMON	A	DIV	J	T					
4. DENTSPLY INT'L - COMMON	A	DIV	J	T					
5. CONSOLIDATED EDISON - COMMON	A	DIV	J	T					
6. EXPEDITORS INT'L OF WASH - COMMON	A	DIV	K	T					
7. FASTENAL CO. - COMMON	B	DIV	M	T					
8. AMERICAN TOWER CORP A COMMON		NONE	J	T					
9. MARKEL CORP COMMON		NONE	J	T					
10. IDEXX LAB, INC. - COMMON		NONE	K	T					
11. INTEL CORP. - COMMON	B	DIV	K	T					
12. IRON MOUNTAIN, INC. - COMMON		NONE	K	T					
13. JACOBS ENG. GRP. - COMMON		NONE	K	T					
14. J & J - COMMON	A	DIV	J	T					
15. K-TRON INT'L - COMMON		NONE	J	T					
16.									
17.									

1. Income Code (See Column B and D-1)	A = \$1,000 or less F = \$10,001 - \$100,000	B = \$1,001 - \$2,000 G = \$10,001 - \$1,000,000	C = \$2,001 - \$5,000 H = \$1,000,001 - \$5,000,000	D = \$5,001 - \$15,000 I = More than \$5,000,000	E = \$15,001 - \$50,000
2. Value Code (See Column C and D-2)	J = \$15,000 or less N = \$20,001 - \$500,000	K = \$15,001 - \$50,000 O = \$50,001 - \$1,000,000	L = \$50,001 - \$100,000 P = \$1,000,001 - \$5,000,000	M = \$100,001 - \$200,000 Q = More than \$50,000,000	R = \$200,001 - \$500,000,000
3. Value Method Code (See Column C-2)	U = Appraisal V = Book Value	W = Cash (Real Estate Only) X = Other	S = Automatic T = Estimated	Y = Cash Market	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Hollander, Ellen L.	Date of Report 4/20/10
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (includes those of spouse and dependent children; see pp. 34-50 of filing instructions)

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

A. Description of Assets (including trust assets) Place "X" after each entry except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-I)	(2) Type (e.g., div., rent, or inc.)	(1) Value Code 2 (J-T)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(1) Value Code 2 (J-T)	(4) Gain Code 1 (A-I)	(5) Identity of buyer/seller (if private transaction)
1. ULTRA PETROLEUM - COMMON		NONE	J	T	Exempt				
2. MONSANTO CO. - COMMON	A	DIV	J	T					
3. PAYCHEX, INC. - COMMON	B	DIV	K	T					
4. POTASH CORP OF SASKATCHEWAN - COMMON	A	DIV	J	T					
5. QUALCOMM, INC. - COMMON	A	DIV	K	T					
6. RESMED, INC. - COMMON		NONE	K	T					
7. RIO TINTO ADH EACH - common shares	A	DIV	K	T					
8. ROPER INDUSTRIES - COMMON	A	DIV	K	T					
9. SCHLUMBERGER, LTD - COMMON	A	DIV	J	T					
10. SMITH INT'L - COMMON	A	DIV	K	T					
11. STERICYCLE - COMMON		NONE	K	T					
12. STRYKER CORP - COMMON	A	DIV	K	T					
13. T.R. PRICE GRP - COMMON	A	DIV	K	T					
14. TECHNE CORP - COMMON	A	DIV	K	T					
15. TEVA PHARMA - ORD SHRS	A	DIV	K	T					
16. THIMBLE NAVIGATION - COMMON		NONE	K	T					
17.									

1. Income Gain Codes (See Column D) and (4)	A = \$1,000 or less F = \$30,001 - \$100,000 J = \$15,000 or less	B = \$1,001 - \$7,000 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000	C = \$1,001 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000	D = \$5,001 - \$15,000 I = More than \$500,000	E = \$15,001 - \$50,000
2. Value Codes (See Column C) and (3)	N = \$750,001 - \$100,000 P3 = \$15,000,001 - \$50,000,000	O = \$100,001 - \$1,000,000	P1 = \$1,000,001 - \$5,000,000 P4 = More than \$50,000,000	Q = \$100,001 - \$1,000,000 R = \$1,000,001 - \$5,000,000	S = \$5,000,001 - \$25,000,000
3. Value Method Codes (See Column C)	Q = Appraised U = Joint Value	H = Cash (Ret Estate Only) V = Other	S = Assessed W = Estimated	T = Cash Method	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Hollander, Ellen L.	Date of Report 4/20/10
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions)

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

A. Description of Assets (including trust assets) Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div, rent, or int.)	(1) Value Code 2 (J-T)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-T)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. W. R. BERKLEY & CO. - COMMON A		DIV	K	T	Exempt				
2. ARTISAN SM CAP VALUE INVESTOR - FUND		NONE	J	T					
3. AMERICAN FNDS - BALANCED F-1		NONE	J	T					
4. AMERICAN FNDS - GROWTH FND OF AMERICA - F-1	A	DIV	J	T					
5. BLACKROCK GLOBAL ALLOCATION FUND, CLASS A	A	DIV	J	T					
6. DAVIS NY VENTURE FND - CLASS A	A	DIV	J	T					
7. FIRST EAGLE GLOBAL FND, CLASS A	A	DIV	J	T					
8. HARTFORD MUTUAL FUNDS - MID CAP, CLASS A		NONE	J	T					
9. IVY FNDS - ASSET STRATEGY FUND, CLASS A	A	DIV	J	T					
10. PERKINS MID CAP VALUE FUND, CLASS J		NONE	J	T					
11. J P MORGAN SMALL CAP EQUITY FND, CLASS A	A	DIV	J	T					
12. TRP - MID TAX FREE BOND FUND	A	INT	J	T					
13. PIONEER CULLEN VALUE FUND, CLASS A	A	DIV	J	T					
14. J P MORGAN MID CAP VALUE FND, CLASS A	A	DIV							
15. VERIZON COMMUNICATIONS - COMMON	A	DIV	J	T					
16. JANUS MID CAP VALUE FD 1		NONE	J	T					
17.									

1. Income Data Codes: (See Column B) and (D)	A = \$1,000 or less F = \$30,001 - \$100,000 J = \$15,000 or less (See Column C) and (D)	B = \$1,001 - \$7,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$300,001 - \$1,000,000 R = \$25,000,001 - \$50,000,000	C = \$7,501 - \$5,000 H = \$1,000,001 - \$3,000,000 L = \$50,001 - \$100,000 M = \$1,000,001 - \$5,000,000 P = More than \$50,000,000	D = \$3,001 - \$15,000 I = More than \$5,000,000 N = \$100,001 - \$500,000 Q = \$5,000,001 - \$10,000,000	E = \$15,001 - \$50,000
2. Value Method Codes (See Column C)	D = Appraised U = Book Value	R = Cost (Real Estate Only) V = Disc	W = Estimated	T = Cash Market	

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Name of Person Reporting Hollander, Ellen L.	Date of Report 4/20/10
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VII. INVESTMENTS and TRUSTS — Income, value, transactions (Include those of spouse and dependent children; see pp. 24-40 of filing instructions)

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

A. Description of Assets (including trust assets) <small>Place "(X)" after each asset except from prior disclosure</small>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month- Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. IRA ACCOUNT #1	B	DIV	M	T	Exempt				
2. AMERICAN FUNDS BALANCED FD - B									
3. ARTISAN SMALL CAP VALUE INVESTOR FD									
4. BLACKROCK GLOBAL ALLOC. FD A									
5. AMERICAN FUNDS CAPITAL WORLD G & I FD B									
6. FIRST EAGLE GLOBAL FD I									
7. AMERICAN FUNDS GROWTH FD OF AMERICA B									
8. AMERICAN FUNDS GROWTH FD OF AMERICA F1									
9. HARTFORD MID CAP FD A									
10. ING GLOBAL REAL ESTATE FD A									
11. IVY ASSET STRATEGY FD A									
12. PERKINS MID CAP VALUE FD INV									
13. DAVIS NY VENTURE FD Y									
14. PIMCO TOTAL RETURN FD A									
15. JP MORGAN SMALL CAP EQUITY FD A									
16. PIONEER CULLEN VALUE FD A									
17. VAN KAMPEN GLOBAL FRANCHISE FD B									

1. Income Codes: (See Column B) and (D)	A = \$1,000 or less F = \$50,000 - \$100,000 J = \$10,000 or less K = \$15,000 - \$50,000 L = \$20,000 - \$50,000 M = \$25,000 - \$50,000 N = \$30,000 - \$50,000 O = \$35,000 - \$50,000 P = \$40,000 - \$50,000 Q = Appraisals R = Book Value	B = \$1,001 - \$1,500 G = \$100,001 - \$1,000,000 H = \$100,001 - \$1,000,000 I = \$100,001 - \$1,000,000 J = \$100,001 - \$1,000,000 K = \$100,001 - \$1,000,000 L = \$100,001 - \$1,000,000 M = \$100,001 - \$1,000,000 N = \$100,001 - \$1,000,000 O = \$100,001 - \$1,000,000 P = \$100,001 - \$1,000,000 Q = Appraisals R = Cash (Not Estate Only) S = Other	C = \$1,001 - \$5,000 H = \$1,000,001 - \$5,000,000 I = \$1,000,001 - \$5,000,000 J = \$1,000,001 - \$5,000,000 K = \$1,000,001 - \$5,000,000 L = \$1,000,001 - \$5,000,000 M = \$1,000,001 - \$5,000,000 N = \$1,000,001 - \$5,000,000 O = \$1,000,001 - \$5,000,000 P = \$1,000,001 - \$5,000,000 Q = Appraisals R = Cash (Not Estate Only) S = Other T = Assessment U = Estimated	D = \$5,001 - \$15,000 I = \$15,001 - \$50,000 J = \$15,001 - \$50,000 K = \$15,001 - \$50,000 L = \$15,001 - \$50,000 M = \$15,001 - \$50,000 N = \$15,001 - \$50,000 O = \$15,001 - \$50,000 P = \$15,001 - \$50,000 Q = Appraisals R = Cash (Not Estate Only) S = Other T = Assessment U = Estimated	E = \$15,001 - \$50,000 I = \$50,001 - \$100,000 J = \$50,001 - \$100,000 K = \$50,001 - \$100,000 L = \$50,001 - \$100,000 M = \$50,001 - \$100,000 N = \$50,001 - \$100,000 O = \$50,001 - \$100,000 P = \$50,001 - \$100,000 Q = Appraisals R = Cash (Not Estate Only) S = Other T = Assessment U = Estimated
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Name of Person Reporting Hollander, Ellen L.	Date of Report 4/20/10
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VII. INVESTMENTS and TRUSTS -- Income, value, transactions (Indicate those of spouse and dependent children; see pp. 34-50 of filing instructions)

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

A. Description of Assets (including trust assets) Place "TX" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-1)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (1-1)	(2) Value Market Code 2 (2-1)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (1-1)	(4) Gain Code 1 (A-H)	(5) Netty of buyer/seller (if private transaction)
1. IRA ACCOUNT #1 (CONTINUED)	B	DIV	M	T	Exempt				
2. VAN KAMPEN COMSTOCK FD B									
3.									
4.									
5. NORTHWESTERN MUTUAL POLICY - CASH VALUE			M	T					
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Tax Codes:	A = \$1,000 or less	B = \$1,001 - \$1,500	C = \$1,501 - \$5,000	D = \$5,001 - \$15,000	E = \$15,001 - \$50,000
(See Column B1 and D1)	F = \$20,001 - \$100,000	G = \$100,001 - \$1,000,000	H = \$1,000,001 - \$5,000,000	I = \$5,000,001 - \$25,000,000	J = \$25,000,001 - \$100,000,000
2. Value Codes:	K = \$1,000 or less	L = \$1,001 - \$50,000	M = \$50,001 - \$500,000	N = \$500,001 - \$1,000,000	O = \$1,000,001 - \$5,000,000
(See Column C1 and D1)	P = \$1,000,001 - \$500,000,000	Q = \$500,000,001 - \$1,000,000,000	R = \$1,000,000,001 - \$5,000,000,000	S = \$5,000,000,001 - \$25,000,000,000	T = \$25,000,000,001 - \$100,000,000,000
3. Value Market Codes:	U = Applied	V = Cash (Real Estate Only)	W = Common	X = Exchange	Y = Other
(See Column C2)	Z = Book Value				

FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Hullinder, Ellen L.	Date of Report 4/20/10
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VII. INVESTMENTS and TRUSTS - Income, value, transactions (Include those of spouse and dependent children; see pp. 34-60 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "XX" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code I (A-I)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. IRA ACCOUNT #2		B DIV	L	T	Exempt				
2. ARTISAN SMALL CAP VALUE INVESTOR FD									
3. BLACKROCK GLOBAL ALLOC. FD A									
4. FIRST EAGLE GLOBAL FD I									
5. AMERICAN FUNDS GROWTH OF AMERICA F1									
6. HARTFORD MID CAP FD A									
7. ING GLOBAL REAL ESTATE FD A									
8. IVY ASSET STRATEGY FD A									
9. PERKINS MID CAP VALUE FD INV SHS CLASS T									
10. DAVIS NY VENTURE FD Y									
11. PIMCO TOTAL RETURN FD A									
12. JP MORGAN SMALL CAP EQUITY FD A									
13. PIONEER CULLEN VALUE FD A									
14.									
15.									
16.									
17.									

1. Interest Divs Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$25,001 - \$100,000	N = \$1,001 - \$5,000 U = \$100,001 - \$1,000,000	C = \$5,001 - \$50,000 H = \$1,000,001 - \$5,000,000	I = \$50,001 - \$100,000 L = \$100,001 - \$1,000,000	P = \$500,001 - \$1,000,000 R = \$1,000,001 - \$5,000,000	S = \$5,000,001 - \$10,000,000 T = \$10,000,001 - \$50,000,000	V = \$50,000,001 - \$100,000,000 W = \$100,000,001 - \$500,000,000	X = \$500,000,001 - \$1,000,000,000 Y = \$1,000,000,001 - \$5,000,000,000	Z = \$5,000,000,001 - \$10,000,000,000 AA = \$10,000,000,001 - \$50,000,000,000	AB = \$50,000,000,001 - \$100,000,000,000 AC = \$100,000,000,001 - \$500,000,000,000	AD = \$500,000,000,001 - \$1,000,000,000,000 AE = \$1,000,000,000,001 - \$5,000,000,000,000	AF = \$5,000,000,000,001 - \$10,000,000,000,000 AG = \$10,000,000,000,001 - \$50,000,000,000,000	AH = \$50,000,000,000,001 - \$100,000,000,000,000 AI = \$100,000,000,000,001 - \$500,000,000,000,000	AJ = \$500,000,000,000,001 - \$1,000,000,000,000,000 AK = \$1,000,000,000,000,001 - \$5,000,000,000,000,000	AL = \$5,000,000,000,000,001 - \$10,000,000,000,000,000 AM = \$10,000,000,000,000,001 - \$50,000,000,000,000,000	AN = \$50,000,000,000,000,001 - \$100,000,000,000,000,000 AO = \$100,000,000,000,000,001 - \$500,000,000,000,000,000	AP = \$500,000,000,000,000,001 - \$1,000,000,000,000,000,000 AQ = \$1,000,000,000,000,000,001 - \$5,000,000,000,000,000,000	AR = \$5,000,000,000,000,000,001 - \$10,000,000,000,000,000,000 AS = \$10,000,000,000,000,000,001 - \$50,000,000,000,000,000,000	AT = \$50,000,000,000,000,000,001 - \$100,000,000,000,000,000,000 AU = \$100,000,000,000,000,000,001 - \$500,000,000,000,000,000,000	AV = \$500,000,000,000,000,000,001 - \$1,000,000,000,000,000,000,000 AW = \$1,000,000,000,000,000,000,001 - \$5,000,000,000,000,000,000,000	AX = \$5,000,000,000,000,000,000,001 - \$10,000,000,000,000,000,000,000 AY = \$10,000,000,000,000,000,000,001 - \$50,000,000,000,000,000,000,000	AZ = \$50,000,000,000,000,000,000,001 - \$100,000,000,000,000,000,000,000 BA = \$100,000,000,000,000,000,000,001 - \$500,000,000,000,000,000,000,000	BB = \$500,000,000,000,000,000,000,001 - \$1,000,000,000,000,000,000,000,000 BC = \$1,000,000,000,000,000,000,000,001 - \$5,000,000,000,000,000,000,000,000	BD = \$5,000,000,000,000,000,000,000,001 - \$10,000,000,000,000,000,000,000,000 BE = \$10,000,000,000,000,000,000,000,001 - \$50,000,000,000,000,000,000,000,000	BF = \$50,000,000,000,000,000,000,000,001 - \$100,000,000,000,000,000,000,000,000 BG = \$100,000,000,000,000,000,000,000,001 - \$500,000,000,000,000,000,000,000,000	BH = \$500,000,000,000,000,000,000,000,001 - \$1,000,000,000,000,000,000,000,000,000 BI = \$1,000,000,000,000,000,000,000,000,001 - \$5,000,000,000,000,000,000,000,000,000	BJ = \$5,000,000,000,000,000,000,000,000,001 - \$10,000,000,000,000,000,000,000,000,000 BK = \$10,000,000,000,000,000,000,000,000,001 - \$50,000,000,000,000,000,000,000,000,000	BL = \$50,000,000,000,000,000,000,000,000,001 - \$100,000,000,000,000,000,000,000,000,000 BM = \$100,000,000,000,000,000,000,000,000,001 - \$500,000,000,000,000,000,000,000,000,000	BN = \$500,000,000,000,000,000,000,000,000,001 - \$1,000,000,000,000,000,000,000,000,000,000 BO = \$1,000,000,000,000,000,000,000,000,000,001 - \$5,000,000,000,000,000,000,000,000,000,000	BP = \$5,000,000,000,000,000,000,000,000,000,001 - \$10,000,000,000,000,000,000,000,000,000,000 BQ = \$10,000,000,000,000,000,000,000,000,000,001 - \$50,000,000,000,000,000,000,000,000,000,000	BR = \$50,000,000,000,000,000,000,000,000,000,001 - \$100,000,000,000,000,000,000,000,000,000,000 BS = \$100,000,000,000,000,000,000,000,000,000,001 - \$500,000,000,000,000,000,000,000,000,000,000	BT = \$500,000,000,000,000,000,000,000,000,000,001 - \$1,000,000,000,000,000,000,000,000,000,000,000 BU = \$1,000,000,000,000,000,000,000,000,000,000,001 - \$5,000,000,000,000,000,000,000,000,000,000,000	BV = \$5,000,000,000,000,000,000,000,000,000,000,001 - \$10,000,000,000,000,000,000,000,000,000,000,000 BW = \$10,000,000,000,000,000,000,000,000,000,000,001 - \$50,000,000,000,000,000,000,000,000,000,000,000	BX = \$50,000,000,000,000,000,000,000,000,000,000,001 - \$100,000,000,000,000,000,000,000,000,000,000,000 BY = \$100,000,000,000,000,000,000,000,000,000,000,001 - \$500,000,000,000,000,000,000,000,000,000,000,000	BZ = \$500,000,000,000,000,000,000,000,000,000,000,001 - \$1,000,000,000,000,000,000,000,000,000,000,000,000 CA = \$1,000,000,000,000,000,000,000,000,000,000,000,001 - \$5,000,000,000,000,000,000,000,000,000,000,000,000	CB = \$5,000,000,000,000,000,000,000,000,000,000,000,001 - \$10,000,000,000,000,000,000,000,000,000,000,000,000 CC = \$10,000,000,000,000,000,000,000,000,000,000,000,001 - \$50,000,000,000,000,000,000,000,000,000,000,000,000	CD = \$50,000,000,000,000,000,000,000,000,000,000,000,001 - \$100,000,000,000,000,000,000,000,000,000,000,000,000 CE = \$100,000,000,000,000,000,000,000,000,000,000,000,001 - \$500,000,000,000,000,000,000,000,000,000,000,000,000	CF = \$500,000,000,000,000,000,000,000,000,000,000,000,001 - \$1,000,000,000,000,000,000,000,000,000,000,000,000,000,000 CG = \$1,000,000,000,000,000,000,000,000,000,000,000,000,001 - \$5,000,000,000,000,000,000,000,000,000,000,000,000,000,000	CH = \$5,000,000,000,000,000,000,000,000,000,000,000,000,001 - \$10,000,000,000,000,000,000,000,000,000,000,000,000,000,000 CI = \$10,000,000,000,000,000,000,000,000,000,000,000,000,001 - \$50,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
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FINANCIAL DISCLOSURE REPORT
Page 4 of 6

Name of Person Reporting Hollander, Ellen L.	Date of Report 4/20/10
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VII. INVESTMENTS and TRUSTS — Income, value, transactions (includes those of spouse and dependent children; see pp. 34-60 of filing instructions)

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

A. Description of Assets (including trust assets) Place "X" after each asset except from prior disclosure	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-I)	(2) Type (e.g., div, int, or int.)	(1) Value Code 2 (J-P)	(2) Value Market Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date Month - Day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. 401 (K) PLAN		NONE	N	T	Exempt				
2. AMERICAN FUNDS EURO PACIFIC GROWTH FD R6									
3. AMERICAN FUNDS GROWTH FD OF AMERICA R6									
4. DREYFUSS MID CAP INDEX FD									
5. FIDELITY PURITAN FD									
6. GOLDMAN SACHS LARGE CAP VALUE FD INST.									
7. PIMCO TOTAL RETURN FD 1									
8. T. HOWE PRICE SMALL CAP STK FD									
9. VANGUARD INSTL INDEX FD IP									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Code (See Column B and D)	A = \$1,001 or less F = \$10,001 - \$100,000 J = \$11,001 or less	B = \$1,001 - \$7,000 G = \$10,001 - \$1,000,000 K = \$13,001 - \$30,000	C = \$7,001 - \$50,000 H = \$1,000,001 - \$1,000,000 L = \$10,001 - \$100,000	D = \$5,001 - \$15,000 I = \$10,001 - \$100,000 M = \$100,001 - \$500,000	E = \$15,001 - \$50,000 N = \$100,001 - \$1,000,000 O = \$1,000,001 - \$5,000,000
2. Value Code (See Column C)	H = \$25,001 - \$100,000 I = \$100,001 - \$500,000	J = \$100,001 - \$500,000 K = \$500,001 - \$1,000,000	L = \$1,000,001 - \$5,000,000 M = \$5,000,001 - \$10,000,000	N = \$10,000,001 - \$50,000,000 O = \$50,000,001 - \$100,000,000	P = \$100,000,001 - \$500,000,000 Q = \$500,000,001 - \$1,000,000,000
3. Value Method Code (See Column C)	Q = Appraised U = Book Value	R = Gift (with Estate Duty) V = Other	S = Adjustment W = Estimated	T = Cash Value	

FINANCIAL DISCLOSURE REPORT
Page 5 of 6

Name of Person Reporting	Date of Report
Hollander, Ellen L.	4/20/10

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 6

Name of Person Reporting	Date of Report
Hollander, Ellen L.	4/20/10

IX. CERTIFICATION.

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

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

Signature: Ellen L. Hollander 4/20/10

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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

Ellen Lipton Hollander

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	500	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured			
Listed securities-add schedule	1	132	404	Notes payable to relatives			
Unlisted securities-add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		287	353
Real estate owned-add schedule		821	500	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		228	500				
Cash value-life insurance		204	921				
Other assets itemize:							
Retirement Funds - See schedule		470	449				
Controlling Interest Funds Held in Trust -							
See Schedule		511	588	Total liabilities		287	353
Other Assets - See Schedule		3	850	Net Worth	3	091	359
Total Assets	3	378	712	Total liabilities and net worth	3	378	712
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor				Are any assets pledged? (Add schedule)			NO
On leases or contracts		3	913	Are you defendant in any suits or legal actions?			NO
Legal Claims				Have you ever taken bankruptcy?			NO
Provision for Federal Income Tax		347	541				
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

<u>LISTED SECURITIES</u>		
CASH/SWEEP ACCOUNT	\$	1,088
ML BANK DEPOSIT PROGRAM		16,586
EVERGREEN MONEY MARKET FUND		5,430
ALCON, INC.		12,925
AMERICAN POWER CORP CL A		8,522
ANSYS, INC., COMMON		15,115
APACHE CORPORATION		21,518
AT&T, INC.		175
CHICAGO BRIDGE & IRON COMPANY N.V.		22,097
CISCO SYSTEMS, INC., COMMON		23,427
COMCAST CORPORATION		300
CONSOLIDATED EDISON, INC.		6,948
CONSOLIDATED ENERGY, INC., COMMON		6,399
COVANCE, INC.		6,139
DENTSPLY INTERNATIONAL, INC.		12,208
EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.		36,920
FASTENAL COMPANY		127,653
IDEXX LABORATORIES, INC.		31,653
INTEL CORPORATION		52,382
INTERNATIONAL BUSINESS MACHINES		116,268
IRON MOUNTAIN, INC.		19,865
JACOBS ENGINEERING GROUP, INC.		27,114
JOHNSON & JOHNSON		13,040
K-TRON INTERNATIONAL, INC.		8,998
MARKEL CORPORATION		13,113
MONSANTO COMPANY		10,713
PAYCHEX, INC.		21,105
POTASH CORPORATION OF SASKATCHEWAN		5,968
QUALCOMM, INC.		41,960
RESMED, INC.		25,460
RIO TINTO ADR EACH REPTG FOUR ORDINARY SHARES		27,224
ROPER INDUSTRIES, INC.		23,136
SCHLUMBERGER, LTD.		10,788
SMITE INTERNATIONAL, INC.		28,538
STERICYCLE, INC.		14,988
STRYKER CORPORATION		27,180
T ROWE PRICE GROUP, INC.		37,105
TECHNE CORPORATION		31,154
TEVA PHARMACEUTICAL INDUSTRIES ADR REPTG ONE ORDINARY SHARES		25,232
TRIMBLE NAVIGATION, LTD.		27,284
ULTRA PETROLEUM CORPORATION		13,989
VERIZON COMMUNICATIONS, INC.		8,982
WR BERKLEY CORPORATION		17,611
AMERICAN FUNDS-BALANCED F-1		3,062
AMERICAN FUNDS-GROWTH FUND OF AMERICA, CLASS F-1		3,122
ARTISAN SMALL CAP VALUE INVESTOR		1,555
BLACKROCK GLOBAL ALLOCATION FUND, CLASS A		3,023
DAVIS NEW YORK VENTURE FUND, CLASS Y		3,100
FIRST EAGLE GLOBAL FUND, CLASS A		3,102
HARTFORD MUTUAL FUNDS, INC.-MIDCAP FUND, CLASS A		1,593
IVY FUNDS, INC.-ASSET STRATEGY FUND, CLASS A		2,999
JANUS MID CAP VALUE FUND, CLASS I		1,580
JP MORGAN SMALL CAP EQUITY FUND, CLASS A		1,610
MERRILL LYNCH-CMA GOVERNMENT SECURITIES FUND		18
MERRILL LYNCH-CMA TAX-EXEMPT FUND		87,229
PIONEER CULLEN VALUE FUND, CLASS A		3,102
T ROWE PRICE-MARYLAND TAX FREE BOND FUND		3,010
		<hr/>
TOTAL LISTED SECURITIES	\$	<u>1,132,404</u>

FINANCIAL STATEMENT
NET WORTH SCHEDULES

<u>REAL ESTATE OWNED</u>	
PERSONAL RESIDENCE	\$ <u>821,500</u>
 <u>REAL ESTATE MORTGAGES PAYABLE</u>	
PERSONAL RESIDENCE	\$ 199,438
HOME EQUITY LINE OF CREDIT	<u>87,915</u>
TOTAL REAL ESTATE MORTGAGES PAYABLE	\$ <u>287,353</u>
 <u>OTHER ASSETS</u>	
ISRAELI BONDS	\$ 1,350
MILLBROOK COMMUNICATIONS, INC. - Net Worth	<u>2,500</u>
TOTAL OTHER ASSETS	\$ <u>3,850</u>
 <u>RETIREMENT FUNDS</u>	
AMERICAN FUNDS-BALANCED F-1	\$ 3,768
AMERICAN FUNDS-CAPITAL WORLD GROWTH & INCOME FUND, CLASS B	4,618
AMERICAN FUNDS-EURO PACIFIC GROWTH R6	26,749
AMERICAN FUNDS-GROWTH FUND OF AMERICA, CLASS B	4,300
AMERICAN FUNDS-GROWTH FUND OF AMERICA, CLASS F-1	17,652
AMERICAN FUNDS-GROWTH FUND OF AMERICA, R6	38,943
ARTISAN SMALL CAP VALUE INVESTOR	9,049
BLACKROCK GLOBAL ALLOCATION FUND, CLASS A	16,670
DAVIS NEW YORK VENTURE FUND, CLASS Y	17,525
DREYFUS MID-CAP INDEX	27,028
FIDELITY PURITAN	27,642
FIRST EAGLE GLOBAL FUND, CLASS I	17,413
GOLDMAN SACHS LARGE CAP VALUE INST	37,142
HARTFORD MUTUAL FUNDS, INC.-MIDCAP FUND, CLASS A	9,010
ING GLOBAL REAL ESTATE FUND, CLASS A	8,719
IVY FUNDS, INC.-ASSET STRATEGY FUND, CLASS A	17,114
JP MORGAN SMALL CAP EQUITY FUND, CLASS A	9,101
PERKINS MID CAP VALUE FUND	8,405
PIMCO TOTAL RETURN FUND, CLASS A	26,431
PIMCO TOTAL RETURN INST	36,941
PIONEER CULLEN VALUE FUND, CLASS A	17,137
T ROWE PRICE-SMALL CAP STOCK FUND	27,366
VAN KAMPEN GLOBAL FRANCHISE FUND, CLASS B	6,297
VAN KEMPEN COMSTOCK FUND, CLASS B	6,243
VANGUARD INSTITUTIONAL INDEX FUND	<u>49,185</u>
TOTAL RETIREMENT FUNDS	\$ <u>470,449</u>

FINANCIAL STATEMENT
NET WORTH SCHEDULES

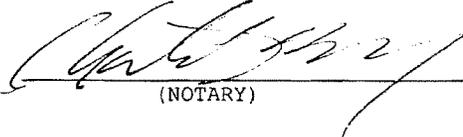
<u>CONTROLLING INTEREST - FUNDS HELD IN TRUST</u>	
ALCON, INC.	\$ 8,482
AMERICAN PUBLIC EDUCATION, INC.	2,039
ANSYS, INC., COMMON	6,748
APACHE CORPORATION	30,552
CHICAGO BRIDGE & IRON COMPANY N.V.	2,907
CISCO SYSTEMS, INC., COMMON	14,967
CONSOLIDATED ENERGY, INC., COMMON	2,666
DENTSPLY INTERNATIONAL, INC.	5,014
EVERGREEN MONEY MARKET FUND	113,760
EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.	11,999
FASTENAL COMPANY	50,089
FISERV, INC.	9,505
HCP, INC.	4,950
II-VI, INC.	7,403
IDEXX LABORATORIES, INC.	17,121
INTEL CORPORATION	8,637
IRON MOUNTAIN, INC.	8,220
JACOBS ENGINEERING GROUP, INC.	12,145
JOHNSON & JOHNSON	2,445
K 12, INC.	2,165
K-TRON INTERNATIONAL, INC.	3,749
MARKEL CORPORATION	7,025
MONSANTO COMPANY	5,714
PAYCHEX, INC.	12,372
POTASH CORPORATION OF SASKATCHEWAN	5,221
QUALCOMM, INC.	14,686
RESMED, INC.	8,911
RIO TINTO ADR EACH REPTG FOUR ORDINARY SHARES	12,310
ROPER INDUSTRIES, INC.	11,568
SCHLUMBERGER, LTD.	5,553
SMITH INTERNATIONAL, INC.	15,255
STERICYCLE, INC.	8,788
STRYKER CORPORATION	11,802
T ROWE PRICE GROUP, INC.	16,835
TECHNE CORPORATION	15,895
TEVA PHARMACEUTICAL INDUSTRIES ADR REPTG ONE ORDINARY SHARES	11,433
TRIMBLE NAVIGATION, LTD.	8,616
ULTRA PETROLEUM CORPORATION	6,703
WR BERKLEY CORPORATION	7,338
TOTAL FUNDS HELD IN TRUST	\$ <u>511,588</u>

AFFIDAVIT

I, Ellen L. Hollander, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

4/19/10
(DATE)

Ellen L. Hollander
(NAME)


(NOTARY)

My Commission Expires 6-20-2013

**STATEMENT OF SUSAN RICHARD NELSON, NOMINATED TO BE
U.S. DISTRICT JUDGE FOR THE DISTRICT OF MINNESOTA**

Judge NELSON. Thank you, Mr. Chairman, Ranking Member Sessions, Senators Franken and Klobuchar, and members of the Committee. I want to start by saying it is a profound honor and privilege to be here today. I am deeply humbled by this process.

I want to thank this Committee for convening this meeting so quickly after my nomination. I appreciate the hard work that went into doing so.

I also want to thank Senator Klobuchar, although she's not here for a moment, for her warm and generous remarks in introducing me today. I want to thank Senator Franken for his unwavering support of my nomination. And perhaps most importantly, I'd like to thank President Obama for his trust and confidence in me. I take that very seriously and hope to make him proud.

I, too, am very proud to introduce some members of my family and friends who have been so kind to come here to support me today. I'd like to start with my husband of nearly 27 years, my dearest friend, and I'd ask him to stand, Tom Nelson.

And our pride and joy, our two boys are here today, our oldest, Rob Nelson, lives and works here in the District for the Council on Foreign Relations, and our youngest son, Michael Nelson, who is a junior at St. Olaf College. And unlike Scott Matheson, I allowed him to miss finals and come here today.

[Laughter.]

Judge NELSON. We'll see whose judgment was—also, on behalf of the Richard family, my family, my sister, Barbara Richard, is here with her youngest child, Jake. The Richards live far and wide across the globe and I know they're all here in spirit.

I'd also like to thank my dearest friend, Annamarie Daley, my best friend in Minneapolis for many decades. She flew here to be here today. And my dearest friend from college, Jan Heininger, who is here.

Also, for those of you watching on the Webcast, I am truly thankful for your support.

And finally, I'd like to acknowledge my in-laws, Tom's parents, Ed and Fern Nelson, who are 89 and 88 years young. And they couldn't be here today, but they have truly provided me for love and support for the years and deserve the greatest recognition for that.

Thank you, Mr. Chairman.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Susan Richard Nelson (formerly, Susan Beth Richard)

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

United States District Court Judge for the District of Minnesota

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

Office Address: United States District Court
300 South Fourth Street
Minneapolis, MN 55415

Residence: Bloomington, MN 55438

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

1952; Buffalo, New York

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

1975 to 1978, University of Pittsburgh School of Law; J.D., 1978
1970 to 1974, Oberlin College; B.A., 1974

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

June 2000 to present
United States District Court
300 South Fourth Street
Minneapolis, Minnesota 55415

United States Magistrate Judge

1996 to present
Minnesota Women Lawyers
600 Nicollet Mall, Suite 390B
Minneapolis, Minnesota 55402
Officer (Various positions held)

1984 to 2000
Robins, Kaplan, Miller & Ciresi
800 LaSalle Plaza
Minneapolis, Minnesota 55402
Partner (1988 to 2000)
Associate (1984 to 1988)

1980 to 1983
Tyler, Cooper & Alcorn
205 Church Street
New Haven, Connecticut 06509
Associate

1978 to 1980 & 1977
Reed, Smith, Shaw & McClay
Pittsburgh, Pennsylvania
Associate
Summer Associate (1977)

1976 (summer)
Pennsylvania Department of Environmental Protection
Pittsburgh, Pennsylvania
Unpaid intern in legal affairs

1975 (summer)
YMCA summer camp
Pittsburgh, PA
Camp counselor

1975 (January to June)
Stouffers Restaurant
Pittsburgh, Pennsylvania
Waitress

1974 (September to December)
First Federal Savings & Loan
Pittsburgh, Pennsylvania
Bank Teller

1973 to 1974 (summers)
 Camp Interlocken
 Keene, New Hampshire
 Camp counselor, waterfront director

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

I have not served in the military. I have not registered for selective service, as I am not eligible to do so.

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

2005 Myra Bradwell Award, Minnesota Women Lawyers
 2005 Judicial Professionalism Award, Hennepin County Bar Association
 Selected as Leading Minnesota Lawyer (Super Lawyer, 1995 to 1999)
 1998 Trial Lawyer of the Year Award, Trial Lawyers for Public Justice
 (Awarded to the entire State of Minnesota Tobacco Trial Team)
 1998 Minnesota Trial Lawyers Association Member of the Year Award
 (Awarded to the entire State of Minnesota Tobacco Trial Team)
 1998 Minnesota Women's Press News Maker of the Year Award
 (Awarded to women members of State of Minnesota Tobacco Trial Team)
 Order of the Barristers, University of Pittsburgh School of Law, 1978
 American Jurisprudence Award in Criminal Law, 1976
 Graduated from Oberlin College with High Honors, 1974

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

American Bar Association
 American Trial Lawyers Association
 Presidential Appointment, Constitutional Law Committee, 1992
 Federal Bar Association, 2000 to present
 Board Member, 2000 to 2004
 Federal Magistrate Judges Association
 Chair, Minneapolis Convention, 2002
 Hennepin County Bar Association
 Minnesota State Bar Association, 1984 to present
 Minnesota Trial Lawyers Association
 Minnesota Women Lawyers

President, 1996 to 1997
President-Elect, 1995 to 1996
Board Member, 1994 to 1995
Current Member of the Advisory Board
Minnesota Supreme Court Advisory Committee, Elimination of Bias CLE, 1995 to 1996
United States Magistrate Judge Selection Committee, 1991

10. **Bar and Court Admission:**

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

Connecticut, 1980 (presently on inactive status)
Minnesota, 1983
Pennsylvania, 1978 (presently on inactive status)

There has been no lapse in membership.

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

Supreme Court of the United States, 1985
United States Circuit Court for the Eighth Circuit, 1985
United States District Court for the District of Minnesota, 1985
United States District Court for the District of Pennsylvania, 1978
United States District Court for the District of Connecticut, 1981
Pennsylvania State Courts, 1978
Connecticut State Courts, 1981
Minnesota State Courts, 1984

There has been no lapse in membership

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Marco Island Yacht Club (2000-2008)
American Legion, Bloomington, Minnesota (2000-2003)
St Paul Chamber Orchestra (Board Member, 1999 to 2001)

Minneapolis Club (1998 to present)
 Minnesota Valley Country Club (1997 to present)
 Swedish Institute (1995 to present)
 Bloomington Classic Baseball League (1995-1999)
 Bloomington Athletic Association (1990-1995)
 Lifetime Athletic Club (formerly Flagship Athletic Club) (1989 to present)
 Southdale YMCA (1986-1996)
 Izaak Walton League, Bush Lake, Minnesota (1986-1988)
 Minneapolis Jewish Community Center (1985-1990)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Minneapolis Club discriminated in their membership long before I became a member, and no longer maintains any discriminatory policies.

12. Published Writings and Public Statements:

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

Editor, Robins, Kaplan, Miller & Ciresi, Complex Litigation Newsletter, May, 1995

Cyanide Poisoning in the Intensive Care Unit: The Story of Sodium Nitroprusside, Robins, Kaplan, Miller & Ciresi, Complex Litigation Newsletter, May 1995

Editor, Robins, Kaplan, Miller & Ciresi Personal Injury Newsletter, Volume IV, Number 1, Summer 1993

Editor, Robins, Kaplan, Miller & Ciresi Personal Injury Newsletter, Volume III, Number 1, April 1992

Editor, Robins, Kaplan, Miller & Ciresi Personal Injury Newsletter, Volume I, Number 3, December 1989

Editor, Robins, Kaplan, Miller & Ciresi Personal Injury Newsletter, Volume I, Number 2, March 1989

The Police Chase: A Precarious Balance of Judgment, Robins Kaplan Miller & Ciresi Newsletter, Volume I, Number 2, March 1989

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

I served on the Minnesota Supreme Court Advisory Committee on the development of the "elimination of bias" CLE requirement for all lawyers in the State of Minnesota. The Committee recommended to the Court that the CLE rules require all lawyers to take two hours of elimination of bias credit every reporting period (every three years). Copies supplied.

As President of Minnesota Women Lawyers, I wrote a monthly column for its Newsletter, addressing MWL's programs, mentor opportunities and the like. In 1993, I served as chair of MWL's annual holiday benefit which raised money for battered women's shelters in the state. In connection with that event, I made some remarks about the good work of the recipient shelters. In 1997, at MWL's annual dinner, I introduced our keynote speaker, Coretta Scott King. In 1996 at MWL's annual dinner, I made remarks when I accepted the presidency of the organization. Copies of the monthly columns supplied. No notes for remarks.

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

I have never given testimony or any official statement relating to matters of public policy or legal interpretation.

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

I have made it my practice to speak frequently at continuing legal education and other bar association programs, especially since my appointment as a magistrate judge in 2000. After searching my files and internet databases I have identified the following presentations that I have made, although there may be others for which I have been unable to locate a record:

Minnesota Women Lawyers: A Twenty Year Retrospective on Gender Fairness in the Courts, Panelist with Marianne Short and Judge Diana Murphy, Eighth Circuit Court of Appeals (Oct. 27, 2009)

Upper Midwest Employment Law Institute, Faculty, "Lost in Translation: Cultural and Practical Considerations for Working with Interpreters" (May 29, 2009)

Pioneering Minnesota Women Lawyers, Luncheon Speaker at St. Thomas School of Law (April 8, 2009)

Fulbright & Jaworski, Web Seminar Panelist, "The Judge's and the Office of the General Counsel's Perspectives: How Not to Regret Mediations and Settlement Conferences" (Sept. 9, 2008)

Upper Midwest Employment Law Institute, Faculty (May 29, 2008)

William Mitchell College of Law Judicial Clerkship Panel Discussion, Panelist (Mar. 12, 2008)

CLE Seminar, Faculty, "Pressure on the Privilege" (2008)

Federal Bar Association Luncheon, "Partnering Between In-House and Outside Counsel," Introductory Speaker (Nov. 14, 2007)

American Intellectual Property Law Association, Advanced Patent Litigation Seminar, "Patrolling the Roads: Judges' Perspectives on Patent Litigation Trends", Minneapolis Panelist (June 15, 2007)

Federal Court Practice Seminar, Federal Bar Association, "Spoliation of Evidence", Panelist (June 13, 2006)

Upper Midwest Employment Law Institute, Faculty (May 22, 2006)

Minnesota Defense Lawyers Seminar, "Tips for New Lawyers" (May 25, 2005)

Minnesota Women Lawyers Annual Meeting, Myra Bradwell Award Acceptance Remarks (Spring 2005)

Federal Court Practice Seminar, Federal Bar Association, "Electronic Evidence and Discovery," Panelist (June 10, 2004)

Minnesota CLE Seminar, Product Liability Practice, "Judicial Perspective on Product Liability Litigation" (Nov. 19, 2002)

Intellectual Property Licensing Seminar, "Mediation of Intellectual Property Cases" (June 6, 2002)

Minnesota State Bar Association, Labor and Employment Section, "Computer Based Discovery in Federal Employment Litigation", Luncheon Speaker (Mar. 13, 2002)

Federal Bar Association Seminar, "Civility in the Courts", Faculty (June 27, 2001)

Upper Midwest Employment Law Institute, "E-Discovery – Goldmine or Nightmare", Faculty (May 30, 2001)

Minnesota Women Lawyer's Seminar, "Tips From the Bench", Faculty (2001)

Federal Bar Association Luncheon Speaker, "Transition from Private Practice to the Federal Bench" (Oct. 18, 2000)

Minnesota Trial Lawyer's Association Seminar, "A View From the Bench", Faculty (Sept. 15, 2000)

Investiture Ceremony Remarks (June 12, 2000)

William Mitchell Center for Conflict Management Seminar, "Y2K Disputes: The Mediation Option", Faculty (Aug. 26, 1999)

CLE, Industry Wide Litigation, "Attorney Client Privilege and Discovery Ethics: Lessons Learned From the Tobacco Litigation", Faculty (April 11, 1999)

Minnesota Institute of Legal Education, "Torts: Frontier Issues", Faculty (1999)

Minnesota Trial Lawyer's Association, "Demonstrative Evidence in Tobacco Litigation", Faculty (1999)

Fulcrum Seminar, "Associate Training and Development", Faculty (1999)

CLE, Winning By Motion, "Summary Judgment: Recognizing a Material Fact Dispute" (1999)

CLE, "No More Lies: Truth and the Consequences for Tobacco – Tobacco Lobbying Documents" (Oct. 28, 1998)

Eighth Judicial District of Minnesota Annual Meeting, "The Tobacco Litigation", Keynote Speaker (June 1998)

Minnesota Institute for Legal Education, Federal Preemption, "Medtronic and its Aftermath", Faculty (1997)

Minnesota Institute for Legal Education, Federal Preemption, "Medtronic and its Aftermath", Faculty (1996)

Minnesota Institute for Legal Education, Products Liability: New Developments – New Frontiers, "Proving a Product is Unreasonably Dangerous", Faculty (1995)

Association of Trial Lawyers of America Annual Convention, Co-Chair, Rear Impact Crash Worthiness Panel, Attorneys Information Exchange Group Program (Oct. 1994)

Minnesota Defense Lawyers, Minnesota Trial Lawyers and Minnesota Women Lawyers, "The Year 2001: The Law & Women", Co-Chair (April 22, 1994)

Robins, Kaplan, Miller & Ciresi Biannual Trial Advocacy Seminar, "Developing a Theme in the Products Liability Trial", Faculty (1994)

Minnesota Trial Lawyers Association, "An Independent Examination of Independent Medical Examiners", Faculty (May 12, 1993)

Association of Trial Lawyers of America Annual Convention, "Fuel System Integrity Litigation", Faculty (Mar. 1993)

CLE, Personal Injury Damages Seminar, "Toxic Tort Proof and Damages", Faculty (1993)

Federal Bar Association Annual Seminar, Panel on Alternative Dispute Resolution, Moderator (1993)

Minnesota Trial Lawyers Association Annual Product Liability Seminar, "Product Liability Litigation in Minnesota", Faculty (1993)

Association of Trial Lawyers of America Mid-Winter Convention, "Preemption", Faculty (1992)

United States Magistrate Judge Training on Settlement Conferences, Coordinated by Magistrate Judge Celeste Bremer, Iowa (1992)

Association of Trial Lawyers of America Annual Convention, "Preemption After Cippollone", Faculty (1992)

Minnesota Institute for Legal Education, "Public Construction Law, Politics and

Economics”, Faculty (1992)

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

I have searched my files and numerous electronic and internet databases in an effort to locate each time I have spoken on the record to a reporter. It has not been my practice to give interviews on a regular basis, but it is possible others exist that I have not been able to locate.

Maria Elena Baca, “*Coretta Scott King Pays Tribute to Unsung ‘Sheroes’*,” Star Tribute, May 22, 1997.

Kristine Boylan, “*New to the Bench: Judge Susan Nelson*,” Hennepin Lawyer, Sept. 2000, at 8. Copies supplied.

- 13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On June 1, 2000, I was appointed a United States Magistrate Judge by the United States District Court for the District of Minnesota. On June 1, 2008, I was reappointed a United States Magistrate Judge by the United States District Court for the District of Minnesota. This is a federal court whose jurisdiction is defined by 28 U.S.C. § 636.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over three cases to verdict as a United States Magistrate Judge.

- i. Of these, approximately what percent were:

jury trials:	66%
bench trials:	34%
civil proceedings:	100%
criminal proceedings:	

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of opinions.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Darcy A. Kornell, individually and as parent and natural guardian of Q.Z., a minor v. Hardin Olson, M.D.*, 00-CV-1836 (SRN) (D. Minn. Jan. 22, 2002). Plaintiff, Darcy A. Kornell, individually and as the mother of her minor son, Q.Z., brought this suit against her obstetrician for medical malpractice arising out of the birth of her son. The parties consented to having all proceedings, including trial, before me. The defendant brought a *Daubert* motion to exclude the plaintiff's experts from testifying at trial on the grounds that their anticipated testimony as to the causal link between the child's exposure to herpes and his subsequent diagnosis was not based on reliable, scientific studies and methodology. After a lengthy evidentiary hearing, I granted defendant's motion. The matter settled before trial.

Counsel for Plaintiff: Phillip A. Cole, Sheila A. Bjorklund and
Thomas A. Foster
Lommen Abdo Cole King & Stageberg
80 South Eighth Street, Suite 2000
Minneapolis, MN 55402
(612) 339-8131

Counsel for Defendant: Terence O'Loughlin, Carolin J. Nearing
Geraghty, O'Loughlin & Kenney PA
55 East Fifth Street, Suite 1100
St. Paul, MN 55101
(651) 291-1177

2. *Robert S. Visina v. Wedge Community Co-op, Inc.*, 07-CV-122 (DSD/SRN), 2007 WL 2908043 (D. Minn. Oct. 1, 2007). Defendant terminated plaintiff, a warehouse employee, after a positive random drug test. Plaintiff sued, alleging that the defendant had violated the Minnesota Drug and Alcohol Testing in the Workplace Act. The defendant removed the case to federal court, claiming that the Federal Omnibus Transportation Employer Testing Act completely preempted his state law claims. Plaintiff moved to remand. In a Report & Recommendation, I granted plaintiff's motion. I ruled that the doctrine of complete preemption is a jurisdictional issue, which permits removal only where there is a federal cause of action that encompasses the claim that plaintiff pled as a state law claim. Here, I ruled that the Federal Omnibus Transportation Employer Testing Act provided no basis for removal. The matter was remanded to state court.

Counsel for Plaintiff: Leslie L. Lienemann
Culberth & Lienemann LLP
444 Cedar Street, Suite 1050
St. Paul, MN 55101
(651) 290-9300

Counsel for Defendant: Pamela L. Vanderwiell
Greene Espel, PLLP
200 South Sixth Street, Suite 1200
Minneapolis, MN 55402
(612) 373-0830

3. *Wildlife Research Center, Inc. v. HME Products, LCC and Terry Harmston*, 521 F.Supp.2d 961 (D. Minn. 2007). Plaintiff, a patent assignee, brought this patent infringement action alleging defendants infringed a patent describing a reusable, hanging container for attracting game with a scented wick protected from moisture. The parties took the unusual step of seeking summary judgment of infringement based on plaintiff's construction of certain patent terms before the Answer was filed and without the benefit of a Markman hearing. In a Report & Recommendation, I granted plaintiff's motion in substantial measure and denied defendant's cross motion. The District Court adopted my Report & Recommendation in its entirety. The case was ultimately settled.

Counsel for Plaintiff: J. Thomas Vitt, Bart B. Torvik
Dorsey & Whitney LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402
(612) 340-5675

Counsel for Defendant: James T. Nikolai, Peter G. Nikolai
Nikolai & Mersereau PA
900 Second Avenue South, Suite 820
Minneapolis, MN 55402
(612) 339-7461

4. *The Rottlund Company, Inc. v. Pinnacle Corporation, Town & Country Homes, Inc. v. Bloodgood Sharp Buster Architects & Planners of Iowa, Inc.*, 01-CV-1980 (DSD/SRN), 2004 WL 1879983 (D. Minn. Aug. 20, 2004), *appeal denied*, 452 F.3d 726 (8th Cir. 2006). Plaintiff is a direct competitor with defendants Pinnacle and Town & Country Homes, Inc. in the design, development, construction and sale of townhomes. Plaintiff accused defendants of copyright infringement of technical drawings and architectural works as-built structures in three copyrighted townhomes. I issued several Reports & Recommendations regarding the liability and damages aspects of this complicated case. This case presented interesting issues regarding the line

between facts and ideas which are not entitled to copyright protection and the point at which those ideas become sufficiently concrete or detailed to constitute protected expression. This case was ultimately tried by District Court Judge Doty in a lengthy trial. On appeal, the Eighth Circuit Court of Appeals reversed Judge Doty on certain rulings he made at trial and the case was remanded back to the district court. Eventually, the entire case settled.

Plaintiff's Counsel: Craig S. Krummen, David Davenport
Winthrop & Weinstine PA
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402
(612) 604-6400

Defendant's Counsel: Darren Schwiebert
Fredrikson & Byron PA
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402
(612) 492-7000

Christopher Murdoch
Holland & Knight
131 South Dearborn Street, Suite 3000
Chicago, IL 60603
(312) 263-3600

Third-Party Defendant's
Counsel: Holly J. Newman
Mackall Crouse & Moore PLC
901 Marquette Avenue, Suite 1400
Minneapolis, MN 55402

5. *Deborah R. Coen v. Louis Coen, Daniel Coen, et al.*, 05-CV-596 (PJS/SRN), 2006 WL 2727219 (D. Minn. Sept. 22, 2006), *aff'd*, 509 F.3d 900 (8th Cir. 2007), *cert. denied*, ___ U.S. ___, 128 S.Ct. 2949 (2008). Plaintiff alleged claims of fraud in connection with the disposition of certain shares of a family-owned foreign company, Compayne (Hampstead) Limited, which is principally located in Great Britain. The action also alleged improprieties in connection with the trusts and estates of certain deceased members of plaintiff's family. The named defendants are all residents of Great Britain or France. After a period of limited discovery on the issue of personal jurisdiction, defendants moved to dismiss the complaint for lack of personal jurisdiction. I recommended dismissal of the case, without prejudice, on the grounds that this Court lacked personal jurisdiction over the defendants. This case was appealed to the District Court. Judge Patrick Schiltz adopted my Report & Recommendation and dismissed the case without prejudice.

Plaintiff's Counsel: Nathan A. Busch

Busch Law Firm
 10709 Wayzata Boulevard
 Minnetonka, MN 55305
 (952) 545-2650

Defendant's Counsel:

Bryan Keane, Christopher Shaheen
 Dorsey & Whitney
 50 South Sixth Street, Suite 1500
 Minneapolis, MN 55402
 (612) 340-2600

6. *EcoWater Systems LLC v. Hague Quality Water International*, 06-CV-3134 (JNE/SRN)(D. Minn. May 22, 2007). Plaintiff and defendant are competitors in the field of residential water conditioning systems. In 2005, EcoWater alleged that one of Hague's conditioners did not meet its stated specifications. As a result, plaintiff sued, alleging a claim under the Lanham Act for false advertising and state law claims for deceptive trade practices and unfair competition. Defendant moved to dismiss or transfer the case on the grounds of improper venue and/or that transfer under sections 1404(a) or 1406 was warranted. I ruled that a venue transfer under section 1406 was not required and that plaintiff had stated a case for personal jurisdiction over the defendant – both specific and general. The parties appealed this Report & Recommendation to the District Court. Judge Joan Ericksen adopted the Report & Recommendation in its entirety. The matter was settled.

Plaintiff's Counsel:

Michael R. Cunningham
 Gray, Plant, Mooty
 80 South Eighth Street
 Minneapolis, MN 55402
 (612) 632-3000

Defendant's Counsel:

James M. Jorissen
 Leonard, O'Brien, Spencer, Gale
 & Sayre, Ltd.
 100 South Fifth Street, Suite 2500
 Minneapolis, MN 55402
 (612) 332-1030

Edward A. Matto
 John Okuley Mueller
 Smith & Matto
 7700 Rivers Edge Drive, Suite 200
 Columbus, OH 43235

7. *Kettner v. Compass Group USA, Inc.*, 570 F. Supp.2d 1121 (D. Minn. 2008).

The trustee for the deceased employee's estate sued his former employer alleging that his discharge violated the ADA, the ADEA and the Rehabilitation Act. The defendant moved to dismiss certain damages claims, arguing that the recoverable damages for a trustee, suing on behalf of a deceased former employee were limited to special damages. The death of the deceased was not related to his discharge. With respect to state law claims under the Minnesota Human Rights Act, I ruled that only special damages were recoverable under Minnesota's law of survival. With respect to the federal law claims, there is no general survival statute for federal question cases. I ruled that, as to the federal claims, all damages survived the ADEA claim, except liquidated damages and all damages survived the ADA and Rehabilitation Act claims, except those which were penal in nature. My Report & Recommendation was adopted in its entirety by the District Court, Judge Joan Ericksen. Ultimately, this case settled.

Plaintiff's Counsel:	Sonia Miller-Van Oort Flynn, Gaskins & Bennett LLP 333 South Seventh Street, Suite 2900 Minneapolis, MN 55402 (612) 333-9500
Defendant's Counsel:	Sandra L. Jezierski Halleland Lewis Nilan & Johnson 220 South Sixth Street, Suite 600 Minneapolis, MN 55402 (612) 338-1838

8. *United States of America v. Steven Jay Novick*, 07-CR-455 (JNE/SRN), 2008 WL 2788023 (D. Minn. July 15, 2008). Defendant was indicted for unlicensed dealing in firearms and for making false statements to federally licensed firearms dealers. Defendant moved to suppress evidence obtained during a search of his home. On the day of the execution of the warrant, unbeknownst to the ATF agents, the local police department invited a reporter to witness the search of defendant's home. The reporter entered the home and observed portions of the search. Defendant moved to suppress the evidence, in part on the grounds that the officers exceeded the scope of the warrant by bringing along a third party, unnecessary to the execution of the warrant. I concluded that there was a violation of the Fourth Amendment in this case. The question, though, of interest in this case, is whether the exclusionary rule should operate to suppress this evidence. I concluded that since the execution of the warrant was done without any interference or assistance of the third party media, the exclusionary rule should not apply to preclude the admissibility of the evidence obtained in the search. My Report & Recommendation was adopted in its entirety by the District Court, Judge Joan Ericksen.

Plaintiff's Counsel: Ann Anaya
 United States Attorney's Office
 300 South Fourth Street
 Minneapolis, MN 55415
 (612) 664-5623

Defendant's Counsel: Jon M. Hopeman
 Felhaber, Larson, Fenlon & Vogt
 220 South Sixth Street, Suite 2200
 Minneapolis, MN 55402
 (612) 339-6321

9. *Firstcom, Inc. v. Qwest Communications*, 618 F.Supp.2d 1001 (D. Minn. 2007), *aff'd*, 555 F.3d 669 (8th Cir. 2009). This case involved a dispute between the plaintiff, Firstcom, a competitive local exchange carrier (CLEC), against Qwest, an incumbent local exchange carrier (ILEC). Plaintiff alleged that the defendant entered into secret interconnection agreements favoring plaintiff's competitors and alleged violations of the Telecommunications Act. Qwest moved to dismiss the case. I ruled that the prior expiration of the Minnesota Telecommunications Act barred plaintiff's MTA claim, equitable tolling under federal law was not warranted on the facts pled, the state statute of limitations was conflict-preempted by the federal statute's two year limitations period and the common law claims were similarly preempted by the Telecommunications Act. My Report & Recommendation was adopted in its entirety by the District Court, Judge David Doty.

Plaintiff's Counsel: David E. Wandling
 Wandling Law Group, PC
 5105 Thimsen Avenue, Suite 200
 Minnetonka, MN 55345
 (952) 474-4406

Defendant's Counsel: Heather D. Redmond
 Marianne Short
 Theresa Bevilacqua
 Dorsey & Whitney
 50 South Sixth Street, Suite 1500
 Minneapolis, MN 55402
 (612) 340-2600

Jason D. Topp
 Qwest
 200 South Fifth Street, Suite 2200
 Minneapolis, MN 55402
 (612) 672-8905

10. *West Coast Beauty Supply Co. v. Rusk, Inc.*, 03-CV-5595 (DSD/SRN) (D. Minn. June 30, 2004). Defendant was a manufacturer and supplier of beauty products. Plaintiff was a distributor of beauty products and for sixteen years had been the exclusive distributor for defendant's products in certain western states. The case raised an interesting set of legal issues regarding a whole host of breach of contract claims: issues regarding the statute of frauds, the parole evidence rule, claims of breach of the covenant of good faith and fair dealing, issues of promissory estoppel, unjust enrichment, unfair competition, the applicability of the Minnesota Franchise Act, issues of consumer fraud. In the end, I recommended that the Defendant's motion to dismiss be denied as to the majority of the claims. My Report & Recommendation was adopted in its entirety by the District Court, Judge David Doty. The matter was settled.

Plaintiff's Counsel: Richard T. Ostlund, Randy Gullickson
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Defendant's Counsel: William Narwold, Michael Streater, Joel Casey
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d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Darcy A. Kornell, individually and as parent and natural guardian of Q.Z., a minor v. Hardin Olson, M.D.*, 00-CV-1836 (SRN) (D. Minn. Jan. 22, 2002)

Counsel for Plaintiff: Phillip A. Cole, Sheila A. Bjorklund and Thomas A. Foster
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Counsel for Defendant: Terence O'Loughlin, Carolin J. Nearing
Geraghty, O'Loughlin & Kenney PA

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2. *Robert S. Visina v. Wedge Community Co-op, Inc.*, 07-CV-122 (DSD/SRN),
 2007 WL 2908043 (D. Minn. Oct. 1, 2007)

Counsel for Plaintiff: Leslie L. Lienemann
 Culberth & Lienemann LLP
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 (651) 290-9300

Counsel for Defendant: Pamela L. Vanderwiel
 Greene Espel, PLLP
 200 South Sixth Street, Suite 1200
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3. *Wildlife Research Center, Inc. v. HME Products, LCC and Terry
 Harmston*, 521 F.Supp.2d 961 (D. Minn. 2007)

Counsel for Plaintiff: J. Thomas Vitt, Bart B. Torvik
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Counsel for Defendant: James T. Nikolai, Peter G. Nikolai
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4. *The Rottlund Company, Inc. v. Pinnacle Corporation, Town & Country
 Homes, Inc. v. Bloodgood Sharp Buster Architects & Planners of Iowa, Inc.*,
 01-CV-1980 (DSD/SRN), 2004 WL 1879983 (D. Minn. Aug. 20, 2004),
appeal denied, 452 F.3d 726 (8th Cir. 2006)

Plaintiff's Counsel: Craig S. Krummen, David Davenport
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 Chicago, IL 60603
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Third-Party Defendant's
 Counsel:

Holly J. Newman
 Mackall Crouse & Moore PLC
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 Minneapolis, MN 55402

5. *Deborah R. Coen v. Louis Coen, Daniel Coen, et al.*, 05-CV-596 (PJS/SRN),
 2006 WL 2727219 (D. Minn. Sept. 22, 2006), *aff'd*, 509 F.3d 900 (8th Cir.
 2007), *cert. denied*, ___ U.S. ___, 128 S.Ct. 2949 (2008)

Plaintiff's Counsel:

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 Busch Law Firm
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Defendant's Counsel:

Bryan Keane, Christopher Shaheen
 Michael Skoglund
 Dorsey & Whitney
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 (612) 340-2600

6. *EcoWater Systems LLC v. Hague Quality Water International*, 06-CV-3134
 (JNE/SRN)(D. Minn. May 22, 2007)

Plaintiff's Counsel:

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 Gray, Plant, Mooty
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Defendant's Counsel:

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 Leonard, O'Brien, Spencer, Gale
 & Sayre, Ltd.

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 (612) 332-1030

Edward A. Matto
 John Okuley Mueller
 Smith & Matto
 7700 Rivers Edge Drive, Suite 200
 Columbus, OH 43235

7. *Kettner v. Compass Group USA, Inc.*, 570 F. Supp.2d 1121 (D. Minn. 2008)

Plaintiff's Counsel: Sonia Miller-Van Oort
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 (612) 333-9500

Defendant's Counsel: Sandra L. Jezierski
 Halleland Lewis Nilan & Johnson
 220 South Sixth Street, Suite 600
 Minneapolis, MN 55402
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8. *United States of America v. Steven Jay Novick*, 07-CR-455 (JNE/SRN), 2008 WL 2788023 (D. Minn. July 15, 2008)

Plaintiff's Counsel: Ann Anaya
 United States Attorney's Office
 300 South Fourth Street
 Minneapolis, MN 55415
 (612) 664-5623

Defendant's Counsel: Jon M. Hopeman
 Felhaber, Larson, Fenlon & Vogt
 220 South Sixth Street, Suite 2200
 Minneapolis, MN 55402
 (612) 339-6321

9. *Firstcom, Inc. v. Qwest Communications*, 618 F.Supp.2d 1001 (D. Minn. 2007), *aff'd*, 555 F.3d 669 (8th Cir. 2009)

Plaintiff's Counsel: David E. Wandling
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(612) 672-8905

10. *West Coast Beauty Supply Co. v. Rusk, Inc.*, 03-CV-5595 (DSD/SRN) (D. Minn. June 30, 2004)

Plaintiff's Counsel: Richard T. Ostlund, Randy
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Defendant's Counsel: William Narwold, Michael
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e. Provide a list of all cases in which certiorari was requested or granted.

To the best of my knowledge, I do not believe certiorari has been granted in any of my cases. The following cases are those in which certiorari was requested, to the best of my knowledge:

Serna v. Goodno, 04-CV-615 (JMR/SRN), 2005 WL 1324090 (D. Minn. June 3, 2005), *adopted*, 2005 WL 1705623 (D. Minn. July 7, 2005), *aff'd*, 567 F.3d 944 (8th Cir. 2009), *cert. denied*, ___ S.Ct. ___, 2009 WL 2524338 (Oct. 20, 2009)

United States v. Perry, 07-CR-125 (RHK/SRN), 2007 WL 2310845 (D. Minn. Aug. 9, 2007), *aff'd*, 548 F.3d 688 (8th Cir. 2008), *cert. denied*, ___ U.S. ___, 129 S.Ct. 2174 (2009)

Schaaf v. Residential Funding Corp., 05-CV-1319 (JNE/SRN), 2006 WL 2506974 (D. Minn. Aug. 29, 2006), *aff'd*, 517 F.3d 544 (8th Cir. 2008), *cert. denied*, ___ U.S. ___, 129 S.Ct. 222 (2008)

Coen v. Coen, 05-CV-596 (PJS/SRN), 2006 WL 2727219 (D. Minn. Sept. 22, 2006), *aff'd*, 509 F.3d 900 (8th Cir. 2007), *cert. denied*, ___ U.S. ___, 128 S.Ct. 2949 (2008)

United States v. Jeanetta, 05-CR-341 (DWF/SRN), Report & Recommendation (D. Minn. Oct. 30, 2006), *adopted*, Order (D. Minn. Nov. 28, 2006), *aff'd*, 533 F.3d 651 (8th Cir. 2008), *cert. denied*, ___ U.S. ___, 129 S.Ct. 747 (2008)

Kohser v. Merth, 03-CV-6194 (JNE/SRN), Report & Recommendation (D. Minn. Sept. 21, 2005), *adopted*, Order (D. Minn. Dec. 27, 2005), *aff'd*, 250 Fed.Appx. 753 (8th Cir. 2007), *cert. denied*, ___ U.S. ___, 128 S.Ct. 2907 (2008)

Carlson v. American Express Financial Advisors, Inc., 02-CV-4084 (DWF/SRN), Report & Recommendation (D. Minn. Mar. 29, 2005), *adopted*, Order (D. Minn. May 25, 2005), *aff'd*, 230 Fed.Appx. 633 (8 Cir. 2007), *cert. denied*, ___ U.S. ___, 128 S.Ct. 1884 (2008)

Johnson v. Haugland, 02-CV-4865 (ADM/SRN), 2005 WL 348267 (D. Minn. Feb. 11, 2005), *aff'd*, 168 Fed. Appx. 139 (8th Cir. 2006), *cert. denied*, 549 U.S. 880, 127 S.Ct. 368 (2006)

United States v. Langer, 04-MC-33 (DSD/SRN), Order (D. Minn. Nov. 9, 2004), *adopted*, Order (D. Minn. Nov. 29, 2004), *aff'd*, 158 Fed.Appx. 759 (8th Cir. 2005), *cert. denied*, 549 U.S. 956 (2006)

United States v. Spencer, 03-CR-243 (DWF/SRN), Report & Recommendation (D. Minn. Aug. 27, 2003), *adopted*, Order (D. Minn. Sept. 15, 2003), *aff'd*, 119 Fed.Appx. 21 (8th Cir. 2004), *cert. denied*, 544 U.S. 1009 (2005)

DuBose v. Ladwig, 02-CV-3575 (DWF/SRN), Report & Recommendation (D. Minn. Mar. 14, 2003), *adopted*, Order (D. Minn. April 1, 2003), *aff'd*, 87 Fed.Appx. 610 (8th Cir. 2004), *cert. denied*, 543 U.S. 833 (2004)

Kolosky v. Fairview University Medical Center, 03-CV-1085 (DWF/SRN), Report & Recommendation (D. Minn. June 23, 2003), *adopted*, Order (D. Minn. Aug. 14, 2003), *aff'd*, 97 Fed.Appx. 64 (8th Cir. 2004), *cert. denied*, 543 U.S. 988, 125 S.Ct. 516 (2004)

State v. Mendoza, 02-CV-594 (PAM/SRN), Report & Recommendation (D. Minn. Jan. 27, 2003), *adopted*, Order (D. Minn. Mar. 18, 2003), *aff'd*, *Mendoza v. Minnesota*, 100 Fed.Appx. 587 (8th Cir. 2004), *cert. denied*, 543 U.S. 859, 125 S.Ct. 223 (2004)

McDeid v. Barnhart, 01-CV-1126 (JMR/SRN), Report & Recommendation (D. Minn. Sept. 3, 2002), *aff'd*, Order (D. Minn. Oct. 8, 2002), *aff'd*, 65 Fed. Appx. 587 (8th Cir. 2003), *cert. denied*, 540 U.S. 971 (2003)

Bar-Meir v. North American Die Casting Ass'n, 00-CV-1666 (RHK/AJB), Am. Report & Recommendation (D. Minn. May 21, 2001), *adopted*, Order (D. Minn. June 12, 2001), *aff'd*, 22 Fed.Appx. 702 (8th Cir. 2002), *cert. denied*, 536 U.S. 941, 122 S.Ct. 2624 (2002)

Johnson v. City of Shorewood, 00-CV-1281 (DWF/SRN), Report & Recommendation (D. Minn. May 3, 2001) and Report & Recommendation (D. Minn. May 18, 2001), *adopted*, Order (D. Minn. July 11, 2001); Report & Recommendation (D. Minn. Aug. 3, 2001), *adopted*, Order (D. Minn. Oct. 10, 2001), *aff'd as modified*, 360 F.3d 810 (8th Cir. 2004), *cert. denied*, 543 U.S. 810 (2004).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

The following cases involve reversal or criticism of my opinions.

1. *United States v. Villalba-Alvarado*, 02-CR-3101 (PAM/SRN), Report & Recommendation (June 24, 2002), *concurring in part, and disagreeing in part*, 2002 WL 32373896 (D. Minn. July 23, 2002), *rev'd, in part*, 345 F.3d 1007 (8th Cir. 2003). I recommended the suppression of evidence and the District Court judge concurred in part, and disagreed in part, with my recommendations. The Eighth Circuit reversed certain suppression rulings and remanded.
2. *Prescott v. Little Six, Inc.*, 02-CV-4741 (DSD/SRN), Report & Recommendation (D. Minn. Aug. 4, 2003), *adopting in part, and declining to adopt in part*, 284 F.Supp.2d 1224 (D. Minn.), *rev'd*, 387 F.3d 753 (8th Cir. 2004), *cert. denied*, 544 U.S. 1032 (2005). I recommended that the defendants' motion to dismiss for lack of subject matter jurisdiction be granted. The District Court adopted my recommendations with respect to certain plaintiffs, but declined to adopt them with respect to other plaintiffs. The Eighth Circuit held that the District Court erred in not according proper deference to the tribal trial court's finding that employee benefits plans were not authorized under tribal law.
3. *Bandy-Bey v. Feneis*, 06-CV-173 (JRT/SRN), Report & Recommendation (D. Minn. June 1, 2007), *rejected*, 2007 WL 2571996 (D. Minn. Aug. 31, 2007).

In this prisoner civil rights action, I recommended granting a motion to strike the plaintiff's amended complaint and granted a defendant's motion to dismiss. The District Court held that the motion to strike should have been denied and denied the motion to dismiss as moot.

4. *Goad v. Barnhart*, 00-CV-1899 (JRT/SRN), Report & Recommendation (D. Minn. Jan. 23, 2003), *rejected*, 2003 WL 22075761 (D. Minn. Aug. 14, 2003), *rev'd*, 398 F.3d 1021 (8th Cir. 2005). I recommended the award of attorney fees pursuant to the Equal Access to Justice Act. The District Court judge declined to adopt the recommendation. The Eighth Circuit held that the District Court had considered improper information in denying the award of fees and reversed and remanded.
5. *Goad v. Massanari*, 00-CV-1899 (JRT/SRN), Report & Recommendation (D. Minn. June 5, 2001), *adopted in part*, 2001 WL 1640052 (D. Minn. Sept. 30, 2001). In this appeal of the denial of Social Security disability benefits, I recommended that the matter be reversed and remanded. The District Court rejected a portion of my reasoning, but adopted my recommendation to remand the case.
6. *Schinzing v. Mid-States Stainless, Inc.*, 00-CV-2686 (SRN), Second Am. Findings of Fact, Conclusions of Law & Order for Judgment (D. Minn. May 18, 2004), *aff'd in part, rev'd in part, vacated in part & remanded*, 415 F.3d 807 (8th Cir. 2005), *cert. denied*, 546 U.S. 1173 (2006). This was a consent patent infringement case. After a bench trial, I entered judgment for the inventor. The Eighth Circuit affirmed in part, reversed in part, and vacated judgment, ordering remand.
7. *United States v. Elmaroudi*, 01-CR-52 (JRT/SRN), Report & Recommendation (Filed Under Seal) (D. Minn. June 1, 2006), *adopted in part and rejected in part*, Mem. Opinion & Order (D. Minn. Aug. 2, 2006), *aff'd*, 501 F.3d 935 (8th Cir. 2007). Defendant moved to dismiss the superseding indictment for violation of the Speedy Trial Act. I recommended denying the motion and the District Court disagreed and dismissed the superseding indictment without prejudice. The Eighth Circuit affirmed.
8. *Johnson v. City of Shorewood*, 00-CV-1281 (DWF/SRN), Report & Recommendation (D. Minn. May 3, 2001) and Report & Recommendation (D. Minn. May 18, 2001), *adopted*, Order (D. Minn. July 11, 2001); Report & Recommendation (D. Minn. Aug. 3, 2001), *adopted*, Order (D. Minn. Oct. 10, 2001), *aff'd as modified*, 360 F.3d 810 (8th Cir. 2004), *cert. denied*, 543 U.S. 810 (2004). I recommended granting the defendants' motions for summary judgment and the dismissal of plaintiffs' claims. My recommendations were adopted by the District Court. The Eighth Circuit affirmed, but held that pursuant to the *Rooker-Feldman* doctrine, the District Court was without jurisdiction to consider certain of the plaintiffs' claims.

