

**CONFIRMATION HEARINGS ON FEDERAL
APPOINTMENTS**

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

OCTOBER 19, NOVEMBER 2, NOVEMBER 16, AND DECEMBER 13, 2011

Serial No. J-112-4

PART 5

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**NOMINATIONS OF MICHAEL E. HOROWITZ,
NOMINEE TO BE INSPECTOR GENERAL, DE-
PARTMENT OF JUSTICE; AND SUSIE MOR-
GAN, NOMINEE TO BE U.S. DISTRICT JUDGE
FOR THE EASTERN DISTRICT OF LOU-
ISIANA**

WEDNESDAY, OCTOBER 19, 2011

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

The Committee met, Pursuant to notice, at 2:35 p.m., Room 226, Dirksen Senate Office Building, Hon. Chris Coons, presiding.

Present: Senators Grassley, Cornyn, and Lee.

Senator COONS. Good afternoon, everyone. I'm pleased to call this nominations hearing of the Senate Committee on the Judiciary to order.

I'd like to welcome each of the nominees, their families, and friends to the U.S. Senate and congratulate them on their nominations. I'd also like to welcome those of my colleagues who are here to introduce one of today's nominees.

We have today two nominees, beginning with Michael E. Horowitz, nominated to serve as Inspector General for the U.S. Department of Justice. Mr. Horowitz currently serves as a partner in the Washington office of Cadwallader, Wickersham & Taft.

We also welcome Donna Sue Morgan, or Susie, whom I've had the pleasure of just meeting, who's been nominated to serve on the District Court for the Eastern District of Louisiana. Ms. Morgan is currently a partner at the New Orleans office of the law firm of Phelps & Dunbar, and she will be introduced by her home State Senator and my friend, Senator Mary Landrieu.

I know that my colleagues have busy schedules to attend to, so we will start a little bit out of order today with the introduction of our second panelist first.

Senator Landrieu, please proceed.

**PRESENTATION OF SUSIE MORGAN NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA
BY HON. MARY LANDRIEU, A U.S. SENATOR FROM THE
STATE OF LOUISIANA**

Senator LANDRIEU. Thank you, Chairman Coons, and thank you Senator Grassley and the members of the Committee for giving me

the opportunity to present Mrs. Morgan to you. As long as I've known Susie I did not know her name was Donna Sue.

[Laughter.]

Senator LANDRIEU. So I've even learned something today that I didn't know.

But Ms. Morgan and I have been friends for literally over 30 years, so I've known her a long time. She is also known and so well-respected, Mr. Chairman, by so many members of the Bar in our State. I am just going to give a brief introduction because I know you have all the documentation before you.

First, let me say that she's joined by her husband, Larry Feldman, and several close friends, including one of our mutual friends, the former Chief of Staff for Senator Bennett Johnson, who also knows this nominee very well.

Susie has earned the support of both myself and Senator Vitter, who will I'm sure send a letter of support if he can't be here in person today. She has practiced for many years in State and Federal court, advocating for both plaintiffs and defendants. One of the things that gave me great confidence when I recommended Ms. Morgan and was pleased that the President nominated her is just her even-handedness, fair temperament, et cetera, which I think is important, Mr. Chairman, on the bench.

She is a native of north Louisiana, received a Master's degree from the University of Louisiana at Monroe. She earned her law degree from Louisiana State, graduating in the top 5 percent of her class with Honors. She clerked for one of our most respected Federal judges in the Fifth Circuit Court of Appeals.

I could go on and on with many of her involvements in the legal community. One of the things she's most proud of, and I think it really stands out in showing you her leadership ability and her willingness to step up and do tough work, not just to be a leader that gets credit for the easy things, but Susie led, and it took her almost 14 years.

She chaired the Rules Committee for the Louisiana Bar Association, the Louisiana Supreme Court, and thanks to her leadership the Louisiana Supreme Court agreed to replace the antiquated system where each judicial district in Louisiana adhered only to its own set of court rules, and she helped to lead and implement a standardized set of rules for all the courts in Louisiana. That is tough work, doesn't get a lot of headlines for the general public. But of course for the lawyers and for the plaintiffs and defendants that use the system, it's important.

She's always been a very strong voice for women lawyers, which I so appreciate, in advancing their opportunities and careers. After Hurricane Katrina and Rita in our district, she rallied the community to support so much of the legal community, or people that needed the help of the legal community after that disaster.

So I submit to you Mrs. Susie Morgan for the District Court. I have every confidence that she will do an outstanding job and that she meets all the criteria and qualifications that this Committee and our country depend on to do an excellent job at the Federal bench. I will be happy to answer any questions or provide any other additional comments.

Senator COONS. Thank you, Senator Landrieu.

I believe we'll hold the record open for a week in the event that Senator Vitter also wants to join you in your very compelling introduction of your professional and personal friendship with Ms. Morgan.

I know you have pressing business to attend to, so Senator Landrieu, thank you very much for joining us this morning to introduce our nominee.

Senator LANDRIEU. Thank you, Mr. Chairman.

Senator COONS. I'd now like to move to invite Mr. Horowitz to come forward, and I'll begin with an introduction of Mr. Horowitz, if I might.

Mr. Horowitz is currently a partner, as I mentioned, in the Washington, DC office of Cadwallader, and during his years there he's also served as a Commissioner on the U.S. Sentencing Commission.

Prior to joining the firm of Cadwallader, Wickersham & Taft, Mr. Horowitz spent 3 years in the Criminal Division of the Department of Justice, where he served as a Deputy Assistant Attorney General and Chief of Staff to two Assistant Attorneys General, James Robinson, a Clinton appointee, and Michael Chertoff, a Bush appointee.

He previously spent 8 years as a Federal prosecutor in the Southern District of New York, where he was Deputy Chief of the Criminal Division and Chief of the Public Corruption Unit. He began his legal career as an associate at Devilbois & Plimpton, and clerked for Judge Davies of the U.S. District Court for the Central District of California. Born in New York City, Mr. Horowitz earned his B.A. summa cum laude from Brandeis University, and his J.D. magna cum laude from Harvard Law School, where he was executive editor of the *Harvard Civil Rights and Civil Liberties Law Review*.

Welcome, Mr. Horowitz.

Mr. HOROWITZ. Thank you, Mr. Chairman.

Senator COONS. Please proceed with your statement.

Mr. HOROWITZ. Thank you.

Senator COONS. I need to swear him, don't I? Yes, I do. Thank you. Forgive me. I was confused by the header which says "opening statement." That's for me, not for you.

**STATEMENT OF HON. CHRISTOPHER COONS, A U.S. SENATOR
FROM THE STATE OF DELAWARE**

Senator COONS. Before we begin your testimony, Mr. Horowitz—forgive me. I'd like to take a moment to highlight the importance of the respective roles of our two nominees today. The Office of Inspector General is charged with conducting independent investigations of Department of Justice personnel and programs to detect and deter waste, fraud, abuse, and misconduct and promote integrity, economy, efficiency, and effectiveness in DOJ operations.

The Office of the Inspector General is within the executive branch, but for it to function properly it must also be independent from it. When the Inspector General steps in it's because of a potential political or personnel conflict which may prevent the normal supervisory structure from operating free of bias. Our Federal laws bestow the IG with formal independence. It takes, however, a spe-

cial personality to shield one's self effectively from the inevitable political pressures that are unavoidable in investigating sensitive and controversial allegations within such an important agency as the Department of Justice.

We rely on Inspector Generals to uncover and report truths that can be tough to learn, but that we must learn if we hope to form a more perfect union and have a more effective Federal Government. The Inspector General's 2008 report within the Department of Justice, covering the improper dismissal of nine U.S. Attorneys, for example, provided factual background for a vigorous public debate surrounding the importance of keeping politics out of prosecutorial discretion, and the Office of the Inspector General also shed critical light on national security letter abuses by the FBI, which led to the FBI revising its internal controls.

The IG conducts regular oversight which requires diligence, tenacity, competency, and fairness. The IG's reports ensure fairness in grant awards, proper information security practices, and integrity in procurement.

I look forward to hearing from Mr. Horowitz, who comes highly recommended regarding his qualifications to be IG, and what principles he would use to guide that office if he were to be confirmed.

I also look forward to hearing from Ms. Morgan, Susie, who is nominated to serve as the District Court judge in the Eastern District of Louisiana. Our vacancy rate today stands at over 10 percent, and many of our judicial districts are in crisis. I hope that my colleagues will move quickly to confirm qualified nominees and bring down the vacancy rate. In my view, Ms. Morgan, I sincerely hope you, if confirmed, will continue in the long and honorable traditions of the Federal bench.

Senator Grassley, do you have any statements at this time?

**STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR
FROM IOWA**

Senator GRASSLEY. I welcome both of our nominees, and will talk about the Office of Inspector General conducting independent investigations, audits, inspections, special reviews of the U.S. Department of Justice personnel and programs to deter and detect waste, fraud, abuse, and misconduct and to promote integrity, economy, efficiency, and effectiveness in the DOJ operation.

The fundamental requirement of this office and other Inspectors General is independence. The IG must not be swayed by political affiliation, loyalty to institutions, personal friendship, or concern about personal popularity or potential embarrassment to colleagues in the Department. That is true whether you are a Republican or Democrat nominee.

I have discussed this in a long visit that I had with Mr. Horowitz, and I hope that he knows my concerns, and I think he does. Much of the hearing today, and any follow-up, will be to establish a record on willingness and ability to maintain that independence.

In addition, we'll be considering the nomination of Susie Morgan to be U.S. District Judge for the Eastern District of Louisiana. The seat to which Ms. Morgan is nominated became vacant upon the removal of Judge Thomas Porteous following his impeachment. It gives me an opportunity to comment on the necessity of our looking

very closely at nominees, with no intimidation toward Susie, our nominee today.

Judge Porteous was one of seven judges nominated on August 25, 1994. A hearing was held just 16 legislative days later. All seven nominees were reported by the Committee later that same day. The very next day, October 7th, the judge was confirmed by voice vote, along with 20 other judicial nominees. Clearly, this nomination, along with others, was on a fast track.

We have no way of knowing whether the impeached judge would have been avoided had more time been spent on reviewing the nomination. However, I think that the compressed timeframe and irregular process was not helpful, nor should it be repeated. There is a reason that we take time to thoroughly review a nominee's record.

Following a hearing, Senators are entitled to review the hearing record and responses to follow-up questions. This is why we routinely ask for the full period of consideration before reporting a nomination to the Senate. Once on the Senate floor, Senators then should be afforded time to review the nomination. Confirmation for lifetime appointments simply should not be rushed through the process.

Today marks the 16th nomination hearing held in this Committee this year. We will have heard from 66 judicial nominees. All in all, 85 percent of President Obama's judicial nominees have received a hearing from this Congress. When my colleagues want to compare the pace of confirmations, I note that at this point in President Bush's presidency, only 78 percent of his nominees had a hearing.

Thank you very much.

Senator COONS. Thank you, Senator Grassley. I certainly agree with your sentiments that it is important that we review closely nominees for Article 3 lifetime appointments to the bench. I am grateful that we have the opportunity for a good and thorough hearing today.

I now would like to invite Mr. Horowitz to please stand and raise your right hand, if you would.

[Whereupon, the witness was duly sworn.]

Senator COONS. Thank you, Mr. Horowitz. Let the record show the nominee has been sworn and taken the oath.

Mr. Horowitz, I welcome you to acknowledge and introduce any family members or friends you have here with you today, and then give us your statement.

**STATEMENT OF MICHAEL E. HOROWITZ, NOMINEE TO BE
INSPECTOR GENERAL, DEPARTMENT OF JUSTICE**

Mr. HOROWITZ. I have, fortunately, family members and friends with me today. My wife, Alexandra; my son, Frederick; my daughter, Clia; my mom, Anne; and my in-laws, Sandra and Charles Kauffman; and some family friends from New York where I grew up, Milton and Janet Leiberman. Thank you.

Senator COONS. Thank you.

Mr. HOROWITZ. Mr. Chairman, Ranking Member Grassley, members of the Committee, thank you for the honor of appearing before you today as the nominee of President Obama to serve as the In-

spector General of the Department of Justice. It is an extraordinarily important position, particularly at this moment in time where the need to eliminate waste, fraud and abuse and to promote integrity and efficiency has never been greater.

I am confident that my investigative, audit, and management expertise in the public and the private sector will enable me to undertake these challenges successfully. I will, if confirmed, exercise my duties with the same independence that I believe I've demonstrated throughout my career and abide by the bedrock principle that Federal District Court Judge John G. Davies instilled in me as his law clerk 24 years ago, that those involved in our justice system must faithfully follow the Constitution and the law and that ideology, partisanship, politics, and favoritism have no role whatsoever.

That wisdom, imparted upon me by Judge Davies, served me well as a prosecutor in the Southern District of New York, where I ultimately became the Chief of the Public Corruption Unit. I was entrusted with some of the office's most sensitive cases and worked regularly with Federal, State, and local Inspectors General, including the Justice Department Inspector General.

We tenaciously followed the evidence wherever it brought us and all too often exposed extraordinary abuses of the public trust. For example, in Manhattan's 30th precinct I helped uncover one of the largest police corruption cases in New York City's history.

On another occasion, I used the RICO statute, the racketeering laws, to prosecute a company and its officers who had defrauded the New York City school system and put children's health at risk by falsely claiming to be able to do asbestos abatement work, which it could not do.

On another occasion, at the then Immigration and Naturalization Service, I led an investigation that arrested 33 people, including 7 INS employees, for taking over \$100,000 in bribes in return for the issuance of green cards that should never have been given out.

The work in the Corruption Unit wasn't always popular, particularly when we were arresting law enforcement officers who were working on cases in our own office with other units. But I wasn't interested in winning popularity contests as the head of the Corruption Unit. I was instructed by the U.S. Attorney to doggedly pursue corruption, to be independent of the other units in the office, and that's precisely what I did.

In many instances, our cases relied heavily on the truth-tellers, those employees who were willing to step forward to report on corruption in their midst. As a result, I understand the importance of encouraging employees to report suspicious activity, of taking whistleblower claims seriously, and of the need to protect them from retaliation. It is a respect that will serve me well, if I am confirmed as the Inspector General.

Over the past 9 years, my work in private practice has involved, among other things, conducting independent internal investigations, working with compliance officers to investigate employee whistleblower allegations, and to protect them from retaliation and drafting compliance and ethics programs.

Many of these matters involve financial fraud and corruption allegations, and as a result I work closely with internal auditors, outside forensic accountants, and audit committees. If confirmed, I will

use this public and private sector experience to oversee and office that aggressively pursues investigations, that makes its decisions based solely on the facts and the law, that conducts thorough and comprehensive audits, and that issues reports that fairly, fully, and accurately reflect its findings.

I also will work tirelessly to protect the office's independence and to fulfill the office's statutory dual reporting obligations to the administration and to the Congress by being responsive and by providing timely and reliable information.

My college alma mater, Brandeis University, has as its motto, "Truth even unto its innermost parts." It's a creed that I intend to live by, if I am confirmed as Inspector General.

I have been asked by family and friends why I'm prepared to leave my law practice to return to the Department of Justice, and the answer to that question for me is easy: because of my love for public service and for our country, and because of my deep affection for the Department of Justice. The Department is much more than just another Federal agency, it is a guardian of our system of justice and is responsible for enforcing our laws fairly, without bias, and above all with the utmost of integrity. The Inspector General plays a critical role in fulfilling that mission and I pledge that, if confirmed, these values will be the basis for any and all decisions that I make.

Thank you for your time, and I look forward to answering any questions that you may have.

[The prepared statement of Mr. Horowitz appears as a submission for the record.]

Senator COONS. Thank you very much.

We will now begin 5-minute rounds of questions.

I wanted to begin by just noting that the Committee has received a range of very notable letters of support for your consideration of your nomination from previous Inspectors General at the Department, from 29 different legal professionals who have served in both Republican and Democratic administrations, and a particularly strong one from Michael Chertoff, whom you worked with when he was Assistant Attorney General in the Criminal Division under President Bush, who wrote that you are an outstanding attorney and public servant who's served in both Democrat and Republican administrations and demonstrated your absolute impartiality and independence, and your integrity is beyond reproach.

I'll ask unanimous consent that these letters be entered into the record at the conclusion of this hearing.

[The letters appear as a submission for the records.]

Senator COONS. I'd be interested in hearing you talk a little bit further. You mentioned your deep affection for the Department of Justice, that being a motivating reason for leaving a successful, vibrant, private sector law practice at a firm.

Given that you spent years at the Justice Department, can you assure the Committee that you will have sufficient distance from your former colleagues to, if required, which it inevitably will, investigate their professional behavior and execute on the role of the IG, and how does your previous experience in the Public Corruption Unit in New York allow us to have any confidence about your ability to do that?

Mr. HOROWITZ. I absolutely make that commitment, Mr. Chairman. I think my experience—it's not just the words that I've mentioned, but I think my deeds will back that up, or have backed that up, in the U.S. Attorney's Office in New York as a corruption prosecutor.

I mentioned an instance where we arrested several law enforcement officers, who at the time we arrested them were about to be the key witnesses in a major drug case that another prosecutor in the office was about to give an opening statement on. As you might imagine, that caused some concern in the office among other parts of the office, but nevertheless the U.S. Attorney completely supported what we were doing, expected us, as I said, to be entirely nonpartisan and independent of the other unit in the office.