9. *Sturge v. Northwest Airlines, Inc.*, 05-CV-1665 (DSD/SRN), Report & Recommendation (D. Minn. Dec. 19, 2008), *declining to adopt*, 600 F.Supp.2d 1040 (D. Minn. Mar. 2, 2009). I recommended that the defendant's motion to dismiss for lack of subject matter jurisdiction be granted. The District Court judge held that the Railway Labor Act's mandatory arbitration provision did not divest the court of jurisdiction and denied the defendant's motion to dismiss. Subsequently, a discovery order that I issued was also reversed in part, consistent with the District Court's earlier opinion. *Sturge*, Order of Feb. 19, 2010, *reversed in part*, Order of April 13, 2010.
10. *UnitedHealth Group, Inc. v. Hiscox Dedicated Corp. Member, Ltd., et al.*, 09-CV-210 (PJS/SRN), Report & Recommendation (D. Minn. Aug. 27, 2009), *adopting in part*, 2010 WL 550991 (D. Minn. Feb. 9, 2010). In this insurance coverage dispute, the insurers moved to dismiss, arguing that they were not obligated to indemnify the insured. I recommended that the insurers' motions be denied because I did not believe that indemnity could be determined on the face of the complaint. Although the District Court adopted part of my recommendation, it concluded that, except for certain narrow exceptions, the insurers were not obligated to indemnify the insured.

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

Civil: As a magistrate judge, I issue orders on non-dispositive matters or orders on dispositive matters in consent cases and I issue reports & recommendations on all dispositive matters referred to me. My non-dispositive orders range from discovery matters, motions to amend the pleadings, motions to extend the discovery schedule and other miscellaneous civil motions. I issue hundreds of such orders in any given year. Very few of those orders are published, although I have filed all of my opinions with our court's Electronic Case Filing system, for as long as the court has maintained that system. With respect to dispositive motions referred to me by the district court, a fair percentage of those cases are published electronically and a smaller portion is available in a published reporter. It is not within my discretion as a magistrate judge to determine whether any given opinion is designated as unpublished.

Criminal: As a magistrate judge, I issue orders on non-dispositive criminal motions (hundreds every year) and reports and recommendations on suppression motions which are all referred to the magistrate judges in this district. After the district court rules on any objections to those reports & recommendations, any given suppression order may be published. Again, it is not within my discretion to determine whether any given order is published. If published, the opinions may be available through electronic publication or in a published reporter. As

with my civil opinions, I have filed all of my criminal opinions with our court's Electronic Case Filing system, for as long as the court has maintained that system.

- h. Provide 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, provide copies of the opinions.

Franco v. Grant, No. 09-CV-0552 (JRT/SRN), 2010 WL 653855 (D. Minn. Feb. 22, 2010)

United States v. Ewing, 09-CR-103 (DSD/SRN), 2009 WL 2337121 (D. Minn. July 29, 2009)

Vance v. King, 08-CV-4756 (ADM/SRN), 2009 WL 294361 (D. Minn. Feb. 5, 2009)

Gouleed v. Wengler, 07-CV-4152 (DSD/SRN), 2009 WL 76669 (D. Minn. Jan. 8, 2009)

Bellanger v. Minnesota, 08-CV-1352, 2008 WL 5244587 (D. Minn. Dec. 15, 2008)

Jones v. Carlson, 06-CV-2317 (JRT/SRN), 2008 WL 4748541 (D. Minn. Oct. 27, 2008), *certificate of appealability denied*, 2009 WL 294352 (D. Minn. Feb. 5, 2009)

Love v. Dingle, 07-CV-4341 (JRT/SRN), 2008 WL 4748640 (D. Minn. Oct. 27, 2008)

United States v. Balance, 08-CR-156 (JNE/SRN), 2008 WL 4533999 (D. Minn. Oct. 6, 2008)

United States v. Rehak, 08-CR-0072 (PJS/SRN), 2008 WL 2828886 (D. Minn. July 21, 2008)

United States v. Novick, 07-CR-455 (JNE/SRN), 2008 WL 2788023 (D. Minn. July 15, 2008)

United States v. Hernandez-Seldana, 08-CR-14 (MJD/SRN), 2008 WL 2230703 (D. Minn. May 28, 2008)

Njaka v. Wright County, 560 F. Supp. 2d 746, 748 (D. Minn. 2008)

United States v. Kahmann, 06-CR-373 (JRT/SRN), 2007 WL 909733 (D. Minn. Mar. 23, 2007)

United States v. Rage, 06-CR-268(1) (RHK/SRN), 2007 WL 763817 (D. Minn. Mar. 9, 2007)

Midkiff v. Paulose, 06-CV-1474 (JNE/SRN), 2006 WL 3804334 (D. Minn. Dec. 26, 2006)

Young v. Minnesota Dept. of Corrections at Rush City, 05-CV-454 (RHK/SRN), 2006 WL 2670030 (D. Minn. Sept. 18, 2006), *aff'd and remanded*, 508 F.3d 868 (8th Cir. 2007)

Serna v. Goodno, 04-CV-0615 (JMR/SRN), 2005 WL 1324090 (D. Minn. June 3, 2005), *adopted*, 2005 WL 1705623 (D. Minn. July 7, 2005), *aff'd*, 567 F.3d 944 (8th Cir. 2009), *cert. denied*, ___ S.Ct. ___, 2009 WL 2524338 (2009)

United States v. Cruz, 04-CR-176 (DSD/SRN) (D. Minn. Sept. 21, 2004)

United States v. Bradai, 04-CR-16 (DWF/SRN) (D. Minn. Aug. 27, 2004)

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

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

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

I follow the federal recusal statutes and the Code of Conduct for United States Judges. My husband is a partner at a large law firm in Minneapolis – Leonard Street & Deinard. By law, I presently recuse and would recuse, if confirmed, on all cases filed by any lawyer in his firm. I worked at another large law firm for 17 years before my appointment to the bench as a magistrate judge – Robins, Kaplan, Miller & Ciresi. With respect to many matters filed by that firm, I presently recuse and would recuse, if confirmed. To the extent that I have a financial interest in any party, I would also recuse, if confirmed. The vast majority of my recusals have occurred for one of the above reasons.

While serving as the trial judge by the consent of the parties in *Anchor Wall Systems, Inc. v. Concrete Products of New London, Inc.*, 03-CV-3271 (SRN) (D. Minn.), counsel for the defendant informed me of its intention to file a motion for recusal and requested that I refrain from ruling on a pending summary judgment motion. The defendant ultimately filed a motion to withdraw consent and seek my recusal before the Honorable Ann D. Montgomery, the District Court Judge originally assigned to the case. Judge Montgomery denied the motion and held that any motion to seek recusal should have been first heard by me. No motion for recusal was filed with me.

I maintain a standing recusal list of law firms and entities which require my recusal consistent with the Code of Conduct for United States Judges. Our Clerk's Office notifies us electronically if any such cases have been assigned to me. In addition, I review every new file assigned to me to ensure that I do not have a relationship with any of the parties or counsel which would interfere with my ability to be impartial or interfere with the appearance of impartiality.

I was able to conduct a search on CM-ECF of all recusal orders since 2004. I have attached a list of the CM-ECF recusal search results.

15. Public Office, Political Activities and Affiliations:

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

I have not held public office other than judicial office. I have not had unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

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

Since I have been on the bench, I have engaged in no political activity.

I have never formally worked on a campaign nor have I held any office in a political party or election committee. Approximately 15 years ago, I hosted a fundraiser at my home for a candidate for the state court bench, Bruce Peterson. He is still a judge on the Hennepin County trial bench.

Approximately 15 years ago, my husband and I had a fundraiser at our home for a democratic candidate from Minnesota for the United States Senate -- Tom Berg, a former United States Attorney in the district.

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a law clerk to a judge.

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

I never practiced on my own.

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

1978 to 1980
Reed Smith Shaw & McClay
225 Fifth Avenue
Pittsburgh, PA 15222
Associate

1980 to 1983
Tyler Cooper & Alcorn
New Haven, CT (no longer in existence)
Associate

1984 to 2000
Robins, Kaplan, Miller & Ciresi (formerly Robins, Zelle, Larson & Kaplan)
800 LaSalle Plaza
Minneapolis, MN 55402
Associate (1984 to 1988)
Partner (1988 to 2000)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

As a partner at Robins, Kaplan, Miller & Ciresi, I occasionally served as a no-fault arbitrator for the AAA. Each of those matters involved the determination of available no-fault benefits to the claimant.

As a Magistrate Judge, I conduct settlement conferences nearly every week. I have settled hundreds of cases in that capacity. The following is a description of ten of the most significant cases I have settled.

1. *Doe I et al v. Mulcahy, Inc. et al, Civil No. 08-306 (DWF/SRN) (D. Minn.)* The Does, a putative class of Latino employees of the defendant drywall company alleged that the defendant harassed them, both physically and emotionally, forcing them to work long hours

without pay. I invited bankruptcy counsel to attend this mediation so that the plaintiffs could better understand their position vis a vis other creditors of the defendant. The case was successfully settled.

2. *Joseph Pagliolo et al., v. Guidant Corporation, et al, Civil No. 06-943 (DWF/SRN) (D. Minn.)*. This putative class sued its employers alleging that a significant reduction in force implemented by Guidant and the other defendants had a disparate impact on older employees. There were hundreds of employees in the proposed class. The case was successfully settled.
3. *Flores v. Michael Lehman et al., Civil No. 08-6046(MJD/SRN) (D. Minn.)* This § 1983 lawsuit is representative of a lot of cases brought in federal court alleging excessive force by law enforcement. I settle 4 – 6 such cases a year. In this matter, the plaintiff alleged that, at the time of booking at the Ramsey County jail, a corrections officer intentionally broke her arm. The case was successfully settled.
4. *Ripdos v. Apex Financial Management LLC, Civil No. 07-1507(DWF/SRN) (D. Minn.)* This Federal Debt Collection Practices Act case is representative of many cases brought in this district. I settle approximately 6-10 of these cases each year. The plaintiff, a victim of identity theft, alleged that the debt collector, in response to her question “Who are you?” said “I am the man who is going to end your life.” The case was successfully settled.
5. *John Dale Stoll v. Univar USA Inc, Banjo Corporation and Clawson Container Company, Civil No. 05-213 (JNE/SRN) (D. Minn.)* The plaintiff was badly burned while working in the course of his employment with sulphuric acid. This products liability action was brought against the manufacturer of the valve used to dispense the acid and the manufacturer of the container of sulphuric acid used by plaintiff’s employer. Plaintiff had significant injuries and widespread scarring. The case was successfully settled.
6. *NMT Medical, Inc. v. Cardia, Inc., Civil No. 04-4200 (JNE/SRN) (D. Minn.)*. NMT Medical sued Cardia alleging patent infringement of its patent which describes an occluder, a closure device used in heart surgery. We have a very significant patent docket in this district (the third or fourth largest docket in the country) and so we settle a lot of patent cases. This case was successfully settled.
7. *LuAllen Kettner v. Compass Group USA, Inc., Civil No. 08-205(JNE/SRN) (D. Minn.)*. This case was brought by the heirs of Lawrence Kettner, deceased, who alleged that his termination from employment with the defendant was motivated by age and disability

bias. Lawrence Kettner was blind and the family wished to honor him in some way with this settlement. As part of the settlement, Compass agreed to set up a scholarship in his name with the National Council for the Blind.

8. *Polymedco, Inc. v. Mentor Corporation et al., Civil No. 06-4400(DSD/SRN) (D. Minn.)*. Polymedco and Mentor had a longtime distributorship agreement under which Mentor distributed Polymedco's medical product. In 2006, Coloplast, another defendant made a bid to buy Mentor's urology division. Mentor, without consent, transferred the agreement and alleged trade secrets to Coloplast after the sale. After several settlement conferences, the case between Polymedco and Mentor was successfully settled.
9. *MSP Corporation v. Westech Instruments, Inc. et al., Civil No. 07-2301(MJD/SRN) (D. Minn.)*. This trademark action involved a pharmaceutical impactor which competed with plaintiff's comparable product. Plaintiff expressed an intent to amend to add patent claims and the defendant counterclaimed under a theory of breach of contract. The case was successfully settled.
10. *Polaris Industries Inc. v. Jerrico International, Inc. et al, Civil No. 06-2153(MJD/SRN)(D. Minn.)*. In this patent, trade dress claim, Polaris alleged that defendant Jerrico imported thousands of knock off ATVs which looked substantially similar to the Polaris Predator ATV and they were sold in discount auto stores by defendant CSK Auto. The case was successfully settled.

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

As an associate with Reed, Smith, Shaw & McClay, I rotated among the various departments of the firm. I was fortunate to second chair an employment discrimination case which was tried in Delaware during that time. In addition, I spent a fair amount of time doing real estate work and labor work.

At Tyler, Cooper & Alcorn, I was primarily involved in insurance defense work. I was fortunate to be able to handle a significant number of cases on my own and frequently appear in court. I was also fortunate to second chair a trial on behalf of a bank client in Bridgeport, Connecticut.

At Robins, Kaplan, Miller & Ciresi, I was primarily involved in products liability litigation, initially with a focus on automotive product liability matters and pharmaceutical cases. I was also involved in personal injury matters, typically complex matters referred to the firm from smaller firms. In 1994, I was invited to be a member of the core trial team representing the State of Minnesota and Blue Cross Blue Shield of Minnesota against the tobacco industry. I was involved full time on that case from 1994 until the case settled on the date of final argument in May, 1998.

- i. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Reed, Smith, Shaw & McClay, I primarily represented companies and worked for the defense. The practice was varied since I rotated among the various departments of the firm as a new associate.

At Tyler, Cooper & Alcorn, I primarily represented insurance companies who were called in to defend their insureds in contract and/or tort matters. The practice was varied but primarily concerned business and insurance litigation.

At Robins, Kaplan, Miller & Ciresi, I primarily represented individual clients in personal injury and products liability matters. As a member of the core trial team representing the State of Minnesota and Blue Cross Blue Shield of Minnesota in the tobacco litigation, I worked extensively with dozens of state agencies and with Blue Cross Blue Shield of Minnesota.

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

At Reed, Smith, Shaw & McClay, my practice varied. Approximately 50% of the matters I was involved with were litigation matters. I occasionally appeared in court and second chaired a trial in Delaware.

At Tyler, Cooper & Alcorn, all of my practice was in litigation and I appeared frequently in court. I second chaired a trial in Connecticut during that time.

At Robins, Kaplan, Miller & Ciresi, all of my practice was in litigation and I appeared frequently in court. I tried a number of cases during my 17 years with the firm.

- i. Indicate the percentage of your practice in:
1. federal courts: 40%
 2. state courts of record: 60%
 3. other courts:

4. administrative agencies:

- ii. Indicate the percentage of your practice in:
1. civil proceedings: 100%
 2. criminal proceedings:

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

I was at counsel table, either as a first chair, second chair or a member of the trial team in 8 jury trials although three of those cases settled after all of the evidence was presented to the jury.

- i. What percentage of these trials were:
1. jury: 100%
 2. non-jury:

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

In *Great American Federal Savings & Loan Association et al v. Novotny*, 442 U.S. 366 (1979), an employment matter alleging a claim under section 1985(c), I assisted on the briefing to the Supreme Court of the United States.

During the tobacco litigation, there were two matters raised in the Supreme Court of the United States: *Philip Morris, Inc. v. Minnesota*, 523 U.S. 1056 (1998) and *R. J. Reynolds Tobacco Co. v. Minnesota*, No. CX-95-2536, 1995 WL 862582 (Minn. Ct. App. December 26, 1995), cert. denied, 517 U.S. 1222, 116 S. Ct. 1852 (1996) (appeal on writ of certiorari of the denial of defendants' motion to seek a writ of prohibition or mandamus from a discovery order)

I did not argue any of these matters.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. 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 State of Minnesota and Blue Cross Blue Shield of Minnesota v. Philip Morris, et al., Ramsey County District Court, File No. CI-94-8565.* Case Description: In 1994, the State of Minnesota and BlueCross BlueShield of Minnesota filed a complaint against the tobacco industry alleging fraud and violations of the antitrust laws. My role in the case was significant and I worked fulltime on the case until it settled in May of 1998. The scope of discovery was monumental - on the plaintiffs' side of the case alone, there were 190 days of depositions and hundreds of motions. The case was venued in Ramsey County before the Honorable Kenneth Fitzpatrick. The trial began in early January, 1998. On the last day of final arguments to the jury, the case settled.

Opposing Counsel:

The American Tobacco Company	Byron E. Starns Leonard, Street & Deinard 150 South Fifth Street, Suite 2300 Minneapolis, MN 55402 (612) 335-1516
Brown & Williamson Tobacco Corp.	Jack M. Fribley Faegre & Benson 90 South Seventh Street, Suite 2200 Minneapolis, MN 55402 (612) 766-7000
Philip Morris Inc.	Peter Sipkins Dorsey & Whitney 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402 (612) 343-7903
R.J. Reynolds Tobacco Company	James Simonson Gray, Plant, Mooty 80 South Eighth Street, Suite 500 Minneapolis, MN 55402 (612) 632-3300
The Council for Tobacco Research	Lawrence Purdy Maslon, Edelman, Borman & Brand LLP

90 South Seventh Street, Suite 3300
 Minneapolis, MN 55402
 (612) 672-8200

The Tobacco Institute

George Flynn
 Flynn, Gaskins & Bennett
 333 South Seventh Street, Suite 2900
 Minneapolis, MN 55402
 (612) 333-9500

Lorillard Tobacco Company

David Martin
 (then at the Doherty, Rumble & Butler firm
 which has since closed)
 Medtronic Inc.
 710 Medtronic Parkway Northeast
 Minneapolis, MN 55432
 (763) 505-2682

2. *Patricia Engel, et al., v. Ford Motor Company*. Case Description: In 1989, plaintiff Patricia Engel was driving her Ford vehicle when she was rear ended by another vehicle. Upon impact, the doors matchboxed, preventing them from being opened, locking in the passengers. The fuel tank was pierced and the vehicle became engulfed in flames. Heroic bystanders were able to save three of the four passengers. Jacob Engel, a nine year old, died from burns and smoke inhalation in the crash. The remaining passengers suffered severe burn injuries. Along with my partner, Ty Bujold, we sued Ford Motor Company. We alleged a design defect in the integrity of the fuel system and we achieved a very sizeable settlement for the family. The case was venued in Dakota County, Minnesota before the Honorable Harvey Holtan.

Opposing Counsel:

David Kelly, Kim Schmid
 Bowman & Brooke
 150 South Fifth Street, Suite 3000
 Minneapolis, MN 55402
 (612) 339-8682

3. *John D. Breen, personally and guardian for Irene Breen v. Abbott Laboratories, et al. (1993)*. Case Description: On behalf of Irene Breen, we brought a medical malpractice and pharmaceutical products liability lawsuit against her treating physicians and Abbott Laboratories. Mrs. Breen was administered a very high dose of a drug called SNP (sodium nitroprusside). If given too high a dose, a patient can suffer irreversible brain damage. After receiving a significant dose of SNP, Irene Breen entered a vegetative state, having suffered massive brain damage, quadriplegia and blindness. The case was venued in Hennepin County before Judge Harvey Ginsburg. The case was settled on the morning trial was scheduled to begin.

Opposing Counsel:

David Hutchinson

Geraghty, O'Loughlin & Kenney PA
 55 East Fifth Street, Suite 1100
 St. Paul, MN 55101
 (651) 291-1177

4. *Herr et al v. Carolina Log Buildings, et al, Civil File Nos. EV-85-262-C through EV 85-268-C (S.D. Ind. 1985)*. Case Description: In this toxic tort case, we represented 43 plaintiffs who resided in log cabins in southern Indiana and who had been exposed to large amounts of pentachlorophenol, a wood preservative, manufactured by Dow Chemical Company and others, which had been used to preserve the wood on their log homes. The matters were venued in federal court in the southern district of Indiana before Judge Brook and Magistrate Judge Hussman. After several years of litigation, the cases settled.

Opposing Counsel: Mr. Edward Fitzpatrick
 Attorney
 The Dow Chemical Company
 Washington Street Building
 Midland, MI 48640

5. *Van Dam v. Ford Motor Company (1989)*. Case Description: This case was brought on behalf of an injured truck driver against Ford Motor Company, alleging that the cab compartment of the truck was defectively designed because it failed to provide sufficient head room for an average truck driver. Mr. Van Dam repeatedly hit his head on the roof of the cab which caused him to suffer permanent head, neck and back injuries. The case was venued in federal court in Minneapolis before the Honorable Diana Murphy, who currently sits on the Eighth Circuit. After two full weeks of trial, the case was settled.

Opposing Counsel: The Honorable John McShane
 (then at the Bowman & Brooke law firm)
 Hennepin County District Court
 Hennepin County Government Center
 300 South Sixth Street
 Minneapolis, MN 55487
 (612) 596-6830

6. *Albert v. Paper Calmenson, et al*. Case Description: Todd Albert, the plaintiff, was burned over 80% of his body surface, in an underground tank explosion on the defendant's premises. The matter was venued in Hennepin County District Court before Judge Sean Rice, who is now retired from the bench. My partner Tyrone Bujold and I tried the case to verdict in 1993. The jury returned a sizeable verdict for our client, Todd Albert.

Opposing Counsel: Duane Arndt
 Arndt & Benton PA
 400 South Fourth Street, Suite 1012
 Minneapolis, MN 55415
 (612) 332-5473

7. *Ridens v. American Manufacturing Company (1986)*. Case Description: Ted Ridens, my client, was a member of the ground crew for the Flying Tigers at the LAX airport. While performing those job responsibilities, the hydraulic lift failed and crushed the vertebrae in his neck. He received surgical disc fusions at every level of his cervical spine. The case was venued in Hennepin County, Minnesota before Judge Robert Schefelbein. Several weeks prior to trial, the case settled.

Opposing Counsel: James Crassweller
 Kalina, Wills, Gisvold & Clark
 6160 Summit Drive, Suite 560
 Minneapolis, MN 55430
 (612) 789-9000

Richard Mahoney
 Mahoney, Dougherty & Mahoney PA
 801 Park Avenue
 Minneapolis, MN 55404
 (612) 339-5863

8. *Evan Flam, a minor v. Rowland Pointe Partnership (1993)*. Case Description: I represented Evan Flam in this premises liability matter against a developer, Rowland Pointe Partnership. In 1990, seven year old Evan Flam was severely injured when thousands of pounds of dirt caved in upon him on undeveloped land located next to his apartment complex. The case was venued in Hennepin County District Court before Judge Peter Lindberg. Ultimately, the case was settled.

Other counsel: Mitchell Spector
 Abrams & Spector
 2445 Park Avenue
 Minneapolis, MN 55404
 (612) 925-3053

9. *Swift v. Owen and the City of Marshall*. Case Description: I represented the plaintiff in this case against the City of Marshall and one of its police officers. My client was injured as a passenger on a motorcycle which was pursued by the police on a high speed police chase. The case was venued in Lyon County District Court before Judge Harvey Holtan. After several days of trial in 1993, the case settled.

Opposing Counsel: William Moeller
 Blethen Gage & Krause PLLP

127 South Second Street
Mankato, MN 56002
(507) 345-1166

10. *The Jeep Litigation*. Case Description: In the late 1980s and the early 1990s, my partner, Tyrone Bujold and I handled a number of cases involving Jeep rollovers against its then parent American Motors Corporation. In those product liability cases, we alleged that the Jeep was designed with a high center of gravity, no rollover protection and a propensity to roll over under circumstances where most stable, standard sedans would not have rolled. The models under scrutiny were the Jeep CJ-5 and CJ-7. At the time, over 1000 suits were brought all over the country. Those cases were venued before various district court judges in federal court in Minnesota. All of the cases were settled.

Opposing Counsel:

Mark Olson
Oppenheimer Wolff & Donnelly
45 South Seventh Street, Suite 3300
Minneapolis, MN 55402
(612) 607-7337

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

I have never been involved in lobbying activities of any sort.

With respect to litigation which did not progress to trial, most of the litigation matters I have handled over the years settled before trial, including many of the cases I referenced in the previous question.

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

I have never taught a class at an institution of higher learning or a law school.

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

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

I have a small defined benefit account with my former law firm, Robins, Kaplan, Miller & Ciresi. When I was appointed to the bench, no further contributions were made to the account. I will be able to access the funds when I turn 65. The entire present value of the account is approximately \$64,000.

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

No.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, 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.

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

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

If confirmed, I will continue to recuse on any matter involving my husband's law firm, Leonard, Street & Deinard. I will also recuse, on a selective basis, on cases involving certain lawyers at my former law firm, Robins, Kaplan, Miller & Ciresi. I will also recuse on any case in which I might own stock or have a financial interest in one of the parties. In addition, my career law clerk is married to one of the Assistant United States Attorneys in Minneapolis. It is my practice now and would be my practice if confirmed not to have him appear before me.

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

If I am confirmed, and during my service as a United States Magistrate Judge, I will continue to follow the federal recusal statutes and the Code of Conduct for United States Judges. If necessary, I would seek advice from the Code of Conduct Committee of the Judicial Conference. I would always err on the side of disqualification.

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

As a judge, I cannot serve as an advocate in pro bono matters. However, I serve as a mentor in many circumstances to disadvantaged youth. For instance, I participated this past summer in the Just the Beginning Foundation program in Minneapolis which is designed to identify and attract bright, underprivileged children of color to the law. I continue to mentor several students in that program. Over the years, I have also been a supporter of Advocates for Human Rights, a local NGO, founded by lawyers, whose mission is dedicated to the study of and eradication of human rights violations all over the world. Every year, I host a high school class for a mock suppression hearing to address constitutional issues with them. I hope to become more involved in international judge's programs focused on the rule of law in third world countries.

26. **Selection Process:**

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

Our senior senator, Senator Amy Klobuchar empanelled a selection committee comprised of prominent judges and attorneys in Minnesota to assist her with her recommendation to the President. I interviewed once with several members of the committee, once with the entire committee and a third time with the committee chairs. I also interviewed with Senator Klobuchar and with our new senator, Senator Franken. On November 3, 2009, Senator Klobuchar recommended me to the President for nomination. Beginning immediately thereafter, I was in contact with the pre-nomination officials at the Department of Justice. I had an interview at the Department of Justice on February 9, 2010 with attorneys from the Department of Justice and the White House Counsel's Office. The President submitted my nomination to the Senate on April 21, 2010.

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

No.

AO 10
Rev. 1/2010

**FINANCIAL DISCLOSURE REPORT
NOMINATION FILING**

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

1. Person Reporting (last name, first, middle initial) Nelson, Susan R.	2. Court or Organization United States District Court for the District of Minnesota	3. Date of Report 04/21/2010
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Court Judge - Nominee	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 04/21/2010 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period 01/01/2009 to 03/31/2010
7. Chambers or Office Address 300 South 4th Street Chambers 9E Minneapolis, MN 55415	5b. <input type="checkbox"/> Amended Report 8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each part where you have no reportable information. Sign on last page.		

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

NONE (No reportable positions.)

POSITION	NAME OF ORGANIZATION/ENTITY
1. Director (Advisory Board)	Minnesota Women Lawyers
2.	
3.	
4.	
5.	

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

NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 05/01/00	Retirement plan with Robins, Kaplan, Miller & Ciresi, no control.
2.	
3.	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Nelson, Susan R.	Date of Report 04/21/2010
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III. NON-INVESTMENT INCOME. *(Reporting individual and spouse; see pp. 17-24 of filing instructions.)*

A. Filer's Non-Investment Income

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

	<u>DATE</u>	<u>SOURCE AND TYPE</u>	<u>INCOME</u> <i>(yours, not spouse's)</i>
1.			
2.			
3.			
4.			

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

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

	<u>DATE</u>	<u>SOURCE AND TYPE</u>
1.	2009	Leonard Street and Deinard, attorney/shareholder
2.	2010	Leonard Street and Deinard, attorney/shareholder
3.		
4.		

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment. (Includes those to spouse and dependent children; see pp. 23-27 of filing instructions.)*

NONE *(No reportable reimbursements.)*

	<u>SOURCE</u>	<u>DATES</u>	<u>LOCATION</u>	<u>PURPOSE</u>	<u>ITEMS PAID OR PROVIDED</u>
1.	Exempt				
2.					
3.					
4.					
5.					

FINANCIAL DISCLOSURE REPORT
Page 3 of 7

Name of Person Reporting Nelson, Susan R.	Date of Report 04/21/2010
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V. GIFTS. (Includes those to spouse and dependent children; see pp. 28-31 of filing instructions.)

NONE (No reportable gifts.)

	<u>SOURCE</u>	<u>DESCRIPTION</u>	<u>VALUE</u>
1.	Exempt		
2.			
3.			
4.			
5.			

VI. LIABILITIES. (Includes those of spouse and dependent children; see pp. 32-33 of filing instructions.)

NONE (No reportable liabilities.)

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Chase	Credit Card	K
2.	American Express	Credit Card	K
3.	US Bank	Credit Card	J
4.			
5.			

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Nelson, Susan R.	Date of Report 04/21/2010
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VII. INVESTMENTS and TRUSTS -- Income, value, transactions (Includes those of spouse and dependent children; see pp. 34-40 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "XX" after each asset except from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or tax)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yyyy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. USB Piper Jaffray IRA #1	C	Interest	K	T	Exempt				
2. EVERGREEN BALANCED CL B									
3. EVERGREEN BALANCED CL A									
4. FIRST AMERICAN PRIME OBLIGS FD A									
5. USB Piper Jaffray IRA #2	C	Interest	K	T					
6. EVERGREEN BALANCED CL B									
7. EVERGREEN BALANCED CL A									
8. FIRST AMERICAN PRIME OBLIGS FD A									
9. USB Piper Jaffray Money Market	A	Interest	J	T					
10. El Paso Energy Corp Stock - Common	A	Dividend	J	T					
11. Northern States Power Stock XCEL Energy Inc. - Common	A	Dividend	J	T					
12. Thor Industries Stock - Common	A	Dividend	J	T					
13. Evergreen Equity Tr Balanced FD CL A - Mutual Fund	E	Dividend	M	T					
14. Evergreen Balanced Mutual Fund	E	Dividend	M	T					
15. First American Technology Fund	A	Dividend	J	T					
16. UGTMA Acct #1 (Cash)	A	Interest	J	T					
17. UGTMA Acct #2 GREENWOOD TR CD SEMI FEDINS;	B	Interest	K	T					

1. Income Gain Codes: (See Columns B1 and D4)	A - \$1,000 or less F = \$10,001 - \$100,000 J - \$15,000 or less N = \$250,001 - \$500,000 P1 - \$1,000,001 - \$50,000,000	B - \$1,001 - \$2,500 G - \$100,001 - \$1,000,000 K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000 Q - Cust (Real Estate Only) V - Other	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000 L - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000 S = Appraisal W = Estimated	D - \$5,001 - \$15,000 I2 - More than \$5,000,000 M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000 T = Cash Market	E - \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	N = \$250,001 - \$500,000 P1 - \$1,000,001 - \$50,000,000	K - \$15,001 - \$50,000 O - \$500,001 - \$1,000,000	L - \$50,001 - \$100,000 P1 - \$1,000,001 - \$5,000,000 P4 - More than \$50,000,000	M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000	
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	H - Cust (Real Estate Only) V = Other	S = Appraisal W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting Nelson, Susan R.	Date of Report 04/21/2010
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VII. INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; see pp. 34-69 of filing instructions.)

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

A. Description of Assets (including trust assets) Place "X" after each asset exempt from prior disclosure	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 1 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
	18. UGTMA Acct. #2 HOUSEHOLD BK FSB CD SEMI FEDIN	B	Interest	K	T				
19. UGTMA Acct. #2 U.S. COUPON TREASURY STRIPS (A)	B	Interest	K	T					
20. UGTMA Acct. #2 U.S. STRIPS (B)	B	Interest	K	T					
21. UGTMA Acct. #2 U.S. COUPON TREASURY STRIPS (C)	B	Interest	K	T					
22. UGTMA Acct. #2 ORCHARD FSB CD QUAR FEDINS	B	Interest	K	T					
23. UGTMA Acct. #2 FIRST AMERICAN PRIME OBLIGS FD A	B	Interest	K	T					
24. Leonard Street and Deinaud 401K	G	Interest	P1	T					
25. Robins, Kaplan, Miller & Ciresi 401K	F	Interest	N	T					
26. Private Bank Minnesota Checking Account	A	Interest	J	T					
27. Private Bank Minnesota Checking Account	A	Interest	J	T					
28.									

1. Income Gain Codes: (See Columns B1 and D4)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$25,000 - \$500,000 P1 = \$15,000,001 - \$50,000,000	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 Q = Appraisal U = Book Value	C = \$2,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P2 = \$1,000,001 - \$5,000,000 R = Cash (Real Estate Only) V = Other	D = \$5,001 - \$15,000 I1 = \$1,000,001 - \$5,000,000 M = \$100,001 - \$250,000 P3 = More than \$50,000,000 S = Nonaccrual W = Estimated	E = \$15,001 - \$50,000 I2 = More than \$5,000,000 N = \$100,001 - \$250,000 P4 = \$5,000,001 - \$25,000,000 T = Cash Market	
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FINANCIAL DISCLOSURE REPORT
Page 6 of 7

Name of Person Reporting	Date of Report
Nelson, Susan R.	04/21/2010

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

iii. A. Non-reportable, non-investment income earned for service as a United States Magistrate Judge.

FINANCIAL DISCLOSURE REPORT
Page 7 of 7

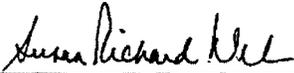
Name of Person Reporting	Date of Report
Nelson, Susan R.	04/21/2010

IX. CERTIFICATION.

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

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

Signature _____



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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		30	000	Notes payable to banks-secured			
U.S. Government securities-add schedule				Notes payable to banks-unsecured		64	987
Listed securities-add schedule			762	Notes payable to relatives			
Unlisted securities--add schedule		380	340	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		40	000
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable-add schedule		400	000
Real estate owned-add schedule	2	380	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property - add schedule		195	665				
Cash value-life insurance		243	863				
Other assets itemize:							
Combined 401(k) plans	1	449	740				
SRN-IRA		23	000				
Michael-UGMA		35	000	Total liabilities		504	987
Deferred benefit plan		64	000	Net Worth	4	297	383
Total Assets	4	802	370	Total liabilities and net worth	4	802	370
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)		no	
On leases or contracts				Are you defendant in any suits or legal actions?		no	
Legal Claims				Have you ever taken bankruptcy?		no	
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Listed Securities

Thor Industries	\$762
Total Listed Securities	<u>762</u>

Unlisted Securities

First American Mid Cap Select Fund	\$15,973
Evergreen Diversified Capital Builder Fund	334,541
Thomas F. Nelson IRA	<u>29,826</u>
Total Unlisted Securities	380,340

Real Estate Owned

Personal residence	\$750,000
Florida condominium	1,600,000
Florida time share	<u>30,000</u>
Total Real Estate Owned	2,380,000

Autos and Other Personal Property

1957 Chevy	\$85,000
2006 Toyota Highlander	27,390
2001 Toyota Highlander	11,025
2000 Toyota Land Cruiser	12,250
Other personal property	<u>60,000</u>
Total Autos and Other Personal Property	195,665

Real Estate Mortgages Payable

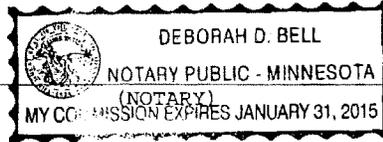
Personal residence	\$400,000
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AFFIDAVIT

I, Susan Richard Wells, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

April 19, 2010
(DATE)

Deborah D. Bell
(NAME)



Senator CARDIN. Well, let me thank all four of you for being willing to continue service in the public, and I particularly want to thank your families, because as I said earlier, this is a family effort. I know it is not easy on your families the amount of time and commitment it takes to serve on the Federal bench, and we very much appreciate their willingness to join in this effort.

Before starting the questioning, I want to acknowledge that the reason we were able to get this hearing scheduled so promptly was the help we received from Senator Sessions in scheduling this, and I would yield to Senator Sessions if he wanted to make any opening comments.

**STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM
THE STATE OF ALABAMA**

Senator SESSIONS. Well, thank you, Mr. Chairman. These are important positions and teams of staffers and lawyers have checked into the backgrounds of the nominees and have looked at that. FBI have done background checks and ABA and others. And so I look forward to participating in the discussion this morning.

Thank you.

Senator CARDIN. I want to start off with the question that I asked Mr. Matheson dealing with the oath of office that you would take on becoming a judge, and, that is, to—so we get the exact language, it's to—equal justice to the poor and to the rich.

I say that because at the trial court level, it becomes more pronounced if someone does not have adequate legal representation and in civil proceedings, the ability to get adequate legal representation many times depends upon having adequate resources in order to be able to pursue a case.

And I understand the role of a judge, but I also understand that as a judge, you are in the upper pinnacle of our judicial system in trying to make sure that equal justice is dispensed and your oath requires you to do that without regards to wealth.

So I guess my question to you is how do you see your role as a district court judge in carrying out the oath of office to make sure that justice is dispensed equally to the poor and to the rich.

We will start with Mr. McConnell and then we will reverse it next.

Mr. MCCONNELL. Thank you, Senator Cardin. It would be my commitment, if I were fortunate enough to be confirmed by the U.S. Senate to serve in the district court of Rhode Island, it would be my commitment to ensure total and complete impartiality and to ensure that whether the poor or the rich came before me, that they would be treated fairly, that they would be treated with respect, and that they would be treated impartially, and that would be my commitment in my courtroom.

My background has included a long history of pro bono service in many areas, from time sitting at a homeless legal clinic, dealing with very practical problems of people perhaps who have lost their license, all the way to litigation on behalf of folks in Rhode Island that were develop mentally disabled and lost their home.

So I would bring that desire for fairness and impartiality to the bench with me.

Senator CARDIN. Judge Bredar.

Judge BREDAR. Thank you, Senator. Thanks for the opportunity to discuss this very important issue. And if I were confirmed, I would, I hope, uphold the commitment that I made early in my career to make sure that the poor and those who live in the shadows of our society do truly have equal access to our courtrooms.

My work as a public defender, I think, was completely involved with that. You're right that it becomes a more tricky proposition when one is a judge, because you're not there, of course, to advocate on behalf of anyone, whether they are rich, poor or otherwise.

But I do think it's appropriate for judges to do what they can to ensure that all parties, including those who are impoverished, have access to the courts. I think in the Federal court system, we do quite well with respect to the criminal side; and, due to the Congress' wisdom in passing the Criminal Justice Act in 1974, we make available public defenders and panel lawyers to perform that service.

On the civil side, it's more problematic. I think that judges have a responsibility to encourage the bar generally to undertake their responsibility, when able to represent the indigent on a pro bono basis, to ensure that they have an equal opportunity to be heard in court.

Senator CARDIN. Judge Hollander.

Judge HOLLANDER. Thank you, Senator Cardin, for that question. I have, as my record reflects, 21 years of judicial service. Part of that time, I was a trial judge, more recently, of course, on the Court of Special Appeals of Maryland.

In that time, I have had numerous occasions to work with pro se litigants and I think my record would reflect that regardless of whether they were represented or not, everyone has an opportunity to be heard fairly and impartially without bias or prejudice.

And I think my colleagues will attest, who are present today, that there are many times when we do have pro se litigants in the appellate court. The court is not able to appoint counsel at our level. But those pro se litigants, their submissions, which are often very difficult to decipher, receive extremely careful consideration and attention; and, in fact, maybe it takes an extra effort, which I've always expended, to try to figure out exactly what the argument is that is being presented.

And so I feel very proud of the fact that I have worked very hard to make sure that whether someone has counsel or doesn't, they, too, have their day in court.

Senator CARDIN. Thank you.

Judge Nelson.

Judge NELSON. Yes. Chairman Cardin, if you could indulge me just one moment, I forgot one of my dear friends.

Senator CARDIN. You better get that in the record.

Judge NELSON. I will worry about it the rest of the hearing. Our dear friend, Anna Fogel, is here and I want to recognize her for being here.

Senator CARDIN. Absolutely.

Judge NELSON. You know, in the district of Minnesota, we have spent a lot of time as a bar and a bench focused on the issue of equal access to justice. And as a magistrate judge for the past 10 years, on a daily basis, I see people come into my courtroom who

are probably experiencing the worst day of their lives, whether they've been charged with a crime, whether they've suffered a terrible physical injury, and many of them have had very difficult lives.

Many of them are pro se. And both on the civil side and the criminal side, we have attempted in Minnesota to address this and we've recently implemented a wonderful pro se program, which includes access to our clerk's office. We give them samples of complaints and other pleadings so they understand how to access the court. We have a very sophisticated system of assigning counsel to represent them.

But I think in the end, what's critically important for a district court judge and the best way to deliver equal access to justice is through impartiality, through fair and just administration of the law to all.

Thank you.

Senator CARDIN. Senator Sessions.

Senator SESSIONS. Thank you, Mr. Chairman. Let me ask each one of you—let me get exactly where we are here. Each one of you will be required to impose sentences.

And having been a prosecutor for some time, I might be accused of having a bias, but I have had the personal experience to see the damage that criminals can do to human beings and to society. We have sentencing guidelines that, until recently, were mandatory, with a few exceptions.

Sometimes judges think they know better than the sentencing guidelines, but in my view, they are pretty good. They were consistent with the view of most judges about how sentences should be imposed.

So I guess I'll just run down a list. Briefly, if you would, share with me to what extent you feel committed to the sentencing guidelines and to what extent do you have any hesitation to provide significant severe sentences, if that's called for under the guidelines.

Do you have any personal feelings that would make it difficult for you to impose a harsh sentence where appropriate?

Mr. McConnell.

Mr. McCONNELL. Thank you, Senator Sessions. I think the sentencing guidelines are—one of the best aspects and the greatest aspects of the sentencing guidelines is that they offer consistency and I think consistency in criminal sentencing is key.

I think people charged with crimes and victims deserve to know that there will be consistent punishment meted out. I think the guidelines should be given great deference. I think the guidelines, as a product of bipartisan work, deserve that deference by people in the know, and I think that I would follow the Supreme Court precedent on how to use them.

But in my own personal circumstance, they would particularly be given great deference in sentencing, Senator.

Senator SESSIONS. Thank you. I think that's the view of most judges.

Magistrate Bredar, you have criticized the guidelines partially, saying that "offenders and their criminal acts are inherently unique and, if justice is to be served, sentences must be imposed

on a case-by-case basis” and that the “interests of justice are best served when discretion is left with the judge.”

And you said in response to the Court’s ruling in the *Booker* case, “I hope Congress will not act precipitously to curtail judicial discretion.”

I would note to you that the Nation went through a national discussion on that issue of case-by-case basis and judge-by-judge basis, which is what that really means. And Senator Kennedy and Senator Hatch and Senator Biden and Senator Thurman all came forward with the sentencing guidelines that I utilized as a prosecutor.

So I am concerned about that. Do you see any problem with the fact that two judges on the same hall, one gets—they get exactly the same cases and one sentence gets probation and one gets 15 years in jail, as used to happen quite often?

Judge BREDAR. Senator, I hope I look like a young man, but the fact is that I was actually working as a Federal prosecutor when the guidelines came into place back when they were held constitutional in *United States v. Mastretta* in 1987.

And I will agree with you wholeheartedly that there were problems in the country and in the Federal courts with respect to disparity in sentencing and that the guidelines, the genesis of the guidelines was that disparity, and it was a very important step forward in terms of advancing justice in this country.

I not just know of stories, I lived the experience you’ve described of getting one sentence in one courtroom and a quite different one down the hallway for virtually identical offenses.

So there clearly was a problem. The guidelines were put in place to address that. I think like many prosecutors and defense attorneys during the time when the guidelines were first in place, there was a feeling in myself that they were, at times, a bit confining; that in a just system of sentencing, there needed to be some room for greater flexibility.

Certainly, not a return to the bad old days where there was really no guidance.

Senator SESSIONS. Well, your advocacy here is that sentences must be imposed on a case-by-case basis. That’s exactly what we had previously, and, basically, that says each judge decides, does it not, if you do not give deference to the guidelines?

Judge BREDAR. I think the first principle I want to enunciate is that as a magistrate judge, I have been sentencing under the guidelines for the last 12 years and I think the record shows that my sentencing practice has been right down the middle of the road and that I have faithfully applied the guidelines, first and foremost, because they’re the law of the land and that’s the judge’s responsibility, regardless of what views he may or may not have advocated before he became a judicial officer.

I want to be crystal clear that, if confirmed as a district judge, that would remain my policy. I follow the law and if the sentencing guidelines are on the books, as they still are, very much, they are the first reference point in any sentence that is imposed.

Senator SESSIONS. Well, that is what I guess I would like to hear. [Laughter.]

Senator SESSIONS. The guidelines are a first reference point. They are not binding, however, and I guess my question is if you truly believe what you said in that statement and you are no longer bound, as you previously were, before *Booker* and those cases, to what degree do you give deference today to sentencing guidelines?

Judge BREDAR. Well, I give the deference that the guidelines themselves command and that the law of the United States Court of Appeals for the Fourth Circuit requires that I give, which is that they are the first place that a judge looks when a judge is crafting a sentence.

And frankly, while the legal language is a bit more technical than this, the bottom line is you need to have a darn good reason why you are stepping away from the guidance of the Sentencing Commission and the experience of so many others with this category and class of offense, and I give great deference to that.

Senator SESSIONS. Mr. Chairman, I have already run well past my time and I do not want to ignore our other two people. But I suppose I would be willing to give back my time. I doubt they would be offended.

[Laughter.]

Senator CARDIN. Thank you, Senator Sessions. I have got a feeling that others will pick up on some of these points.

Senator Klobuchar.

Senator KLOBUCHAR. He can go ahead. He was before me.

Senator CARDIN. Senator Whitehouse.

Senator WHITEHOUSE. Thank you. I had the chance earlier to welcome Jack McConnell here. So I think my questions, if the other nominees will forgive me, will focus on the Rhode Island nominee.

You have had, clearly, a very strong political background. You and I—you have been for me and you have been against me. I would say, on balance, maybe a little bit more against than for over the years.

But one of the interesting things about Rhode Island is that people can have friendships and respect for one another that transcends where you stand politically.

Senator Reed has great personal confidence that you will be able to transcend your political experiences and background and opinions of the past if you become a judge. I want to say I very strongly share that point of view and that is why I so strongly supported your nomination.

But not everyone here has had the chance to get to know you in that way and to see that element of your character. Not everyone here is familiar with the extent to which, in Rhode Island, it is not uncommon for people of intensely political backgrounds to become judges and how over and over and over again our experience has been very successful with them able to set aside that history and treat every person who comes before them equally and fairly once they have done that.

Your father-in-law, Justice Shea, was one. On the Republican side, Justice Weisberger was another. One of the people who has indicated his personal belief in your capability to make that transformation is Judge Selya of the First Circuit, a Rhode Islander on

the First Circuit, who has served with great distinction for many years.

I have practiced before him. I have never had a moment's hesitation about his fairness or concern about partiality, and yet he came to that job intensely political, working for a Republican Governor, working in politics, active in campaigns.

And as I said, a lot of people here aren't familiar with that tradition in Rhode Island or with how successfully judges are expected to and do make that leap. In Corinthians, it says, "When I was a child, I spoke as a child, I understood as a child, I thought as a child. But when I became a man, I put away childish things."

I do not want to make a firm equation of political things with childish things. There are occasions when politics is not childish.

[Laughter.]

Senator WHITEHOUSE. There are occasions when it is. But I do think that the Bible's presumption that there are turning points in a person's life when they put away things of the past and move into new responsibilities is something that is very much a part of the human condition and very appropriate.

And I would ask you to make some remarks at this point to assure us that every litigant who comes before you, no matter their background, whether they be poor or rich, Democrat or Republican, if they are individuals, to know that they will get a fair shake against big corporations, that whoever they are, when you are a judge, it no longer matters. You have taken a solemn oath and obligation to do impartial justice and you will honor that.

Mr. MCCONNELL. Thank you, Senator Whitehouse, and thank you for that kind introduction. If I could just say that I must have been a child when I opposed you politically.

[Laughter.]

Mr. MCCONNELL. I now am a man——

Senator WHITEHOUSE. But a very effective one, a very effective one.

Mr. MCCONNELL. Sadly for you, yes.

[Laughter.]

Mr. MCCONNELL. I do regret it, if I can say so. I am under oath.

I appreciate that question, Senator. Politics has been an avocation for me. It has been, ever since—I told you earlier I have five brothers and I had a dad who politics was an avocation for him. He was a local ward Committee person.

And we would oftentimes struggle to get dad's attention individually, when you have such a large family as I do. And so I picked up, when I was about 10, walking the ward with him and distributing the leaflets and whatnot and as we say in Rhode Island, I sort of caught the bug.

But that was my avocation. That was what I said, because I believed in a cause or I believed in a particular candidate, which we have been very fortunate in Rhode Island over time to have.

My professional life has been as a litigator. For 25 years, I've tried cases, and the politics has never gotten in the way.

I was telling someone the other day, while I have contributed and supported and helped in campaigns, I don't believe I've ever asked for anything. I don't ask for White House tours. I don't ask

for Senate gallery seats. I just don't ask for anything. It is an avocation, because I truly believe in the public service it's done.

And my dad taught me very early on that if you believe in something, then you need to support it, and I've tried to do that.

If I am fortunate enough to become—to be confirmed by the Senate and become a judge, I commit to you and to the people of the state and the country that I'd leave that behind.

I have been involved in politics and I have been a trial lawyer. That was my job. I did it professionally, I did it fairly, I did it ethically for many, many years.

Again, if I'm privileged enough to be confirmed, I make that same commitment to impartiality, to fairness, and to the rule of law, because that is what my job would be. And I make that commitment to you and to the entire Committee and the Senate.

Senator WHITEHOUSE. Thank you. I have gone a moment over my time, so I am not going to ask any further questions. But I do want to make sure, Mr. Chairman, that the letter from Mayor Scott Avedisian, who is the second senior ranking Republican official in Rhode Island, the letter from Justice Weisberger, who is a very distinguished Republican member of the Rhode Island Supreme Court, now serving on senior status, that the letter from my predecessor as attorney general and our last Republican attorney general, Jeffrey Pine, are also in the record; that my successor as the state director of business regulation, Republican Barry Hittner, is in the record; that the letter from John Harpootian, who is an extremely active Republican political figure in Rhode Island, on the current Republican Governor's sort of inner circle of advisers and very important part of his political campaign, again, supporting Jack McConnell is in the record; and, the statement from Judge Selya in the Providence Journal, with his assurance that Jack McConnell can make this transition; and, finally, a letter from the former Republican attorney general and now member of the United States Court of Appeals for the Third Circuit, Michael Fisher.

I believe that they are all in the record, they are in my package, but if not, I would ask unanimous consent that they be put into the record.

Senator CARDIN. Without objection, they will be included in the record.

[The letters appear as a submission for the record.]

Senator CARDIN. Do you have any Democrats that are supporting him?

[Laughter.]

Senator WHITEHOUSE. There may be one or two.

Senator CARDIN. Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. Let me welcome all of the panelists and all of the family members who are here.

I hope that, since I am going to concentrate, Mr. McConnell, on questions to you, that the others will not feel slighted or that the members of your family will feel slighted. Believe me, the panelists are not—do not feel that way.

Let me ask you questions that will both follow-up on what Senator Whitehouse was just talking about and then one other line of inquiry.

Do you believe that health care is a right of citizenship?

Mr. McCONNELL. I have never studied the issue legally, Senator Kyl, so I don't have an opinion on that.

Senator KYL. Well, the reason I ask is that you were quoted in 2003 in the Providence Journal Bulletin as saying, and I quote, that "affordable, accessible and quality health care should be a right of citizenship."

And that caught my attention, because I think it is hard to find a place in the Constitution, a particular provision, which would support that view. And so I was curious why you said it, if you remember saying it.

Mr. McCONNELL. I do. I believe it was in an op-ed in 2002 concerning democratic principles and values in the state, if I recall.

Senator KYL. Correct. I have 2003, but—

Mr. McCONNELL. 2003, it was, after the 2002 election. I think what I said in there, that were certain values that I believed that the state Democratic Party should unite around, education, work in the inner city, health care at the time, perhaps inappropriately, perhaps I meant universal health care, meaning that everyone should have health care for the system to work, and certainly was not speaking in any legal fashion.

Senator KYL. Well, when you say it should be a right of citizenship, what else could you mean other than that the law would require it?

Mr. McCONNELL. Well, what I think I meant, Senator Kyl, was that as a party, that one of the values that we should profess as a state party was that health care for all people was so fundamental; that perhaps I took a little bit of liberty by saying it rises to the level of citizenship.

Senator KYL. All right. This then will be the lead-in to the final question that Senator Whitehouse was about to ask you, I am sure, which was, in effect, tell us how we can be assured by you that views like the one I just expressed, a strong political view that something should be the case, will not creep into your decision-making.

I mean, I can interpret that as you saying this is the law or the Constitution, it should be a right of citizenship. And because you believe that, presumably, still as a political matter, a case may come to you where the question is, well, is that, in fact, the law and the tendency to wish that something could be true could well color your view when you read the law.

What can you say to assure us that this will not be the case?

Mr. McCONNELL. Senator Kyl, it would be inappropriate for it to color my view, if I'm fortunate enough to be confirmed by the Senate. I deeply understand that the role that I've played as an advocate in the courtroom or as an advocate in the political system for political beliefs are left behind.

Those, in fact, to follow on Senator Whitehouse's analogy, those were the thoughts and actions at the time of an older child. But the reality is that the duties—I have followed my ethical and professional duties as an advocate in the courtroom unblemished and I would bring that same commitment to follow the law, a judge's responsibility of applying law to facts.

Senator KYL. I appreciate your commitment to doing that and you understand why it important to do it.

And another, you gave an interview in which you said, and I quote, "There are wrongs that need to be righted and that's how I see the law." Well, most of us believe some version of that.

But the question is when you are in a position to right those wrongs, as a judge, would you tend to do so, even though the law may be contrary to that particular result? And what I am asking for, and I thought Senator Whitehouse kind of invited the same thing, is what is it that would lead us to believe that you can actually do that.

I am sure you want to assure us you can. I practiced law for 20 years. I left politics out of the practice of law. It is kind of hard to involve it. I mean, you have got a client and a bunch of facts and politics does not have much to do with it.

But judging, you could actually right the wrong, you have got the power to do it. The legislature just did not get the job done, you might conclude. And by your ruling, you could make it happen and you would like to see it happen, but the law just does not seem to be that way.

So how can we be assured that you would not read the law to right that wrong?

Mr. McCONNELL. Because I would have a different role, Senator. My role as an advocate was to do that and a look at my record will show an unblemished record of 25 years of professional, ethical, fair conduct, never called into question.

I would bring those same values with me to the bench. I understand that the role of a judge is not to make law. There are other branches of government or the legislature that does that. The role is to apply the facts to the law and follow precedent.

I'm a firm believer in following precedent. I believe, as I said earlier to Senator Sessions, consistency in the law is important, and that would be my goal as a judge, to be a fair and impartial arbiter of the law by applying them to the facts in the case before me.

Senator KYL. Thank you. My time is up. I will have one other round of questions, if I may.

Mr. McCONNELL. Thank you, Senator.

Senator CARDIN. Senator Klobuchar.

Senator KLOBUCHAR. Well, thank you very much, Mr. Chairman. Thank you. I am sorry I was not here when you all sat down and introduced your families. I was meeting with a nominee for another court, one in Washington, DC., but I quickly ran over here, ended the meeting actually to say that I had to be here for our nominee.

But I wanted to just, first of all, Mr. McConnell, before I address some questions to our two nominees at the end of the table here—that quote that I was listening that Senator Kyl read about the health care.

So even back then in your advocacy role, you were not talking about a constitutional right. You were talking about that something had to be done, like a law change. Is that what you meant by that?

Mr. McCONNELL. I meant that the political system should take up the issue to assure that people have health care, yes, Senator, not in a legal or a rights sense at all.

Senator KLOBUCHAR. All right. Thank you. Anyway, back over here to the other end of the table. You both have served as judges

and I know you, Magistrate Nelson, as a magistrate. And I wondered how that experience has changed your view about the job that you seek now; how that experience being a judge, how it has been different than you thought and how you think it will make you a better judge.

I guess I will start with you, Magistrate Nelson.

Judge NELSON. Thank you, Senator Klobuchar, for the opportunity to respond to that question. Over the past 10 years as a magistrate judge, day in and day out, as I mentioned before, I see folks come to court who are in desperate straits and it has become clear to me that we need to provide good and full access to everyone to our system of justice and that our system of justice must be totally fair and impartial.

And we all, when we look at what happens around the world, develop a deeper appreciation for the importance of the rule of law. And as a judge for many years now, I revere the rule of law, because it is so critical to the functioning of a good society.

Senator KLOBUCHAR. Judge Hollander.

Judge HOLLANDER. Thank you, Senator, for the question. As I know my record reflects, I have 21 years of judicial service, a portion on the trial court and, more recently, a portion on the appellate court.

And in the capacity of both trial court and appellate court situations, I've had the opportunity to consider a wide array of issues and multiple questions. I'm always amazed at how many things seem to be new.

I suppose judges are the last remaining generalists. But this has given me the confidence to believe that whatever the issues might present in terms of Federal court, that I would be well equipped to resolve them, because I have the basic tools to use these skills to answer the questions.

And I also believe that my service as an assistant U.S. attorney and a Federal law clerk will come in very handy as I return, I hope, with any good fortunate and, hopefully, confirmation to the Federal system.

Senator KLOBUCHAR. Thank you. Magistrate Nelson, I want to touch specifically on the role of a magistrate here and I know that you—we focus a lot on criminal cases and sentencing guidelines in a lot of our questions, and, certainly, I think like that as a prosecutor, former prosecutor.

But civil cases are such an important part of the Federal workload and some of them are very complex. And I know that you have a record of being able to bring parties together in consensus and settle cases that are very complicated and you have a reputation of bringing the most cases to settlement of just about any magistrate judge.

Could you talk about how you do that and why you think that can be a good way to resolve disputes?

Judge NELSON. Thank you, Senator, for that question. I think in your opening remarks, you commented on the fact that we have about 5,000 civil filings in the district of Minnesota each year and we have seven active district court judges.

And so our district court has determined that its highest and best use of its magistrate judges is to attempt to settle cases. And

two to three days a week, we bring parties together in lengthy, complicated settlements.

You know, litigation is so costly these days, too, that in many ways, that brings about justice earlier in a case in a way that's cost-effective and it's an important opportunity for us as a court to provide to the parties and lawyers.

I also think to be a good settlement judge, a magistrate judge has to gain the respect and rapport of both sides, because once you lose the respect and rapport of one side, they won't engage in the settlement process. And by nature, settlement is difficult. It's a compromise and it's difficult not to win.

And so I think it requires certain skills, but most importantly, that the parties do trust you and respect your judgment on assessing the strength of their cases.

Senator KLOBUCHAR. Very good. And you have also had trials, is that right, that you have overseen trials, as well?

Judge NELSON. As a magistrate judge. Certainly, in my private practice, I have been in many trials and as a magistrate judge, I have had three trials to verdict.

Senator KLOBUCHAR. All right. Well, very good. Thank you very much. Thank you, all of you, and good luck.

Senator CARDIN. Senator Franken.

Senator FRANKEN. Just to start, Mr. McConnell, I believe that people have a right to health care, but I know that it is not in the Constitution and I do not think I would be confused, and I am not even a lawyer.

[Laughter.]

Senator FRANKEN. You talk about giving up childish things. I talk about doing that.

[Laughter.]

Senator FRANKEN. All right. Judge Nelson, I am really impressed by your record of volunteering as a mentor to the disadvantaged kids and disadvantaged students. What impact do you think those experiences have had on your work as a magistrate judge?

Judge NELSON. Thank you, Senator Franken. I appreciate the opportunity to address that question. When I graduated from law school in the late 1970s, I found myself in this new profession with very few mentors. I didn't know any women judges, I didn't know any women partners, and I didn't know any women politicians.

I barely knew any women who worked outside the home. And I always promised myself that if I enjoyed some success in this profession, that I would turn around and provide mentorship to those who also didn't have mentors in their lives, and I think it's essential to do that.

I mentor at every level. We have a wonderful program that came out of the seventh circuit, actually, which Judge Ann Williams of the seventh circuit began the program, and that is to provide mentorship to disadvantaged children in high schools, and we've done that in Minneapolis and in many other parts of the country.

I've also provided mentorship at the college level and at the law school level. And I believe it gives everybody a sense that they can do what they dream of.

Thank you.

Senator FRANKEN. Thank you. Mr. McConnell, you engaged in a wide variety of pro bono litigation, including on behalf of immigrants and the homeless and persons with disabilities.

How do you make the decision? How do you decide where to devote your pro bono time?

Mr. McCONNELL. Thank you, Senator. That's a good question. I hadn't thought of it. In some cases, it knocks on your door. In some cases, you volunteer time, as I have, with the homeless legal clinic and you sit at a table where social services are offered to homeless people, including time with an attorney, and that's where the rubber really hits the road and you find legal problems that—a man who lived in his car who needed his car, but didn't have his driver's license, and needed to move it and you work and try and get him his license back, which we successfully did.

So sometimes you make yourself available to it, and that's been—and sometimes they come back at you. I had an instance, Senator, where I represented four developmentally disabled adults who had spent most of their time in an institution, who had lived successfully in the community in a residence, and the state moved them out and wanted to put them back into another institution and they landed on my door and we went to court and got an injunction to stop it.

They left them alone for 12 years and then tried it again. And they came back at my door and knocked again and we went back to court the court reviewed it and issued an injunction to stop it.

So they come in a variety of different ways and you always can expect them.

Senator FRANKEN. Sounds pretty haphazard.

Mr. McCONNELL. It is oftentimes, Senator.

Senator FRANKEN. Judge Nelson, as Senator Klobuchar mentioned, you have served as a magistrate judge for 10 years. What are some of the most notable settlements that you have had? Can you describe one? Most people think of magistrate judges doing civil. Can you name one that is just sort of memorable in a way that is illustrative of how you will be a Federal judge?

Judge NELSON. Sure.

Senator FRANKEN. That is a hard thing to put together. Do your best.

Judge NELSON. Sure, Senator Franken. Thank you. I have had many settlements that I have been very proud of. And so I don't mean to slight anybody by selecting one, but one that I'm especially proud of is a case known as *Pagliolo v. Guidant*.

Guidant, a very big company, of course, engaged in a reduction in force and laid off hundreds and hundreds of employees and in doing so, it was alleged, their decisions had a disparate impact on older employees. That was the allegation in the case.

So there were a class of the employees who had been fired or laid off who sued and it was a very emotional case. Many of those people had worked for 20 or 30 years for the company and the company felt very strongly that they had carefully considered their RIF to ensure that it would have no disparate impact on age.

And it took us several long days to work through it, but we were able to reach consensus on it, and I'm particularly proud of it.

Senator FRANKEN. Thank you. Thank you, Mr. Chairman.

Senator CARDIN. We will have a second round, because I believe that Senator Kyl does want to ask some questions, and Senator Sessions.

Let me just ask, if I might, a couple questions, then I will turn it to my colleagues.

Judge Bredar, you are in your second term as a magistrate judge, having served there for over a decade. What experiences do you take out of your being a magistrate judge that, if you are confirmed, sir, as a district court judge, you would use to try to improve the administration of justice in the Maryland district using the district court judges and experiences that you have had a magistrate judge to try to make the system more efficient?

Judge BREDAR. Thank you, Senator Cardin. Echoing some of what Judge Nelson has said, a critical role that magistrate judges play in the district of Maryland is in settling cases or attempting to. And if there were a retail level of judicial work in this country, I believe it is when judges are at the settlement table face-to-face with the litigants and the lawyers who represent them.

From that experience, a judge develops a deep sense of just how extremely important the issues are involving the litigants, but not just how important it is to them that the case ultimately be resolved, but also that it be done in a timely manner; that there not be delays.

You, I think, have some distance as a district judge in a way that a magistrate judge doesn't, so that when you grant a postponement or you are unable, for whatever reasons, to get a prompt decision or opinion out, you're maybe not quite as aware of the impact that that has on people's lives and abilities to run their businesses, to conduct their personal affairs and so forth.

As a magistrate judge, you hear those stories, because you sit with those litigants in settlement conferences. And I firmly believe that while, certainly, a lot of what you're hearing about is the substance of the case, you also hear a great deal of their frustration with the process itself.

And a lot of that has to do with how discovery is conducted, how long it takes for rulings to be made, why was my trial postponed, and these sorts of things.

I will take with me that experience, if I'm so fortunate as to be confirmed. These are real people. Our decisions, even our administrative decisions, have real consequences in their lives and in the operation of their businesses, and nothing is unimportant that a United States district judge does.

Senator CARDIN. Thank you. Thank you for that answer.

Judge Hollander, you would bring considerable State judicial experience both at the circuit court level and at the appellate court level.

As you know, I come from the a family of a circuit court judge and a State judge and I know, at times, there is a view that even though our Federal court and State court are only located a couple blocks apart, that there is a real difference as the way the pace of justice in the two courts.

How do you see taking the experience in the State court and how will your adjustment be moving to the Federal bench?

Judge HOLLANDER. Senator, thank you for the question. And I hope it's appropriate to say that I knew your father. He was a wonderful man and, obviously, the apple didn't fall far from the tree, and I do feel compelled to say that, since you mentioned him.

I think my service—

Senator SESSIONS. That is OK, you are under oath.

[Laughter.]

Judge HOLLANDER. And every word was true. I was a young lawyer when he was on the bench and he was very kind to me.

I think my State service will serve me enormously well, if I am fortunate enough to be confirmed. Many of the issues that come before the State courts often involve questions of Federal law. Obviously, in the criminal arena, we see Fourth, Fifth, Sixth Amendment issues, Eighth Amendment issues.

In the civil domain, we have cases from which we draw upon Title VII, ADEA cases. We've had many cases involving issues under both the civil rules of procedure and the criminal rules of procedure. Our State rules are modeled on the Federal rules.

And I've had a number of cases over the years where we've had to look by analogy to the State—in State law, drawing on Federal cases to answer the questions.

So I feel very comfortable that my service as a State judge will be enormously helpful, if I am fortunate enough to be confirmed.

Senator CARDIN. Senator Sessions.

Senator SESSIONS. Mr. McConnell, looking at a couple of your statements that Senator Kyl asked you about, and I have a lot of good friends who are good trial lawyers, this seemed to fit a number of them.

"I am an emotional person about injustice at any level, personal, societal or global. There are wrongs that need to be righted, and that's how I see the law," closed quote. So I think being passionate and zealot is a good quality for a litigator, and it seems to be that way for people who are highly successful in the plaintiff bar.

But I do think those qualities are somewhat different cloistered halls of a courtroom, where you are reading briefs and trying to be objective, and those emotions might start running and you might see that there is a wrong there that I need to right.

Do you feel like—I will just ask you again. Do you feel that you can—that you are seeking the job as the kind of judge I believe we need, one that calls the balls and strikes, does not take sides in the ball game and fairly adjudicates the just result of the case based on the law and the facts?

Mr. MCCONNELL. I do, Senator Sessions. My job as an advocate in the courtroom was my job to advocate. My ethical responsibilities were to do it zealously and I believe, for 25 years, I did that.

I oftentimes, in some of the cases—the people that I represented, you would develop relationships with and you would advocate on their behalf. That was what I saw as my role.

But my role would definitely be different as a judge. I have—

Senator SESSIONS. After you try a case—I am a little bit taken aback by the op-ed criticizing the court that ruled against you 4:0 on one of these cases. It seemed to me that was a bit unusual. Most people that make sure they have calmed down good after the case

is over before they write an op-ed criticizing the court that 4:0 ruled against them.

Do you have any second thoughts about that op-ed that you wrote?

Mr. MCCONNELL. Only, Senator Sessions, in that I've been asked a lot about it during this process and if I hadn't written it, I wouldn't have had to talk about it so often.

And are there word choices that perhaps you would choose differently? Sure. We have a tradition in Rhode Island. We're many years without a law school, and lawyers oftentimes would be the ones that would need to critique the law.

I can recall back in 1983, when I was clerking, he went on to become Justice Flanders on our Rhode Island Supreme Court, wrote a very strident op-ed against an opinion that the Rhode Island Supreme Court had written and that, since that time, has sort of been our tradition to critique the law and—

Senator SESSIONS. Well, it is all right to point out why you might think—I think it is a free country. It is not normally done by most good lawyers I know. But I do think you can speak out about litigation.

But you accused the court of letting, quote, “wrongdoers off the hook.” That is the kind of results-oriented criticism that makes me uneasy.

You understand what I am saying?

Mr. MCCONNELL. I do, Senator.

Senator SESSIONS. A very important distinction, is it not?

Mr. MCCONNELL. It is, Senator.

Senator SESSIONS. So you are accusing the court of deliberately, the way I would look at that quote, as crafting a result that let wrongdoers off the hook. And maybe they had no choice under the law but to rule against you.

I could see you questioning their analysis of the law, but that conclusion—would you explain how you felt comfortable using those words?

Mr. MCCONNELL. I will try, Senator. Thank you. Taken in context, Senator, it was the State's belief that the public nuisance law of Rhode Island that had been in existence for 200 years was the appropriate avenue for the State to choose, given the fact some of the law of the State of Rhode Island at the time, to bring this case.

That was done. It was tried before a jury. The jury returned a verdict for the State. The trial judge affirmed the verdict under that longstanding law. And it was appealed to the Supreme Court.

The Supreme Court disagreed. They disagreed with the State's analysis of the law, and the results of that were that the law, as the State perceived it at the time and I, as their counsel, was overturned, that had existed for centuries in our State.

And the effect of that change of law were, according to the allegations that the jury found, that wrongdoers were let go. It was not—

Senator SESSIONS. Well, the judges of the court somehow decided to let these wrongdoers go and change established law, is that your testimony?

Mr. MCCONNELL. I apologize, Senator, I missed the first part of the question.

Senator SESSIONS. It is your testimony that all four of the judges who reviewed this case changed the law so that they could let wrongdoers off the hook.

Mr. MCCONNELL. No, Senator, not so that they could, two independent clauses. We believed—the State believed that the law—that the Supreme Court overturned and changed longstanding public nuisance law, period. That's—

Senator SESSIONS. Well, I will take a look at that, but I am not so much concerned about whether or not you criticized them for, quote, “changing the law,” if that is what they did. I am more concerned by your characterization of it as suggesting they had some desire to let wrongdoers off the hook.

Mr. MCCONNELL. I did not intend to give that perception and I believe in that op-ed, Senator, we referenced the longstanding change in law that we—that the State alleged took place because of the Supreme Court opinion.

Senator SESSIONS. My time is up. Thanks, Senator.

Senator CARDIN. Senator Whitehouse.

Senator WHITEHOUSE. Thank you. As the lead attorney in the early parts of this case, I can add my two cents on that, because I was probably even more disappointed and dismayed by the Supreme Court's decision than Jack McConnell was.

I argued all of the early dispositive motions personally. I was very familiar with the law. We had done extensive research; I had done extensive research. The public nuisance theory was one that I had brought forward. I had done previous public nuisance cases. I thought it fit perfectly.

The trial judge in this case was a gentleman named Michael Silverstein. He is a very tough, smart business judge. He ran the business calendar on the Rhode Island Superior Court.

I do not think there is a judge on the Superior Court who would not say that he is, if not the best, one of the very best judges not only now on the Superior Court, but in its history.

This trial was the longest trial in Rhode Island history. It spanned my tenure as attorney general and went into the next attorney general's tenure. It was Attorney General Lynch who ultimately won it at trial.

Judge Silverstein is an extraordinarily distinguished person. I think that we—between the independent judgment that we reached about where the law was, the confirmation we got over and over through dispositive motions and rejection of motions to dismiss and overturn the verdict and all that we got from Judge Silverstein, that there was a very strong sense that had actually gotten a conviction that should stand and that the trial judge and the trial jury had both established that these were indeed wrongdoers. Period.

And then when the Supreme Court changed the law, it did have the effect of letting these defendants, who had been determined to be wrongdoers both by a jury of their peers and by the very, very capable, very no nonsense trial judge, and they got off the hook.

So I actually can remember calling Jack when I saw the piece and to say I thought you kind of let them off easy, actually, but I am glad you did not consult with me on it.

So I just wanted to add that comment. I have some personal experience with that.

Senator SESSIONS. (Off microphone) because I value your experience and judgment on this matter.

Senator WHITEHOUSE. The other thing I would add—and I have got a little time remaining, I think. I just want to highlight some of the things that some of our Republicans have said.

I know the letters are in the record. But Scott Avedisian has said, “As the Republican mayor of Rhode Island’s second largest community, I’ve always firmly believed that the ability to reach consensus among people of different points of view is critical for the well being of our residents and our state as a whole. In the time I’ve come to know Jack, I’ve realized he shares the same philosophy. I believe that Jack would be a valuable asset to the bench and a good representative of Rhode Island in the Federal court system. I am proud to offer this recommendation.”

Justice Weisberger concludes his letter that “Jack McConnell would be superbly qualified to preside as a Federal judge over the most challenging and complex cases. He is a man of keen intelligence and impeccable integrity. He would be a splendid addition to the distinguished bench of the United States District Court of Rhode Island.”

Attorney General Pine concludes that “There is no question, in my mind, that Jack would be an honest, principled, ethical and fair judge. He would be a credit to our state and to our judiciary. He has earned this prestigious position for his many years of hard work, legal experience and success as an attorney, as well as his position in the community as a respected civic leader and family man. I enthusiastically support his candidacy for a position on the Federal bench.”

And then John Harpootian, who is actually an official—he is vice Chairman of the state Republican Party. “Time and again, Jack has proven that he is a man of great principle and integrity. While being a vigilant advocate for his clients in the causes that he has taken up during his professional career, Jack has always conducted himself in the most ethical and professional manner. One of the greatest characteristics that I admire about Jack so much is that despite political differences of opinion, he never allowed those differences to become personal or to cloud his judgment. These characteristics lead me to unqualifiedly support Jack’s confirmation to the United States District Court of Rhode Island.”

Judge Fisher of the Third Circuit writes to most favorably recommend Jack McConnell and to conclude that “He is an outstanding nominee to serve on the U.S. District Court for the District of Rhode Island and I enthusiastically support his nomination.”

The last thing I will mention, as my time runs out, is that I know that the United States Chamber of Commerce has taken a position, kind of extraordinarily for a trial judge, supported by both Senators of the home state. The Greater Providence Chamber of Commerce, which is the largest Chamber of Commerce in Rhode Island, has distanced itself from that opinion and has said, “The Greater Providence Chamber of Commerce was not consulted at any point in the process by the United States Chamber of Commerce or its Institute for Legal Reform as to our views relative to the nomination of Mr. McConnell. The Greater Providence Cham-

ber of Commerce has never endorsed nor opposed nominees running for the Federal or state judiciary." And then it concludes, "We would point out that Mr. McConnell is a well respected member of the local community, leading important civic, charitable and economic development institutions."

So the anxiety that seems to appear in some quarters is really not shared in Rhode Island from the business community, through our own Chamber of Commerce, through very significant Republican leaders and officials, and certainly throughout the legal community, and Senator Reed and myself.

Senator CARDIN. Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. Since we are discussing this lead paint litigation, let me ask you about that.

The information I have is that you were awarded the no bid contingency contract in 1999 by the State of Rhode Island to bring suit against the former manufacturers of lead paint. Is that correct?

Mr. MCCONNELL. My law firm, along with another law firm, was engaged by then Attorney General Whitehouse pursuant to his powers, statutory powers to do so.

Senator KYL. This is the litigation we were just talking about. Right?

Mr. MCCONNELL. Yes, Senator.

Senator KYL. And the news reports, at least some of them, suggest that it was you who approached the Rhode Island attorney general. Did you?

Mr. MCCONNELL. I did not.

Senator KYL. You did not.

Mr. MCCONNELL. No, Senator.

Senator KYL. All right. Do you know how the representation came about?

Mr. MCCONNELL. I do, Senator.

Senator KYL. Was it somebody else in your law firm that approached the attorney general or did he approach them or how did that come about? Do you know?

Mr. MCCONNELL. No, Senator. The case came about when our firm was engaged in certain cases on behalf of children that had lead poisoning in the ordinary course of claims against homeowners' insurance or against the landlord, and we had been involved in that throughout the country.

When I represented the state in its tobacco lawsuit, then Attorney General Pine, Republican Attorney General Pine was the attorney general and I would sit and brief him on the negotiations and ultimately the settlement, so that he could make a decision whether to sign onto it or not.

He brought up the fact that he had started a task force working on lead paint issues. We had a very, very—we had thousands of children—

Senator KYL. Let me just interrupt you. This is not that big a deal as to who said what to whom here. I am just trying to—

Mr. MCCONNELL. It was actually Attorney General Pine who asked me to put it together. I left a binder. He was on his way out. He said, "I can't saddle the next attorney general with this," and he left the analysis for incoming Attorney General Whitehouse.

Senator KYL. Good. You are familiar with criticism in the media about representation of your firm in some of this litigation, are you not?

Mr. McCONNELL. I have seen it, yes, Senator.

Senator KYL. And some of that may be relative to your—I mean, after your nomination to serve on the court, obviously.

Would you say that either you or other partners at Motley Rice did anything to encourage this particular kind of litigation over lead paint?

Mr. McCONNELL. We were asked to analyze the law and the facts in the case and we prepared an analysis and a binder and turned it over to then Attorney General Pine and then to Attorney General Whitehouse.

Senator KYL. Well, let me ask it a little bit more broadly. After you got the verdict in the case we are talking about, the one that was overturned by the Rhode Island Supreme Court.

Mr. McCONNELL. Yes, Senator.

Senator KYL. One newspaper described you, and this is a quotation, as “the lead lawyer in the Ohio lawsuits” and quoted you as saying, and I am quoting, “The movement is gaining steam. We have seen it in both the Rhode Island trial and in three or four appellate court decisions, all of which have ruled against the lead paint industry.”

Do you think it is right for lawyers to bring lawsuits as part of a movement against an industry?

Mr. McCONNELL. No, I don't, Senator, and—

Senator KYL. Do you think that quotation was inaccurate, as quoting you—and I will say it again. Let me just figure out the quotation here.

From the New York Times, January 6, 2007, quoting you as saying, “The movement is gaining steam. We have seen it in both in the Rhode Island trial and three or four appellate decisions, all of which have ruled against the lead paint industry.”

Mr. McCONNELL. I think if—I don't particularly remember the article, Senator. I apologize. I believe it was a general story about the state of lawsuits nationwide against former manufacturers of lead pigment in paint and I believe what I was saying was after many years of rulings that went in favor of the pigment industry, that there had been a series of rulings, Rhode Island, Ohio, California, and others, that actually—it had shifted—

Senator KYL. Gone the other way.

Mr. McCONNELL. Right. It had shifted from sort of unanimous one side to—after Attorney General Whitehouse brought the Rhode Island case, it sort of shifted legally the other way. It was sort of a—

Senator KYL. So you are quoted as saying “The movement is gaining steam” and then you referred to Rhode Island and three or four other appellate decisions.

Mr. McCONNELL. There had been a period where more of the law was being defined in favor of the government entities who were bringing these cases, yes, Senator.

Senator KYL. I am just curious then. You say it is not right for lawyers to bring lawsuits as part of the movement against an industry, but it sounds like that is exactly what you were saying.

Mr. MCCONNELL. No. What I was saying was that the legal opinions that this—I believe—again, I don't recall the article, exactly, but that the legal opinions that the courts were issuing—the attempt to—the cases were being brought against lead pigment companies back maybe into the 1970s. My dates may be off a little bit. And there were a series of them where courts had ruled that it wasn't applicable, for a variety of reasons.

And then after an analysis in Rhode Island under the public nuisance law and the judge's ruling there and in a few other places, it had sort of shifted. It was sort of more of a historic comment, Senator, than it was anything beyond that.

Senator KYL. I understand. My 5 minutes is up. It is kind of hard to have continuity in questioning when we have this kind of limitation.

I understood the point you were originally trying to make, but if I can—and I have a couple more minutes' worth of questions just as a follow-up to this. My point really was not only is it right to seek this as a movement, but whether you actually encouraged these lawsuits in other states, you or your law firm. Did you?

Mr. MCCONNELL. No, Senator, we did not.

Senator KYL. Are you aware of any role by the Association of Community Organizers for Reform Now, that's ACORN, in how those cases might have come to be filed?

Mr. MCCONNELL. No. Neither I nor my firm have had any relationship with ACORN.

Senator KYL. Mr. Chairman, I have just two other quick questions.

Senator CARDIN. Without objection, Senator.

Senator KYL. Thank you. I appreciate it. One has to do with a letter that was written on June 4, 2009, the Public Nuisance Fairness Coalition wrote a letter to Attorney General Holder asking the Department of Justice to look into several allegations of wrongdoing related to the Rhode Island lead paint case that you handled.

Are you aware of that letter?

Mr. MCCONNELL. I have seen it, yes, Senator.

Senator KYL. All right. Has any—

Mr. MCCONNELL. Not from them.

Senator KYL. From some other source.

Mr. MCCONNELL. Yes, Senator.

Senator KYL. Did any law enforcement official contact you regarding the allegations in it?

Mr. MCCONNELL. No, Senator, they didn't.

Senator KYL. All right. And so are you aware of whether any investigation is ongoing or has been concluded?

Mr. MCCONNELL. I have heard nothing of it other than when I received that and I was sort of outraged by the false accusations that were contained in there.

Senator KYL. Thank you. My last question is just this, and if you would like to, rather than taking time of the Committee, reflect on this and provide a written answer, that is fine with me.

It just is the general question of how you would view recusal in cases of this kind given your substantial involvement in whether it be lead paint or tobacco litigation. And I do not know that I am even asking a specified question here, other than as you look at

how you would have to deal with this as a judge, have you thought about it and if you would think about it, how do you think you would come out on matters of recusal?

And if you would like, as I said, given the time, the fact that I am over time, I am happy to allow you to answer that question on the record.

Mr. MCCONNELL. I appreciate that, Senator. I will do that.

Senator CARDIN. We expect there will likely be questions, other questions, that will be offered in writing also.

Senator KYL. That is fine. Thank you, and, again, I thank the indulgence of all the members of the panel.

Senator CARDIN. Senator Klobuchar.

Senator KLOBUCHAR. I have no additional questions at this time.

Senator CARDIN. Senator Franken.

Senator FRANKEN. I guess I do not have any questions for the nominees. I do have a question—maybe a couple of questions for Senator Whitehouse. Is that all right?

[Laughter.]

Senator CARDIN. It is not all right.

Senator FRANKEN. All right. Well, then, I will not—I will just ask them out loud, which is I was wondering if those letters that he read from were from people who knew Mr. McConnell very well.

Senator WHITEHOUSE. Yes. They were written by people who actually knew Jack McConnell very well.

Senator FRANKEN. And they are people from Rhode Island.

Senator WHITEHOUSE. That is correct. You are two for two.

Senator FRANKEN. And they must have been Democrats, I guess, because they were so laudatory, is that right?

Senator WHITEHOUSE. No. You are wrong there, I am sorry.

Senator FRANKEN. I am wrong there? All right. So they were Republicans?

Senator WHITEHOUSE. Yes.

Senator FRANKEN. But they were so laudatory and they know him very well.

Senator WHITEHOUSE. That is right.

Senator FRANKEN. All right. I am confused. Thank you, Mr. Chairman.

Senator CARDIN. It just goes to show you should have gone to law school.

[Laughter.]

Senator CARDIN. The hearing record will remain open for one week for additional statements and questions from Senators. I ask the nominees to try to respond to those questions in a timely manner, because we cannot schedule the—it is difficult to schedule the action of the Committee until after the material is made available to the Senators who request it.

So I would ask that you try to respond to that in a timely way.

Senator SESSIONS. Mr. Chairman, thank you. Mr. McConnell, I have enjoyed talking with you this morning. There has been some complaints or controversy about your nomination. It is not possible for us to run through all that today. So I may submit some additional questions for the record.

These are important issues. There has been a lot of public policy discussion about these kind of class action lawsuits, whether they

have been abused, how much money the lawyers have made off the cases, and what is the best way to affect good public policy.

So I know the Chamber of Commerce has spent a lot of time studying the issues and they have some strong opinions on it. So I value the fact that they are concerned about your nomination and oppose it, and I give that some credibility.

I do not dismiss it lightly. But you are entitled to a fair day to get your side out, and when you are involved in litigation of this intensity, sometimes hard feelings can occur. So I understand that. And we will look forward to complete answers about that.

Otherwise, I do not think we would have fulfilled, Mr. Chairman, the responsibility we have to clear the air on issues of controversy.

Thank you.

I will say Senator Reed also spoke very highly of you. He has talked to me more than once and I appreciate that.

Mr. MCCONNELL. Thank you, Senator.

Senator CARDIN. And as has been pointed out frequently, the five nominees that we have before us today all are seeking confirmation for lifetime appointments. So we consider the confirmation process to be a very important responsibility of the Senate.

I know that the hearing has gone on longer than we had anticipated. I want to thank particularly those that are in the room for their patience. And we had a lot of young people here and they were very well behaved and didn't hear them at all. So I want to compliment the audience, and, again, thank the families and friends for their support, and our nominees for being prepared to take on this responsibility.

With that, the Committee will stand adjourned.

[Whereupon, at 5:10 p.m., the hearing was concluded.]

[Questions and answers and submissions for the record follow.]

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QUESTIONS AND ANSWERS

JAMES K. BREDAR

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May 24, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Sessions, Senator Grassley, and Senator Coburn.

Very truly yours,



James K. Bredar

JKB/bpg

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Responses of James K. Bredar
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Jeff Sessions

1. In 1997, the *Maryland Church New Magazine* published an article entitled, “Why the Federal Public Defender Opposes an Impending Execution,” which discussed your concerns about the death penalty for one of your clients who had shot and killed a police officer. The article stated that “when it comes to capital punishment, to executing murderers, [you are] usually opposed for any number of reasons, all traceable, when you get right down to it, to his Christian faith.” According to the article, you questioned why we “perpetuate the culture of violence” by sentencing individuals to death and commented that “only the most primitive of societies, it seems to me, would validate the value of one life by taking another.”

a. **Do you still hold these views?**

Response: When I granted this interview, my client’s appeals had all been exhausted, execution was imminent, and as his court-appointed advocate I was discharging my professional responsibility by vigorously seeking clemency on his behalf. Part of that strategy included outreach to religious communities in Maryland that have traditionally opposed the death penalty. Nothing in my personal views and convictions would prevent me from faithfully following the law in a death penalty case, and I would impose the death penalty when required by the law.

b. **Do you have a personal objection to the death penalty?**

Response: A judge’s personal views are not relevant in deciding a case. Nothing in my personal views and convictions would prevent me from faithfully following the law in a death penalty case, and I would impose the death penalty when required by the law.

c. **Do you believe that the death penalty is an acceptable form of punishment?**

Response: The United States Supreme Court has ruled that the death penalty is constitutional and acceptable and, as a U.S. District Judge, I would faithfully follow that precedent.

d. **Do you believe that the death penalty constitutes cruel and unusual punishment under the Constitution?**

Response: The United States Supreme Court has ruled that the death penalty does not constitute cruel and unusual punishment. As a U.S. District Judge, I would follow that precedent.

- e. **If confirmed, you will have to preside over capital cases. Do you have any reservations about imposing the death penalty where appropriate?**

Response: No.

2. **In 2004, you rejected the determination of an Administrative Law Judge (ALJ) that a disabled student's individualized education program was acceptable under the Individuals with Disabilities Act (IDEA). The Fourth Circuit reversed your ruling, finding that you substituted your "own views on educational policy . . . for the determinations of the local education officials charged with formulating the [education plan]." The court noted that you "consistently reached diametrically opposing conclusions" from the ALJ and that you "repudiated the findings of the ALJ and discarded the expertise of the [education officials] without reason or explanation." The court concluded that you ignored congressional preference, substituted your own views on education and the IDEA for that of Congress, and failed to show appropriate deference to the ALJ.**

- a. **Do you think it is appropriate for a judge to decide cases based on his or her own personal beliefs?**

Response: No.

- b. **What in your view is the role of a trial court judge?**

Response: A trial court judge is obligated to research and determine the law applicable to the case before him, and then to faithfully apply that law to the facts.

- c. **If confirmed, can you assure the Committee that you will abide by binding precedent even when you disagree with the precedent?**

Response: Yes.

3. **Please describe with particularity the process by which these questions were answered.**

Response: I received a copy of these questions via e-mail from Department of Justice staff on May 20, 2010. I prepared a draft of the answers and discussed the draft with staff on May 21, 2010. I then provided a final version of my answers to Department of Justice staff for transmission to the Committee.

4. **Do these answers reflect your true and personal views?**

Response: Yes.

Responses of James K. Bredar
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Grassley

1. **During the 2008 presidential campaign, President Obama described the kind of judge that he would nominate to the federal bench as follows: “We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”**

- a. **Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit the President’s criteria for federal judges, as described in this quote?**

Response: President Obama nominated me so I believe that I fit his criteria for federal judges.

- b. **During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: I agree with Justice Sotomayor’s statements that judges properly apply law to facts, and not feelings to facts.

- c. **Do you believe that it is ever appropriate for judges to indulge their own subjective sense of empathy in determining what the Constitution and the laws mean? If so, under what circumstances?**

Response: No.

- d. **Do you believe that it is ever appropriate for judges to indulge their empathy for particular groups or certain people? For example, do you believe that it is appropriate for judges to favor those who are poor? Do you believe that it is appropriate for judges to disfavor corporations?**

Response: No.

- e. **After Justice Stevens announced his retirement, President Obama stated that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe that judges should base their decisions on a desired outcome?**

Response: No.

2. What, in your view, is the role of a judge? Please describe your judicial philosophy.

Response: A judge's role is to apply the law to the facts. It is not the judge's role to make the law. I believe that judges should conduct careful research to determine the applicable law and precedents, and then apply the law and governing precedents to the facts.

3. How do you define "judicial activism"?

Response: "Judicial activism" is not a term that I use. I believe that a U.S. District Judge must follow the law as defined in the Constitution and statutes and must follow precedent as established in the rulings of the U.S. Supreme Court and the Courts of Appeals.

4. Could you identify three recent Supreme Court cases that you believe are examples of "judicial activism"? Please explain why you believe these cases are examples of "judicial activism".

Response: "Judicial activism" is not a term that I use and, therefore, I am unable to define it. I am unable to identify any recent Supreme Court case that would be an example of what is commonly referred to as "judicial activism."

5. How do you define "judicial restraint"?

Response: "Judicial restraint" is also not a term that I use. I believe that U.S. District Judges are constrained to follow the law as set out in the text of the Constitution and statutes and as established in precedents set in rulings of the U.S. Supreme Court and the Courts of Appeals.

6. Could you identify three recent Supreme Court cases that you believe are examples of "judicial restraint"? Please explain why you believe these cases are examples of "judicial restraint".

Response: "Judicial restraint" is not a term that I use. I am unable to identify any recent Supreme Court case that is an example of "judicial restraint."

7. Do you believe that it is ever appropriate for judges to indulge their own values and/or policy preferences in determining what the Constitution and the laws mean? If so, under what circumstances?

Response: No.

8. Should the courts, rather than the elected branches of government, ever take the lead in creating a more "just" society?

Response: U.S. District Judges are to apply law to facts. The determination of policy is for the other, elected branches of government.

9. In your opinion, what is the proper role of foreign law in U.S. court decisions, and is citation to or reliance on foreign law ever appropriate when interpreting the U.S. Constitution and statutes?

Response: There is no proper role for foreign law in U.S. court decisions, nor may there be reliance on foreign law in interpreting the U.S. Constitution and U.S. statutes, unless U.S. law or a precedent of the U.S. Supreme Court or a Court of Appeals so requires.

10. Does the silence of the U.S. Constitution on a legal issue allow a federal court to use foreign law as an authority for judicial decision-making? When is it not appropriate to look to foreign law for legal guidance or legal authority?

Response: I cannot think of a circumstance when it would be appropriate to rely on foreign law in the absence of language in the Constitution addressing an issue.

11. I would like to get a better understanding of how you would interpret statutes and what your judicial method would be if you were confirmed to be a judge on the District Court of Maryland.

a. In cases involving a close question of law, what would you look to when determining which way to rule?

Response: I would look first to the plain language of the applicable statute. I would also rely on the applicable precedents of the U.S. Supreme Court and the U.S. Court of Appeals for the Fourth Circuit.

b. Would you agree that the meaning of a statute is to be ascertained according to the understanding of the law when it was enacted?

Response: A statute should be given the meaning that flows from a plain reading of its words.

c. How would you use legislative history when interpreting a statute? What kind of weight would you give legislative history, if any, when interpreting a statute?

Response: I would use legislative history to assist in interpreting a statute only if the statute's meaning could not be determined from a plain reading, and only if there were no precedents from the U.S. Supreme Court and/or the Courts of Appeals explaining the meaning. I would give legislative history no weight unless a plain reading of the statute and the precedents of the Supreme Court and the Court of Appeals failed to establish the meaning of the provision.

Responses of James K. Bredar
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Tom Coburn, M.D.

1. In *Kennedy v. Louisiana*, the Supreme Court held that the death penalty for the crime of child rape always violates the Eighth Amendment. Writing for a five-justice majority, Justice Kennedy based his opinion partly on the fact that 37 jurisdictions – 36 states and the federal government – did not allow for capital punishment in child rape cases.

- a. Given the heinousness of the crime, as well as the new information on the federal government's codification of capital punishment in child rape cases under the UCMJ, do you believe *Kennedy v. Louisiana* was wrongly decided? If not, why?

Response: As a U.S. District Judge, I would be obligated to follow the precedents established in rulings of the U.S. Supreme Court regardless of personal belief. I believe that judges are obligated to apply the law and controlling precedent faithfully regardless of personal views. Nothing in my personal views and convictions would prevent me from faithfully following the law in a death penalty case, and I would impose the death penalty when required by the law, which, of course, includes the precedents of the U.S. Supreme Court.

- b. Following the Supreme Court's decision, President Obama announced at a press conference: "I think that the death penalty should be applied in very narrow circumstances for the most egregious of crimes. I think that the rape of a small child, 6 or 8 years old, is a heinous crime." Do you agree with that statement?

Response: I agree that rape of a child is an especially heinous offense. With respect to when the death penalty should be applied, if I am confirmed as a U.S. District Judge, I would faithfully follow the precedents established in rulings of the U.S. Supreme Court in the death penalty context as in all other contexts.

2. In *Atkins v. Virginia*, the Supreme Court ruled that the imposition of the death penalty on mentally retarded defendants constituted cruel and unusual punishment. In its majority opinion, Justice Stevens stated that the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures," and that the majority first reviewed "the judgment of legislatures that have addressed the suitability of imposing the death penalty on the mentally retarded." The majority cited the fact that 18 States, less than half of the 38 States that permitted capital punishment, had recently enacted legislation barring execution of the mentally retarded as evidence that a "national consensus" existed about the propriety of executing the mentally retarded.

a. Do you believe that the legislative acts of 47% of the country equates to a national consensus?

Response: I do not have a view on what constitutes a national consensus. I do believe that a U.S. District Judge is obligated to follow the precedents set in rulings of the U.S. Supreme Court, and if confirmed I would faithfully do so in the death penalty and all other contexts.

b. In its majority opinion, the Court stated: “Moreover, within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved. Brief for The European Union as *Amicus Curiae* in *McCarver v. North Carolina*, O. T. 2001, No. 00—8727, p. 4.” Do you personally believe it was appropriate for the Court to consider the opinion of the “world community” when interpreting the Eighth Amendment?

Response: A judge’s personal beliefs have no role in the resolution of a case before him, and my personal views as to whether the Supreme Court should have included a particular consideration in their resolution of the case is not relevant in my application of the precedent flowing from that case. If confirmed, I would faithfully follow the applicable law and binding precedent in the cases before me.

3. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: No. The Constitution is a fixed text, except when lawfully amended pursuant to Article V.

4. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.

a. Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?

Response: Yes.

b. Why or why not?

Response: I believe *Lopez* and *Morrison* are consistent with the Supreme Court’s earlier Commerce Clause decisions because the decisions themselves indicate as much, and the Court, in *Gonzales v. Raich*, 545 U.S. 1 (2005), confirmed it.

5. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: If confirmed to serve as a U.S. District Judge, I would be obligated to follow the precedents set out in rulings of the U.S. Supreme Court and I would faithfully do so regardless of personal belief. The holding in *Roper* is binding precedent and I would follow it.

- a. **How would you determine what the evolving standards of decency are?**

Response: If I were in circumstances where it became necessary to determine “evolving standards of decency,” I would do so in a manner that applied the controlling precedents of the U.S. Supreme Court and the Court of Appeals for the Fourth Circuit.

- b. **Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: Given that the U.S. Supreme Court has held that the death penalty is constitutional in some circumstances, a U.S. District Judge would be precluded from making such a finding.

- c. **What factors do you believe would be relevant to the judge’s analysis?**

Response: Given that the U.S. Supreme Court has held that the death penalty is constitutional in some circumstances, no factors could cause a U.S. District Judge to conclude and rule otherwise.

6. **In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?**

Response: No, unless the U.S. Supreme Court or the Court of Appeals for the Fourth Circuit hold otherwise.

- a. **If so, under what circumstances would you consider foreign law when interpreting the Constitution?**

Response: I would not consider foreign law when interpreting the Constitution except if binding precedent required me to do so.

- b. **Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?**

Response: In deciding a case, I do not believe it proper for a judge to consider “ideas and solutions” from any source other than those allowed by applicable law and binding precedent.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, unless directed to do so by applicable law or binding precedent from the U.S. Supreme Court or the U.S. Court of Appeals for the Fourth Circuit.

7. **In a case captioned *A.B. v. Lawson*, the parent of a disabled student sued a school district challenging an Administrative Law Judge’s (ALJ) determination that the student’s individualized education programs complied with the Individuals with Disabilities Act. The ALJ determined that that the student’s programs were reasonable and denied the request for reimbursement. On appeal, you reversed. The Fourth Circuit reversed your ruling stating: “The district court substituted its own views on educational policy ... repudiated the findings of the ALJ [and] simply adopted the worldview of [the student’s] experts and their perspectives on proper educational policy.” The Fourth Circuit concluded: “In sum, the magistrate judge ignored the congressional preference for mainstreaming, clearly and strongly substituted its views on education and IDEA for that of Congress, and failed to accord the ALJ’s factual findings the requisite degree of deference.” Do you believe you substituted your own views for those of the ALJ? If not, please explain.**

Response: The U.S. Court of Appeals for the Fourth Circuit reversed my opinion in this case – the only time it has done so in my twelve years on the bench – and I accept the Court’s judgment. I approached this case, as I approach every case before me, by seeking to correctly apply the law to the facts. I do not believe that it is ever appropriate for a judge to decide a case based on his own policy views. It was not my intention to do so in this case.

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Ellen L. Hollander
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Baltimore, MD 21202

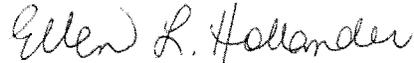
May 24, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Sessions, Senator Grassley,
and Senator Coburn.

Sincerely,



Ellen L. Hollander

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

**Responses of Ellen Lipton Hollander
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Jeff Sessions**

1. **In 1996 remarks at Goucher College, you stated that if judges “necessarily enact into law parts of a system of social philosophy,” then “it is certainly appropriate that the judicial law makers reflect the composition and diversity of this great nation.”**

- a. **In your view, how do judges “enact into law parts of a system of social philosophy”? Please explain your answer.**

Response: In my speech to the Goucher College students, I used quotes from President Theodore Roosevelt’s 1908 State of the Union address in an attempt to underscore the important role of judges in our democratic society. In that same speech by President Roosevelt, he expressly recognized that legislators are “chosen to represent the people in enacting and administering the laws.” I fully recognize and abide by the principle that it is the legislature’s responsibility to enact the laws, and the duty of the judges to interpret them.

- b. **Do you think it is ever appropriate for a judge to indulge in their own policy preferences or values in determining what the law means?**

Response: No.

- c. **What did you mean by the term “judicial law makers”?**

Response: When I used this term in my speech, I was quoting President Theodore Roosevelt. I believe that he used the term to explain a judge’s role in interpreting the laws enacted by Congress.

- d. **How do you define the role of a judge?**

Response: The rule of law is the cornerstone of our democracy. It is the responsibility of a judge to decide cases by ascertaining the applicable law, under principles of *stare decisis*, and applying that law to the particular facts of the case. A judge must do so fairly and impartially, without bias, prejudice, or sympathy for or against any party. In addition, the judge must treat all who appear before the court with courtesy and respect.

- e. **Why do you think it is important for the judiciary to reflect diversity?**

Response: An independent and well respected judiciary is central to a robust democracy. Therefore, it is important to maintain public confidence in the

judiciary. In my view, the composition of the judiciary affects the public perception of the third branch of government.

i. What role, if any, do you think diversity should play in the composition of the judiciary?

Response: I believe that a diverse bench helps to inspire public confidence in the judiciary, and public confidence is essential to the authority of the court. Nevertheless, judges should be selected on the basis of their intellect, ability, integrity, work ethic, and experience.

ii. How can litigants know that they are being treated fairly if a judge's background, rather than the application of the law to the facts, affects legal decisions?

Response: A judge's background, such as race, gender, and ethnicity, must never influence his or her legal decisions. Judges must adhere to the rule of law, i.e., controlling legal precedent, and decide all cases by applying the applicable law to the facts of the case.

2. The Maryland Court of Appeals reversed your decision in a relatively non-controversial divorce proceeding, noting that you "did not rule on any of the four issues raised," but rather chose to rule on other issues not presented to the court.

a. Why did you believe it was proper to go outside of the record and determine issues not on appeal?

Response: It is not appropriate for any court to rule on matters outside the record. I believe your question refers to *Garg v. Garg*, 163 Md. App. 546 (2005), *rev'd*, 393 Md. 225 (2006), a complex international custody dispute for which I wrote the opinion for the Maryland Court of Special Appeals. In that opinion, I attempted to address all of the issues that the parties presented on appeal. For example, on behalf of the Court, I determined that the underlying divorce action could proceed in Maryland, and I addressed issues concerning jurisdiction and attorney's fees, all issues that were presented by the parties on appeal. The Maryland Court of Special Appeals was faulted by the Maryland Court of Appeals for addressing, *sua sponte*, the mother's request at trial for the appointment of an attorney for the child. The Court of Special Appeals considered that issue based on principles of equity law governing domestic cases in Maryland as well as state statutory law. I accept the criticism of the Maryland Court of Appeals for undertaking that analysis.

- b. **Part of your holding in that case was based on “fundamental fairness.” Why did you believe that you could ignore the applicable statute and impose your personal standard of fairness?**

Response: The Court of Special Appeals believed that the gravity and complexity of the case warranted appointment of an attorney for the child, which was permissible under Maryland statutory law. In writing the opinion for the Court of Special Appeals, I did not ignore applicable statutes, although I accept the Court of Appeals’ determination that I should not have reached the issue.

- c. **What role does fairness play in your judicial decisions?**

Response: Fairness comes into play in the way in which I treat the litigants and lawyers – fairly and impartially, with dignity and respect.

3. **Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit.**

- a. **Are you committed to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?**

Response: Yes.

- b. **How would you rule if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you nevertheless apply that decision of your own best judgment of the merits?**

Response: If confirmed, I would faithfully apply the decisions of the United States Supreme Court and the Court of Appeals for the Fourth Circuit, without regard to my personal beliefs.

4. **As you know, following the Supreme Court’s decision in *United States v. Booker*, the federal sentencing guidelines are advisory, rather than mandatory.**

- a. **If confirmed, how much deference will you afford the Sentencing Guidelines?**

Response: I will give the Federal Sentencing Guidelines great deference.

- b. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Response: Yes.

- c. **Under what circumstances do you believe it appropriate for a district court judge to depart downward from the Sentencing Guidelines?**

Response: Only in rare circumstances, such as when part of a plea agreement includes a recommendation by the Government for a downward departure in exchange for the defendant's substantial cooperation.

5. **Please describe with particularity the process by which these questions were answered.**

Response: I received the Questions for the Record from the Department of Justice on May 20, 2010, by electronic transmission. I drafted my answers to the questions, and then consulted with representatives of the Justice Department. Thereafter, I finalized my answers and transmitted them to the Justice Department, with the understanding that the Justice Department would forward them to the Committee.

6. **Do these answers reflect your true and personal views?**

Response: Yes.

**Responses of Ellen Lipton Hollander
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Grassley**

- 1. During the 2008 presidential campaign, President Obama described the kind of judge that he would nominate to the federal bench as follows: “We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”**

- a. Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit the President’s criteria for federal judges, as described in this quote?**

Response: Because President Obama has nominated me, I believe that I fit his criteria for federal judges.

- b. During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: I agree with Justice Sotomayor that judges must apply law to facts and not feelings to facts.

- c. Do you believe that it is ever appropriate for judges to indulge their own subjective sense of empathy in determining what the Constitution and the laws mean? If so, under what circumstances?**

Response: No.

- d. Do you believe that it is ever appropriate for judges to indulge their empathy for particular groups or certain people? For example, do you believe that it is appropriate for judges to favor those who are poor? Do you believe that it is appropriate for judges to disfavor corporations?**

Response: No.

- e. After Justice Stevens announced his retirement, President Obama stated that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe that judges should base their decisions on a desired outcome?**

Response: No.

2. What, in your view, is the role of a judge? Please describe your judicial philosophy.

Response: It is the responsibility of the trial judge to resolve cases and controversies by ascertaining the applicable law, under principles of *stare decisis*. The judge must then scrupulously apply that law to the particular facts – fairly and impartially, without bias, prejudice, or sympathy for or against any party. In addition, the judge should value and pursue legal scholarship, possess a keen work ethic, and treat those who appear before the court with dignity and respect.

3. How do you define “judicial activism”?

Response: This is not a term that I use. As I understand the common usage of the term, however, it refers to a judge who disregards established legal precedent that is applicable to the particular matter in order to achieve a desired result, based on personal or policy considerations. The phrase is sometimes used to imply that a judge has made law, rather than interpreted the law.

4. Could you identify three recent Supreme Court cases that you believe are examples of “judicial activism”? Please explain why you believe these cases are examples of “judicial activism”.

Response: I cannot characterize recent decisions of the United States Supreme Court. Trial judges are bound by the decisions of the United States Supreme Court.

5. How do you define “judicial restraint”?

Response: Although this is not a term that I use, I believe it is commonly used to refer to the principle that judges should not permit their personal beliefs to influence or dictate the outcome of any case.

6. Could you identify three recent Supreme Court cases that you believe are examples of “judicial restraint”? Please explain why you believe these cases are examples of “judicial restraint”.

Response: I cannot characterize recent decisions of the United States Supreme Court. Trial judges must adhere to the decisions of the United States Supreme Court.

7. Do you believe that it is ever appropriate for judges to indulge their own values and/or policy preferences in determining what the Constitution and the laws mean? If so, under what circumstances?

Response: No.

8. Should the courts, rather than the elected branches of government, ever take the lead in creating a more “just” society?

Response: No. In our democratic system of government, it is the role of the legislative branch to make the laws and the role of the courts to interpret the laws.

9. In your opinion, what is the proper role of foreign law in U.S. court decisions, and is citation to or reliance on foreign law ever appropriate when interpreting the U.S. Constitution and statutes?

Response: There is no proper role for foreign laws in interpreting the United States Constitution or statutes, unless directed to do so by the United States Supreme Court or the United States Court of Appeals for the Fourth Circuit.

10. Does the silence of the U.S. Constitution on a legal issue allow a federal court to use foreign law as an authority for judicial decision-making? When is it not appropriate to look to foreign law for legal guidance or legal authority?

Response: I do not believe that the silence of the United States Constitution with respect to a legal issue permits a federal court to turn to foreign law as authority for resolution of a dispute.

11. I would like to get a better understanding of how you would interpret statutes and what your judicial method would be if you were confirmed to be a judge on the District Court of Maryland.

a. In cases involving a close question of law, what would you look to when determining which way to rule?

Response: At the outset, I would review the plain text of the statute and look to applicable cases decided by the United States Supreme Court or the United States Court of Appeals for the Fourth Circuit.

b. Would you agree that the meaning of a statute is to be ascertained according to the understanding of the law when it was enacted?

Response: In the course of my judicial career, I have consistently endeavored to ascertain the meaning of various statutes by reference to well-honed principles of statutory construction. The primary goal is to reference the statutory text, ascribing to the words their plain meaning.

c. How would you use legislative history when interpreting a statute? What kind of weight would you give legislative history, if any, when interpreting a statute?

Response: In the ordinary course, I do not refer to legislative history to interpret a statute. Rather, I apply the well-settled principles of statutory construction, according the words of the statute their plain meaning. However, in the event of ambiguity in regard to the meaning of a statute, or some portion of the statute, it may be helpful to look to the legislative history, with a view to determining legislative intent.

**Responses of Ellen Lipton Hollander
Nominee to be United States District Judge for the District of Maryland
to the Written Questions of Senator Tom Coburn, M.D.**

- 1. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No. Its text is fixed, and judges may not alter the terms of the text with the times.

- 2. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. Do you believe *Lopez* and *Morrison* are consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. Why or why not?**

Response: In *Lopez* and *Morrison*, and more recently in *Gonzales v. Raich*, 545 U.S. 1, 23-25 (2005), the United States Supreme Court stated that its decisions in these cases were consistent with its earlier Commerce Clause decisions.

- 3. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: If confirmed by the Senate, I would be bound by the decisions of the United States Supreme Court, including *Roper*.

- a. How would you determine what the evolving standards of decency are?**

Response: If confirmed, I would abide by all applicable decisions of the United States Supreme Court and the United States Court of Appeals for the Fourth Circuit in ascertaining the meaning of the concept “evolving standards of decency.”

- b. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: No. The United States Supreme Court has foreclosed any contention that the death penalty is unconstitutional in all cases.

c. What factors do you believe would be relevant to the judge's analysis?

Response: For a federal trial judge, the factors relevant to the judge's analysis are those articulated by the United States Supreme Court and the particular appellate court that reviews the rulings of the trial court.

4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No, unless directed to do so at some point in the future by the United States Supreme Court or the United States Court of Appeals for the Fourth Circuit.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Only when binding precedent requires me to do so.

b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No, unless directed to do so at some point in the future by the United States Supreme Court or the United States Court of Appeals for the Fourth Circuit.

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Scott M. Matheson, Jr.
1846 Michigan Ave.
Salt Lake City, UT 84108

May 24, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senators Coburn, Grassley, Kyl, and Sessions.

Sincerely,



Scott M. Matheson, Jr.

cc:
The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

**Responses of Scott M. Matheson, Jr.
Nominee to be United States Circuit Judge for the Tenth Circuit
to the Written Questions of Senator Jeff Sessions**

1. **In a speech you gave to the Women’s State Legislative Council in 1987, you examined the question of whether our Constitution is a living document and quoted Justice Oliver Wendell Holmes, who wrote that**

“[w]hen we are dealing with words . . . like the Constitution of the United States, we must realize that they have called into life a being, the development of which could not have been foreseen completely by the most gifted of its begetters. It was enough for them to realize or to hope that they had created an organism.”

- a. **Do you agree with Justice Holmes that the Constitution should be read as a living document, “the development of which could not have been foreseen completely by the most gifted of its begetters”?**

Response: In context, the speech quoted Holmes and several others to offer perspectives to the audience. I do not regard the Constitution as a “living document.” The Constitution established the structure and powers of the federal government, the relationship between the federal and state governments, and principles regarding the relationship between the government and individuals. It can be changed only through the constitutional amendment process. The Framers meant the Constitution to endure and to apply to changing circumstances “which could not have been foreseen completely.”

- b. **If yes, who will decide what this living document means at any given moment?**

Response: Please see previous response.

2. **For your spring 2010 Constitutional Law course, you assigned a book written by Professors Geoffrey R. Stone, Louis M. Seidman, Cass Sunstein, and Pamela Karlan.**

- a. **In *Judicial Activism & Ideology*, 6 GREEN BAG 2d 281 (2003), Professor Stone referred to “the principle of ‘original intent,’ which we all found so entertaining in the 1980s” and claimed that “[a]s fifteen years of judicial experience have amply demonstrated, the core methodology of those justices who purport to seek the original intent of the framers is to ask what they would have intended had they been framers, and -- presto! -- there it is.” Do you agree with Professor Stone’s description of originalism?**

Response: No.

- b. Professor Seidman wrote a paper entitled “Our Unsettled Ninth Amendment: An Essay on Unenumerated Rights and the Impossibility of Textualism,” which stated:

“the Ninth Amendment states a truth that we would have to deal with whether or not it was part of the original text: No matter how comprehensive, no text can control the force of ideas and commitments that lie outside the text. This simple truth leaves the status of liberal constitutionalism permanently and inevitably unsettled. The day of final reckoning will never arrive.”

Do you agree with Professor Seidman that, because of the Ninth Amendment, we can never truly know what our Constitution means?

Response: No.

- c. Writing about the First Amendment, Professor Sunstein, who is now a close advisor to President Obama, has written:

“Our existing liberty of expression owes much of its content to the capacity of each generation to rethink and to revise the understandings that were left to it. . . . The conception of free speech in any decade of American history is often quite different from the conception twenty years before or after.” (Cass R. Sunstein, *Speech in the Welfare State: Free Speech Now*, 59 U. CHI. L. REV. 255 (1992)).

Do you agree with Professor Sunstein that our First Amendment free speech rights are subject to being rethought and revised by each generation?

Response: No. Most Supreme Court First Amendment free speech cases were decided in the last one hundred years and applied speech and press protections to a significant variety of circumstances and changing technologies.

3. In your book *Presidential Constitutionalism in Perilous Times*, you argued that “the presidency requires a constitutional conscientiousness that was lacking in the George W. Bush Administration and that must be inculcated in the future.” Do you think President Obama exhibited “constitutional conscientiousness” when he pressed Congress to pass the healthcare bill despite serious constitutional concerns about the individual mandate?

Response: A central point of the book is for the President to work with Congress when national security policies may affect individual liberties. It is important for the President and Congress to address constitutional concerns about proposed legislation. I do not

know the extent that occurred with the health care legislation. As a nominee, it would not be appropriate for me to attempt to address the constitutionality of the health care legislation because it or a similar issue may come before me if I am confirmed as a judge. If that were to occur, I would approach the issues with an open mind and apply applicable Supreme Court precedent.

4. **In your book *Presidential Constitutionalism in Perilous Times*, you claimed that “[t]he relatively more assertive Supreme Court during the Bush years may in part have been the product of the infinite character of the war on terror.” Do you believe judges should be more aggressive or active when they believe the problem before them poses particularly grave concerns that have not been addressed by the other branches of Government? Please explain your answer.**

Response: The quoted statement is a descriptive observation (the passage uses the word “indefinite” rather than “infinite”). Justice Kennedy wrote in *Boumediene*: “Because our Nation’s past military conflicts have been of limited duration, it has been possible to leave the outer boundaries of war powers undefined. If, as some fear, terrorism continues to pose dangerous threats to us for years to come, the Court might not have this luxury. This result is not inevitable, however. The political branches, consistent with their independent obligations to interpret and uphold the Constitution, can engage in a genuine debate about how best to preserve constitutional values while protecting the Nation from terrorism.” 128 S.Ct. at 2277.

The quote from the book was not intended to suggest that judges should ever substitute their policy preferences for those of the democratically elected branches. Federal courts should only decide cases that are properly before them as a matter of Article III justiciability and statutory jurisdiction, and judges should apply and follow Supreme Court precedent.

5. **You also wrote:**

“When President Bush issued his November 13, 2001, military commission order, he claimed lawmaking, adjudicating, and prosecuting authority, conflating separation of powers under the Commander-in-Chief mantle. . . . Historically, this ‘blending of executive, legislative, and judicial powers in one person or even in one branch of the government is ordinarily regarded as the very acme of absolutism.’”

- a. **Do you contend that a President, in the exercise of his authority as commander-in-chief of our armed services, is required to seek Congress’ approval when dealing with foreign enemy combatants on foreign soil?**

Response: The quote referred to separation of powers concerns regarding the military commissions. The Supreme Court recognized these concerns when it

struck down the administration's military commissions in *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006). Justice Kennedy wrote, "Trial by military commission raises separation of powers concerns of the highest order. Located within a single branch, these courts carry the risk that offenses will be defined, prosecuted, and adjudicated by executive officials without independent review Concentration of power puts personal liberty in peril of arbitrary action by officials, an incursion the Constitution's three-part system is designed to avoid." *Id.* at 2800 (concurring).

b. **You also argued:**

"[t]he executive's claim that it could arrest and lock up individuals suspected of terrorist ties without charge, without counsel, without due process, and without any prospect of release until the war on terror is over evaded the rule of law in a war that is supposed to preserve the rule of law."

Do you contend that criminal charges, provision of counsel, and some prospect of release is required by Due Process for foreign terrorists captured on the battlefield and detained outside the United States?

Response: The answer depends on the particular circumstances. For example, the Supreme Court held in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), that a citizen could be detained as an enemy combatant but had been denied an adequate due process opportunity to contest his detention with the prospect of release if the detention was in error. Further, in *Boumediene v. Bush*, 128 S.Ct. 2229 (2008), the Court held that the Guantanamo detainees have a constitutional right to habeas corpus review of their detentions. The United States Court of Appeals for the District of Columbia Circuit recently held in *Al Maqaleh v. Gates* that *Boumediene* does not extend to the Bagram air base in Afghanistan. Cases continue to be litigated on these issues, and I do not think it would be appropriate to comment further as a judicial nominee. If confirmed, I will follow and apply applicable precedent if any such issues come before me.

6. **You have written:**

"The Bill of Rights does not require constitutionally guaranteed health care, housing, employment or education. Those basic needs are left to our economy and the political process and the legislative and executive branches at the federal, state and local levels to provide. Nonetheless, there is an unmistakable link between our established constitutional values and basic human needs. Freedom of speech is a diminished guarantee to the uneducated, and freedom of one's home from unreasonable searches means nothing to those without a home. As Sen. Harris Wofford of Pennsylvania

recently noted, if an individual accused of crime has a fundamental right to a lawyer, is it not just as important that a sick person have access to a doctor? In this bicentennial year of the first 10 amendments to the Constitution, in addition to all the other compelling reasons for a progressive domestic agenda, the Bill of Rights supplies perhaps the most powerful inspiration of all.”

- a. **Do you believe that courts should read the Constitution as requiring health care, housing, employment and education?**

Response: No. These are matters for the political branches to address as a matter of public policy.

- b. **Another of President Obama’s judicial nominees, Professor Goodwin Liu, has argued that the Fourteenth Amendment guarantee of national citizenship also guarantees all the education and social services that are necessary to participate meaningfully as a citizen. He has said that “the duty of government cannot be reduced to simply providing the basic necessities of life . . . the main pillars of the agenda would include . . . expanded health insurance, child care, transportation subsidies, job training, and a robust earned income tax credit.” Without commenting on what Professor Liu may or may not have meant, please answer whether you agree with his statement.**

Response: I have not read the Constitution as requiring government to provide these benefits. The Supreme Court has not done so. As a judge, I would follow and apply Supreme Court precedent.

7. **You wrote an opinion article challenging a program that would have provided a tax credit for expenditures on tuition, textbooks and transportation on behalf of dependents who do not attend public school. You claimed this initiative likely violated the Establishment Clause and was “vulnerable to a constitutional attack.”**

- a. **Do you believe that any government program that may have some effect of supporting a religious organization violates the Establishment Clause? Please explain your answer.**

Response: No. In fact, in my Senate Judiciary Committee Questionnaire, I describe an Establishment Clause case in which I was involved in defending a federal government program that provided educational benefits to children attending religious schools. The article was intended to explain why a particular proposal might have raised an Establishment Clause concern, and it did not reach a firm conclusion on that question.

- b. **What standard would you apply to determine whether the program violated the Establishment Clause? If your answer is that you would follow applicable precedent, please identify such precedents.**

Response: Recent Supreme Court precedents on government programs include *Agostini v. Felton*, 521 U.S. 203 (1997); *Mitchell v. Helms*, 530 U.S. 793 (2000); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002). Relevant precedents depend on the particular case. If confirmed, I would follow and apply the applicable Supreme Court cases.

8. **In your article, *Federal Legislation to Elevate and Enlighten Political Debate: A Letter and Report to the 102d Congress about Constitutional Policy*, you concluded that the Clean Campaign Act of 1989 likely impermissibly burdened free speech and associational rights under the First Amendment. Specifically, you determined that disclosing the identity of the group that was advertising, refusing independent advertisers from political dialogue, and requiring free response time to a political candidate violated the Constitution.**

- a. **Do you still adhere to this belief?**

Response: The article does not reach final conclusions on the constitutionality of the legislative proposals that it discussed. As a judicial nominee, it would not be appropriate for me to address the constitutionality of these or other legislative proposals because, if confirmed, I may face these issues as a judge.

- b. **What factors do you consider when evaluating the constitutionality of different free speech restrictions?**

Response: The Supreme Court has produced an extensive body of First Amendment free speech case law that addresses different forms of government regulation, speech settings, and remedies. For example, Supreme Court precedent distinguishes between speech regulation that is content-based as opposed to content neutral, between speech that occurs in a public forum as opposed to certain other locations, and between prior restraint remedies as opposed to damages. If confirmed, I would follow and apply the precedent that is applicable to a particular case.

- c. **Do you believe that the Supreme Court's decision in *Citizens United v. FEC* was correctly decided? I am asking for your views and not whether if confirmed you would follow Supreme Court precedent.**

Response: I do not think it would be appropriate for me to express an opinion on the correctness of this decision because I may need to apply it in cases that come

before me if I become a judge. I would, as you indicate, follow and apply the *Citizens United* precedent if I am confirmed.

9. **In May 1994, the *Salt Lake Tribune* reported that the number of indictments since you became U.S. Attorney for the District of Utah had “decreased substantially.” The paper reported that from January 1 to April 11, 1993, 225 people were charged in federal court; during the same time period in 1994 (your tenure), only 88 individuals were charged. In February 1996, the *Deseret News* similarly reported that in his first two and half years as U.S. Attorney, you prosecuted a quarter fewer cases than your predecessor. According to the media reports, some federal law enforcement officers complained that you delayed or refused to prosecute certain good cases. Please take this opportunity to comment on those allegations or explain the reasons for the lower rate of prosecutions during your tenure.**

Response: Law enforcement and prosecutorial resources are a major determinant of case filings. When I became U.S. Attorney, budget constraints limited the availability of both law enforcement agents and prosecutors. Also, in the period preceding my appointment, the office had filed a number of complex, multi-defendant telemarketing fraud cases that consumed significant time of AUSA's as the cases moved to trial over the next year. This factor also distorted the statistical comparison in the article, which was limited to comparing two three-month periods in which different activity was emphasized. The article also failed to mention that a substantial number of cases were filed just after the end of the second three-month period. As my time in the office proceeded, the case filings increased, especially toward the end when more attorney and law enforcement staff became available. During my final year in 1997, the office was on track to reach one of its highest annual case filing rates. As for case filing decisions, we developed a consistent set of prosecution guidelines, followed the U.S. Attorney's Manual, and, in performing our prosecutor gatekeeping role, filed most cases that were presented to us.

10. **During your 2004 gubernatorial campaign, you opposed a proposed state constitutional amendment that defined marriage as the union between a man and a woman, and stated that no other domestic union may be recognized as a marriage or given the same or substantially equal legal effect.**
- a. **Did you ever express a view on the constitutionality of the measure? If so, what view did you express?**

Response: I do not recall expressing a view on the constitutionality of the measure. The second part provided that “No other domestic union, however denominated, may be recognized as a marriage or given the same or substantially equal legal effect.” I was concerned about the possible impact of this part on matters such as hospital visitation and medical decision-making if it became a state constitutional provision, but my opposition was not based on the constitutionality of the measure.

- b. **Was your opposition based in any way on the constitutionality of the measure?**

Response: Please see my previous response.

11. **During your 2004 gubernatorial campaign, you stressed that you would prioritize diversity in your judicial and commission appointments. You stated that**

“[d]iversity would be a factor in my judicial appointments because the bench should reflect the constituencies it serves and also include various viewpoints. I would seek diversity through encouragement of qualified and diverse women and men to apply and by considering diversity among many other factors in making appointment decisions.”

- a. **Do you believe an individual’s background should affect the outcome of a judicial decision?**

Response: No.

- b. **Why do you think it is important for the judiciary to reflect diversity?**

Response: As with educational, workplace, and other institutional settings, diversity enhances learning and working environments and deepens mutual understanding. It gives hope to individuals of all backgrounds that they and their children can pursue opportunities and develop their full potential. With respect to the judiciary, diversity provides role models for students and young lawyers, breaks down stereotypes about who can be a judge, builds confidence in the community about the system of justice, and sends a message of inclusion and equal opportunity.

- c. **How can litigants know that they are being treated fairly if a judge’s background, rather than the application of the law to the facts, affects legal decisions?**

Response: A judge’s role is to adhere to the rule of law, and his or her background should not affect legal decisions or the application of law to fact.

12. **For your Spring 2010 Constitutional law course, you assigned *Mr. Meese, Meet Mr. Madison*, by Jack N. Rakove, which harshly criticizes the notion of “originalism.” The article states: “[t]here is no reason to believe that the framers thought their intentions should guide later interpretations of the Constitution.”**

a. **Do you agree with this statement?**

Response: No.

b. **How do you believe the Constitution should be interpreted?**

Response: The Constitution should be interpreted through careful reading of the text, an understanding of its structure and history, and application of Supreme Court precedent. A judge should not substitute his or her personal or policy preferences for what the Constitution requires.

c. **During your hearing, you stated that you “don’t see the structure or principles [of the Constitution] changing; [you] see circumstances that have to be confronted as changing.” Please explain whether you believe your statement conforms to or conflicts with the following assertion by Rakove and why:**

“Rather than recover the ‘static meaning’ that the Constitution had ‘in a world that is dead and gone,’ judges must trace the distance between the framers’ time and our own, and then apply the great underlying principles of the Constitution to the modern problems that our litigious society asks the courts to resolve. And while judges should ordinarily defer to the expressed will of the legislature, they cannot make majority rule the only basis of decision. For within the larger scheme of our system the great duty of the judiciary is to protect individual and minority rights against improper actions by popular majorities.”

Response: Whether or not the statements can be reconciled, my view is that courts are presented with cases today about issues that the Framers did not and could not have anticipated, but, as I said at my hearing, the structure of the Constitution and the principles it embodies do not change. The challenge is to apply the Constitution to modern problems consistent with those principles.

I mentioned at my hearing Justice Scalia’s response in *District of Columbia v. Heller* to the claim that only arms that existed in the eighteenth century are protected by the Second Amendment: “We do not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” 178 S.Ct. at 2791 (citations omitted).

- d. **Do you believe “judges must trace the distance between the framers’ time and our own, and then apply the great underlying principles of the Constitution to the modern problems that our litigious society asks the courts to resolve”?**

Response: Please see my previous response.

- e. **Do you believe that the notion of “originalism” is inherently flawed?**

Response: No. I think the original understanding of the Constitution is an important and legitimate source for constitutional interpretation.

13. **Please describe with particularity the process by which these questions were answered.**

Response: I prepared draft responses. The White House Counsel’s Office reviewed them. I then completed the final responses.

14. **Do these answers reflect your true and personal views?**

Response: Yes.

**Responses of Scott M. Matheson, Jr.
Nominee to be United States Circuit Judge for the Tenth Circuit
to the Written Questions of Senator Grassley**

1. **During the 2008 presidential campaign, President Obama described the kind of judge that he would nominate to the federal bench as follows: “We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”**

- a. **Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit the President’s criteria for federal judges, as described in this quote?**

Response: When the President nominated me on March 3, 2010, he made the following statement: “Scott Matheson is a distinguished candidate for the Tenth Circuit court. Both his legal and academic credentials are impressive and his commitment to judicial integrity is unwavering. I am honored to nominate this lifelong Utahn to the federal bench.” I do not have further information on the basis for his decision, but I am honored that he believes I am qualified to serve. I hope my experience, training, and background will meet both the President’s and the Senate’s standards for this appointment.

- b. **During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: Yes.

- c. **Do you believe that it is ever appropriate for judges to indulge their own subjective sense of empathy in determining what the Constitution and the laws mean? If so, under what circumstances?**

Response: No.

- d. **Do you believe that it is ever appropriate for judges to indulge their empathy for particular groups or certain people? For example, do you believe that it is appropriate for judges to favor those who are poor? Do you believe that it is appropriate for judges to disfavor corporations?**

Response: No to all three questions.

- e. **After Justice Stevens announced his retirement, President Obama stated that he would select a Supreme Court nominee with “a keen understanding of**

how the law affects the daily lives of the American people.” Do you believe that judges should base their decisions on a desired outcome?

Response: No.

2. What, in your view, is the role of a judge? Please describe your judicial philosophy.

Response: The role of a judge is to decide cases within the court’s jurisdiction based on the law and the facts. A judge must be committed to the rule of law, apply the law impartially, follow procedural fairness, and approach each case with an open mind. A judge should be deferential to the other branches of government, and a federal appeals court judge should follow Supreme Court precedent. A judge should not substitute his or her personal or policy views for the law in deciding cases.

3. How do you define “judicial activism”?

Response: Judicial activism can include a judge acting beyond the court’s jurisdiction, applying personal or policy preferences instead of the law, relying on facts outside the record, according insufficient deference to the legislative or executive branches, or basing decisions on considerations other than the applicable constitutional, statutory, or regulatory provisions or case law precedent.

4. Could you identify three recent Supreme Court cases that you believe are examples of “judicial activism”? Please explain why you believe these cases are examples of “judicial activism”.

Response: It would not be appropriate for me to attempt to identify recent decisions as examples of “judicial activism” that I, if confirmed as a judge, may need to apply as Supreme Court precedent.

5. How do you define “judicial restraint”?

Response: A judge exercises judicial restraint by deciding cases within the constraints of the court’s jurisdiction, the applicable law and facts, the precedents established by the U.S. Supreme Court and, for the court to which I have been nominated, the precedents of the U.S. Court of Appeals for the Tenth Circuit. A judge also exercises judicial restraint by deciding only those issues that are necessary to resolve the case before the court.

6. Could you identify three recent Supreme Court cases that you believe are examples of “judicial restraint”? Please explain why you believe these cases are examples of “judicial restraint”.

Response: It would not be appropriate for me to attempt to identify recent decisions as examples of “judicial restraint” that I, if confirmed as a judge, may need to apply as Supreme Court precedent.

- 7. Do you believe that it is ever appropriate for judges to indulge their own values and/or policy preferences in determining what the Constitution and the laws mean? If so, under what circumstances?**

Response: No.

- 8. Should the courts, rather than the elected branches of government, ever take the lead in creating a more “just” society?**

Response: Debate over what constitutes a “just society” and decisions on what policies should be adopted to achieve it are the province of the elected branches of government, and courts should respect those policy choices. Courts have a limited but important constitutional role in protecting individual rights and liberties from government infringement in particular cases and in applying the law fairly and impartially in all cases. Federal courts should decide only those matters that present a justiciable case or controversy under Article III of the Constitution.

- 9. In your opinion, what is the proper role of foreign law in U.S. court decisions, and is citation to or reliance on foreign law ever appropriate when interpreting the U.S. Constitution and statutes?**

Response: Foreign law should not have a binding effect on and should not influence a judge’s interpretation and application of U.S. law.

- 10. Does the silence of the U.S. Constitution on a legal issue allow a federal court to use foreign law as an authority for judicial decision-making? When is it not appropriate to look to foreign law for legal guidance or legal authority?**

Response: No. Please see my previous response.

- 11. I would like to get a better understanding of how you would interpret statutes and what your judicial method would be if you were confirmed to be a judge on the Tenth Circuit.**

- a. In cases involving a close question of law, what would you look to when determining which way to rule?**

Response: I would carefully study the text, history, and case law precedent regarding the applicable legal authorities and would accord deference to choices made by the democratically accountable branches.

- b. Would you agree that the meaning of a statute is to be ascertained according to the understanding of the law when it was enacted?**

Response: Yes.

- c. **How would you use legislative history when interpreting a statute? What kind of weight would you give legislative history, if any, when interpreting a statute?**

Response: The starting point for interpreting a statute is the text. The plain meaning of the words of the statute should govern. If the text is not clear as applied to a particular case, the legislative history may assist in understanding legislative intent and how the statute should apply, but a judge must be careful to understand the legislative record objectively and avoid reliance on legislative history to reach a preferred result.

Responses of Scott M. Matheson, Jr.
 Nominee to be United States Circuit Judge for the Tenth Circuit
 to the Written Questions of Senator Jon Kyl

1. **At your hearing, Senator Cardin said that in your book, *Presidential Constitutionalism in Perilous Times*, “you analyze presidents, as I understand it, Lincoln, Wilson, Franklin Roosevelt, Truman and George W. Bush. That was all three that you were -- all five, I guess, that you were comparing.” You testified that your book “is . . . about several presidents that faced security and liberty interests in times of war and national security threat.” However, you devoted one chapter, “Presidents and Constitutionalism” (51 pages) to four presidencies – Lincoln, Wilson, FDR and Truman – and one chapter, “George W. Bush and Constitutionalism” (63 pages) solely to the Bush administration. Do you maintain that your book was a balanced discussion of all five presidents mentioned therein?**

Response: More pages were devoted to President Bush because of the contemporary interest in his administration’s executive power claims and practices. The book provides a critical analysis of all five presidents on how they handled security and liberty issues during wartime.

2. **Please provide examples of instances in which you believe that Bush administration lacked “a constitutional conscientiousness.”**

Response: My book concentrates on three examples: coercive interrogation, electronic surveillance, and detention.

3. **At your hearing, I asked you whether you agreed with a statement in *Keeping Faith with the Constitution*, which was co-authored by Professor Pamela Karlan, who also co-authored the case book that you assigned for your Spring 2010 Constitutional law class. In *Keeping Faith with the Constitution*, Professor Karlan wrote:**

“interpreting the Constitution . . . requires adaptation of its broad principles to the conditions and challenges faced by successive generations. The question . . . is not how the Constitution would have been applied at the founding, but rather how it should be applied today . . . in light of changing needs, conditions, and understandings of our society.”

As part of your answer, you stated: “I suppose my initial reaction to it is that I understand what changed circumstances are, but I’m not sure I understand what a changed need is.”

In a 1987 speech at the March of Dimes Constitutional Ball you stated:

“We have come to recognize that part of the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone,

but in the adaptability of its great principles to cope with current problems and current needs.”

- a. **Given your statements in 1987, please take this opportunity to clarify your statement from the hearing regarding “what a changed need is.”**

Response: I still am not sure what a “changed need” or “changing need” is as that phrase is used in the book, and, accordingly, continue to be reluctant to agree with the passage.

- b. **Please explain what you meant by your statement from the March of Dimes speech regarding “current problems and current needs.”**

Response: That was twenty-three years ago, but I hope I meant something similar to what I said at the hearing, which stated my position after many years of studying constitutional law. My view is that courts are presented with cases today about issues that the Framers did not and could not have anticipated, but, as I said at the hearing, the structure of the Constitution and the principles it embodies do not change. The challenge is to apply the Constitution to modern issues consistent with those principles.

I mentioned at my hearing Justice Scalia’s response in *District of Columbia v. Heller* to the claim that only arms that existed in the eighteenth century are protected by the Second Amendment: “We do not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” 128 S.Ct. at 2791 (citations omitted).

4. **On page 134 of your book *Presidential Constitutionalism in Perilous Times*, you write, “[w]hen President Bush issued his November 13, 2001, military commission order, he claimed lawmaking, adjudicating, and prosecuting authority, conflating separation of powers under the Commander-in-Chief mantle. . . . Historically, this ‘blending of executive, legislative, and judicial powers in one person or even in one branch of the government is ordinarily regarded as the very acme of absolutism.’”**

In contrast to your description, Harvard law professor Jack Goldsmith provided the following description of the November 13, 2001 military commissions order on page 109 of his book *The Terror Presidency*:

“Military commissions were used extensively in World War II, the Spanish-American War, the Civil War, the War of 1812, and the Revolutionary War. Relying on legal advice provided by Patrick

Philbin in OLC, Bush's military commission order was modeled on Roosevelt's order creating the commission that tried eight Nazi saboteurs. The Supreme Court had unanimously approved the commission trial of the out-of-uniform Nazis, which included one American. This was a powerful precedent for trying out-of-uniform alien enemy fighters in a military commission on Guantanamo. 'We relied on the same language in FDR's order, the same congressional statute that FDR did, and we had a unanimous Supreme Court decision on point,' Brad Berenson, a White House lawyer who worked on the commission in the fall of 2002, later told me."

- a. **Do you agree with Jack Goldsmith's description of the precedent for the November 13, 2001 military commission order? If not, please explain.**

Response: I have no reason to question that the OLC relied on these examples, and I mention in my book (page 130) that the order tracked President Roosevelt's 1942 proclamation.

- b. **Was it improper for Bush Administration legal advisors to rely upon previous executive and Supreme Court precedent to craft the November 13, 2001 military commission order?**

Response: There has been much debate about whether the history and precedent relied upon was sufficient to support the military commissions. The Supreme Court decided in *Hamdan v. Rumsfeld*, 126 S.Ct. 2749 (2006), that it was not.

- c. **Given that President Bush's November 13, 2001 military commission order was modeled on the similar order issued by President Roosevelt during World War II, do you believe President Roosevelt was also acting at "the very acme of absolutism" when he created a similar military commission system?**

Response: Both orders were significant exercises of executive power, and they arose in different circumstances. The *Hamdan* Court distinguished *Ex Parte Quirin*, 317 U.S. 1 (1942), which upheld President Roosevelt's military commission for the eight German saboteurs, from President Bush's military commissions.

- d. **Do you believe that any provision of the Military Commissions Act is unconstitutional? If so, please explain.**

Response: The Supreme Court's decision in *Boumediene v. Bush*, 128 S.Ct. 2229 (2008), addressed constitutional issues regarding the availability of habeas corpus

review for the Guantanamo detainees under the Military Commissions Act and the Detainee Treatment Act. If confirmed, I would follow the *Boumediene* precedent.

e. At any time, have you expressed a view that any provision of the Military Commissions Act is unconstitutional?

Response: My book discusses the *Boumediene* decision but does not otherwise express such a view.

5. Before they were hired as deputies within the Office of Legal Counsel, then-Professors Marty Lederman and David Barron published two law review articles in the *Harvard Law Review* in January 2008 in which they questioned the exclusivity of the President's Commander-in-Chief powers relative to the legislature. In their articles, they expressly reject as "unwarranted" the "view expressed by most contemporary war scholars – namely that our constitutional tradition has long established that the Commander in Chief enjoys substantive powers that are preclusive of congressional control, especially with respect to the command of forces and the conduct of [military] campaigns[.]"

a. As an academic, do you share the views of Mr. Barron and Mr. Lederman regarding the limited power of the Executive Branch in wartime?

Response: My recollection is their articles focused on the "lowest ebb" category of Justice Jackson's *Youngstown* analysis of executive authority and that they did not find substantial historical evidence or Supreme Court precedent for executive power to exceed congressional limits. My views on executive power are set forth in my book and in the following responses.

b. As an academic, do you agree with Mr. Barron and Mr. Lederman's rejection of "the argument that tactical matters [in wartime] are for the President alone[?]?"

Response: Their article states that "the evidence of original understanding . . . accords . . . with the conclusion that the Founders contemplated congressional control of military operations, and betrays little evidence of a consensus assumption that tactical matters were reserved for the President alone." 121 Harv. L. Rev. at 1106.

I think there are probably some limits on Congress in this area. My book explains that whether or not the legislative and judicial branches are active participants on national security and liberty issues, "significant executive prerogative will remain." Page 5. "The analysis offered here reaffirms the primacy of the executive in responding to threats." Page 2. "Because the executive is designed

to act more promptly and decisively on national security matters than Congress or the courts, the President occupies a constitutionally strategic position to determine the security and liberty balance.” Page 158.

c. Do you believe Congress has the constitutional authority to prescribe legislatively the military’s tactics during wartime?

Response: I think there are probably some limits on Congress depending on the circumstances. For example, I wrote in my book, “In the President’s role as Commander in Chief, congressional attempts to direct particular battlefield operations or to appoint military officials outside the chain of command arguably would interfere with constitutional executive authority.” Page 158.

d. Setting aside the constitutional considerations, do you believe Congress has the ability – both in terms of information and nimbleness – to legislate tactics during a military campaign?

Response: I think there are practical limits on Congress’s ability. Please see my response to 5.b. above.

e. Do you believe the President has any meaningful authority to act contrary to congressional authorization under the formula articulated by Justice Jackson in his *Youngstown Steel*? Put another way, do you believe there are any types of actions the President may take at the so-called “lowest ebb”? If so, please describe them and your views in this area.

Response: The *Youngstown* category of “lowest ebb” describes the President’s authority when Congress has legislated to limit or prevent executive action. Justice Jackson contemplated that the President may nonetheless have authority to act in that circumstance: “When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.” 343 U.S. at 637.

Justice Jackson’s *Youngstown* analysis was recently reaffirmed in *Hamdan* as leading precedent on executive and separation of powers questions. As a judicial nominee, I do not think it is appropriate for me to attempt to specify what the “lowest ebb” powers may be, but, if confirmed, I would follow *Youngstown* and other relevant precedents.

6. In your view, to what extent does the Fourth Amendment’s warrant requirement apply to surveillance activities directed toward non-U.S. persons overseas?

Response: Although my book raised general Fourth Amendment concerns about President Bush's warrantless wiretapping program without reaching a final conclusion, I do not think it would be appropriate to express a view on this specific question as a judicial nominee because this or a similar issue may come before me if I am confirmed.

7. **To what extent do you believe the Fourth Amendment's warrant requirement applies to overseas surveillance designed to secure foreign intelligence and other national security information, including when non-U.S. persons subject to surveillance communicate with U.S. citizens in the United States?**

Response: I do not think it would be appropriate to express a view on this specific question as a judicial nominee because this or a similar issue may come before me if I am confirmed.

8. **Do you believe that any provision of the FISA Amendments Act of 2008 is unconstitutional?**

Response: I do not think it would be appropriate to express a view on this specific question as a judicial nominee because this or a similar issue may come before me if I am confirmed.

9. **At any time, have you expressed a view that any provision of the FISA Amendments Act of 2008 is unconstitutional?**

Response: I do not recall expressing such a view. I provide a brief description of the Act in my book.

10. **At page 104 of your book, you write: "In the case of torture during the Bush administration, it is highly unlikely that any form of retroactive judgment will condone its executive power coercive interrogation claims or activities."**

- a. **What was "the case of torture" during the Bush administration?**

Response: This phrase was not a reference to any particular case and would have been clearer if it had said "With respect to torture."

- b. **Please explain what you mean by "any form of retroactive judgment."**

Response: The book uses several analytical frameworks, including "retroactive judgment." It describes the Congress giving after-the-fact approval to unilateral presidential action. The passage suggests that Congress is unlikely, through

legislation, to approve certain coercive interrogation claims or practices that occurred during the Bush administration.

- c. **In this context, under what circumstances do you believe it appropriate for government lawyers to be prosecuted?**

Response: I would leave that question to the judgment of the Department of Justice.

**Responses of Scott M. Matheson, Jr.
Nominee to be United States Circuit Judge for the Tenth Circuit
to the Written Questions of Senator Tom Coburn, M.D.**

- 1. During your campaign for Governor of Utah, you said in a public debate that you would oppose allowing law-abiding citizens who held concealed carry licenses from taking concealed handguns into schools and churches.**
- a. Do you personally agree with the Supreme Court's decision in *District of Columbia v. Heller* that the Second Amendment protects an individual's right to keep and bear arms?**

Response: I agree, based on the Supreme Court's decision in *Heller*, that the Second Amendment protects an individual right to keep and bear arms. If confirmed, I will follow and apply that holding.

- b. Do you believe that holding would have any effect on laws that restrict the places a duly-licensed person can possess a firearm?**

Response: In his majority opinion in *Heller*, Justice Scalia wrote that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." 128 S.Ct. at 2816-17. However, the specific issue raised in your question was not before the Court in *Heller*. As a judge, I would keep an open mind on any such issue and follow applicable precedent.

- 2. In a 5-4 majority opinion, the U.S. Supreme Court recently held in *District of Columbia v. Heller*, 554 U.S. ___ (2008), that the Second Amendment of the United States Constitution "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." As Justice Scalia's opinion in *Heller* pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Do you personally believe the right to bear arms is a fundamental right?**

Response: The Supreme Court will decide this issue in *McDonald v. City of Chicago* in the next few weeks. If confirmed, I will follow and apply that holding.

- a. Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.**

Response: The Supreme Court has recognized that almost all of the rights enumerated in the Bill of Rights are applicable to the states through the Due Process Clause of the Fourteenth Amendment and are fundamental rights.

- b. Is your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.**

Response: Please see my previous response.

- c. *Heller* further stated that “it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right.” Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.**

Response: This statement in Justice Scalia’s majority opinion in *Heller* is based on the Supreme Court’s historical analysis of the period leading to the ratification of the Second Amendment. The conclusion that the Second Amendment codified a pre-existing right stands as Supreme Court precedent, which I would follow as a judge.

- d. Some have criticized the Supreme Court’s decision in *Heller* saying it “discovered a constitutional right to own guns that the Court had not previously noticed in 220 years.” Do you believe that *Heller* “discovered” a new right, or merely applied a fair reading of the plain text of the Second Amendment?**

Response: As noted in the previous response, the Supreme Court did not “discover” a new right in *Heller*. The *Heller* case was the Court’s first opportunity to address the meaning of the Second Amendment at length. Through a textual and historical analysis, the Court held there is an individual right to keep and bear arms under the Second Amendment.

- 3. While running for governor, you stated that a 2004 Utah ban on late-term abortions should include an exception for fatally deformed fetuses. Can you please explain what you meant by that statement?**

Response: The *Deseret Morning News* candidate questionnaire asked the following question: “As we saw recently, a family had to seek an abortion for a severely deformed fetus (which could not survive outside the womb) from a clinic because her hospital refused to perform the late-term abortion because a law passed by the 2004 Legislature restricts funding for entities that perform abortions. The new law doesn’t make allowances for the health of the fetus or the mother. In light of these problems, do you still favor or still oppose the new law? If oppose, how should the law be changed?”