In another instance, I was the lead prosecutor before I came down to main Justice on the Teamsters investigation that resulted in the arrest of several individuals connected to the election in the mid-1990s at the Teamsters that resulted in Ron Carey's reelection. That matter was handled by our Civil Division in our office.

Our investigation resulted in the arrest of several people connected to his campaign and resulted in the election being thrown out that our office had obviously spent a considerable amount of time handling. But again, the message we had was, you make the decisions, you follow the evidence in the law, you do so with impartiality, and the results are the results. Wherever the chips fall, they fall.

I've continued that, working in private practice for audit committees and doing independent investigations on several occasions having to make recommendations about misconduct by individuals that we were working with, but that was the responsibility that I was asked and instructed to do by the audit committees, by the clients, and that's what I did.

Then finally, on the Sentencing Commission, I was in private practice at the same time because it was a part-time position by statute, and we, on several occasions, adopted increases in penalties that I can tell you were not welcomed in the defense bar, but nevertheless we did what we thought was right and had to do. I heard many comments from colleagues about that, but nevertheless it was what I was sworn to do and the oath I took, and that would be the same oath I take here and pledge to you.

Senator COONS. If you are to be confirmed, how would you avoid, going forward, political pressures, either within the Department or from elsewhere, to dispose of troublesome investigations or to ignore uncomfortable facts? I know you've got experience in that, but what would you actually use to sustain you in that very difficult work?

Mr. HOROWITZ. Well, I think one of the things that's very important is to understand the Inspector General isn't the only person in the office. It's an office of about 450 people, people with deep working relationships and understandings of the Department, who have been there a long time. I think it's safe to say many—I think most people would agree Glenn Fine and Mike Bromwich, and others before him, built an outstanding office with outstanding people.

So one of the things to do is to understand that, as Inspector General, you need to listen to the people you're working with and

make sure they have the authority to do the investigations and make sure you're not interfering with the investigations, but supervising, oversee it, and giving direction. So that's, I think, a significant part of how you do things and make sure you follow through and do things fairly and honestly.

Senator COONS. And what do you think—my last question. What do you think are the most important characteristics for an effective Inspector General, in addition to listening well?

Mr. HOROWITZ. Well, I think, first and foremost, is independence and the ability to operate independently. I think as well, as with any corruption prosecutor, the ability to think creatively and to be tenacious. These are not easy matters to investigate, cases to make. There are people involved who, in most instances—for example, in investigating law enforcement officers, they went in to do right and turned bad in the job. They didn't go in to steal. Something turned them. So you've got to be prepared to think creatively, be tenacious. Never say something's impossible, because the one thing I learned as a corruption prosecutor, anything is possible. People in authority can do things improperly.

Then finally, given the issues as to the budget, I think it's very important for an Inspector General to go in, to be able to work with auditors, to push them, to pursue waste, fraud and abuse, and that's something that I think is going to be a very important part of this job.

Senator COONS. I couldn't agree more.

Senator GRASSLEY.

Senator GRASSLEY. Yes. My questions would follow along the lines that we talked about in our private conversation in my office. I heard what you said in your opening statement and I heard everything that you've answered here for Senator Coons, and that gives me a great deal of satisfaction.

But I want to be a little more direct. For instance, in private practice you indicated that you had worked with the Attorney General's current chief of staff—and I ask these questions because of Fast and Furious—and that you had contacts with him about your nomination. There are serious questions about exactly what this chief of staff knew and what he may have told the Attorney General about Fast and Furious.

You wrote a letter in support of Lanny Brewer to be head of the Criminal Division. Briefly, how long have you known him? These can be short answers if you want them.

Mr. HOROWITZ. Right. Sometime after 1999, when I came down. I believe he was in private practice by then.

Senator GRASSLEY. OK.

You indicated that you have followed the Fast and Furious news reports. Based on what you know publicly, do you believe that, if confirmed, you will have to investigate some of your friends and former colleagues? For instance, Mr. Brewer or Attorney General's chief of staff, Gary Grindler?

Mr. HOROWITZ. I intend, if confirmed, Senator, to pursue every avenue in that case no matter who's involved. It's clear to me that there are numerous people at various levels of the administration that are—that have had questions raised, and I will pursue them vigorously and fully, and the office will do that.

Senator GRASSLEY. OK.

I think you answered my next question, so let me make a statement. I think your statement is to assure us that you would investigate these individuals independently and impartially, despite your previous subordinate interaction with them.

Mr. HOROWITZ. Absolutely, Senator.

Senator GRASSLEY. As you know, the Office of Inspector General recently provided copies of some secretly recorded audiotapes to the U.S. Attorney's Office in Arizona. On the tapes, the cooperating gun dealer in Fast and Furious and the ATF case agent are talking about my oversight work, and other conversations that the U.S. Attorney's Office and the ATF had about what to say in response to all the questions from Congress. And by the way, they don't like me. That's what I deduced from it.

Mr. HOROWITZ. I've only read the transcript. I haven't listened to the tape yet, Senator.

Senator GRASSLEY. So based on that, do you understand how it interferes with our Congressional inquiry to provide evidence like this directly to the very office we're investigating?

Mr. HOROWITZ. Senator, I understand the significance of that issue and read about it. Let me just briefly mention, I had a similar scenario to have to deal with in the 30th Precinct investigation I dealt with in New York, where we were investigating police officers that the District Attorney's Office were relying on, other parts of the office were relying on. I clearly understand the need to be sensitive to other matters going on and think very carefully, step by step, before taking action.

Senator GRASSLEY. Yes. To continue on this same line about the tapes, the office cited discovery obligations to criminal defendants. But does that require that the evidence be turned over immediately, even before the inquiry is complete?

Mr. HOROWITZ. What I can tell you is, in the cases I've dealt with where that situation arose, oftentimes I've reached out to the defense lawyer and the judge to talk about the timing of the production and try and work out an arrangement that allowed our investigation to continue while ensuring that any constitutional obligations were not violated. So I would certainly approach these matters with that kind of sensitivity.

Senator GRASSLEY. So that kind of is like you're saying indirectly that they probably gave these tapes too soon to the people down there.

Mr. HOROWITZ. Well, I'm hesitant to answer specifically as to this, Senator—

Senator GRASSLEY. That's OK.

Mr. HOROWITZ.—because I don't know the facts. I've simply read about the tape question.

Senator GRASSLEY. OK.

What steps would you take, if confirmed, to ensure better cooperation and coordination with parallel Congressional investigations?

Mr. HOROWITZ. In my mind, Senator, it's very important that both investigations obviously be respected and the independence of both investigations be respected, but that doesn't mean that you go forward without recognizing the legitimacy of the other investiga-

tion and working carefully to ensure that both investigations can successfully proceed, and neither hurts the other. It's got to be done carefully, but that's certainly something I'm sensitive to.

Senator GRASSLEY. The Office of Inspector General currently does not have jurisdiction to investigate allegations of misconduct by attorneys at the Department of Justice. Rather, that jurisdiction falls to the Office of Professional Responsibility, which reports directly to the Attorney General. Former Inspector General Glenn Fine said that this creates a conflict of interest. So my question to you: do you support extending the jurisdiction of the Office of Inspector General to include attorney misconduct?

Mr. HOROWITZ. I've talked with Glenn about that issue. I think it's a very significant issue. The only hesitancy I have with answering that right now, is I feel I'd have an obligation to speak with the other people in the office to get their views before I reached a decision on that. But I have read the transcript of the hearing, I've read his testimony, I've talked to him personally about this. I know how strongly he feels about it and I understand why. He's concerned that this is the only department in the government that doesn't have that authority.

Senator GRASSLEY. Thank you. I'll have a second round.

Senator COONS. Thank you, Senator Grassley.

Senator CORNYN.

Senator CORNYN. Mr. Horowitz, welcome.

Mr. HOROWITZ. Hi. Thank you, Senator.

Senator CORNYN. And thank you for your willingness to serve. Congratulations to you and your family.

I also want to follow up on some of our conversation we had in my office, and thank you for coming by and answering those. But just so we can put this in context, other than the Inspector General, which serves at the pleasures of the Attorney General himself and the President, I think people are familiar with the role of Special Counsel, which is also an office within the Department of Justice, presumably reports to the Attorney General himself, but has some measure of independence. That was actually—the independent counsel position that actually preceded that was allowed to expire by bipartisan support in Congress because of concerns on both sides of the aisle about overreaching that occurred, the tremendous pressure on an independent counsel to come up with some indictment of someone somehow for something.

Mr. HOROWITZ. Right.

Senator CORNYN. But I want to ask you about the—your level of independence. I have great respect for the legal profession, and I heard what you said about your commitment to the law and to the facts. But can you explain to everyone listening how—if ultimately Attorney General Holder and the President himself can terminate you, how do you reconcile your independence with that fact?

Mr. HOROWITZ. I appreciate that concern and that issue, Senator. I can tell you from my standpoint, I'm interested in this job and interested in serving because of the independence in a significant way. If I felt that my independence was being limited in a way that I thought was inappropriate I wouldn't be interested in serving, or continuing to serve. It's—

Senator CORNYN. You'd quit?

Mr. HOROWITZ. I presumably would quit. I'm obviously not committing to doing anything until a situation arose, but I've been in the Department in both administrations and have worked with people who made it clear that they would be willing to do that in an appropriate circumstance. So I don't think it's just an Inspector General, but I understand how it arises even in a greater context with an Inspector General.

Senator CORNYN. As you know, the Fast and Furious debacle came to the public's attention generally when Brian Terry, a Border Patrol agent, was killed using one of these 2,000 some-odd firearms that were bought in the United States but then allowed to walk without the Bureau of Alcohol, Tobacco and Firearms Agency even knowing where they were going.

Then apparently Attorney General Holder, sometime in February-March 2011 timeframe, requested the Acting Inspector General to do an investigation of this. Of course, we're still waiting. That was some seven or 8 months ago.

While the properly functioning Inspector General's Office is important to maintaining the public's confidence in the proper operation of the Department of Justice and accountability, it strikes me as a concern that if in fact an Inspector General's report can—investigation can continue ad infinitum, that there is some obligation to bring it to a reasonable conclusion, or at least provide some sort of interim report so it doesn't look like people are waiting for the next election or some other event for it to occur, which would seem to undermine the credibility of the investigation.

Would you care to comment on that?

Mr. HOROWITZ. Senator, in almost every context I've ever worked in at the Department of Justice, justice delayed is justice denied. Delay is rarely to the benefit of anybody who's doing an investigation, and that's why I mentioned timely reporting in my opening statement because I do care about that, and I think it's very important, particularly in an Inspector General position, as you said, that the Congress, the public, the administration gets timely reports.

Senator CORNYN. If the trail in your investigation, once you're confirmed, would lead to the Deputy Attorney General or the Attorney General himself, would you follow this to the end of that trail?

Mr. HOROWITZ. Absolutely, follow wherever the facts lead, Senator.

Senator CORNYN. What would be a legitimate reason for the Department of Justice to refuse to turn over a document or provide a witness for a—to a Congressional investigation of this matter?

Mr. HOROWITZ. On this matter? On the Fast and Furious matter? Senator, I probably would have to understand more about what the request involved. And I have, at this point, only looked at what's public, including the reports of Senator Grassley and Chairman Issa. But without understanding better perhaps what the request was, I could foresee circumstances—grand jury information for example, is by statute confidential. So I think it would, for my mind, turn on what the specific request was. But I'd need to know, I think, a little bit more.

Senator CORNYN. And finally, do you see any reason why the Department can't, or shouldn't, cooperate with a legitimate congress-

sional investigation while simultaneously conducting its own investigation through the Office of Inspector General?

Mr. HOROWITZ. To my mind, Senator, that's something that the Inspector General's Office should try to do, and I would try to do that, and commit to you I will do that.

Senator CORNYN. Thank you, Mr. Horowitz.

Mr. HOROWITZ. Yes.

Senator COONS. Senator Lee.

Thank you, Mr. Horowitz. We'll go to a second round of questions.

To the question about timeliness and swiftness on the shortness of justice, if you would, you mentioned a number of compelling fact patterns of how aggressively you pursued investigations when you were leading the public Corruption Unit, even those that were uncomfortable or difficult for the broader objectives either of NYPD or the U.S. Attorney's Office.

I think you referenced one where you executed arrest warrants on law enforcement officers who were scheduled to be the opening witnesses in a major—tell us a little bit more about the facts of that particular case, if you would.

Mr. HOROWITZ. Yes. That case involved three officers assigned to an elite drug enforcement task force in New York that were arrested for stealing drugs and being involved in drug dealing themselves. They—we learned about that information. That's obviously the kind of thing you need to bring to a conclusion quickly.

You can't have people with badges and guns going around when you know what they're doing, conduct such as that. And so our obligation was to swiftly get to the end point, but at the same time make sure you had a good case, a case that could stand up in court. So that's the balance that has to go on, but you have to move quickly.

Senator COONS. And what impact did your proceeding swiftly and executing those arrest warrants have on the narcotics case where those officers were signature witnesses?

Mr. HOROWITZ. We decided the case was ready to be taken down and it didn't matter that it was the day before the opening statements in the other trial, or the day of the opening statements. I can't remember which it was. That was a case where it was clear the arrests had to be made and that was the right outcome. It didn't matter what the impact was on the other case.

Senator COONS. You also referenced a broad procurement fraud issue.

Mr. HOROWITZ. Right.

Senator COONS. I think you said you deployed—you used the RICO statute in order to prosecute—investigate and prosecute a New York City Schools procurement fraud case.

Mr. HOROWITZ. Correct.

Senator COONS. And you also referenced some immigration or INS bribes—

Mr. HOROWITZ. Right.

Senator COONS.—for improper issuance of green cards. Tell us anything else if you could that would give the Committee some reassurance about your insistence, your independence, your doggedness as a prosecutor, particularly in these corruption cases,

that may speak to some of the questions that have been asked here today.

Mr. HOROWITZ. Well, a particularly good example comes again out of the 30th Precinct investigation that I did. We had a situation where we had first—what became the first take-down in September 1994, and arrested several officers. Many people—and a very successful case. Many people wanted us to shut it down. We had good press, we had arrests, they were good cases, and that should be it. No more embarrassment. We had evidence that others were involved but we needed more time to make those cases.

Fortunately, the police commissioner at the time, Commissioner Bratton, and our U.S. Attorney agreed that we should be allowed to continue. We did. Six months later we took down a sergeant who had been training new officers and the Assistant Integrity Control officer in the precinct. Those people would have been allowed to stay had we not fought to do the continuation on the investigation, but instead shut it down simply because there was nice press and it was time to move forward.

Senator COONS. And if you'd been in a position where you hadn't had the support of the folks you referenced who supported your continuing these very controversial investigations, if you hadn't had their support and they had insisted on your stopping when you had evidence of further wrongdoing, what action might you have taken?

Mr. HOROWITZ. I would have certainly seriously considered resigning from my position as head of the Corruption Unit. I don't think you can have evidence like that, believe you need to continue, and continue sitting in that position.

Senator COONS. I just want to say thank you—I will turn to Senator Grassley, if he has additional questions—for your willingness to serve and for your bringing such a rich, broad range of experience to bear.

Senator Grassley.

Senator GRASSLEY. Senator Lee, I have to be with Senator Landrieu at 3:30. Could I go ahead of you?

Senator LEE. Yes.

Senator GRASSLEY. OK.

I think I'm going to just ask one question, but it's kind of a long question. I think you and I talked about my authorship of the False Claims bill. It is my hope that, as Inspector General, that you would also vigorously support the False Claims bill, and particularly the qui tam provisions.

Could you inform the Judiciary Committee of your experience, if any, with the False Claims Act?

Mr. HOROWITZ. My experience, Senator, has been somewhat limited with the False Claims Act and the qui tam statute. I've been involved with clients who have had issues that I wasn't directly handling, was present for some meetings where those cases were discussed, but I was never the lead lawyer on the civil side on those matters. I was involved in some of the discussions concerning interactions with the government that were related to those cases.

Senator GRASSLEY. OK.

Without violating any client-lawyer relationships you have, have you ever advised any corporation about retaliation cases under 31

U.S.C. 3738, the anti-retaliation portion of False Claims? If so, what did you advise the corporation?

Also, have any clients you represented been accused of violating that section during the course of your representation, and have you ever advised a client to take any personnel action which could be viewed as adverse against any qui tam relator?

Mr. HOROWITZ. I have not, Senator. I have not been—no to all three questions.

Senator GRASSLEY. OK.

Have you ever found yourself under pressure by a corporate client to discredit a whistleblower rather than investigate their claim, and if so, how did you respond to the pressure?

Mr. HOROWITZ. I have not, Senator. In fact, I've counseled clients in the other direction, which is to take the claim seriously and to pursue them vigorously.

Senator GRASSLEY. Do you have any question as to the constitutionality of the False Claims Act and the qui tam provision?

Mr. HOROWITZ. None, Your Honor—none, Senator.

Senator GRASSLEY. As Inspector General, would you vigorously police enforcement of the False Claims Act?

Mr. HOROWITZ. Absolutely.

Senator GRASSLEY. Will you oppose any—I'm sorry that I'm smiling, but I ask these questions of everybody from the Justice Department.

Mr. HOROWITZ. It's OK. Completely understand, Senator.

Senator GRASSLEY. Will you oppose efforts within the Justice Department to weaken the False Claims Act and its qui tam provision?

Mr. HOROWITZ. To the extent I was asked, Senator, I'd obviously want to understand what was going on there, but I'm guessing that issue wouldn't arise before the Inspector General. But what I can assure you, is I would learn and understand what was involved, and certainly anything that dealt with retaliation against whistleblowers, I would care deeply about.

Senator GRASSLEY. OK.

And the last portion here, and then I'll quit. Would you agree to promote a close working relationship between qui tam relators' counsels and the Justice Department for the purpose of establishing the public/private relationship envisioned—that I envision of the False Claims Act?

Mr. HOROWITZ. To the extent, Senator, that the Inspector General's Office was involved in that, I'd certainly—that's something certainly I'd be willing to be involved with.

Senator GRASSLEY. Thank you very much.

Mr. HOROWITZ. Thank you, Senator.

Senator GRASSLEY. I wish you well.

Mr. HOROWITZ. Thank you.

Senator COONS. Well, thank you, Senator Grassley.

Senator GRASSLEY. I want to apologize to Ms. Morgan. I have to go to be with your Senator Landrieu on some foster kid cases that we work on.

Senator COONS. Thank you for joining us today, Senator Grassley. We'll do our best to carry on.

I just want to say in closing, if I could, Mr. Horowitz, my thanks to your family, your in-laws, your mother, your friends, to Alexandra, and to Frederick and Claire, for being so good during the hearing and for answering—I have small children of my own.

[Laughter.]

Senator COONS. I am grateful for your appearance and testimony before this Committee today. You're excused, and we will move to our second panel.

Mr. HOROWITZ. Thank you, Mr. Chairman.

[The biographical information follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

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

Inspector General, U.S. Department of Justice
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.

Cadwalader, Wickersham & Taft LLP
700 Sixth Street, NW
Washington, DC 20001
Residence: Chevy Chase, Maryland
4. **Birthplace:** State date and place of birth.

1962; New York, NY
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.

Harvard Law School (August 1984 to June 1987), JD, 1987
Brandeis University (August 1980 to May 1984), BA, 1984
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.

Cadwalader, Wickersham & Taft LLP
700 Sixth Street, N.W.
Washington, DC 20001
Litigation Partner, September 2002 to Present

U.S. Sentencing Commission
One Columbus Circle, N.E.
Washington, DC 20002
Commissioner (part-time), May 2003 to January 2009
Commissioner (ex-officio), January 2001 to August 2001
Member, Advisory Group on the Organizational Sentencing Guidelines, February 2002 to May 2003

U.S. Department of Justice, Criminal Division

950 Pennsylvania Ave., N.W.
Washington, DC 20530
Deputy Assistant Attorney General, January 1999 to December 1999
Chief of Staff, January 2000 to June 2002

Child Online Protection Act Commission
Washington, DC
Commissioner (ex-officio), October 1999 to October 2000

Georgetown Univ. Law Center, 600 New Jersey Avenue, NW, Washington, DC 20001
Adjunct Professor, August 2000 to December 2000

George Washington Univ. Law School, 2000 H Street, NW, Washington, DC 20052
Catholic Univ. Law School, 3600 John McCormack Rd., NE, Washington, D.C. 20064
American Univ. College of Law, 4801 Massachusetts Ave., NW, Washington, DC 20016
Adjunct Professor, August 1999 to December 2000

U.S. Attorney's Office, Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007
Assistant U.S. Attorney, May 1991 to January 1999
(served as Deputy Chief, Criminal Division from August 1995 to December 1997;
served as Chief, Public Corruption Unit from March 1997 to January 1999)

Debevoise & Plimpton
919 Third Avenue
New York, NY 10022
Associate, December 1988 to April 1991

U.S. District Judge John G. Davies
United States Courthouse
312 North Spring Street
Los Angeles, CA 90012
Law Clerk, September 1987 to September 1988

Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019
Summer Associate, May 1987 to July 1987

Sullivan & Worcester
One Post Office Square
Boston, MA 02109
Summer Associate, July 1986 to August 1986

Debevoise & Plimpton
919 Third Avenue
New York, NY 10022
Summer Associate, May 1986 to July 1986

Paul Alfred, Inc.
1400 Broadway

New York, NY 10018
Sales Assistant, January 1985, Sept. 1985 to December 1985 (occasional), and May 1984 to July 1984 (occasional)

Sherin & Lodgen
100 Summer Street
Boston, MA 02110
Summer Associate, June 1985 to August 1985

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 am registered with 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.

Fellow, International Society of Barristers (approx. 2007 to present)
Listed in Super Lawyers, Washington, DC (2008 to present)
Listed in Best Lawyers, Washington, DC (2007 to present)
Listed in International Who's Who of Business Crime Defense Lawyers (2010 to present)
Listed in Benchmark Litigation Guide to America's Top Business Litigation Attorneys (2010 to present)
Listed in Ethisphere Magazine's Lawyers Who Matter (2009 to present)
Listed in Washington Smart CEO's top lawyers (2010 to present)
Listed in The Legal 500 (2011)
Attorney General's Award for Distinguished Service (1995)
Graduated *Magna Cum Laude*, Harvard Law School (1987)
Graduated *Summa Cum Laude*, high honors in Economics Major, Brandeis Univ. (1984)
Elected to Phi Beta Kappa, Brandeis University (approx. 1983)

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.

Edward Bennett Williams Inn of Court (approx. 2002 to present)
American Bar Association (approx. 2002 to present)
New York State Bar Association (approx. 2008 to present)
Federal Bar Council (approx. 2003 to present)
Association of the Bar of the City of New York (approx. late 1980s to early 1990s)
U.S. Sentencing Commission Advisory Group on the Organizational Guidelines (approx. 2001 to 2003)

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 State, June 1988

District of Columbia, April 1990
There are no lapses in membership

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

U.S. District Court, Southern District of New York, March 1990
U.S. Court of Appeals, Second Circuit, July 1993
U.S. District Court, District of Columbia, June 2004
There are 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.

International Society of Barristers (approximately 2007 to present)
Ethics Resource Center, member of Board of Directors (2009 to present)
Society for Corporate Compliance and Ethics, member of Advisory Board (approximately 2006 to present)
Lawyers Committee for Civil Rights Under Law, member of Board of Directors (2009 to present)
B'nai Brith, former trustee of local unit in New York City (approximately 1988 to present)
Brandeis University Alumni Association (1984 to present)
Harvard Law School Alumni Association (1987 to present)
International Association of Prosecutors (approximately 1999 to present)
Kennedy Center for the Performing Arts (approximately 2006 to present)
Washington National Opera (approximately 2007 to approximately 2009)
U.S. Holocaust Museum (approximately late 1980s to present)
U.S. Supreme Court Historical Society (approximately early 1990s to present)

I have made financial contributions to charitable organizations over the years. I have not included in the list above any organizations to which I gave funds and did not otherwise participate in programmatic activities, although the organization may label me a member.

- b. 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.

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.

I have done my best to identify all books, articles, reports, letters to the editor, editorial pieces, or other published material, including a through review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find, or remember. I have located the following:

- Artists' Rights in the United States: Toward Federal Legislation, 25 Harv. J. Legis. 153 (1988). Copy supplied.
 - Forward, The State of Federal Prosecution, American Criminal Law Review (Volume 43, Number 3) (2006) (republished by the Corporate Counsel Review, Journal of the Corporate Counsel Section, State Bar of Texas, Vol. XXVI, Number 2, November 2007). Copy supplied.
 - Strategies for Successful Advising and Collaboration with the Client, White Collar Law Defense Strategies: Leading Lawyers on Preparing for Trial, Offering Evidence, and Overcoming the Challenges of a White Collar Crime Case (Aspatore Books, 2007). Copy supplied.
 - The Stockman Decision: An Expansion Of Indemnification and Advancement, White Collar Crime Litigation Reporter (September 2009). Copy supplied.
 - The Blurring of Plain View, White Collar Crime Litigation Reporter (November 2009). Copy supplied.
 - SEC Launches FCPA Probe of Financial Services Industry's Interactions With Sovereign Wealth Funds, Financial Fraud Law Report (to be published September 2011). Unpublished copy supplied.
 - Eulogy for James K. Robinson, former Assistant Attorney General of the Criminal Division, The Wayne Law Review (to be published Fall 2011). Unpublished copy supplied.
- 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 tenure on the U.S. Sentencing Commission, the Commission issued, on an annual basis, federal sentencing guidelines manuals, sourcebooks of federal sentencing statistics, and yearly reports. These materials (except where noted), including the reports and correspondence listed below, are available at www.ussc.gov.

- December 2008 - Overview of Federal Criminal Cases, Fiscal Year 2007

- December 2008 – Changing Face of Federal Criminal Sentencing: Seventeen Years of Growth in the Federal Sentencing Caseload
- November 2008 – Report on Federal Escape Offenses in Fiscal Years 2006 and 2007
- September 2008 – Report to Congress: “Amendments to the Federal Sentencing Guidelines in Response to the Emergency Disaster Assistance Fraud Penalty Enhancement Act of 2007”
- August 2008 – Letter to Senator Leahy and Senator Specter regarding the Court Security Improvement Act of 2007 (Letter is not on website – Copy supplied)
- May 2007 – Report to Congress: “Cocaine and Federal Sentencing Policy”
- March 2006 – Report to Congress: “Final Report on the Impact of *United States v. Booker* on Federal Sentencing
- April 2005 – Letter to the House Judiciary Committee regarding H.R. 1528, the “Defending America’s Most Vulnerable: Safe Access to Drug Treatment and Child Protection Act of 2005”
- November 2004 – Preliminary Findings: Federal Sentencing Practices Subsequent to the Supreme Court’s Decision in *Blakely v. Washington*
- May 2004 – Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines
- May 2004 – Recidivism and the “First Offender”
- April 2004 – Letter to Senator Bill Nelson regarding the CAN-SPAM Act. (Letter is not on website – Copy supplied)
- October 2003 – Report to Congress: “Downward Departures from the Federal Sentencing Guidelines”
- May 2001 – Report to Congress: “MDMA Drug Offenses: Explanation of Recent Guideline Amendments” (issued during my tenure as an ex-officio member of the Commission).

It is important to note that while Commissioners contribute to the Commission’s guidelines, reports, briefs, letters, and other statements of the Commission, these materials are representative of the Commission as a whole, and not of any single Commissioner.

During my tenure, the Commission also held numerous public meetings and hearings; filed amicus briefs in the U.S. Supreme Court; and issued periodic newsletters. Minutes of the Commission’s public meetings, transcripts of select

public hearings, Supreme Court briefs, and other materials are available at www.ussc.gov.

As a Commissioner on the Child Online Protection Act Commission, I joined in the Commission's report to Congress in October 2000. Copy supplied.

- 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 done my best to identify all official statements or other communications relating to public policy or legal interpretation, including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

- October 4, 2000 – House Committee on the Judiciary, Subcommittee on Crime – Hearing on H.R. 469, "Jeremy and Julia's Law," a bill that would have created federal criminal penalties for certain acts by child day care providers. Copy supplied.
- May 15, 2001 – House Committee on the Judiciary, Subcommittee on Crime – Hearing on the Reauthorization of the Department of Justice. Copy supplied.
- December 13, 2001 – House Committee on Government Reform – Hearing on the President's invocation of executive privilege regarding the production of prosecution memoranda. Copy supplied.

Additionally, the Chair of the Commission, and the Vice Chairs of the Commission, periodically testified on behalf of the Commission before various Congressional Committees. Copies of the testimony is available at www.ussc.gov.

- 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 done my best to identify all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be additional speeches or other materials that I have been unable to identify, find or remember. I have located the following:

As a supervisor in the U.S. Attorney's Office for the Southern District of New York, and as a senior official in the Justice Department's Criminal Division, I

participated in numerous CLE presentations and panel discussions. I do not maintain or have a complete list. Those that I have been able to identify include:

- Presentations at various NYPD training programs on preventing and investigating police corruption (I am not certain of the dates but the programs were held during my tenure as an AUSA in the Southern District of New York; New York, NY). Copy supplied.
- Speaker and presenter at conferences of the International Association of Prosecutors on the Foreign Corrupt Practices Act (September 1999; Beijing, China), recent developments in US law enforcement (I am not certain of the dates but I believe it was in September 2000 in Cape Town, South Africa and in September 2001 in Sydney, Australia), and best practices in investigating child pornography (I am not certain of the date but I believe it was in September 2000 in Cape Town, South Africa).
- Faculty for an ATF training seminar on searches, seizures, arrests, testifying, and evidence preservation (September 1995; New York, NY). Copy supplied.
- Speaker at a program entitled Fraud in Today's Business Environment: What You Need to Know to Survive sponsored by Kahn Consulting (March 1996; New York, NY). Copy supplied.
- Speaker at a session entitled Applicable Statutes and Techniques in Investigating Public Corruption at the DOJ Office of Legal Education Public Corruption Seminar (September 1996; Los Angeles, CA). Copy supplied.
- Speaker at a session entitled Initiating an Investigation: How/When/Who to Investigate; at a session entitled Planning the Proactive Investigation: Degree of AUSA Involvement; and at a session entitled Planning the Takedown at the DOJ Office of Legal Education Public Corruption Symposium (November 1996; Austin, TX). Copy supplied.
- Speaker at a session entitled Impeachment at the DOJ Office of Legal Education Basic Criminal Trial Advocacy (February 1997; Washington, DC).
- Speaker at a session on investigating and prosecuting police corruption cases at an FBI Public Corruption training program (June 1997; Quantico, VA). Copy supplied.
- Speaker at a session entitled Police Corruption: A Real Case Analysis at the Arizona Law Enforcement Coordinating Committee entitled Turning Square Corners (December 1997; Prescott, AZ). Copy supplied.
- Speaker at a session entitled Proactive Investigation Techniques: Defining the Direction and Scope of the Investigation and moderator at a session entitled Recurring Issues and Dilemmas: Why and How are Public Corruption Cases Different at the DOJ Office of Legal Education Public Corruption Seminar (April 1998; Phoenix, AZ). Copy supplied.

- Speaker on prosecuting public corruption cases at a program sponsored by Fordham Law School entitled International Seminar on Government Ethics and Law Enforcement (May 1998; New York; New York, NY). Copy supplied.
- Speaker on the role of the prosecutor in investigating and prosecuting public corruption cases at an FBI Public Corruption/Ethics course for Russian law enforcement (July 1998; Moscow, Russia). Copy supplied.
- Speaker at a session entitled Conflicts and Joint Defense Agreements at the DOJ Office of Legal Education Grand Jury Practice Seminar (March 2000; Columbia, SC). Copy supplied.
- Speaker for a session entitled Sentencing Guidelines Update at the ABA National Institute on White Collar Crime (March 2000; Miami, FL)
- Speaker at a session entitled Conflicts and Joint Defense Agreements at the DOJ Office of Legal Education Basic Grand Jury Practice Seminar (May 2001; Columbia, SC). Copy supplied.
- Speaker for sessions entitled Meet the Sentencing Commission and Prosecutor Training at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2001; Palm Springs, CA).
- Speaker at a program sponsored by the John F. Kennedy Library entitled Defending an Open Society: Balancing Security and Liberty (November 2001; Boston, MA). Copy supplied.
- Speaker at a program entitled Under Penalty: Production of Documents in Response to Federal Grand Jury Subpoenas sponsored by the American Corporate Counsel Association (November 2001; New York, NY).
- Moderator of a panel entitled Sentencing Guidelines Update: The New Economic Crimes Package and Money Laundering Guidelines at the ABA National Institute on White Collar Crime (March 2002; Miami, FL).
- Keynote address at the International Law Enforcement Academy for a program entitled Developing Strategies for the Prevention and Detection of Terrorism (March 2002; Bangkok, Thailand). Copy supplied.
- Speaker for a session entitled Organizational Guidelines at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2002; Palm Springs, CA).