My response to this question was as follows: “When this bill was being debated, my running mate, Sen. Karen Hale, proposed an amendment that would have provided an exception for fetuses known by competent medical authority to have fatal defects. As the author of the original bill acknowledged, the bill should permit an exception for fatally deformed fetuses.”

My Republican opponent, Jon Huntsman, Jr., took the same position in answer to the same questionnaire. He supported “changes to include abortion for fatal fetal abnormalities” as an “appropriate remedy [for] the concerns raised by the current law.”

a. How do you define “fatally deformed fetuses”?

Response: The definition contained in the question: a severely deformed fetus that could not survive outside the womb, as determined by competent medical authority.

b. Please explain how such an exception would comply with the federal Partial Birth Abortion Ban?

Response: If confirmed and if presented with this issue as a judge, I would closely examine the text of the state and federal statutes as well as the factual record, and I would apply the applicable law and Supreme Court and Tenth Circuit precedents to the case.

4. What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?

Response: Whether a statute infringes an individual right depends on proper understanding of both the statute and the Constitution. The starting point is the text of the statute and the plain meaning of its words. If the text is not clear, the next step is examination of the legislative history to determine legislative intent. Case law precedent interpreting and applying the statute should be considered. The constitutional analysis calls for careful consideration of the relevant textual provision, history, and case precedent. This legal analysis would be applied to the factual record in the case. I would follow Supreme Court precedent for principles of constitutional interpretation.

5. Please describe in your own words the criteria and legal methodology the Supreme Court employs to determine whether a right is a “fundamental right?”

Response: The Supreme Court in a series of decisions has determined whether individual rights, including the rights enumerated in the Bill of Rights, are incorporated and protected under the Due Process Clause of the Fourteenth Amendment. In *Duncan v. Louisiana*, the Supreme Court summarized the criteria for deciding whether a provision of the Bill of Rights is incorporated: “The question has been asked whether a right is among those ‘fundamental principles of liberty and justice which lie at the base of all our civil and political institutions,’ whether it is ‘basic in our system of jurisprudence,’ and whether it is a ‘fundamental right, essential to a fair trial.’” 391 U.S. 145, 148-49 (1968) (citations omitted). The Court will address the criteria and legal methodology again in *McDonald v. City of Chicago* in the next few weeks. If confirmed, I would follow and apply the Court’s precedents.

6. **Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No. The Constitution established the structure and powers of the federal government, the relationship between the federal and state governments, and principles regarding the relationship between the government and individuals. It can be changed only through the constitutional amendment process. The Framers meant the Constitution to endure and to apply to changing circumstances, but not to evolve “as society interprets it.”

7. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. **Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes. The Supreme Court in *Lopez* and *Morrison* discussed earlier Commerce Clause decisions and did not overturn them.

- b. **Why or why not?**

Response: The Constitution conferred enumerated powers on the federal government. As an enumerated power, the Commerce Clause both authorizes Congress to act but also limits what Congress can do. The *Lopez* and *Morrison* decisions reaffirmed the principle of limits on enumerated powers.

8. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: As a judge, I would be bound to follow and apply the holding in *Roper* whether or not I agree with it.

- a. **How would you determine what the evolving standards of decency are?**

Response: I would follow Supreme Court precedent and apply the analysis that the Court has held should be applied.

- b. **Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: The Supreme Court has held that the death penalty is constitutional as a general matter. If confirmed, I would follow and apply that precedent.

c. What factors do you believe would be relevant to the judge's analysis?

Response: I would follow Supreme Court precedent to determine the relevant factors.

9. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Please see my previous response.

b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: Foreign law should not have a binding effect on and should not influence a judge's interpretation and application of U.S. law.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: No.

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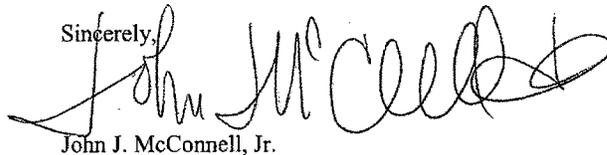
May 24, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senators Sessions,
Grassley, Kyl, Cornyn, and Coburn.

Sincerely,



John J. McConnell, Jr.

cc: The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510



**Responses of John J. McConnell, Jr.
Nominee to be United States District Judge for the District of Rhode Island
to the Written Questions of Senator Jeff Sessions**

1. **Have you ever represented anyone in a case against the manufacturers of lead-based paint or dealing with lead poisoning, prior to the Rhode Island case? If so, please list each matter and include a description.**

Response: Yes, I represented Renita Jackson and others in an action against former manufacturers of lead pigment for use in paint in Cuyahoga County Common Pleas Court in Ohio. That case was filed on August 11, 1992, and I became involved in 1996. In addition, in the years prior to filing the State of Rhode Island, I represented numerous children and their parents against landlords alleging negligence due to lead-poisoning. These cases on behalf of individual lead poisoned children go back over 15 years and my firm's records do not allow me to identify them with any further particularity.

2. **Please describe your reasons for designating Brigham and Women's Hospital as the destination for settlement money from DuPont related to the Rhode Island lead paint litigation.**

Response: My firm waived its attorney fees that would be due from the State's settlement with DuPont, on the condition that those fees be directed to a charitable cause. We chose Brigham and Women's Hospital because its doctors were conducting experimental work on treatments for people with mesothelioma, an asbestos-related cancer. This is a cause that my partners and I care deeply about in light of our years of work in the area.

- a. **Do you believe it was appropriate to designate lead paint litigation settlement monies to an out of state hospital when such monies should have benefitted the citizens of the State of Rhode Island?**

Response: The money designated to Brigham & Women's Hospital represented attorneys fees that would otherwise have been payable to Motley Rice LLC. I believe it was appropriate for my partners and me to select the recipient of a charitable donation for funds that would otherwise have come to us as attorney fees.

- b. **Do you believe it was appropriate to designate lead paint litigation settlement monies to a cause associated with asbestos-related disease, when such monies presumably should have been designated a cause associated with lead poisoning?**

Response: The money designated to Brigham & Women's Hospital represented attorneys fees that would otherwise have been payable to Motley Rice LLC. I believe it was appropriate for my partners and me to select the recipient of a

charitable donation for funds that would otherwise have come to us as attorney fees.

- c. **Prior to designating the DuPont settlement money, did you or your law firm have any preexisting pledge or commitment to donate money to the Brigham and Women's Hospital in Boston? If so, provide the details of that pledge or commitment, including when that pledge or commitment was made; who from your law firm made that pledge or commitment; the amount of the pledge or commitment; and the identity of all representatives or agents at the Brigham and Women's Hospital involved in the pledge or commitment.**

Response: My firm, through my partner Joseph F. Rice, made a commitment on August 15, 2004, to Brigham & Women's Hospital to give or raise \$3 million to help it with its medical research on treatment for mesothelioma. The pledge was made with the lead researcher, Dr. David Sugarbaker.

- d. **Was the DuPont settlement money that was designated to the Brigham and Women's Hospital credited to your and/or your law firm's pledge or commitment to the hospital?**

Response: I would assume so, but I do not know for sure.

- e. **Have you or your firm ever retained Dr. David J. Sugarbaker of the Brigham and Women's Hospital as an expert in a case for which you or your firm was counsel? If so, please identify the case(s) and provide a description for each, including whether Dr. Sugarbaker testified in the matter?**

Response: I have not engaged Dr. Sugarbaker in any case. I have made a diligent inquiry of my firm and do not believe that the firm has retained Dr. Sugarbaker.

- f. **Has Dr. David J. Sugarbaker of the Brigham and Women's Hospital ever referred any plaintiffs or potential plaintiffs to you, your firm, or any attorney at your firm? If so, please identify the case(s) and provide a description for each, including whether they were ultimately used as plaintiffs in any of your cases.**

Response: Dr. Sugarbaker has not referred any plaintiffs or potential plaintiffs to me. I have made a diligent inquiry of my firm and do not believe that Dr. Sugarbaker has referred any plaintiffs or potential plaintiffs to the firm.

- g. **Has any employee, representative or agent of the Brigham and Women's Hospital ever referred any plaintiffs or potential plaintiffs to you, your firm, or any attorney at your firm? If so, please identify the cases for which he referred plaintiffs, the number of plaintiffs he referred, and whether they were ultimately used as plaintiffs in any of your cases.**

Response: No employee, representative or agent of the Brigham and Women's Hospital has ever referred any plaintiffs or potential plaintiffs to me. I have made a diligent inquiry of my firm and its attorneys and do not believe that any employee, representative or agent of the Brigham and Women's Hospital has referred any plaintiffs or potential plaintiffs to the firm or to its attorneys.

- h. Do you or any other attorney at your firm presently have, or expect to have in the future, any case or cases dealing with asbestos and/or the disease mesothelioma?**

Response: I do not. Attorneys at my firm do.

- 3. At your hearing, I asked you about the editorial you and several of your law partners published in the *Providence Journal* criticizing the Rhode Island Supreme Court's decision in the lead-based paint case. You testified that you meant no disrespect to the Court, that "critiquing the law" in newspaper opinion pieces was normal in Rhode Island, and that your criticism was based on the fact that the Rhode Island Supreme Court "changed the law" of public nuisance in Rhode Island. However, the main thrust of the article, as written, was that the Court's decision "let wrongdoers off the hook without any responsibility for the consequences of their actions," "the state was very close to solving the problem of childhood lead poisoning when the court brought the public-health remedy to a screeching halt," that "the money that these corporations spent on defense lawyers and public-relations firms to influence the outcome of this case [was] simply obscene," and that "lead poisoning is prevalent throughout Rhode Island, but it disproportionately affects the least powerful among us—inner city children, children of color—people without any voice in the system."¹ In short, your primary complaint was not that the law was misapplied; the primary complaint was that "[j]ustice was not served."²**

- a. Do you think a judge's job is to interpret the law and correctly apply it to specific facts, or do you think it is to assure that "justice was served"?**

Response: I believe that a judge's job is to interpret the law and correctly apply it to specific facts.

- b. Why did you criticize the Rhode Island Supreme Court because "justice was not served," when its opinion has proven persuasive as a matter of public nuisance law in a number of other jurisdictions?**

Response: The client, the State of Rhode Island, believed that the Rhode Island Supreme Court misinterpreted existing case law and did not properly apply the law to the facts of the case as found by the trial justice and jury below.

¹ Fidelma Fitzpatrick, Bob McConnell & Jack McConnell, *The Rhode Island Supreme Court got it Terribly Wrong In Its Decision In the Recent Lead-Paint Case*, PROVIDENCE JOURNAL, Aug. 19, 2008.

² *Id.*

4. In its opinion reversing the trial court's judgment in the lead paint case, the Rhode Island Supreme Court detailed the history of public nuisance law—both its common law roots and its development in Rhode Island—before stating the three elements of a public nuisance cause of action.³ Those three elements are: “(1) an unreasonable interference; (2) with a right common to the general public; (3) by a person or people with control over the instrumentality alleged to have created the nuisance when the damage occurred.”⁴

Analyzing your case under these elements, the Rhode Island Supreme Court ultimately concluded that the State of Rhode Island could not demonstrate any set of facts that would satisfy these three elements. Therefore, the Court held that the trial court had erred when it denied the defendants' Rule 12(b)(6) motion to dismiss. In so holding, the Court noted that “[e]xpanding the definition of public right based on the allegations in the complaint would be antithetical to the common law and would lead to a widespread expansion of public nuisance law that never was intended,”⁵ that “[t]he law of public nuisance never before has been applied to products, however harmful,” and that “[t]he enormous leap that the state urge[d] [the Court] to take [was] wholly inconsistent with the widely recognized principle that the evolution of the common law should occur gradually, predictably, and incrementally.”⁶

- a. Can you cite any precedent of the Rhode Island Supreme Court holding that a defendant can be held liable for a public nuisance based on a product they manufactured many years before the time the alleged public nuisance arose but did not have control over at the time any injury occurred?

Response: Rhode Island has long recognized that claims for public nuisance can be brought against any entity that creates a condition that unreasonably interferes with the health, safety and comfort of the public. *See, e.g., Citizens for Preservation of Waterman Lake v. Davis*, 420 A.2d 53, 59 (R.I. 1980). In addition, the Rhode Island Legislature has found that lead poisoning in Rhode Island meets this definition of public nuisance, concluding that “Childhood lead poisoning is dangerous to the public health, safety, and general welfare of the people and necessitates excessive and disproportionate expenditure of public funds for health care and special education, causing a drain upon public revenue.” R.I.G.L. § 23-24.6-2(5).

Rhode Island had long recognized that public nuisance liability could be established when a threat of harm is created, not when actual harm is caused to the public. *Mugler v. Kansas*, 123 U.S. 623, 673 (1887); *Wood v. Picillo*, 443 A.2d 1244 (R.I. 1982).

³ *State v. Lead Indus. Ass'n, Inc.*, 951 A.2d 428, 443-447 (2008).

⁴ *Id.* at 446-47.

⁵ *Id.* at 453.

⁶ *Id.* at 545.

b. **What precedents, if any, of the Rhode Island Supreme Court do you argue were overturned by the Court's opinion?**

Response: *Wood v. Picillo*, 443 A.2d 1244 (R.I. 1980); *Citizens for Preservation of Waterman Lake v. Davis*, 420 A.2d 53, 59 (R.I. 1980); *Pine v. Kalian*, 1998 WL 34090599 (R.I. Super. 1998), *aff'd*, *Pine v. Kalian*, 723 A.2d 804 (R.I. 1998); *Hydro-Manufacturing Inc. v. Kayser-Roth Corp.*, 640 A.2d 950, 959 (R.I. 1994).

c. **The Rhode Island Supreme Court stated that its definition of public nuisance was "largely consistent with that of many other jurisdictions, the Restatement (Second) of Torts, and several scholarly commentators."⁷**

i. **Do you contend that the Court's statement was inaccurate?**

Response: The Rhode Island Supreme Court accurately cited provisions from the Restatement (Second) of Torts. However, it was the State's position that the Court overlooked significant sections of the Restatement (Second) of Torts that compel a different result, namely Restatement (Second) of Torts § 821, cmt. g; Restatement (Second) of Torts § 821B, cmt. b; Restatement (Second) of Torts § 821B(2)(a) and (c); and Restatement (Second) of Torts § 834, cmt. e.

ii. **Do you contend that the public nuisance law was substantially different than that of other jurisdictions? If so, please cite case law and scholarly treatises that support your contention.**

Response: Before the Rhode Island Supreme Court's decision in the lead paint case, Rhode Island's public nuisance law was substantially the same as public nuisance law in numerous jurisdictions. The State asserted that the Rhode Island Supreme Court's 2008 decision signaled a shift in Rhode Island's interpretation of public nuisance law, and that precedent differs from public nuisance law in many jurisdictions today. *See, e.g., Conn. v. Am. Elec. Power Co.*, 582 F. 3d 309, 357 (2d Cir. 2009); *County of Santa Clara v. Atlantic Richfield Co.*, 137 Cal. App. 4th 292, 306 (Cal. Ct. App. 2006).

iii. **New Jersey, Connecticut and New Hampshire courts have rendered opinions construing public nuisance in a manner similar to the Rhode Island Supreme Court's opinion in the lead-based paint case. Is it your position that those opinions also misapplied the traditional law of public nuisance?**

Response: I have not analyzed the New Jersey, Connecticut and New Hampshire opinions and so have no positions on them.

⁷ *Id.* at 446.

5. **During the course of the Rhode Island lead paint litigation, the Rhode Island Superior Court fined Attorney General Patrick Lynch several times for contempt of court after he made inflammatory statements to the media. You publicly criticized that, saying “we see hypocrisy in [the defendants] filing motions against the attorney general for saying something publicly while they have two full-time public relations people in court every day trying to affect the press.”⁸**

- a. **If confirmed, would you consider “hypocrisy” a valid consideration in ruling on a motion for sanctions related to inflammatory statements in the media?**

Response: No.

- b. **I am not familiar with the statements that may have been made by the public relations people you mentioned in your statement to the press, but do you think there is a difference between a public relations person trying to make a defendant look good in the press and a statement by a public official about a given case that is likely to inflame the passions of a jury or the public?**

Response: I do not believe anyone should make statements that are likely to inflame the passions of a jury.

6. **During the hearing, Senator Whitehouse said that he suggested the public nuisance theory as an approach to the lead paint litigation. A number of news articles have reported that your law partner, Fidelma Fitzpatrick, developed that approach.⁹ You yourself were involved in the multistate tobacco litigation, which had centered on public nuisance law. Please clarify exactly how the public nuisance theory was developed in the lead-paint litigation.**

Response: Rhode Island Attorney General Jeff Pine asked my firm to analyze possible causes of action that might arise given the facts that had been presented. As part of that presentation, the potential cause of action of public nuisance, amongst others, was included in the analysis. This research and analysis was primarily done by my law partner, Fidelma Fitzpatrick. Then Attorney General Whitehouse spearheaded the drafting of the complaint and arguing the motions to dismiss as it related to advancing the theory of public nuisance.

7. **You were involved in a number of cases brought in the late 1990s by state attorneys general against tobacco companies. As a result, you seem to have developed some very strong feelings about tobacco companies and smoking. For example, you once commented to the press about a proposed smoking ban for Rhode Island**

⁸ Peter B. Lord, *Lynch Fined \$5,000 for Contempt of Court*, PROVIDENCE JOURNAL, May 6, 2006, at A-01.

⁹ See, e.g., Brian C. Jones, *How the Lead Paint Case Was Won*, BOSTON PHOENIX, Feb. 28, 2007, <http://thephoenix.com/Boston/news/34782-how-the-lead-paint-case-was-won/>; John O'Brien, *After unsure beginning, public nuisance provided Motley Rice with staying power in Rhode Island*, LEGALNEWSLINE.COM, Dec. 19, 2007, <http://www.legalnewsline.com/news/205426-after-unsure-beginning-public-nuisance-provided-motley-rice-with-staying-power-in-rhode-island>.

restaurants that “the idea of choice in regard to allowing smoking in restaurants is phony and offensive.” You said “‘freedom of choice, my foot! Not when it’s hurting the public health and it’s addicting another generation of kids.’ Sometimes, [you said], there is no room for choice. [You said] some people might like having all-white restaurants so they don’t have to sit with blacks, but we don’t allow it.”¹⁰

a. Do you still stand by your comparison?

Response: I felt strongly about the smoking ban issue, but I regret making that comparison.

b. At one point, you were also quoted in a newspaper article as saying that you would “like Congress to put the cigarette makers out of business, but that it won’t happen in our lifetime because addicted smokers are such a large voting bloc that [politicians] don’t want to step on them.”¹¹ Given your view that cigarette makers should be put out of business, how can you assure this Committee that you will be fair to a cigarette maker or a tobacco company that might come before your court?

Response: My personal opinion about a public health question would have absolutely no role in my application of the law to the facts.

8. You once said in a press interview that “I am an emotional person about injustice at any level—personal, societal, global.”¹² In that same interview, you said that “[t]here are wrongs that need to be righted, and that’s how I see the law.”¹³ As a lawyer, you were free to see the law that way, and you were free to be emotional about what you perceived as injustice; however, as a judge, you will not have either luxury. You will be required to be objective about situations you might perceive as unjust, and your role will not be to “right wrongs.” Your job, as Chief Justice Roberts put it, will be to be a neutral umpire and call the balls and strikes as you see them.

a. Do you still hold those beliefs?

Response: My role as an attorney was to zealously represent my clients within the bounds of the law, professionalism, and ethics. As a judge, I believe that my role would be to be objective and impartial about all situations and apply existing law to the facts before me, not attempting to achieve any particular result.

¹⁰ M. Charles Bakst, *An Opportunity to Save Lives If We Care*, PROVIDENCE JOURNAL, Apr. 12, 2001, at B-01.

¹¹ M. Charles Bakst, *Jack McConnell: Host to First Lady is Lawyer, Operative*, PROVIDENCE JOURNAL-BULLETIN, Dec. 2, 1999, at B-01.

¹² M. Charles Bakst, *Jack McConnell: Taking on the Bad Guys*, PROVIDENCE JOURNAL, Mar. 7, 2005, at B-01.

¹³ *Id.*

- b. **Do you think the views you expressed in that article are appropriate for a judge?**

Response: No.

- c. **What can you point to in your record to assure this Committee that you will set those beliefs aside?**

Response: I have practiced law professionally and ethically for over 25 years. I have never had an ethical complaint filed against me and I have never had sanctions filed against me or imposed on me. Every judge before whom I have appeared would attest to my integrity and professionalism. I would conduct myself in a similar fashion in the new and different role as a judge if I am fortunate enough to be confirmed by the Senate.

To point to a specific aspect of my record, I was routinely selected by both sides of a dispute as a neutral arbiter in matters in our state court, which reflects my ability to be a fair and impartial judge.

9. **In 2003, you were quoted in the *Providence Journal-Bulletin* as saying that “Democrats should stand for active government” and that being a Democrat has “meant fighting for economic and social justice and opportunity for all.” Please explain what you meant by “active government.”**

Response: I meant that our political branches of government should actively commit to ensure justice and opportunity for all people.

10. **As a volunteer lawyer for the ACLU, you brought suit against a detention facility that housed immigrants who were subject to orders of removal. The facts of that case were quite disturbing, and I understand that Immigration and Customs Enforcement did an investigation and found wrong-doing had occurred. During the course of the litigation, you moved the district court to order prison officials to provide you with records to aid in your investigation, but ICE initially failed to approve the release of those records due to federal regulations.¹⁴ While that dispute was ongoing, you commented to the media that you were concerned detainees could be moved and deported who “could be highly relevant witnesses to what appears to be the torture of an innocent man, and I, for the life of me, can’t figure out why [the facility] and the federal government are keeping this information from the family.”¹⁵**

- a. **I understand that the context for your statement was slightly different, but do you understand the need for the federal government to keep certain information from disclosure, including information that pertains to**

¹⁴ See Hillary Russ, *Attorney Seeks Records in RI detainee death*, ASSOCIATED PRESS, Dec. 10, 2008.

¹⁵ Karen Lee Ziner, *Hearing on Detainee Who Dies Is Continued*, PROVIDENCE JOURNAL-BULLETIN, Dec. 11, 2008, at 1.

immigration cases, to assure the government's ability to investigate and prosecute crimes?

Response: Yes.

- b. In view of the Supreme Court's ruling in *Boumediene v. Bush*, which held that terrorists held at Guantanamo Bay are entitled to *habeas corpus*, and with the current administration's insistence on trying foreign-combatant terrorists in civilian courts, would you agree that there is sometimes the need for judges to exercise the utmost care when dealing with sensitive information?

Response: Yes.

11. On May 24, 2006, the Rhode Island affiliate of the American Civil Liberties Union filed an administrative complaint with the Rhode Island Division of Public Utilities and Carriers asking for an investigation of Verizon & AT&T's cooperation with the National Security Agency in anti-terrorism surveillance programs.

- a. According to an administrative order entered by the Department of Public Utilities and Carriers on December 8, 2006, you were appointed as Counsel to the ACLU in this case. Did you, in fact, represent the ACLU in this matter?

Response: I entered an appearance as counsel.

- i. If so, were you retained by the organization, or did you handle the case on a *pro bono* basis?

Response: I handled this matter without charging a fee.

- ii. Did you have any involvement in this matter, in any capacity, prior to being appointed counsel to the ACLU?

Response: No.

- b. On January 19, 2006, the Attorney General of the United States issued a memorandum detailing the administration's position that these activities were legally authorized by Congress' Authorization for Use of Military Force. I understand that many people do not agree with that memorandum; however, did you consider the contents of this memorandum prior to agreeing to represent the Rhode Island ACLU in their complaint against the telecommunications firms for cooperating with the federal government in a program the President and Attorney General of the United States believed was legally proper?

Response: No.

- c. **In 2008, the Congress passed the FISA Amendments Act of 2008, which, among other things, prohibited actions against electronic communication service providers for cooperating with federal authorities in national security surveillance activities that the President and Attorney General of the United States believe are legal. That measure passed the Senate by a vote of 68-29, and the House of Representatives with a vote of 293 to 129. Thereafter, the ACLU filed a lawsuit in the Southern District of New York challenging the constitutionality of the law.**

- i. **Were you supportive of this lawsuit?**

Response: I did not know about the law suit and had no involvement in it. I do not have sufficient information to have a view of the law suit.

- ii. **Do you believe that the authority of the Federal government under the Foreign Intelligence Surveillance Act, as amended by the FISA Amendments Act of 2008, violates the Fourth Amendment to the Constitution? Please explain your answer.**

Response: I have no opinion about this matter, having never dealt with it before, researched it, or considered it.

12. **Please provide a list of any matters in which you have provided any legal services to the American Civil Liberties Union (or any affiliate thereof), in which the United States, an agent, agency or department of the federal government, a State, or an agent, agency or department of a state government was a defendant or intervenor in the case. For each case, please indicate whether you were retained or handled the matter on a volunteer basis.**

Response: I have never provided legal services to the ACLU or any affiliate thereof. In the *Ng v. Central Falls Detention Facility* case, I am listed as a cooperating attorney of the Rhode Island affiliate of the ACLU. In that capacity, however, I do not provide legal services to the ACLU or its affiliate.

13. **According to the organization's website, Amnesty International's position on the death penalty is as follows:**

"The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state. This cruel, inhuman and degrading punishment is done in the name of justice. It violates the right to life as proclaimed in the Universal Declaration of Human Rights. Amnesty International opposes the death penalty in all cases without

exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the prisoner.¹⁶

Do you agree with that statement?

Response: No.

14. You reported in your questionnaire that you have been a member of the American Constitution Society since 2008. In its mission statement, the ACS includes the following: “ACS believes that law can and should be a force for improving the lives of all people. We are revitalizing and transforming legal and policy debates in classrooms, courtrooms, legislatures and the media.”¹⁷

- a. Do you share the view that the law should be a force for improving the lives of all people?

Response: I believe that when the law is fairly and impartially applied, it improves our country and the lives of the people in it.

- b. The ACS has also recently published a book, entitled *Keeping Faith with the Constitution*, co-authored by ACS leaders Pamela Karlan, Christopher Schroeder, and Goodwin Liu, that discusses how that institution sees the proper role of a judge in interpreting the U.S. Constitution. In the very first line of that book, the authors say that “Justice Oliver Wendell Holmes was right when he said that the words of the Constitution ‘have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters.’”¹⁸ The book goes on to say that

“interpreting the Constitution . . . requires adaptation of its broad principles to the conditions and challenges faced by successive generations. The question . . . is not how the Constitution would have been applied at the founding, but rather how it should be applied today . . . in light of changing needs, conditions, and understandings of our society.”¹⁹

- i. Do you agree with these statements?

Response: No.

¹⁶ Abolish the death penalty – Amnesty International, <http://www.amnesty.org/en/death-penalty> (last visited May 20, 2010).

¹⁷ American Constitution Society, <http://www.acslaw.org/> (last visited May 20, 2010).

¹⁸ GOODWIN LIU, PAMELA S. KARLAN & CHRISTOPHER H. SCHROEDER, *KEEPING FAITH WITH THE CONSTITUTION* 1 (2009).

¹⁹ *Id.* at 2.

- ii. **The book is also very critical of originalism and strict construction as interpretive approaches, saying that “neither originalism nor strict construction has proven to be a persuasive or durable methodology, not least because they cannot explain many of the basic constitutional understandings we now take for granted.”²⁰ Do you agree with that statement?**

Response: No.

- c. **In a paper entitled “The Right and Wrong Kinds of Judicial Activism,” recently published by the ACS, Professor Alan B. Morrison argues that**

“it is most appropriate for the Court to intervene and overturn legislative decisions when there is some reason to believe that our system of representative government has not worked and that the protections that the Constitution is supposed to afford are lacking. The most common circumstance of appropriate intervention is to safeguard rights of a racial or other minority that were not adequately represented in the political process. There is another important area to which this theory is also applicable: where the structural protections afforded by the Constitution’s specific guarantees of separation of powers or federalism have broken down because of an imbalance in legislative powers.”²¹

Do you agree with that statement?

Response: No.

15. **When you were chair of the Myrth York Gubernatorial campaign, columnist Charles Bakst of the *Providence Journal* said that he found you “prone to overnight or early morning emails or phone messages goading [him] to write something critical of York’s opponents, or needling [him] for a column he didn’t like. During [York’s] Primary with Attorney General Sheldon Whitehouse, [he] punched [his] voice mail one day to hear McConnell saying, ‘Oh, I’m sorry, I thought this was the Whitehouse campaign,’ then abruptly hanging up.”²²**

- a. **Was that statement accurate?**

Response: In the middle of a political campaign against Sheldon Whitehouse, I called a columnist with whom I had a long-standing informal relationship to

²⁰ *Id.* at 5.

²¹ Alan B. Morrison, *The Right and Wrong Kinds of Judicial Activism*, AMERICAN CONSTITUTION SOCIETY ISSUE BRIEF, May 2010, available at <http://www.acslaw.org/files/ACS%20Issue%20Brie%20-%20Morrison%20Judicial%20Activism.pdf>.

²² *Id.*

complain in jest about a position he took by leaving a message in which I said ““Oh, I’m sorry, I thought this was the Whitehouse campaign.”

b. If yes, do you feel that sort of behavior would be appropriate for a public official?

Response: I do not believe it would be appropriate for a judge. At the time of that comment I was not a public official, but rather a political volunteer in the middle of a heated campaign. Given my long-standing and informal relationship with the columnist, it was meant only as a joke.

c. Do you think that this and other comments you have made in the political arena might have an effect on how some parties would perceive your fairness and objectivity on the bench?

Response: I believe that most people who know me, and certainly those that have observed me in a professional setting would realize that I understand the difference between being an advocate in the legal or political system and being in a new role as an impartial and fair judge if I am confirmed by the Senate.

16. You have made some very unkind comments about Republicans in public, comments that give me concern about your ability to be objective and fair to different viewpoints. For example, when Republican Governor Lincoln Almond kept the Rhode Island government open during a snowstorm in 1996, you commented to the press that the decision was “typical of the cold-hearted Republican attitude of disregarding workers’ needs.”²³ You went on to argue against the governor’s appeal to the cost efficiency of keeping agencies open by saying that “[w]e could bring child labor back, which would be cheaper, too.”²⁴

a. Did you truly believe that Republicans have a typical “cold-hearted attitude of disregarding workers’ needs”?

Response: No. I regret having made that comment and do not believe it to be true.

b. Do you truly believe that keeping government offices open during a snowstorm in New England, even a particularly bad storm, is equivalent to the use of child labor?

Response: No.

²³ M. Charles Bakst, *Almond in Storm: What You Saw Is The Way Gov. Is*, PROVIDENCE JOURNAL-BULLETIN, Jan. 11, 1996, at B-01.

²⁴ *Id.*

- c. **Given your view of the character of Republicans, do you believe you could be fair to a Republican or conservative person or group that came before you if confirmed?**

Response: Yes, I believe that, if confirmed as a judge by the Senate, I would be fair to all who came before me, regardless of any person's party affiliation or their political leanings.

17. **The *Providence Journal* recently reported the following:**

“[Senator] Reed said McConnell could add balance to the large number of corporate lawyers on the federal bench. ‘We need more guys there who care about the little guy,’ Reed said, referring to McConnell’s representation of people with illnesses caused by asbestos, tobacco and other products.”

- a. **Do you agree with Senator Reed that you “could add balance to the large number of corporate lawyers on the federal bench”? If so, how?**

Response: I am not sure of the context of Senator Reed's quote. I assume that Senator Reed made the decision to recommend me for the district court position based on his knowledge of our State and on his experience in nominating judges to the bench. I defer to his expertise in this area.

- b. **Do you agree with Senator Reed that “[w]e need more [judges] who care about the little guy”?**

Response: I believe that Rhode Island, indeed every state in the nation, needs judges who care about all litigants, no matter who they are or from where they come.

18. **Please describe with particularity the process by which these questions were answered.**

Response: I received these questions Thursday evening May 20, 2010 through the Department of Justice (DOJ). I reviewed the questions and I prepared my responses to them. I later discussed my responses with the DOJ. I then finalized my responses. On May 24, 2010 I asked the DOJ to forward my responses to the Senate Judiciary Committee on my behalf.

19. **Do these answers reflect your true and personal views?**

Response: Yes.

**Responses of John J. McConnell, Jr.
Nominee to be United States District Judge for the District of Rhode Island
to the Written Questions of Senator Grassley**

1. **During the 2008 presidential campaign, President Obama described the kind of judge that he would nominate to the federal bench as follows: “We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”**

- a. **Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit the President’s criteria for federal judges, as described in this quote?**

Response: I assume that I met President Obama’s criteria for a federal judgeship because he nominated me to fill a vacancy on the District Court for the District of Rhode Island after a thorough review of my background and record.

- b. **During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: Yes.

- c. **Do you believe that it is ever appropriate for judges to indulge their own subjective sense of empathy in determining what the Constitution and the laws mean? If so, under what circumstances?**

Response: No.

- d. **Do you believe that it is ever appropriate for judges to indulge their empathy for particular groups or certain people? For example, do you believe that it is appropriate for judges to favor those who are poor? Do you believe that it is appropriate for judges to disfavor corporations?**

Response: No, for every case and for every litigant, empathy should play no role in a judge’s decisions. It is never appropriate for a judge to favor or disfavor any litigant, including corporations.

- e. **After Justice Stevens announced his retirement, President Obama stated that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe that judges should base their decisions on a desired outcome?**

Response: No.

2. What, in your view, is the role of a judge? Please describe your judicial philosophy.

Response: The role of a judge is to apply existing law, as set forth in precedents from the U.S. Supreme Court and the U.S. Court of Appeals for the First Circuit, to the facts presented. My judicial philosophy would be to fulfill that role in an impartial, unbiased, and procedurally fair and efficient manner.

3. How do you define “judicial activism”?

Response: Judicial activism, as I would use the term, occurs when a judge decides a case to achieve a desired result or a result consistent with a judge’s own personal policy point of view, rather than based on the law and applicable precedents. It would include a failure to give proper deference, where appropriate, to the elected branches of government.

4. Could you identify three recent Supreme Court cases that you believe are examples of “judicial activism”? Please explain why you believe these cases are examples of “judicial activism”.

Response: I do not think about U.S. Supreme Court cases as examples of judicial activism. If I am confirmed as a judge on the trial court, my role will be to follow the law as set forth by the U.S. Supreme Court and the Court of Appeals for the First Circuit. In that role, therefore, I would be bound to follow any opinion by the Supreme Court that has not been overturned or modified, regardless of my personal opinion about whether that Supreme Court case represented an exercise of judicial activism or judicial restraint.

5. How do you define “judicial restraint”?

Response: Judicial restraint, as I would use the term, occurs when a judge properly applies the law to the facts, setting aside all policy and other considerations that are not appropriate to the courts.

6. Could you identify three recent Supreme Court cases that you believe are examples of “judicial restraint”? Please explain why you believe these cases are examples of “judicial restraint”.

Response: I do not think about U.S. Supreme Court cases as examples of judicial restraint. If I am confirmed as a judge on the trial court, my role will be to follow the law as set forth by the U.S. Supreme Court and the Court of Appeals for the First Circuit. In that role, therefore, I would be bound to follow any opinion by the Supreme Court that has not been overturned or modified, regardless of my personal opinion about whether that Supreme Court case represented an exercise of judicial activism or judicial restraint.

- 7. Do you believe that it is ever appropriate for judges to indulge their own values and/or policy preferences in determining what the Constitution and the laws mean? If so, under what circumstances?**

Response: No.

- 8. Should the courts, rather than the elected branches of government, ever take the lead in creating a more “just” society?**

Response: By correctly and impartially applying the law to the facts in each case that comes before them, the courts make an institutional contribution to the justness of society. This institutional role is important, but courts, as the unelected branch of government, should not take the lead in creating a more just society.

- 9. In your opinion, what is the proper role of foreign law in U.S. court decisions, and is citation to or reliance on foreign law ever appropriate when interpreting the U.S. Constitution and statutes?**

Response: I cannot think of any instance where the use of foreign law would be proper when interpreting the U.S. Constitution and statutes. I do not believe that foreign law should ever be relied upon in interpreting the U.S. Constitution or statutes.

- 10. Does the silence of the U.S. Constitution on a legal issue allow a federal court to use foreign law as an authority for judicial decision-making? When is it not appropriate to look to foreign law for legal guidance or legal authority?**

Response: No. I cannot think of any instance where the use of foreign law would be proper when interpreting the U.S. Constitution and statutes. I do not believe that foreign law should ever be relied upon in interpreting the U.S. Constitution or statutes.

- 11. I would like to get a better understanding of how you would interpret statutes and what your judicial method would be if you were confirmed to be a judge on the District Court of Rhode Island.**

- a. In cases involving a close question of law, what would you look to when determining which way to rule?**

Response: I would look to the language of the statute and then the interpretations of the statutes by the U.S. Supreme Court and the U.S. Court of Appeals for the First Circuit.

- b. Would you agree that the meaning of a statute is to be ascertained according to the understanding of the law when it was enacted?**

Response: I will interpret the meaning of the statute based on the plain meaning of the statute as enacted.

- c. **How would you use legislative history when interpreting a statute? What kind of weight would you give legislative history, if any, when interpreting a statute?**

Response: I believe that reliance on legislative history is a last resort when interpreting a statute. Only if the language of the statute is not clear, or if there is no other guidance from higher courts about its interpretation, should a court consider legislative history when interpreting a statute.

**Responses of John J. McConnell, Jr.
Nominee to be United States District Judge for the District of Rhode Island
to the Written Questions of Senator Jon Kyl**

- 1. Identify all cases where you and/or your current or previous law firms have represented a State or local government (including but not limited to any state attorneys general office, Governors office, political subdivision, instrumentality, or authority of a State or States) under a contingency fee contract or other legal services arrangement to pursue civil litigation against private defendants. In addition to identifying the case, and as part of your response, provide the following:**

Response: See Attachment A.

- a. The name of the state or local government officials and related entities involved with the contingency fee contract or legal services arrangement.**

Response: See Attachment B.

- b. A detailed description (including dates and amounts) of any political campaign contributions from you or your law firm to any of the state or local government officials identified in your response to question 1(a).**

Response: My firm does not maintain a list of contributions by members or employees to elected public officials, and therefore I have no way to gather the information requested as it relates to members or employees. I have done a diligent and reasonable inquiry of the attorneys in the firm and am able to provide the following information:

My firm was retained by the State of Rhode Island by and through its then Attorney General Sheldon Whitehouse to represent the State in litigation against the lead paint industry in 1999. According to Rhode Island Board of Elections files, I contributed \$2,000 in 1998 to Sheldon Whitehouse's 1998 campaign for Rhode Island Attorney General. In addition, although I cannot find a record of it, I do believe that Joseph F. Rice and I contributed to Governor Christine Gregoire's campaign for governor of the State of Washington.

- c. The amount of any money (whether by contingency fee or otherwise) you or your firm received in the representation.**

Response: In the lead paint case brought on behalf of Rhode Island and other government entity, neither my firm nor I received any money. With respect to other cases, both my prior firm (MRRM, P.A.) and I have received money pursuant to the Master Settlement Agreement for tobacco litigation. The monies that I will receive as deferred compensation from the tobacco litigation are listed on my "Net Worth Statement" submitted to the Senate Judiciary Committee.

2. **Identify all states, local governments or municipalities where you or your law firm pursued lead paint litigation. Please note any litigation similar to that brought in Rhode Island. As part of your response, provide the following:**

Response: See the lead paint section of Attachment A in which Motley Rice LLC or predecessor firms were hired or otherwise engaged by one or more elected officials.

- a. **The names of all state and local government officials with whom you or your law firm (including their agents or representatives) contacted or communicated.**

Response: See the lead paint section of Attachment B in which Motley Rice LLC or predecessor firms were hired or otherwise engaged by one or more elected officials.

- b. **To the extent not already covered by question 1, provide a detailed description (including dates and amounts) of any political campaign contributions from you or your law firm to any of the state or local government officials identified in this response.**

Response: None.

- c. **If you or your law firm entered into any contingency fee arrangement to pursue lead paint litigation on behalf of any of these other states or local government officials, please provide those contracts to the Committee.**

Response: I am providing all of the contracts.

3. **As part of your contingency fee contract with the State of Rhode to pursue lead paint litigation against defendant paint companies, did you or your law firm agree to pay all the costs and expenses of prosecuting that litigation?**

Response: We agreed to pay all of the costs and expenses of prosecuting such claims. The agreement states as follows: "All costs and expenses of prosecuting such claims, including, without limitation, expert witness fees, costs of depositions, discovery, and travel, will be borne by Ness, Motley, Loadholt, Richardson & Poole."

4. **In the Rhode Island lead paint case, the State asked the trial court to immediately begin implementing an abatement plan for the alleged public nuisance, and to appoint co-examiners, or outside experts, to aid in the development of the complex plan. Although the defendants asked the court to refrain from doing so pending their appeal, the court sided with the State; the court seemed to have been persuaded, at least in part, by the State's contention that reimbursement of the co-examiner fees could be sought if the verdict was reversed on appeal. After the Rhode Island Supreme Court did, in fact, reverse and vacate the judgment, the defendants moved for such reimbursement. At a hearing on that motion, the State**

argued that reimbursement could not be ordered because the State had sovereign immunity. The trial court ultimately rejected that argument and ordered the State to pay the fees.

- a. Did you play any role, either as counsel or in an advisory capacity, in any proceedings relating to the co-examiner fees, either before or after the Rhode Island Supreme Court's decision?

Response: Yes.

- b. Although it appears Motley Rice had agreed to pay all costs associated with the litigation, the firm contended it was not responsible for these fees. You yourself commented to the press that Motley Rice "certainly never offered, intended or agreed to pay defense costs in the case." Eric Tucker, *R.I., Paint Cos. Await Decision on Lawsuit Costs*, ASSOCIATED PRESS, Mar. 28, 2009. In view of Rhode Island's pending budget deficit, explain why you personally disavowed this contractual obligation to pay such costs and expenses of litigation after the State was ordered by a court reimburse defense costs associated with the lead paint litigation.

Response: The contract required that Ness, Motley, Loadholt, Richardson & Poole incur "[a]ll costs and expenses of prosecuting such claims." It was never anticipated by either party, nor does the contract require, that it would include opposing counsel's costs, only the costs of prosecuting the claims.

- c. Did you or your law firm ever reimburse the State of Rhode Island to cover court-ordered payment of defense costs from the lead paint litigation?

Response: There are no court-ordered payments of defense costs from the lead paint litigation in Rhode Island.

1. Do you agree that when state attorneys general enter into contingency fee arrangements with private law firms to pursue civil litigation on behalf of a state, the process should be open and transparent?

Response: Yes.

- a. Was the lead paint litigation contingency fee contract between Motley Rice and the State of Rhode Island procured under an open and transparent process?

Response: Yes.

- b. Was the lead paint litigation contingency fee contract made publicly available prior to its execution?

Response: I am unaware whether the Attorney General made the contract publicly available prior to its execution.

- c. **Did the Rhode Island state legislature approve the lead paint litigation contingency fee contract between Motley Rice and the State of Rhode Island?**

Response: No.

- 6. **At your hearing, I asked whether you approached Senator Whitehouse, in his capacity as Rhode Island Attorney General, to initiate the Rhode Island lead paint litigation. You stated that you did not, but then testified that your firm was asked to “analyze the law and the facts in the case, and we prepared an analysis in a binder and turned it over to then-Attorney General Pine and then to Attorney General Whitehouse.” However, during the lead paint litigation (*State of Rhode Island v. Lead Industries Association, Inc., et al.*, C.A. No. 99-5226), then-Rhode Island Attorney General Whitehouse testified that it was your firm (then Ness Motley) that approached him about bringing the case:**

Q. Can you tell me who approached you? Is it true that Ness Motley approached you about bringing this kind of case?

A. Yes, it is.

Please explain the discrepancy in your testimony.

Response: I do not know specifically what then Attorney General Whitehouse was referring to in his deposition. I assume he meant that his initial involvement in this matter began when he reviewed a binder that Ness Motley attorneys had prepared for the Rhode Island Attorney General’s Office at the request of former Attorney General Jeffrey Pine.

- 7. **Please describe your involvement in the litigation brought by Sherwin-Williams against your firm in the Court of Common Pleas of Cuyahoga County, Ohio concerning certain documents belonging to Sherwin Williams that were obtained without the company’s consent and alleged to be privileged. (*Sherwin Williams Co. v. Motley Rice LLC*, No. CV 09 689237 (Ohio Ct. Common Pleas Apr. 03, 2009)).**

Response: I have no involvement in that case except to assist my firm’s counsel in the defense. I am not listed as a defendant in the case or mentioned in the complaint.

- a. **Do you know the identity of any of the unidentified “Doe” defendants in that lawsuit? Are you one of them?**

Response: I do not know the identities of any John Does (if any even exist). I have no reason to believe that I am one of them.

b. At present, do you have any reason to believe that you may be deposed or subject to any discovery in the lawsuit?

Response: The firm's attorneys have informed me that Sherwin Williams has requested my deposition in this case.

c. Have you discussed this litigation with any other member of the Motley Rice firm? If so, with whom did you discuss it, when, and what was the content of the discussion?

Response: Yes, I have discussed the litigation with other members of Motley Rice. As to the contents of those communications, those communications may be subject to attorney-client or the work-product privileges.

d. Do you have any other information related to the Sherwin-Williams lawsuit? If so, please describe and/or provide to the Committee.

Response: The Rhode Island Superior Court judge who presided for ten years over this litigation specifically found, after full briefing and hearing on the issues at the center of Sherwin-Williams' lawsuit, that the documents at issue in the Sherwin Williams law suit were not privileged and that all counsel acted in an "exemplary fashion" with regard to this matter specifically and in the litigation generally.

e. Do you believe it would be appropriate for Motley Rice to retain documents that Sherwin-Williams has claimed are privileged and confidential?

Response: It would depend on the particular applicable state law and the facts surrounding their claim of privilege.

f. Have you asked Motley Rice to return the misappropriated document belonging to Sherwin-Williams?

Response: By agreement, all copies of the disputed documents that Sherwin-Williams claims were privileged have been turned over to the trial court in Ohio. Motley Rice has not retained any copies of the document.

g. Were you familiar with these documents, prior to this suit being filed in Ohio? Please explain your answer.

Response: I saw the documents prior to suit being filed in Ohio. I briefly saw them when they were first faxed to our firm and then again a few years later, I saw them when we submitted one page of the documents to the court in Rhode Island. I would not say I was familiar with the documents in any fashion.

8. **You have acted as counsel on behalf of numerous States in bringing lawsuits against lead paint and tobacco manufacturers. If confirmed, you may preside over cases involving lead paint or tobacco manufacturers and mass tort claims in general. At your hearing, I asked whether, given your extensive representation in these types of matters, you had thought about recusal. Please answer each of the following questions fully. Reciting 28 U.S.C. § 455 is not sufficient.**

- a. **Would you recuse yourself from any action involving a party that has been adverse to a party represented by either you or your firm?**

Response: I would make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

- b. **Would you recuse yourself from actions that involve paint manufacturers that were named in *State of Rhode Island v. Lead Industries Association* 951 A.2d 428 (R.I. 2008)?**

Response: I would make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

- c. **Would you recuse yourself from actions that involve paint manufacturers that were named in *Steven Thomas v. Mallett*, 701 N.W.2d 523 (Wis. 2005)?**

Response: I would make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

- d. **Would you recuse yourself from actions that involve paint manufacturers in general?**

Response: I would make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

e. Would you recuse yourself from actions that involve the tobacco companies involved in the Master Settlement that you helped negotiate and draft?

Response: Yes, if it involved any of the Original Participating Manufactures that contribute to the payment of attorney fees.

f. Would you recuse yourself from all actions that involve companies that are a party to litigation on which some or all of your compensation depends?

Response: Yes.

g. Would you recuse yourself from actions that involve tobacco companies or tobacco retailers?

Response: Yes, if it involved any of the Original Participating Manufacturers that contribute to the payment of attorney fees. In addition, I would further make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

h. Would you recuse yourself from actions that involve product manufacturers?

Response: I would make that decision on a case-by-case basis after a thorough analysis of the prevailing issues presented by the parties and based on the applicable statutes, rules and Canon 3 of the Code Conduct for United States Judges. I would be guided specifically by Canon 3 (C) (1) that requires a judge to disqualify himself or herself if “the judge’s impartiality might reasonably be questioned,” or if I had “personal knowledge of disputed evidentiary facts” in the case. If I determined that my previous involvement as an advocate required my recusal from the case, then I would recuse myself.

9. **In your Questionnaire, you stated: “I do not foresee any recurrent basis for disqualification, except possibly in connection with matters in which my firm or my brother is counsel for a party.”**

a. Please explain what you mean by “possibly.”

Response: I meant that if Mottley Rice (where my brother is a partner) came before me in a matter, I would recuse myself. The use of the term “possibly” reflects my uncertainty as to whether any matters involving him would be “recurrent.”

b. Under what circumstances would you choose not to recuse yourself if your brother or your law firm partners/colleagues were to appear before you as counsel for a party?

Response: I would always recuse myself if my brother or other family member came before me as a litigant or attorney. I would always recuse myself from any case in which a law firm where my brother or other family member is partner. For a period of years—the specific numbers of years appropriate for recusal, which I would determine by following the rules and seeking guidance from colleagues on the bench—I would recuse myself from cases involving my former law firm partners/colleagues.

ATTACHMENT A
LIST OF LAWSUITS

Tobacco

Blaylock et al. v. American Tobacco Co. et al., Circuit Court, Montgomery County, No. CV-96-1508-PR

State of Alaska v. Philip Morris, Inc., et al., Superior Court, First Judicial District of Juneau, No. IJU-97915 CI (Alaska)

State of Hawaii v. Brown & Williamson Tobacco Corp., et al., Circuit Court, First Circuit, No. 97-0441-01 (Haw.)

State of Idaho v. Philip Morris, Inc., et al., Fourth Judicial District, Ada County, No. CVOC 9703239D (Idaho)

State of Iowa v. R.J. Reynolds Tobacco Company et al., Iowa District Court, Fifth Judicial District, Polk County, No. CL71048 (Iowa)

State of Kansas v. R.J. Reynolds Tobacco Company, et al., District Court of Shawnee County, Division 2, No. 96-CV-919 (Kan.)

Ieyoub v. The American Tobacco Company, et al., 14th Judicial District Court, Calcasieu Parish, No. 96-1209 (La.)

Commonwealth of Massachusetts v. Philip Morris Inc., et al., Middlesex Superior Court, No. 95-7378 (Mass.)

Kelley v. Philip Morris Incorporated, et al., Ingham County Circuit Court, 30th Judicial Circuit, No. 96-84281-CZ (Mich.)

State of Montana v. Philip Morris, Inc., et al., First Judicial Court, Lewis and Clark County, No. CDV 9700306-14 (Mont.)

State of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior Court, Chancery Division, Middlesex County, No. C-254-96 (N.J.)

State of New York et al. v. Philip Morris, Inc., et al., Supreme Court of the State of New York, County of New York, No. 400361/97 (N.Y.)

State of Ohio v. Philip Morris, Inc., et al., Court of Common Pleas, Franklin County, No. 97CVH055114 (Ohio)

State of Oklahoma, et al. v. R.J. Reynolds tobacco Company, et al., District court, Cleveland County, No. CJ-96-1499-L (Okla.)

State of Oregon v. The American Tobacco Co., et al., Circuit Court, Multnomah County, No. 9706-04457 (Or.)

Rossello, et al. v. Brown & Williamson Tobacco Corporation, et al., U. W. District Court, Puerto Rico, No. 97-1910JAF

State of Rhode Island v. American Tobacco Co., et al., Rhode Island Superior Court, Providence, No. 97-3058 (R.I.)

State of South Carolina v. Brown & Williamson Tobacco Corporation, et al., Court of Common Pleas, Fifth Judicial Circuit, Richland County, No. 97-CP-40-1686 (S.C.)

State of Utah v. R.J. Reynolds Tobacco Company, et al., U.S. District Court, Central Division, No. 96 CV 0829W (Utah)

State of Vermont v. Philip Morris, Inc., et al., Chittenden Superior Court, Chittenden County, No. 744-97 (Vt.) and 5816-98 (Vt.)

State of Washington v. American Tobacco Co. Inc., et al., Superior Court of Washington, King County, No. 96-2-1505608SEA (Wash.)
McGraw, et al. v. The American Tobacco Company, et al., Kanawha County Circuit Court, No. 94-17-7 (W. Va.)

Lead Paint

State of Rhode Island v. Lead Industries Assn. C.A. No 99-5229
In Re Lead Paint Litigation, Case Code: 702-MT, Superior Court of New Jersey
City of Cincinnati v. Sherwin-Williams et al., C.A. No. A0611226
City of Columbus v. Sherwin-Williams et al., 06CVH-16480
Ohio v. Sherwin-Williams et al., 07CVC-04-4857
City of East Cleveland v. Sherwin-Williams et al., CA No CV-06-602785
City of Athens v. Sherwin Williams, et al., C.A. No. 07CI136
City of Massillon v. Sherwin-Williams et al., C.A. No. 07 CV O1224
City of Canton v. Sherwin-Williams et al., C.A. NO. 06 CV 05048
City of Dayton, Ohio v. Sherwin-Williams, et al., C. A. No. 07 CV 12701
City of Cleveland v. Sherwin-Williams et al., C.A. No. CV-06-602785
City of Lancaster v. Sherwin-Williams et al., C.A. No. 06 CV 1055
City of Toledo v. Sherwin-Williams et al., C.A. No. G-4801-CI-200606040
City of Youngstown v. Sherwin-Williams, et al., C.A. No. 07-CV-1167
City of New York Housing Authority v. Lead Industries Assn., Index No. 14365/89, IAS Part 39
County of Santa Clara, et al. v. Atlantic Richfield Company, et al., Case No. CV 788657

Other

Kurikose v. Fed. Home Loan Mortgage Co., No. 1:08-cv-7281 (JFK) (S.D.N.Y);
 Various individual asbestos cases on behalf of Bob Whittaker, Director, Division of Workers' Compensation Funds, Commonwealth of Kentucky Labor Cabinet
State of Oklahoma v. Tyson Foods, Inc., et al., 4:05-cv-00329-GKF-PJC, N.D. Okla.
In re: W.R. Grace & Co., et al., Case No. 01-01139 (JKF), D. Del. (Bankruptcy) - Claims No. 6937-6944 (State of Washington claims); Claims No. 6945-6947 (Port of Seattle claims); Claims No. 3405 (Fargo Housing and Redevelopment Authority claims).

ATTCAHMENT B**LIST OF PUBLIC OFFICIALS****Tobacco**

Honorable Bruce M. Botelho	Attorney General of Alaska
Honorable Margery S. Bronster	Attorney General of Hawaii
Honorable Alan G. Lance	Attorney General of Idaho
Honorable Tom Miller	Attorney General of Iowa
Honorable Carla J. Stovall	Attorney General of Kansas
Honorable Richard P. Ieyoub	Attorney General of Louisiana
Honorable Scott Harshbarger	Attorney General of Massachusetts
Honorable Frank J. Kelley	Attorney General of Michigan
Honorable Joseph P. Mazurek	Attorney General of Montana
Honorable Peter Verniero	Attorney General of New Jersey
Honorable Dennis C. Vacco	Attorney General of New York
Honorable Betty D. Montgomery	Attorney General of Ohio
Honorable W. A. Drew Edmondson	Attorney General of Oklahoma
Honorable Hardy Myers	Attorney General of Oregon
Honorable Jose A. Fuentes-Agostini	Attorney General of Puerto Rico
Honorable Jeffrey B. Pine	Attorney General of Rhode Island
Honorable Charlie Condon	Attorney General of South Carolina
Honorable Jan Graham	Attorney General of Utah
Honorable William H. Sorrell	Attorney General of Vermont
Honorable Christine O. Gregoire	Attorney General of Washington

Honorable Darrell V. McGraw Jr. Attorney General of West Virginia

Lead Paint

Honorable Sheldon Whitehouse	Attorney General of Rhode Island
Louise Renne, Esq.	San Francisco City Attorney
Mayor John T. Gregorio	Linden, New Jersey
Mayor Sara B. Bost	Irvington, New Jersey
Mayor Karen McCoy Oliver	Hillside, New Jersey
George Devaney	Union County, New Jersey Manager
Mayor Robert L. Bowser	East Orange, New Jersey
Mayor Joseph V. Doria	Bayonne, New Jersey
Thomas S. Plaia	Township Attorney – Union Township, NJ
Mayor Samuel Rivera	Passaic, New Jersey
John D. Massi	Borough Attorney - Roselle, New Jersey
Mims Hackett, Jr.	Mayor of Orange, New Jersey
Unknown	Essex County, New Jersey
Unknown	Jersey City, New Jersey
Unknown	West New York, New Jersey
Garry E. Hunter	Athens, Ohio Director of Law
Joseph Martuccio	Canton, Ohio Director of Law
Pericles G. Stergios	Massillon, Ohio Director of Law
Richard C. Pfeiffer, Jr.	Columbus City Attorney
Mayor Eric J. Brewer	City of East Cleveland

Terre Vandervoort	Lancaster, Ohio Director of Law
John Madigan	Toledo, Ohio Director of Law
Iris Guglucello	Youngstown, Ohio Director of Law
Milton R. Dohoney, Jr.	Cincinnati, Ohio City Manager
Ricardo Elias Morales	General Counsel, NYC Housing Authority

Other

Richard H. Moore	Treasurer, State of North Carolina & Sole Trustee of the North Carolina Retirement Systems
Linda Strout	Port of Seattle
Lynn Fundingsland	Fargo Housing Authority
Unknown	Deputy Attorney General, State of Washington
Bob Whittaker	Director, Kentucky Division of Worker' Compensation Fund
W.A. Drew Edmondson	Oklahoma Attorney General

RETAINER AGREEMENT

The State of Rhode Island ("State"), by and through Sheldon Whitehouse, its Attorney General ("Attorney General"), hereby retains the law firms of Ness, Motley, Loadholt, Richardson & Poole, 321 South Main Street, Providence, Rhode Island, and Decof & Grimm, One Smith Hill, Providence, Rhode Island (the "Law Firms"), to pursue any and all claims against any and all persons, corporations and other entities for damages of every kind arising out of the manufacture, sale, distribution and use of lead paint, upon the following terms and conditions:

1. The Law Firms will diligently and forcefully prosecute all claims which, in their judgment, should be asserted against any and all persons, firms or corporations for damages arising out of or referable to the manufacture, sale, distribution or use of lead paint.

2. The Attorney General shall have the right to designate from either of the Law Firms chief counsel, with full authority and responsibility for all case management, trial strategy and other decisions necessary or incident to the necessary prosecution of the claims.

3. The Law Firms will render all services necessary in the proper prosecution of the claims, including consultation, advice, research, preparation, negotiation, litigation and all appeals, if necessary, on a contingent fee basis, to-wit: sixteen and two-thirds percent (16 2/3%) of any and all moneys received by the State in settlement, judgment or otherwise. As payments are received by the State on account of the claims, whether by settlement, judgment or otherwise, the State will promptly pay the Law Firms.

4. All costs and expenses of prosecuting said claims, including, without limitation, expert witness fees, costs of depositions, discovery, and travel, will be borne by Ness, Motley, Loadholt, Richardson & Poole. In the event of recovery of any moneys as the result of said claims, the costs expensed by the Law Firms shall be reimbursed them in addition to the contingent fees hereinabove specified. Such reimbursement shall be made at the time of the recovery by the State. All expenditures for costs and expenses shall be reimbursed only on the basis of itemized copies for costs billed to and paid by either or both of the Law Firms. The Law Firms agree to abide by and conform to State of Rhode Island requirements with respect to travel expenditures and per diems for elected officers, as set forth in Exhibit A attached hereto and incorporated herein.

5. In the event that the services of either Law Firm shall be terminated for any reason, such Law Firm shall be entitled to compensation on the basis of quantum meruit, but in no event less than its share of sixteen and two-thirds

percent (16 2/3%) of any and all offers of settlement received by the State at the time of such termination. Such payment of quantum meruit fees shall be paid by the State at the time of final disposition of all claims and recovery of moneys.

6. In the event the Litigation is resolved, by settlement or judgment, under terms involving the provision of goods or services, equitable relief, or any other "in-kind" payment, the parties hereto agree to seek, as part of any such settlement, compensation for the Law Firms equivalent to the contingency fee and expenses to which the Law Firms would be entitled under this Agreement. In the event the Attorney General is unable to secure such compensation for the Law Firms as part of any "in-kind" settlement, the Attorney General agrees to petition the General Assembly to appropriate funds to compensate the Law Firms.

7. The parties hereto agree to extend their best efforts, to the extent legally possible, against all defendants to recover counsel fees for the Law Firms directly from the defendants, in addition to any settlement, whether monetary or otherwise. All such recovery of fees will be credited in full against all fees owed by the State to the Law Firms under this Agreement, whether for monetary or non-monetary recovery.

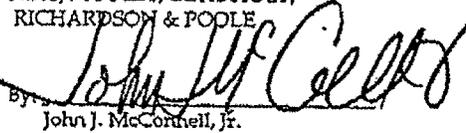
This Agreement shall be binding upon the parties hereto, and their respective successors and assigns.

EXECUTED this 8th day of October, 1999.

DECOF & GRIMM

By: 
Leonard Decof

NESS, MOTLEY, LOADHOLT,
RICHARDSON & POOLE

By: 
John J. McCormell, Jr.

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS

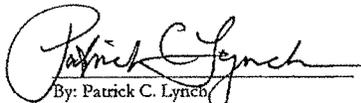
By: 
Sheldon Whitehouse, Attorney General

LFreedman/ Cases/ Load Paint/ Agreements/ Retainer Agreement/ 1-2

The Retainer Agreement entered into between the State of Rhode Island and Ness, Motley, Loadholt, Richardson & Poole and Decof & Grimm on or about October 8, 1999, is hereby amended as follows:

1. The law firm of Decof & Decof shall be substituted for the law firm of Decof & Grimm and the law firm of Motley Rice LLP shall be substituted for the law firm of Ness, Motley, Loadholt, Richardson & Poole.
2. Notwithstanding any other provisions contained in the Retainer Agreement, as chief legal officer of the State of Rhode Island the Attorney General shall at all times retain full control of the litigation, including but not limited to who to sue, what causes of action(s) should be asserted, and settlement or termination of this lawsuit. This provision does not prohibit outside counsel from exercising their professional judgment in prosecuting this case in accord therewith.
3. Paragraph 2 of the Retainer Agreement is hereby deleted in its entirety.
4. This Amendment shall be entered on a non pro tunc basis to the date of the execution of the Retainer Agreement.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

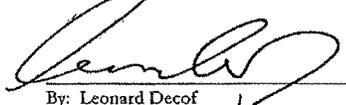

 By: Patrick C. Lynch
 Attorney General

MOTLEY RICE LLP


 By: John J. McConnell, Jr.

Dated: 9-10-03

DECOF & DECOF


 By: Leonard Decof

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 8th day of February, 2007 BY AND BETWEEN:

THE CITY OF ORANGE, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at City Hall, 29 North Day Street, Orange, New Jersey 07050
(hereinafter referred to as the "CITY")

and

CITY OF ORANGE LEAD LITIGATION GROUP, which is comprised of the firms of:

Motley Rice, LLC
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

WITNESSETH THAT:

WHEREAS, the City, desires to engage a committee of lawyers known as "City of Orange Lead Litigation Group" ("LLG") to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (the "Claim").

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MAR 03 2007

JON L. GELMAN

WHEREAS, the LLG desires to perform said services for the City,

NOW THEREFORE,

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the city and the LLG covenant and agree as follows:

1. SCOPE OF SERVICES: The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the City regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

1. Investigating the City's potential claims against lead manufacturers and/or providing legal representation to the City in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the City should be directed to this attorney.
2. The extent of the Corporation Counsel attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize City resources where available, consistent with the needs of the case.
3. The City agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the City's claim.

-2-

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MAR 03 2007

JON L. GELMAN

2. SERVICES.

COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The City hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the City after payment of all expenses and costs incurred by the LLG in this matter.
- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION

- a. It is further agreed that neither the LLG nor the City may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

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MAR 03 2007

JON L. GELMAN

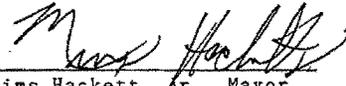
4. JURISDICTIONAL LANGUAGE:

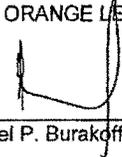
It is agreed by and between the City and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF, the City and the Lead Litigation Group have executed this Contract as of the date first herein written.

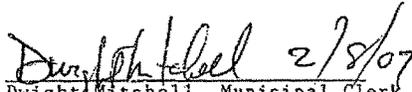
CITY OF ORANGE

CITY OF ORANGE LEAD LITIGATION GROUP

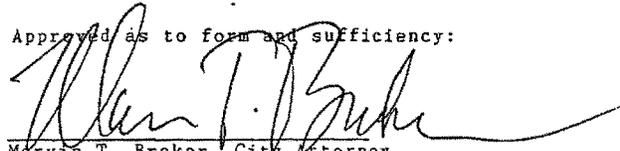
By: 
Mims Hackett, Sr., Mayor

By: 
Michael P. Burakoff, Esq.

ATTEST:

 2/8/07
Dwight Mitchell, Municipal Clerk

Approved as to form and sufficiency:


Marvin T. Braker, City Attorney

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MAR 08 2007

JON L. GELMAN

CITY COUNCIL	The City of Orange Township, New Jersey
DATE <u>October 1, 2002</u>	NUMBER <u>322-2002</u>
TITLE: A RESOLUTION AUTHORIZING THE CITY OF ORANGE TOWNSHIP TO INSTITUTE SUIT AGAINST THE LEAD INDUSTRY AND RETAINING THE LEGAL SERVICES OF THE CITY OF ORANGE LEAD LITIGATION GROUP.	
<p>WHEREAS, lead poisoning has caused permanent and devastating health problems for the children of the City of Orange Township; and,</p> <p>WHEREAS, the problems and costs which lead poisoning causes the citizens of the City of Orange Township are staggering; and,</p> <p>WHEREAS, the City, its taxpayers, and other public entities are forced to bear additional costs as a result of lead poisoning in the City of Orange Township; and,</p> <p>WHEREAS, the lead industry failed to take reasonable, responsible steps which would have prevented lead poisoning in the City of Orange Township; and,</p> <p>WHEREAS, the City of Orange Township has decided to take action by instituting suit against the lead industry; and,</p> <p>WHEREAS, the City of Orange Township wishes to retain the legal service of the City of Orange Lead Litigation Group; and,</p> <p>WHEREAS, this contract is awarded without public bidding, as a professional service exception to the Local Public Contracts Law as set forth in N.J.S.A. 40A:11-5(1)(a)(i).</p> <p>NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, that:</p> <p>1. The Mayor and Municipal Clerk are hereby authorized to execute a contract with the following law firms on a contingency basis as follows:</p> <p>Ness, Motley, Loadholt, Richardson & Poole, P.C. 321 South Main Street, Suite 402 Providence, Rhode Island 02903</p> <p>Jon L. Gelman, Esq. 1450 Valley Road P.O. Box 934 Wayne, New Jersey 07474-0934</p> <p>Michael P. Burakoff, P.A. 18 Bank Street, 4th Floor Morristown, New Jersey 07960</p>	
RECEIVED MAR 03 2007 JON L. GELMAN	

APPROVED AS TO FORM BY _____

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

Sheldon Bross, Esq.
Giantomasi, Bross & Oliveira, P.C.
292 Lafayette Street
Newark, New Jersey 07105

2. The Mayor and Municipal Clerk are authorized to execute the attached contract and it shall be the responsibility of the City Attorney to provide the Mayor and Municipal Council with periodic status reports as to legal services provided as outlined in the attached contract.

3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 40A:11-5(1)(a)(i).

4. A Notice of this action shall be published in the newspaper, as required by law within ten (10) days of its passage.

Adopted: October 1, 2002

Dwight Mitchell / MP
Dwight Mitchell, Municipal Clerk

Allen Barnhardt / RP
Allen Barnhardt, Council President

REGULAR MEETING - 10/1/02
OFF CONSENT AGENDA

MOTION TO ADOPT: Peters SECOND: Lewis

YEAS: Eason, Gaunt, Lewis, Peters, Vandermeer & Council President
Barnhardt

NAYS: None
ABSTENTIONS: None
ABSENT: Rimes

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MAR 03 2007
JON L. GELMAN

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 28th day of December, 2001 BY AND BETWEEN:

THE CITY OF LINDEN, COUNTY OF UNION, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at City Hall, 301 North Wood Avenue, Linden, New Jersey (hereinafter referred to as the "CITY")

AND

CITY OF LINDEN LEAD LITIGATION GROUP, which is comprised of the firms of

Ness, Motley, Loadholt, Richardson & Poole, PC
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
PO Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street - 4th Floor
Morristown, New Jersey 07960

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

Thornton & Naumes
100 Summer Street - 30th Floor
Boston, Massachusetts 02110

Wilentz, Goldman & Spitzer
90 Woodbridge Center Drive
Woodbridge, New Jersey 07095

WITNESSETH THAT:

WHEREAS, the City desires to engage a committee of lawyers known as "City of Linden Lead Litigation Group" ("LLG") to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (the "Claim"); and

WHEREAS, the LLG desires to perform said services for the City;

NOW THEREFORE,

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenants and agrees as follows:

1. SCOPE OF SERVICES: The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

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JON L. GELMAN

Provide legal counsel and related legal services to the City regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

- a. Investigating the City's potential claims against lead manufacturers and/or providing legal representation to the City in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. This correspondence form outside counsel to the City should be directed to this attorney.
- b. The extent of the Corporation Counsel's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel's legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize City resources where available, consistent with the needs of the case.
- c. The City agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the City's claim.

2. SERVICES, COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The City hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the City after payment of all expenses and costs incurred by the LLG in this matter.
- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorneys' fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION:

- a. It is further agreed that neither the LLG nor the City may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

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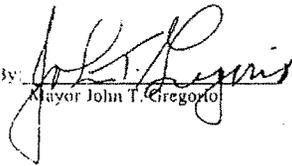
JON L. GELMAN

4 JURISDICTIONAL LANGUAGE:

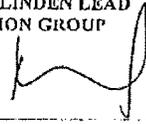
It is agreed by and between the City and LLG that this retainer agreement and any dispute which may arise thereunder shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF the City and the Lead Litigation Group have executed this Contract as of this date first herein written.

CITY OF LINDEN

By: 
Mayor John T. Gregorio

CITY OF LINDEN LEAD
LITIGATION GROUP

By: 

Michael P. Burakoff, Esq.
18 Bank Street
Morristown, N.J. 07960

RECEIVED
JAN 09 2002
JON L. GELMAN

Dec-19-01 10:58 From:FRANCIS GIANTOMASI PC M. BURAKOFF F-047
+18735880187 T-784 P.03/08 F-047

WHEREAS, lead poisoning has caused permanent and devastating health problems for the children of the Township of Irvington; and

WHEREAS, the problems and costs which lead poisoning causes the citizens of the Township of Irvington are staggering; and

WHEREAS, the Township, its Taxpayers and other public entities are forced to bear additional costs as a result of lead poisoning in Irvington; and

WHEREAS, the lead industry has failed to take reasonable, responsible steps which would have prevented lead poisoning in the Township and

WHEREAS, the Township has determined to take action by instituting suit against the lead industry; and

WHEREAS, the Township of Irvington wishes to retain the services of the Township of Irvington Lead Litigation Group which consists of Sheldon Bross, Esq., Giantomasi, Bross & Oliveira, Esqs., 292 Lafayette Street, Newark, New Jersey 07105, Ness, Motley, Loadholt, Richardson & Poole, P.C., 321 South Main Street, Suite 402, Providence, Rhode Island 02903, Jon L. Gelman, Esq., 1450 Valley Road, Wayne, New Jersey 07474, Michael P. Burakoff, P.A. 18 Bank Street, 4th Floor, Morristown, New Jersey 07960; and

WHEREAS, this contract is awarded without public bidding, as a professional service exception to the Local Public Contracts Law as set forth in N.J.S.A. 40A:11-5(1)(a)(i):

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that:

1. The Mayor and Township Clerk is hereby authorized to execute the attached contract with the Township of Irvington Lead Litigation Group which consists of the following law firms, on a contingency basis, as follows: Sheldon Bross, Esq., Giantomasi, Bross & Oliveira, Esqs., 292 Lafayette Street, Newark, New Jersey 07105, Ness, Motley, Loadholt, Richardson & Poole, P.C., 321 South Main Street, Suite 402, Providence, Rhode Island 02903, Jon L. Gelman, Esq., 1450 Valley Road, Wayne, New Jersey 07474, Michael P. Burakoff, P.A. 18 Bank Street, 4th Floor, Morristown, New Jersey 07960.
2. The Township of Irvington Lead Litigation Group will provide the Township Attorney with periodic status reports as to legal services provided and the Township Attorney shall so provide same to the Mayor and Township Council.
3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 40A:11-5(1)(a)(i).
4. Notice of this action shall be published in the appropriate newspaper, as required by law within ten (10) days of its passage.

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DEC 19 2001

JON L. GELMAN

11/19/01 11:44 9734558874 M. BURAKOFF PAGE 07
 Dec-19-01 10:52 From:FRANCIS GIANTOMASI PC +19738890197 7-784 P.05/08 F-047

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the Township and the LLG covenant and agree as follows:

1. SCOPE OF SERVICES: The Township of Irvington LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the Township regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

1. Investigating the Township's potential claims against lead manufacturers and/or providing legal representation to the Township in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the Township should be directed to this attorney.
2. The extent of the Corporation Counsel attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel legal assistants and support services may be used where feasible. The attorney and Township of Irvington LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize Township resources where available, consistent with the needs of the case.
3. The Township agrees to provide for the cooperation of all of its agencies with Township of Irvington LLG for the purpose of the investigation and/or prosecution of the Township's claim.