Additionally, during my tenure as a Commissioner on the U.S. Sentencing, as well as a former member of the Sentencing Commission and as a private practitioner, I have given numerous CLE presentations and panel discussions on Sentencing Guidelines issues, on corporate compliance and ethics issues, and on criminal law and regulatory matters. Those presentations have usually occurred before ethics and compliance organizations, such as the Society of Corporate

Compliance and Ethics ("SCCE"), the Health Care Compliance Association ("HCCA"), the Blue Cross/Blue Shield Association ("BCBSA"), and the Ethics and Compliance Officer Association ("ECOA"). I also have spoken frequently at programs by the Practicing Law Institute ("PLI"), the American Bar Association ("ABA"), the Federal Bar Association ("FBA"), and the American Conference Institute ("ACI"). I do not maintain or have a complete list. Moreover, I did not give a formal speech at those events and therefore did not prepare a formal text of my remarks. For most of these programs, I used PowerPoint presentations. Those programs that I can recall include:

- Speaker on corporate compliance and Sentencing Guidelines issues for several PLI-Corpedia telephone briefings (I do not know the exact dates but they occurred during my tenure as a Commissioner on the Sentencing Commission; via telephone).
- Speaker on the Sentencing Guidelines at a DOJ Office of Legal Education's Sentencing Guidelines Program (I do not recall the exact date but it occurred during my tenure as a Commissioner on the Sentencing Commission; Columbia, SC).
- Speaker at a session entitled Update on the Federal Sentencing Guidelines at the ECOA Annual Conference (October 2002; Boston, MA).
- Speaker at session entitled Compliance and Ethics: What's Next? at the LRN KnowledgeForum (January 2003, Los Angeles, CA). Copy supplied.
- Speaker at a session entitled Sentencing Guidelines Update: Sarbanes/Oxley, Fraud and the Organizational Guidelines at the BCBSA Compliance and Ethics Conference (February 2003; Orlando, FL). Copy supplied.
- Speaker for a session entitled The Federal Sentencing Guidelines for Organizations: Do they Serve as a Deterrent? Should they be Amended? at the ABA National Institute on White Collar Crime (March 2003; San Francisco, CA).
- Speaker at session on Compliance and Ethics: What's Next? at the LRN Regional Compliance Conference (March 2003; Detroit, MI; April 2003, New York, NY). Copy supplied.
- Speaker at a session entitled Discussion by U.S. Sentencing Commissioners and at a session entitled Campaign Finance Reform Act Offenses at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2003, Miami, FL).
- Speaker at a session entitled Sentencing Guidelines Update: Sarbanes/Oxley and the Organizational Guidelines at the PLI Corporate Compliance Institute (May 2003; Chicago, IL). Copy supplied.
- Speaker at a panel on corporate compliance issues at the PLI Corporate Compliance Institute (June 2003; New York, NY).

- Speaker at a session entitled Compliance and Ethics: Recent Regulatory Initiatives at the PLI Advanced Corporate Compliance Workshop (July 2003; San Francisco, CA). Copy supplied.
- Co-chair and speaker at PLI's Advanced Corporate Compliance Workshop (July 2003, San Francisco, CA; July 2004, San Francisco, CA; September 2005, New York, NY; September 2005, San Francisco, CA; September 2006, New York, NY; September 2006, San Francisco, CA; September 2007, San Francisco, CA; November 2007, New York, NY; November 2008, New York, NY; November 2009, New York, NY; October 2010, New York, NY).
- Speaker at a session entitled Update on the U.S. Sentencing Commission's Advisory Group at the ECOA's Annual Conference (October 2003; Orlando, FL).
- Speaker at a session entitled Corporate Compliance and the U.S. Sentencing Guidelines at the HCCA's National Symposium on Corporate Responsibility: Internal Audit, Compliance and Ethics Programs (October 2003, Redmond, WA). Copy supplied.
- Speaker on Sentencing Guidelines and compliance issues for an LRN webinar (November 2003; webinar). Copy supplied.
- Speaker at a program on corporate ethics and compliance issues sponsored by the Association of Corporate Counsel (November 2003, New York, NY).
- Speaker for a PLI telephone briefing entitled The Final Report of the Ad Hoc Advisory Group on the Organizational Sentencing Guidelines: What Your Organization Needs to Know Now (January 2004; via telephone).
- Speaker at session entitled Do You Have an Effective Compliance Program? Possible Changes to the Federal Sentencing Guidelines at the LRN KnowledgeForum (February 2004; Los Angeles, CA).
- Speaker at an ABA panel discussing Attorney General Ashcroft's Sentencing Memorandum (February 2004; Washington, DC).
- Speaker on the proposed changes to the Organizational Sentencing Guidelines for the Greater Phoenix Compliance Network meeting (February 2004; videoconference). Copy supplied.
- Moderator for a session on Parallel Proceedings: A Real and Present Danger at the ABA National Institute on White Collar Crime (March 2004, Miami, FL).
- Speaker for a session entitled Limiting Judicial Discretion: Are We Changing the Balance of Justice? at the District of Columbia Judicial & Bar Conference (March 2004; Washington, DC).
- Speaker at a program entitled After the Dust Settles: The Federal Sentencing Guidelines Six Months Later sponsored by the Federal Bar Council (March 2004; New York, NY).

- Co-chair of PLI program entitled Corporate Counsel Forum: What You Need to Know About Corporate Liability & Government Enforcement After Sarbanes/Oxley (April 2004; New York, NY). Copy supplied.
- Speaker for a session on compliance and enforcement issues at the Food and Drug Law Institute's Annual Conference (April 2004; Washington, DC). Copy supplied.
- Speaker at a panel of the U.S. Sentencing Commissioners and for a session entitled Amendments to Chapter Eight: The Organizational Sentencing Guidelines at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2004, Miami, FL). Copy supplied (for session on Organizational Guidelines).
- Speaker at a session Sentencing Issues at the Sixth Circuit Judicial Conference (May 2004, Lexington, KY).
- Speaker at a program entitled Shifting Balance: Corporate Criminal Justice After the Thompson Memo and the Amended Organizational Sentencing Guidelines sponsored by the District of Columbia Bar (June 2004; Washington, DC). Copy supplied.
- Speaker at a session on compliance issues at the PLI Corporate Compliance Institute (June 2004; New York, NY). Copy supplied.
- Speaker at a session on Developments at the United States Sentencing Commission at the PLI Advanced Corporate Compliance Workshop (July 2004; San Francisco, CA).
- Speaker on the Sentencing Guidelines and compliance at the Delaware Valley Association of Corporate Counsel General Counsel Forum (September 2004; Philadelphia, PA). Copy supplied.
- Moderator and Speaker for the Edward Bennett Williams Inn of Court at programs on the Sentencing Guidelines (September 2004 and September 2006), civil vs. criminal matters, and developments on legal privileges (I am not certain of the dates but they occurred during the time I have been a member of the Inn; Washington, DC).
- Speaker for a PLI telephone briefing entitled The Future of the Federal Sentencing Guidelines After *Blakely* (October 2004; via telephone).
- Faculty for a State Department program in Russia on the U.S. Sentencing Guidelines (October 2004, Russia).
- Speaker at a session entitled Foundations for Compliance with the Sentencing Guidelines and Sarbanes-Oxley at the SCCF's Corporate Compliance Workshop (October 2004; Philadelphia, PA).
- Speaker at a program entitled How Corporations Respond to Regulatory Investigations: Current Trends and Issues sponsored by Association of Corporate Counsel (November 2004; New York, NY). Copy supplied.

- Speaker at a teleconference on the Sentencing Guidelines sponsored by the General Counsel Roundtable (November 2004; via telephone).
- Speaker at a session entitled Municipal Corruption: Identifying the Causes and Understanding the Costs at a event sponsored by the Hills Program on Governance called Corruption in Cities: Identifying Causes and Understanding Costs (December 2004; Washington, DC).
- Speaker on the Sentencing Guidelines at the ABA Committee of Corporate General Counsel meeting (December 2004; Palm Beach, FL). Copy supplied.
- Speaker for LRN webinars on compliance and Sentencing Guidelines issues (various dates in 2005, 2006, and 2007; webinars).
- Speaker on a PLI telephone briefing on the Supreme Court's decision in *Booker* (February 2005; telephone conference).
- Speaker at session entitled The Sentencing Guidelines: Now What? at the LRN KnowledgeForum (February 2005; Santa Monica, CA).
- Moderator for a session entitled Sentencing Guidelines: What's Next? at the ABA National Institute on White Collar Crime (March 2005, Las Vegas, NV).
- Speaker at a program entitled After *Booker*: Navigating the New Federal Sentencing Landscape sponsored by the ABA and the Federal Bar Council (March 2005, New York, NY).
- Speaker at a program entitled Enron, Worldcom, Disney, Spitzer & The FDA: The Revolution in Duties & Liability Beyond Sarbanes-Oxley sponsored by The Directors Roundtable (April 2005; New York, NY).
- Speaker for a session on Ethics Standards and Corporate Culture at the ECOA Sponsoring Partner Forum (April 2005; Atlanta, GA).
- Speaker at a session on How the Organizational Sentencing Guidelines Address Compliance and Ethics Programs at the HCCA's Annual Compliance Institute (April 2005; New Orleans, LA). Copy supplied.
- Co-chair of PLI program entitled Corporate counsel Forum: What You Need to Know About Corporate Liability & Government Enforcement After Sarbanes-Oxley (May 2005; New York, NY).
- Speaker at an LRN webinar entitled The Cost of Legal Failure: What the Government Expects From Companies with Legal Problems (May 2005; webinar). Copy supplied.
- Speaker for a session entitled Meet the Sentencing Commission and a session entitled The Organizational Guidelines in a Post-*Booker* World at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2005, San Francisco, CA). Copy supplied (for session on the Organizational Guidelines).

- Speaker at a session on compliance issues at the PLI Corporate Compliance Institute (June 2005; New York, NY).
- Speaker at a session entitled Panel Discussion with the U.S. Sentencing Commission at the ECOA program entitled Effective Compliance & Ethics Programs in a post-*Booker* World (June 2005; New York, NY). Copy supplied.
- Speaker at a session entitled FCPA: How it Applies to Pharmaceutical Companies and Why it Should be an Integral Part of Your Company's Revised Blueprint for Compliance at the ACI's Global Pharmaceutical Compliance Conference (June 2005; New York, NY). Copy supplied.
- Speaker for a session entitled Sentencing After *Booker* at the Federal Judicial Center's Workshop for Judges of the Eighth and Tenth Circuits (June 2005; Santa Fe, NM).
- Speaker on compliance issues at a program entitled Gateway to Opportunities: Compliance/Ethics Marathon sponsored by the Association of Corporate Counsel (June 2005; New York, NY).
- Speaker at a session discussing current Sentencing Commission work at the Second Circuit Judicial Conference (June 2005; Bolton Landing, NY).
- Speaker at Federal Judicial Center's National Sentencing Policy Institute for session entitled "Federal Sentencing: From the Sentencing Reform Act to Today" (July 2005; Washington, DC).
- Speaker at a panel on the global impact of the U.S. Sentencing Guidelines at The Conference Board Council on Business Conduct (September 2005; Redmond, WA).
- Speaker at a session entitled Trends in Corporate Regulation, Enforcement and Litigation at the Delaware Valley Association of Corporate Counsel General Counsel Forum (September 2005; Philadelphia, PA). Copy supplied.
- Speaker on the Organizational Sentencing Guidelines at a program sponsored by the Colorado Ethics & Compliance Exchange forum (October 2005; Denver, CO).
- Speaker on Sentencing Issues at the Eighth Circuit Judicial Conference (October 2005, Colorado Springs, CO). Copy supplied.
- Speaker at a session on Corporate Compliance Best Practices at the Association of Corporate Counsel Community Forum (November 2005; New York, NY).
- Speaker at a program entitled Sentencing in the Post-*Booker* Era sponsored by the DC Bar (November 2005; Washington, DC).

- Speaker at a program entitled The Impact of the Supreme Court on American Business sponsored by The Directors Roundtable (December 2005; New York, NY).
- Speaker at a session entitled Making Sense of the Recent Developments in Federal Sentencing Guidelines Compliance: *Booker* and Beyond at the ACI's FDA/SEC Centralized Procedure for Referrals with Other Applicable Laws, Guidelines and Obligations Conference (January 2006, New York, NY). Copy supplied.
- Speaker at session entitled Recent Developments in Enforcement and Compliance: *Booker* and Beyond at the LRN KnowledgeForum (February 2006, Santa Monica, CA). Copy supplied.
- Business Finance Magazine Webinar, Upward Mobility: Leveraging Your Sarbanes-Oxley Investment for Broader Risk Management (February 2006; webinar). Copy supplied.
- Moderator for a session on The Sentencing Revolution After Twenty Years: Its Impact on White Collar Crime at the ABA National Institute on White Collar Crime (March 2006; San Francisco, CA). Copy supplied.
- Speaker at a session on Developing an Enterprise-Wide Compliance Curriculum at the HCCA's Annual Compliance Institute (April 2006; Las Vegas, NV).
- Speaker at a session on Structuring the Investigation and Choosing Your Strategy: Preliminary Determinations and Particulars at the ACI's Internal Investigations for the Pharmaceutical & Medical Devices Industries (April 2006; New York, NY). Copy supplied.
- Speaker at a session entitled Cutting Edge Antitrust Compliance Programs: Objectives, Technologies, and Ethics at the ABA Section of Antitrust Law Spring Meeting, (April 2006; Washington, DC). Copy supplied.
- Speaker for sessions entitled Meet the Sentencing Commission and Fraud/Theft Offenses at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2006; Miami, FL).
- Speaker on the Organizational Sentencing Guidelines at a program sponsored by the U.S. Chamber of Commerce (May 2006; Washington, DC).
- Speaker at a session entitled The New Enforcement Agenda: The Carrot & the Stick at the Compliance Week annual conference (June 2006; Washington, DC). Copy supplied.
- Speaker for a session on recent developments at the Sentencing Commission at Federal Judicial Center's National Sentencing Policy Institute (July 2006; Washington, DC).

- Speaker at a session on Creating a Global Culture at the SCCE's Annual Compliance and Ethics Institute (September 2006; Chicago, IL).
- Speaker at a session entitled Ethics in the Boardroom during the pre-conference briefing for PLI's Annual Institute on Securities Regulation (November 2006; New York, NY). Copy supplied.
- Speaker on corporate compliance and Sentencing Guideline issues for a program entitled Ask the Commissioner by the Open Compliance and Ethics Group (various dates in 2007; via telephone).
- Speaker at a session entitled Ensuring FCPA Compliance for Foreign Operations at the ACT's Government Investigation Preparedness for Pharma conference (January 2007, New York, NY).
- Co-chair for PLI conference entitled The New Justice Department Guidelines for Corporate Prosecutions: What the McNulty Memo Means to You (January 2007; New York, NY).
- Speaker at a session on compliance and Sentencing Guidelines issues at the LRN KnowledgeForum (February 2007; Miami, FL).
- Moderator at a session entitled Sentencing for Individuals: Advocacy is Back at the ABA National Institute on White Collar Crime (March 2007; San Diego, CA). Copy supplied.
- Speaker at a session entitled Defense Counsel Perspective for the DOJ Office of Legal Education Criminal Chiefs' Conference (March 2007; Columbia, SC – I joined by videoconference).
- Speaker on FCPA issues at the Pharmaceutical Internal Audit Forum Conference (March 2007; Orlando, FL). Copy supplied.
- Speaker at a session entitled Regulatory Update at the SCCE's Compliance Academy (March 2007, Dallas, TX; and September 2007, San Francisco, CA). Copy supplied.
- Speaker at a session entitled Government Panel at the HCCA's Annual Compliance Institute (April 2007; Chicago, IL). Copy supplied.
- Speaker on Sentencing after *Booker* at the Sixth Circuit Judicial Conference (May 2007, Asheville, NC). Copy supplied.
- Speaker on FCPA issues in the Healthcare and Pharma Industry at the DOJ/FBI Training Program on the FCPA (May 2007; Washington, DC). Copy supplied.
- Speaker for sessions entitled Federal Sentencing Guidelines Post-*Booker* and Fraud/Theft Offenses at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2007; Salt Lake City, UT).
- Co-chair of the ACT's National Conference on the FCPA and Anti-Corruption for Pharma and Life Sciences (May 2007; New York, NY).

- Speaker at a session entitled The New Enforcement Agenda at the Compliance Week Annual Conference (June 2007, Washington, DC).
- Speaker for LRN webinars on FCPA and compliance, including one entitled Current FCPA Compliance Issues and one entitled Discovering and Managing FCPA Issues – M&A Issues (approximately June 2007; webinar). Copies supplied.
- Speaker at a session entitled Controlling Ethics and Compliance Risks Through Culture at the Institute of Internal Auditors Risk and Control Conference (August 2007; San Diego, CA). Copy supplied.
- Speaker on the FCPA and the Practical Implications to Interactions with HCPs at the Pharmaceutical Regulatory and Compliance Congress and Best Practices Forum (November 2007, Washington, DC). Copy supplied.
- Presenter on FCPA issues involving the Healthcare/Pharmaceutical Industry at the U.S. Securities and Exchange Commission FCPA Training Workshop (December 2007; Washington, DC). Copy supplied.
- Moderator at a session entitled U.S. Sentencing Guidelines: A View from the Bench at the ABA National Institute on White Collar Crime, Sentencing Guidelines Update (March 2008; Miami, FL). Copy supplied.
- Speaker at an ABA teleconference entitled The New Federal Sentencing Landscape After *Gall* and *Kimbrough* (March 2008; via telephone).
- Speaker at a session entitled Managing FCPA Issues in a Global Organization at the Institute of Internal Auditors General Audit Management Conference (March 2008; Las Vegas, NV).
- Speaker at a webinar entitled FCPA: Proven Compliance Strategies sponsored by FDA News (March 2008; webinar).
- Speaker for a session entitled Creating Effective Strategies and Policies for Dealing With a Government Investigation at the ACT's FCPA and International Anti-Corruption for Pharma & Life Sciences conference (April 2008; New York, NY).
- Speaker on Sentencing Issues at the Sixth Circuit Judicial Conference (May 2008; Chattanooga, TN).
- Speaker for sessions entitled U.S. Sentencing Commission: A Year in Review and Firearm Offenses at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (May 2008; Orlando, FL).
- Speaker at a session entitled Cutting Edge Issues in Compliance and Business Conduct at the Bay Area ECOA Forum (May 2008, Santa Clara, CA). Copy supplied.

- Speaker on Supporting a Culture of Compliance and Ethics at the BCBSA Compliance and Ethics Week (May 2008; Washington, DC). Copy supplied.
- Speaker on Global Compliance Issues at the SCCE's Regional Compliance Conference (May 2008; Washington, DC).
- Speaker at Federal Judicial Center's National Sentencing Policy Institute for session entitled Sentencing Practices Post-*Booker*. *Rita*, *Gall*, and *Kimbrough* (June 2008; Long Beach, CA).
- Speaker at New York State Bar Association program entitled Federal Sentencing in White Collar Cases: Expanded Judicial Discretion or Business as Usual? (June 2008; New York, NY).
- Moderator for a panel on Alternative Sentencing: Rehabilitative and Punitive Models and Evidence-Based Policy and a panel on Federal Problem Solving Courts at the U.S. Sentencing Commission's Symposium on Alternatives to Incarceration (July 2008; Washington, DC).
- Speaker for a webcast entitled Creating and Enforcing a Robust FCPA Compliance and Audit Program by PLU/Ethisphere (August 2008; webcast). Copy supplied.
- Speaker at a session entitled Regulatory Affairs Update at the SCCE's Compliance Academy (August 2008; Chicago, IL). Copy supplied.
- Speaker for PLI video on the FCPA (September 2008; video taping).
- Speaker at a session on Managing FCPA Issues in a Global Organization/Due Diligence and a session on the Government Perspective on Corporate Culture at the SCCE's Annual Compliance and Ethics Institute (September 2008; Chicago, IL).
- Speaker at a session entitled White Collar Sentencing After Sarbanes/Oxley at the ABA Sentencing Advocacy, Practice and Reform Institute (October 2008; Washington, DC). Copy supplied.
- Speaker for a webcast entitled White Collar Law Defense Strategies by West LegalEdcenter (December 2008; webcast).
- Speaker at a program entitled The U.S. Justice Department: Examining the New Leadership and its Priorities for White Collar Enforcement sponsored by the Washington Legal Foundation (February 2009; Washington, DC).
- Speaker at a session entitled Dangerous Silence: What Employees Won't Tell You, Why, and What You Can Do About It at the Dow Jones/Ethisphere Global Ethics Summit (February 2009; New York, NY).

- Speaker at a session entitled Regulatory Affairs Update at the SCCE's Compliance Academy (February 2009, Scottsdale, AZ; and March 2009, Orlando, FL). Copy supplied.
- Moderator at a session entitled The Sentencing Guidelines After *Gall* and *Kimbrough*: Are They Still Relevant? at the ABA National Institute on White Collar Crime, Sentencing Guidelines Update (March 2009; San Francisco, CA). Copy supplied.
- Moderator of panel on White Collar and Fraud Sentencing Trends at the FBA's National Seminar on the Federal Sentencing Guidelines (May 2009; Clearwater, FL). Copy supplied.
- Speaker on recent compliance issues at the SCCE's Regional Compliance Conference (May 2009; New York, NY).
- Speaker on compliance issues at the SCCE's Effective Compliance Systems in Higher Education Conference (June 2009; Austin, TX). Copy supplied.
- Speaker for a session entitled Fraud/Theft Offenses at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (June 2009; New Orleans, LA).
- Moderator of panel on FCPA and Anti-Corruption: What's New and What You Should Do at the SCCE's Annual Compliance and Ethics Institute (September 2009; Las Vegas, NV).
- Speaker at a program entitled Anti-Corruption: A Transatlantic View sponsored by Cadwalader and Simmons & Simmons (February 2010, London, UK; March 2010, New York, NY). Copy supplied.
- Speaker at a session on Dawn Raids and Third Parties at the SCCE's Compliance and Ethics Academy (May 2010; London, UK). Copy supplied.
- Speaker on Sentencing Issues in Securities Cases at the FBA National Seminar on the Federal Sentencing Guidelines (May 2010; St. Petersburg, FL).
- Speaker for a session entitled Restitution and Other Victim Rights Issues and a session entitled Organizational Guidelines: Gaps and Solutions at the U.S. Sentencing Commission's Annual National Seminar on the Federal Sentencing Guidelines (June 2010; New Orleans, LA).
- Speaker at webinar entitled U.S. Sentencing Commission Changes Affecting Compliance Programs and Recent Developments in Ethics Issues sponsored by the ABA (July 2010; webinar).
- Speaker at a session on Managing Your Growing Privacy and Security Obligations and a session on Recent Amendments to the Organizational Sentencing Guidelines at the SCCE's Annual Compliance and Ethics Institute (September 2010; Chicago, IL). Copies supplied.

- Speaker as a session entitled FCPA Update at the Association of General Counsel Fall Meeting (October 2010; Washington, DC). Copy supplied.
 - Speaker on a webinar entitled 2010 UK Bribery Act and “Adequate Procedures” Guideline: The Bar Has Been Raised on FCPA Standards for Anticorruption Compliance for the SCCE (October 2010; webinar). Copy supplied.
 - Speaker at a session on Managing Disclosure of FCPA Issues at the ACT’s National Conference on the Foreign Corrupt Practices Act (November 2010; Washington, DC). Copy supplied.
 - Speaker on Sentencing Issues in Securities Cases at the FBA’s National Seminar on the Federal Sentencing Guidelines (May 2011; Orlando, FL).
 - Moderator of panel entitled The State of Anti-Bribery Enforcement and What Compliance Programs are Doing at the SCCE’s Regional Compliance Conference (May 2011; New York, NY).
 - Speaker at a session entitled Economic Crimes: Loss Determination and Other Issues at the U.S. Sentencing Commission’s Annual National Seminar on the Federal Sentencing Guidelines (May 2011; San Diego, CA).
 - Speaker at a session entitled Sentencing Guidelines Update at the FBI Certified Public Accountant Conference (July 2011; Denver, CO). Copy supplied.
- 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 done my best to identify all interviews I have given to newspapers, magazines or other publications, or radio and television stations, including through a review of my personal files, requesting materials maintained by my law firm, and searches of publicly available electronic databases. I do not maintain a comprehensive list of those stories or interviews. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

- Legal Times, August 9, 2010, *James Robinson, Former DOJ Criminal Division Head, Dies at 66*. Copy supplied.
- Legal Times, April 6, 2009, *Series of Errors Doomed Stevens Prosecution*. Copy supplied.
- Bloomberg.com, March 23, 2009, *Top Cop Khuzami*. Copy supplied.
- Compliance Week, December 2008, *Building a Values-Driven Compliance Program*. Copy supplied.
- L.A. Daily Journal, September 8, 2008, *Sentencing Commission Looks to 2009*. Copy supplied.

- Design Product News, March 17, 2008, *Device Companies Will Be Under FCPA Spotlight, Experts Say*. Copy supplied.
- Associated Press, December 12, 2007, *Sentencing Commission Votes to Allow Retroactive Easing of Crack Cocaine Sentences*. Copy supplied.
- ABC News, December 12, 2007, Television news story regarding Sentencing Commission decision on retroactivity. Transcript supplied.
- Bloomberg News, September 17, 2007, Television interview regarding nomination of Michael Mukasey to be Attorney General (video clip can be found at www.cadwalader.com/search_results.php?search=Horowitz).
- New York Times, May 17, 2007, *Loyal to Bush But Big Thorn in G.O.P. Side*. Copy supplied.
- Compliance Week, December 19, 2006, *Where the 'McNulty Memo' Goes From Here*. Copy supplied.
- Bloomberg News, November 17, 2006, *Corporate Fraud Rules to be Eased by U.S., People Say*. Copy supplied.
- Financial Times, July 10, 2006, *Steamy Welcome Awaits the ex-Natwest Three*. Copy supplied.
- Legal Times, October 31, 2005, *Fitzgerald Leads Legion to Libby Indictment*. Copy supplied.
- Legal Intelligencer, September 15, 2005, *Ebbers' Lawyer: White Collar Bar's 'Rolled Over'*. Copy supplied.
- Legal Times, May 30, 2005, *Gonzales Mulls Need for Terror Reform*. Copy supplied.
- Corporate Legal Times, October 2004, *Sentencing Guidelines Teeter on Brink of Extinction*. Copy supplied.
- Associated Press, July 22, 2004, *Weary of Scandals, Businesses Turn to Ethics Training*. Copy supplied.
- USA Today, July 19, 2004, *Ruling May Have Impact on Corporate Sentences*. Copy supplied.
- C-SPAN's Washington Journal, July 17, 2004, Discussion regarding the Sentencing guidelines and the Supreme Court decision in *Blakely* (video clip can be found at www.c-spanvideo.org/michaelhorowitz).
- Washington Post, June 30, 2004, *Restraining the Gavel's Power*. Copy supplied.
- NBC's Kudlow & Cramer, June 28, 2004, Story regarding the Supreme Court's decision in *Blakely*. Transcript supplied.

- Los Angeles Times, June 26, 2004, *Thousands of Cases in Doubt After Decision on Sentencing*. Copy supplied.
- NPR's Morning Edition, June 25, 2004, *Supreme Court declares system used to sentence convicted criminals could be unconstitutional*. Transcript supplied.
- Wall Street Journal, June 25, 2004, *Ruling Puts Limits on Scope of Judge's Sentencing Powers*. Copy supplied.
- FDA News, April 30, 2004, *Top Pharma Management, Boards Face New USSC Compliance Obligations*. Copy supplied.
- Washington Times, March 23, 2004, *Bribery Sentences Toughened*. Copy supplied.
- Legal Times, October 7, 2003, *Career Prosecutor Called a Natural for Deputy AG Job*. Copy supplied.
- Legal Times, October 2, 2003, *Ashcroft Endorses Fast-Tracking for Some Offenders*. Copy supplied.
- The Journal News, June 29, 2003, *Bush Names 1980 Suffern High Grad to Federal Post*. Copy supplied.

13. 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.

Volunteer summer intern, Rockland County D.A.'s Office, Summer 1982
Appointed by hiring chief for District Attorney Kenneth Gribetz (I do not recall the person's name)

Volunteer intern, Congressman James Shannon, Washington, DC, January 1982
Appointed by Administrative Assistant to Congressman Shannon (I do not recall the person's name)

Paid summer intern, Rockland County Legislature, Summer 1983
Appointed by Herbert Reisman, Chairman of the Legislature

Brandeis University internship for school credit and then volunteer intern
Office of Congressman Barney Frank, West Newton, MA
Fall 1982, Spring 1983 and Spring 1984
Appointed by Administrative Assistant Dorothy Reichard

Law Clerk to U.S. District Judge John G. Davies, Central District of California
September 1987 to September 1988

Appointed by Judge John G. Davies

Assistant U.S. Attorney, U.S. Attorney's Office, Southern District of New York
May 1991 to January 1999

Appointed by U.S. Attorney Otto Obermaier
(appointed Deputy Chief, Criminal Division (August 1995 to December 1997)
and Chief, Public Corruption Unit (March 1997 to January 1999) by U.S.
Attorney Mary Jo White)

Deputy Ass't Attorney General, U.S. Department of Justice, Criminal Division,
January 1999 to December 1999

Appointed by Assistant Attorney General James Robinson

Chief of Staff, U.S. Department of Justice, Criminal Division
January 2000 to June 2002

Appointed in January 2000 by Assistant Attorney General James Robinson and
re-appointed in April 2001 by Assistant Attorney General Michael Chertoff.

Commissioner (ex-officio), Child Online Protection Act Commission
October 1999 to October 2000

Appointed by Attorney General Janet Reno

Commissioner (ex-officio), U.S. Sentencing Commission
January 2001 to August 2001

Appointed by Attorney General John Ashcroft

Member, Advisory Group to the U.S. Sentencing Commission on the
Organizational Sentencing Guidelines
February 2002 to May 2003

Appointed by Judge Diana Murphy, Chair, U.S. Sentencing Commission

Commissioner, U.S. Sentencing Commission, May 2003 to January 2009
(Senate confirmed appointment; renominated in 2007 but not confirmed)

Appointed by President George W. Bush

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

Since leaving law school in 1987, I have not played a role in any political campaigns. As a college student, I volunteered on an unpaid basis for a few political campaigns (and I may have also volunteered in a campaign in law school, but I do not recall any). I do not have a list of those campaigns. The ones I can recall are John Anderson for President, Alan Cranston for President, Herbert Reisman for Rockland County Legislature, and Barney Frank for Congress. I have never had a formal position in any campaign.

14. **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 for U.S. District Judge John G. Davies of the Central District of California from September 1987 to September 1988.

- 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.

Cadwalader, Wickersham & Taft LLP
700 Sixth Street., N.W.
Washington, DC 20001
Litigation Partner, September 2002 to Present

U.S. Sentencing Commission
One Columbus Circle, N.E.
Washington, DC 20002
Commissioner (part-time), May 2003 to January 2009
Commissioner (ex-officio), January 2001 to August 2001
Member, Advisory Committee on the Organizational Sentencing Guidelines, February 2003 to May 2003

U.S. Department of Justice, Criminal Division
950 Pennsylvania Ave., N.W.
Washington, DC 20530
Deputy Assistant Attorney General, January 1999 to December 1999
Chief of Staff, January 2000 to June 2002

Child Online Protection Act Commission
Washington, DC
Commissioner (ex-officio), October 1999 to October 2000

U.S. Attorney's Office, Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007
Assistant U.S. Attorney, May 1991 to January 1999
(served as Deputy Chief, Criminal Division from August 1995 to December 1997; served as Chief, Public Corruption Unit from March 1997 to January 1999)

Debevoise & Plimpton
919 Third Avenue
New York, NY 10022
Associate, December 1988 to April 1991

- 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.

b. Describe:

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

After my clerkship, I served as an associate at the law firm of Debevoise & Plimpton in New York from December 1988 to May 1991. In May 1991, I became a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York. I remained in that position until January 1999, when I became a Deputy Assistant Attorney General in the Criminal Division in Main Justice in Washington, D.C. Then, from January 2000 to June 2002, I served as Chief of Staff to the Assistant Attorney General for the Criminal Division.

In addition, during my employment at Main Justice, I began teaching a law school seminar class entitled "The Role of the Federal Prosecutor." Initially, the class was comprised of students from George Washington Law School, American Law School, and Catholic Law School. Subsequently, students from Georgetown Law School also participated in the class. I taught the class from Fall 1999 through Fall 2000.

In September 2002, I joined the law firm of Cadwalader Wickersham & Taft LLP as a litigation partner in Washington, D.C., where I remain today. My practice has generally involved representing individuals and companies in a variety of regulatory, civil, and criminal matters. From May 2003 to January 2009, I also served as a part-time Commissioner to the U.S. Sentencing Commission.

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

As an associate at Debevoise & Plimpton, I participated in a variety of litigation matters, including commercial litigation and white collar investigations. I also undertook a few tax matters. Most of the matters on which I worked involved the firm's corporate and institutional clients. I also worked on several pro bono matters, mostly for individuals as described in response to Question 23 below.

As a federal prosecutor in the U.S. Attorney's Office, I prosecuted a wide variety of cases, but most involved white collar crime and/or public corruption.

As a senior official at Main Justice, I was primarily involved in handling policy issues, although I did assist in overseeing several investigations and prosecutions that involved national or international issues.

Finally, as a partner at Cadwalader, I primarily represent individuals and corporations involved in regulatory and/or criminal investigations. I also assist with some civil litigation matters for corporations. I also have performed pro bono work for both individuals and not-for-profit organizations, as described in response to Question 23 below.

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

Over 95% of my practice has involved federal court litigation, or potential litigation. At present I appear in court occasionally. While working in the U.S. Attorney's Office for the Southern District of New York, I appeared in federal court frequently. While serving at Main Justice in Washington, and while working as an associate at Debevoise & Plimpton, I appeared in court occasionally.

- i. Indicate the percentage of your practice in:
 1. federal courts: 95% or more;
 2. state courts of record: less than 5%
 3. other courts; none
 4. administrative agencies less than 5%
- ii. Indicate the percentage of your practice in:
 1. civil proceedings; roughly 15%
 2. criminal proceedings. roughly 85%

- 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 eight cases. I was sole counsel on two of those cases, chief counsel on two of the cases, and co-counsel on four of the cases. Seven of the eight trials were decided by the jury (in one case the judge granted my client a verdict of acquittal at the conclusion of the government's evidence).

- i. What percentage of these trials were:
 1. jury 100%;
 2. non-jury. 0%

- 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 never practiced before the Supreme Court of the United States.

15. **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.