2. SERVICES.

COMPENSATION AND METHOD OF PAYMENT:

a. For and in consideration of the professional services to be rendered by the Township of Irvington LLG, the Township shall pay a contingent fee to Township of Irvington LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the Township of Irvington LLG in this matter. The Township hereby further agrees to pay to the Township of Irvington LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and

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DEC 19 2001

JON L. GELMAN

Dec-19-01 10:58 From:FRANCIS GIANTOMASI PC M. BURAKOFF +19735880197 Page 06 T-724 P.04/08 F-047

CONTRACT FOR LEGAL SERVICES
2001 BY

THIS AGREEMENT entered into this day of 2001 BY AND BETWEEN:

THE TOWNSHIP OF IRVINGTON, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at Municipal Building, Civic Square, Irvington, New Jersey 07111, (hereinafter referred to as the "TOWNSHIP")

and

TOWNSHIP OF IRVINGTON LEAD LITIGATION GROUP, which is comprised of the firms of:

Sheldon Bross, Esq.
Giantomasi, Bross & Oliveira, P.C.
292 Lafayette Street
Newark, N.J. 07105

Jon L Gelman, Esq.
1450 Valley Road
P.O. Box 934
Wayne, New Jersey 07474-0934

Nass, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

WITNESSETH THAT:

WHEREAS, the Township, desires to engage a committee of lawyers known as "Township of Irvington Lead Litigation Group" ("Township of Irvington LLG") to render certain professional services in connection with matters pertaining to any and all claims which the Township has, or may have, against E.I. DuPont, Gliscert Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (the "Claim").

WHEREAS, the Township of Irvington LLG desires to perform said services for the Township,

NOW THEREFORE,

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JON L. GELMAN

Dec-19-01 10:59 From-FRANCIS GIANTOMASI PC M. BURAKOFF +1973880187 T-784 P.06/06 F-047

expenses incurred by the Township of Irvington LLG in this matter in furtherance of this litigation. All remaining funds shall go to the Township after payment of all expenses and costs incurred by the Township of Irvington LLG in this matter.

b. In the event, and to the extent, that the Township is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the Township agrees to use its best efforts to ensure that the Township of Irvington LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.

c. It is further agreed by and between the Township and the Township of Irvington LLG that the Township of Irvington LLG shall pay all reasonable expenses related to the prosecution of this litigation. The Township of Irvington LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION

a. It is further agreed that neither the Township of Irvington LLG nor the Township may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.

b. The Township of Irvington LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the Township of Irvington LLG shall not result in any increase of fee to the Township.

4. JURISDICTIONAL LANGUAGE:

It is agreed by and between the Township and Township of Irvington LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

N WITNESS WHEREOF, the Township and the Lead Litigation Group have executed this Contract as of the date first herein written.

TOWNSHIP OF IRVINGTON TOWNSHIP OF IRVINGTON LEAD LITIGATION GROUP

By: _____ By: _____

RECEIVED DEC 19 2001 JON L. GELMAN

R-01-561

RESOLUTION

WHEREAS, lead poisoning has caused permanent and devastating health problems for the children of the Township of Hillside ; and

WHEREAS, the problems and costs which lead poisoning causes the citizens of the Township of Hillside are staggering; and

WHEREAS, the Township, its taxpayers, and other public entities are forced to bear additional costs as a result of lead poisoning in the Township of Hillside; and

WHEREAS, the lead industry failed to take reasonable, responsible steps which would have prevented lead poisoning in the Township of Hillside; and

WHEREAS, the Township of Hillside has decided to take action by instituting suit against the lead industry; and

WHEREAS, the Township of Hillside wishes to retain the legal services of the Township of Hillside Lead Litigation Group; and

WHEREAS, this contract is awarded without public bidding, as a professional service exception to the Local Public Contracts Law as set forth in N.J.S.A. 40A:11-5(1)(a)(i).

NOW, THEREFORE, BE RESOLVED BY THE MUNICIPAL COUNSEL OF THE TOWNSHIP OF HILLSIDE, NEW JERSEY, THAT:

1. The corporation counsel is hereby authorized to execute a contract with the following law firms on a contingency basis as follows:

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

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DEC 04 2001
JON L. GELMAN

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

2. The Corporation Counsel is authorized to execute the attached contract and it shall be the responsibility of the Corporation Counsel to provide the Mayor and Municipal Council with periodic status reports as to legal services provided as outlined in the attached Contract.

3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 40A:11-5(1)(a)(i).

4. A Notice of this action shall be published in the newspaper, as required by law within ten (10) days of its passage.

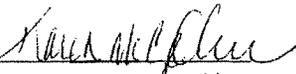
STATEMENT

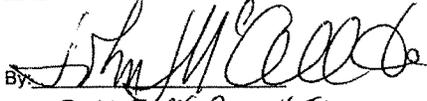
This Resolution authorizes a professional service contract between the Township of Hillside and the Township of Hillside Lead Litigation Group on a contingency fee basis.

Adopted: November 27, 2001

TOWNSHIP OF HILLSIDE

TOWNSHIP OF HILLSIDE
LEAD LITIGATION GROUP

By: 
Mayor Karen McCody Oliver

By: 
JOHN J. McCann, Jr.

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DEC 04 2001

JON L. BELMAN

AGREEMENT

This Agreement made and entered into this day of 2002 by and between the **COUNTY OF UNION**, a Body Politic of the State of New Jersey, having its principal place of business at the Union County Administration Building, Elizabethtown Plaza, Elizabeth, New Jersey, 07207 hereinafter referred to as **COUNTY** and the County of Union Lead Litigation Group which is comprised of the firms of:

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P.O. Box 934
Wayne, NJ 07575-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, NJ 07960

James J. Plaia, Esq.
10 South Prospect Street
Verona, NJ 07044

hereinafter referred to as **COUNSEL**.

WITNESSETH:

That the parties hereto agree as follows:

1. The **COUNTY** shall retain the services of the Union County Lead Litigation Group (LLG) to provide legal services representing the County of Union in connection with matters pertaining to any and all claims which the County has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation,

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JON L. GELMAN

American Cyanimid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers, pursuant to Resolution No. 1199-01 adopted on December 13, 2001 by the Union County Board of Chosen Freeholders.

2. In consideration of said **COUNSEL** furnishing the aforementioned services, **COUNTY** shall pay unto **COUNSEL** on a contingency basis, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation.

AFFIRMATIVE ACTION REGULATIONS

During the performance of the contract, the contractor agrees as follows:

a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Equal Employment Opportunity

Officer setting forth provisions of this non-discrimination clause.

b. The contractor or subcontractor, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

c. The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Agency Contracting Officer advising the labor union or workers representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented for time to time and the Americans with Disabilities Act.

e. The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 of the Regulations promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time.

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JON L. GELMAN

f. The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

g. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable federal laws and applicable federal court decisions.

h. The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading, and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status or sex, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable federal law and applicable federal court decisions.

i. The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purpose of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

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JON L. GELMAN

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

Annette Guzman
Clerk of the Board

COUNTY OF UNION

By *George Devanney*
GEORGE DEVANNEY
Union County Manager

APPROVED AS TO FORM:

Jeremiah D. O'Dwyer
JEREMIAH D. O'DWYER, ESQ.
Union County Counsel

WITNESS:

By *Jon L. Gelman* 5/16/02
JON L. GELMAN, ESQ.

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JON L. GELMAN

RECEIVED

MAY 16 2002

JON L. GELMAN

CITY COUNCIL OF EAST ORANGE

NOW, THEREFORE, BE RESOLVED BY THE CITY COUNSEL OF THE CITY OF EAST ORANGE, NEW JERSEY, that

1. The Mayor and City Clerk are hereby authorized and directed to execute a contract with the following law firms on a contingency basis (payment for professional services shall be made from a settlement or award and does not require the expenditure of municipal funds) as follows:

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Childress & Jackson, LLC
280 So. Harrison Street
East Orange, NJ 07018

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Giantomasi, Bross & Oliveira, P.C.
292 Lafayette Street
Newark, New Jersey 07105

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

2. It shall be the responsibility of the East Orange Lead Litigation Group to provide Corporation Counsel with periodic status reports as to legal services provided and progress reports as outlined in the attached Contract. Corporation Counsel may amend said contract where appropriate.

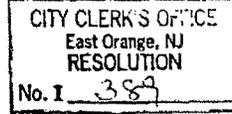
3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 49A:11-5(1)(a)(i).

4. A Notice of this action shall be published in the East Orange Record noting that the contract has been awarded without competitive bid as a professional service, and that the contract and the resolution authorizing it are available for public inspection in the Office of the City Clerk.

Council Member	AYE	NAY	N.V.	A.B	VETO
BROWN	X				
MUNFORD	X				
TURNER				X	
JOHNSON	X				
SMALL	X				

Council Member	AYE	NAY	N.V.	A.B	VETO
WILLIAMS	X				
SAUNDERS				X	
PATTERSON	X				
CLARK	X				
TALMADGE	X				

X - Indicates Vote A.B - Absent N.V. - Not Voting (Excused)



CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 27th day of December, 2001 BY AND BETWEEN:

THE CITY OF EAST ORANGE, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at 44 City Hall Plaza, East Orange, New Jersey 07019 (hereinafter referred to as the "CITY")

and

CITY OF EAST ORANGE LEAD LITIGATION GROUP, which is comprised of the firms of:

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

Childress & Jackson, LLC
280 So. Harrison Street
East Orange, NJ 07018

Giantomasi, Bross & Oliveira, P.C.
292 Lafayette Street
Newark, New Jersey 07105

WITNESSETH THAT:

WHEREAS, the City, desires to engage a committee of lawyers known as "City of East Orange Lead Litigation Group" ("LLG") to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers

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and/or each of their successors, assigns and insurers (the "Claim").

WHEREAS, the LLG desires to perform said services for the City,

NOW THEREFORE,

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the city and the LLG covenant and agree as follows:

1. SCOPE OF SERVICES: The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the City regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

1. Investigating the City's potential claims against lead manufacturers and/or providing legal representation to the City in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to supervise and monitor outside counsel. The Office of the Corporation Counsel may participate actively in the case, and will specify whether he or it will also appear as a counsel of record. The correspondence from outside counsel to the City shall be directed to the Office of Corporation Counsel.
2. The City agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the City's claim.
3. LLG shall provide to the Corporation Counsel quarterly reports as to the status of litigation.

2. SERVICES.

COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The City hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation specific to the

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City. All remaining funds shall go to the City after payment of all expenses and costs incurred by the LLG in this matter. The contingency fee will be governed by the New Jersey Court Rules.

- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION

- a. It is further agreed that LLG without the consent of the City, may not settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

4. JURISDICTIONAL LANGUAGE:

It is agreed by and between the City and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF, the City and the Lead Litigation Group have executed this Contract as of the date first herein written.

CITY OF EAST ORANGE

By: Robert L. Bowser
ROBERT L. BOWSER, MAYOR

Attested: Cynthia Brown
CYNTHIA BROWN, RMC/CMC
CITY CLERK

CITY OF EAST ORANGE LEAD LITIGATION GROUP

By: Michael P. Burakoff
Michael P. Burakoff, Esq.
18 Bank Street
Morristown, N.J. 07960

From previous Report (If any) Temporary & Part-Time Employees											
The data below shall NOT be included in the figures for the appropriate categories above.											
12. HOW WAS INFORMATION AS TO RACE OR ETHNIC GROUP IN SECTION B OBTAINED? <input type="checkbox"/> 1. Visual Survey <input type="checkbox"/> 2. Employment Record <input type="checkbox"/> 3. Other (Specify)											
13. DATES OF PAYROLL PERIOD USED FROM: _____ TO: _____											
14. IS THIS THE FIRST Employee Information Report Submitted? 1. YES <input type="checkbox"/> 2. NO <input type="checkbox"/>											
15. IF NO, DATE LAST REPORT SUBMITTED? MO: _____ DAY: _____ YEAR: _____											
SECTION C — SIGNATURE AND IDENTIFICATION											
16. NAME OF PERSON COMPLETING FORM (Print or Type)				SIGNATURE				TITLE		DATE	
17. ADDRESS NO. & STREET			CITY		COUNTY		STATE		ZIP CODE		
									PHONE (Area Code, No., Extension)		

WHITE - DIV OF CONTRACT COMPLIANCE; CANARY - DIV. OF CONTRACT COMPLIANCE DP; PINK - PUBLIC AGENCY; GOLD - VENDOR

II. Contractor's Qualifications

1. Contractor shall be licensed by the State of New Jersey to practice law and said licensure shall be in good stead at all times during the term of this contract.

2. Contractor shall, at contractor's own cost and expense, maintain professional liability and/or malpractice insurance in a minimum amount of \$1,000,000 and shall maintain same during the term of this contract.

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 JON L. GELMAN

B. COMPENSATION AND TIME OF PERFORMANCE

1. The Contractor does hereby agree to furnish the services of its partners, associates and staff, whenever necessary and to the best of their ability in such manner as to serve the best interests of the City and perform the aforementioned professional legal services consistent with the method of payment set forth in "Schedule A".

2. The obligation of the City to make payment to the Contractor shall be limited to the funds appropriated and made available as set forth above.

C. CONTRACTOR'S INDEPENDENT STATUS

1. It is expressly understood and agreed that the status of the Contractor and its employees, agents, and officers shall be that of an independent contractor retained on a contractual basis to provide professional legal services for the limited time frame set forth above and it is not intended, nor shall it be construed, that the contractor or any of its employees, officers and/or agents is/are (an) employee(s) or officer(s) of the City of Bayonna for any purpose whatsoever.

D. NON-DISCRIMINATION

In accordance with N.J.A.C. 17:27-1 et seq., during the performance of this contract, contractor agrees as follows:

a. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause.

b. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

c. The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or

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JON I. GELMAN

1. It is expressly agreed that this written agreement embodies the entire agreement of the parties in relation to the subject matter, and that no understandings or agreements, verbal or otherwise, in relation thereto, exists between the parties except as herein expressly set forth.

2. The contract documents shall include this signed agreement, together with the following:

	YES	NO	N/A
a. Schedule A	{X}	{ }	{ }
b. Addenda, if any	{ }	{ }	{X}
c. Request for Proposal	{ }	{ }	{X}
d. Specifications	{ }	{ }	{X}
e. General Conditions	{ }	{ }	{X}

F. MODIFICATIONS

No change or modification of this contract shall be valid unless it shall be in writing, approved by the Municipal Council and signed by all parties.

G. SEVERABILITY CLAUSE

If it should appear that any of the terms of this Agreement are in conflict with any rule of law or statutory provision of this State, then such terms shall be deemed inoperative and null and void insofar as they are in conflict with such rule of law or statutory provision, and shall be deemed modified to conform to such rule of law.

H. EXCULPATORY CLAUSE

It is mutually understood and agreed that none of the parties hereto shall be held responsible for damages caused by delay or failure to perform hereunder, when such delay or failure is due to fires, strikes, acts of God, legal acts of the public authorities which cannot be reasonably forecast or provided against.

I. VALIDITY GOVERNED BY LAW OF NEW JERSEY

This agreement shall be subject to the provisions of the charter and revised municipal code of the City of Bayonne. Additionally, the validity of this contract shall be governed by the Laws of the State of New Jersey and any legal action arising out of this contract shall be commenced in the courts of the State of New Jersey. Furthermore, all parties to this agreement consent to the jurisdiction of the Superior Court of New Jersey, County of Hudson.

J. NOTICES

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JON L GELMAN

All notices given by either party to the other shall be delivered, in writing, as follows:

To the City of Bayonne: **NANCY A. KIST**
DIRECTOR OF LAW
630 AVENUE C
BAYONNE, NJ 07002
201-858-6095

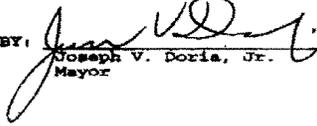
To the Contractor: **ROBERT M. LEVY, ESQ.**
SCARINCI & HOLLENBECK, LLC
500 FLAKA DRIVE
SECAUCUS, NJ 07096
201-392-8900

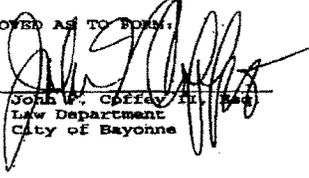
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JON L. GELMAN

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IN WITNESS WHEREOF, the Contractor has caused this agreement to be executed in its corporate name by its President, attested by its Secretary and its corporate seal to be hereunto affixed, the day and year first above written, and the City has caused this agreement to be executed in its corporate name by the Mayor, attested by the City Clerk, approved by the Law Department (as to form only), and its corporate seal to be hereunto affixed the day and year first above written.

Attest: _____ LEG
BY: _____ BY: _____

Attest: _____ CITY OF BAYONNE
BY:  Robert F. Sloan
City Clerk
BY:  Joseph V. Doris, Jr.
Mayor

APPROVED AS TO FORM:
BY:  John P. Coffey III, Esq.
Law Department
City of Bayonne

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JON L. GELMAN

SCHEDULE A

1. SCOPE OF SERVICES: The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the City regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

- a. Investigating the City's potential claims against lead manufacturers and/or providing legal representation to the City in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the City should be directed to this attorney.
- b. The extent of the Corporation Counsel attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize City resources where available, consistent with the needs of the case.
- c. The City agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the City's claim.

2. SERVICES.

COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The City hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the City after payment of all expenses and costs incurred by the LLG in this matter.

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JON I. GELMAN

- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION

- a. It is further agreed that neither the LLG nor the City may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fees to the City.

4. JURISDICTIONAL LANGUAGE:

It is agreed by and between the City and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF, the City and the Lead Litigation Group have executed this Contract as of the date first herein written.

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JUL 27 2001
JON J. GERMAN

MUNICIPAL COUNCIL OF THE CITY OF BAYONNE

RESOLUTION NO. 01-10-24- 097

WHEREAS, lead poisoning has caused permanent and devastating health problems for the children of the City of Bayonne; and

WHEREAS, the problems and costs which lead poisoning causes to the citizens of the City of Bayonne are staggering; and

WHEREAS, the city, its taxpayers and other public entities are forced to bear additional costs as a result of lead poisoning; and

WHEREAS, the lead industry failed to take reasonable, responsible steps which would have prevented lead poisoning in the City of Bayonne; and

WHEREAS, the City of Bayonne has decided to take action by investigating to determine if there is a lead paint problem in municipal buildings and if there is then instituting suit against the lead industry; and

WHEREAS, the City of Bayonne wishes to retain the legal services of Ness, Motley, Loadholt, Richardson & Poole, 321 South Main Street, Providence Rhode Island 02940, as special counsel to the City and to act as counsel for the Lead Litigation Group; and

WHEREAS, this contract is awarded without public bidding, as a professional service exception to the Local Public Contracts Law as set forth in N.J.S.A. 40A: 11-5 (1)(a)(f); now, therefore be it

RESOLVED, by the Municipal Council of the City of Bayonne, New Jersey that:

- 1. The Mayor and City Clerk are hereby authorized to execute a contract with Ness, Motley, Loadholt, Richardson & Poole, 321 South Main Street, Providence Rhode Island 02940, on a contingency basis to be compensated in accordance with the New Jersey Court Rules.
2. It shall be the responsibility of Special Counsel to provide the Mayor and Council with periodic status reports as to legal services provided.
3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 40A: 11-5(1)(a)(f).
4. A notice of this action shall be published in the newspaper as required by law within ten (10) days of its passage and a copy of the contract shall be kept in the office of the City Clerk.

JFC/cmg

City of Bayonne
MAYOR
JON S. GELMAN

Handwritten signature of Robert J. Slone

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 27th day of December, 2001 BY AND BETWEEN:

THE TOWNSHIP OF UNION, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at Municipal Building, Friberger Park, 1976 Morris Avenue, Union, New Jersey 07083 (hereinafter referred to as the "TOWNSHIP")

and

TOWNSHIP OF UNION LEAD LITIGATION GROUP, which is comprised of the firms of:

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

WITNESSETH THAT:

WHEREAS, the Township, desires to engage a committee of lawyers known as "Township of Union Lead Litigation Group" ("LLG") to render certain professional services in connection with matters pertaining to any and all claims which the Township has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (the "Claim").

WHEREAS, the LLG desires to perform said services for the Township,

NOW THEREFORE,

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the Township and the LLG covenant and agree as follows:

1. SCOPE OF SERVICES: The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the Township regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

1. investigating the Township's potential claims against lead manufacturers and/or providing legal representation to the Township in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the Township should be directed to this attorney.
2. The extent of the Corporation Counsel attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize Township resources where available, consistent with the needs of the case.
3. The Township agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the Township's claim.

2. SERVICES.

COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the Township shall pay a contingent fee to LLG out of

any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The Township hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the Township after payment of all expenses and costs incurred by the LLG in this matter.

- b. In the event, and to the extent, that the Township is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the Township agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. it is further agreed by and between the Township and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION

- a. it is further agreed that neither the LLG nor the Township may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the Township.

4. JURISDICTIONAL LANGUAGE:

It is agreed by and between the Township and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF, the Township and the Lead Litigation Group have executed this Contract as of the date first herein written.

TOWNSHIP OF UNION

By: Thomas S. Placia
TOWNSHIP ATTORNEY

TOWNSHIP OF UNION LEAD LITIGATION GROUP

By: Michael P. Burakoff
Michael P. Burakoff, Esq.
18 Bank Street
Morristown, N.J. 07960

Res: # 9022

CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 8th day of November, 2001, BY AND BETWEEN:

THE CITY OF PASSAIC, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at City Hall, 330 Passaic Street, Passaic, New Jersey 07055 (hereinafter referred to as the "City") and

CITY OF PASSAIC LEAD LITIGATION GROUP, Ness, Motley, Loadholt, Richardson & Poole, PC, 321 South Main Street, Suite 402, Providence, Rhode Island 02903; Jon L. Gelman, Esq., 1450 Valley Road, P. O. Box 934, Wayne, New Jersey 07474-0934 and Michael P. Burakoff, P.A., 18 Bank Street, 4th Floor, Morristown, New Jersey 07960.

WITNESSETH THAT:

WHEREAS, the City, desires to engage a committee of lawyers known as "City of Passaic Lead Litigation Group" ("LLG") to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (the "Claim").

WHEREAS, the LLG desires to perform said services for the City,

NOW, THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenants and agree as follows:

1. SCOPE OF SERVICES: The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

- a. Investigating the City's potential claims against lead manufacturers and/or providing legal representation to the City in a suit against the lead manufacturers, et als. The City Attorney's Office will designate an attorney from its office to be assigned this case. The City Attorney may participate actively in the case, along with the firm of Ness, Motley, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the City should be directed to the City Council and City Attorney.

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CITY OF PASSAIC

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- b. The extent of the City Attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. City Attorney's legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize City resources where available, consistent with the needs of the case.
- c. The City agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the City's claim.

2. **SERVICES.
COMPENSATION AND METHOD OF PAYMENT:**

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected for the City plus all costs and expenses incurred by the LLG in this matter. The City hereby further agrees to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, for the City, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the City after payment of all expenses and costs incurred by the LLG in this matter. LLG will use its best efforts to ensure that the City pays only its fair share of expert fees by spreading the costs of experts herein retained for the litigation, to the extent possible, among the other public entities that LLG is representing in other actions against the lead paint industry.
- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorneys' fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for

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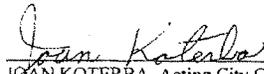
prosecution of this litigation. If the City does not prevail in its litigation, the City owes nothing to the LLG.

3. **TERMINATION:**

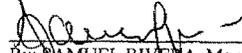
- a. It is further agreed that the LLG or City may not, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase fees to the City.

5. **JURISDICTIONAL LANGUAGE:** It is agreed by and between the City and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF, the City and the Lead Litigation Group have executed this Contract as of this date first herein written.


 JOAN KOTERBA, Acting City Clerk

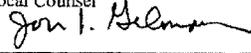
Dated: 12/11/01

THE CITY OF PASSAIC

 By: SAMUEL RIVERA, Mayor

CITY OF PASSAIC LEAD
 LITIGATION GROUP

 By: NESS, MOTLEY, LOADHOLT
 RICHARDSON & POOLE

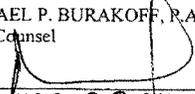
Dated: 12/5/01

JON L. GELMAN, ESQ.
 Local Counsel


Dated: 12/3/01

By: JON L. GELMAN
 MICHAEL P. BURAKOFF, P.A.
 Local Counsel

Dated: 12/3/01


 By: MICHAEL P. BURAKOFF, P.A.

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EXHIBIT A

P.L.1975.C.127 (N.J.A.C. 17:27)
MANDATORY AFFIRMATIVE ACTION LANGUAGE

PROCUREMENT, PROFESSIONAL AND SERVICES CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation.

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contract or subcontractor, where applicable, agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time and the Americans with Disabilities Act.

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The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal Law and applicable Federal Court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status or sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decision of the State of New Jersey, and applicable Federal Law and applicable Federal Court decision.

The contractor or subcontractor shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies, shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

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CITY OF PASSAIC

RESOLUTION NO. 9022-01

RESOLUTION AUTHORIZING PARTICIPATION
IN LEAD PAINT LITIGATION

WHEREAS, lead poisoning has caused permanent and devastating health problems for the children of the City of Passaic; and

WHEREAS, the problems and costs which lead poisoning causes to the citizens of the City of Passaic are staggering; and

WHEREAS, the City, its taxpayers, and other public entities are forced to bear additional costs as a result of lead poisoning; and

WHEREAS, the lead industry failed to take reasonable, responsible steps which would have prevented lead poisoning in the City of Passaic; and

WHEREAS, the City of Passaic has decided to take action by investigating to determine if there is a lead paint problem in municipal buildings and if there is then instituting suit against the lead industry; and

WHEREAS, the City of Passaic wishes to retain the legal services of Ness, Motley, Loadholt, Richardson & Poole as special counsel to the City and to act as counsel for the Lead Litigation Group; and

WHEREAS, this contract is awarded without public bidding, as a professional service exception to the Local Public Contracts Law as set forth in N.J.S.A. 40A:11-5(1)(a)(1).

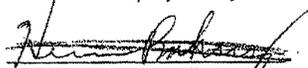
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PASSAIC, NEW JERSEY, THAT:

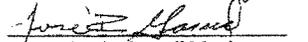
1. The Mayor and City Clerk are hereby authorized to execute a contract with Ness, Motley, Loadholt, Richardson & Poole on a contingency basis to be compensated in accordance with the contingency fee agreement set forth in the contract .
2. It shall be the responsibility of Special Counsel to provide the Mayor and Council with periodic status reports as to legal services provided.
3. This contract is awarded as a professional service contract pursuant to N.J.S.A. 40A:11-5(1)(a)(1).

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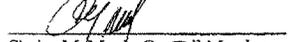
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JON L. GELMAN

4. A Notice of this action shall be published in the newspaper, as required by law within ten (10) days of its passage and a copy of the contract shall be kept by the City Clerk.


Herman Barkley, Council Member


Jose R. Garcia, Council Member

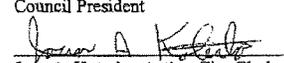

Marcellus T. Jackson, Council Member


Chairm M. Munk, Council Member


Gary S. Schaer, Council Member

Daniel J. Schwartz, Council Member


Gerardo Fernandez
Council President


Joan A. Koterba, Acting City Clerk

Dated: November 8, 2001

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CITY CLERK'S OFFICE
SAN ANTONIO

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DEC 20 2001
JON L. GELMAN

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CONTRACT FOR LEGAL SERVICES

THIS AGREEMENT, entered into this 8 day of August, 2008
BY AND BETWEEN:

THE BOROUGH OF ROSELLE, NEW JERSEY, a municipal corporation of the State of New Jersey with its principal place of business located at 210 Chestnut Street, Roselle, New Jersey 07203 (hereinafter referred to as the "BOROUGH"),

and

BOROUGH OF ROSELLE LEAD LITIGATION GROUP, which is comprised of the firms of

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street, Suite 402
Providence, Rhode Island 02903

Jon L. Gelman, Esq.
1450 Valley Road
P. O. Box 934
Wayne, New Jersey 07474-0934

Michael P. Burakoff, P.A.
18 Bank Street, 4th Floor
Morristown, New Jersey 07960

James J. Plaia, Esq.
10 South Prospect Street
Verona, New Jersey 07044

WITNESSETH THAT:

WHEREAS, the Borough, desires to engage a committee of lawyers known as "Borough of Roselle Lead Litigation Group" ("LLG") to render certain professional services in connection with matters pertaining to any and all claims which the Borough has, or may have, against E.I. DuPont, Glidden Corp., SCM Chemicals, Sherwin-Williams Co., The O'Brien Corporation, American Cyanimid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (the "Claim").

WHEREAS, the LLG desires to perform said services for the Borough,

NOW THEREFORE,

For the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the Borough and the LLG covenant and agree as follows:

1. **SCOPE OF SERVICES:** The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract:

Provide legal counsel and related legal services to the Borough regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include but not be limited to the following:

1. Investigating the Borough's potential claims against lead manufacturers and/or providing legal representation to the Borough in a suit against the lead manufacturers, et al. The Corporation Counsel's Office will designate an attorney from its office to be assigned this case. The Corporation Counsel attorney may participate actively in the case, and will specify whether he or she should appear as a counsel of record. The correspondence from outside counsel to the Borough should be directed to this attorney.
2. The extent of the Corporation Counsel attorney's involvement will vary. In some instances the attorneys will participate directly in pretrial and trial activities. Corporation Counsel legal assistants and support services may be used where feasible. The attorney and LLG should agree as early as possible on a division of efforts and then reassess that decision as the case unfolds. The goal should be to utilize Borough resources where available, consistent with the needs of the case.
3. The Borough agrees to provide for the cooperation of all of its agencies with LLG for the purpose of the investigation and/or prosecution of the Borough's claim.

2 **SERVICES.**

COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the Borough shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial 25% of the net amount of money collected plus all costs and expenses incurred by the LLG in this matter. The Borough hereby further agrees

to pay to the LLG, in the event of settlement or resolution after commencement of trial in this matter, 30% of the net amount of money collected, plus all costs and expenses incurred by the LLG in this matter in furtherance of this litigation. All remaining funds shall go to the Borough after payment of all expenses and costs incurred by the LLG in this matter.

- b. In the event, and to the extent, that the Borough is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the Borough agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the presiding court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the Borough and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.

3. TERMINATION

- a. It is further agreed that neither the LLG nor the Borough may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the Borough.

4. JURISDICTIONAL LANGUAGE:

It is agreed by and between the Borough and LLG that this retainer agreement and any dispute which may arise thereunder, shall be governed, controlled and interpreted using the laws of the State of New Jersey.

IN WITNESS WHEREOF, the Borough and the Lead Litigation Group have executed this Contract as of the date first herein written.

BOROUGH OF ROSELLE

By: *J. D. Mason*
Roselle Borough
attorney

BOROUGH OF ROSELLE LEAD LITIGATION GROUP

By: *[Signature]*
Michael P. Burakoff, Esq.
18 Bank Street
Morristown, N.J. 07960

ORIGINAL

ENGAGEMENT AND CONTINGENCY AGREEMENT

This AGREEMENT is made this ___ day of ___, 2001, in the City and County of San Francisco, State of California, by and between the City and County of San Francisco, the San Francisco Unified School District, and the San Francisco Housing Authority (hereinafter collectively referred to as "San Francisco") acting through San Francisco City Attorney Louise Renne, on the one hand, and the law firms of Thornton & Naumes, LLP and Ness, Motley, Loadholt, Richardson & Poole, and Wartnick, Chaber, Harowitz & Tigerman, on the other hand, retained for the purposes described herein as Special Assistant City Attorneys ("Special Attorneys").

Whereas, lead contamination is a significant public health problem, and manufacturers responsible for lead in paint have fraudulently concealed the dangers associated with lead and created a public and private nuisance in the City and County of San Francisco;

Whereas, the San Francisco City Attorney is in the process of initiating litigation ("the Litigation") against manufacturing companies responsible for lead in paint, and related entities, on behalf of the City and County of San Francisco, the San Francisco Unified School District, and the San Francisco Housing Authority, and on behalf of the People of the State of California, pursuant to her authority to protect the public under California Code of Civil Procedure section 731 and California Business and Professions Code section 17204;

Whereas, the Litigation and any other litigation involving lead and the manufacturers responsible for lead in paint is likely to entail numerous complex factual and legal issues;

Whereas, such Litigation will require the expenditure of substantial resources by any private attorneys retained to assist San Francisco; and

Whereas, the San Francisco City Attorney seeks to limit the expenditure of resources by San Francisco in such litigation;

NOW THEREFORE, the City and County of San Francisco, the San Francisco Unified School District, the San Francisco Housing Authority, and Special Attorneys AGREE AS FOLLOWS:

I. SCOPE OF SERVICES/CASE HANDLING

A. The Special Attorneys are retained to provide legal services to the San Francisco City Attorney for the purpose of seeking damages and injunctive and other relief, including restitution and disgorgement of profits but excluding any civil penalties, against lead and lead paint industry companies and related entities ("defendants") in the Litigation. The parties to this agreement acknowledge that the Special Attorneys may be retained to represent other government entities in similar litigation, including but not limited to in the Litigation.

B. The San Francisco City Attorney, as the chief legal officer of the City and County of San Francisco, who is charged with representing it in legal proceedings with respect to which it has an interest and who is authorized to bring certain actions on behalf of the People of the State of California, together with the county counsel and city attorneys of any other counties and cities that join in the prosecution of the Litigation and retain Special Attorneys ("the Prosecuting Entities"), retain final authority over all aspects of the Litigation.

C. As provided herein, the Special Attorneys are authorized to take appropriate legal steps to prosecute the Litigation as it pertains to liability, injunctive relief and restitution/disgorgement of profits and participate in any settlement negotiations. The San Francisco City Attorney shall designate a member or members of her staff to monitor, review and participate as counsel in the prosecution of all aspects of the Litigation and to prosecute the Litigation as it pertains to any civil penalties. The Special Attorneys shall consult in advance with, and obtain the prior approval of, the San Francisco City Attorney concerning all substantive matters related to the Litigation, including, but not limited to, the pleadings and dispositive motions, discovery, selection of consultants and experts, and whether the Special Attorneys may represent additional co-plaintiffs in the Litigation. Regular status meetings shall be held as requested by either the San Francisco City Attorney or the Special Attorneys.

D. The Special Attorneys shall provide the San Francisco City Attorney with copies of all pleadings, discovery requests and responses, and relevant correspondence related to the Litigation.

E. The Special Attorneys shall communicate with the departments and employees of San Francisco through the San Francisco City Attorney's Office, unless alternative arrangements are made in advance among the Special Attorneys, the San Francisco City Attorney and the department(s).

F. The Special Attorneys shall provide sufficient resources, including attorney time and capital for payment of expenses, to prosecute the Litigation faithfully and with due diligence. Legal services under this Agreement shall be performed only by competent personnel under the supervision and in the employment of Special Attorneys or retained by Special Attorneys as consultants with the prior approval of the San Francisco City Attorney.

G. The San Francisco City Attorney retains the right to add firms as additional Special Attorneys in this Litigation, with the consent of the existing Special Attorneys, which consent shall not unreasonably be withheld. Any such additional Special Attorneys will share in such compensation, if any, as is provided to Special Attorneys pursuant to Section II of this Agreement. In the event that the Special Attorneys are unable to agree on the terms under which the new firms shall share in the compensation under this Agreement, the San Francisco City Attorney shall decide and such decision shall be final and binding on all the Special Attorneys. In addition, the San Francisco City Attorney retains the right to add as many attorneys and firms as she chooses who agree to participate on a pro bono publico basis, without sharing in the percentages of any recovery provided in Section II.C., below, or seeking court-awarded fees payable from the recovery of damages or penalties, e.g., under a common fund theory. However, such pro bono counsel shall be eligible on the same basis as the Special Attorneys to recover their reasonable disbursements as provided under Section II.B. and Section II.C., below, and may seek court-awarded fees payable by defendants in addition to any recovery.

H. The San Francisco City Attorney may determine to appoint an Executive Committee to oversee the day-to-day conduct of the Litigation. The Executive Committee shall include: the San Francisco City Attorney or her designee, Neil T. Leifer, Esq. (or designee), John J. McConnell, Jr., Esq. (or designee), Harry F. Wartnick, Esq. (or designee); and any additional members that the San Francisco City Attorney designates.

I. The San Francisco City Attorney retains the right to designate lead counsel and lead trial counsel on behalf of San Francisco in the Litigation on the claims for injunctive relief and restitution/disgorgement of profits. The San Francisco City Attorney and any other City Attorneys and County Counsel who are authorized to seek civil penalties shall prosecute the Litigation as it pertains to any civil penalties.

J. The Special Attorneys shall submit quarterly reports to the San Francisco City Attorney's Office setting forth for the work performed and the expenses incurred in the Litigation in the proceeding quarter. Where disbursements are made or expenses are incurred by Special Attorneys which also benefit other clients of Special Attorneys in other, similar litigation, only the portion of such disbursements fairly and properly allocable to plaintiffs in the Litigation shall be claimed as reasonable expenses of prosecuting the Litigation.

K. Audit and Inspection: The Special Attorneys agree to maintain and make available to the San Francisco City Attorney accurate books and accounting records relative to their activities under this Agreement. The Special Attorneys will permit the San Francisco City Attorney to audit, examine and make excerpts and transcripts from such time and expense records, payrolls, records of personnel and other documents and data related to in whole or in part matters covered by this Agreement. The Special Attorneys shall maintain such data and records in an accessible location and condition for a period of no less than one (1) year after final payment under this Agreement.

II. CONTINGENT FEE AGREEMENT

A. The Special Attorneys agree to advance all out of pocket litigation costs approved by the Executive Committee and reasonably incurred by the City and County of San Francisco or Special Attorneys in the Litigation. Except as provided in the remaining paragraphs of this Section II (B, C, D, E, F and G), San Francisco is not liable to pay any of the expenses of the Litigation, whether such expenses are attorneys' fees, costs or other amounts, except for any costs or fees that may be awarded to defendants as prevailing parties. The repayment of any additional costs and other expenses is contingent upon a recovery being obtained. If no recovery is obtained, San Francisco will owe nothing for costs and other expenses.

B. The sole contingency upon which San Francisco shall pay compensation to the Special Attorneys is the recovery and collection by the Special Attorneys on behalf of San Francisco of moneys other than civil penalties in the Litigation, whether by settlement or judgment.

C. Compensation on the foregoing contingency shall be the Special Attorneys' reasonable disbursements in the Litigation, plus 17% of any recovery, excluding all civil penalties collected pursuant to California Business and Professions Code section 17206, collected by the Special Attorneys in this Litigation in excess of the reasonable disbursements of Special Attorneys, provided that if any additional entities become plaintiffs in this litigation represented by Special Attorneys, such percentages shall apply to the aggregate recoveries, exclusive of civil penalties, on behalf of all such plaintiffs. As used in this paragraph, the term "recovery" shall not include amounts awarded or ordered to be paid as attorneys' fees and costs. If the Special Attorneys recover moneys in the Litigation, but in an amount that does not exceed the disbursements in the Litigation, such moneys shall be used to reimburse disbursements. In no event shall Special Attorneys share in any recovery of civil penalties.

D. Notwithstanding paragraph II.C. above, San Francisco shall pay no higher percentage for compensation of the Special Attorneys than is paid by any other co-

plaintiff that the Special Attorneys represent in the Litigation or any other local government entity that the Special Attorneys represent on a contingent fee basis in similar litigation.

E. As used in this Agreement, the term "disbursements" shall include reasonable travel expenses and any other expenditures reasonably incurred in the Litigation. Reasonable costs do not include mark-ups above actual costs, meals not connected with travel or costs of transportation between Special Attorneys' residences and offices or disbursements for travel expenses and accommodations that exceed the usual and customary business rate charged in the locality where such expenses are incurred.

F. The Prosecuting Citics and Counties intend to seek an order for payment of their attorneys' fees and costs should they prevail, in whole or in part, in the Litigation. If any Court in the Litigation awards attorneys' fees, such fees shall be paid to the Special Attorneys to the extent that the award is based on services furnished by the Special Attorneys; provided that, to the extent that such fees come from the recovery, e.g., under a common fund theory, Special Attorneys shall not receive any greater payment than they are entitled to under Sections II.C. and II.D., above. However, any attorneys' fees that are awarded by the Court for Special Attorneys' services and collected in the Litigation shall be deducted from any fees payable to the Special Attorneys pursuant to this Section II, paragraphs B, C and D, above. If the Court awards expenses and costs in the Litigation, such amount shall be applied as directed in this Agreement. The San Francisco City Attorney and the Special Attorneys are aware that defendants in similar litigation have previously challenged and sought to invalidate contingency fee arrangements between public entities and outside counsel. The San Francisco City Attorney and the Special Attorneys believe that any such challenges to this Agreement lack merit and that this contingent fee arrangement is valid. However, in the event that this contingent fee arrangement is found to be invalid, the Special Attorneys agree to continue to represent San Francisco and advance expenses with the understanding that Special Attorneys will be paid only such attorneys' fees and expenses as are awarded for their services by the Court or recovered as reasonable fees and expenses for their services. San Francisco agrees to use its best efforts to support any application for such fees and expenses made pursuant to this paragraph.

G. In the event that the Litigation is resolved by settlement under terms involving the provision of goods, services or any other "in-kind" payment, the San Francisco City Attorney agrees to seek, as part of any such settlement, a mutually agreeable monetary settlement of attorneys fees and expenses. The San Francisco City Attorney agrees to consult with the Special Attorneys prior to making a recommendation to the Board of Supervisors or other public agencies regarding settlement or dismissal of legal proceedings.

H. Special Attorneys agree to use their best efforts together with San Francisco to recover Special Attorneys' fees from defendants rather than from any of San Francisco's recovery. Should any nationwide resolution of lead litigation, which includes this Litigation, provide for a fund to compensate plaintiffs' counsel, such as Special Attorneys, for the services rendered on behalf of San Francisco and that furthered the overall litigation efforts against the leads industry, in addition to using their best efforts to recover fees from the defendants, Special Attorneys also agree to use their best efforts to obtain their attorneys fees from that fund rather than from San Francisco's recovery. San Francisco agrees to use its best efforts to support Special Attorneys' application for fees from any such fund. Any attorneys' fees that are recovered by Special Attorneys from such a fund for services provided by Special Attorneys to San Francisco shall be deducted from any fees payable to the Special Attorneys pursuant

to Section II paragraph B, C and D of this Agreement.

III. GENERAL REQUIREMENTS

A. The Special Attorneys shall attach to this Agreement a copy of the resumes of Neil T. Leifer, John J. McConnell, Jr., Harry F. Wartnick, and all other key personnel assigned by the Special Attorneys to handle the Litigation. The Special Attorneys shall replace or remove key personnel only upon the prior approval of the San Francisco City Attorney.

B. San Francisco acknowledges that by this Agreement, Special Attorneys are retained as attorneys and that neither Special Attorneys nor their members or employees thereby become officers or employees of San Francisco. Special Attorneys shall be deemed at all times to be independent contractors and shall be wholly responsible for the manner in which they perform the services required of them by the terms of this Agreement. Special Attorneys shall be liable for any act or acts of their own, or their agents or employees, and nothing contained herein shall be construed as creating the relationship of employer and employee between San Francisco and Special Attorneys or their agents and employees.

C. Assignment: This Agreement may not be assigned by the Special Attorneys. The Special Attorneys are expressly employed because of their unique skills, ability and experience and therefore it is understood that no substitution or assignment may be made unless the San Francisco City Attorney expressly approves such substitution or assignment.

D. The Special Attorneys are prohibited from subcontracting this Agreement or services unless such subcontracting is agreed to in writing by the San Francisco City Attorney. No party on the basis of this Agreement shall in any way contract on behalf of or in the name of the other party of this Agreement. Any violation of this provision shall confer no right on any party and shall be void.

E. Insurance: Special Attorneys will maintain in force, during the full term of this Agreement, insurance in the following amounts and coverage:

Workers' Compensation, with Employers' Liability limits not less than one million dollars (\$1,000,000) each accident.

Commercial General Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence. Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

Business Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

Professional Liability Insurance with limits not less than one million dollars (\$1,000,000) each claim with respect to negligent acts, errors or omissions, and any deductible not to exceed two hundred fifty thousand dollars (\$250,000) each claim. The Special Attorneys certify that the services that the Special Attorneys will be performing in connection with the Litigation are covered by their firm's Professional Liability Insurance.

F. Commercial General Liability and Business Automobile Liability Insurance policies shall be endorsed to provide the following:

Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

G. ALL POLICIES SHALL BE ENDORSED TO PROVIDE:

Thirty (30) days advance written notice to the City and County of San Francisco of cancellation, non-renewal or reduction in coverage.

H. Certificates of insurance, satisfactory to the City and County of San Francisco, evidencing all coverages above shall be furnished to the City and County of San Francisco, with complete copies of policies upon the City and County of San Francisco's request.

I. Approval of the insurance by the City and County of San Francisco shall not relieve or decrease the liability of the Special Attorneys.

J. Indemnity: The Special Attorneys shall take full responsibility for their work and shall bear all losses and damages directly resulting from it if the result of professional malpractice. The Special Attorneys shall assume the defense of, indemnify and hold harmless San Francisco and its officers, representatives, agents and employees from all claims, loss, damage, injury, and liability of every kind, nature and description caused by the willful and intentional misconduct or negligence of the Special Attorneys. Such negligence shall include, but not be limited to, any negligence of the Special Attorneys in connection with acts, errors or omissions by the Special Attorneys' agents, employees or subcontractors arising out of performance under, or any action taken in furtherance of, this Agreement. Nothing in this paragraph shall limit any right or remedy otherwise available to San Francisco under law. It is understood and agreed that the indemnification provided above shall not apply to the extent of any negligence of San Francisco and its officers, representatives, agents and employees.

K. Liability of San Francisco: San Francisco's obligations under this contract shall be limited to the payment of the compensation provided for in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall San Francisco be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

L. During the term of this Agreement, the Special Attorneys shall promptly provide a statement describing any criminal investigation relating to, or material litigation asserted against, the Special Attorneys' firm or members of the firm.

M. Each California Special Attorney firm shall certify in writing, under penalty of perjury, that the firm has fully complied with the laws of the California and the City and County of San Francisco, if applicable, relating to payment of taxes.

N. The Special Attorneys shall list and describe any litigation or representation ever undertaken by their firm or its members on behalf of any member of the lead industry.

O. Conflicts of Interest: The Special Attorneys shall avoid conflicts of interest and shall comply with all applicable professional conduct standards. The Special Attorneys shall not represent a party involved in a claim, dispute or transaction of any kind which would create a conflict of interest for counsel or the San Francisco City Attorney unless and until the Special Attorneys have informed the San Francisco City Attorney of the proposed representation and received her written approval to proceed. Special Attorneys state that they are familiar with provisions of Section 87100 et seq. of the Government Code of the State of California, and certify that they do not know of any facts which constitute a violation of those sections.

P. Termination:

1. Without Cause: The San Francisco City Attorney may terminate this Agreement as to any Special Attorneys, without cause and without penalty, by providing the Special Attorneys with written notice of termination delivered to it at least fourteen (14) calendar days before the effective date of termination.

2. For Cause: If any Special Attorneys breach any material term or condition of this Agreement, or fails to perform or fulfill any material obligation required by this Agreement, then the San Francisco City Attorney may give notice to the Special Attorneys of her intent to terminate or suspend those Special Attorneys by providing at least seven (7) calendar days written notice of an intent to terminate or suspend. If the Special Attorneys do not substantially cure or correct such breach or failure to perform or fulfill any material obligation within seven (7) calendar days after receipt of such written notice from the San Francisco City Attorney, or within such longer period as the San Francisco City Attorney might prescribe in writing, then the San Francisco City Attorney may thereafter terminate the Special Attorneys or suspend the Special Attorneys. In any event, the San Francisco City Attorney reserves the right to terminate immediately any Special Attorneys who are (a) disbarred or suspended in any jurisdiction, (b) indicted by a grand jury, or (c) convicted of a felony.

3. Consequences of Termination: If any Special Attorneys are terminated for cause, such Special Attorneys shall not be entitled to share in any contingency fee under this Agreement, but shall be entitled to be reimbursed for reasonable out-of-pocket costs that they incurred, but only if and to the extent and at the time such amounts would otherwise be payable pursuant to Section II, above. If any Special Attorneys are terminated for reasons other than "cause", such Special Attorneys shall be entitled (1) to be reimbursed for reasonable out-of-pocket costs that they incurred, but only if and to the extent and at the time such amounts would otherwise be payable pursuant to Section II, above, and (2) to be paid such compensation as might be payable to them in accordance with this Agreement and any fee sharing arrangement among them and any additional Special Attorneys, but only if, and to the extent and at the time, compensation is payable to the Special Attorneys from any recovery in the Litigation pursuant to Section II of this Agreement.

Q. Confidentiality: The Special Attorneys understand and agree that, in the performance of this Agreement, the Special Attorneys may have access to private or confidential information, including confidential patient medical information and confidential governmental information, which may be owned or controlled by San Francisco or any officer or employee thereof and that such information may contain proprietary or confidential details, whose disclosure to third parties may be damaging to

San Francisco or prohibited by law. The Special Attorneys agree that such information shall be held in confidence and used only in performance of the Agreement and shall not to be furnished to others by Special Attorneys except as authorized by the San Francisco City Attorney or as required by law.

R. Notice to the Parties: All notices and copies of documents to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

TO THE CITY ATTORNEY:

LOUISE H. RENNE
City Attorney
City and County of San Francisco
1 Carlton B. Goodlett Place, Ste. 234
San Francisco, CA 94102

TO SPECIAL ATTORNEYS:

Thornton & Naumes, LLP
100 Summer Street, 30th Floor
Boston, Massachusetts 02110
Attention: Neil T. Leifer

Ness, Motley, Loadholt, Richardson,
& Poole
P.O. Box 6067
321 South Main Street
Providence, Rhode Island 02940-6067
Attention: John J. McConnell, Jr.,

Wartnick, Chaber, Harowitz &
Tigerman
101 California Street, Suite 2200
San Francisco, CA 94111-5802
Attention: Harry F. Wartnick

S. Forum and Choice of Law: Any actions arising out of this Agreement shall be governed by the laws of California, and shall be brought and maintained in San Francisco Superior Court, which shall have exclusive jurisdiction thereof.

T. If any provision of the Agreement is found to be illegal, unenforceable, or void, then the parties shall be relieved of all obligations under that provision, provided, however, that the remainder of the Agreement shall be enforced to the fullest extent permitted by law. The headings used herein are for reference and convenience only and shall not be a factor in the interpretation of this Litigation.

U. This Agreement may not be modified, nor may compliance with its terms be waived, except by written instrument executed and approved by the San Francisco City Attorney or his/her designee and by authorized representatives of all parties to be bound or affected thereby.

V. Entire Agreement: This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

IN WITNESS WHEREOF, the San Francisco City Attorney and the Special Attorneys have executed this Agreement on the day and year first written above.

Dated: _____, 2001 City and County of San Francisco.

LOUISE H. RENNE
City Attorney

Dated: _____, 2001 San Francisco Unified School District.

Dated: _____, 2001 San Francisco Housing Authority

SPECIAL ATTORNEYS:

Dated: _____, 2001

Neil T. Leifer, Esq.
Individually and on behalf of
Thornton & Naumes, LLP

Dated: _____, 2001

John J. McConnell, Jr., Esq.
Individually and on behalf of
Ness, Motley, Loadholt, Richardson,
& Poole, LLP

Dated: _____, 2001

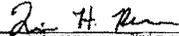
Harry F. Wartnick, Esq.
Individually and on behalf of
Wartnick, Chaber, Harowitz &
Tigerman

V. Entire Agreement: This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

IN WITNESS WHEREOF, the San Francisco City Attorney and the Special Attorneys have executed this Agreement on the day and year first written above.

Dated: 3/27/01, 2001

City and County of San Francisco.



LOUISE H. RENNE
City Attorney

Dated: _____, 2001

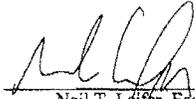
San Francisco Unified School District.

Dated: _____, 2001

San Francisco Housing Authority

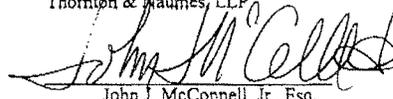
SPECIAL ATTORNEYS:

Dated: 01/22, 2001



Neil T. Leifer, Esq.
Individually and on behalf of
Thornton & Matines, LLP

Dated: 2/01/, 2001



John J. McConnell, Jr., Esq.
Individually and on behalf of
Ness, Motley, Loadholt, Richardson,
& Poole, LLP

Dated: _____, 2001

Harry F. Wartnick, Esq.
Individually and on behalf of
Wartnick, Chaber, Harowitz &
Tigerman

V. Entire Agreement: This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

IN WITNESS WHEREOF, the San Francisco City Attorney and the Special Attorneys have executed this Agreement on the day and year first written above.

Dated: _____, 2001 City and County of San Francisco.

LOUISE H. RENNE
City Attorney

Dated: _____, 2001 San Francisco Unified School District.

Dated: _____, 2001 San Francisco Housing Authority

SPECIAL ATTORNEYS:

Dated: 01/22, 2001

Neil T. Leifer, Esq.
Individually and on behalf of
Thornton & Naumes, LLP

Dated: _____, 2001

John J. McConnell, Jr., Esq.
Individually and on behalf of
Ness, Motley, Loadholt, Richardson,
& Poole, LLP

Dated: _____, 2001

Harry F. Wartnick, Esq.
Individually and on behalf of
Wartnick, Chaber, Harowitz &
Tigerman

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this 30th day of March 2007, as
ORDINANCES 0-28-07 & 0-35-07
 authorized by Athens City Council Resolution _____ and by and between the City of
 Athens ("City"), and The City of Athens Lead Litigation Group, which is comprised
 of the following attorneys and law firms:

Andrew S. Lipton, Esq.
 Lipton Law LLC
 316 North Michigan St., Ste. 800
 Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
 Motley Rice, LLC
 321 South Main St.
 P.O. Box 6067
 Providence, RI 02940-6067

Jon L. Gelman, Esq.
 1450 Valley Road, 1st Floor
 P.O. Box 934
 Wayne, NJ 07474-0934

John P. Kennedy, Esq.
 George R. McCue III, Esq.
 Crabbe, Brown & James
 500 S. Front St., Ste. 1200
 Columbus, Ohio 43215

Steven A. Davis, Esq.
 Crabbe, Brown & James
 111 S. Broad St., Ste. 209
 Lancaster, OH 43130

Michael J. O'Shea, Esq.
 O'Shea & Associates Co., LPA
 55 Public Sq. Ste. 1600
 Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be
 known as the City of Athens Litigation Group ("LLG"), to render certain professional

services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC(successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Athens (the "Claims").

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The City Director of Law will designate an attorney from his office to monitor the case and be a liaison between the LLG, the City Law Director's Office and City departments and offices. The City agrees to cooperate with LLG for the purpose of investigation and/or prosecution of the City's claim. Motley Rice LLC is designated as lead counsel on behalf of the LLG and Andrew S. Lipton of Lipton Law, LLC will be the liaison between the LLG and the City Law Director's Office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information consists of public records under Ohio Law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the

amount of compensation, which may be mutually agreed upon by the City and the LLG shall be effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Andrew S. Lipton, Lipton Law, LLC, 316 North Michigan Avenue, Suite 800, Toledo, OH 43604, and notice to the City shall be provided to the Law Director, 8 East Washington Street, Athens, Ohio 45701.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. All remaining funds shall go the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. If there is no settlement or verdict in favor of the City, the city shall not be responsible for payment of any costs or expenses advanced by the

LLG.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by the Athens City Code.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Athens or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City of Athens any such Athens City income tax resulting from work performed in the City of Athens pursuant to this contract as may be required by the Athens City Code.

K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio and such disputes shall be brought in the Athens County Court of Common Pleas.

L. The LLG agrees to indemnify and hold harmless the City of Athens from

any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLG in pursuit of claims against the lead pigment defendants. This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this 27th day of March, 2007.

City of Athens Litigation Group

CITY OF ATHENS, OHIO

Andrew S. Lipton, Esq.


GARRY E. HUNTER
Athens Director of Law

John P. Kennedy, Esq.

Steven A. Davis, Esq.


John J. McConnell, Jr., Esq.

Jon L. Gelman, Esq.

Michael J. O'Shea, Esq.

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this _____ day of _____ 2006, as authorized by Canton City Council Resolution 100, and by and between the City Attorney, City of Canton ("City"), and The City of Canton Lead Litigation Group, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

John P. Kennedy, Esq.
George R. McCue III, Esq.
Crabbe, Brown & James
500 S. Front St., Ste. 1200
Columbus, Ohio 43215

Samuel J. Ferruccio, Jr., LPA
220 Market Ave. South, Ste. 400
Canton, OH 44702-2181

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq, Ste. 1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of Canton Litigation Group ("LLG"), to render certain professional

services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC(successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Canton (the "Claims"). The Harrison Paint Co. of Canton, Ohio will not be named as a defendant by the City or the LLG.

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

I. SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The City Law Director will designate an attorney from his office to monitor the case and be a liaison between the LLG, the City Law Director's Office and City departments and offices. The City agrees to cooperate with any reasonable request of the LLG for the purpose of investigation and/or prosecution of the City's claim. Motley Rice LLC is

designated as lead counsel on behalf of the LLG and Andrew S. Lipton of Lipton Law, LLC will be the liaison between the LLG and the Law Director's Office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information or records independently consist of or exist as public records according to Ohio law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the City and the LLG shall be effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E.. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Andrew S. Lipton, Lipton Law, LLC, 316 North Michigan Avenue, Suite 800, Toledo, OH 43604, and notice to the City shall be provided to the Law Director, Canton City Hall-7th Floor, 218 Cleveland Avenue S.W., Canton, Ohio 44702.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. All remaining funds shall go the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the

City's behalf. The City shall not be responsible for any costs or expenses should there be no settlement or successful verdict in its favor. The City shall have final settlement authority, which it shall exercise in good faith.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best legal efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred and documented by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by Chapter 507 of the Codified Ordinances of the City of Canton.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Canton or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City of Canton any such Canton City income tax resulting from work performed in the City of Canton pursuant to this contract as may be required by Chapter 181 of the Codified Ordinances of the City of Canton.

K. The LLG agrees to indemnify and hold harmless the City of Canton from any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLG in pursuit of claims against the lead pigment defendants.

This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

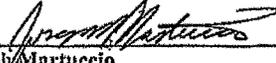
L. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio and such disputes shall be brought in the Stark County Court of Common Pleas.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this 22 day of December, 2006.

City of Canton Litigation Group

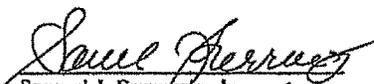
CITY OF CANTON, OHIO

Andrew S. Lipton, Esq.

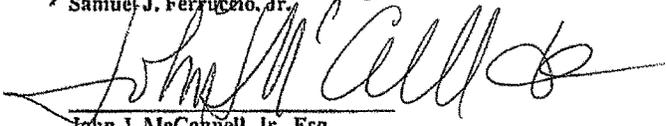


Joseph Martuccio
Canton Law Director

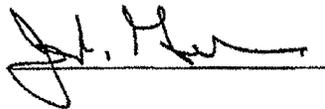
John P. Kennedy, Esq.



Samuel J. Ferruccio, Jr.



John J. McConnell, Jr., Esq.



CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this _____ day of _____ 2007, as authorized by Massillon City Council Resolution 1-7000 and by and between the City of Massillon ("City"), and The City of Massillon Lead Litigation Group, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

John P. Kennedy, Esq.
George R. McCus III, Esq.
Crabbe, Brown & James
500 S. Front St., Ste.1200
Columbus, Ohio 43215

Samuel J. Ferruccio, Jr., LPA
220 Market Ave. South, Ste. 400
Canton, OH 44702-2181

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste.1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of Massillon Litigation Group ("LLG"), to render certain professional

services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC(successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Massillon (the "Claims").

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

I. SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The City Director of Law will designate an attorney from his office to monitor the case and be a liaison between the LLG, the City Law Director's Office and City departments and offices. The City agrees to cooperate with LLG for the purpose of investigation and/or prosecution of the City's claim. Motley Rice LLC is designated as lead counsel on behalf of the LLG and Andrew S. Lipton of Lipton Law, LLC will be the liaison between the LLG and the City Law Director's Office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information consists of public records under Ohio Law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the City and the LLG shall be

effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Andrew S. Lipton, Lipton Law, LLC, 316 North Michigan Avenue, Suite 800, Toledo, OH 43604, and notice to the City shall be provided to the Law Director, Municipal Government Center, Upper Level, One James Duncan Plaza, S.E., Massillon, OH 44646.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. All remaining funds shall go the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. If there is no settlement or verdict in favor of the City, the city shall not be responsible for payment of any costs or expenses advanced by the LLG.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by the Massillon City Code.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Massillon or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City of Massillon any such Massillon City income tax resulting from work performed in the City of Massillon pursuant to this contract as may be required by Chapter 181, Massillon City Code.

K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio and such disputes shall be brought in the Stark County Court of Common Pleas.

L. The LLG agrees to indemnify and hold harmless the City of Massillon from any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLG in pursuit of claims against the Lead pigment defendants.

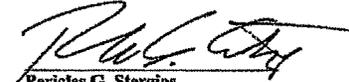
This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this _____ day of _____, 2007.

City of Massillon Litigation Group

CITY OF MASSILLON, OHIO

Andrew S. Lipton, Esq.


Pericles G. Storgios
Massillon Director of Law

John P. Kennedy, Esq.

Samuel J. Ferruccio, Jr.


John J. McCoppell, Jr., Esq.

Jon L. Gelman, Esq.

Michael J. O'Shea, Esq.

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this 17 day of MAY 2007, is to clarify and to be substituted for the previous contract dated on or about September 22nd 2006 entered into as authorized by Columbus City Council Ordinance 1304-2006, and by and between the City Attorney, City of Columbus ("City"), and The City of Columbus Lead Litigation Group ("LLG").

Whereas, the City desires to engage these attorneys and law firms, to be known as the City of Columbus Litigation Group ("LLG"), to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC (successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Columbus (the "Claims").

Whereas, the LLG has extensive knowledge, experience and expertise in the areas of law necessary to render such services; and

Whereas, the LLG desires to perform said services for the City; and

Whereas, the LLG, by reason of training, knowledge, reputation and experience, particularly in providing expert legal services concerning matters regarding environmental law and well field protection, is uniquely qualified to provide such professional, noncompetitive service to the City;

Now Therefore, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

i. Scope of Services

The LLG agrees to perform and carry out in a manner satisfactory to the City Attorney the following services:

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing

legal representation to the City in a suit against the Lead Manufacturers as requested by the City Attorney. This shall include advice, assistance, administrative hearings, litigation, negotiation of any agreements or settlements or other activities as requested by the City Attorney or his designees relating to the Claims, including the defense of any claim or complaint brought by the Lead Manufacturers as requested by the City Attorney or his/her designees.

The LLG's services will be coordinated with the City Attorney.

The LLG hereby agrees that the City Attorney retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City of Columbus. Motley Rice LLC is designated as lead counsel on behalf of the LLG and will be the liaison between the LLG and the City Attorney's Office.

II. Terms

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by the Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City Attorney and the City. The LLG may hire expert witnesses or other law firms, with the City's consent to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of this services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the city and the LLG shall be effective or enforceable until a written amendment to this contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing at the Toledo, Ohio law office of Andrew S. Litpon, and notice to the City shall be provided to the City Attorney, 90 West Broad Street, Columbus, Ohio 43215.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the net amount of money collected from the settlement. The net amount will be determined by subtracting from each sum of settlement money collected any reasonable litigation expenses and court costs paid by the LLG for on the City's behalf for which the City shall reimburse the LLG from the settlement funds. All remaining funds shall go to the City. In the event this matter goes to trial against any Lead Manufacturer, the then LLG shall be entitled to a contingent fee of 33 1/3% of the net amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgement) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out herein above for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and its incorporated herein required by Section 3909.01, Columbus City Code.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Columbus or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

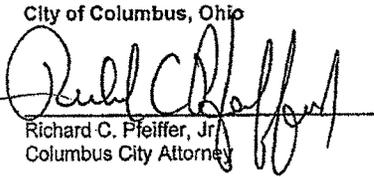
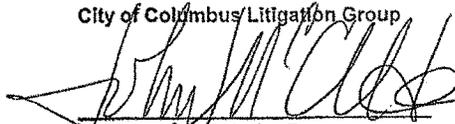
J. The LLG agrees to pay the City of Columbus any such Columbus City income tax resulting from work performed in the City of Columbus pursuant to this contract as may be required by Chapter 361, Columbus City Code.

K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio and such disputes shall be brought in the Franklin County Court of Common Pleas.

In Witness Whereof, the parties hereto hereby set their hands this 17th day of MAY, 2007.

City of Columbus Litigation Group

City of Columbus, Ohio

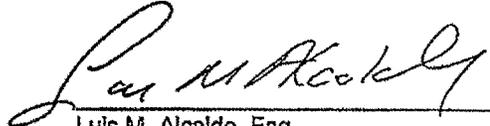


John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main Street
P.O. Box 6067
Providence, RI 02940-6067

Richard C. Pfeiffer, Jr.
Columbus City Attorney



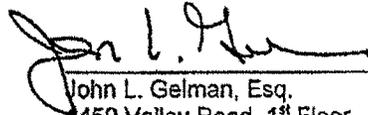
John P. Kennedy, Esq.
Crabbe, Brown & James LLP
500 S. Front Street, Ste. 1200
Columbus, Ohio 43215



Luis M. Alcalde, Esq.
Crabbe, Brown & James LLP
500 S. Front Street, Ste. 1200
Columbus, Ohio 43215

George E. Gerken, Esq.
Gerken Law Office
412 14th Street
Toledo, Ohio 43624

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan Street, Ste. 800
Toledo, Ohio 43624



John L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Square, Ste. 1600
Cleveland, Ohio 44113

2007-JUL-02 16:58 FROM:

T-605 P.002/007 F-188

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this 20 day of July 2007, by and between the City of East Cleveland ("City"), and The City of East Cleveland Lead Litigation Group, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

John F. Kennedy, Esq.
George R. McCue III, Esq.
Crabbe, Brown & James
500 S. Front St., Ste. 1200
Columbus, Ohio 43215

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq, Ste. 1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of East Cleveland Lead Litigation Group ("LLG"), to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC (successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid

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Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Youngstown (the "Claims").

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

I SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The LLG's services will be coordinated with the City's law director, who shall retain control over the litigation, with the LLG working under the direction and discretion of the City.

The LLG hereby agrees that the City's law director retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City.

2007-JUL-02 18:58 FROM-

T-005 P.004/007 F-566

The City's law director will designate an attorney from that office to monitor the case and be a liaison between the LLG, the City's law director's Office and City departments and offices. The City agrees to cooperate with LLG for the purpose of investigation and/or prosecution of the City's claim. Motley Rice LLC is designated as lead counsel on behalf of the LLG and Michael J. O'Shea, Esq. will be the liaison between the LLG and the City's law director's office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information consists of public records under Ohio Law.

2007-JUL-02 17:00 FROM-

T-005 P.005/007 F-500

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the City and the LLG shall be effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Michael J. O'Shea, 55 Public Square, Suite 1600, Cleveland, Ohio 44113, and notice to the City shall be provided to the City's law director, 14340 Euclid Avenue, East Cleveland, Ohio 44112.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. All remaining funds shall go the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be

PAGE 04/05

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2007-JUL-02 17:00 FROM:

T-805 P.006/007 F-568

entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. If there is no settlement or verdict in favor of the City, the city shall not be responsible for payment of any costs or expenses advanced by the LLG.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by the City's municipal code.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City any such city income tax resulting from work performed in the City pursuant to this contract as may be required by the City's municipal code.

K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted

2007-JUL-02 17:00 FROM-

T-808 P.007/007 F-568

using the laws of the State of Ohio and such disputes shall be brought in the Cuyahoga County Court of Common Pleas.

L. The LLG agrees to indemnify and hold harmless the City from any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLG in pursuit of claims against the lead pigment defendants. This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this 2 day of July, 2007.

City of East Cleveland Litigation Group

CITY OF EAST CLEVELAND

ASL ml
Andrew S. Lipton, Esq.

[Signature]
Mayor Eric J. Brewer

TPK ml
John P. Kennedy, Esq.

JJM ml
John J. McConnell, Jr., Esq.

SLG ml
Jon L. Gelman, Esq.

[Signature]
Michael J. O'Shea, Esq.

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this 26th day of June 2007, as authorized by Lancaster City Council Resolution 86-07 and by and between the **City of Lancaster** ("City"), and **The City of Lancaster's Lead Litigation Group**, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

John P. Kennedy, Esq.
George R. McCue III, Esq.
Crabbe, Brown & James
500 S. Front St., Ste.1200
Columbus, Ohio 43215

Steven A. Davis, Esq.
Crabbe, Brown & James
111 S. Broad St., Ste. 209
Lancaster, OH 43130

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste.1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of Lancaster Litigation Group ("LLG"), to render certain professional

services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings LLC(successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Lancaster (the "Claims").

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

I. SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The LLG's services will be coordinated with the City Attorney, who shall retain control over the litigation, with the LLG working under the direction and discretion of the City.

The LLG hereby agrees that the City Attorney retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City of Athens.

The City Director of Law will designate an attorney from his office to monitor the case and be a liaison between the LLG, the City Law Director's Office and City departments and offices. The City agrees to cooperate with LLG for the purpose of investigation and/or prosecution of the City's claim. Motley Rice LLC is designated as lead counsel on behalf of the LLG and Andrew S. Lipton of Lipton Law, LLC will be the liaison between the LLG and the City Law Director's Office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or

organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information consists of public records under Ohio Law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the City and the LLG shall be effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E.. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Andrew S. Lipton, Lipton Law, LLC, 316 North Michigan Avenue, Suite 800, Toledo, OH 43604, and notice to the City shall be provided to the Law Director, 123 East Chestnut Street, PO Box 1008, Lancaster, Ohio 43130.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and

court costs paid by the LLG on the City's behalf. All remaining funds shall go the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. If there is no settlement or verdict in favor of the City, the city shall not be responsible for payment of any costs or expenses advanced by the LLG.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by the Lancaster City Code.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Athens or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City of Lancaster any such Lancaster City income tax resulting from work performed in the City of Lancaster pursuant to this contract as may be required by the Lancaster City Code.

K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio and such disputes shall be brought in the Fairfield County Court of Common Pleas.

L. The LLG agrees to indemnify and hold harmless the City of Lancaster from any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLG in pursuit of claims against the lead pigment defendants. This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this 26th day of June, 2007.

City of Lancaster Litigation Group

CITY OF Lancaster, OHIO

<p><u>Andrew S. Lipton</u> by <u>Levi Mehl</u> Andrew S. Lipton, Esq.</p> <p><u>John P. Kennedy</u> by <u>Levi Mehl</u> John P. Kennedy, Esq.</p> <p><u>Steven A. Davis</u> by <u>Levi Mehl</u> Steven A. Davis, Esq.</p>	<p><u>Terre Vandervoort</u> Terre Vandervoort Lancaster Director of Law</p>
---	---

John J. McConnell by *Sam Merrill*
John J. McConnell, Jr., Esq.

Jon L. Gelman by *Sam Merrill*
Jon L. Gelman, Esq.

Michael J. O'Shea by *Sam Merrill*
Michael J. O'Shea, Esq.

REVISED CONTRACT FOR PROFESSIONAL SERVICES

This revised Contract, being entered into this 25 day of June 2007, revises and replaces the prior contract between the parties which was entered into on June 26, 2006, by and between the **City of Toledo** ("City"), by its **Law Director, John Madigan, Esq.**, and **The City of Toledo Lead Litigation Group**, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

George E. Gerken, Esq.
Gerken Law Office
412 14th St.
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste. 1600
Cleveland, OH 44113

WHEREAS, the City desires to engage a committee of lawyers known as the "City of Toledo Lead Litigation Group (LLG)" to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont de Nemours, Glidden Corp., SCM Chemicals, Sherwin-Williams Co.,

The O'Brien Corporation, American Cyanamid Co., N.L. Industries, ARCO, The Lead Industries Association, ConAgra Grocery Products Company and/or other lead manufacturers, distributors, marketers, retailer and/or each of their successors, assigns and insurers relating to the presence of and effects from lead in paint in the City of Toledo (the "Claim").

WHEREAS, the LLG desires to perform said services for the City.

NOW THEREFORE,

For the reason set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

1. **SCOPE OF SERVICES:** The LLG shall perform the following tasks and services in accordance with the objectives and assignments as determined under this Contract: Provide legal counsel and related legal services to the City regarding the institution of a suit against the lead manufacturers, et al. Such legal counsel and related services will include, but not be limited to the following:
 - a. Investigating the City's potential claims against lead manufacturers, et al. and providing legal representation to the City in a suit against the lead manufacturers, et al. The City's Law Director will designate an attorney from his office to monitor the case and be a liaison between the LLG and the City's Law Department and other City departments and offices. The City Attorney shall retain control over the litigation, with the LLG working under the direction and discretion of the City.
 - b. The City agrees to provide for the cooperation of all of its departments, offices, employees and agents with LLG for the purpose of the investigation and/or prosecution of the City's claim.
 - c. The LLG hereby agrees that the City Attorney retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City of Toledo.

2. COMPENSATION AND METHOD OF PAYMENT:

- a. For and in consideration of the professional services to be rendered by the LLG, the City shall pay a contingent fee to LLG out of any settlement made in this matter prior to commencement of trial in the amount of 25% of the net amount of money collected, plus all reasonable costs and expenses incurred by the LLG on the City's behalf in this matter in furtherance of this litigation. All remaining funds shall go to the City. In the event this matter goes to trial, then the LLG shall be entitled to a contingent fee of 33 1/3% of the net amount of money collected, plus all reasonable costs and expenses incurred by the LLG on the City's behalf in this matter in furtherance of this litigation. All remaining funds shall go to the City.
- b. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the defendants or through an award of fees from the court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief.
- c. It is further agreed by and between the City and the LLG that the LLG shall pay all reasonable expenses related to the prosecution of this litigation. The LLG shall keep records of expenses it pays for prosecution of this litigation.
- d. It is expressly understood that this the City's obligation under this agreement is subject to necessary approvals by Toledo City Council.

3. MISCELLANEOUS:

- a. It is further agreed that neither the LLG nor the City may, without the consent of the other, settle, compromise, release, discontinue or otherwise dispose of the Claim or suit mentioned above.
- b. The LLG may hire expert witnesses or other law firms to assist in the prosecution of this litigation if it deems necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

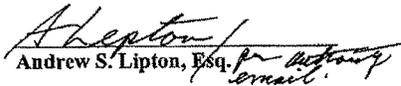
4. JURISDICTIONAL LANGUAGE:

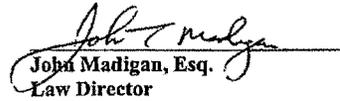
- a. It is agreed by and between the City and the LLG that this retainer agreement and any dispute that may arise hereunder, shall be governed, controlled and interpreted using the laws of the State of Ohio.

IN WITNESS WHEREOF, the City and the Lead Litigation Group have executed this Contract as of the date first herein written.

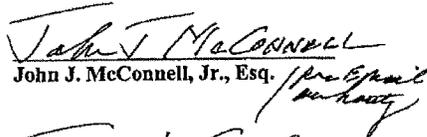
City of Toledo Litigation Group

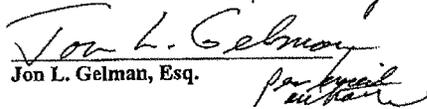
CITY OF TOLEDO, OHIO

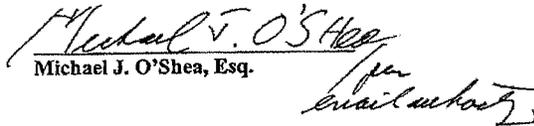

Andrew S. Lipton, Esq. *per testimony on email*


John Madigan, Esq.
Law Director


George E. Gerken, Esq.


John J. McConnell, Jr., Esq. *per email on transcript*


Jon L. Gelman, Esq. *per email on transcript*


Michael J. O'Shea, Esq. *per email on transcript*

CONTRACT FOR PROFESSIONAL SERVICES

This Contract, entered into this _____ day of _____ 2007, as authorized by Youngstown City Council Resolution _____ and by and between the **City of Youngstown** ("City"), and **The City of Youngstown Lead Litigation Group**, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

John P. Kennedy, Esq.
George R. McCue III, Esq.
Crabbe, Brown & James
500 S. Front St., Ste.1200
Columbus, Ohio 43215

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste.1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of Youngstown Litigation Group ("LLG"), to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against E.I. DuPont, Glidden Corp., Millennium Holdings

LLC(successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Youngstown (the "Claims").

WHEREAS, the LLG desires to perform said service for the City.

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG covenant and agree as follows:

I. SCOPE OF SERVICES

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers.

The LLG's services will be coordinated with the City Attorney, who shall retain control over the litigation, with the LLG working under the direction and discretion of the City.

The LLG hereby agrees that the City Attorney retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City of Athens.

The City Director of Law will designate an attorney from his office to monitor the case and be a liaison between the LLG, the City Law Director's Office and City departments and offices. The City agrees to cooperate with LLG for the purpose of investigation and/or prosecution of the City's claim. Motley Rice LLC is designated as lead counsel on behalf of the LLG and Andrew S. Lipton of Lipton Law, LLC will be the liaison between the LLG and the City Law Director's Office.

II. TERMS

A. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law, unless the information consists of public records under Ohio Law.

C. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

D. The City may, from time to time, request changes in the scope of services to be performed by the LLG. No such change, including an increase or decrease in the amount of compensation, which may be mutually agreed upon by the City and the LLG shall be effective or enforceable until a written amendment to this Contract has been executed by both parties and such modification has been authorized by ordinance, if required.

E.. If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least fifteen (15) days after the date such notice is provided. Such notice should be provided to the LLG in writing to Andrew S. Lipton, Lipton Law, LLC, 316 North Michigan Avenue, Suite 800, Toledo, OH 43604, and notice to the City shall be provided to the Law Director, 4th Floor, City Hall, 26 South Phelps Street, Youngstown, Ohio 44503.

F. The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will then be reimbursed for any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. All remaining funds shall go the City. In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be

entitled to a contingent fee of 33 1/3% of the gross amount of money collected and reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf. If there is no settlement or verdict in favor of the City, the city shall not be responsible for payment of any costs or expenses advanced by the LLG.

G. In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

H. The LLG agrees to follow and be bound by all provisions and terms of the Equal Opportunity Clause, which is made a part hereof, and is incorporated herein as required by the Youngstown City Code.

I. The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Youngstown or its various departments, where such representation is in direct conflict with the services being rendered hereunder.

J. The LLG agrees to pay the City of Youngstown any such Youngstown City income tax resulting from work performed in the City of Youngstown pursuant to this contract as may be required by the Youngstown City Code.

K. It is further agreed by and between the City and the LLG that this Contract and any dispute that may arise hereunder, shall be governed, controlled and interpreted

using the laws of the State of Ohio and such disputes shall be brought in the Mahoning County Court of Common Pleas.

L. The LLG agrees to indemnify and hold harmless the City of Youngstown from any and all liability, damages, expenses and attorney fees that may arise or result from the services performed by the LLG in pursuit of claims against the lead pigment defendants. This obligation to indemnify and hold harmless includes but is not limited to Rule 11 sanctions for frivolous conduct ordered by any court of law.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this _____ day of _____, 2007.

City of Youngstown Litigation Group

CITY OF YOUNGSTOWN

Andrew S. Lipton
Andrew S. Lipton, Esq.

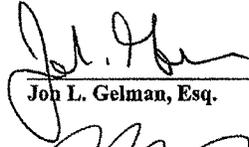
Iris Gugliucello
Iris Gugliucello
Youngstown Director of Law

John P. Kennedy
John P. Kennedy, Esq.

APPROVED: 7/5/07
DATE
CITY OF YOUNGSTOWN
BOARD OF CONTROL:

John J. McConnell, Jr.
John J. McConnell, Jr., Esq.

Iris J. Gugliucello
MAYOR
[Signature]
LAW DIRECTOR
[Signature]
FINANCE DIRECTOR


Jon L. Gelman, Esq.


Michael J. O'Shea, Esq.

Suspend & Passes MAYOR JAY WILLIAMS

Sub G. Inducible
DEPARTMENT OF LAW R.S-07 75

MOVED TO FILED	<input type="checkbox"/>
MOVED TO SDRD	<input type="checkbox"/>
COMMITTEE	<input type="checkbox"/>
SUSPEND	<input checked="" type="checkbox"/>

A RESOLUTION

**RATIFYING THE YOUNGSTOWN LAW DIRECTOR'S
FILING OF A NUISANCE SUIT AGAINST
LEAD PAINT MANUFACTURERS
AND APPROVING HER ENGAGEMENT OF OUTSIDE COUNSEL**

* * *

- WHEREAS,** The City of Youngstown has expended and continues to expend substantial funds on abatement and removal of lead paint in buildings within the City of Youngstown; and
- WHEREAS,** Lead Paint Companies have been found responsible for the creation of nuisances and liable for these costs by courts in other states; and
- WHEREAS,** There are several law suits pending in Ohio Courts brought by other municipalities against lead paint manufactures; and
- WHEREAS,** Challenged legislation proposed by the Ohio Senate would prohibit the filing of such suits after March 2007; and
- WHEREAS,** Expeditious action was necessary to meet the filing deadline; and
- WHEREAS,** The City Law Director's office does not have the time expertise, staff or resources necessary to prosecute such an action on the City's behalf and a law firm with such expertise was available to represent the City under a contingent fee agreement; and
- WHEREAS,** The terms of the contingent fee agreement allows the City Law Director to retain control of the litigation and exercise direction and discretion over the work of outside counsel.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF YOUNGSTOWN, STATE OF OHIO:

21

SECTION 1

That the Youngstown Law Director, is authorized to pursue a nuisance action against lead paint manufactures for costs incurred by the City in lead abatement and removal; that the Law Director is authorized to enter into a contingent fee agreement to retain outside counsel to represent the City in such lawsuit; and that City Council ratifies any prior action by the City Law Director in furtherance of these objectives.

SECTION 2

That the Clerk of Council is hereby instructed to forward a copy of this resolution to individuals as designated by Council.

PASSED IN COUNCIL THIS 16th DAY OF May 2007.

Charles P. Jammare
PRESIDENT OF COUNCIL

ATTEST:
Faith C. O'neill
CITY CLERK

APPROVED: THIS 18th DAY OF May, 2007.

[Signature]
MAYOR

75 X 0011

CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into by and between the City of Cincinnati, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 ("City"), and Cincinnati Lead Litigation Group, which is comprised of the following attorneys and law firms:

Andrew S. Lipton, Esq.
Lipton Law LLC
316 North Michigan St., Ste. 800
Toledo, Ohio 43624

John P. Kennedy, Esq.
Crabbe, Brown & James
500 S. Front St., Ste. 1200
Columbus, Ohio 43215

John J. McConnell, Jr., Esq.
Motley Rice, LLC
321 South Main St.
P.O. Box 6067
Providence, RI 02940-6067

Jon L. Gelman, Esq.
1450 Valley Road, 1st Floor
P.O. Box 934
Wayne, NJ 07474-0934

Michael J. O'Shea, Esq.
O'Shea & Associates Co., LPA
55 Public Sq. Ste. 1600
Cleveland, OH 44113

WHEREAS, the City desires to engage these attorneys and law firms, to be known as the City of Cincinnati Lead Litigation Group ("LLG"), to render certain professional services in connection with matters pertaining to any and all claims which the City has, or may have, against any or all of the following entities: E.I. DuPont, Glidden Corp., Millennium Holdings LLC (successor to The Glidden Company), Sherwin-Williams Co., American Cyanamid Co., N.L. Industries, Atlantic Richfield Company (successor to International Smelting and Refining Company and Anaconda Lead Products Company), The Lead Industries Association, and/or

other lead manufacturers, distributors, marketers, retailers and/or each of their successors, assigns and insurers (collectively "Lead Manufacturers") relating to the presence of and effects from lead in paint in the City of Cincinnati (the "Claims"); and

WHEREAS, the LLG has extensive knowledge, experience and expertise in the areas of law necessary to render such services; and

WHEREAS, the LLG desires to perform said services for the City; and

WHEREAS, the LLG, by reason of training, knowledge, reputation and experience, particularly in providing expert legal services concerning matters regarding environmental law and well field protection, is uniquely qualified to provide such professional, noncompetitive service to the City;

NOW THEREFORE, for the reasons set forth above and in consideration of the mutual covenants and promises of the parties hereto, the City and the LLG mutually agree as follows:

I. SCOPE OF SERVICES

The LLG agrees to perform and carry out in a manner satisfactory to the City Solicitor the following services:

The City engages the LLG to perform legal and professional services, in accordance with reasonably accepted professional standards for attorneys, in matters related to the investigation of the City's potential Claims against the Lead Manufacturers and providing legal representation to the City in a suit against the Lead Manufacturers, as requested by the City Solicitor. This shall include advice, assistance, administrative hearings, litigation, negotiation of any agreements or settlements or other activities as requested by the City Solicitor or her designees relating to the Claims, including the defense of any claim or complaint brought by the Lead Manufacturers as requested by the City Solicitor or her designees.

The LLG's services will be coordinated with the City Solicitor. Motley Rice LLC is designated as lead counsel on behalf of the LLG and Andrew S. Lipton, Esq. Of Lipton Law, LLC will be the liason between the LLG and the City Solicitor's Office.

The LLG hereby agrees that the City Solicitor retains the sole authority to authorize any settlement of any claim or complaint made or defended on behalf of the City of Cincinnati.

II. COMPENSATION AND METHOD OF PAYMENT

The LLG shall advance and pay all reasonable litigation expenses and court costs related to the prosecution of this litigation. The LLG shall keep records of litigation expenses and court costs it pays for prosecution of this litigation. The City shall pay, a contingent fee to LLG out of any settlement amount made in this matter prior to commencement of trial in the amount of 25% of the gross amount of money collected from the settlement. The LLG will also be reimbursed for any reasonable litigation expenses and court costs paid by the LLG on the City's behalf out of any settlement fund created through the litigation. All remaining funds shall go to the City.

In the event this matter goes to trial against any Lead Manufacturer, then the LLG shall be entitled to a contingent fee of 33 1/3% of the gross amount of money collected plus reimbursement of any reasonable litigation expenses and court costs paid by the LLG on the City's behalf out of any fund created through the litigation.

In no event shall the City be responsible for any litigation expenses or court costs paid by the LLG if the City does not prevail by way of settlement or trial.

In the event, and to the extent, that the City is afforded an opportunity (either by way of settlement or judgment) to resolve the claim for any non-monetary relief, then the City agrees to use its best efforts to ensure that the LLG receives, either directly from the Lead Manufacturers or through an award of attorney fees from the Court, an appropriate attorney's fee which is consistent

with the percentage fees set out hereinabove for the monetary portion of any relief or based upon reasonable time and rates incurred by the LLG.

III. GUIDE FOR OUTSIDE LEGAL COUNSEL

The LLG acknowledges that its representation of the City shall be in accordance with the terms of the City of Cincinnati Guide for Outside Legal Counsel, attached hereto and incorporated herein by reference. Any charges billed to the City, which fall outside the permissible charges outlined in the Guidelines, will be deducted from the bill and will not be paid. To the extent there are any inconsistencies between this Agreement and the Guide for Outside Legal Counsel, the terms of this Agreement shall apply.

IV. TERM

The term of this Agreement shall commence on ~~December~~ 2006, and shall continue through: (1) a resolution of the Claims in a satisfactory to the City Solicitor; or (2) until this Agreement is otherwise terminated, or amended, in accordance with the terms herein.

V. EQUAL EMPLOYMENT OPPORTUNITY

This Agreement is subject to the provisions of the Equal Employment Opportunity Program of the City of Cincinnati contained in Chapter 325 of the Cincinnati Municipal Code. Section 325-9 of the Cincinnati Municipal Code is hereby incorporated by reference into this Agreement. The LLG agrees to comply with the provisions of Section 325-9.

VI. SMALL BUSINESS ENTERPRISE PROGRAM

This Agreement is subject to the provisions of the Small Business Enterprise Program contained in Chapter 323 of the Cincinnati Municipal Code. Section 323-99 of the Cincinnati Municipal Code is hereby incorporated by reference into this Agreement.

Details concerning this program can be obtained from the Office of Contract Compliance, Two Centennial Plaza, 805 Central Avenue, Suite 700, Cincinnati, Ohio 45202, (513) 352-3144.

The LLG shall utilize best efforts to recruit and maximize the participation of all qualified segments of the business community in subcontracting work, including the utilization of small business enterprises, which includes small business firms owned by minorities and women. Best efforts includes the use of practices such as assuring the inclusion of qualified Small Business Enterprises in bid solicitation and dividing large contracts into smaller contracts when economically feasible.

VII. SUBCONTRACTING

None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written contract and shall be made expressly subject to each provision of this Agreement.

VIII. COMPLIANCE WITH LAWS AND POLICIES

In the performance of services under this Agreement, the Law Firm shall comply with all applicable statutes, ordinances, regulations and rules of the Federal Government, the State of Ohio, the County of Hamilton and the City of Cincinnati. The LLG shall also comply with the City of Cincinnati Law Department's Guide to Outside Legal Counsel. To the extent there are any inconsistencies between this Agreement and the Guide for Outside Legal Counsel, the terms of the Guide for Outside Counsel shall apply.

IX. CONFLICT OF INTEREST

The LLG shall be precluded, by virtue of its legal representation hereunder, from representing other clients in connection with other matters involving the City of Cincinnati or its

various departments, where such representation is in direct conflict with the services being rendered hereunder.

No officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning and administration of the services hereunder, nor any immediate family member, close business associate, or organization which is about to employ any such person, shall have any personal financial interest, direct or indirect, in any law firms which are part of the LLG or in this Agreement and the law firms that are part of the LLG shall take appropriate steps to assure compliance.

X. REPORTS, INFORMATION AND AUDITS

The LLG, at such times and in such form as the City may require, shall furnish the City such reports as may be requested pertaining to the work or services undertaken pursuant to this Agreement, and any other matters covered by this Agreement. The LLG shall retain all financial and administrative records applicable to this Agreement and the work performed thereunder for a period of three (3) years after the expiration or termination of this Agreement, and shall permit the City or any of its representatives or auditors access to such records.

XI. TERMINATION

If, for any reason or cause, either the City or the LLG shall fail to fulfill its obligations under this Contract, then either party shall have the right to terminate the Contract upon giving written notice to the other party specifying a termination date that shall be at least thirty (30) days after the date such notice is provided.

XII. INDEPENDENT CONTRACTOR

The LLG shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the City. The LLG shall have the exclusive right to control the details of the services and work performed hereunder and all

persons performing the same and the LLG shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing herein shall be construed as creating a partnership or joint venture between the City and the LLG. No person performing any of the work or services described hereunder shall be entitled to any benefits available or granted to employees of the City.

XIII. ADDITIONAL TERMS

A. Personnel and Support Services. The LLG represents that it has, or will secure at its own expense, all necessary support staff at its law firms that may be necessary and required to perform all work to be completed under this Contract. All of the services required under this Contract will be directly performed by the LLG or by such personnel at its law firms that are acting under the LLG's direct supervision and control. All personnel engaged in work under this Contract shall be fully qualified and authorized or permitted under applicable state and local law to perform such services. None of the LLG's services covered by this Contract shall be transferred, assigned, or subcontracted by the LLG without the prior written consent of the City. The LLG may hire expert witnesses or other law firms, with the City's consent, to assist in the prosecution of this litigation if the LLG deems it necessary. The retention of other law firms to assist the LLG shall not result in any increase of fee to the City.

B. Confidentiality. All reports, information, data, or other documents given to, prepared by, or assembled by the LLG under this contract shall be deemed as attorney-client communications and shall be kept confidential and not made available to any individual or organization by the LLG without the prior approval of the City, nor be subject to any public records law.

C. Ownership of Property. All reports, working documents, and other documents, whether finished or unfinished, that are prepared by the LLG as part of the services pursuant to this Contract shall become the City's property.

XVII. ENTIRETY

This Agreement and the Exhibits attached hereto contain the entire Agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

XVIII. SEVERABILITY

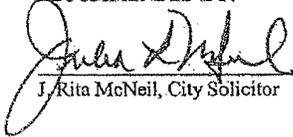
This Agreement shall be severable, if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

XIX. FORUM SELECTION

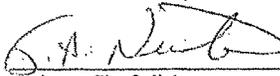
The LLG and its successors and assigns acknowledge and agree that all state courts of record sitting in Hamilton County, Ohio, shall be the exclusive forum for the filing, initiation, and prosecution of any suit or proceeding arising from or out of, or relating to, this Agreement, or any amendment of attachment thereto, including any duty owed by the LLG to the City in connection therewith.

IN WITNESS WHEREOF, the parties hereto hereby set their hands this _____ day of _____, 2007.

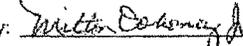
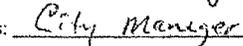
RECOMMENDED BY:


Rita McNeil, City Solicitor

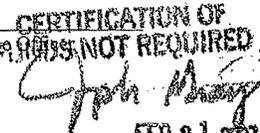
APPROVED AS TO FORM:


Assistant City Solicitor

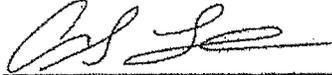
CITY OF CINCINNATI:

By: 
Its: 

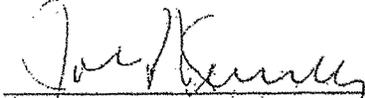
APPROVED BY CONTRACT COMPLIANCE:

Contract Compliance 
**CERTIFICATION OF
COMPLIANCE NOT REQUIRED**
FEB 21 2007

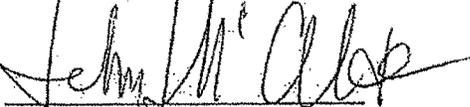
CITY OF CINCINNATI LEAD LITIGATION GROUP:


Andrew S. Lipton, Esq.
Law Firm Tax ID Number: 20-3166179

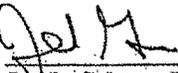
1-22-07
Date


John P. Kennedy, Esq.
Law Firm Tax ID Number: 31-0787394

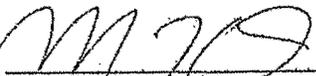
1-24-07
Date


John J. McConnell, Jr., Esq.
Law Firm Tax ID Number: 75-3851732

2-5-07
Date


Jon L. Gelman, Esq.
Law Firm Tax ID Number: 22-2254684

JAN 09 2007
Date


Michael J. O'Shea, Esq.
Law Firm Tax ID Number: 34-1745676

2/9/07
Date

Firmdocs/CB&J/Cincinnati Lead Contract 12-19-2006

RETAINER AGREEMENT

This Retainer Agreement is entered into by and between the New York City Housing Authority (“NYCHA” or “Client”) and The City of New York acting through the New York City Law Department (“Law Department”) and the law firms of Ness, Motley, Loadholt, Richardson & Poole, P.C., Thornton & Naumes, LLP and Wilentz, Goldman & Spitzer, P.C. (hereinafter, collectively “Outside Counsel”) for the purpose of setting forth the terms of engagement of Outside Counsel to represent NYCHA in the legal matters set forth below.

1. Outside Counsel agree to serve as attorneys for NYCHA in a pending civil action known as NYCHA v. Lead Industries Association, et al., Index No. 14365/89 (“the Civil Action”). The Law Department shall remain as attorney of record in the Civil Action. Unless otherwise specified herein, Outside Counsel shall have the primary responsibility to perform and provide all reasonable and necessary professional services to prepare and try the Civil Action for NYCHA. The Law Department and NYCHA shall be responsible to prosecute and defend any appeals, although Outside Counsel shall cooperate with respect to any such appeals. The Law Department agrees that it shall have the primary responsibility to respond to all fact discovery requests served upon NYCHA in the Civil Action relating to NYCHA. In order to fulfill this responsibility, the Law Department shall provide adequate legal staff, including attorneys, paralegals and secretaries and provide reasonable access to office space and use of copiers for Civil Action documents in NYCHA’s or the Law Department’s possession. NYCHA shall make its employees and, to the extent feasible, former NYCHA employees, reasonably available to Outside Counsel as Outside Counsel determine that their assistance, including participation as trial witnesses, is necessary for the effective prosecution of the case.

2. In consideration of the professional services to be provided by Outside Counsel, NYCHA hereby assigns to Outside Counsel as a contingency fee THIRTY PER CENT (30%) of any recovery obtained by way of verdict, judgment, settlement or otherwise from or due to the pendency of the Civil Action. However, if the Civil Action is retried and Outside Counsel do not agree to serve as attorneys for NYCHA in the retrial of the Civil Action, then the Law Department agrees to act as trial counsel in the retrial and Outside Counsel's right to a contingency fee shall be limited to quantum meruit, which in no event shall be greater than fifteen per cent (15%) of the recovery obtained in the Civil Action. NYCHA also agrees that in the event a recovery is obtained in the Civil Action, it will reimburse Outside Counsel from NYCHA's recovery for any unreimbursed litigation expenses and personal or travel and lodging expenses advanced by them.

3. As further consideration for the professional services to be undertaken by Outside Counsel, Outside Counsel shall have in their sole discretion the right to pursue against any or all of the defendants in the Civil Action or against any other lead paint or lead pigment manufacturer not a party to the Civil Action any contribution or indemnity claim available to NYCHA, arising from any verdict or judgment that NYCHA has paid as of the date of this Retainer Agreement ("**Post-Verdict Claims**"), in any lead poisoning claim brought against NYCHA. Within ninety (90) days after the date of this Retainer Agreement, NYCHA shall provide to Outside Counsel sufficient information about each potential contribution or indemnity Post-Verdict Claim so that Outside Counsel may determine whether to elect to pursue the claims or any number of them for NYCHA. Additionally, NYCHA, in its sole discretion, may ask Outside Counsel to pursue against any or all of the defendants in the Civil Action any contribution or indemnity claim available to NYCHA, arising from any pre-verdict settlement that NYCHA has paid as of the

date of this Retainer Agreement (“**Pre-Verdict Claims**”), in any lead poisoning claim brought against NYCHA. Outside Counsel shall notify NYCHA which, if any, of the potential contribution or indemnity Post or Pre-Verdict Claims they agree to pursue for NYCHA. If Outside Counsel elect to pursue one or more of such claims, NYCHA hereby assigns to Outside Counsel TWENTY FIVE PER CENT (25%) of any recovery obtained by way of verdict, judgment, settlement or otherwise from or due to the pendency of the said contribution or indemnity claim. Outside Counsel agree to use their best efforts to keep confidential the terms and amount of any settlement of any lead poisoning claim and may disclose the terms or amount of a settlement only to the extent necessary in the prosecution of the claim. Outside Counsel shall have the responsibility to handle all aspects of these matters, including preparing the case for trial and responding to discovery requests. NYCHA’s Law Department shall serve as liaison between NYCHA’s staff and Outside Counsel. Prior to commencing litigation, Outside Counsel shall notify NYCHA in writing of their intent to commence litigation of any Pre or Post-Verdict Claim by sending such notice to NYCHA Law Department, 250 Broadway, New York, NY 10007, Attn.: Deputy General Counsel, Tort Division. Furthermore, Outside Counsel shall not commence any such action without the consent of the Law Department and NYCHA prior to the deadline for the closing of fact discovery in the Civil Action. Outside Counsel shall have no responsibility for any contribution or indemnity claims that they do not expressly agree to pursue. NYCHA retains the right to pursue such claims if Outside Counsel decline to do so. If Outside Counsel choose to pursue any claims under this paragraph, they shall enter into a separate retainer agreement with NYCHA for each such claim.

4. All legal work performed by Outside Counsel in the Civil Action shall be pursuant to a litigation plan approved by the Law Department and NYCHA. In addition, Outside Counsel

shall keep NYCHA and the Law Department fully informed of all legal work performed in the Civil Action pursuant to this Retainer Agreement. Within thirty (30) days after the date of this Retainer Agreement, Outside Counsel shall make an oral presentation to the Law Department and NYCHA during which Outside Counsel shall make recommendations as to how the Civil Action should be tried. Within ninety (90) days after the date of this Retainer Agreement, Outside Counsel shall provide to the Law Department and NYCHA a written litigation plan that outlines the recommendations made and approved at the oral presentation. The litigation plan shall concern all substantive issues affecting the Civil Action, including, but not limited to, complaints and motions, selection of consultants and experts, discovery, pre-trial proceedings, trial, settlement negotiations, and participation of subcontractors. Regular status meetings shall be held as requested by NYCHA and the Law Department. Outside Counsel shall provide NYCHA and the Law Department with a copy of all substantive correspondence and all pleadings, discovery requests, and other documents served, transmitted, or filed in the Civil Action concerning or constituting their legal work performed pursuant to this Retainer Agreement. However, in the event the documents described in the preceding sentence are voluminous, Outside Counsel may notify NYCHA and the Law Department of the existence of the documents and provide copies at the request of NYCHA and the Law Department.

5a. Outside Counsel shall seek NYCHA's approval before incurring an item of expense in excess of five hundred dollars (\$500.00) necessary to the prosecution of the Civil Action, and NYCHA's approval of such item of expense shall not be unreasonably withheld. NYCHA shall be responsible for payment of all approved expenses and expenses not requiring approval, as set forth in the previous sentence, necessary for the prosecution of the Civil Action, regardless of the outcome of the Civil Action, up to a cap of \$315,000. All of Outside Counsel's expenses in the

prosecution of the Civil Action, not just the expenses requiring approval, shall be credited toward the cap. The parties further agree that the fees of the discovery Referee shall continue to be paid by NYCHA or the Law Department and shall not be counted against the cap. In the event that there is a retrial of the Civil Action following an appeal, if Outside Counsel elect to handle the retrial, the parties shall renegotiate the treatment of expenses for such representation, including without limitation, funding arrangements and a possible expenses cap for such retrial. To the extent that Outside Counsel advance any such expenses, they shall be reimbursed on a timely basis and no later than ninety (90) days from the date that the request for reimbursement is made. Expenses to be incurred in this case for discovery and trial preparation that NYCHA and Outside Counsel determine will benefit Outside Counsel's clients in similar lead litigation shall be divided equally among each client that benefited thereby. The Client agrees that expenses to be incurred in Outside Counsel's other Lead Litigation that the Client and Outside Counsel determine will benefit the Client may be used to offset expenses from the Civil Action that are apportioned to those other cases. Outside Counsel shall advance expenses in the actions described in ¶ 3 pursuant to the separate retainer agreements entered into for those actions. NYCHA agrees that it shall reimburse Outside Counsel in the actions set forth in ¶ 3 from its share of any recovery for any unreimbursed litigation expenses and personal or travel and lodging expenses advanced by them. Nothing in this paragraph shall prevent NYCHA from seeking to have the defendants reimburse NYCHA for its expenses reimbursed to Outside Counsel in the Civil Action or actions described in ¶ 3. Outside Counsel shall be reimbursed in accordance with the timetable set forth herein, and their right to reimbursement shall in no way be dependent on the Client's efforts or intentions to recover these expenses from the defendants.

5b. Expenses and disbursements shall be limited to costs actually incurred, without markup and sales taxes, and are further limited to:

1. Travel and Lodging: Travel by automobile at the mileage rates recognized by the Internal Revenue Service; when traveling by means other than private automobile, Outside Counsel shall use the least costly and most reasonable means of transportation (e.g., coach fare). Where lodging is required in connection with travel required by the Civil Action, NYCHA will pay Outside Counsel whichever of the following is less expensive in each billing period: (i) one hundred and ninety-eight dollars (\$198.00) per person per night for hotel lodging, or (ii) the actual cost to the Outside Counsel during that period of renting an apartment in New York City, provided that NYCHA pays only a pro rata share of the apartment rental cost when any employees or members of Outside Counsel stay overnight in the apartment for the benefit of activities other than the Civil Action described herein.

5c. 1. Outside Counsel shall submit quarterly invoices to NYCHA, with a copy to the Law Department, for reimbursement for all expenses and disbursements as allowed by this Retainer Agreement and reasonably, necessarily and actually incurred in the preceding quarter.

2. Each invoice submitted by Outside Counsel shall contain sufficient detail to allow the Client to verify the adequacy and accuracy of such invoice, including, but not limited to, the following:

- a. The name of the case; the Outside Counsel's case number; the unique identifier(s) assigned by the Client; and an identifying invoice number;
- b. The name of the employee incurring itemized expenses and disbursements; the date such expenses were incurred, and other appropriate detailed information;
- c. The tax identification number for the person or entity being paid and the total for the billing period;

d. A statement certifying that the enclosed invoice is for the articles received, services rendered or accounts expended for NYCHA in connection with this litigation matter, that they are correct as to prices and amounts, and that, with the exception of those items specifically identified otherwise, they were incurred solely for the benefit of NYCHA.

3. Outside Counsel shall submit all bills for expenses and disbursements within ninety (90) days after their receipt but in no event later than ninety (90) days after the termination of this Retainer Agreement.

4. Internal photocopying and duplicating costs shall be at cost, but in no event to exceed 10 cents (\$0.10) per page; facsimile charges shall be at cost, but in no event to exceed one dollar (\$1.00) per transmission.

5d. Outside Counsel will maintain books, records, and documents (including electronic storage media) evidencing expenses in accordance with generally accepted accounting procedures and practices. These records shall be subject at all reasonable times to inspection, review, or audit by NYCHA personnel and other personnel duly authorized by NYCHA. Outside Counsel will retain these records, supporting documents, statistical records, and any other documents (including electronic storage media) for a period of five (5) years after termination of this Retainer Agreement, but if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings.

6. Outside Counsel agree not to settle, engage in settlement negotiations or otherwise resolve the Civil Action without the prior written consent of NYCHA and the Law Department, and NYCHA and the Law Department agree not to settle, engage in settlement negotiations or otherwise resolve the Civil Action without the knowledge and participation of Outside Counsel. Outside Counsel agree not to settle, engage in settlement negotiations or otherwise resolve any

litigation brought as described in ¶ 3 without the prior consent of NYCHA, and NYCHA agrees not to settle, engage in settlement negotiations or otherwise resolve any such matters without the knowledge and participation of Outside Counsel.

7. Outside Counsel represent that there are no lead poisoning claims against NYCHA in which they serve in any form of counsel relationship, other than Givhan v. New York City Housing Authority, a currently settled case subject to Court approval, and that, with the exception of claims settled subject to Court approval, all lead poisoning claims against New York City are set forth in Appendix A. The Law Department and Outside Counsel shall make good faith efforts to resolve fairly these Appendix A claims to the satisfaction of the parties concerned. NYCHA and the Law Department have each concluded that Outside Counsel's continuing representation of the plaintiffs in those claims does not present a conflict to Outside Counsel's representation of NYCHA in the Civil Action, and NYCHA and the Law Department agree not to challenge Outside Counsel's right to represent their clients in those claims. NYCHA and the Law Department also agree that Outside Counsel's representation of future clients in lead poisoning cases that may be adverse to NYCHA and/or the City of New York after final judgment in this case is entered, independent of any appeals, does not present a conflict to Outside Counsel's representation of NYCHA in the Civil Action, and NYCHA and the Law Department agree not to challenge Outside Counsel's right to represent such clients in the future, provided that nothing in this Retainer Agreement authorizes Outside Counsel to use any confidences or confidential information they may acquire in the Civil Action in or for any of its private plaintiffs' actions unless this information is otherwise made public as set forth below in ¶

9.

8. No Outside Counsel attorney or paralegal involved in the representation of NYCHA shall participate in the litigation of such future claims against NYCHA or the City of New York until the conclusion of the Civil Action, independent of any appeals, as set forth above in ¶ 7. The Law Department also agrees that Outside Counsel's representation of NYCHA does not bar Outside Counsel from bringing actions against the City of New York in which lead or lead poisoning is not the subject matter, provided that nothing in this Retainer authorizes Outside Counsel to use any confidences or confidential information they may acquire in the Civil Action in any such actions, unless the information is otherwise made public as set forth below in ¶ 9.

9. Outside Counsel shall take all steps necessary to strictly ensure that any knowledge or confidences or confidential information gained in litigation on behalf of NYCHA, not made public or available to the public through the Civil Action, other lead litigation or otherwise, shall be restricted to only those attorneys, paralegals and other staff working on the Civil Action and shall not be used in the course of representations of their private plaintiffs. Except as otherwise set forth herein, no attorneys, paralegals, or other agents employed in the representation of NYCHA shall participate in any manner in the representation of Outside Counsel's private plaintiffs in lead poisoning cases against the City of New York or NYCHA until after the entry of a final judgment in the Civil Action, independent of any appeals. No attorneys, paralegals or other agents employed in the representation of private plaintiffs in lead poisoning cases against the City of New York or NYCHA shall participate in any manner in the representation of NYCHA. Outside Counsel agree that they shall not participate in any way in any lead poisoning claims against NYCHA, including assisting other counsel, until after the entry of a final judgment, independent of any appeals, in the Civil Action or any of the actions for contribution or indemnity referred to in ¶ 3. Outside Counsel agree that, with the exception of the lead

poisoning claims identified in Appendix A, they shall not participate in any way in any lead poisoning claims against the City of New York, including assisting other counsel, until after the entry of a final judgment, independent of any appeals, in the Civil Action. During these periods, Outside Counsel shall refer potential claims to counsel other than Outside Counsel.

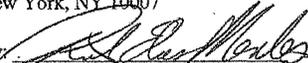
10. The Law Department and NYCHA agree that they shall not share Outside Counsel's work product in the Civil Action with other law firms or governmental entities without the approval of Outside Counsel. Outside Counsel agree that they will abide by agreements made by the Law Department or NYCHA prior to this Retainer Agreement with other law firms or governmental entities that restrict the dissemination of, or use in non-Client litigation of, documents or work product without the approval of those other law firms or entities. Outside Counsel shall be provided the right to participate in communications concerning these prior agreements and the dissemination of or use of documents or work product.

11. In the event Outside Counsel cease to represent NYCHA during the pendency of this litigation, without waiving their other rights under New York law and this Retainer Agreement, Outside Counsel shall not assert a retaining lien.

12. The Retainer Agreement and performance of it are governed by and to be construed in accordance with the laws of the State of New York, excluding New York's rules regarding conflicts of laws. Any and all proceedings relating to the subject matter of the Retainer Agreement must be obtained in the state courts sitting in the City and County of New York, which courts have exclusive jurisdiction for such purpose. The parties hereby consent to submit themselves to the jurisdiction of such courts with respect to any proceedings arising out of, under or related to the Retainer Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in sextuplicate, on the dates indicated, two copies to remain with the Law Department, one copy to be delivered to NYCHA and one copy each to be delivered to the three law firm signatories to this Agreement.

New York City Housing Authority
250 Broadway
New York, NY 10007

By: 
Ricardo Elias Morales

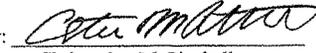
Date: 8/31/01

Ness, Motley, Loadholt, Richardson & Poole, P.C.
321 South Main Street
P. O. Box 6067
Providence, RI 02908

By: 
John McConnell

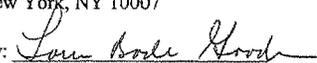
Date: 10/16/01

Wilentz, Goldman & Spitzer, P.C.
90 Woodbridge Center Drive
P. O. Box 10
Woodbridge, NJ 07095

By: 
Christopher M. Placitella

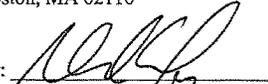
Date: 9/05/01

New York City Law Department
100 Church Street
New York, NY 10007

By: 
Lorna Bade Goodman

Date:

Thornton & Naumes, LLP
100 Summer Street, 30th Floor
Boston, MA 02110

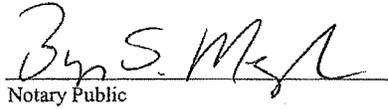
By: 
Neil T. Leifer

Date: 9/14/01

ACKNOWLEDGEMENT BY GENERAL COUNSEL

State, City and County of New York, ss.:

On this 31st day of August, 2001 before me personally came Ricardo Elias Morales, to me known to be the General Counsel of the New York City Housing Authority ("NYCHA"), the person described as such in and who as such executed the foregoing instrument for the purposes therein mentioned.


Notary Public

BYRON S. MENEGAKIS
Notary Public, State of New York
No. 41-4941251
Qualified in West County
Commission Expires August 1, 2002

ACKNOWLEDGEMENT BY SENIOR ASSISTANT CORPORATION COUNSEL

State, City and County of New York, ss.:

On this 21st day of August, 2001 before me personally came Lorna Bade Goodman, to me known to be the Senior Assistant Corporation Counsel of the City of New York, the person described as such in and who as such executed the foregoing instrument as Commissioner for the purposes therein mentioned.

Bruce E. Stanton
Notary Public

BRUCE E. STANTON
Notary Public, State of New York
No. 4730108
Qualified in Nassau County
Commission Expires April 30, 2003

ACKNOWLEDGEMENT BY A PROFESSIONAL CORPORATION

State of New Jersey, County of Middlesex, City of Woodbridge, ss.:

On this 5th day of September, 2001 before me personally came Christopher M. Placitella, to me known to be an officer or principal of Wilentz, Goldman & Spitzer, P.C., the firm described in and which executed the foregoing instrument and he acknowledged to me that he subscribed the name of said firm for the purposes therein mentioned.


Notary Public or Commissioner of Deeds

THERESE M. REYNOLDS
A Notary Public of New Jersey
My Commission Expires Dec. 10, 2002

ACKNOWLEDGEMENT BY A LIMITED LIABILITY PARTNERSHIP

State of Massachusetts, County of Suffolk, City of Boston, ss.:

On this 10 day of September, 2001 before me personally came
Neil T. Leifer, to me known to be an officer or principal of Thornton & Naumes, LLP, the firm
described in and which executed the foregoing instrument and he acknowledged to me that he
subscribed the name of said firm for the purposes therein mentioned.

Lee McKenney
Notary Public or Commissioner of Deeds
My Commission Expires 9/30/05

ACKNOWLEDGEMENT BY A PROFESSIONAL CORPORATION

State of Rhode Island, City of Providence, County of Providence, ss.:

On this 16th day of October, 2001 before me personally came John McConnell, to me known to be an officer or principal of Ness, Motley, Loadholt, Richardson & Poole, P.C., the firm described in and which executed the foregoing instrument and he acknowledged to me that he subscribed the name of said firm for the purposes therein mentioned.


Notary Public or Commissioner of Deeds

Appendix A

1. Garcia v. City of New York, Supreme Court of the State of New York, Bronx County, Index No. 8788/94

2. Casillas v. City of New York, Supreme Court of the State of New York, Bronx County, Index No. 21307/94

**Responses of John J. McConnell, Jr.
Nominee to be United States District Judge for the District of Rhode Island
to the Written Questions of Senator John Cornyn**

- 1. In your questionnaire, you noted that “[p]ursuant to contractual arrangements with MRRM, P.A., which owns various assets and liabilities including attorneys’ fees arising from settled litigation, I anticipate receiving deferred compensation for work performed and completed of approximately \$2.5 million to \$3.1 million each year through 2024.”**

a. Please describe MRRM, P.A. What is its relationship to Motley Rice LLC?

Response: Response: MRRM, P.A. is a South Carolina professional association formerly known as Ness, Motley, Loadholt, Richardson & Poole, P.A. (among other names during that entity’s history). MRRM, P.A. was actively engaged in the practice of law until April 28, 2003, when my law partners and I left that firm and began the practice of law in Motley Rice LLC, a new South Carolina limited liability company. Ronald L. Motley and Joseph F. Rice have ownership control of both MRRM, P.A. and Motley Rice LLC.

i. What does MRRM, P.A. stand for?

Response: The name “MRRM, P.A.” is derived from the last names of its two shareholders, Ronald L. Motley and Joseph F. Rice, i.e., “Motley Rice Rice Motley.”

ii. What is the business address of MRRM, P.A.?

Response: MRRM, P.A.’s business address is 28 Bridgeside Blvd., Mt. Pleasant, SC 29464.

iii. What are its assets?

Response: MRRM, P.A. is not an operating entity. Its principal asset is anticipated fee income from tobacco litigation and some other small residual assets from when it was an operating entity.

iv. What is its purpose and function?

Response: MRRM, P.A. exists to own and manage various assets and liabilities. The entity has no employees and does not engage in the active practice of law.

v. Who is on its board of directors?

Response: Ronald L. Motley and Joseph F. Rice are the only directors of MRRM, P.A.

vi. Who manages the day-to-day affairs of MRRM, P.A.?

Response: Joseph F. Rice manages the minimal day-to-day affairs of MRRM, P.A.

vii. Are you currently in communication with any executives, directors, employees or agents of MRRM, P.A.? If so, please identify who, their position at MRRM, P.A. and the approximate content of the communication.

Response: Ronald L. Motley and Joseph F. Rice are my law partners at Motley Rice LLC, so I communicate regularly with them about a variety of matters. However, I am not involved in either the management or the day-to-day operations of MRRM, P.A.

2. Please describe the origin and structure of your compensation from MRRM, P.A. including the specific verdicts and/or settlements upon which this compensation is based.

Response: My compensation from MRRM, P.A. is sourced from a nominal interest in that entity's litigation costs that might be recovered in the future with respect to a variety of pending client matters in which MRRM, P.A. has a financial interest; and a deferred compensation arrangement which is funded solely by MRRM, P.A.'s future tobacco fee income arising from the state tobacco litigation settlements of the late 1990s pursuant to the Master Settlement Agreement.

a. Is this compensation contingent on any currently pending litigation? If so, please identify the case style and current procedural status.

Response: Almost all of my compensation from MRRM, P.A. is derived from settled and closed litigation, principally the tobacco Master Settlement Agreement. A very small portion of my total income from MRRM, P. A. – about \$100 in recent quarters – is derived from recovered litigation costs incurred by MRRM, P.A. prior to 2003 for the thousands of cases that were transferred to another firm and remain pending.

b. Could this compensation become dependent on any future litigation?

Response: No.

- b. Upon what else does the amount of your compensation from MRRM, P.A. depend?**

Response: The amount of my deferred compensation from MRRM, P.A. is dependent upon both the tobacco companies' financial ability to continue to pay the full amount of tobacco fees owed to MRRM, P.A. and MRRM, P.A.'s financial ability to continue to pay the full amount of deferred compensation owed to me.

- c. Is your deferred compensation held in a segregated account for your benefit, or is your future compensation dependent upon the overall financial health of MRRM, P.A.?**

Response: My deferred compensation from MRRM, P.A. is not held in a segregated account for my benefit. The amount of deferred compensation I will ultimately receive is dependent upon both the tobacco companies' financial ability to continue to pay the full amount of tobacco fees owed to MRRM, P.A. and MRRM, P.A.'s financial ability to continue to pay the full amount of deferred compensation owed to me.

- d. Could your deferred compensation become dependent upon the overall financial health of Motley Rice LLC?**

Response: No.

- e. Does MRRM, P.A. invest in any stocks, bonds, mutual funds, or other investment vehicles? If so, identify all such investments.**

Response: MRRM, P.A.'s deposit funds are invested in overnight repurchase agreements and mutual funds of U.S. Treasury securities.

- 2. Is any current or former employee of Motley Rice LLC receiving similar deferred compensation from MRRM, P.A.?**

Response: Yes.

- 3. Please provide the Committee with a copy of any agreement between you and MRRM, P.A.**

Response: Attached is the 2003 Employment and Compensation Agreement.

- 4. Please provide the Committee with any documents, communications, letters, emails or memoranda relating to your deferred compensation arrangement with MRRM, P.A.**

Response: The 2003 Employment and Compensation Agreement, which I have attached, is the only document. I have no other communications regarding it.

5. Please provide the Committee your severance agreement with Motley Rice LLC, or any other agreement that sets forth the terms of your departure from that firm.

Response: I do not have a severance agreement with Motley Rice LLC or any other agreement that sets forth the terms of my departure from that firm.

6. Did you, in any public statement or any official capacity, oppose any nominee to a federal judgeship? If so, please identify the date of such statement, its content, and the nominee that was the subject of the statement.

Response: No.

7. Did you make any monetary contributions to any political action committee or any other political organization for the purpose of opposing any nominee to a federal judgeship? If so, please identify the committee or organization, and the relevant nominee.

Response: No.

8. Please list all cases, during your tenure at Motley Rice LLC or predecessor firms, in which the firm was hired or otherwise engaged by one or more elected public officials?

Response: I undertook a diligent manual search in order to provide as complete an answer as possible, the results of which are attached as Attachment A.

9. Please list all cases responsive to question 9 in which Motley Rice LLC partners or employees, or the partners or employees of predecessor firms, donated (before or after the engagement) to the campaign of the elected public official or officials who hired or otherwise engaged the firm?

Response: My firm does not maintain a list of contributions by members or employees to elected public officials, and therefore I have no way to gather the information requested as it relates to members or employees. I have done a diligent and reasonable inquiry of the attorneys in the firm and am able to provide the following information.

My firm was retained by the State of Rhode Island by and through its then Attorney General Sheldon Whitehouse to represent the State in litigation against certain lead paint companies in 1999. According to Rhode Island Board of Elections files, I contributed \$2,000 in 1998 to Sheldon Whitehouse's 1998 campaign for Rhode Island Attorney General. In addition, although I cannot find a record of it, I do believe that Joseph F. Rice and I contributed to Governor Christine Gregoire's campaign for governor of the State of Washington.

10. On how many cases have you personally worked in which your firm was hired or otherwise engaged by one or more elected public officials?

Response: I have worked on all of the tobacco and lead paint cases listed on Attachment A.

11. Please list all cases responsive to question 11 in which you personally donated (before or after the engagement) to the campaign of the elected public official or officials who hired or otherwise engaged the firm?

Response: The Rhode Island lead-paint case and the State of Washington tobacco case.

12. At your hearing, you testified: “while I have contributed and supported and helped in campaigns, I don’t believe I’ve ever asked for anything. I don’t ask for White House tours, I don’t ask for Senate gallery seats, I just don’t ask for anything.”

- a. Have you or your firm or partners or employees of your firm ever made a political contribution to an elected public official with the hope, expectation, or understanding that the individual receiving the donation would engage you or your firm for legal services? If so, for each instance, please list the individual who received the contribution, the name of each individual who provided the contribution and their position within your firm, the amount of each contribution, and the matter for which your firm was engaged for legal services.**

Response: I have not and I am not aware that my firm, its partners or employees has.

- b. Have you or your firm or partners or employees of your firm ever made a political contribution to an elected public official after your firm was engaged by that individual on behalf of a State to represent that State in litigation? If so, for each instance, please list the individual who received the contribution, the name of each individual who provided the contribution and their position within your firm, the amount of each contribution, and the matter for which your firm was engaged for legal services.**

Response: I have not and, after having done a diligent inquiry of the attorneys and employees in the firm, I am not aware that anyone in my firm has. My firm does not maintain a list of contributions by members or employees to elected public officials.

13. Have you ever directly or indirectly suggested or encouraged employees of your firm to make political contributions? If so, please identify the candidates, campaigns, or Political Action Committees to which you suggested or encouraged donations.

Response: No.

- 14. Have you or your firm ever paid bonuses or other compensation to an employee in connection with the employee's making of certain political campaign contributions?**

Response: No.

- 15. Have you or your firm ever paid for independent political advocacy advertisements by entities not affiliated with a campaign committee? If so, provide a description of each advertisement and identify who sponsored each advertisement.**

Response: I have not and, after diligent inquiry, my understanding is that my firm has not done so.

- 16. Attached as Exhibit A is an August 2, 2000 memorandum from a Texas plaintiffs' law firm to Texas school board members lobbying the school board to join a lead-based paint remediation lawsuit that was headed by Ness Motley, predecessor to Motley Rice LLC and your firm at the time.**

- a. Do you believe that it is appropriate for a lawyer to solicit a school board as a client in a lead-based paint remediation lawsuit if the district is not aware whether district school buildings have lead-based paint and is not aware of any past remediation costs?**

Response: No.

- b. Do you believe that it is appropriate for a lawyer, in soliciting a school board as a client in a lead-based paint remediation lawsuit, to assure the district that if it recovers funds for lead-based paint remediation, those funds do not have to be spent on lead-based paint remediation, but may be placed in the general maintenance and operations fund and used for any appropriate purpose?**

Response: No.

- c. Did you or any attorneys with your firm help prepare the attached memorandum or the resolution attached thereto? If so, please identify who helped in the preparation.**

Response: I have never seen the memo that is Attachment A and know nothing about the circumstances of the preparation or distribution of this document. I made diligent inquiry of members of my firm and they advised that they also did not have any involvement with this memo.

- d. Have there been similar solicitations sent to other school board officials or other state and local government officials related to cases on which Motley Rice LLC or its predecessor firms worked? If so, to whom?**

Response: I made diligent inquiry of members of my firm and there have been no such similar solicitations.

- e. Do you agree with the memorandum's assessment that pursuing lead paint litigation on a contingency fee basis is a "win-win situation" for the school board?**

Response: No.

- 17. As part of your asbestos litigation practice, did you or your law firm ever directly or indirectly retain, work with, coordinate, communicate or collaborate with the following individuals: Dr. Ray Harron, Dr. Andrew Harron, Dr. James Ballard, Dr. Kevin Cooper, Dr. Glynn Hilbun, Dr. Todd Coulter, Dr. Barry Levy, Dr. George Martindale, and /or Dr. Allen Oaks? If so, please provide details including the matter, the relevant dates, and the nature of the retention, work, coordination, communication, or collaboration.**

Response: I did not. I have made diligent inquiry with my firm and have been advised that some of these doctors may have been involved as experts in some cases filed in Texas in which my law firm has also been involved.

- 18. As part of your asbestos litigation practice, did you or your law firm ever directly or indirectly retain, work with, coordinate, communicate or collaborate with the following asbestos screening companies known commonly as N&M, Inc., Respiratory Testing Services, Inc., and/or Healthscreen, Inc.? If so, please provide details including the matter, the relevant dates, and the nature of the retention, work, coordination, communication, or collaboration.**

Response: I did not. I have made diligent inquiry with my firm and have been advised that Healthscreen, Inc., may have been involved as experts in some cases.

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ADDENDUM A

LIST OF LAWSUITS

Tobacco

Blaylock et al. v American Tobacco Co. et al.,
Circuit Court, Montgomery County, No. CV-96-1508-PR

State of Alaska v. Philip Morris, Inc., et al., Superior Court, First Judicial District of Juneau, No. IJU-97915 CI (Alaska)

State of Hawaii v. Brown & Williamson Tobacco Corp., et al., Circuit Court, First Circuit, No. 97-0441-01 (Haw.)

State of Idaho v. Philip Morris, Inc., et al., Fourth Judicial District, Ada County, No. CVOC 9703239D (Idaho)

State of Iowa v. R.J. Reynolds Tobacco Company et al., Iowa District Court, Fifth Judicial District, Polk County, No. CL71048 (Iowa)

State of Kansas v. R.J. Reynolds Tobacco Company, et al., District Court of Shawnee County, Division 2, No. 96-CV-919 (Kan.)

Ieyoub v. The American Tobacco Company, et al., 14th Judicial District Court, Calcasieu Parish, No. 96-1209 (La.)

Commonwealth of Massachusetts v. Philip Morris Inc., et al., Middlesex Superior Court, No. 95-7378 (Mass.)

Kelley v. Philip Morris Incorporated, et al., Ingham County Circuit Court, 30th Judicial Circuit, No. 96-84281-CZ (Mich.)

State of Montana v. Philip Morris, Inc., et al., First Judicial Court, Lewis and Clark County, No. CDV 9700306-14 (Mont.)

State of New Jersey v. R.J. Reynolds Tobacco Company, et al., Superior Court, Chancery Division, Middlesex County, No. C-254-96 (N.J.)

State of New York et al. v. Philip Morris, Inc., et al., Supreme Court of the State of New York, County of New York, No. 400361/97 (N.Y.)

State of Ohio v. Philip Morris, Inc., et al., Court of Common Pleas, Franklin County, No. 97CVH055114 (Ohio)

State of Oklahoma, et al. v. R.J. Reynolds tobacco Company, et al., District court, Cleveland County, No. CJ-96-1499-L (Okla.)

State of Oregon v. The American Tobacco Co., et al., Circuit Court, Multnomah County, No. 9706-04457 (Or.)

Rossello, et al. v. Brown & Williamson Tobacco Corporation, et al., U. W. District Court, Puerto Rico, No. 97-1910JAF

State of Rhode Island v. American Tobacco Co., et al., Rhode Island Superior Court, Providence, No. 97-3058 (R.I.)

State of South Carolina v. Brown & Williamson Tobacco Corporation, et al., Court of Common Pleas, Fifth Judicial Circuit, Richland County, No. 97-CP-40-1686 (S.C.)

State of Utah v. R.J. Reynolds Tobacco Company, et al., U.S. District Court, Central Division, No. 96 CV 0829W (Utah)

State of Vermont v. Philip Morris, Inc., et al., Chittenden Superior Court, Chittenden County, No. 744-97 (Vt.) and 5816-98 (Vt.)

State of Washington v. American Tobacco Co. Inc., et al., Superior Court of Washington, King County, No. 96-2-1505608SEA (Wash.)

McGraw, et al. v. The American Tobacco Company, et al., Kanawha County Circuit Court, No. 94-17-7 (W. Va.)

Lead Paint

State of Rhode Island v. Lead Industries Assn. C.A. No 99-5229

In Re Lead Paint Litigation, Case Code: 702-MT, Superior Court of New Jersey

City of Cincinnati v. Sherwin-Williams et al., C.A. No. A0611226

City of Columbus v. Sherwin-Williams et al., 06CVH-16480

Ohio v. Sherwin-Williams et al., 07CVC-04-4857

City of East Cleveland v. Sherwin-Williams et al., CA No CV-06-602785

City of Athens v. Sherwin Williams, et al., C.A. No. 07CI136

City of Massillon v. Sherwin-Williams et al., C.A. No. 07 CV 01224

City of Canton v. Sherwin-Williams et al., C.A. NO. 06 CV 05048

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City of Dayton, Ohio v. Sherwin-Williams, et al., C. A. No. 07 CV 12701

City of Cleveland v. Sherwin-Williams et al., C.A. No. CV-06-602785

City of Lancaster v. Sherwin-Williams et al., C.A. No. 06 CV 1055

City of Toledo v. Sherwin-Williams et al., C.A. No. G-4801-CI-200606040

City of Youngstown v. Sherwin-Williams, et al., C.A. No. 07-CV-1167

City of New York Housing Authority v. Lead Industries Assn., Index No. 14365/89, IAS Part 39

County of Santa Clara, et al. v. Atlantic Richfield Company, et al., Case No. CV 788657

Other

Kurikose v. Fed. Home Loan Mortgage Co., No. 1:08-cv-7281 (JFK) (S.D.N.Y); Motley Rice represents movant Richard H. Moore, as Treasurer of the State of North Carolina and as the Sole Trustee of the North Carolina Retirement Systems

Various individual asbestos cases on behalf of Bob Whittaker, Director, Division of Workers' Compensation Funds, Commonwealth of Kentucky Labor Cabinet

State of Oklahoma v. Tyson Foods, Inc., et al., 4:05-cv-00329-GKF-PJC, N.D. Okla.

In re: W.R. Grace & Co., et al., Case No. 01-01139 (JKF), D. Del. (Bankruptcy) - Claims No. 6937-6944 (State of Washington claims); Claims No. 6945-6947 (Port of Seattle claims); Claims No. 3405 (Fargo Housing and Redevelopment Authority claims).

NESS, MOTLEY, P.A.
EMPLOYMENT AND COMPENSATION AGREEMENT

This Employment and Compensation Agreement (the "2003 Agreement") is entered into this 30th day of January, 2003, by and among the undersigned attorneys (the "Signatories") and Ness, Motley, P.A. (f/k/a Ness, Motley, Loadholt, Richardson & Poole, Professional Association, a/k/a Ness, Motley, Loadholt, Richardson & Poole, P.A., a/k/a Ness, Motley, Loadholt, Richardson & Poole, Professional Association, d/b/a Ness, Motley, P.A.) ("Ness Motley").

WITNESSETH:

WHEREAS, on April 1, 1999, Ness Motley and certain attorneys signatory thereto (the "1999 Signatories") entered into the Ness, Motley, Loadholt, Richardson & Poole, P.A. Employment and Compensation Agreement dated March 31, 1999 and effective as of October 1, 1998 (the "1999 Agreement"), a copy of which is attached hereto as Exhibit A;

WHEREAS, Thomas D. Rogers ("Rogers") and Ness Motley entered into the Agreement and Release of June 30, 1999 between Rogers and Ness Motley (the "Rogers Agreement"), thereby making Rogers a signatory to the 1999 Agreement and thus a 1999 Signatory;

WHEREAS, Ness Motley, the 1999 Signatories (including Rogers), Charles Patrick ("Patrick"), and Michael Brickman ("Brickman") entered into the Agreement and Release of December 6, 1999 (the "Patrick/Brickman Agreement"), thereby making Patrick and Brickman signatories to the 1999 Agreement and thus 1999 Signatories;

WHEREAS, Paragraph 14(A) of the 1999 Agreement provides that the 1999 Agreement shall be in full force and effect until December 31, 2002 and its terms and provisions shall continue on after December 31, 2002 until affirmatively replaced after December 31, 2002 by another compensation agreement expressly replacing and superseding the 1999 Agreement;

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WHEREAS, Paragraph 14(A) of the 1999 Agreement further provides that the replacement and supersedure of the 1999 Agreement requires the approval of persons listed on Exhibit A to the 1999 Agreement holding in the aggregate at least 60% of the total of the weighted percentages set forth on Exhibit A to the 1999 Agreement held by those persons who are members of Ness Motley at the time that the 1999 Agreement is replaced and superseded;

WHEREAS, the persons listed on Exhibit A to the 1999 Agreement who are members of Ness Motley as of the date first written above and who have the right to vote on the replacement and supersedure of the 1999 Agreement, and their respective weighted percentages applicable to determining the 60% aggregate weighted percentage necessary to approve the replacement agreement, are as follows:

<u>Individual</u>	<u>Weighted Percentage</u>
Motley	48.04%
Rice	26.52%
Hulsey	9.06%
Ritter	5.86%
McConnell, J.	5.79%
Allston	0.61%
Herrick	1.07%
Cottingham	0.65%
Boiter	0.81%
Cone	1.07%
McConnell, B.	0.52%

WHEREAS, of the persons listed on Exhibit A to the 1999 Agreement who are members of Ness Motley as of the date first written above, the affirmative vote of Ronald L. Motley and Joseph F. Rice exceeds the 60% weighted vote requirement to replace and supersede the 1999 Agreement;

WHEREAS, Paragraph 14(B) of the 1999 Agreement provides that Paragraphs 8, 9, 10, 12, 13, and 15(B)-(G) shall continue in effect indefinitely beyond the life of the 1999 Agreement

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as to the lawyers identified in Paragraph 15(B) of the 1999 Agreement, regardless of other changes in any subsequent agreement;

WHEREAS, certain provisions regarding Paragraph 15 of the 1999 Agreement were later clarified, modified, and amended by the Arbitration Award dated November 19, 2001 and delivered December 11, 2001 (the "Arbitration Award"), a copy of which is attached hereto as Exhibit B; and

WHEREAS, Ness Motley and the Signatories (collectively, Ness Motley and the Signatories shall be referred to as the "Parties" and each individually as a "Party") desire to adopt this 2003 Agreement to replace and supersede the 1999 Agreement;

NOW THEREFORE, based upon the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Effective Date of 2003 Agreement. The effective date of this 2003 Agreement is January 1, 2003 (the "Effective Date"). As of the Effective Date, this 2003 Agreement supersedes and replaces in its entirety the 1999 Agreement, except as expressly provided in Paragraph 2 of this 2003 Agreement. Thus no person who is to receive compensation under this 2003 Agreement is entitled to any compensation from Ness Motley not specifically set forth or identified in this 2003 Agreement or in the Surviving 1999 Provisions (as defined hereinafter).

2. Survival of Certain Provisions of the 1999 Agreement. Paragraphs 8, 9, 10, 12, 13, and 15(B)-(G) of the 1999 Agreement (the "Operative Provisions"), as well as Paragraphs 6(B), 15(A), 15(H), 15(I), 19, 21(B), 22, 23, 24, 25, 26, 27, 28, 29 and 30 of the 1999 Agreement which are ancillary to the Operative Provisions (the "Related Provisions," and together with the Operative Provisions, the "Surviving 1999 Provisions"), shall continue in effect indefinitely and

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remain unchanged as to the lawyers identified in Paragraph 15(B) of the 1999 Agreement; provided, however, that the survival of the Related Provisions shall be subject to their amendment or replacement in accordance with Paragraph 20 of this 2003 Agreement.

3. Governing Organizational Documents. It is the understanding and agreement of the Parties that the corporate organizational documents, including but not limited to the Articles of Incorporation, Articles of Amendment and By-Laws, as amended, of Ness Motley (the "Organizational Documents"), remain in full force and effect. All payments under this 2003 Agreement are for past, present and future services rendered as current and/or former employees of Ness Motley; provided, however, that the rights of the 1999 Signatories shall be deemed to have vested under the Surviving 1999 Provisions (subject to the reservation of the right to amend the Related Provisions) without the necessity of any of the 1999 Signatories providing any further services to Ness Motley.

4. Full Time Work, Best Efforts and Part-Time Law School Positions.

(A) All attorneys employed from time to time by Ness Motley (each individually known as a "Ness Motley Attorney" and collectively known as the "Ness Motley Attorneys") are expected to devote their best efforts to the business of Ness Motley and to work full time, except as set forth in Paragraph 4(B) hereof, on behalf of Ness Motley, in a competent, professional and ethical manner. All compensation received by any Ness Motley Attorney in connection with the business of Ness Motley (i.e., for the performance of work and/or professional legal services while such attorney is employed by Ness Motley) shall be considered due and owing to Ness Motley except as otherwise unanimously agreed to in writing by the members of the Board of Directors of Ness Motley (the "Board").

(B) All Parties agree and acknowledge that participation as a part-time lecturer or teaching at a law school part-time (not to exceed 15% of such lawyers' time) will be permitted and will be deemed not inconsistent with his or her duties and responsibilities under the provisions of this Paragraph 4. Any compensation earned over and above reasonable out-of-pocket expenses as such part-time lecturer or teacher shall be considered Ness Motley income, and shall be due and owing to Ness Motley.

5. Compensation under 2003 Agreement. All legal fees and other money ("Income") received by Ness Motley (e.g., including interest or investment income by Ness Motley) on or after January 1, 2003 not governed by the Surviving 1999 Provisions shall be governed solely and exclusively by this 2003 Agreement, the Organizational Documents, and the employment or compensation agreements (if any) between Ness Motley and its employees. Ness Motley's obligations to disburse Income received are unfunded and unsecured and are contractual rights against Ness Motley only, and Ness Motley's obligations to disburse Income hereunder become due and owing only after Ness Motley receives such Income. There is no present right of any Ness Motley Attorney to Income not yet received by Ness Motley, and no Ness Motley Attorney has any direct interest in, claim to, ownership interest in, or security interest, lien, or encumbrance of any kind whatsoever on, Income received by Ness Motley or in or on Ness Motley's rights to receive such Income.

6. Personal Assistants. During the term of this 2003 Agreement, in order to make Ronald L. Motley more productive to Ness Motley, Ronald L. Motley shall be provided a runner at his discretion and personal direction and at Ness Motley's expense so long as the annual cost does not exceed Twenty Five Thousand Dollars (\$25,000.00). Joseph F. Rice may use Lloyd Daniels for any uses that in his discretion make Joseph F. Rice more productive for Ness Motley.

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Further, Ronald L. Motley shall be provided a business development expense account not to exceed One Hundred Thousand Dollars (\$100,000.00) annually. In order to receive the money, Ron Motley must provide documentary evidence to support the tax deductibility of this payment by Ness Motley. This sum shall be due and payable on March 31 following the year of the expenditure.

7. Deductions from General Compensation. Any payments made pursuant to the Surviving 1999 Provisions shall be deducted prior to determining general compensation under Paragraph 8 hereof.

8. General Compensation. All net Income received by Ness Motley but not otherwise expressly addressed in the Surviving 1999 Provisions or in this 2003 Agreement may be disbursed as compensation for services rendered to the employees of Ness Motley on an annual basis as and when determined by the Board.

9. Severance Rights of Signatories. There are severance formulae presently in effect for all Signatories that have an employment or compensation agreement with Ness Motley. Those existing employment or compensation agreements, and all severance payments due thereunder upon termination of employment with Ness Motley, shall remain unaltered and in effect. If a Signatory or other Ness Motley Attorney did not and does not sign an employment or compensation agreement with Ness Motley providing for severance rights, no severance rights exist or shall exist, and no such rights are created by this 2003 Agreement.

10. Term of 2003 Agreement. This 2003 Agreement shall be in full force and effect from January 1, 2003, until December 31, 2025.

11. Incentive Bonuses. The Board shall have the authority, but not the obligation, to award an incentive bonus up to a maximum of 2.5% of the net Income actually received by Ness

Motley on any identifiable project or case (except amounts subject to the Surviving 1999 Provisions) to any Ness Motley Attorney. The award may be granted before, during, or after the project or case. The purpose of the incentive bonuses is to more fairly compensate attorneys for extraordinary and superlative effort, ingenuity, creativity, and result and to motivate attorneys for the benefit of Ness Motley's clients. It is recognized that Ness Motley expects excellent quality work from all attorneys at all times; the incentive bonuses are for work over and above that level of work.

12. Composition of Committees. The composition of any committee provided for under the terms of this 2003 Agreement (including, without limitation, the removal or replacement of members thereof) shall be determined by the Board.

13. Transfer of Fee Awards. In order to enhance and protect the rights of the 1999 Signatories under the Operative Provisions, it has been proposed that (a) Ness Motley's ownership of and rights to receive payments under the tobacco fee awards (the "Fee Awards") referenced in Paragraph 15 of the 1999 Agreement be transferred to one or more single-purpose bankruptcy remote limited liability companies ("LLCs") and that such LLCs be further authorized to transfer and assign participation or other interests to other LLCs either owned by the transferring LLCs or Ness Motley or to third-party firms with an interest in such Fee Awards, and (b) Ness Motley's LLC interests may be transferred to a deferred compensation trust for the benefit of the 1999 Signatories and others and income received thereon be paid pursuant to a deferred compensation plan. To the extent necessary, if at all, the Signatories hereunder consent to the above-described transfer of the Fee Awards and the LLC interests under terms, conditions, and documents approved by the Board.

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14. Agreement to Arbitrate. Any controversy, claim, dispute and/or interpretation arising out of or relating to this 2003 Agreement or the Organizational Documents (any such matter is an "Arbitration Claim"), or the breach thereof, shall be settled only by private binding nonappealable arbitration administered by the American Arbitration Association under its applicable rules. The American Arbitration Association shall be contacted in accordance with its applicable rules by anyone with an Arbitration Claim, and the American Arbitration Association shall follow its applicable rules to have an arbitrator or arbitrators appointed; provided, however, that all arbitrators must be attorneys. The arbitrator or arbitrators, upon good cause shown and consistent with the expedited nature of arbitration, shall order discovery, the conduct of depositions and the use of interrogatories in any arbitration initiated pursuant to this 2003 Agreement; however, the arbitrator or arbitrators may place such limitations on the conduct of such discovery as the arbitrator or arbitrators shall deem appropriate, in his or her or their discretion. Any arbitration initiated pursuant to this 2003 Agreement shall take place in either Charleston, South Carolina or in Mount Pleasant, South Carolina. Multiple arbitrations involving the same or substantially similar Arbitration Claims may be consolidated either by agreement of the parties to the arbitrations or by court order.

15. Governance. Ronald L. Motley and Joseph F. Rice are the Shareholders of Ness Motley (the "Shareholders"). Pursuant to the Organizational Documents, on January 30, 2003, the Shareholders have unanimously elected Ronald L. Motley and Joseph F. Rice as the sole members of the Board. Members of the Board shall serve pursuant to the Organizational Documents. There shall be no executive committee unless created by the Board separate from this 2003 Agreement.

16. Confidentiality. The Signatories affirm and recognize that certain matters regarding the operation of Ness Motley are confidential and privileged (for example, client confidences), and agree not to disclose any such matters to any third party not related to Ness Motley unless agreed to by Ness Motley or required by law. This Paragraph 16 is not meant to restrict any Signatory's practice of law or participation in any bona fide educational program whether as part of a continuing legal education program and/or a university or law school curriculum provided that client confidentiality is appropriately protected. This Paragraph 16 may be enforced in equity or the law, and it is recognized by the Signatories hereto that such breach would subject the person breaching this provision to substantial and punitive damages by Ness Motley.

17. Representations And Warranties by Signatories. Each Signatory represents and warrants that, to the Signatory's best knowledge, the execution and delivery by the Signatory of this 2003 Agreement does not, and the performance by the Signatory of the Signatory's obligations hereunder shall not, with or without the giving of notice or the passage of time, or both: (a) violate any judgment, writ, injunction, or order of any court, arbitrator, or governmental agency applicable to the Signatory, or (b) conflict with or result in the breach of any provisions of or the termination of, or constitute a default under, any agreement to which the Signatory is a party or by which the Signatory is or may be bound.

18. Binding Effect; Delegation By Signatories Of Duties Prohibited. This 2003 Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective successors, heirs, and legal representatives and, in the case of Ness Motley, its successors and assigns who assume Ness Motley's obligations hereunder. The terms "successors, heirs, and legal representatives" shall mean that person or persons who shall be

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designated by such Signatory by an instrument in writing filed with Ness Motley, as the successor, heir and/or legal representative to such attorney. Amounts payable under this 2003 Agreement with respect to or as a result of such Signatory's death shall be paid to such designated successor, heir and/or legal representative. If no successor, heir and/or legal representative has been so designated by a Signatory, then his or her successor, heir and/or legal representative shall be his or her estate. The duties and covenants of the Signatories to this 2003 Agreement, being personal, may not be delegated.

19. Notices. All notices, consents, waivers, and other communications under this 2003 Agreement must be in writing and shall be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and facsimile numbers set forth below (or to such other addresses and facsimile numbers as a party may designate by notice to the other parties):

If to Ness Motley: 28 Bridgeside Boulevard, Mt. Pleasant, South Carolina 29464
 Telephone: (843) 216-9000
 Telecopy: (843) 216-9450

Attention: Ronald L. Motley
 Joseph F. Rice

If to a Signatory: At the addresses set forth below their names on the signature pages of this 2003 Agreement.