Corruption Prosecutions Working With Inspector Generals and Internal Affairs:

- U.S. v. Sandaq, et. al., 92 Cr. 381 (CMM) – This case was one of the first uses of the RICO statute to prosecute an environmental crime case and the investigating agency was the Inspector General for the New York City School Construction Authority. Sandaq and its two officers were charged with defrauding the New York City School Construction Authority in order to obtain asbestos removal contracts that they were not qualified to perform. The fraud cost New York City millions of dollars in losses. I was the lead prosecutor on the case and worked on it from 1992 to 1993. The cases were filed in the U.S. District Court for the Southern District of New York and were assigned to U.S. District Judges Charles Metzner and Robert Carter. All three defendants pleaded guilty. Opposing defense counsel was Ozro T. Wells, whose last address I had was 401 Broadway, New York, NY, and Ronald Garnett, 299 Broadway, New York, NY, (212) 587-5159.
- New York City Police Department (“NYPD”) 30th Precinct Corruption Investigation – This was the largest police corruption case involving a single precinct in the history of the NYPD and was worked with the NYPD Internal Affairs Bureau, the Inspector General of the U.S. Department of Agriculture, the Internal Revenue Service’s (“IRS”) Criminal Investigation Division, and the Manhattan District Attorney’s Office. I had primary responsibility for handling the investigation and prosecution of over 30 police officers assigned to the precinct who were involved in drug dealing, extortion, robbery, perjury, and tax evasion. Assisting me at the U.S. Attorney’s Office was Andrew Dember and Sarah Chapman. For our work on this matter, we received the Attorney General’s Distinguished Service Award (the Justice Department’s second highest award). I worked on this matter from early 1993 through approximately 1998. The cases were filed in the U.S. District Court for the Southern District of New York and New York County Supreme Court. AUSA Dember and I handled the one federal trial, and I assisted the state prosecutors with trial preparation on two or three of the cases that went to trial in state court. The cases were handled by over 20 federal and New York state judges, with numerous defense counsel. All but one of the officers was convicted. Counsel for one of the lead defendants was Amy Attias, whose last address that I have is Croton-on-Hudson, NY, (914) 271-2200.
- U.S. v. Joseph Termini, et. al., 93 Cr. 413 (LLS) – This case resulted in the arrest of three officers assigned to the elite New York Drug Enforcement Task Force (“DETF”) and the investigating agencies were the the NYPD Internal Affairs Bureau and the Drug Enforcement Administration’s (“DEA”) Office of Professional Responsibility. The three officers were charged with stealing

heroin and other valuables from the DETF evidence locker. I was co-lead prosecutor on the cases, which ran from 1992 until 1995. The cases were filed in the U.S. District Court for the Southern District of New York and were assigned to U.S. District Judges John Keenan, Michael Mukasey, and Louis Stanton. All three defendants pleaded guilty. My co-counsel was David Fein, who is now the U.S. Attorney for the District of Connecticut. Principal opposing defense counsel was Mark Pomerantz, now with Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, NY, (212) 373-2000.

- U.S. v. Robert Felzenberg and George Gillmore, 93 Cr. 460 (SS) – This case involved a \$40 million check-kiting scheme by a payroll cashing company that did work for (among others) the City of New York and the investigating agency was the New York City Department of Investigation (the equivalent of the Inspector General for New York City). The owner and the treasurer of the company were prosecuted for the fraud. I was the sole prosecutor assigned to the case, and worked on the matter from 1992 to 1996. The cases were filed in the U.S. District Court for the Southern District of New York. Mr. Felzenberg's case was assigned to then-U.S. District Judge Sonia Sotomayor. I do not recall which District Judge was assigned Mr. Gillmore's case. Both individuals pleaded guilty. Principal opposing defense counsel was Edward M. Shaw, who I believe is now retired, but was formerly with Stillman, Friedman & Shaw in New York, NY.
- U.S. v. Jillian Hernandez, 95 Cr. 281 (RO) – This case involved the theft of cocaine and money from the DEA by three DEA employees (including Special Agent Jillian Hernandez) and the investigating agency was the DEA's Office of Professional Responsibility. The three employees were prosecuted and I worked on the case from approximately 1994 through approximately 1996. The case was brought in the U.S. District Court for the Southern District of New York and was before U.S. District Judge Richard Owen. Agent Hernandez was convicted by a jury after trial. The two DEA employees pleaded guilty. I had sole responsibility for the investigation. My co-counsel at trial was Suzanne Jaffe Bloom, who is now with Dewey & LeBoeuf in New York, NY, (212) 259-7362. Defense counsel was Thomas G. Roth, whose last address I have is with Fleming, Roth & Fettweis, 744 Broad St., Newark, NJ, (973) 565-9495.
- U.S. v. Stephen Mighdoll, 97 Cr. 431 (JES) – This matter involved the arrest of an attorney who used his position as a court-appointed trustee for the Resolution Trust Corporation (RTC) to embezzle RTC money. The investigating agency was the Inspector General for the FDIC. I was the sole prosecutor on the case and worked on it from 1995 until 1997. The case was filed in the U.S. District Court for the Southern District of New York and was assigned to U.S. District Judge John Sprizzo. The defendant pleaded guilty. Opposing defense counsel was Elkan Abramowitz of Morvillo, Abramowitz, Grand, Iason & Silberberg, 565 Fifth Avenue, New York, NY, (212) 880-9500.
- U.S. v. Thomas Middlemiss, et. al., 217 F.3d 112, 124 (2d Cir.2000) – This case involved extortion and illegal self-dealing by a Port Authority employee, a U.S. Secret Service Special Agent, and a private attorney. The investigating agency was the Inspector General for the Port Authority of New York and New Jersey. The three individuals were charged with extorting a restaurant operator at JFK Airport. I was the supervisor overseeing the matter from approximately mid-

1996 until my departure from the U.S. Attorney's office in January 1999. The line AUSA with primary responsibility for the case and the trial was Jonathan Halpern, who is now with Bracewell & Giuliani in New York, NY. (212) 508-6153. The case was brought in the U.S. District Court for the Southern District of New York and was before U.S. District Judge Sidney Stein. All three defendants were convicted after trial.

Other Corruption Prosecutions:

- U.S. v. David Lew, et. al., 91 Cr. 367 (KC) – This multi-defendant bribery investigation and prosecution involved restaurant owners who were paying bribes to an undercover IRS employee in order to eliminate federal tax liabilities. I worked on the case from mid-1991 through 1993. The case was filed in the U.S. District Court for the Southern District of New York and was tried before U.S. District Judge Kenneth Conboy. All of the other defendants pleaded guilty. Mr. Lew went to trial and was convicted by a jury. I prosecuted the case with my co-counsel, Andrea Likwornik Weiss. Ms. Weiss is now at Levi Lubarsky & Feigenbaum, 1185 Avenue of the Americas, New York, NY, (212) 308-6100. Defense counsel was Jonathan Marks, 220 Fifth Avenue, New York, NY, (212) 545-8008.
- U.S. v. Nicholas Rudi, 95 Cr. 166 (LLS) – This securities fraud prosecution involved an alleged fraud on a public agency in connection with a bond refinancing. I was assigned the matter post-indictment, and was co-counsel during trial. I worked on the case from 1995 until 1996. The case was filed in the U.S. District Court for the Southern District of New York and was assigned to U.S. District Judge Louis Stanton. The defendant was acquitted after trial. My co-counsel was Karen Patton Seymour, now with Sullivan & Cromwell in New York, NY, (212) 558-3196. Opposing counsel was Thomas Puccio, whose last address I have was 277 Park Avenue, New York, NY, (212) 421-7889.

Case While Defense Counsel

- U.S. v. Ronald Ferguson, et. al., 3:06-CR-137 (CFD) – I was lead trial counsel for the ex-CEO of the Gen Re Corporation in a criminal jury trial alleging securities fraud against five defendants. My participation in the matter began in mid-2007. The case was brought in the U.S. District Court for the District of Connecticut and was tried before U.S. District Judge Christopher F. Droney. All five defendants were convicted in February 2008, but the convictions were reversed by the U.S. Court of Appeals for the Second Circuit in August 2011. I tried the case with my co-counsel, Al Pavlis of Finn, Dixon & Herling, 177 Broad Street, Stamford, CT, (203) 325-5000. Principal Counsel for the other four defendants are: Fred Hafetz of Hafetz & Necheles, 500 Fifth Avenue, New York, NY, (212) 997-7595; Reid Weingarten of Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C., (202) 429-3000; Alan Vinegrad of Covington & Burling, 620 Eighth Avenue, New York, NY, (212) 841-1000; and Anthony Pacheco of Proskauer Rose, 2049 Century Park East, Los Angeles, CA, (310) 557-2900. Opposing counsel was Assistant U.S. Attorney Eric Glover, U.S. Attorney's Office, 157 Church Street, New Haven, CT, (203) 821-3700.

16. **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.)

As a prosecutor in the U.S. Attorney's Office for the Southern District of New York, I handled numerous significant criminal investigations and prosecutions as a line prosecutor and as Chief of the Public Corruption Unit, including the largest police corruption investigation and prosecution involving a single precinct in the history of the New York City Police Department, and the investigation into the Teamsters election in 1997. I also handled a variety of matters for several inspector general offices, including the Department of Justice Inspector General, the New York City Department of Investigation, the Port Authority of New York and New Jersey Inspector General, and the New York City School Construction Authority Inspector General. As a Deputy Chief of the Criminal Division, I helped supervise and train the new criminal prosecutors in the office, and reviewed and approved Indictments and Informations on behalf of the U.S. Attorney.

As a litigation partner at Cadwalader, I have conducted numerous significant internal investigations on behalf of corporate clients and defended corporate clients and individuals in a number of substantial investigations before, among others, the DOJ and the SEC. These matters have included Foreign Corrupt Practices Act cases, securities fraud cases, health care fraud matters, antitrust issues, and tax investigations, to name a few. I also have helped clients draft and rewrite compliance programs in a variety of areas. Additionally, as described previously in my answer to Question 15, I represented Ronald Ferguson at a two month criminal trial in the District of Connecticut.

As a Commissioner on the U.S. Sentencing Commission, I participated in, among other things, substantially revising and strengthening the corporate compliance guidelines, increasing penalties for terrorism-related offenses, and addressing the crack cocaine sentencing disparity.

I have never performed any lobbying activity.

17. **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.

For Fall 1999, Spring 2000, and Fall 2000, I taught a law school class on a pro bono basis to law students at American, Catholic, George Washington, and Georgetown Law Schools (Georgetown was only Fall 2000), entitled "The Role of the Federal Prosecutor." The course focused on the exercise of discretion by a federal prosecutor. I have supplied copies of the syllabus for Fall 1999 and Spring 2000.

18. **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 currently have a capital account at my law firm. Pursuant to the firm's partnership agreement, I will receive a lump sum payment of my capital account one year after separation from the firm. Additionally, pursuant to the firm's partnership agreement, my capital account will continue to receive a monthly interest credit during that one year period, which I may withdraw each month.
- Pursuant to my law firm's partnership agreement, during the first week of calendar year 2012, I will receive my share of the firm partnership distribution, minus a less than 10% hold-back, calculated as of the date that I withdraw as an equity partner. At the conclusion of the firm yearly audit, typically in March 2012, pursuant to the firm partnership agreement, I will receive payment of my remaining share of hold-back funds, if any, calculated as of the date that I withdraw as an equity partner.
- I currently participate in my law firm's 401K and HR10 accounts and intend to maintain those accounts. I will continue to direct investment of funds in those accounts, and neither I nor Cadwalader will continue funding those accounts.
- Within 90 days of separation from my law firm, I will receive a lump sum payout of my funds in the firm's defined benefit plan, which I will rollover into an IRA.

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

I have no such plans or commitments.

20. **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 SF-278 Financial Disclosure Report.

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

Attached is a financial net worth statement, as of August 1, 2011 (rounded to the nearest \$1,000).

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors 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.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of

interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

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

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

While employed at Cadwalader, I have supervised associates who have undertaken pro bono projects, including a Social Security Disability case and a landlord/tenant dispute. I also have personally served on a voluntary pro bono basis on the Boards of the Lawyers Committee for Civil Rights Under Law, the Ethics Resource Center, and the Society of Corporate Compliance and Ethics. Finally, I represented and filed on behalf of a group of former federal prosecutors an amicus brief in the U.S. Court of Appeals for the Ninth Circuit supporting a reversal in *U.S. v. Reyes*, No. 08-10047.

While employed at Main Justice, I taught a law school class on a pro bono basis for three semesters to law students at Georgetown, George Washington, Catholic and American Law Schools, entitled "The Role of the Federal Prosecutor." The class met two hours each week, but also involved significant amounts of preparation time each week outside the classroom.

While employed at Debevoise & Plimpton, I handled a number of matters on a pro bono basis. I do not, however, have a list of each of those matters. The matters I recall are as follows: (a) a mid-level associate and I represented a plaintiff in an employment discrimination case in federal court, which was settled on the eve of trial. The matter required a substantial amount of my time to prepare for trial; (b) a senior associate and I represented a defendant in a narcotics trafficking case in federal court, which resulted in the defendant's acquittal. The matter required a substantial amount of my time to prepare for trial and to try the case; (c) I conducted an internal investigation for a community organization regarding an alleged theft of funds. The matter required a considerable amount of my time; and (d) I represented on two separate occasions individuals who applied for political asylum in the United States. The matters required a considerable amount of my time.

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		515	000	Notes payable to banks-secured			0
U.S. Government securities-add schedule		4	000	Notes payable to banks-unsecured			0
Listed securities-add schedule	5	223	000	Notes payable to relatives			0
Unlisted securities--add schedule		1	000	Notes payable to others			0
Accounts and notes receivable:			0	Accounts and bills due			0
Due from relatives and friends			0	Unpaid income tax			0
Due from others			0	Other unpaid income and interest			0
Doubtful			0	Real estate mortgages payable-add schedule (home - Citibank)	369	000	
Real estate owned-add schedule (home residence and co-ownership of mother's residence)	1	855	000	Chattel mortgages and other liens payable			0
Real estate mortgages receivable			0	Other debts-itemize:			
Autos and other personal property (estimate)		75	000	Auto loan (Acura Financial)	32	000	
Cash value-life insurance		10	000				
Other assets itemize:							
CWT Partner Capital Account	1	042	000				
Federal TSP Account		330	000				
Maryland and New York 529 accounts		394	000	Total Liabilities		401	000
CWT Partnership Retirement Program		222	000	Net Worth	9	270	000
Total Assets	9	671	000	Total Liabilities and net worth	9	671	000
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner or guarantor			0	Are any assets pledged? (Add schedule)			No
On leases or contracts			0	Are you defendant in any suits or legal actions?			No
Legal Claims			0	Have you ever taken bankruptcy?			No
Provision for Federal income tax			0				
Other special debt			0				

Net Worth Schedule**A. US Government Securities**

- U.S. SAVINGS BONDS (\$4,000)

B. Listed Securities

- FIDELITY MUNICIPAL MONEY MARKET – FTEXX (\$409,000)
- MORGAN STANLEY US GOVT MONEY MARKET – DWGXX (\$19,000)
- VANGUARD LIMITED TERM T/E FUND ADMIRAL – VMLUX (\$223,000)
- VANGUARD INTERMEDIATE TERM T/E FUND ADMIRAL – VWIUX (\$47,000)
- FREDERICK CNTY MD GO PUB FACS BDS SER MUNI BOND (\$81,000)
- PUERTO RICO COMWLTH PUB IMPT BDS SER MUNI BOND (\$57,000)
- MASSACHUSETTS STATE G/O CONS LN SER B MUNI BOND (\$23,000)
- PORTLAND ORE FIRST LIEN SWR SYS REV REF SER A MUNI BOND (\$23,000)
- PENNSYLVANIA ST TPK COMMN TPK REV RFDG SER B MUNI BOND (\$23,000)
- LOS ANGELES CNTY CA MTA SALES TAX REV MUNI BOND (\$34,000)
- PUERTO RICO COMWLTH REF GO BDS SER MUNI BOND (\$150,000)
- LEANDER TEX INDPT SCH DIST MUNI BOND (\$57,000)
- CHICAGO IL MET WTR RECL DIST GTR CHICAGO MUNI BOND (\$80,000)
- WASHINGTON ST VAR PURP SER C MUNI BOND (\$24,000)
- UNIVERSITY TEX UNIV REVS RFDG-FING SYS SER B MUNI BOND (\$24,000)
- CENTRAL WEBER UTAH SWR IMPT DIST SWR REV RFDG SER A MUNI BOND (\$18,000)
- PURDUE UNIV IND UNIV REVS RFDG STUDENT FEE SER Z-1 MUNI BOND (\$36,000)
- HEMPSTEAD TOWN NY PUB IMPT SER A MUNI BOND (\$24,000)
- MISSOURI DEV FIN BRD CULTURAL FACS REV NELSON GALLERY MUNI BOND (\$23,000)
- NEW YORK ST DORM AUTH ST PERS INCOME TAX REV RFDG SER A MUNI BOND (\$24,000)
- FLORIDA ST BRD ED PUB ED RFDG CAP OUTLAY SER D MUNI BOND (\$23,000)
- ILLINOIS ST SALES TAX REV MUNI BOND (\$43,000)
- WISCONSIN ST TRANSN REV RFDG SER I MUNI BOND (\$54,000)
- WILMINGTON DE RFDG SER A MUNI BOND (\$24,000)
- IOWA ST SPL OBLIG UOBS MUNI BOND (\$57,000)
- DISTRICT OF COLUMBIA INC TAX REV RFDG SECD SER A MUNI BOND (\$23,000)
- METRO GOVT NASHVILLE & DAVIDSON CNTY TN WTR & SWR MUNI BOND (\$40,000)
- OHIO STATE RFDG-COMMON SCHS SER A MUNI BOND (\$59,000)
- UNIVERSITY WASH UNIV REVS (\$58,000)
- ENERGY NORTHWEST WA ELEC REV RFDG COLUMBIA GENERATING SER A MUNI BOND (\$53,000)