20. Entire Agreement. This 2003 Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, between the Parties hereto with respect to the subject matter

hereof, except as otherwise expressly provided in this 2003 Agreement, the Organizational Documents and the employment or compensation agreements (if any) between Ness Motley and the individual Signatories. The terms and provisions of this 2003 Agreement and the Related Provisions may be amended or replaced from time to time by the written agreement of the Board and persons listed below in this Paragraph 20 who are employees of Ness Motley at the time of such amendment or replacement and who hold in the aggregate at least 60% of the total of the weighted percentages set forth below in this Paragraph 20 that are held by employees of Ness Motley at the time of such amendment or replacement:

<u>Individual</u>	<u>Weighted Percentage</u>
Motley	48.04%
Rice	26.52%
Hulsey	9.06%
Ritter	5.86%
McConnell, J.	5.79%
Allston	0.61%
Herrick	1.07%
Cottingham	0.65%
Boiter	0.81%
Cone	1.07%
McConnell, B.	0.52%

21. Jurisdiction. Any action or proceeding seeking to enforce any arbitration award rendered pursuant to this 2003 Agreement may be brought against any of the Parties in the courts of the State of South Carolina in Charleston, South Carolina, or, if the claimant has or can acquire jurisdiction, in any of the federal courts in Charleston County, South Carolina, and each of the Parties consents to the jurisdiction of and venue in such courts (and the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world.

22. Paragraph Headings, Construction. The headings of Paragraphs in this 2003 Agreement are provided for convenience only and shall not affect its construction or interpretation. All references to "Paragraph" or "Paragraphs" refer to the corresponding Paragraph or Paragraphs of this 2003 Agreement unless otherwise specified. All words used in this 2003 Agreement shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

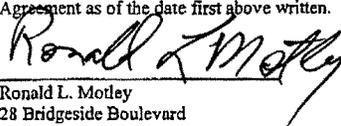
23. Severability. If any provision of this 2003 Agreement is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions, and if any provision is determined to be illegal, invalid or unenforceable in any jurisdiction or as to any person, it shall not be illegal, invalid or unenforceable in any other jurisdiction or as applied to any other person.

24. Counterparts. This 2003 Agreement may be executed in one or more counterparts (including by facsimile or telecopier), each of which shall be deemed to be an original copy of this 2003 Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.

25. Governing Law. This 2003 Agreement and the rights and obligations of the Parties under this 2003 Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina without regard to conflicts of laws principles.

IN WITNESS WHEREOF, the Parties hereby have executed and delivered this 2003

Agreement as of the date first above written.



Ronald L. Motley
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

John J. McConnell, Jr.
321 South Main Street, Suite 402
P.O. Box 6067
Providence, RI 02940

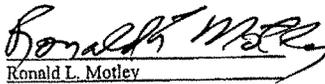
Joseph F. Rice
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

Ann Ritter
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

Paul H. Hulsey
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

NESS, MOTLEY, P.A.

By: _____
Name: Joseph F. Rice
Title: _____

By: 
Name: Ronald L. Motley
Title: _____

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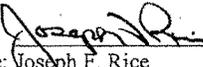


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P.O. Box 1792
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NESS, MOTLEY, P.A.

By: 
Name: Joseph F. Rice
Title: _____

By: _____
Name: Ronald L. Motley
Title: _____

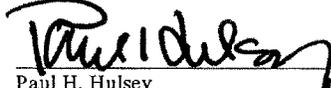
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P.O. Box 1792
Mount Pleasant, SC 29465



Paul H. Hulsey
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

NESS, MOTLEY, P.A.

By: _____
Name: Joseph F. Rice
Title: _____

By: _____
Name: Ronald L. Motley
Title: _____

IN WITNESS WHEREOF, the Parties hereby have executed and delivered this 2003

Agreement as of the date first above written.

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P.O. Box 1792
Mount Pleasant, SC 29465



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P.O. Box 1792
Mount Pleasant, SC 29465

NESS, MOTLEY, P.A.

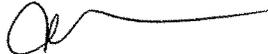
By: _____
Name: Joseph F. Rice
Title: _____

By: _____
Name: Ronald L. Motley
Title: _____

IN WITNESS WHEREOF, the Parties hereby have executed and delivered this 2003 Agreement as of the date first above written.

Ronald L. Motley
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

John J. McConnell, Jr.
321 South Main Street, Suite 402
P.O. Box 6067
Providence, RI 02940



Joseph F. Rice
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

Ann Ritter
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

Paul H. Hulsey
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465

NESS, MOTLEY, P.A.

By: _____
Name: Joseph F. Rice
Title: _____

By: _____
Name: Ronald L. Motley
Title: _____

**Responses of John J. McConnell, Jr.
 Nominee to be United States District Judge for the District of Rhode Island
 to the Written Questions of Senator Tom Coburn, M.D.**

1. Please identify all not-for-profit organizations that you have represented in a pro bono capacity and briefly describe the matter(s) at issue.

Response: I have represented RI Arc, formerly known as the RI Association for Retarded Citizens with various legal issues involving community residences and services for people with developmental disabilities. I have represented Trinity Repertory Company, a local regional theatre in a few business matters including return of a security deposit and notice to prior donors about an endowment issue. I have reviewed my records and these are the two not-for-profit organizations that I could determine that I had represented.

2. Please explain your role at the Motley Rice firm involving asbestos litigation.

Response: Since 1986, I have been an attorney representing workers who suffered injuries caused by exposure to asbestos. I have litigated their claims in state and federal courts and been involved with filing administrative claims.

3. Did you or your law firm ever pursue unimpaired asbestos claims in state or federal court? If so, describe when and where you brought such claims.

Response: Yes, if the law of the state recognized such claims, we would pursue them on behalf of our clients. My firm has represented tens of thousands of workers who suffered injuries caused by exposure to asbestos in all 50 states. My firm has never emphasized its practice in the representation of unimpaired asbestos claims.

a. Do you or your law firm have any involvement with existing asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy code? If so, please explain in detail the nature of such involvement.

Response: I have had no involvement.

Members of my firm have had various roles with existing asbestos bankruptcy trusts. Joseph F. Rice, a member of Motley Rice LLC, currently serves as a member of the trust advisory committee for several of the existing bankruptcy trusts, which are listed below. Motley Rice LLC, as the attorneys for its individual clients, submits and processes claims to various existing bankruptcy trusts.

AC&S , Inc.	Bankr. D. Del.	No. 02-12687
Armstrong World Industries, Inc.	Bankr. D. Del.	No. 00-4471

Babcock & Wilcox Co.	Bankr. E.D.La.	No. 00-10992
Celotex Corp.	Bankr. M.D. Fla	Nos. 90-10016-8B1, 90-10017-8B1
Dresser II	Bankr. W.D. PA.	No. 03-35592
Federal Mogul	Bankr. D. Del	No. 01-10578
G-I Holdings	Bankr. D.N.J.	Nos. 01-30135 and 01-38790
Kaiser Aluminium Corp.	Bankr. D.Del.	No.02-10429
Keene	Bankr. S.D.N.Y.	No. 93B 46090,96 CV 3492
Johns-Manville Corp.	S.D.N.Y., E.D.N.Y.	No.82-B11656 through 82 B 11676
MH Detrick	Bankr. N.D. Ill.	No. 98 B 01004
Owens Corning Corp.	Bankr. D. Del.	No. 00-03837
Rock Wool	Bankr. N.D.Ala.	Nos. CV-99-J-1589-S.BK -96-08295-TBB-11
Rutland Fire Clay	Bankr. D.Vt.	No. 99-11390
Shook & Fletcher	Bankr. N.D. Ala	No. 02-02771-BGe-11
United States Gypsum Corp.	Bankr. D. Del.	No. 01-2094
W.R. Grace Co.	Bankr. D. Del	No.s 01-1139, 01-1140

b. Have you or your law firm been involved in the formation and confirmation of an asbestos bankruptcy trust under section 524(g) of the federal bankruptcy code?

Response: I have had no involvement.

Members of my firm have had various roles with the formation and confirmation of asbestos bankruptcy trusts. Motley Rice LLC represents clients who are representative members of the Asbestos Claims Committee. The Asbestos Claims Committee is a committee appointed by the United States Trustee for the relevant District to address the issues of the various asbestos claimants as it relates to the particular debtor. Joseph F. Rice, a member of Motley Rice LLC, has been involved in the formation and confirmation of various asbestos bankruptcy trusts, which are listed below.

Durabla Corp.	Bankr. D. Del	No. 09-14415
AC&S	Bankr. D. Del.	No. 02-12687
Congoleum Corp.	Bankr. D. N.J.	No.03-51524
Babcock & Wilcox	Bankr. E.D.La	No. 00-10992
Combustion Engineering	Bankr. D. Del.	No. 03-10495
Celotex	Bankr. M.D.Fla.	Nos. 90-10016-8B1, 90-10017-8B1
Federal Mogul	Bankr. D. Del	No. 01-10578
G-I Holdings	Bankr. D.N.J.	Nos. 01-30135 and 01-38790
Johns-Manville Corp.	S.D.N.Y., E.D.N.Y.	No.82-B11656 through 82 B 11676

Keene	Bankr. S.D.N.Y.	No. 93B 46090,96 CV 3492
MH Detrick	Bankr. N.D. Ill.	No. 98 B 01004
North American Refractories Corp.	Bankr. W.D. PA.	No. 02-20198
Owens Corning Corp.	Bankr. D. Del.	No. 00-03837
Pittsburgh Corning Corp.	Bankr. W.D. PA	No. 00-22876
Rock Wool	Bankr. N.D. Ala.	Nos. CV-99-J-1589-S.BK -96-08295-TBB-11
Rutland Fire Clay	Bankr. D.Vt.	No. 99-11390
Shook and Fletcher	Bankr. N.D. Ala	No. 02-02771-BGc-11
United States Gypsum Corp.	Bankr. D. Del.	No. 01-2094
W.R. Grace Co.	Bankr. D. Del	No.s 01-1139, 01-1140

- c. **Do you agree that asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy code should operate in a structure and manner necessary to give reasonable assurance that the trust will value, and be able to pay, similar present and future claims in substantially the same manner?**

Response: Yes.

- d. **Do you have any concerns that asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy code are specifically structured and operated to thwart attempts to obtain information regarding trust claimants who are also making claims of other 524(g) trusts or who are suing solvent defendants in the tort system?**

Response: I do not have the information necessary to have any opinion on this matter. I have had very little dealings with asbestos bankruptcy trusts, other than to cause to be filed administrative claims on behalf of some of my clients.

- e. **Have you recovered any attorneys' fees as a result of the filing of a claim with any asbestos bankruptcy trust formed under 524(g) of the federal bankruptcy code?**

Response: Yes.

- f. **Do you think that asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy code have adequate internal controls and safeguards to prevent fraudulent claims from being submitted?**

Response: I do not have the information necessary to have any opinion on this matter. I have had very little dealings with asbestos bankruptcy trusts, other than to cause to be filed administrative claims on behalf of some of my clients.

- g. **Do you think that asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy code should have greater cooperation and transparency**

to prevent the possibility of duplicate payments made by the trusts to the same claimants?

Response: Yes.

h. Do you think that asbestos bankruptcy trusts formed under 524(g) of the federal bankruptcy require additional oversight from the Congress?

Response: I do not have the information necessary to have any opinion on this matter. I have had very little dealings with asbestos bankruptcy trusts, other than to cause to be filed administrative claims on behalf of my clients.

i. Do you think that asbestos plaintiffs who bring claims in the tort system should disclose to the court and the defendants their previous or future asbestos bankruptcy trust filings?

Response: I think every party should comply fully with their obligations of candor to the tribunal. As to whether any particular information should be disclosed, including asbestos bankruptcy trust filings, it would depend on what the particular state law and circumstances require.

j. Did you have any involvement in efforts to oppose or support proposed federal legislation to address problems with asbestos litigation during the 108th, 109th, or 110th Congresses?

Response: No.

k. Should prevailing legal standards governing expert witness testimony apply to asbestos litigation pursued in state and federal courts?

Response: Yes, the prevailing legal standard in state and federal courts applicable to expert witness testimony should also apply to experts in asbestos litigation.

l. Should asbestos claimants show an illness before securing compensation against an asbestos defendant in the tort system?

Response: Yes.

m. Should asbestos claimants show substantial exposure to a product of an asbestos defendant before securing a recovery in state or federal court against that defendant?

Response: Like any litigant, an asbestos claimant should have a good faith basis under the law for all claims made in court, which would include substantial exposure where required by law. The law on what an asbestos claimant must show varies amongst states.

4. **After the Rhode Island Supreme Court issued its ruling overturning the verdict in your lead paint litigation, did you have any discussions with any Justice of the Rhode Island Supreme Court regarding either the case generally or the decision in particular? If so, what was the date and substance of the discussion(s)?**

Response: No.

5. **According to Rhode Island Board of Elections files, you contributed \$1,000 on December 30, 1998, and \$1,000 on November 1, 1998, to Sheldon Whitehouse's 1998 campaign for Rhode Island Attorney General. Did you make any other contributions to Senator Whitehouse's 1998 campaign for Rhode Island Attorney General?**

Response: Not to my knowledge. I do not recall any other and, in answering this question, I rechecked my personal records and publically available databases.

- a. **Did Motley Rice or any attorney at Motley Rice make any contributions to Senator Whitehouse's 1998 campaign?**

Response: Rhode Island election law has prohibited contributions from corporations. Motley Rice LLC did not make any such contributions. I do not know of any attorney affiliated with Motley Rice (other than the two contributions I made) who contributed to Senator Whitehouse's Attorney General campaign.

6. **You cited Democrat presidential candidate Bill Bradley's strong pro-gun control views as one of the main reasons you supported him for president. Do you believe the Second Amendment guarantees a fundamental right to own a firearm, and that the right should be applied to the states?**

Response: I have not formed a view on whether the Second Amendment should be applied to the states and I understand that this is a pending question before the Supreme Court of the United States. If confirmed as a U.S. District Judge, my personal beliefs will have no role in my decision-making in the courtroom. I would be bound by applicable Supreme Court and First Circuit precedent with regard to the scope and reach of the Second Amendment, including *District of Columbia v. Heller*, and the upcoming decision in *McDonald v. Chicago*.

7. **In a 5-4 majority opinion, the U.S. Supreme Court recently held in *District of Columbia v. Heller*, 554 U.S. ____ (2008), that the Second Amendment of the United States Constitution "protects an individual right to possess a firearm unconnected to service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." As Justice Scalia's opinion in *Heller* pointed out, Sir William Blackstone, the preeminent authority on English law for the Founders, cited the right to bear arms as one of the fundamental rights of Englishmen. Do you personally believe the right to bear arms is a fundamental right?**

Response: I have not formed a view on whether the Second Amendment is a fundamental right that should be applied to the states and I understand that this is a pending question before the Supreme Court of the United States. If confirmed as a U.S. District Judge, my personal beliefs will have no role in my decision-making in the courtroom. I would be bound by applicable Supreme Court and First Circuit precedent with regard to the scope and reach of the Second Amendment, including *District of Columbia v. Heller*, and the upcoming decision in *McDonald v. Chicago*.

- a. Do you believe that explicitly guaranteed substantive rights, such as those guaranteed in the Bill of Rights, are also fundamental rights? Please explain why or why not.**

Response: I do not have an opinion on this matter, but if confirmed as a U.S. District Judge, I would be bound by applicable Supreme Court and First Circuit precedent on this issue.

- b. Is it your understanding of Supreme Court precedent that those provisions of the Bill of Rights that embody fundamental rights are deemed to apply against the States? Please explain why or why not.**

Response: Yes. See, e.g., *Duncan vs. Louisiana*, 391 U.S. 145, 148-149 (1968) (“The test for determining whether a right extended by the Fifth and Sixth Amendments with respect to federal criminal proceedings is also protected against state action by the Fourteenth Amendment has been phrased in a variety of ways in the opinions of this Court. The question has been asked whether a right is among those “fundamental principles of liberty and justice which lie at the base of all our civil and political institutions,” *Powell v. Alabama*, 287 U.S. 45, 67 (1932); whether it is “basic in our system of jurisprudence,” *In re Oliver*, 333 U.S. 257, 273 (1948); and whether it is “a fundamental right, essential to a fair trial,” *Gideon v. Wainwright*, 372 U.S. 335, 343-344 (1963); *Malloy v. Hogan*, 378 U.S. 1, 6 (1964); *Pointer v. Texas*, 380 U.S. 400, 403 (1965”).

- c. *Heller* further stated that “it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right.” Do you believe that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right? Please explain why or why not.**

Response: The U.S. Supreme court has said that the Second Amendment codified a preexisting right, and if confirmed as a U.S. District Judge I would be bound by applicable Supreme Court and First Circuit precedent on this issue.

- d. Some have criticized the Supreme Court’s decision in *Heller* saying it “discovered a constitutional right to own guns that the Court had not previously noticed in 220 years.” Do you believe that *Heller* “discovered” a**

new right, or merely applied a fair reading of the plain text of the Second Amendment?

Response: I have not studied the history to an extent that would permit me to have formed an opinion on the criticism described. As an opinion of the Supreme Court, *Heller* is the law, and if confirmed as a U.S. District Judge, I would follow it.

8. Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

Response: No.

9. Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.

a. Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?

Response: Yes.

b. Why or why not?

Response: The *Lopez* and *Morrison* opinions are consistent with the Supreme Court’s earlier Commerce Clause decisions because the decisions themselves so indicate and the Court affirmed this opinion in *Gonzales v. Raich*, 545 U.S. 1 (2005).

10. In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?

Response: I do not disagree with Justice Kennedy’s analysis as the opinion of the U.S. Supreme Court, which, if confirmed as a U.S. District Judge, I would follow.

a. Do you believe evolving standards of decency are relevant to a court’s evaluation of the text of the Constitution or Bill of Rights?

Response: If confirmed as a U.S. District Judge, I would not look to “evolving standards of decency” except where instructed to do so by the U.S. Supreme Court or the First Circuit.

b. How would you determine what the evolving standards of decency are?

Response: If required to make such a determination, I would apply precedents from the U.S. Supreme Court and the U.S. Court of Appeals for the First Circuit.

c. Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?

Response: No. The U.S. Supreme Court has previously ruled that the death penalty is a constitutional punishment and, therefore as a U.S. District Judge, I would follow that precedent.

d. What factors do you believe would be relevant to the judge’s analysis?

Response: The only relevant factors in the analysis of this issue at the district court level are those set forth by the U.S. Supreme Court in its decisions on the issue.

11. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: No.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: Not applicable.

b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: No.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: I would not consider foreign law when interpreting the Eighth Amendment unless required to do so by precedent from the U.S. Supreme Court or the Court of Appeals for the First Circuit.

12. In *Kennedy v. Louisiana*, the Supreme Court held that the death penalty for the crime of child rape always violates the Eighth Amendment. Writing for a five-justice majority, Justice Kennedy based his opinion partly on the fact that 37 jurisdictions – 36 states and the federal government – did not allow for capital punishment in child rape cases.

- a. **Given the heinousness of the crime, as well as the new information on the federal government's codification of capital punishment in child rape cases under the UCMJ, do you believe *Kennedy v. Louisiana* was wrongly decided? If not, why?**

Response: I have not analyzed this opinion. Justice Kennedy's opinion in *Kennedy* is binding precedent and I would follow it if confirmed as a U.S. District Judge.

- b. **Following the Supreme Court's decision, President Obama announced at a press conference: "I think that the death penalty should be applied in very narrow circumstances for the most egregious of crimes. I think that the rape of a small child, 6 or 8 years old, is a heinous crime." Do you agree with that statement?**

Response: I can agree that the rape of a child is a heinous crime. With respect to when the death penalty should be applied, I would follow binding precedent of the U.S. Supreme Court.

13. **In *Atkins v. Virginia*, the Supreme Court ruled that the imposition of the death penalty on mentally retarded defendants constituted cruel and unusual punishment. In its majority opinion, Justice Stevens stated that the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures," and that the majority first reviewed "the judgment of legislatures that have addressed the suitability of imposing the death penalty on the mentally retarded." The majority cited the fact that 18 States, less than half of the 38 States that permitted capital punishment, had recently enacted legislation barring execution of the mentally retarded as evidence that a "national consensus" existed about the propriety of executing the mentally retarded.**

- a. **Do you believe that the legislative acts of 47% of the country equates to a national consensus?**

Response: I do not know what constitutes a national consensus.

- b. **In its majority opinion, the Court stated: "Moreover, within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved. Brief for The European Union as *Amicus Curiae* in *McCarver v. North Carolina*, O. T. 2001, No. 00—8727, p. 4." Do you personally believe it was appropriate for the Court to consider the opinion of the "world community" when interpreting the Eighth Amendment?**

Response: If confirmed as a U.S. District Judge, my personal beliefs will not play a role in my decision making. I would be bound by that precedent and would follow the law.

1034

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CHAMBERS OF
SUSAN RICHARD NELSON
MAGISTRATE JUDGE



U.S. COURTHOUSE, SUITE 9E
300 SOUTH FOURTH STREET
MINNEAPOLIS, MINNESOTA 55415
(612) 664-5490

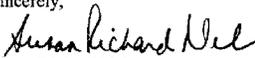
May 24, 2010

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached are my responses to written questions from Senator Grassley, Senator Sessions, and Senator Coburn.

Sincerely,


Susan Richard Nelson
U.S. Magistrate Judge

SRN/bcr
Enclosures

cc: The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

**Responses of Susan Richard Nelson
Nominee to be United States District Judge for the District of Minnesota
to the Written Questions of Senator Jeff Sessions**

1. **In a 2002 drug case, you recommended the suppression of physical evidence obtained before the defendant was given *Miranda* warnings. In addition, you recommended the suppression of the defendant's incriminating statement made after he waived his *Miranda* rights, citing the fruit of the poisonous tree doctrine. The district court judge adopted most of your report, but the Eighth Circuit reversed. Specifically, the court found that because there was no evidence of involuntariness as to the initial, unwarned statement, both the entire post-*Miranda* statement and physical evidence were admissible.**

- a. **When deciding whether to suppress a statement made by a defendant who has been given *Miranda* warnings and has waived his or her rights, what factors do you consider?**

Response: If a defendant received *Miranda* warnings and then waived his rights, under the law of the Supreme Court and the Eighth Circuit in *Dickerson v. United States*, 530 U.S. 428, 120 S. Ct. 2326, 147 L. Ed. 2d 405 (2000) and *Simmons v. Bowersox*, 235 F.3d 1124, 1132 (8th Cir. 2001), I would only suppress such a statement if there was evidence that demonstrated the waiver was not voluntary.

- b. **Do you believe that *Miranda* warnings provide adequate protection for the rights of the accused?**

Response: Yes, if administered properly.

2. **In your questionnaire, you indicated that you have no experience litigating criminal cases. You testified that in your district, magistrates are utilized mostly for settling civil cases. While I recognize that you also handle some non-dispositive criminal motions and issue reports and recommendations in some criminal cases, you do not preside over criminal cases, which account for a substantial portion of the federal docket.**

- a. **How has your experience prepared you for the criminal cases you will handle as district court judge?**

Response: As a Magistrate Judge for the past ten years, I have conducted all preliminary criminal hearings (first appearances, preliminary hearings, detention hearings, arraignments, and preliminary revocation hearings) as well as all criminal motions, including evidentiary hearings on suppression issues, in every criminal case. I have become very familiar with the Federal Rules of Criminal Procedure, the criminal rules of evidence, and substantive federal criminal law.

- b. **If confirmed, how do you plan to educate yourself with respect to federal criminal law and the federal sentencing guidelines?**

Response: If confirmed, I will attend the training sessions offered by the Federal Judicial Center, which provide in depth training on the federal sentencing guidelines and criminal trials. In addition, the Probation Office in our district has tailored an extensive training program for me on the guidelines, sentencing, and plea bargains.

3. **Now that the guidelines are advisory rather than mandatory, a judge may impose any sentence ranging from probation to the statutory maximum.**

- a. **What level of deference will you show to the guidelines now that they are only advisory?**

Response: If confirmed as a District Judge, I would give the guidelines great deference.

- b. **Do you commit to follow the guidelines?**

Response: If confirmed as a District Judge, I would commit to giving them great deference.

- c. **Do you agree that the sentence a defendant receives for a particular crime should not depend on the judge he or she happens to draw?**

Response: Yes. I believe that the sentencing guidelines provide uniformity in sentencing, which is essential to a fair system of justice.

4. **Please describe with particularity the process by which these questions were answered.**

Response: After the Department of Justice forwarded the questions to me, I reviewed them and drafted my responses. I consulted with Justice Department representatives and then finalized my responses, and then forwarded them to the Justice Department to submit to the Committee on the Judiciary on my behalf.

5. **Do these answers reflect your true and personal views?**

Response: Yes.

**Responses of Susan Richard Nelson
Nominee to be United States District Judge for the District of Minnesota
to the Written Questions of Senator Grassley**

- 1. During the 2008 presidential campaign, President Obama described the kind of judge that he would nominate to the federal bench as follows: “We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”**

- a. Without commenting on what President Obama may or may not have meant by this statement, do you believe that you fit the President’s criteria for federal judges, as described in this quote?**

Response: Although I cannot comment on what President Obama meant by this statement, because he nominated me, I believe I meet his criteria for a federal judge.

- b. During her confirmation hearing, Justice Sotomayor rejected this so-called “empathy standard” stating, “We apply the law to facts. We don’t apply feelings to facts.” Do you agree with Justice Sotomayor?**

Response: Yes.

- c. Do you believe that it is ever appropriate for judges to indulge their own subjective sense of empathy in determining what the Constitution and the laws mean? If so, under what circumstances?**

Response: No.

- d. Do you believe that it is ever appropriate for judges to indulge their empathy for particular groups or certain people? For example, do you believe that it is appropriate for judges to favor those who are poor? Do you believe that it is appropriate for judges to disfavor corporations?**

Response: No, impartiality is the hallmark of a good judge.

- e. After Justice Stevens announced his retirement, President Obama stated that he would select a Supreme Court nominee with “a keen understanding of how the law affects the daily lives of the American people.” Do you believe that judges should base their decisions on a desired outcome?**

Response: I believe that judges should base their decisions solely on the law and facts presented.

2. What, in your view, is the role of a judge? Please describe your judicial philosophy.

Response: I believe that the role of a District Judge is to apply the law, including Supreme Court and appellate court precedent to the facts of a particular case, with careful consideration and impartiality. As a United States Magistrate Judge, I have sought to do so, and would continue to do so, if confirmed as a District Judge. My judicial philosophy is to evaluate disputes based on legal precedent and the plain meaning of the applicable law, as guided by any relevant precedent.

3. How do you define “judicial activism”?

Response: While this is not a term that I use, I understand others interpret the phrase to refer to a judicial decision-making process whereby judges permit their personal views to influence their decision-making in order to reach a particular result.

4. Could you identify three recent Supreme Court cases that you believe are examples of “judicial activism”? Please explain why you believe these cases are examples of “judicial activism”.

Response: No, I am not aware of any recent Supreme Court cases that are examples of “judicial activism.”

5. How do you define “judicial restraint”?

Response: My understanding is that “judicial restraint” refers to a philosophy of judicial decision-making whereby judges rule based upon established legal precedent and in deference to the law.

6. Could you identify three recent Supreme Court cases that you believe are examples of “judicial restraint”? Please explain why you believe these cases are examples of “judicial restraint”.

Response: As a general principle, I believe that the Supreme Court has exercised judicial restraint and therefore I am unable to identify just three cases.

7. Do you believe that it is ever appropriate for judges to indulge their own values and/or policy preferences in determining what the Constitution and the laws mean? If so, under what circumstances?

Response: No.

8. Should the courts, rather than the elected branches of government, ever take the lead in creating a more “just” society?

Response: No. Each of our branches of government is designed to serve a different purpose. The courts apply the laws of the United States, enacted by Congress.

- 9. In your opinion, what is the proper role of foreign law in U.S. court decisions, and is citation to or reliance on foreign law ever appropriate when interpreting the U.S. Constitution and statutes?**

Response: I believe that reliance upon foreign or international law in determining a Constitutional question is not appropriate unless controlling Supreme Court or appellate court precedent requires such an approach.

- 10. Does the silence of the U.S. Constitution on a legal issue allow a federal court to use foreign law as an authority for judicial decision-making? When is it not appropriate to look to foreign law for legal guidance or legal authority?**

Response: No, it is inappropriate to look to foreign law as authority for legal guidance, unless directed to do so by the Supreme Court or appellate court precedent.

- 11. I would like to get a better understanding of how you would interpret statutes and what your judicial method would be if you were confirmed to be a judge on the District Court of Minnesota.**

- a. In cases involving a close question of law, what would you look to when determining which way to rule?**

Response: If confirmed as a District Judge, I would look to the plain meaning of the statute, then to the decisions of the Supreme Court and the Eighth Circuit, interpreting the statute.

- b. Would you agree that the meaning of a statute is to be ascertained according to the understanding of the law when it was enacted?**

Response: I believe that the plain meaning of a statute governs.

- c. How would you use legislative history when interpreting a statute? What kind of weight would you give legislative history, if any, when interpreting a statute?**

Response: If confirmed as a District Judge, I would refer to legislative history only when the statute in question contains ambiguities. In this context, I would afford careful consideration to the legislative history.

Responses of Susan Richard Nelson
Nominee to be United States District Judge for the District of Minnesota
to the Written Questions of Senator Tom Coburn, M.D.

1. **Some people refer to the Constitution as a “living” document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

Response: No. The text of the Constitution is fixed, absent amendment through the Article V amendment process.

2. **Since at least the 1930s, the Supreme Court has expansively interpreted Congress’ power under the Commerce Clause. Recently, however, in the cases of *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Morrison*, 529 U.S. 598 (2000), the Supreme Court has imposed some limits on that power.**

- a. **Do you believe *Lopez* and *Morrison* consistent with the Supreme Court’s earlier Commerce Clause decisions?**

Response: Yes.

- b. **Why or why not?**

Response: The Supreme Court stated in both *Lopez* and *Morrison*, and also in *Gonzales v. Raich*, 545 U.S. 1 (2005), that its recent decisions are consistent with earlier Commerce Clause precedent.

3. **In *Roper v. Simmons*, 543 U.S. 551 (2005), Justice Kennedy relied in part on the “evolving standards of decency” to hold that capital punishment for any murderer under age 18 was unconstitutional. I understand that the Supreme Court has ruled on this matter, but do you agree with Justice Kennedy’s analysis?**

Response: As a United States Magistrate Judge, I have not had occasion to consider the analysis referenced here. In the event that I am confirmed and appointed to serve as a District Judge, I would follow the binding precedent of the Supreme Court and the Court of Appeals.

- a. **How would you determine what the evolving standards of decency are?**

Response: If confirmed as a District Judge, I would apply Supreme Court and appellate precedent, including those cases that provide authority and guidance on this issue.

- b. **Do you think that a judge could ever find that the “evolving standards of decency” dictated that the death penalty is unconstitutional in all cases?**

Response: The Supreme Court has held that capital punishment is not unconstitutional per se, therefore, under current Supreme Court law, a District Judge could not so rule.

c. What factors do you believe would be relevant to the judge's analysis?

Response: The factors identified by the Supreme Court in its decisions on capital punishment, including *Roper*.

4. In your view, is it ever proper for judges to rely on contemporary foreign or international laws or decisions in determining the meaning of the Constitution?

Response: If I am confirmed and appointed as a District Judge, I would not consider foreign or international law in determining a Constitutional question unless controlling Supreme Court or Court of Appeals precedent directed such an approach.

a. If so, under what circumstances would you consider foreign law when interpreting the Constitution?

Response: If confirmed and appointed as a District Judge, I would only consider foreign or international law in interpreting the Constitution if the decisions of the Supreme Court or the controlling Court of Appeals required as much.

b. Do you believe foreign nations have ideas and solutions to legal problems that could contribute to the proper interpretation of our laws?

Response: If presented with such an argument, I would respond by referring to Supreme Court or controlling appellate court authority.

c. Would you consider foreign law when interpreting the Eighth Amendment? Other amendments?

Response: If confirmed and appointed as a District Judge, I would not consider foreign law in interpreting a Constitutional Amendment unless the Supreme Court or controlling appellate court authority directed such an approach.

5. In May 2009, you gave a speech at an Upper Midwest Employment Law Institute Seminar during which you said: "the quality of interpretation for non-English speakers other than Spanish speakers is of variable quality. There are a significant number of cases nation-wide which address this very troubling issue and it is very worthy of addressing today." You stated that as a judge, she is concerned about "the risk of inadequate interpretation in the context of significant cultural bias and misunderstandings in the courthouse." In addition, you commented that "[s]ocial mores of different cultures not only make the context of law and legal proceedings incomprehensible, social mores also prevent evidence from being fully explored" and that "language, despite the best of interpreters, can also be a barrier. Significantly, much of our legal process is not easily translatable into certain languages, such as African or Asian languages."

8 U.S.C.A. § 1423 of the United States Code requires citizens who are naturalized to have “an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language...” Do you have any concerns about this requirement?

Response: No.

- a. Do you believe translators and materials in legal proceedings and courts should be made available in every conceivable language to avoid “the risk of inadequate interpretation?”**

Response: Every criminal defendant should be afforded the opportunity to understand the charges brought against him and his rights under the Constitution.

- b. If not, what limits would you place on the number and variety of languages available.**

Response: The Court endeavors to find competent interpreters for every criminal defendant charged with a crime.

- c. Do you have any concerns about the cost to states and to the federal government if translators and materials are required to be made available in every language?**

Response: It is incumbent on courts to efficiently serve the public, including with respect to the use of interpreters. For example, where a competent interpreter is not available for a particular language, our court has used telephone interpretation as a back-up to meet the need at a reasonable cost.

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MAY. 7. 2010 1:27PM WARWICK MAYOR'S

NO.275 P.1

**SUBMISSIONS FOR THE RECORD
EXECUTIVE CHAMBER**

CITY OF WARWICK



RHODE ISLAND

**SCOTT AVEDISIAN
MAYOR**

May 7, 2010

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Senator Sessions:

I am pleased to write this letter in support of John J. "Jack" McConnell, Jr., who is seeking appointment to the United States District Court for the District of Rhode Island.

Jack had been an acquaintance of mine for many years, but it was not until we began serving together for two non-profit agencies – Crossroads Rhode Island's Board of Directors and the Institute for the Study and Practice of Non-Violence – that I got to know him well. Jack is a man of integrity, a strong sense of community and a very fair and forward-thinking individual.

As the Republican Mayor of Rhode Island's second largest community, I have always firmly believed that the ability to reach consensus among people of differing points of view is critical to the well-being of our residents and our state as a whole. In the time I have come to know Jack, I have realized that he shares this same philosophy.

The District Court appointment is a critical one to ensure that our justice system continues to provide victims and their accused with an opportunity to be heard fairly and impartially. I believe that Jack would be a valuable asset to the bench and a good representative of Rhode Island in the federal court system.

I am proud to offer this recommendation and respectfully urge you to give him your serious consideration. Thank you for your attention.

Sincerely,

Scott Avedisian
Mayor

3275 Post Road • Warwick, RI 02886 • (401) 738-2000 • FAX (401) 738-6639

05/07/2010 12:58PM

1044

BARBARA F. BALDWIN
81 Hudson St.
Providence, Rhode Island 02909

February 23, 2009

FEB 24 2009

The Honorable Jack Reed
United States Senate
1000 Chapel View Boulevard, Suite 290
Cranston, Rhode Island 02909

Dear Senator Reed:

I am writing concerning the nomination of Jack McConnell, Jr. to United States District Court for the District of Rhode Island.

I have worked with Jack for a number of years, as a board member of Planned Parenthood of Rhode Island, on numerous political campaigns, and most recently on lead safety issues. I have always been impressed with his commitment to righting wrongs and defending the most vulnerable Rhode Islanders. His volunteer work reflects this passion serving on the boards of Planned Parenthood of Rhode Island, Crossroads Rhode Island, the Genesis Center, and the George Wiley Center. He has served as a volunteer for Big Brothers of Rhode Island. These organizations serve some of our most defenseless populations.

Despite our difficult economic times, Jack continues to contribute to a number of organizations that are struggling to keep services available here in Rhode Island. Times are challenging, and without individuals like Jack it would be difficult to push ahead.

I can think of no one I would rather see in a judicial position because of his integrity, honesty, and sense of fairness as well as 25 years of experience practicing law. I hope you will seriously consider supporting Jack's appointment to the District Court here in Rhode Island.

Should you wish to discuss this matter further, I would welcome speaking with you or one of your staff members.

I also want to thank you for all you are doing in Washington to get us back on track.

Sincerely,



Barbara F. Baldwin

For your information

CC: The Honorable Sheldon Whitehouse
United States Senate



June 16, 2010

Founder and President

WILLIAM J. FIEKNER

Chairman Patrick J. Leahy
 Ranking Member Jeff Sessions
 And members of the Judiciary Committee

Chairman

JONATHAN P. SCOTT

Board of Directors

SUZANNE CARCIERI

First Lady of Rhode Island

DANIEL S. HARRIS, M.D.

Brown University

JAY R. JACOTT, ASSOCIATE AIA

Thompson/Edwards Architects, LLC

EDWARD M. MAZZAK, Ph.D.

University of Rhode Island

HON. J. WILLIAM MIDDENDORF II

Middendorf and Company

LLOYD MONTROSE, J.D.

Oceanstate Financial Services

SANDRA L. THOMPSON

*Operation Clean Government***Promoting Free-Market****Ideals and Traditional****American Values**

Via fax: 202.224.9516 and 202.224.9102

Senators:

We write today to ask you to postpone your final considerations of Nominee John J. McConnell, Jr. for whom you have scheduled a committee vote tomorrow. While we recognize that the committee has operated in a bipartisan manner to facilitate broader inquiry into the nominee's unique role in various mass torts in the public behalf, we have been unable, as of this date, to obtain public records which may shed light on the nominee's full candor with the courts, other members of bar and this committee, most especially with regard to negotiations and payments that resulted in the release with prejudice of E.I Dupont De Nemours and Company as a defendant in the so called 'Lead Paint' in Rhode Island, captioned PC-1999-5226.

The Founders Project brings the Ocean State Policy Research Institute's focus on transparency in the operation of all branches of government to bear on the Judiciary. Our mission is to make the operation of government accessible and understandable to better enable the exercise of the citizenry of informed participation. The frame of reference for our substantive analyses of policies and practices in Rhode Island is their coordination with the interests of free markets and free people.

Our commitment to transparency in government, however, is just that. Thus we ask transparency of right leaning organs of government such as the present gubernatorial administration of Governor Donald Carcieri with whom we have sparred recently on corporatist renewable energy policy, and of left leaning organs such as the office of Attorney General as aligned with trial lawyers in these recent mass torts.

It should be noted that the species of criticism we imply in reviewing the disposition of moneys from the 'Dupont deal' was not first raised by rabid fans of tort reform or skeptics of the mass tort wave, but rather by Attorney McConnell's fellow trial lawyer and co-counsel in the 'Lead Paint' case, Leonard Decof, esq. who said when he filed after filing a lien against the Dupont funds: "If there was a lawyer's fee paid, then I am owed money. . . Is it a settlement, and was a fee paid?" If Attorney McConnell's own co-counsel was unconvinced by Attorney

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www.oceanstatepolicy.org

McConnell's protestations to the contrary, we think those questions should be answered by the record, and not by taking for granted representations made by participants which have changed subtly over time.

We have been seeking documentation from this case since Attorney McConnell was first recommended for this appointment by your colleagues Senators Reed and Whitehouse, in hopes that evidence of how the 'Dupont Deal' was struck and executed could speak for itself, as we do not intend to take a position on this nomination. Thus what may appear a last minute appeal of sorts actually results from months of chasing the records of a case for which the docket itself is over 200 pages long, meaning that some 3500 separate filings were made totaling an untold number of pages and these records -- due apparently to their unusual volume -- have been inaccessible to the public throughout our attempts.

Nor do these public records alone represent the extent of documentation that should be available to the public regarding a case in which they (the public) were the client. Because the Dupont Deal was never actually written down, it does not itself constitute a document. A spoken version was delivered into the court's stenographic record but that does not exist in a form that is accessible to the public.

Further, now that the case is resolved -- appeals exhausted and only the very end remnant of 'housekeeping' now remaining, the work product of the public's lawyers should be available to the public. Thus aspects of this deal not to be found in either court filings or court transcripts must come from the Attorneys involved. We trust that Attorney McConnell who has been eager to work for the public in these contingency fee arrangements would concur that the public is the client and has every right to examine its own case files.

Towards this end we made Access to Public Records requests of Attorney McConnell, his contingency co-counsel Attorney Leonard Decof, and of the Attorney General 3 weeks ago. We have received a request for extension from the Attorney General but no response from either of the contingent fee counsel.

The Rhode Island General Laws clearly state that such counsel are independently subject to the provisions of the Access to Public Records Act, codified as §38-2-1 *et seq.*, which defines "Agency" or "public body" as including: "any other public or private agency, person, partnership, corporation, or business entity acting on behalf of and/or in place of any public agency." The act further provides that failure to respond within 10 days is equivalent to denial. Thus, ironically, we have been forced to appeal the effective denial of our request by Attorneys McConnell and Decof to the Attorney General.

Just as the appointment of contingency fee counsel to prosecute the state's interest in this 'Lead Paint' case was novel and created issues of first impression for the courts, so it must be understood that our request raises similar issues and we cannot blame the Attorney General for the necessity to carefully consider these matters. However, this has made it beyond our control to obtain any of the records we seek within the 10 day framework envisioned by the law and thus our request that you take notice of this ongoing process in Rhode Island and would permit your members to benefit from the anticipated production of records in the case by delaying your vote.

We remain very truly yours,



Brian Bishop
Director of the Founders Project



Bill Felkner
President and Founder of the Ocean State Policy Research Institute

1048

**OPENING STATEMENT OF
SENATOR BENJAMIN L. CARDIN
CONFIRMATION HEARING FOR
JUDICIAL NOMINATIONS
SENATE JUDICIARY COMMITTEE**

Thursday, May 13, 2010

The Committee will come to order. Let me thank Chairman Leahy for asking me to chair today's hearing.

Today the Committee considers five judicial nominations. Panel I consists of Scott Matheson of Utah to be a US Circuit Judge for the Tenth Circuit. Panel II consists of four district court nominees: John McConnell of Rhode Island, Susan Nelson of Minnesota, Ellen Hollander of Maryland, and James Bredar of Maryland.

Let me take my prerogative as Chairman to make a few brief comments about our Maryland nominees today.

I was pleased to join with Senator Mikulski in recommending Judges Hollander and Bredar for the two vacancies that now exist in the U.S. District Court for the District of Maryland. Let me commend Senator Mikulski for the thoughtful process we used in selecting these nominees and making recommendations to the President. The Constitution provides for lifetime appointments for federal judges, which is unique in our federal government. I know that both Senator Mikulski and I take this obligation very seriously in terms of the advice and consent role played by the Senate.

I look forward to Senator Mikulski's formal introduction of Judges Hollander and Bredar later in this hearing, and to having the judges introduce their family members that are attending today's hearing.

Judge Ellen Hollander currently serves as a Judge on the Maryland Court of Special Appeals, which is Maryland's second-highest court that hears mandatory appeals from our state trial courts in Maryland.

She has served as a judge on that court since 1994. Judge Hollander comes to this committee with an impressive amount of experience in federal and state court. She served as a federal prosecutor in Maryland for 4 years, served as a state Circuit Court judge in Baltimore City for 5 years, and has served as a state appellate court judge for 16 years. As a state trial court judge she heard thousands of criminal and civil cases – hundreds of which went to verdict of final judgment – and handled both jury trials and bench trials. As an appellate judge she has authored over 1,000 opinions.

Judge Hollander would replace Andre Davis on the bench in Baltimore, as Judge Davis was recently elevated to the Fourth Circuit. I was pleased to attend last month with Senator Mikulski the investiture ceremony for Judge Davis, who filled a Maryland seat on the Fourth Circuit.

Judge Hollander has been a member of the Maryland Bar since 1974. The American Bar Association's Standing Committee on the Federal Judiciary evaluated Judge Hollander's nomination and rated her unanimously well qualified, the highest possible rating.

Judge Hollander in my mind really exemplifies the spirit of public service. She is well known by lawyers and jurors alike in Maryland for her meticulous reasoning process and well-crafted legal opinions. She really is a model of a fair and impartial judge who will dispense equal justice under the law. I know that Judge Hollander has also supported efforts to reduce recidivism and is a strong supporter of our drug treatment courts and juvenile diversion programs.

Judge Hollander is also a judge who believes in giving back to the community and being involved with our Maryland community. She is a proud graduate of Goucher College in Towson, and has served on the Board of Trustees there for nearly 15 years. She served on the Executive Committee of the Baltimore Jewish Council for 13 years, and took a special interest in Holocaust remembrance and human rights issues. She regularly participates in law-related activities with students from the elementary school to the law school level. She has received a great number of professional awards in Maryland for her legal service which are too numerous to mention here, but are listed in her Committee questionnaire. And let us not forget that Judge Hollander is also a wife and mother to three children.

Judge Jim Bredar also comes to this committee with a wide range of courtroom and litigation experience. He served as a federal prosecutor in Colorado for 4 years before coming to Maryland and serving as a federal public defender for 6 years. Since 1998 he has served as a U.S. Magistrate Judge for U.S. District Court for the District of Maryland, where he works closely with our judges of the U.S. District Court for the District of Maryland, and conducts preliminary proceedings in felony cases, all proceedings in petty offense cases, and all proceedings in misdemeanor and civil matters upon the consent of the parties. Judge Bredar has also conducted over 700 mediation and settlement conferences in civil cases.

Judge Bredar would replace Judge J. Frederick Motz on the bench in Baltimore, as Judge Motz is taking senior status. Let me thank Judge Motz for his excellent 15 years of service on the bench, and particularly thank him for his service as Chief Judge from 1994 to 2001. And let me also mention that Judge Motz's wife continues to serve with great distinction on the Fourth Circuit. It is fitting indeed that Judge Motz was the official that swore in Judge Bredar as a US Magistrate Judge in 1998.

Judge Bredar has been a member of the Maryland Bar since 1995. The American Bar Association's Standing Committee on the Federal Judiciary evaluated Judge Bredar's nomination and rated him unanimously well qualified, the highest possible rating.

Judge Bredar has now made Maryland his home, after beginning his professional career in Colorado. With Judge Bredar, I see a nominee who is genuinely concerned about broadening the access to justice of Americans to their courts, which is an issue about which I have worked on for numerous years in Baltimore, Annapolis, and now Washington. Judge Bredar has a unique perspective here, as he has been a judge, prosecutor, and public defender. He believes that we can do better with both our criminal and civil justice systems. I know of Judge's Bredar work as a mediator in our federal court's alternative dispute resolution program, which has received high praise from Maryland lawyers and litigants alike. As the co-chair of the U.S. District Court's Criminal Justice Act (CJA) Committee he has fought to ensure adequate attention and resources for indigent defendants. As a Trustee of the Vera Institute he has worked to improve the criminal justice system both at home and abroad. Finally, in 2007, Chief Justice Roberts appointed Judge Bredar to the Committee on Federal-State Jurisdiction of the Judicial Conference of the United States.

And I suspect the most interesting work experiences you have had were as a park ranger and ski patroller in Colorado. And let me close by mentioning that you are also a husband and father of three children.

When evaluating judicial nominees, I use several criteria. First, I believe judicial nominees must have an appreciation for the Constitution and the protections it provides to each and every American. I believe each nominee must embrace a judicial philosophy that reflects mainstream American values, not narrow ideological interests. I believe a judicial nominee must respect the role and responsibilities of each branch of government, including a healthy respect for the precedents of the court. I look for a strong commitment and passion for the continued forward progress of civil rights protections. And I want judges who have the necessary experience and temperament.

I am confident that Judges Hollander and Bredar meet these criteria and standards, and I look forward to exploring their records in more detail at today's hearing.

Let me also mention the other three nominees for our hearing today, before hearing from their home-state Senators for their formal introduction.

Scott Matheson of Utah comes to this Committee with the experience of being a prosecutor, law firm attorney, professor of law, and dean of a law school. Mr. Matheson is a legal scholar, and we look forward to reviewing his book and various law review articles he has written during today's hearing. I would note that Senator Hatch, a distinguished former Chairman of this Committee, has return a positive blue slip on this nominee and will be introducing the nominee today. I have also had the pleasure of serving with the nominee's brother, Congressman Jim Matheson, for 6 years when I was a member of the House of Representatives.

John McConnell of Rhode Island is a distinguished lawyer with more than 25 years of private practice in the Rhode Island bar. He has focused on complex civil litigation, and most notably worked on behalf of personal injury victims and consumers that were defrauded, often filing class action lawsuits. He has spent about half of his time in state court and half of his time in federal court. Most notably, Mr. McConnell worked on behalf of state governments suing the tobacco industry for damages, and ultimately helped draft and negotiate a 46-state, \$246 billion settlement.

Our final nominee is Susan Nelson of Minnesota. Judge Nelson has served as a U.S. Magistrate Judge for the District of Minnesota for the past ten years. As a magistrate judge she has handled hundreds of cases, and in civil cases she regularly handles discovery proceedings, pleadings of the parties, and a wide variety of motions from counsel that lead to both dispositive and non-dispositive orders. She has regularly conducted settlement conferences for litigants. For criminal cases she has also issued hundreds of orders on non-dispositive criminal motions, and reports and recommendations on suppression motions.

So let me thank these five nominees for agreeing to serve their country – and that their families for agreeing to the sacrifices that public service demands, as well as the rewards that it provides – and I look forward to receiving your testimony today.

Before I ask the nominees to step forward to take the oath and introduce their family members in attendance today, let me turn to the Ranking Member for any comments he cares to make at this time.



3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1550 | Fax: 202.628.1601

www.namic.org

December 17, 2010

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

I would like to take this opportunity to clarify the position of the National Association of Mutual Insurance Companies (NAMIC) on the nomination of attorney John "Jack" McConnell for the United States District Court for the District of Rhode Island.

NAMIC is the largest and most diverse national property/casualty insurance trade association in the United States. Its 1,400 member companies write all lines of property/casualty insurance business and include small, single-state, regional, and national carriers accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has been advocating for a strong and vibrant insurance industry since its inception in 1895.

On May 11th of this year, NAMIC was a signatory to a multi-trade letter circulated by the U.S. Chamber of Commerce in opposition to Mr. McConnell's nomination. Upon further consideration and consultation with our member companies in Rhode Island, and after evaluating support for Mr. McConnell from the local business community and former Rhode Island Attorneys General Arlene Violet and Jeffrey Pine, NAMIC withdraws its opposition to his nomination for the United States District Court for the District of Rhode Island.

Sincerely,

Charles Chamness
President & CEO
National Association of Mutual Insurance Companies

EFFECTIVE ADVOCACY
STRATEGIC PUBLIC POLICY
VALUABLE MEMBER SERVICES



JAN 06 2009

December 29, 2008

Curt Columbus
Artistic Director
Michael Gennaro
Executive Director
Jack McConnell
Board Chair

Senator Jack Reed
1000 Chapel View Boulevard
Suite 290
Cranston, RI 02920

Stephen Rerenson
Angela Brazil
Timothy Crowe
William Dankoehler
Janice Duclos
Mauro Hantman
Phyllis Kay
Brian McElenny
Barbara Meeke
Anne Scuzia
Cynthia Strickland
Fred Sullivan, Jr.
Stephen Thorne
Rachael Warren
Joe Wilson, Jr.
Resident Actors

William Lane
Eugene Lee
Resident Designers
D. Salem Smith
Paula Vogel
Resident Playwrights
Amanda Dehnert
Kevin Moriarty
Resident Directors

Dear Jack,

I hope this letter finds you and your family well and prospering in the new year. I know that all of us are looking to the coming months with great expectation and relief. I am certain you will be an important part of all of the good things to come.

I am writing to you today to offer my voice in support of Jack McConnell's candidacy for federal district court judge. As the chair of Trinity Repertory Company's board, Jack was the very first person I met in Rhode Island during my interview process. His warmth, intelligence, and gentle humor were apparent from that first encounter and, quite honestly, were a large part of my decision to take the job at Trinity in the first place.

There was one quality which was not apparent in that first meeting, but which became crystal clear over the next several years. Jack McConnell is one of the most passionate people I have ever met when it comes to the pursuit of justice. He is driven by a selfless desire to see that truth wins out over falsehood, that right is served, and that wrongs are redressed. As a lawyer, Jack has always been dedicated to serving others, rather than serving himself. If this assessment makes Jack sound like some sort of overgrown boy scout, nothing could be further from the truth. His probing intelligence and keen wit keep Jack McConnell firmly planted in the realities of the world. He simply chooses to use his considerable gifts for the good, rather than the expedient.

In the interest of full disclosure, there is no question that Jack McConnell has been my champion during my first three years as artistic director. He is an enormous part of the reason that Trinity Rep has been enjoying the kind of creative success we have had since my arrival. But I am not being swayed by the job he has done for Trinity; I have worked closely with many board members in

1059

my time, and Jack is among the most extraordinary of individuals. Hands down, extraordinary.

I am sure that my voice will only be one of many in support of Jack McConnell, and I hope that my observations will be helpful when considering his candidacy. Please know that my support is unconditionally and fully given. If you have any further questions, I would be delighted to hear from you. Please give my warmest regards to Julia and Emily. I hope that I will see you at the theater sometime in the near futures.

Yours, ever,

A handwritten signature in black ink, appearing to read 'Curt Columbus'. The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail that ends in a small flourish.

Curt

Curt Columbus
Artistic Director
Trinity Repertory Company

cc: Senator Sheldon Whitehouse



Richard K. Corley
Licensed in Rhode Island

Katherine Godin
*Licensed in Rhode Island
and Massachusetts*

March 3, 2009

MAR 04 2009

The Honorable Sheldon Whitehouse
United States Senator
170 Westminster Street
Suite 1100
Providence, Rhode Island 02903

Dear Senator Whitehouse:

It is my privilege and honor to recommend John J. McConnell, Jr. to you for appointment to the United States District Court for the District of Rhode Island. I have known Jack McConnell for approximately twenty years. As the past President of the Rhode Island Association of Criminal Defense Lawyers and a former member of the Board of Directors of the National Association of Criminal Lawyers, I would like to bring to your attention Jack's commitment, understanding and knowledge of the types of cases I handle on a daily basis. As clerk for Supreme Court Justice Donald Shea, Jack was involved in reviewing and analyzing a multitude of criminal cases. Many of the opinions on criminal issues, which were decided by Justice Shea during Jack's tenure as a clerk, were first drafted by Jack after reviewing the transcripts, briefs and conducting his own legal research concerning the criminal issues implicated in each of those cases.

As you are aware, my area of daily practice is criminal defense. Throughout the past two decades I have had numerous occasions to discuss my cases and the practice involving the Federal Court with Jack. There has been several occasions where I have called him for advice because of his vast knowledge of the law in general and, in particular, his ability to analyze and help strategize during my representation of individuals charged with serious felony offenses. It is my opinion that at this point in his career Jack knows more about criminal defense than either of the two judges, The Honorable Mary Lisi and The Honorable William Smith had when they were first appointed to serve as Federal District Court Judges. I say this knowing full well that Judge Lisi had been a member of the public defender staff. However, her representation was limited to juvenile defendants which are much different than handling a case involving felony charges in both the State and Federal Courts.

The Honorable Sheldon Whitehouse
March 3, 2009
Page TWO

Many people are aware that Jack has been a tremendously successful civil trial attorney. However, he also is accomplished in the area of civil rights litigation. I consider civil rights litigation to be the first cousin to criminal defense practice.

I know there are several fine candidates for the vacancy in the Rhode Island Federal District Court. However, I know of no candidate that has the same type of demeanor, respect for the individual, and understanding the gravitas implicated when a citizen is accused of a crime as Jack McConnell. I know that he believes in the Constitution and the fundamental rights enjoyed by any citizen accused of a crime. I also know from his personal background that he has a practical understanding of the types of individual which find themselves before the Federal Court. Jack comes from a working class family. While he has been tremendously successful throughout his career, he has earned every dime through his hard work and dedication to the practice of law. He understands the plight of the working class citizens that often find themselves involved in disputes both civil and criminal in the Federal Court. I have no doubt that he would treat each party; the State Government, the accused, the plaintiff and the defendant with a dignity that is commensurate with the awesome responsibility of a Federal District Court Judge. Judicial temperament is a trait that cannot be taught. I am supremely confident that if Jack were to be nominated and appointed to the bench he would make each person that came before him understand that each litigant deserved to be respected and treated as an individual that is before the Court on the most important case in the world, their case.

Jack is active in the community and has spent much of his so-called "free time" working for various non-profit charities as well as contributing to these organizations which provide a much-needed service to the citizens of Rhode Island. His commitment to the position for which he aspires is made clear simply by his seeking the position. It is obvious that he would be in a position for decades to come able to earn much more money if he stayed in practice as a practicing attorney. He is willing to walk away from all of that due to his desire to do the right thing and serve our State and Country while foregoing what many would consider to be a higher lifestyle.

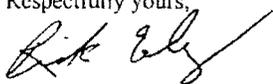
When it comes to the practice of law this economic sacrifice that he is willing to make is a simple statement that Jack McConnell gets "it". I know that he would be an asset to the system that I work in on a daily basis if he were to be appointed to the bench. I wholeheartedly support his application and hope that you consider my brief comments on his behalf.

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The Honorable Sheldon Whitehouse
March 3, 2009
Page THREE

Best of luck in your decision and I hope that you are guided by the same wisdom that I have seen you act upon as a person that I am proud to call my Senator.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Rick Corley", written in a cursive style.

Richard K. Corley, Esq.

RKC:pab

BANKRI
 BANK RHODE ISLAND
 January 25, 2009

The Honorable Jack Reed
 United States Senate, District Office
 1000 Chapel View Boulevard, Suite 290
 Cranston, RI 02920

JAN 29 2009

Dear Senator Reed:

I am writing to you today to support the nomination of John J. McConnell, Jr., to the United States District Court for the District of Rhode Island. It is with great enthusiasm I write on his behalf.

Mr. McConnell's twenty-five year legal career is recognized on a national level. His legal prowess combined with his compassion and understanding has earned him respect among a variety of constituencies. He is one of the most highly regarded members of our community. Providence and Rhode Island are fortunate to count Mr. McConnell among its residents.

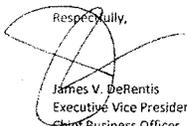
I have had the privilege of working with Mr. McConnell on a variety of initiatives over the past several years. As a member of the board of directors of the Greater Providence Chamber of Commerce, we worked very closely with Mr. McConnell in his capacity as chair of the Providence Tourism Council, to align the economic development work of both the chamber and the city. The result is a broad based marketing effort one led by the chamber and the private sector and a second led by the city with the launch of the "Providence – The Creative Capitol" campaign. Mr. McConnell was the driving force behind this important economic development initiative that will position Providence on an international stage.

Mr. McConnell is actively engaged in the tourism business of the city, which in turn helps support the all important creative economy. A study released by American's for The Arts last June, revealed that the non-profit arts organizations in Providence contributed \$111 million of economic activity to the city in the form of sales revenue, wages and ancillary fees to local businesses, plus an additional \$5 million in local tax revenue. Mr. McConnell, as chair of the Trinity Repertory Company, the largest non-profit arts organization in the state, has led one of the major contributors to this important economic engine. His role in both tourism and the business of the arts, helped propel Providence to be listed as the only US City mentioned by the *Wall Street Journal*, as one of its top ten cultural destinations in the world.

In addition to his legal and business endeavors, Mr. McConnell devotes countless hours to his community in the form of volunteer work. Whether he is advocating for the homeless, children's healthcare, public justice or public radio, Mr. McConnell makes an impact. He is a source of inspiration to many, a counselor to all who seek his help and a true example of what it means to give back to a community.

In my humble opinion, Mr. McConnell would prove a valuable addition to the United States District Court. He would bring to the judiciary a balanced, thoughtful and compassionate approach to its work. The experience he has gained through a successful legal career, community champion, business leader and devoted family man will make for a committed, fair and honest jurist. I am honored to ask for your support on his behalf.

Respectfully,


 James V. DeRentis
 Executive Vice President &
 Chief Business Officer

Cc: Honorable Sheldon Whitehouse

Correspondence Address: P.O. Box 9384, Providence, Rhode Island 02909-0384
 Corporate Address: One Tower Hill Place, Providence, Rhode Island 02883, Main Number: (401) 455-5000 Fax: (401) 455-5000

member FDIC

 Bank of America



State of Rhode Island and Providence Plantations

HOUSE OF REPRESENTATIVES
 REPRESENTATIVE GRACE DIAZ District 11

January 13, 2009

JAN 16 2009

Honorable Sheldon Whitehouse
 United States Senator
 170 Westminster Street
 Suite 1100
 Providence, RI 02903

Dear Senator Whitehouse,

I am writing to urge you to consider John J. (Jack) McConnell for the vacancy on the United States District Court in Rhode Island.

Jack has all of the qualities that great judges have shared throughout history. He is compassionate. He understands how to solve complex problems. He has a relentless intellect. And his intelligence is only matched by the passion in his heart for the law and for justice. Throughout his career, Jack has demonstrated these qualities: whether representing injured asbestos workers, developmentally disabled adults or childhood victims of lead poisoning.

As you well know, people who live in my district often do not have the same level of access to justice as others because of barriers such as race, class and gender. It is my firm belief that Jack's presence on the Court would go a long way to reducing these barriers if he was appointed to the bench. In addition, I believe that Jack's compassion would be equally matched by his stern and commanding voice against young people who choose gangs, guns or violence. If there was ever a Judge who could get through to our young people, it would be Jack.

Thank you in advance for considering my recommendation of Jack McConnell to the U.S. District Court and please do not hesitate to contact me if you would like to talk further at (401) 575-3641 or rep-diaz@rilin.state.ri.us.

Sincerely,

Grace Diaz
 RI State Representative
 District 11- Providence

45 ADELAIDE AVENUE, PROVIDENCE, RI 02907
 ROOM 621 STATE HOUSE, PROVIDENCE, RHODE ISLAND 02903

1065

Colonel Dean M. Esserman
Chief of Police



David N. Cicilline
Mayor

Providence Police Department
"Building Pride in Providence"

Personal and Unofficial

May 7, 2010

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Senator Leahy,

It is a pleasure to write a letter of recommendation for John J. McConnell, Jr. I believe he possess all the attributes that would make him a distinguished jurist. He is a man of great intellect, integrity and compassion.

I met Jack McConnell nearly seven years ago when I first moved to Providence. Since that time our families have gotten to know one another and became friends. I have observed him in both private and public settings, and have never seen anything but a consistently decent, thoughtful, modest and caring individual. He is a committed husband, father, friend and admirable professional.

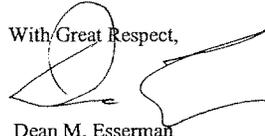
Jack McConnell comes from a modest background. His father went to work after service in the United States Marine Corps in Brown University's Housing Department. This allowed Jack and most of his brothers to attend the University. Jack went on to Law School, and then clerked for Rhode Island Supreme Court Justice Donald J. Shea. He has practiced law ever since.

Jack McConnell is a man who engenders trust and respect from all who encounter him within the courtroom or the boardroom, whether at work, in his church community, or his neighborhood community. A strong theme of tremendous decency and personal integrity runs through all that he does. He seems to seek out and bring out the best in those around him, even when they may be adversaries. He can be a strong adversary, but just as often, an important peace maker, one who can bring people together.

325 Washington Street Providence, Rhode Island 02903 (401) 243-6401 Fax: (401) 243-6464 TDD#: (401) 831-3456

Jack McConnell is a genuinely consistent individual. He lives by the same strong values in his public and private life. He contributes to his community in large and also very private ways. He is honest and level headed. He truly embodies all the attributes that would honor the title of the United States District Court Judge for Rhode Island.

With Great Respect,

A handwritten signature in black ink, appearing to read 'Dean M. Esserman', written over the closing 'With Great Respect,'.

Dean M. Esserman
Colonel
Chief of Police

1067

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

D. MICHAEL FISHER
CIRCUIT JUDGE



5360 U.S. POST OFFICE & COURTHOUSE
700 GRANT STREET
PITTSBURGH, PA 15219-1906

May 11, 2010

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Re: John J. McConnell, Jr.
U.S. District Court for the District of Rhode Island

Dear Chairman Leahy:

I write at this time to most favorably recommend John J. McConnell who has been nominated by the President to the U.S. District Court for the District of Rhode Island.

I met and worked with Mr. McConnell when I was the elected Attorney General of Pennsylvania from 1996-2203. We worked very closely together on the national tobacco litigation which resulted in the \$206 Billion 1998 Master Settlement Agreement. I was designated by my Attorney General colleagues to be part of the national negotiating team and worked closely with Mr. McConnell who was part of that team along with his partner from Ness Motley, Joe Rice. We spent considerable time together in New York and at meetings elsewhere and I had the unique opportunity to assess Mr. McConnell's legal abilities and his character, which were both outstanding. He was one of our key people in developing strategy, drafting documents and evaluating various provisions of this landmark settlement.

In addition to his work with the state Attorneys General in that case, Mr. McConnell has been involved in major litigation in the state and federal courts in Rhode Island and elsewhere across the country. He has been honored for his legal skill and acumen by many organizations and has made major contributions to the cause of justice in his state and elsewhere.

412-208-7320
412-208-7327 (FAX)
chambers_of_judge_d_michael_fisher@ca3.uscourts.gov

1068

The Honorable Patrick Leahy
May 11, 2010
Page two

John J. McConnell, Jr. is an outstanding nominee to serve on the U.S. District Court for the District of Rhode Island and I enthusiastically support his nomination. If I can provide any additional information, please feel free to contact me.

Very truly yours,



D. Michael Fisher

cc: The Honorable Jeff Sessions
The Honorable Lindsey Graham
The Honorable Arlen Specter

1069

William G. Foulkes
120 Brown St.
Providence, RI 02906

January 27, 2009

U.S. Senator Jack Reed
1000 Chapel View Boulevard, Suite 290
Cranston, RI 02920

JAN 28 2009

Dear Senator Reed:

Congratulations on the beginning of your new term.

With the concurrent commencement of the Obama Administration, we now have an exciting opportunity to have input on policy and personnel decisions in the executive and judiciary branches.

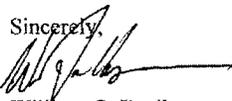
I understand that one of these decisions, the appointment of a federal district court judge for the United States District Court for the District of Rhode Island, is currently under review.

While I am sure you have numerous excellent candidates under consideration, I strongly recommend Jack McConnell, Jr., an attorney at Motley Rice in Providence.

I have lived and worked for fifteen years in Rhode Island, first with the strategy consulting firm, Telesis, then as an executive at two small software firms, Context Media and MTI Film and, finally, as the Executive Director of the Center for Design and Business. I have known, and have known of, Jack McConnell for nearly this entire time. Most recently, I serve on the board of the Trinity Repertory Theater where Jack is chair.

Jack is an outstanding attorney, a dedicated and creative civic leader, and a great ally of those who need a helping hand. I cannot imagine a better choice for the future decisions before the District of Rhode Island than Jack McConnell. His combination of kindness, legal expertise and business acumen make him a rare and valuable find for this appointment.

Thank you for your consideration.

Sincerely,

William G. Foulkes

CC: Senator Sheldon Whitehouse

1070

Michael C. Gerhardt
Doree M. Goodman
39 Bagy Wrinkle Cove
Warren, RI 02885


FEB 28 2009

February 27, 2009

The Honorable Jack Reed
1000 Chapel View Boulevard
Suite #290
Cranston, RI 02920

Dear Senator Reed:

We write to strongly support your consideration of the nomination of our friend John (Jack) McConnell, Jr. to serve on the United States District Court for the District of Rhode Island.

We have known Jack for many years in numerous contexts and quite frankly can think of no one better qualified and suited to fill the role of US District Judge.

Of course his intellectual capacity and skill regarding the law are beyond dispute, as evidenced by, among other things, his extremely successful legal career. But, more importantly, have a discussion with Jack on a wide variety of topics ranging from culture, to social policy, to current affairs and you will find him extremely well informed, reflective, curious and both interested and interesting. Given the wide range of issues before the Court, he would bring a refreshing breath of vision and insight.

But, Jack is much more than a smart, well connected man. He is intensely involved in attempting to solve the significant issues of the day. We have been drawn to him because of his involvement with clearly progressive candidates for governor, for mayor and for president. The energy he brought to these efforts was both engaging and inspiring.

We recognize that there are many political activists in the community who are involved in broader issues but Jack has always gone well beyond many of them in terms of his contribution of both time and monetary resources. We have encountered him in his leadership roles at Planned Parenthood, Crossroads, WRNI Public Radio and Trinity Repertory Theatre where he has unquestionably made a significant difference in the lives of Rhode Islanders. As in his personal, professional and political lives, Jack both understands the complex issues involved and leads by example to resolve them.

However, what is more important is the manner in which Jack approaches his many responsibilities. He is a person who is deeply respectful of the views of others; he is a true humanist, fully committed to the values of equality and inclusion. He also has a bright sense of humor and a positive perspective which he brings to all of his endeavors. It is our opinion that he will bring all of these characteristics along with his strong, deeply rooted values, to the position of US District Judge.

We are acutely aware, as we are sure you are, of the extreme damage done to the federal judiciary by the appointments made over the last eight years. The appointment of someone with Jack's background, attributes and personality can begin to restore the authority and balance that has recently been missing in this critical institution. We follow the important cases that are before the court and we are sure that, if appointed and confirmed, Jack would serve in a manner that would make you and all (well perhaps not all) Rhode Islanders proud.

We urge you to recommend the appointment of John (Jack) McConnell to serve on the United States District Court for the District of Rhode Island.

Please do not hesitate to contact us if you wish to discuss in more detail our recommendation of Jack McConnell.

Sincerely,



Michael Gerhardt



Doree Goodman

C: Senator Sheldon Whitehouse

FEB 25 2009

February 23, 2009

The Honorable Sheldon Whitehouse
United States Senate
170 Westminister Street, Suite 1100
Providence, RI 02903

Senator Whitehouse:

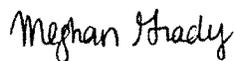
We would like to express our utmost support for John J. McConnell and urge you to consider him for the vacancy within the United States District Court in Rhode Island.

Over the past few years, we have been privileged to know Jack in many capacities. We have had the pleasure of working with him through various civic and community engagements where we have experienced his commitment and dedication to volunteerism. His community leadership has been inspirational to young professionals throughout Rhode Island. It is apparent that throughout his life, Jack has demonstrated three important qualities: intelligence, integrity, and compassion. We firmly believe these qualities have ultimately contributed to his personal and professional success and it would be these qualities that he would bring to the Federal Judiciary.

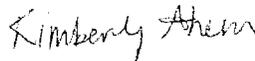
At Roger Williams University, Jack has served as an educator, mentor, and role model for aspiring public servants and has personally influenced both of our lives. He is a tireless advocate for all those involved in the legal system, and in particular those who devote their life's work to legal service for the less fortunate. At the same time, Jack values our Constitution and understands the challenges of maintaining an independent judiciary in a world that is consistently changing. Jack's appointment to the United States District Court would ensure justice will be dispensed in a fair and equitable manner to all.

Thank you in advance for considering our recommendation of Jack McConnell to the U.S. District Court and please do not hesitate to contact either of us if you would like to talk further:
[REDACTED] or [REDACTED]

Sincerely,



Meghan Grady, MPA



Kimberly Ahem

**Statement of the Greater Providence Chamber of Commerce on the
Nomination of John McConnell to the U.S. District Court**

On Tuesday May 11, the United States Chamber of Commerce urged the members of the Senate Judiciary Committee to reject the nomination of John J. 'Jack' McConnell for a judgeship on the U.S. District Court in Rhode Island.

The Greater Providence Chamber of Commerce was not consulted at any point in the process by the United States Chamber of Commerce or The Institute for Legal Reform as to our views relative to the nomination of Mr. McConnell.

The Greater Providence Chamber of Commerce has never endorsed nor opposed nominees vying for the federal or state judiciary. In a similar vein, we have never endorsed nor opposed candidates seeking elective office on the federal, state or municipal levels.

The Greater Providence Chamber of Commerce has enjoyed a very positive working relationship with Senator Reed and Senator Whitehouse, and we respect their right and ability to put forth qualified nominees to the United States District Court.

We would point out that Mr. McConnell is a well respected member of the local community, leading important civic, charitable and economic development institutions including Crossroads Rhode Island, the Providence Tourism Council and Trinity Repertory Theatre.

#####

1074

CHRISTINE O. GREGOIRE
Governor



DEC 22 2008

STATE OF WASHINGTON

OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

December 12, 2008

The Honorable Jack Reed
United States Senator
1000 Chapel View Boulevard, Suite 290
Cranston, RI 02920

Dear Senator Reed:

I am delighted to support John J. McConnell, Jr.'s candidacy for appointment to the United States District Court for the District of Rhode Island.

Jack's strong ethical character and commitment to service form the foundation of his jurisprudence. For the past 25 years, he has represented the ill and underprivileged, fighting to ensure that justice is administered fairly for all people. Jack's impressive array of awards and honors speaks not only to his expertise, but also to his community engagement. Complementing his role as lawyer, Jack's work as an advocate, mediator, teacher, and philanthropist, informs his practice and perspective and would provide a well-rounded base to draw from as judge.

I had the privilege of working with Jack when I was the lead Attorney General negotiating the \$246 billion Master Settlement Agreement with the tobacco industry. I know we both consider this accomplishment to be among the most satisfying of our careers, particularly in the elimination of logos and cartoon characters, like Joe Camel, that appeal to youth. That unprecedented and historic agreement could not have been accomplished in my opinion without the legal skills, hard work and commitment to justice that Jack brought to the negotiating team.

Jack's integrity, temperament, breadth of experience, passion for public service, and deep regard for the rule of law make him a perfect fit for the bench, and I have every confidence that he would be a valuable addition to the U.S. District Court. Thank you for your attention to Jack's application; I highly encourage your favorable consideration.

Sincerely,

A handwritten signature in cursive script that reads "Christine O. Gregoire".

Christine O. Gregoire
Governor

cc: U.S. Senator Sheldon Whitehouse





Choose peace

THE INSTITUTE
FOR THE STUDY
& PRACTICE OF
NONVIOLENCE

DEC 22 2008

December 12, 2008.