- A T & T INC (NEW) (\$1,000)
- AOL INC COM (\$0)
- ASCENT MEDIA CORP COM SER A (\$0)
- CISCO SYS INC (\$5,000)
- COMCAST CORP NEW COM CL A (\$1,000)
- DIRECTV CLASS A (\$2,000)
- DISCOVERY COMMUNICATNS NEW COM SER A (\$0)
- DISCOVERY COMMUNICATNS NEW COM SER C (\$0)
- ERICSSON L M TEL CO ADR B (\$0)
- GENERAL ELEC CO (\$5,000)
- INTEL CORP (\$14,000)
- LIBERTY GLOBAL INC COM SER A (\$1,000)
- LIBERTY GLOBAL INC COM SER C (\$1,000)
- LIBERTY MEDIA CORP NEW LIB STAR COM A (\$0)
- LIBERTY MEDIA HLDG CORP CAP COM SER A (\$1,000)
- LIBERTY MEDIA HLDG CORP INT COM SER A (\$1,000)
- LSI LOGIC CORP (\$0)
- MICROSOFT CORP (\$3,000)
- ORACLE SYS CORP (\$18,000)
- TIME WARNER CABLE INC COM (\$0)
- TIME WARNER INC COM (\$1,000)
- WAL-MART STORES INC (\$11,000)
- BARON GROWTH – BGRFX (\$37,000)
- BARON GROWTH FUND INST SHARES – BGRFX (\$204,000)
- BLACKROCK EQUITY DIVIDEND FUND – MADVX (\$151,000)
- DODGE & COX STOCK FUND – DODGX (\$74,000)
- FIDELITY CONTRAFUND – FCNTX (\$94,000)
- FIDELITY LOW PRICED STOCK FUND – FLPSX (\$234,000)
- AMERICAN GROWTH FUND OF AMERICA CL F – GFAFX (\$40,000)
- AMERICAN GROWTH FUND OF AMERICA CL F2 – GFFFX (\$58,000)
- ROYCE TOTAL RETURN FD – RYTRX (\$249,000)
- SPDR S&P MIDCAP 400 ETF – MDY (\$99,000)
- TWEEDY BROWNE GLOBAL VALUE – TBGVX (\$238,000)
- VANGUARD MID-CAP INDEX FD – VIMSX (\$167,000)
- BLACKROCK GLOBAL ALLOCATION – MALOX (\$437,000)
- IVY ASSET STRATEGY – IVAEX (\$464,000)
- MORGAN STANLEY GLOBAL LONG/SHORT FD (\$251,000)
- PIMCO TOTAL RETURN FUND – PTTRX (\$260,000)
- TEMPLETON GLOBAL BOND FUND – TGBAX (\$269,000)

C. Unlisted Securities

- ISRAEL BONDS (\$1,000)

AFFIDAVIT

I, Michael E. Harowitz, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

9/9/11
(DATE)

Michael E. Harowitz
(NAME)

Nancy Galanos
(NOTARY)

NANCY GALANOS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires May 31, 2016

Senator COONS. I'd now like to invite Ms. Morgan to come forward. Please raise your right hand and repeat after me.

[Whereupon, the witness was duly sworn.]

Senator COONS. Thank you, Ms. Morgan. Let the record reflect the witness has been sworn, taken the oath.

Ms. Morgan, I'd encourage you to introduce any members of your family or friends who might be with you and then proceed with your statement.

**STATEMENT OF SUSIE MORGAN, NOMINEE TO BE U.S.
DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA**

Ms. MORGAN. First, I'd like to introduce my husband, Larry Feldman. Stand up. Larry's a distinguished trial attorney in Louisiana in his own right, and a past president of the Louisiana State Bar Association. I'm very proud of him. I'd also like to introduce my friend Margaret Shehee from Shreveport, Louisiana. I appreciate her being here. And my friends, Charlie McBride and Peggy DeBell, who are from Washington, DC. I appreciate all of them being here to support me. Our daughters are at home watching on the webcast: Summer, Erin, and Jill. They couldn't be here today, but they certainly are watching the proceedings with interest.

Senator COONS. Wonderful.

Ms. MORGAN. I'd like to thank the Committee for scheduling my hearing. I'd like to thank Senator Landrieu and Senator Vitter for their support, and the President for his nomination.

Senator COONS. Do you have any statement you'd like to share with us, Ms. Morgan?

Ms. MORGAN. That's all.

Senator COONS. Thank you.

Senator Landrieu gave a thorough and encouraging introduction, a review of your professional experience and career. I'd appreciate your beginning our first round of questions by just briefly describing your judicial philosophy.

Ms. MORGAN. Well, I believe that the judge's role is to apply the law to the facts and to be fair and impartial, and that the judge's opinions and personal preferences play no role in that process, and I believe that Federal judges must be sure that they decide only the issues before them and that they narrow their rulings in that manner.

Senator COONS. As a District Judge, how would you see your role in ensuring fair access to our legal system and what prior experience might you have in ensuring access to justice that would be relevant to your service in the court?

Ms. MORGAN. Well, I know that it's important for all citizens to have access to the courts and for them all to be treated with respect when they come before the court, regardless of their position in life or station. And I would support the efforts of the Louisiana State Bar Association and the New Orleans Bar Association and our local Federal Bar Association to help ensure that indigent people have the right to counsel.

Senator COONS. Thank you.

What are the most important lessons you've learned in your various legal positions and across your practice, and how would you apply those lessons to your service as a Federal judge, if confirmed?

Ms. MORGAN. Well, I think I've learned—I've had a lot of different kinds of cases over my legal career and I think that's going to help me because I've done oil and gas cases, construction disputes, navigable waterway disputes. I've done product liability cases, I've got—I've had a lot of varied experience. And I've even had some criminal cases because when I practiced in Shreveport, the way that conflicts were dealt with was that the courts appointed private attorneys to represent co-defendants. So I feel I've got a broad range of experience and that that would help me in considering the very many different kinds of cases that I would see in a Federal District Court.

Senator COONS. And in interpreting or applying a statute, what do you view as the role of the judiciary in sort of defining, understanding, and applying the will of the legislative body, whether it's a State or Federal one?

Ms. MORGAN. Well, I think the most important thing, and the first thing that the judge has to do, is look at the words of the statute or the words of the constitutional provision and to apply that as written—as written. If there's an interpretation to be made or application to be made, then I think I would look to the United States Supreme Court decisions and to the Fifth Circuit Court of Appeal decisions. If there were no controlling or close decisions from those courts, then I would look to Circuit Courts from other Circuits or to analogous cases.

Senator COONS. And what do you view as the role of precedent in reaching decisions, whether in the Federal bench or in your previous legal practice?

Ms. MORGAN. Well, I know that the role of the District Court is to apply the law as it's written and it has been interpreted by the higher courts, which would be the U.S. Supreme Court, and in my case the Fifth Circuit Court of Appeal.

Senator COONS. Thank you, Ms. Morgan.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman.

Thank you for joining us today, Ms. Morgan.

Ms. MORGAN. Thank you.

[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).

Donna Sue Morgan is my full legal name.
For my law license and other business and personal dealings, I use the name Susie Morgan.
Donna Sue Beach
Donna Sue Leteff

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

United States District Judge for the Eastern District of Louisiana

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.

Phelps Dunbar L.L.P.
365 Canal Street, Suite 2000
New Orleans, Louisiana 70130

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

1953; Winnsboro, Louisiana

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, Louisiana State University, Paul M. Hebert Law Center; J.D., 1980

1974 – 1976, Northeast Louisiana University (now known as University of Louisiana at Monroe); M.A., 1976

1971 – 1974, Northeast Louisiana University (now known as University of Louisiana at Monroe); B.A. (*magna cum laude*), 1974

1970 and 1971, Louisiana State University; no degree received (summer school)

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.

2005 – present
Phelps Dunbar L.L.P.
365 Canal Street, Suite 2000
New Orleans, Louisiana 70130
Partner (2009 – present)
Counsel (2005 – 2008)

1981 – 2005
Wiener, Weiss & Madison, APC
(also known as Wiener, Weiss, Madison & Howell from 1986 to 1996)
2350 AmSouth Bank Tower
333 Texas Street
Shreveport, Louisiana 71101
Partner (1985 – 2005)
Associate (1981 – 1984)

1980 – 1981
United States Court of Appeals for the Fifth Circuit
300 Fannin Street
Shreveport, Louisiana 71101
Judicial Clerk to the Honorable Henry A. Politz

1980
Barham and Churchill, APC
400 Lafayette Street, Suite 300
New Orleans, Louisiana 70130
Law Clerk

1978 – 1980
LSU Paul M. Hebert Law Center
1 East Campus Drive
Baton Rouge, Louisiana 70803
Research Assistant

1977 – 1978
Law Office of J. Donald Cascio
555 South Range Avenue
Denham Springs, Louisiana 70726
Law Clerk

1976 – 1977

Mortgage company (cannot recall name)
Nicholson Drive
Baton Rouge, Louisiana
Administrative Assistant

Summer 1976

Ouachita Parish District Attorney's Office
400 St. John Street
Monroe, Louisiana 71201
Legal Assistant

1974 – 1976

Northeast Louisiana University (now University of Louisiana at Monroe)
700 University Avenue
Monroe, Louisiana 71209
Graduate Teaching Assistant

Other Affiliations (uncompensated):

2009 – present

New Orleans Association for Women Attorneys
c/o Katie Laskey
601 Poydras, Suite 2655
New Orleans, Louisiana 70130
Board Member

2004 – present

Louisiana State University, Paul M. Hebert Law Center
1 East Campus Drive
Baton Rouge, Louisiana 70803
Board of Trustees Member

2006

Energy Bar Association New Orleans Chapter
c/o National Chapter Energy Bar Association
1990 M Street, NW
Washington, DC 20036
Board of Directors

2003 – 2004

United Way of Northwest Louisiana
402 Edwards Street
Shreveport, Louisiana 71101
Vice President

1989 – 1995

YWCA of Northwest Louisiana (now disbanded)
710 Travis Street
Shreveport, Louisiana 71101
Board Member (1989 – 1995)
Vice President (1993)
President (1994)

1990s

Shreveport Summer Music Festival
3500 Milam Street, Apartment L-202
Shreveport, Louisiana 71109
Board Member

1988

Downtown Shreveport Development Corporation
401 Edwards Street, Suite 205
Shreveport, Louisiana 71101
Board Member, Secretary

1986, 1988

Shreveport Bar Association
401 Market Street, # 950
Shreveport, Louisiana 71101
Secretary-Treasurer (1986)
President, Young Lawyers' Section (1988)

Mid-1980s

Femmes Soles, Inc. (now disbanded)
505 Travis Street, Third Floor
Shreveport, Louisiana 71101
President/Director

1983

Shreveport Association for Women Attorneys (now disbanded)
(No address available)
President

1980s

Shreveport Metropolitan Ballet
6654 Saint Vincent Avenue
Shreveport, Louisiana 71106
Board Member

1980s
 Stoner Arts Center (Charter revoked 2001)
 (No address available)
 Board Member

1980s
 River Cities Network (now disbanded)
 (No address available)
 Board 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 did not 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.

Martindale-Hubbell, AV Rated (highest ranking for Legal Ability and Ethical Standards)

Louisiana State Bar Association, "President's Award" (2000)

Rising Young Business Leader Award, Shreveport Chamber of Commerce (1992)

Louisiana State Bar Association Outstanding Young Lawyer Award (1989)

Order of the Coif, Shell Foundation Award and Scholarship, Law Faculty Scholarship, Board of Supervisors Scholarship, Louisiana State University, Paul M. Hebert Law Center (1977 – 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.

American Bar Association

American Bar Foundation

Fellow (1998 – present)

Louisiana State Co-Chair (2010 – 2011)

Criminal Justice Act Panel Selection Committee, United States District Court, Western District of Louisiana (1995 – 1996)

Energy Bar Association

Member, New Orleans Chapter Board of Directors (2006)

Fifth Circuit Bar Association (1984 – 2007)

Harry V. Booth and Judge Henry A. Politz American Inn of Court, Shreveport, Louisiana
 Barrister (1990 – approximately 2000)
 International Society of Barristers
 Judicial Conference of the Fifth Federal Circuit
 Attorney Participant (1993 – 1999)
 Delegate of the Louisiana State Bar Association (1993 – 1995, 2009 – 2011)
 Judicial Council of the Louisiana Supreme Court
 Chair, Court Rules Committee (1997 – 2002)
 Louisiana Bar Foundation
 Fellow (1997 – present)
 Fellows Gala Committee (2007)
 Legal Services Task Force (1998 – 1999)
 Education Committee (2003 – present)
 Louisiana Bar Journal
 Editorial Board (1997 – 2000)
 Louisiana State Bar Association
 Member, House of Delegates (1989 – 2002)
 Member, Legislation Committee (2010 – 2011)
 Member, Bench Bar Liaison Committee (1996 – 1997)
 Chair, Court Rules Committee (1997 – 2002)
 Member, Long Range Planning Committees (1996, 1998, 2002)
 Member, Task Force on Domestic Violence (1996 – 1998)
 Louisiana State University, Paul M. Hebert Law Center
 Member, Board of Trustees (2004 – present)
 Member, Regional Campaign Steering Committee (2006 – 2010)
 Louisiana Supreme Court
 Chair, Court Rules Committee (2002 – present)
 Member, Task Force on Women in the Courts (1990 – 1992)
 National Association of Bond Lawyers
 New Orleans Association for Women Attorneys
 Board Member (2009 – present)
 Chair, Law Reform Committee (2010 – present)
 New Orleans Bar Association
 Minorities in the Profession Committee (2011)
 Member, Bench Bar Committee (2009)
 New Orleans Bar Association American Inn of Court
 Master (2009 – present)
 Shreveport Association for Women Attorneys
 Founding Member and President (1983)
 Shreveport Bar Association
 Member (1980 – 2005)
 Secretary-Treasurer (1986)
 Chair, Law Day Committee (1986)
 Chair, Bicentennial Committee (1987)
 President, Young Lawyers Section (1988)

Chair, People's Law School (1987)
Member, Krewe of Justinian (1994 – 2005)

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.

Louisiana, 1980

There have been no lapses in membership.

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

United States Court of Appeals for the Fifth Circuit, 1981
United States District Court for the Western District of Louisiana, 1981
United States District Court for the Eastern District of Louisiana, 2006
Louisiana Supreme Court, 1980

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.

Cambridge Club (approximately 1990 – 2005)
Community Jefferson Meeting on the Constitution, Shreveport, Louisiana
Chair (1987)
Domestic Violence Task Force, Shreveport Police Department (1994 – 1997)
Downtown Shreveport Development Corporation
Board Member, Secretary (1988)
Jewish Community Center of New Orleans (2007 – present)
Louisiana Department of Environmental Quality Transition Team, Governor
Kathleen Blanco (2003 – 2004)
Mystick Krewe of Louisiana (1997 – present)
River Cities Network
Board Member (1980s)
Shreveport Mayor's Women's Commission (1992 – 1996)

Shreveport Metropolitan Ballet
 Board Member (1980s)
 Shreveport Summer Music Festival
 Board Member (1990s)
 Shreveport U.S. Bicentennials Commission
 Steering Committee (1986 – 1992)
 Stoner Arts Center
 Board Member (1980s)
 United Way of Northwest Louisiana
 Vice President (2003 – 2004)
 Willis-Knighton Health Center (2000 – 2005)
 YWCA of Northwest Louisiana
 Member (1990s)
 Board Member (1989 – 1995)
 Vice President (1993)
 President (1994)
 Chair, YWCA Celebration of Women Week (1992)
 Advisory Board, Encore Breast Cancer Awareness Program (1999)
 YWCA of the USA
 Retirement Fund Task Force (1992 – 1994)
 Women's Political Fund of Northwest Louisiana (1980s)
 Women's Political Roundtable (1980s)

- 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 the best of my knowledge, none of the organizations of which I am or have been a member 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.

With John F. Sharp, "The Biomedical Research Foundation of Northwest Louisiana, Securing Northwest Louisiana's Place in the Global Economy," 49 La. B.J. 300 (Dec. 2001). Copy supplied.

"Judicial Council Endorses Concept of Proposed District Court Rules," La. B.J., (Dec. 2000). Copy supplied.

"The Adoption and Safe Families Act: An Interview with Senator Mary Landrieu," 46 La. B.J. 482 (Apr. 1999). Copy supplied.

"Uniform Court Rules: Survey Shows Strong Support," 46 La. B.J. 496 (Apr. 1999). Copy supplied.

"When Bad Things Happen to Basically Good Lawyers: LSBA Program Offers 'Alternatives to Discipline' Assistance," 46 La. B.J. 388 (Feb. 1999). Copy supplied.

With Elizabeth Erny Foote and Elizabeth H. Ryan, "Woman Rainmakers," 45 La. B.J. 422 (Feb. 1998) (reprinted in multiple outlets). Copy supplied.

Letter to the Editor, "Every Vote Counts," Newsweek, Apr. 21, 1997. Copy supplied.

"An Interview with Judge Henry A. Politz," 39 La. B.J. 467 (Feb. 1992). Copy supplied.

"Workers' Compensation Third Party Suits: The Effect of Employer Negligence on Third Party Rights," 41 La. L. Rev. 101 (1980) (reprinted in multiple outlets). Copy supplied.