The Honorable Jack Reed
United States Senate
Washington, DC 20510

Dear Senator Reed,

I am writing in support of Jack McConnell's nomination to the United States District Court for the District of Rhode Island. Mr. McConnell is an exceptional human being, giving tirelessly of himself to the community. With great integrity, intelligence and care Mr. McConnell has supported causes and problem solving that improve the lives of Rhode Islanders of all walks of life. He has championed those who have the least, the sick, the elderly, and the poor. He has been instrumental in supporting the nationally recognized innovations experienced in Providence in the field of public safety, as the city left its corrupt past and entered an era that is focused on 'community policing', and violence reduction.

Mr. McConnell, has supported nonprofit organizations with time, advice, and donations, always as a can-do leader that pushes for more opportunities and growth. Mr. McConnell has led with humility and a ready smile, never complaining or even indicating how full his agenda is. He gives willingly and happily, and I often am surprised to uncover another effort in which Mr. McConnell has been a quiet leader.

Mr. McConnell has never forgotten his roots and, to an immigrant and a student of American history as myself, he signifies what is best about this country. These days, on an Ipod, I am reliving the 'Justice' class taught at Harvard by Michael Sandel. I have no doubt that Mr. McConnell will bring great intellect and balance to his work as a judge. Mr. McConnell is a man of courage. Even in a free society it takes great courage to stand-by the poor, the vulnerable, and for minorities. Mr. McConnell every day lives the credo that in this country everyone deserves a fair chance.

Mr. McConnell will grapple with the issues at hand, both with deep respect and empathy to those standing in front of him, as well as deep care with the legal and philosophical traditions of this country. Mr. McConnell is also a modern man and as the legal system is increasingly asked to arbitrate in a growing complexity of issues, his experience and intellect will make him an outstanding judge, building on his exceptional legal career.

9 Central Street, Providence, RI 02907 phone 401.785.2320 fax 401.270.5490
info@nonviolenceinstitute.org www.nonviolenceinstitute.org

1076

With the appointment of Mr. McConnell, Rhode Island has the opportunity to shine and lead by appointing a good, honest, intelligent, and deeply committed community leader, to the position of a judge. Rarely have so many good qualities been found in one person.

I submit this letter with pleasure to your deep consideration.

Choose Peace,

Teny Oded Gross

A handwritten signature in black ink that reads "Teny Oded Gross". The signature is written in a cursive, flowing style.

Executive Director.

COX Media

JAN 29 2009

January 26, 2009

Honorable Jack Reed
100 Chapel Hill Blvd.
Suite 290
Cranston, RI 02920



Dear Senator Reed:

It is my understanding that Jack McConnell is being considered for an appointment to an open federal district court judgeship in Rhode Island.

950 Main St.
Cranston, RI 02910
Phone (401) 551-1999
Fax (401) 551-1559

I have had the pleasure of working with Jack, specifically in the not for profit sector, for the last 4 years. As Chairman of Trinity Reps Board, for the last 3 years, Jack has taken a true leadership role by bringing in a new Artistic Director and at the same time bringing together a very large and diverse board with the single mission of growing Trinity within our community.

At Crossroads Rhode Island, Jack has taken on a true leadership role in helping that organization tackle the issue of homelessness, which continues to challenge our city, our state and our community at large.

In all of my dealings with Jack he has shown the utmost respect and admiration for those he works with, those he serves and the entire RI community as a whole.

Rhode Island would be very well served by having Jack McConnell serve in the Federal District Court.

Sincerely,

Adam Hamblett
Vice President/General Manager

Cc: Honorable Shelden Whitehouse

AH/ljd

Paster & Harpoonian, Ltd.
Counsellors at Law
1000 Chapel View Blvd., Suite 220
Cranston, RI 02920
Telephone 401-455-9800
Fax 401-455-9801

PASTER & HARPOONIAN

May 7, 2010

Via Fax (202) 224-9516 and
bruce_cohen@judiciary-dem.senate.gov

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Re: John J. McConnell, Jr./United States District Court

Dear Senator Leahy:

Thank you for allowing me the time to write to you in support of my friend and colleague, John J. McConnell, Jr., for confirmation to the United States District Court for the District of Rhode Island. The Senate Judiciary Committee is scheduled to hold a confirmation hearing on his appointment on May 13, 2010.

I have known Jack McConnell for many years as a professional colleague, fellow dedicated board member of Trinity Repertory Company here in Rhode Island and as a very friendly political rival.

Time and again, Jack has proven that he is a man of great principle and integrity. While being a vigilant advocate for his clients and the causes that he has taken up during his professional career, Jack has always conducted himself in the most ethical and professional manner; a trait unfortunately sometimes not found among lawyers today.

Jack and I also know each other from being on opposite sides of the aisle politically, including some elections as well. As you know, elections can turn bitter and the participants can sometimes allow themselves to get caught up in the bitterness to the extent of it becoming personal. One of the greatest characteristics that I admire about Jack so much is that, despite political differences of opinion, he never allowed those differences to become personal, or to cloud his judgment. As a result, we have always enjoyed spirited conversation regarding political issues, but have remained great friends.

PASTER & HARPOOTIAN

The Honorable Patrick Leahy
May 7, 2010
Page 2 of 3

These characteristics lead me to unqualifiedly support Jack's confirmation to the United States District Court for Rhode Island.

Please do not hesitate to contact me if you believe I have information which may be helpful to you in this process.

Thank you very much for your kind consideration.

Very truly yours,


JOHN M. HARPOOTIAN
JMh/cmb

1080

JAN 21 2009

Barry G. Hittner
222 Channel View
Warwick, RI 02889

January 19, 2009

Senator John F. Reed
1000 Chapel View Boulevard, Suite 290
Cranston, RI 02920

Dear Jack:

I understand that John (Jack) McConnell may be under consideration for appointment to the open federal district judgeship here in Rhode Island. I am writing to encourage you to give his candidacy the strongest consideration possible.

Notwithstanding the fact that we tend to occupy opposite ends of the political spectrum on any number of issues, I have known Jack for many years and consider him both a friend and a highly competent member of the bar.

I have done estate planning work for Jack and his wife, Sara, for many years. In that capacity I have come to know Jack's genuine regard for his family and for people in general. He is an honest, sincere person who always tries to do the right thing.

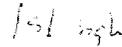
He is of course actively involved in both politics and community affairs. I have spent many years with Jack as a trustee at Trinity Rep. I was privileged to chair the Nominating and Governance Committee at Trinity when we were fortunate enough to be able to persuade Jack to accept appointment as Chair of the Board. And of course he has done the expected superb job.

You may recall that I chaired the board of Meeting Street for a number of years and co-chaired the Capital Campaign that raised the money necessary to construct our new facility on Eddy Street. As someone born and raised in that neighborhood, Jack was extremely helpful both in his personal giving and also in helping persuade others to give.

But ultimately the task you have is to recommend the best-qualified candidate for a federal judgeship. I believe that Jack's intellect, judgment, fundamental honesty and ability to perform under pressure make him an ideal candidate.

I urge you to give Jack your most serious consideration.

Sincerely yours,



Barry G. Hittner

cc Senator Sheldon Whitehouse

1081

RHODE ISLAND PUBLIC DEFENDER

160 Pine Street, Providence, Rhode Island 02903

TELEPHONE: (401) 222-3492

FAX: (401) 222-3287

JAN 13 2009

January 12, 2009

The Honorable Sheldon Whitehouse
United States Senator
170 Westminster Street
Suite 1100
Providence, Rhode Island 02903

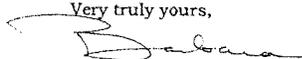
Dear Sheldon:

Today I sent the enclosed letter to Sen. Jack Reed, recommending for his consideration John J. McConnell, Jr., for nomination as District Judge for the District of Rhode Island. While I understand that it is the senior senator who by tradition has the most influence on such appointments, I can only imagine that your input would be both valued and valuable and I hope that you would lend your support to Jack McConnell's candidacy.

Beyond the fact that he is a tremendously talented and smart litigator, with a wealth of legal and community experience, Jack should particularly interest you because of his establishment of a loan forgiveness program at Roger Williams University School of Law this past year. I know from your leadership on behalf of passage of the John R. Justice Prosecutor and Defender Incentive Act, for which we in the defense community remain grateful, that this is an issue you care profoundly about. It is truly remarkable that Jack, putting his personal philanthropy to work for his social philosophy, would take it upon himself to establish such a program. He is really an extraordinary person, who does extraordinary things.

There are few, if any, candidates who could equal Jack's credentials, and surely none who could surpass them. Beyond his role as a master of complex litigation, and beyond the breadth of his volunteer work in Rhode Island, he is held in the highest esteem by the Rhode Island Bar. As you know from many years of practicing law in a public arena, it is critically important that judges not only be the brightest lights we have, but be recognized as such. Jack's appointment would stand out as a brilliant move on the part of everyone involved in it.

Very truly yours,



Barbara Hurst
Deputy Public Defender.

Administration	Appeals	Felony Division	Misdemeanor/PAC	Light VOP Unit	Family Court	Investigations
222-1511	222-1510	222-1540	222-1520	222-1312	222-1530	222-3492

RHODE ISLAND PUBLIC DEFENDER

160 Pine Street, Providence, Rhode Island 02903

TELEPHONE: (401) 222-3492

FAX: (401) 222-3287

January 12, 2009

The Honorable Jack Reed
 1000 Chapel View Boulevard
 Suite 290
 Cranston, Rhode Island 02920

Dear Senator Reed:

Occasionally, one is lucky enough to be able to do exactly the right thing, for the right reasons. I am privileged to be in that position, recommending John J. McConnell, Jr. to you for appointment to the United States District Court for the District of Rhode Island. I can think of no lawyer I could recommend with more enthusiasm than Jack McConnell and no greater blessing that you could bestow on the citizens of Rhode Island than to put his name forward.

The value of letters of recommendation has a lot to do with the credentials of those who write them, and I think by virtue of my particular field of law I bring a valuable perspective to your consideration. I specialized in appellate practice during a 30+-year career and teach both state constitutional law and civil liberties issues at Roger Williams School of Law as an adjunct faculty. Thus, in both practice and academia, I have pursued the "purer" side of law - the cerebral side, the side that deals with law not only as a tool to resolve disputes between individuals but as an intellectual exercise in logic, rationality and persuasion.

You will no doubt receive letters recommending Jack from those who will attest to his compassion, his fairness and pursuit of justice, his record of public service, his reputation for honesty and integrity, and the esteem in which he is held in the legal profession. All of that is true and the accolades are well deserved. But the perspective that I offer you concerns Jack's talent for the *thinking* part of the practice of law, the intellectual capacity to appreciate legal issues beyond the ones that immediately present, and the ability to persuade others by the clarity of reasoning.

I have known Jack professionally and personally for a quarter century. I met him when I was a practicing appeals lawyer and he was a young law clerk at the Supreme Court of Rhode Island. Although we had only casual contact at that

Administration	Appeals	Felony Division	Misdemeanor/PAC	Licht VOP Unit	Family Court	Investigations
222-1511	222-1510	222-1540	222-1520	222-1312	222-1530	222-3492

time, as was appropriate for a law clerk and an attorney practicing before that court, it was clear that Jack's intelligence and creative thinking were a strong influence on the quality of the opinions issuing from that chamber. Jack has the ability to cut through a morass of side issues and focus insightfully on the crux of the problem. He specializes in complex litigation and that takes a certain kind of mind: one that can understand and think about legal issues on a variety of levels at once. Complex legal issues demand the ability to see and appreciate the application of principle *both* to the specific case at hand *and* to future situations not yet before the court. Interpretation of law is a living, almost breathing phenomenon, and Jack understands that. He is both reverential about the law and comfortable manipulating it. Though he is a powerful advocate, he is intellectually honest in his assessments about law, and his judgment is not clouded by his advocacy. Jack can put 100% of his energy into developing a legal theory to further a position he favors, and yet conclude with total intellectual honesty that the theory won't hold water.

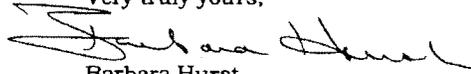
Jack is recognized in the Rhode Island Bar as an accomplished trial attorney. But the esteem in which he is held is a result not only of demonstrated litigation skills but also of the universal recognition of how smart he is. Jack's theories combine solid and unimpeachable legal analysis with creativity and vision, and he brings an unequalled talent as a lawyer to bear on everything he does. I have sat at countless crowded meeting tables and watched how carefully others listen to him, and how valued his opinion is. People pay attention when Jack talks.

Finally, Jack would bring a broad view of the world and the people populating it to his decision-making. His impressive record of public service is important because public service demonstrates caring and concern for others. But beyond that, an active life in the community helps to instill an awareness of how others live, and that is a critical attribute of good judging.

Jack is an extraordinary person who does extraordinary things, and nowhere is that more evident than in his establishing the loan forgiveness program at Roger Williams School of Law. I was very aware because of my public defender work of the leadership taken by the United States Senate in loan forgiveness programs, particularly the John R. Justice Prosecutor and Defender Incentive Act. That Jack would take on loan forgiveness as a personal cause is emblematic of who he is and what he cares about. He has used his skills as an attorney and his personal philanthropy to better the lives of countless ordinary people.

You would make us all proud to be Rhode Islanders if you put Jack McConnell's name forward for appointment to the federal bench and I urge you to do so.

Very truly yours,



Barbara Hurst
Deputy Public Defender

1084

RICHARD J. ISRAEL
54 Egremont Plain Road
Great Barrington, MA 01230-0913

May 7, 2010

Honorable Patrick Leahy
Chair of the Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: John J. McConnell, Jr.

Dear Senator Leahy:

This letter is in support of the candidacy of John J. McConnell, Jr., for confirmation of his appointment as United States District Judge for the District of Rhode Island.

I have come to know Mr. McConnell through my many years as an Associate Justice of the Superior Court of the State of Rhode Island following my tenure as elected Attorney General of the State of Rhode Island. I can honestly attest from my professional experience at the bar, in office and on the bench, that he enjoys a thoroughly well-deserved reputation as an honest, diligent, well-prepared and conscientious trial lawyer. His clientele has come from all levels of society and I believe he is well prepared to do equal justice for all who may come before him, if he is confirmed as a United States judge.

This true gentleman will enhance the Federal Bench in Rhode Island, if he is confirmed. I urge you to support his candidacy with your favorable vote.

Respectfully yours,


Richard J. Israel

1085

Bob & Jill Jaffe

15 Freeman Parkway • Providence, RI 02906 • Phone: [REDACTED]
E-Mail: [REDACTED]



FEB 27 2009

Date: February 24, 2009

Senator Jack Reed
1000 Chapel View Boulevard
Suite 290
Cranston, RI 02920

Dear Senator Reed:

We hope that this letter finds you well and thriving with the new direction that our government has taken.

We are eager to endorse the appointment of John J. McConnell, Jr. as federal district court judge. We have both had the privilege to work with Jack in many capacities in the not for profit, city, and political arenas. He has consistently shown himself to be a thoughtful listener and a prudent activist. His name always comes to mind whenever a just social cause needs an advocate. Jack has proven again and again both in his personal and public life what it means to be a truly great citizen of Rhode Island.

There is no doubt in our mind that he will be a scrupulously fair jurist and rule with compassion and honesty.

We cannot think of a better choice.

Our very best to you,

Bob & Jill Jaffe

cc: Senator Sheldon Whitehouse ✓



331 Farnum Pike
Smithfield, RI 02917
Ph: (401)232-3377
Fx: (401)232-3253



JAN 30 2009

January 28, 2009

The Honorable Sheldon Whitehouse
170 Westminister St., Suite 1100
Providence, RI 02903

Dear Senator Whitehouse:

I write in support of Jack McConnell for consideration to the Federal bench.

Twelve years ago, we bought a manufacturing business, Precision Turned Components, in Smithfield, to compliment our businesses in Georgia and New Jersey. We soon moved our New Jersey operations to Rhode Island as well as our family. Today, our five girls, even those past college, live in Rhode Island. Our business employs 80 people and produces metal components for telecom, automotive, and agricultural sectors. As a family and as a manufacturer, we are committed to RI.

My wife Jacky Beshar and I have known Jack McConnell for seven years when our children became fast friends. My first impression of Jack, that he is the real thing, has only strengthened over time.

With last week's inauguration, which my family was able to attend thanks to your lottery, I was struck by our President's ability to connect with diverse people. Masterfully, he moves us with words and example to look past daily concerns toward our own role in stewardship.

In no small measure, Jack McConnell has these same abilities. Jack is smart as can be but that alone is never enough. He uses a mix of intellect, pragmatism, and persistence dealing with colleagues to get things done, often with sights on the needs of the larger community. Jack's track record is impressive but his focus has never been a brass ring for himself. Rather, his sense of public good drives him forward. He is invested in using our judicial system to help those at a disadvantage. As a business owner, I have tremendous respect for the balance and intensity that Jack has demonstrated in his work on economic development, public safety, and philanthropy for Rhode Islanders.

Our country is blessed to have people of Jack's heart and capability eager to be of service. I strongly recommend him for consideration and have written the same to Senator Reed.

Respectfully yours,

Scot A Jones
President/CEO

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www.groov-pin.com • ISO 9001



331 Farnum Pike
Smithfield, RI 02917
Ph: (401)232-3377
Fx: (401)232-3253

November 2, 2010

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Senator Leahy:

I write in support of Jack McConnell for consideration to the Federal bench.

Twelve years ago, we bought a manufacturing business, Precision Turned Components, in Smithfield, to compliment our fastener manufacturing business in Georgia. Our business employs 80 people and produces metal components for telecom, automotive, and agricultural sectors.

My spouse and I have known Jack McConnell for seven years when our children became fast friends. My first impression of Jack, that he is the real thing, has only strengthened over time. Jack is smart as can be but that alone is never enough. He uses a mix of intellect, pragmatism, and persistence dealing with colleagues to get things done, often with his sights on the needs of the larger community. Jack's track record is impressive but his focus has never been a brass ring for himself. Rather, his sense of public good drives him forward. As a business owner, I have tremendous respect for the balance and intensity that Jack has demonstrated in his work on economic and cultural development, support for education and the homeless, as well as countless other philanthropies in New England.

Our country is blessed to have people of Jack's heart and capability eager to be of service. I strongly recommend him for consideration.

Respectfully yours,

Scot A Jones
President/CEO

SJ/ss

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www.groov-pin.com • ISO 9001

1088

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

June 15, 2010

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly opposes the nomination of John "Jack" McConnell to serve on the United States District Court for the District of Rhode Island.

As detailed further in the attached multi-industry letter that was sent to the Committee on May 11, 2010, the Chamber believes that Mr. McConnell is unfit to serve this lifetime appointment to the federal bench. Mr. McConnell's actions during his career as a personal injury lawyer and past statements demonstrate his disregard for the rule of law, an activist judicial philosophy and obvious bias against businesses. In addition, if confirmed, Mr. McConnell would have a clear conflict of interest because of future compensation arrangements that he currently has in place with his law firm employer for the next 15 years.

The Chamber urges you to oppose this nomination. Should the Committee report Mr. McConnell's nomination to the full Senate, **the Chamber would consider votes on, or in relation to, this nomination in our annual *How They Voted* Scorecard.**

Sincerely,



R. Bruce Josten

Cc: The Members of the Senate Committee on the Judiciary

Attachment



The Church of Saint Michael the Archangel

239 Oxford Street
Providence, RI 02905-2096
401 • 781-7210

May 6, 2010

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Chairman Leahy,

It is my understanding that Jack McConnell, Jr. has been nominated by President Obama to become a federal judge for the District of Rhode Island. His confirmation hearing is scheduled for May 13, 2010 before your committee. If it were possible I would be in that hearing room to listen and support Jack's nomination at every question and comment.

Jack's academic and professional credentials are well documented. His tenacity in the pursuit of justice for clients individually and collectively is without question. When Jack McConnell commits to the truth there is no means to distract him. Case after case, undertaken by Jack, prove his life long commitment to justice for all. He never fails to choose the path that benefits those most in need, decisions that in the end benefit all.

My experience of Jack McConnell is as a friend, parishioner, advocate, voice of reason, a person not hesitant to offer constructive criticism and a man of unwavering loyalty to family and friends. His keen intellect is matched by his compassion, thoughtfulness and generosity.

My recommendation to you and support of Jack is clear and firm. He will make a great federal judge for the District of Rhode Island as after all wisdom is what we all seek in the judge. Jack McConnell will be that judge.

If there are any questions please do not hesitate to contact me at Saint Michael's Parish.

Sincerely,


Sister Ann Keefe, SSJ
Saint Michael's Parish

December 26, 2008

The Honorable Jack Reed
United States Senate
Washington, DC 20510

DEC 30 2008

Dear Senator Reed,

I am writing to support Jack McConnell's candidacy for Federal District Court Judge for the District of Rhode Island.

First, may I start by saying that I have never met anyone with a bigger or kinder heart than Jack McConnell. Those of us involved at the group home consider him to be our guardian angel sent to us directly from God.

Our story begins:

Patrick, Kenny, Lisa and Joanne were all born about 50 years ago and diagnosed with developmental disabilities. They were admitted to Zambarano Hospital as infants. They were tied to their cribs, fed, and had their diapers changed. They were never shown love in any form. They were never cuddled or kissed all over and their families were discouraged from ever visiting. In 1983, as part of the state's deinstitutionalization plan, the four were moved into their first-ever home in Lincoln. They blossomed, thrived, and achieved skills never previously imagined. They learned how to communicate and make choices. They learned how to make their beds, grocery shop, and even help make dinner. They quickly learned what McDonald's and Dunkin Donuts were all about. If they could, they would probably tell you that learning how to make a pot of coffee was the best out of all the things they ever learned. This group home became a true home, filled with love and laughter, trust and security, and a place where all could grow and thrive.

Life was great for the four until 1995. At that time, the State of Rhode Island faced a budget shortfall. On June 16th, I received a phone call ordering me to evacuate my clients to my other group home in Smithfield. Later that day, I was told that the group home was closed and would never re-open. Quickly, the four began to react negatively to their new placement and began begging us to take them "home". We, as the staff, did everything we could to protest this move to the State. We even had the Providence Journal do a story on us. We wrote and called all legislators—but nothing worked.

As hope began to fade, Jack McConnell walked into our lives. He had heard about our story and graciously volunteered to help. Jack approached the four without fear and with a sensitivity and

compassion rarely seen with this population. While all others were telling us to stop and to suck it up, we saw daily the agony this move was causing the four. Taking the role of our personal hero, Jack took the governor and the Department of MHRH to Superior Court. Jack stood up for the rights of our most vulnerable citizens, folks without a voice or vote, and won their home, their lives, and their happiness back for them. I can't even begin to put into words the joy we all experienced in moving back home. Life was great again!

However, our story with Jack does not end there. In 2007, once again Patrick, Ken, Lisa and Joanne were targeted as the object of a budget cut (why we constantly try to balance the budget on the backs of our neediest and most vulnerable citizens is beyond my comprehension). Once again, Jack was there for us. He dropped everything and immediately won a permanent injunction, restraining the state from closing our home.

Today, Patrick, Ken, Lisa and Joanne continue to live and thrive as a family at 27 Southwick Drive in Lincoln. Please understand that the only reason they continue to live in happiness and peace is this man, Jack McConnell. Jack received nothing in return for his services except our unending gratitude and love. Not many would give freely of their time and talent as Jack has. He cared when no one else did. He heard the cry of our most vulnerable citizens and acted with compassion, sensitivity, and love. What better qualities could a candidate for judgeship possess?

Jack McConnell gave freely of his time, effort, and expertise, helping to essentially save the lives of four of our state's most vulnerable and helpless citizens. I give my highest possible recommendation and endorsement to a man whom I consider to be a savior and hero to the people that I care most about. Based upon these extraordinary qualities and his widespread legal accomplishments, I consider him to be the strongest candidate you could ever find for the United States District Court of Rhode Island.

If I may be of any further assistance, please do not hesitate to contact me.

██████████ - ██████████
██████████ - ██████████

Sincerely,



Beth Keeling
Supervisor of Southwick Drive Group Home

Cc: The Honorable Sheldon Whitehouse

FEB 13 2009

February 12, 2009

Honorable Jack Reed
United States Senator
1000 Chapel View Boulevard, Suite 290
Cranston, R.I. 02920

Re: Recommendation for John J. McConnell Jr.
For District Judge

Dear Senator Reed,

I am writing to recommend Jack McConnell for the position of District Judge for the United States District Court for the District of Rhode Island. By way of background, I have been a member of the Rhode Island Department of Attorney General for the past twenty-two years where I have served as a prosecutor in the Criminal Division, and for the last eleven years as a lawyer in the Civil Division more recently as an Assistant Attorney General. My work with the Civil Division has allowed me to litigate at all levels of the federal court system, including several high profile cases with one that is currently pending decision by the Supreme Court of the United States. More importantly, I have known Jack since the late 1990s, and have had a close working relationship with him in the high profile case of *State of Rhode Island v. Lead Industries Association*, the case with longest civil jury trial in the history of the Rhode Island Superior Court.

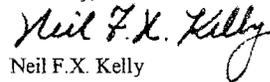
I have found that Jack possesses unique experiences that would make him an outstanding member of the federal judiciary as a District Judge. There are many excellent lawyers, but Jack has had a remarkably wide range of experience litigating exceedingly complex and protracted high profile cases, several on behalf of the public. He understands the intense scrutiny of litigating in such an environment and has the ability to communicate clearly. Jack also has a deeper understanding of the larger ramifications of such litigation. Managing such high profile cases often occurs in District Court, while handling other cases too. Jack has demonstrated the administrative capabilities to meet such challenges through his practice of law, work as a member of the Motley Rice firm, his community service, and additional interests beyond the law. Jack has the experience and ability to manage the type of caseload and the innumerable issues that arise to ensure justice is done.

A judge also needs a keen intellect and an ability to analyze the legal issues from all sides to reach the proper legal conclusion. Jack has a deep understanding of the law. He possesses the wisdom and an uncanny ability to untangle thorny legal issues to reach a solid solution while making the process seem simple. He understands the need to quickly reach a sound answer to the issues presented to keep litigation moving, and does so in an intellectually honest manner. Jack engages such issues with a positive enthusiasm, even in a highly charged atmosphere reaching solutions with clarity and ease. His innate qualities coupled with his vast experiences set him apart from others.

Jack also has good judgment and strong family values. He is a quality person who leads an exemplary life full of actions and deeds. These traits are reflected in his compassion and concern for all people, in particular those who are less fortunate and not just those around him. Jack understands that with the privileges that life presents comes significant responsibility. He lives these principles. I can confidently say, because of Jack's background and the kind of person he is, that if he were to be appointed to the bench that that he would ensure that every litigant would be given full and proper consideration while treating them all with fairness and dignity. Jack is a person of great character who has the ability to be an excellent judge.

Many fine candidates will undoubtedly be under consideration for this esteemed position. I believe, however, that Jack would bring his commitment to excellence to this position and would make an outstanding jurist on our District Court. I would ask that you give Jack serious consideration for this position. If you should have any questions or would like to discuss Jack's application further please let me know.

Sincerely,


Neil F.X. Kelly

Cc: Sen. Sheldon Whitehouse



INSIGHT 2008
CBA TRUST

The Honorable Sheldon Whitehouse
United States Senate
170 Westminster Street Suite 1100
Providence, RI 02903

JAN 21 2009

Sally E. Lapidés
President, CBA

140 Wickenden Street
Providence, RI 02903

401.553.6309 *direct*
401.274.6740 *office*
401.553.4333 *fax*
401.772.8016 *residence*

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January 14, 2009

Dear Senator Whitehouse,

I am writing this letter to strongly recommend that you consider nominating Jack McConnell to fill one of the vacancies on the Federal Bench. Having known Jack McConnell for over fifteen years, I can say without reservation that he would make an outstanding Federal judge. Jack possesses the very qualities that will make him a first rate appointment.

First of all, Jack is extremely knowledgeable about the law. Over his career as an attorney he has been involved in a wide range of legal cases from representing thousands of workers injured by asbestos to representing the mentally disabled in our state. His scholarship and research skills for example, were evident in his multi-year effort to win the nationally prominent Tobacco case.

In addition, Jack's lifetime commitment to public service is well established by his involvement over the years in numerous charities, nonprofit groups and civic affairs. I personally had the privilege of serving with him on the Board of Trinity Rep where is Chairman of the Board. While my tenure as a Trustee at Roger Williams University did not coincide with Jack's, he carries the same priorities that I had while I served on the Board. I have spent many years working with him on behalf of the Gordon School. In all these cases, and in his many other commitments to public service, Jack has demonstrated his modesty, thoughtfulness, intelligence, integrity and balanced approach to numerous issues and challenges.

Finally, Jack possesses the judicial temperament to become an outstanding judge. He is exceedingly fair and balanced, he investigates matters thoroughly before reaching a decision, and he communicates the rationale behind his decisions in a clear, judicious and persuasive manner.

For all the above reasons, and more, I would strongly recommend that you consider Jack McConnell for an appointment to the Federal Bench. I am confident that he will become an outstanding judge.

Thank you for your consideration.

Very truly yours,

Sally E. Lapidés

BARRINGTON
CUMBERLAND
E. GREENWICH
NEWPORT
PROVIDENCE
RELOCATION
SOUTH COUNTY



**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing on Judicial Nominations
May 13, 2010**

Today we welcome five of President Obama's nominees to the Committee who have the support of home state Senators who are Members of this Committee. I know Senator Hatch supports the nomination of Professor Scott Matheson of Salt Lake City, Utah to the Tenth Circuit. He is the Republican former Chairman of this Committee. Professor Matheson also has the support of his other distinguished home state Senator, Senator Bennett, also a Republican. This nomination shows President Obama's success reaching across the aisle to identify consensus nominees to fill vacancies on the federal bench. I look forward to Senator Hatch's introduction of Professor Matheson today.

I thank Senator Cardin for chairing this important hearing. He strongly supports both of the nominees to fill vacancies on the District of Maryland who are appearing before the Committee today, Judge James Bredar and Judge Ellen Lipton Hollander. They are both well-respect judges who also have the support of Maryland's Senior Senator, Senator Mikulski, who is here to introduce them.

Also appearing before the Committee today is John McConnell, President Obama's nominee to serve as a Federal district court judge in Rhode Island. He has the strong support of Senator Whitehouse, the Chairman of the Subcommittee on Administrative Oversight and the Courts, as well as Rhode Island's Senior Senator, Senator Reed. Both are here to introduce Mr. McConnell, who has received numerous letters of support for his nomination. We also welcome Judge Susan Richard Nelson, who has been nominated to fill a vacancy on the District of Minnesota. She has the strong support of both of her home state Senators, both valued members of this Committee, Senator Klobuchar and Senator Franken.

I trust that with the support of so many Members of this Committee, all of these nominees will be treated fairly and I hope that in light of the skyrocketing vacancies on the federal courts, we can proceed without delay to consider their nominations both in Committee and in the full Senate. That should be the case for all nominees. However, nearly every one of President Obama's nominations have been held hostage for weeks and months on the floor for no good purpose, and with no explanation. Even nominees reported favorably by this Committee with bipartisan support or no dissenting votes have been subjected to extensive delays. Often these nominees are then confirmed unanimously. This obstruction is wrong. I have called for it to end, but the Republican Senate leadership persists in this practice.

The results of this strategy of obstruction are by now all too clear. By this date in President Bush's first term, with a Democratic majority in the Senate, 57 of President Bush's judicial nominations had been confirmed. Now that President Obama is in the White House, Republicans have allowed votes on only 25 of his Federal circuit and district court nominees. The same number, 25, are currently stalled on the Executive Calendar. Many have been there for months

The majority leader has had to file cloture petitions to cut off the Republican stalling by filibuster on President Obama's nominees 22 times. Four times he has had to file cloture to proceed with judicial nominees, only to eventually see those nominees confirmed, two which were confirmed unanimously. This stalling and obstruction is wrong.

We should be doing the business of the American people, like reigning in the abuses on Wall Street, rather than having to waste weeks and months considering nominations that should be easily confirmed. Several Senators have gone to the floor in recent weeks and have been outspoken about these delays and secret holds on judicial nominations, as well as scores of other Presidential nominations on which the Republican minority refuses to act. Regrettably, Republicans have objected to live requests for action on these nominations. They have also refused to identify who is objecting, and the reasons for the objections, in accordance with the Senate rules.

The action of the Republican minority to place politics ahead of constitutional duty by refusing to adhere to the Senate's tradition of quickly considering noncontroversial nominees reminds me of the 1996 session when the Republican majority considered only 17 of President Clinton's judicial nominations. That was a low point I thought would not be repeated. Their failing to fill judicial vacancies led to rebuke by Chief Justice Rehnquist. But they are repeating this unfortunate history today, again allowing vacancies to skyrocket to over a hundred, more than 40 of which have been declared "judicial emergencies" by the Administrative Office of the U.S. Courts.

Despite the fact that President Obama began sending judicial nominations to the Senate two months earlier than President Bush, the Senate is far behind the pace we set during the Bush administration. As I noted earlier, by his date in George W. Bush's presidency, the Senate had confirmed 57 Federal circuit and district court judges. In the second half of 2001 and through 2002 the Senate with a Democratic majority confirmed 100 of President Bush's judicial nominees. Given Republican delay and obstruction this Senate may not achieve half of that. Last year the Senate was allowed to confirm only 12 Federal circuit and district court judges all year. That was the lowest total in more than 50 years. So far this year, despite two dozen nominations on the Executive Calendar, we have confirmed only 13 more.

The Republican pattern of obstructionism since President Obama took office has led to this unprecedented backlog in nominations on the Senate calendar awaiting final consideration. We should end the backlog by restoring the Senate's tradition of moving promptly to consider noncontroversial nominees with up-or-down votes in a matter of days, not weeks, and certainly not months. For nominees Republicans wish to debate, they should come to a time agreement to have those debates and votes. It is passed time to end the destructive delaying tactics of stalling nominees for no good purpose.

I hope that the nominees we hear from today are not subject to these extended and damaging delays.

Professor Scott Matheson has been nominated to serve on the Tenth Circuit. He is a law professor and former Dean of the University of Utah's S.J. Quinney College of Law. He

formerly served as Utah's U.S. Attorney, and he was also a county prosecutor and a lawyer in private practice. Professor Matheson earned his B.A. with distinction from Stanford University, his M.A. from Oxford University, where he was a Rhodes Scholar, and his J.D. from Yale Law School, where he was an editor of the *Yale Law Review*. He comes from a distinguished Utahan family with a long history of public service.

President Obama nominated John McConnell to serve as a Federal district court judge in Rhode Island. Mr. McConnell has more than 25 years of experience as a lawyer in private practice, and he is currently a partner at the Providence, Rhode Island law firm of Motley Rice. He earned his B.A. from Brown University and his J.D. from the Case Western Reserve University School of Law. Following his graduation from law school, he clerked for Associate Justice Donald F. Shea on the Rhode Island Supreme Court.

Judge James Bredar is nominated to serve on the U.S. District Court for the District of Maryland. For the last 12 years, he has served that court as a magistrate judge. Before that, he was a Federal public defender, and he also spent years as both a Federal and a local prosecutor. Judge Bredar received his B.A. with honors from Harvard University and his J.D., *cum laude*, from my alma mater, the Georgetown University Law Center. After graduation, he clerked for Judge Richard Matsch on the federal district court in Colorado.

Judge Ellen Lipton Hollander is nominated to serve as a Federal district court judge in Maryland. She is currently an Associate Judge on the Maryland Court of Special Appeals, and she formerly was a judge on the Baltimore City Circuit Court. Judge Hollander has years of experience as a Federal prosecutor, and also worked as a lawyer in private practice. She earned her B.A. from Goucher College and her J.D. from the Georgetown University Law Center, after which she clerked for Judge James Miller on the U.S. District Court for the District of Maryland—the court to which she is now nominated.

President Obama nominated Judge Susan Richard Nelson to serve on the U.S. District Court for the District of Minnesota. For the last ten years, she has served that court as a magistrate judge. Previously, she worked for more than two decades as a lawyer in private practice. Judge Nelson received her B.A. with high honors from Oberlin College, and she earned her J.D. from the University of Pittsburgh School of Law.

I welcome the nominees and their families to the Committee today.

#####

1098

184 Poppasquash Road
Post Office Box 319
Bristol, Rhode Island 02809
February 22, 2009

The Honorable Jack Reed
1000 Chapel View Boulevard, Suite 290
Cranston, Rhode Island 02920

Dear Senator Reed:

I am writing to express my strong support for the nomination John J. McConnell, Jr. to the United States District Court for the District of Rhode Island.

I have had the good fortune of knowing Mr. McConnell for several years, at first through political activities and more recently through our work on behalf of Trinity Repertory Theatre Company and Roger Williams University on whose Boards of Trustees we both serve. In every situation in which I have observed Mr. McConnell interact with others or have heard him speak, I have been impressed with his quick intelligence, his articulateness and his fairness. In his role as President of the Board of Trustees of Trinity Rep, in particular, he has often skillfully brought divergent views to consensus. He has an ability to know exactly when to intervene in an emotionally charged situation and negotiate people towards a resolution that they see as fair. I have never seen him do this in a heavy-handed way; on the contrary, he can be quite self-effacing. Rather, Mr. McConnell brings people together in a manner that is respectful to all parties and leaves them feeling that they have been fairly heard. This is a rare characteristic of a good man and a true leader.

There is no question that Mr. McConnell has the legal skill and experience to be a judge. Moreover, anybody who reads the newspaper is aware of his lifelong commitment to helping the less fortunate both inside and outside the courtroom. However, it is his personal qualities of fairness, empathy and the ability to effect compromise in even the most difficult cases that will ensure that Mr. McConnell is not just a good judge but a truly outstanding one.

I therefore urge you to consider the nomination of John J. McConnell, Jr. to the federal judiciary for the District of Rhode Island. He will make us all proud.

Please do not hesitate to contact me if you would like to speak further about this recommendation.

Warmest personal regards,

Suzanne McTigue Magaziner

████████████████████
h: ██████████
c: ██████████

cc. The Hon. Sheldon Whitehouse
United States Senate

1099

MANDELL, SCHWARTZ & BOISCLAIR, LTD.
Attorneys at Law

JAN 29 2009

Mark S. Mandell
Michael S. Schwartz
Yvette M. Boisclair
Heather M. Bonnett*

One Park Row
Providence, Rhode Island 02903
Telephone: (401) 273-8330
Fax: (401) 751-7830
*Also admitted in Massachusetts

January 28, 2009

Senator Jack Reed
1000 Chapel View Boulevard, Suite 290
Cranston, Rhode Island 02920

Dear Jack:

I am writing to you in support of Jack McConnell's application to be appointed to the Federal Bench. I have known and worked with Jack for over 25 years. I have immense respect for him as an attorney and as a person.

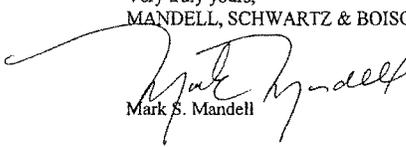
Jack actually began his legal career in my office. He worked with me for about three years before he left to join the firm Motley Rice LLC. I had the opportunity to observe Jack's work first hand. He is very bright and exceptionally dedicated. He worked long hours until he got his work done and done well. I developed an implicit trust in Jack due to his immense personal integrity.

I've also worked with and observed Jack over the years since we worked together. It is no surprise to me that he has been so successful. He is extremely talented.

It is also no surprise that he has volunteered so much time and has risen to leadership positions in social service organizations, such as the Trinity Repertory Company. Jack has a heart as big as his integrity and intellect. He is a true gift to Rhode Island and to all of us.

It is a great pleasure for me to have the chance to write to you on Jack's behalf. I deeply appreciate his friendship. I have learned much from him.

Very truly yours,
MANDELL, SCHWARTZ & BOISCLAIR, LTD


Mark S. Mandell

MSM/slh

bcc: Senator Sheldon Whitehouse

1100



160 Broad Street • Providence, RI 02903 • p 401.521.2255 • f 401.421.7410 • www.crossroadsri.org

February 6, 2008

FEB 07 2009

The Honorable Sheldon Whitehouse
170 Westminster Street, Suite 1100
Providence, RI 02903

Dear Senator Whitehouse:

I am writing this letter in support of John J. McConnell and his potential nomination to the United States District Court for the District of Rhode Island. Let me begin by saying how honored I was that Mr. McConnell even asked me to write this letter - I can not imagine a person I could recommend more enthusiastically.

I first got to know Mr. McConnell when he came for a tour Crossroads. After we spent about an hour walking around our facility at 160 Broad Street I asked him if he would ever consider coming on the board. His response was something I believe best defines who he is. He said "After seeing it, how could I not?".

I have now had the distinct pleasure of working with him for the past three years. In that time I have learned what a man of compassion, commitment, generosity, intelligence and humor he is. He has enriched the board of Crossroads and as a result has had a very real impact on thousands of homeless adults and children throughout the State.

He is fair, open and willing to listen to all sides of a situation before he weighs in with his opinion. He is respected by everyone on the board and is seen as a leader by all. I am honored by the fact he is part of Crossroads and can not imagine a more perfect candidate for the United States District Court.

Thank you for your consideration.

Most sincerely,

A handwritten signature in black ink, appearing to read "Anne M. Nolan", written over a horizontal line.

Anne M. Nolan
President

1101

LAW OFFICES OF
JEFFREY B. PINE ESQ.
A PROFESSIONAL CORPORATION

* Jeffrey B. Pine
Attorney General 1993-1999

321 South Main Street, Suite 302, Providence, RI 02903

* *Admitted in Rhode Island
and Massachusetts*

Of Counsel

TELEPHONE 401.351.8200 FAX 401.351.9032

* Harris K. Weiner
* Brian G. Goldstein

www.pinelaw.com

* *Admitted in Rhode Island
and New York*

May 7, 2010

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Re: John J. McConnell Jr.

Dear Senator Leahy:

I have the pleasure of writing on behalf of John (Jack) McConnell Jr. for a position on the Federal bench. I served as Rhode Island Attorney General from 1993-1999, as a Republican.

I have known Jack for more than fifteen years, both professionally and personally, and feel very qualified to comment on his credentials for such a prestigious position. Throughout his career, Jack has demonstrated the kind of legal ability, integrity, dedication to his client, and willingness to fight hard for the cause of justice that makes him a truly outstanding candidate for the Federal Judiciary.

During my tenure as Attorney General I worked closely with Jack during the multi-state tobacco litigation initiated on a bipartisan basis by more than 40 Attorneys General in the mid-1990's. As Attorney General, I was directly involved in the prosecution of our lawsuit and in the settlement negotiations between the Attorneys General and the tobacco industry. In that capacity I had the ability to work with and observe Jack over an extended period of time as he represented many states' interests, including Rhode Island; in short, what I observed was an attorney who was smart, ethical, diligent and absolutely dedicated to the cause of justice on behalf of his client.

Since our interaction in the public sector I have remained very aware of Jack's talents and abilities as an attorney. I closely followed the lead paint litigation in Rhode Island, where Jack led the fight on behalf of the victims of this public health problem.

He has always fought for those less fortunate who might otherwise not have had a voice in the judicial system. Jack has been that effective voice for many people for many years. I also believe that as an experienced litigator Jack has an outstanding ability to look at legal issues from all perspectives, without bias or predisposition, and I have no doubt that he would be fair to all litigants who appear before him. In my opinion he would bring the kind of experience to the federal bench that would make him an outstanding judge presiding at trials, and a fair and impartial arbiter for those who come before him.

South County Office - 231 Old Tower Hill Road, Suite 208, Wakefield, RI 02879

TELEPHONE 401-788-9100

05/07/2010 11:17AM

I also have the pleasure of knowing Jack outside of legal circles, and while I consider him a friend, my comments about him as a person and family man are not influenced by our friendship—they are objective assessments that are very easy to make.

Jack and his wife Sara have three children who are very close in age to each of my three children. For most of the past fifteen years our children have attended the same schools at the same time. Jack is a devoted and dedicated father who understands the importance of being there for your family even if the demands of a busy career are always present. All three of their children have grown up with strong values, a sense of giving back to society, and the same kind of commitment to others that Jack and Sara have. Jack understands the balance that needs to be struck between career and family, and while he has achieved great success professionally, he retains the strong values of his own upbringing, which he in turn imparts to his children.

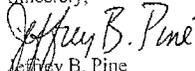
In addition to his professional accomplishments and commitment to his family, Jack has always been very active in the community, involved in a number of civic activities, and he has been honored for his efforts on many occasions. He enjoys an outstanding reputation in both the legal community and the community at large, and many organizations have recognized his commitment to his public service.

In conclusion, there is no question in my mind that Jack would be an honest, principled, ethical and fair judge. He would be a credit to our state and to our judiciary. He has earned this prestigious position for his many years of hard work, legal experience and success as an attorney, as well as his position in the community as a respected civic leader and family man.

I enthusiastically support his candidacy for a position on the federal bench.

If I can answer any questions or be of further assistance to you, please don't hesitate to contact me.

Sincerely,


Jeffrey B. Pine



Rhode Island news

Comments 54 | Recommend 12

U.S. court nominee John J. McConnell a top campaign donor

10:55 AM EDT on Monday, April 26, 2010

By JOHN E. MULLIGAN

Journal Washington Bureau



McConnell

WASHINGTON — John J. McConnell Jr., President Obama's choice for the U.S. District Court in Rhode Island, is one of the top election campaign contributors among the nearly 1,500 nominees to the federal courts since the late 1980s.

McConnell, 51, a Providence lawyer, has given at least \$432,456 to Democratic House, Senate and presidential campaigns since the 1990 election cycle, according to a Providence Journal analysis of reports to the Federal Election Commission.

Over the years, McConnell contributed tens of thousands of dollars in total to the campaign funds of major Democratic presidential candidates and of Senators [Jack Reed](#) and [Sheldon Whitehouse](#). The Rhode Island senators last April recommended McConnell for a seat on the court. McConnell is also a substantial contributor to the party campaign arm that helps elect Democrats to the Senate, whose members must vote on whether to seat him on the federal bench.

It is commonplace for presidents and senators to look to their political backers and campaign fundraisers to fill important federal jobs, including judgeships. But the size of

U.S. court nominee John J. McConnell a top campaign donor | Rhode Is... http://www.projo.com/news/content/mcconnell_political_donations_0.

McConnell's contributions distinguishes him from his peers in the pool of prospects for lifetime seats on the federal bench.

"The selection and confirmation of judges is inevitably a political process," said Judge Bruce M. Selya, of the 1st U.S. Circuit Court of Appeals. "It's done by elected officials, and you're never going to be able to separate it from politics, nor should you try to."

Selya was a corporate lawyer and campaign manager for Republican Sen. John H. Chafee when he became a federal judge in 1982, under Chafee's patronage.

"It would be a terrible rule to say candidates should be excluded if they donate to their political parties in a perfectly legal fashion," Selya said. "It would be equally terrible to think that someone could buy a political appointment with contributions."

Selya said that when senators weigh the credentials of political contributors who are nominated to the federal bench, the proper question is not how much money did they give, but rather, can they make the transition from partisans to impartial jurists. The judge said he believes McConnell can do that.

Both Reed and Whitehouse expressed great confidence in McConnell's ability to be a fair judge. McConnell declined to be interviewed for this story. Reed also praised McConnell for his generosity to charitable causes.

McConnell's ascent into the ranks of prominent Democratic campaign contributors has roughly paralleled his rising success as a lawyer suing companies for damages wrought by dangerous products. He was involved, most notably, in the landmark, \$246-billion settlement in 1998 between the tobacco industry and a number of states.

The Journal's analysis shows that in 2008 alone — a banner year for Democrats that left them in control of the White House and both houses of Congress — McConnell gave \$120,466. The newspaper's computer analysis was performed by matching the list of all federal judicial nominees after 1988 against the database of all individual campaign contributions reported to the Federal Election Commission during the same period. The analysis used a compilation of federal judicial nominees from the American Bar Association and a database of FEC campaign reports compiled by the Center for Responsive Politics, an independent Washington-based watchdog group.

The precept "Reward your friends and punish your enemies" has been a factor in political appointments since the earliest days of the republic, according to Sheldon Goldman, a professor of political science at the University of Massachusetts at Amherst. "It shouldn't make any difference" if McConnell or any other job applicant has contributed to his partisan allies, Goldman said. "He's a wealthy man, he should contribute money if he chooses."

But Susan Tolchin, a professor in the School of Public Policy at George Mason University and the co-author of two books on political patronage, said big contributions should raise tougher questions for prospective federal judges than for aspirants to more politically oriented appointments. As a lawyer with aspirations to the federal bench, “it probably didn’t hurt him that he gave all that money,” Tolchin said of McConnell. “But half a million dollars wouldn’t be enough to get him an ambassadorship” representing the United States in a sought-after European capital, she joked.

Indeed, presidents of both parties have not been squeamish about tapping major contributors for jobs traditionally viewed as political. Richard J. Egan, the wealthy Massachusetts businessman who became President George W. Bush’s first ambassador to Ireland, gave \$760,083 to (mostly Republican) election campaigns — including Bush’s — between 1992 and 2004.

President Bill Clinton’s first treasury secretary, Goldman-Sachs executive Robert E. Rubin, gave \$188,651 to (mostly Democratic) campaigns during the 1990 and 1992 election cycles.

Recent history suggests that political money is rarely an issue in Senate deliberations over a judicial nominee’s fitness for the job. In fact, said, Russell Wheeler of the Brookings Institution, a Washington nonprofit public policy group, executive branch officials responsible for judicial nominations sometimes keep the issue of campaign donations at arm’s length, perhaps to ensure that it does not become a factor for or against a candidate.

Senator Whitehouse said that as he weighed McConnell’s merits, the big contributions were “a bit of a negative.” He said McConnell’s campaign donations raised “the potential concern” that if “so loyal a supporter of the Democratic Party” became a judge, his “personal beliefs might intrude on his judicial decisions.”

But Judge Selya framed the issue more starkly.

“People react to the sheer size of the donations,” Selya said. “Any Joe or Jane out there is going to react this way: ‘Well, why did he give all of that money if he didn’t want something?’ ”

But Reed and Whitehouse said in separate interviews that McConnell has the “character,” as Whitehouse put it, to set aside his political beliefs and “become a judge whom every party can trust when they come before him to give them a fair hearing and a square deal.”

Reed invited a comparison between the nomination of his ally, McConnell, and the Rhode Island Republicans elevated to the federal bench at the recommendation of the late John Chafee and his son, former Sen. [Lincoln D. Chafee](#).

John Chafee “appointed people to the bench who had active political careers, who were perceived as political activists, and they turned out because of his judgment to be

remarkably effective federal judges,” Reed said, citing the example of Selya.

Selya had been a close associate of John Chafee when then-President Ronald Reagan nominated him in 1982 to his first judgeship on the U.S. District Court. In 1986, Reagan nominated Selya to the 1st U.S. Circuit Court of Appeals in Boston, where he is now a senior judge. Reed said Chafee, in promoting Selya’s candidacy, “looked at this question of what can he contribute to the courts, rather than what did he contribute ... in terms of contributions to political campaigns.”

Reed also compared McConnell to William E. Smith, the younger Chafee’s Rhode Island chief of staff, whom then-President George W. Bush nominated to the U.S. District Court at Chafee’s suggestion.

But Selya and Smith, while active political partisans, never approached the kind of cash donations McConnell has made. Selya contributed a lifetime total of \$650 to federal campaigns, \$400 of it to John Chafee in 1979, according to the FEC records. Smith gave a lifetime total of \$1,700 — all to Lincoln Chafee’s campaigns.

McConnell has given \$8,730 to Reed’s Senate campaigns. He gave \$8,400 to Whitehouse’s 2006 campaign, when the onetime Rhode Island attorney general and U.S. attorney defeated the younger Chafee. He has also given \$3,500 to the political action committee that Whitehouse runs to help fellow Democrats finance their campaigns.

McConnell gave substantial contributions to Democrat Hillary Clinton’s 2008 presidential campaign. After Mr. Obama became the nominee, McConnell gave his campaign \$228.

Reed’s office provided specific totals and descriptions of charitable giving by McConnell’s family, including \$1 million to Trinity Repertory Company in Providence “to keep the doors open and the bills paid” during the recession; \$625,000 to the Roger Williams University Law School to establish a loan forgiveness program for needy students that go into public service law; \$157,500 to help the Institute for the Study and Practice of Non-Violence erect a building in Providence; \$127,000 to Crossroads R.I. in Providence for work with the homeless; and \$60,000 each to St. Michael Church and St. Francis Church in Warwick for their capital needs.

Reed’s office listed several dozen other beneficiaries of the McConnells. The senator added that the charity of McConnell and his wife, Sara, is “not just writing a check” but also good works, such as service in soup kitchens.

While the Constitution requires that the president select federal judges, with the advice and consent of the Senate, there is a longstanding tradition that the senior senator of the president’s own political party recommends nominees from his or her state. Reed has chosen to share that prerogative with Whitehouse. Reed said he and Whitehouse found that their confidence in McConnell rose as they went through the process of interviewing more than a

dozen lawyers who know his work.

Reed said McConnell "has never forgotten" that he has risen to great success from an upbringing of modest means. Reed added that the nation has a varied federal bench that includes many experienced corporate lawyers.

He concluded by suggesting that McConnell could bring some balance to the judiciary because of such work as his representation of people with illnesses caused by asbestos, tobacco and other products. "We need more guys there who care about the little guy."

Reporter Dave Michaels of The Dallas Morning News performed computer research for this story.

BY THE NUMBERS Campaign finance

Attorney John J. McConnell Jr.'s contributions, by election cycle, to federal candidates and organizations that support them.

\$700

1994 \$23,350

1996 \$29,340

1998 \$45,500

2000 \$26,750

2002 \$95,000

2004 \$91,350

2006 \$120,466

2008

jmulligan@belo-dc.com



State of Rhode Island and Providence Plantations

HOUSE OF REPRESENTATIVES

REPRESENTATIVE DEBORAH RUGGIERO, District 74

January 20, 2009

JAN 27 2009

The Honorable U.S. Senator Jack Reed
1000 Chapel View Boulevard, Suite 290
Cranston, RI 02920

Dear Senator Reed,

This a letter of support for an accomplished and humble attorney,
John J. McConnell, Jr.

I have known 'Jack' for 9 years and in the next few minutes you'll
come to understand why I believe he will be an outstanding Judge on
the United States District Court for the District of Rhode Island.

Jack McConnell exemplifies the qualifications for a federal district court
judge. He is thoughtful, judicious, and deliberate. Jack's appreciation
for diversity will assure fair and equitable decisions to all people, from
all walks of life.

Jack McConnell has extensive expertise as a trial attorney representing
diverse clients in both state and federal courts. He is a hard worker
who has dedicated his career to defending the working people, the
disabled, and those marginalized in our society.

What strikes me most about Jack McConnell is that despite his great
wealth and success, he has never forgotten his modest roots. There is
something compelling about his humility and commitment to serve and
help others.

Jack McConnell lives the words that Martin Luther King, jr said: "An
injustice anywhere is a threat to justice everywhere. Whatever affects
one directly affects us all indirectly."

My personal experience of Jack is not as a lawyer, but as a community
leader and philanthropist. Jack's values are profound and ever present
in his ongoing work. From the first day I met him, Jack has inspired
me to serve my community and our great state.

78 COLUMBIA AVENUE, JAMESTOWN, RHODE ISLAND 02835

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State of Rhode Island and Providence Plantations

HOUSE OF REPRESENTATIVES

REPRESENTATIVE DEBORAH RUGGIERO, District 74

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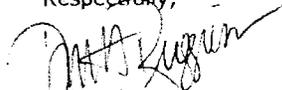
Jack's tireless work and boundless energy touches many. He is a steward for the arts serving as chair of the Board of Trustees for Trinity Repertory Company; he teaches future young lawyers at Roger Williams Law School; and he volunteers his time and treasures on many charitable boards including Crossroads and the Children's Environmental Health Center at the Mount Sinai Medical Center in New York.

He is a reflective and deep thinker and would serve well on the United States District Court for the District of Rhode Island.

Thank you for considering Jack McConnell as a federal district Judge. He is a great American. We are blessed to have him in Rhode Island, and would be fortunate should you choose to appoint him as a Judge.

I am honored to recommend John J. McConnell, Jr. enthusiastically and unconditionally.

Respectfully,


Deborah Ruggiero
State Representative
District 74
Jamestown/Middletown

cc: Senator Sheldon Whitehouse

78 COLUMBIA AVENUE, JAMESTOWN, RHODE ISLAND 02835



Property Casualty Insurers
Association of America
Shaping the Future of American Insurance

DAVID A. SAMPSON
PRESIDENT AND CHIEF EXECUTIVE OFFICER

December 14, 2010

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the Property Casualty Insurers Association of America (PCI), I would like to clarify our position on the nomination of Mr. John "Jack" McConnell to serve on the United States District Court for the District of Rhode Island.

Earlier this year, we signed a multi-industry letter with the U.S. Chamber of Commerce opposing Mr. McConnell's nomination. Since then, the Greater Providence Chamber of Commerce has clarified that they were never consulted in the process. While they do not participate in any judicial endorsements, they find Mr. McConnell to be a well-respected member of the local community, leading important civic, charitable and economic development institutions. In addition, former Republican Rhode Island Attorneys General Jeffrey Pine and Arlene Violet have offered support for Mr. McConnell.

In light of these developments, we have reconsidered our position and hereby withdraw our opposition to Mr. McConnell's nomination to the United States District Court for the District of Rhode Island.

Mr. McConnell's nomination should be considered against this changed landscape.

Sincerely,

David A. Sampson

cc: The Honorable Mitch McConnell
The Honorable Jon Kyl



Property Casualty Insurers
Association of America
Shaping the Future of American Insurance

ATTN:
ED PAGANO

Thomas R. Litjen
Vice President, Federal Government Relations
T: 202-349-7462 F: 202-639-0494
tom.litjen@pciaa.net

444 N. CAPITOL STREET NW, STE 801, WASHINGTON, D.C. 20001 WWW.PCIAA.NET

1111

January 25, 2009

The Honorable Jack Reed
United States Senator, Rhode Island
1000 Chapel View Boulevard, Suite 290
Cranston, RI 02920

JAN 27 2009

Dear Senator Reed,

When Jack McConnell asked me to write him a letter of recommendation for nomination to the United States District Court for the District of Rhode Island, I was delighted.

Mr. McConnell asks for so little and has almost done everything I have asked him to do. Many years ago I asked him to sit on the Board of Trinity Repertory Company; he is now the Chairman of the Board. And a great Chairman he has become. Jack is a take charge kind of guy.

When recommending someone for the position of a judge, I always think about whom I would like to judge me. For Jack is ultimately fair, always informed, and usually the most erudite person in the room. I would accept any sentence Jack handed down knowing that it would never be a frivolous or capricious judgement.

I also like to look at the total person when I make a recommendation. Jack is the consummate family man, he's a fine husband, and a creative and caring parent, and just about the best son or brother one could hope for. His professional life has been a string of remarkable accomplishments. His record as a community volunteer is as dazzling as it is varied. Jack isn't a talker; he is the one person on a committee that I can always be count on to do what he says he is going to do, and then some. No wonder everyone in town is after him.

There are two primary Jacks in my life, and both of you have such an endless reservoir of grace and nobility. Both of you have made not only my life richer, but also all of the people that you both encounter in your very busy lives. There must have been something in the Rhode Island water supply to turn out two such spectacular Jacks. Lucky me, lucky us.

I think back to my early church training and some nun telling me "Judge not, lest ye be judged." I say, "Bring on the judge, and let that judge be Jack McConnell." He gives us so much hope for our collective futures.

Warmest regards,

Charles Sullivan
Professor of English, CCRI, Retired

1112



SUSAN SYMONDS
INTERIOR DESIGN, LLC

MAR 07 2009

February 20, 2009

Dear Senator Reed,

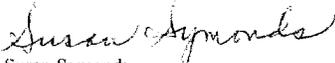
I recently learned that Jack McConnell is being considered for an appointment to the open federal district judgeship in Rhode Island.

I have known Jack for over 18 years personally and professionally. His dedication and commitment to the law and the community is beyond measure. Jack has spent his life devoted to the country, to the community, family and friends.

A man of integrity, honor, Jack is thoughtful, brilliant and judicious. There could never be a better candidate.

I would like to add my name to those who believe in and know him. I welcome his appointment.

Sincerely,


Susan Symonds

Cc: Senator Sheldon Whitehouse

50 TRANSIT STREET, PROVIDENCE, RHODE ISLAND 02906-1064 PHONE 401.273.9296 FAX 401.331.1809 EMAIL SUSAN@SUSANSYMONDS.COM

1113

May 11, 2010

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

The undersigned organizations write to express our strong opposition to the nomination of John "Jack" McConnell to the United States District Court for the District of Rhode Island. Mr. McConnell's past statements, conduct as a personal injury plaintiffs' lawyer, and lackluster ABA rating give us serious reservations about his fitness to serve a lifetime appointment to the federal bench. We do not raise these issues lightly, as our organizations have historically stayed away from debates surrounding federal district court nominees. But given Mr. McConnell's record, we believe that a response is warranted under the circumstances.

Our opposition begins with Mr. McConnell's mediocre rating from the American Bar Association of "substantial majority qualified, minority unqualified." For a practicing lawyer with 25 years of experience to obtain such a low rating speaks poorly of his legal abilities, and likely means that he generated negative comments from judges before whom he appeared and/or from lawyers who know him.

Mr. McConnell's ABA rating should come as no surprise given his past statements that raise serious question about whether he will follow precedent and the rule of law. For example, in 1999, Mr. McConnell was hired on a contingency fee basis by the State of Rhode Island to sue paint companies under theories of liability that exceeded the bounds of well-settled law. After nine years of protracted litigation, and after millions of dollars spent by defendants, the Rhode Island Supreme Court unanimously (4-0) rejected Mr. McConnell's misguided interpretation of public nuisance law. Rather than respect the court's ruling, Mr. McConnell publicly attacked the Supreme Court's decision in an op-ed that he penned for *The Providence Journal*, where he said that the justices "got [the decision] terribly wrong" by letting "wrongdoers off the hook."

Mr. McConnell's public criticism of the Rhode Island Supreme Court's lead paint ruling should also give the Committee pause because it casts light on a judicial philosophy that appears more outcome-driven than based on interpreting and applying the law. Indeed, when viewed against his philosophical views of "an active government" that should not "stand on the sidelines," a picture begins to emerge of a judicial nominee who will legislate from the bench.

We are equally concerned that Mr. McConnell lacks the capacity to be an impartial jurist, especially against business defendants who may appear before him. Mr. McConnell has defined his career by suing business defendants. As his own Committee questionnaire indicates, of the top ten cases he views as the "most significant" litigations of his legal career, all but two involve actions against businesses, and *none involved him representing or defending a business*. Worse

still, when asked by the *Columbus Post Dispatch* in 2006 about the possibility of future lead paint litigation, he said that, based on history, he had “absolutely no confidence” that defendant paint companies would do the right thing. He added “ [t]he only time is when they’re sued and forced to by a jury.” How could a business hope to win in Mr. McConnell’s courtroom when these statements show that the deck is already stacked so heavily against them?

To be sure, Mr. McConnell’s ability to render fair and impartial rulings from the bench should be seriously questioned in light of potential significant financial windfalls that he stands to recover for the next 15 years. According to the McConnell questionnaire, he is scheduled to receive millions of dollars annually through 2024 from an organization closely tied with his current employer, the Motley Rice plaintiffs’ lawyer firm. This has all the appearance of a conflict of interest and it is truly difficult to see how Mr. McConnell could render impartial judgments in matters involving plaintiffs’ law firms while simultaneously receiving millions of dollars in compensation from another plaintiffs’ firm.

We ultimately fear that Mr. McConnell’s apparent bias against business defendants, underlying judicial philosophy, and questionable respect for the rule of law, will lead to the multiplication of baseless lawsuits in his courtroom with untold consequences to businesses large and small across the country. Given the handful of judges who currently serve on the District of Rhode Island court, it is not hard to imagine a generation of enterprising personal injury lawyers flocking to a new “magnet jurisdiction” at the federal level with a chance to draw a plaintiff-lawyer friendly judge. State courts like those in Madison County, Illinois have amply demonstrated the problems that can arise from courts that accept plaintiffs’ claims no matter what the merits. Finally, as most litigators well know, federal district courts retain wide swaths of effectively unreviewable authority. As such, we urge the Committee to resist the confirmation of a lawyer with an animus against one type of defendant.

Like other litigants before our courts, the business community seeks the evenhanded application of law to the circumstances of their cases. After reviewing the record to date, the undersigned strongly believe that Mr. McConnell has not demonstrated that he would provide the kind of fair notice and predictable rules that businesses need to order their affairs. For this and the other foregoing reasons, we urge you to oppose this nomination.

Sincerely,

US Chamber Institute for Legal Reform
 US Chamber of Commerce
 American Insurance Association
 American Tort Reform Association
 National Association of Mutual Insurance Companies
 Property and Casualty Insurers Association of America

Cc: The Members of the Senate Committee on the Judiciary

1115

FEB 10 2009



JOSEPH R. WEISBERGER
CHIEF JUSTICE (RETIRED)

Supreme Court of Rhode Island
Frank Licht Judicial Complex
250 Benefit Street
Providence, RI 02903

February 9, 2009

The Honorable Jack Reed
United States Senate
Cranston Office
1000 Chapel View Boulevard, Suite 290
Cranston, R.I. 02920

Re: John J. McConnell, Jr.

Dear Senator Reed:

I have recently learned that the subject attorney has applied to your office as a candidate for appointment to the United States District Court for the District of Rhode Island. It may be of assistance in evaluating his application if those who are familiar with his professional background write concerning his outstanding qualifications.

I have known Mr. McConnell since 1983 when he served as a law clerk to Justice Donald F. Shea of the Rhode Island Supreme Court. Prior to this service, he graduated from Brown University and Case Western Reserve University School of Law. His talent and personality were outstanding from the earliest stages of his career.

Since he left our court, I have observed, with great admiration, his meteoric rise as a trial lawyer. He has been lead counsel in a number of extremely high profile cases in both State and Federal Courts. His work in the negotiation of the master settlement agreement with the tobacco industry on behalf of forty-six states is legendary in the annals of litigation. His achievements

Senator Jack Reed
February 9, 2009
Page 2

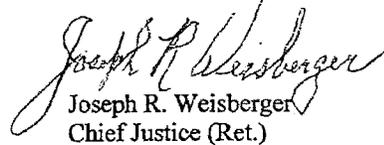
in asbestos litigation are equally distinguished and involved some of the most complex cases on record. He has been recognized by his peers with numerous awards for service to the profession as well as designation as one of the best lawyers in America. The Rhode Island Bar Association has honored him for his service to the poor and disadvantaged.

His compassion and charitable contributions have benefited agencies in the field of health, education and service to the poor and homeless. His service as a director of Crossroads Rhode Island is only one example of his reaching out to the needy and dispossessed.

He has been active in civic affairs in the City of Providence, the State of Rhode Island as well as on the national level. He is a splendid example of a model citizen whose advice and counsel are sought after and freely given.

His great experience as a litigator has given him exceptional knowledge of the intricacies of the rules of practice and procedure in the federal courts. He would be superbly qualified to preside as a federal judge over the most challenging and complex cases. He is a man of keen intelligence and impeccable integrity. He would be a splendid addition to the distinguished bench of the United States District Court of Rhode Island.

Sincerely yours,



Joseph R. Weisberger
Chief Justice (Ret.)

cc: Senator Sheldon Whitehouse
170 Westminster Street
Providence, R.I. 02903

1117

CROSS

A.T. Cross Company One Alston Road, Lincoln, RI 02865-3701 USA www.cross.com

David G. Whalen
President
Chief Executive Officer

January 22, 2009

JAN 23 2009

The Honorable Jack Reed
United States Senate
1000 Chapel View Boulevard, Suite 290
Cranston, RI 02920

Dear Senator Reed:

I understand that you are considering nominating Jack McConnell to a position on the United States District Court for the District of Rhode Island. I am writing to you to convey my full and enthusiastic support for that nomination.

I have known Jack for nearly ten years. During that time I have admired his work as an attorney, community volunteer and, of course, husband and father. From my perspective, he has been an exemplary citizen of Rhode Island and one whom I believe has the potential to become an outstanding judge.

As CEO of A.T. Cross (NASDAQ: ATX), I believe that one of the major challenges that a business encounters when trying to grow is how to interpret laws regarding, competition, intellectual property and human resources. These areas are constantly evolving and becoming more complex. Therefore, when navigating these issues the two things that business needs from the courts are consistency and clarity. With them, we can move forward with confidence and grow. When we receive mixed signals from the judicial system, too much time is spent discussing what the courts meant as opposed to how to move forward. In all of my dealings with Jack, he has demonstrated a consistent approach to issues, one that is framed by his keen mind and guided by his sense of fairness. Additionally, he is an excellent communicator who presents his point of view in a clear, compelling manner.

Jack's extensive history as an attorney has been marked by his efforts to provide a voice for those who he believes have been injured. Many of these people would not have had a voice otherwise. While in some cases corporations have been on the other side of Jack's efforts, that fact, from a business perspective, does not concern me. It seems that Jack's driving motivations were to get a fair judgment for his clients and set the wheels in motion for the offending entity to improve the way that it was doing business. In my experience, when a business improves its approach, over time it becomes a better, more profitable company. Therefore, it can be argued that the long term impact of Jack's efforts have been good for his clients and good for the system as a whole.

C R O S S

The Honorable Jack Reed
January 22, 2009
Page 2

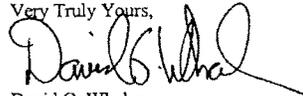
Beyond his career, it has been a pleasure to watch Jack direct his boundless energy toward community service. Mead's quote, "Never doubt that a small group of thoughtful committed citizens can change the world..." seems to embody Jack's approach to life. When something in Providence needs to get done, Jack is there to lend his guidance and support. I am sure that he has provided you a list of organizations with which he has been involved. Whenever, I encounter someone from one of those entities they invariably praise Jack and the impact he has had on the group. The response to Jack is really quite impressive.

Finally, Jack and his wife Sara have a wonderful, loving, family. My daughter is a good friend of their daughter Maggie. I have watched Maggie grow from a child to a poised, young lady. It is clear that Jack and Sara have instilled in her a strong character and an enduring set of positive values including: confidence, respect, humility, tolerance, preparedness and service to others. In my eyes, all of these values, which are clearly present in the McConnell household, would serve any judge very well.

Senator Reed, I strongly encourage you to nominate Jack McConnell to a position on the United States District Court for the District of Rhode Island. I am highly confident that he would serve the District and the United States with honor and excellence.

Thank you for considering this recommendation.

Very Truly Yours,



David G. Whalen

DGW:tcp

✓ cc: Senator Sheldon Whitehouse
United States Senate
170 Westminster Street, Suite 1100
Providence, RI 02903

CROSS

A.T. Cross Company One Albion Road, Lincoln, RI 02865-3700 USA www.cross.com

David G. Whalen
President
Chief Executive Officer

May 6, 2010

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Senator Leahy:

I understand that you are considering confirming Jack McConnell to a position on the United States District Court for the District of Rhode Island. I am writing to you to convey my full and enthusiastic support for that nomination.

I have known Jack for over ten years. During that time I have admired his work as an attorney, community volunteer and, of course, husband and father. From my perspective, he has been an exemplary citizen of Rhode Island and one whom I believe has the potential to become an outstanding judge.

As CEO of A.T. Cross (NASDAQ: ATX), I believe that one of the major challenges that a business encounters when trying to grow is how to interpret laws regarding, competition, intellectual property and human resources. These areas are constantly evolving and becoming more complex. Therefore, when navigating these issues the two things that business needs from the courts are clarity and consistency. With them, we can move forward with confidence and grow. When we receive mixed signals from the judicial system, too much time is spent discussing what the courts meant as opposed to how to move forward. In all of my dealings with Jack, he has demonstrated a consistent approach to issues, one that is framed by his keen mind and guided by his sense of fairness. Additionally, he is an excellent communicator who presents his point of view in a clear, compelling manner.

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C R O S S

The Honorable Patrick Leahy
May 6, 2010
Page 2

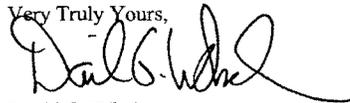
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Senator Leahy, I strongly encourage you to confirm Jack McConnell to a position on the United States District Court for the District of Rhode Island. I am highly confident that he would serve the District and the United States with honor and excellence.

Thank you for considering this recommendation.

Very Truly Yours,



David G. Whalen

DGW:tcp

1121

COUNCILMAN
CLIFFORD J. WOOD
299 DOYLE AVENUE
PROVIDENCE, RI 02906
Office: (401) 521-7477



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City of Providence, Rhode Island

COMMITTEES

Ordinances
Vice-Chairman

Finance

Claims and Pending Suits

BOARDS & COMMISSIONS

Special Commission on
Public Education
Chairman

Police Advisory Board

April 1, 2009

The Honorable Jack Reed
1000 Chapel View Boulevard, Suite 290
Cranston, RI 02920

Dear Senator,

It has come to my attention that you are considering Jack McConnell for an appointment to the open federal district court judgeship in Rhode Island. Please allow me to add humbly my support and encouragement for this appointment.

I was fortunate to work with Mr. McConnell during my tenure with the Cicilline Administration on matters of public policy, and have continued to do so since my swearing-in as a member of the Providence City Council. Jack is an intelligent, hard-working, fair and compassionate volunteer public servant, and the people of our state would benefit from his contributions as a federal judge. If there is any way that I can be helpful to you in your decision-making process, please do not hesitate to call upon me.

Thank you most sincerely for your consideration.

Yours truly,

Cliff Wood

Cc: The Honorable Sheldon Whitehouse
170 Westminster St., Suite 1100
Providence, RI 02903