I served as a member of the Louisiana Bar Journal Editorial Board from 1977 to 2000. I did not keep a record of the articles I edited and have no specific recollection of them. The articles I wrote that appeared in the Louisiana Bar Journal are included in the list above.

- 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 Court Rules Committee to the Supreme Court of Louisiana, Fall 2010. Copy supplied.

Report of the Court Rules Committee to the Supreme Court of Louisiana, April 19, 2010. Copy supplied.

Report of the Court Rules Committee to the Supreme Court of Louisiana, November 12, 2009. Copy supplied.

Report of the Court Rules Committee to the Supreme Court of Louisiana, August 29, 2008. Copy supplied.

Letter from Susie Morgan, as Chair of the Court Rules Committee, to the Supreme Court of Louisiana, November 15, 2007. Copy supplied.

Memorandum from the Chief Deputy Judicial Administrator, on behalf of the Court Rules Committee, to the Supreme Court of Louisiana, October 29, 2004. Copy supplied.

Memorandum from the Chief Deputy Judicial Administrator, on behalf of the Court Rules Committee, to the Supreme Court of Louisiana, September 8, 2004. Copy supplied.

Report of the Court Rules Committee to the Supreme Court of Louisiana, October 10, 2003. Copy supplied.

Report of the Court Rules Committee of the Judicial Council of the Supreme Court and the Louisiana State Bar Association to the members of the Louisiana State Bar Association, May 2000. Copy supplied.

Report of the Court Rules Committee of the Judicial Council of the Supreme Court and the Louisiana State Bar Association, May 2000. Copy supplied.

Final Report of the Louisiana Task Force on Women in the Courts, 1992. Copy supplied.

- 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.

On May 18, 2009, I gave a presentation to the Caddo Parish Commission about the parish's efforts to obtain federal stimulus funds. Press coverage supplied.

On May 18, 2005, I gave testimony before the Insurance Committee of the Louisiana Senate regarding regulation of life insurance and funeral benefits policies. A transcript of the hearing is supplied.

On May 11, 2005, I gave testimony before the Insurance Committee of the Louisiana House of Representatives regarding regulation of life insurance and funeral benefits policies. No transcript is available but a video of the hearing is

available on the Louisiana Legislature's website at
http://house.louisiana.gov/H_Video/2005/May2005.htm.

As a lobbyist for Bossier Parish, I submitted letters to government officials regarding such matters as funding for transportation and other public works projects. Copies of those letters are supplied.

As a lobbyist for Bossier Parish, I appeared before the Parish Police Jury on multiple occasions to update the board on my work. Below is a list of the dates on which I appeared. Meeting minutes for each date are supplied, and press coverage from the September 17, 2008 meeting is supplied.

September 17, 2008
 March 16, 2005
 July 21, 2004
 February 18, 2004
 January 21, 2004

As bond counsel for Bossier Parish, I appeared before the Parish Policy Jury on multiple occasions to update the board on my work. Below is a list of the dates on which I appeared. Meeting minutes for each date are supplied.

October 1, 2003
 August 20, 2003
 October 3, 2001
 August 15, 2001

- 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 given presentations and participated in panels in a variety of continuing legal education programs. I have also participated in programs, such as career day, at high schools. I have a record of participating as a presenter or panel member in the following seminars, conferences, classes or programs:

November 12, 2010, December 2, 2010 and December 10, 2010: Louisiana Rules for District Court, Louisiana State University Law Center, Recent Developments in Legislation & Jurisprudence: Louisiana Rules for District Courts Seminar.

Baton Rouge, Kenner and New Orleans, Louisiana. Written materials and PowerPoint supplied.

October 11, 2010: Build America Bonds and the Recovery Act, International Municipal Lawyers Association Seminar. New Orleans, Louisiana. Written materials and PowerPoint supplied.

August 16, 2010: Tulane Law School Professionalism Program for Law School Freshmen. New Orleans, Louisiana. I have no notes, transcript or recording. The address of Tulane Law School is 6329 Freret Street, New Orleans, Louisiana 70118.

April 7, 2009 and February 2, 2010: Guest lecturer, Tulane Law School, Ethics in Civil Litigation. I have no notes, transcript or recording. The address of Tulane Law School is 6329 Freret Street, New Orleans, Louisiana 70118.

December 15, 2009: Masters of the Courtroom Seminar, New Orleans Bar Association. New Orleans, Louisiana. I have no notes, transcript or recording. The address of NOBA is 650 Poydras Street, Suite 1505, New Orleans, Louisiana 70130.

October 9, 2009: Changes to the Louisiana Rules for District Courts, Shreveport Bar Association Multi-Topic Seminar. Shreveport, Louisiana. Written materials supplied and video available at <http://www.judgescottcrichton.com/video.php?v=13>.

June 11, 2009: Louisiana District Court Rules, Judges' Annual Nuts and Bolts Seminar. Destin, Florida. PowerPoint supplied.

March 14, 2009: Recent Changes to Louisiana District Court Rules, New Orleans Bar Association, Bench-Bar Conference. Biloxi, Mississippi. Written materials supplied.

February 5, 2009: Louisiana District Court Rules, Louisiana Clerks of Court Institute. Marksville, Louisiana. Written materials supplied.

December 2, 2008: Louisiana Rules for District Courts, Orientation for Newly Elected District Court Judges. New Orleans, Louisiana. Outline supplied.

November 9, 2007: Louisiana Rules for District Courts, Louisiana Parish Attorneys' Association, Fall Conference. Baton Rouge, Louisiana. Written materials supplied.

September 15, 2007, November 17, 2007 and November 30, 2007: Louisiana Rules for District Court, Louisiana State University Law Center, Recent

Developments in Legislation & Jurisprudence Seminar. Baton Rouge, Louisiana (twice) and Kenner, Louisiana. Written materials supplied.

Fall 2007: LSU Law School Professionalism Program for Law School Freshmen. Baton Rouge, Louisiana. I have no notes, transcript or recording. The address of the LSU Law School is 1 East Campus Drive, Baton Rouge, Louisiana 70803.

August 17, 2007: Tulane Law School Professionalism Program for Law School Freshmen. New Orleans, Louisiana. I have no notes, transcript or recording. The address of Tulane Law School is 6329 Freret Street, New Orleans, Louisiana 70118.

June 7, 2007: Louisiana Rules for District Court, Louisiana State Bar Association Summer School for Louisiana Judges. Destin, Florida. I have no notes, transcript or recording. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

June 6, 2007: Today's Legal Society – A Breakdown of Rules, Judges' Annual Nuts and Bolts Seminar. Destin, Florida. Written materials supplied.

April 20, 2007: Louisiana District Court Rules, Louisiana Judicial College's Spring Judges' Conference. Lafayette, Louisiana. Written materials and PowerPoint supplied.

August 4, 2006: Recent Developments in Insurance Class Action Litigation, Louisiana Insurers' Conference. Seattle, Washington. I have no notes, transcript or recording. The address of the conference is 450 Laurel Street, Suite 1400, Baton Rouge, Louisiana 70801.

Approximately 2005: Ethics; Shreveport Bar Association Seminar. Shreveport, Louisiana. I have no notes, transcript or recording. The address of the Shreveport Bar Association is 401 Market Street, Suite 950, American Towers, Shreveport, Louisiana 71101.

December 2004: Louisiana Rules for District Court, Shreveport Bar Association. Shreveport, Louisiana. Written materials supplied.

July 2004: Instructor, Louisiana Association of Defense Counsel, Trial Academy, Loyola School of Law. New Orleans, Louisiana. I have no notes, transcript or recording. The address of the Loyola School of Law 526 Pine Street, New Orleans, Louisiana 70118.

October 16-17, 2003: Recent Developments in the Law of Oil and Gas, American Association of Professional Landmen, 2003 Gulf Coast Land Institute. New Orleans, Louisiana. Written materials supplied.

June 8-11, 2003: Improving Case Management with the Uniform Rules for District Court, Louisiana State Bar Association Summer School for Louisiana Judges. Sandestin, Florida. Written materials supplied.

May 2003: Louisiana District Court Rules, Bossier Parish Bar Association. Bossier City, Louisiana. I have no notes, transcript or recording. The address of the Association is 1661 Benton Road, Bossier City, Louisiana 71111.

April 2003: Louisiana District Court Rules, Louisiana Judicial College's Spring Judges' Conference. Lafayette, Louisiana. I have no notes, transcript or recording. The college does not have a physical address.

2003: Recent Developments in the Law of Oil and Gas, Louisiana Mineral Law Institute. Baton Rouge, Louisiana. Written materials supplied.

October 30-31, 2002: Bridging the Gap Seminar for Young Lawyers, Shreveport Bar Association. Shreveport, Louisiana. Written materials supplied.

October 20-22, 2002: Getting In with In-House Counsel: Keeping Your Corporate Clients Happy, Louisiana State Bar Association. Asheville, North Carolina. Written materials supplied.

June 2002: To Admit or Not To Admit: Evidence Issues, Louisiana State Bar Association Summer School for Lawyers. Sandestin, Florida. I have no notes, transcript or recording. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

June 2002: Louisiana's New District Court Rules, Louisiana State Bar Association Summer School for Judges. Sandestin, Florida. I have no notes, transcript or recording. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

March 27, 2002: Women in Law: How the Rules Changed?, Shreveport Bar Association. I have no notes, transcript or recording. The address of the Shreveport Bar Association is 401 Market Street, Suite 950, American Towers, Shreveport, Louisiana 71101.

2002: Louisiana District Court Rules, Louisiana State Bar Association. Asheville, North Carolina. I have no notes, transcript or recording. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

June 7, 2001: Presentation on activities of the Court Rules Committee, Meeting of the Louisiana State Bar Association House of Delegates. Destin, Florida. Meeting minutes supplied.

January 13, 2001: Presentation on activities of the Court Rules Committee, Meeting of the Louisiana State Bar Association House of Delegates. New Orleans, Louisiana. Meeting minutes supplied.

2001: Drafting Judicial Rules; International Legislative Drafting Institute; Tulane University Law School. New Orleans, Louisiana. I have no notes, transcript or recording. The address of Tulane Law School is 6329 Freret Street, New Orleans, Louisiana 70118.

1997: Emerging Issues in Tort Litigation – Allocating Fault, Louisiana State Bar Association Multi-Topic Seminar. Baton Rouge, Louisiana. I have no notes, transcript or recording. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

1996: An Overview of Louisiana Law of Immovable Property, Louisiana State Bar Association Multi-Topic Seminar. Seattle, Washington. I have no notes, transcript or recording. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

June 1995: A Colloquy on Discovery, Louisiana State Bar Association Summer School for Lawyers. Sandestin, Florida. I have no notes, transcript or recording. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

Approximately 1994: Report on the YWCA of the USA Retirement Fund Task Force, YWCA of the USA Annual Meeting. I have no notes, transcript or recording. The address of the YWCA is 2025 M Street, NW, Suite 550, Washington, DC 20036.

In my capacity as President of the YWCA of Northwest Louisiana and Chair of the YWCA's Celebration of Women Week program in 1992, I made remarks and introduced speakers at various community events. I have not kept a record of the dates of those presentations and I have no notes, transcripts or recordings from these events. The YWCA of Northwest Louisiana has since been disbanded and has no physical address.

1991: Navigability and its Effect on Ownership of Land and Mineral Rights, Louisiana State Bar Association Multi-Topic Seminar. Orlando, Florida and New Orleans, Louisiana. I have no notes, transcript or recording. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

Early 1990s: Avoiding Conflicts, Harry V. Booth and Judge Henry A. Politz American Inn of Court. Shreveport, Louisiana. I have no notes, transcript or recording. The Inn of Court does not have a physical address.

1990: New Challenges in the Law for the 1990s – Changes in Due Process and Notice Requirements, Louisiana State Bar Association Young Lawyers' Section.

Grand Cayman. I have no notes, transcript or recording. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

Approximately 1990: Changes to the Federal Rules of Civil Procedure, Louisiana State Bar Association Summer School for Lawyers. Sandestin, Florida. I have no notes, transcript or recording. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

1989: Speech to luncheon at the YWCA of Northwest Louisiana on Women and the United States Constitution. Shreveport, Louisiana. I have no notes, transcript or recording. The YWCA of Northwest Louisiana has since been disbanded and has no physical address.

1988: Agency, Due Process and Notice Requirements, Louisiana State Bar Association Summer School for Lawyers. Sandestin, Florida and New Orleans, Louisiana. I have no notes, transcript or recording. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

In my capacity as Chair of Louisiana State Bar Association's Court Rules Committee, I have given reports and presentations to some of the House of Delegates' Annual Meetings and Mid-Year Meetings regarding the drafting and implementation of the Louisiana District Court Rules. Those meetings were held in June and January from 1987 until approximately 2002. I did not keep a record of the exact dates of those presentations and I have no notes, transcripts or recordings from these events. The address of LSBA is 601 St. Charles Avenue, New Orleans, Louisiana 70130.

- 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.

Adam Kealoha Causey, "Caddo May Spend \$25K on Stimulus Lobbyists," The Shreveport Times, July 21, 2009. Copy supplied.

Drew Pierson, "Bossier City, Parish Hire Major Lobbyist," The Shreveport Times, Dec. 10, 2008. Copy supplied.

Drew Pierson, "Bossier, Caddo Have Hefty Lobbyist Bills," The Shreveport Times, Nov. 30, 2008. Copy supplied.

Ronette King, "Sales Register; Throughout the New Orleans Area, Merchants Welcome Throngs that Renew their Hope for the Local Economy," Times-Picayune, Nov. 24, 2007. Copy supplied.

Janelle Rucker, "Lobbyist: Efforts to Get Funds Going Well," The Shreveport Times, June 25, 2007. Copy supplied.

Jessica Fender, "Burial Policies Bill Advances to Senate," The Advocate, May 19, 2005. Copy supplied.

Billy Gunn, "Judge Lets Burial-Insurance Suit Proceed," Daily Town Talk, Apr. 6, 2005. Copy supplied.

Raechal Leone, "Correction; Bossier Awaits Federal Funds for Roads," The Shreveport Times, Mar. 19, 2005. Copy supplied.

Raechal Leone, "Legislators' Staff to Experience Traffic," The Shreveport Times, Feb. 19, 2005. Copy supplied.

"Interview: 62nd LSBA President: Of Family, the Bar and 'Leadership LSBA,'" 50 La. B.J. 8 (June/July 2002). Copy supplied.

Don Walker, "Push On to Keep Chicago Routes," The Shreveport Times, May 12, 1999. Copy supplied.

Joe Gyan, Jr., "Majority of Judges, Lawyers Favor Uniform Court Rules," The Advocate, Feb. 12, 1999. Copy supplied.

Paulette H. Holahan, "Department: Judicial Notes," 45 La. B.J. 594 (Apr. 1998). Copy supplied.

Elizabeth Wright, "La. Court Guidelines Targeted," The Advocate, Mar. 23, 1998. Copy supplied.

As president and chair of various committees for the YWCA of Northwest Louisiana, from about 1990 until 1995 I frequently appeared on television programs and made comments that were quoted by local media outlets regarding the organization, including personnel issues, programming, fundraising and events hosted by the YWCA. I do not have and have been unable to obtain clips or transcripts of those interviews.

In 1992, while I served as Chair of the YWCA of Northwest Louisiana's Celebration of Women Week, I was interviewed for an article in the Shreveport Times. I do not have a copy of the transcript of that interview.

In 1989, after I received the Louisiana State Bar Association's Outstanding Young Lawyer Award, I recall the Shreveport Times doing a profile of me for which I was interviewed but I do not have a copy of the transcript of that interview.

Craig Lewis, "Time is Money: The Business of Law," Shreveport Business, Nov. 1986. Copy 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.

I have not held any judicial offices.

- 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:

I have not held any judicial offices.

- 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.

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.

Downtown Shreveport Development Corporation
Board Member, Secretary (1988)
Appointed by the Mayor of the City of Shreveport and confirmed by the City Council

Shreveport Mayor's Women's Commission, 1992 – 1996
Appointed by the Mayor of the City of Shreveport

Louisiana Department of Environmental Quality Transition Team, Governor
Kathleen Blanco, 2003 – 2004
Appointed by Governor Kathleen Blanco

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.

Between 1992 and 2008, I did occasional work for Democratic presidential
campaigns, such as phone banking and being a poll watcher. In the 1992 and
1996 campaigns, I performed voter protection work.

In Senator Mary Landrieu's campaigns for the U.S. Senate in 1996, 2002 and
2008, I did volunteer work as a poll watcher and provided voter protection work.
I provided legal services to Senator Landrieu in the election contest filed against
her after her 1996 campaign.

I recall being listed on event host committees for the following candidates:

Ravi Sangisetty for the U.S. House of Representatives, 2010
Caroline Fayard for Lieutenant Governor of Louisiana, 2010
Mitch Landrieu for Mayor of New Orleans, 2010
Mary Landrieu for U.S. Senate, 2008
Paul Carmouche for U.S. House of Representatives, 2008
Foster Campbell for Governor of Louisiana, 2007
Neil Abramson for Louisiana House of Representatives, 2007
Mary Landrieu for U.S. Senate, 2002
Mary Landrieu for U.S. Senate, 1996
Mary Landrieu for Governor, 1995
Foster Campbell for U.S. House of Representatives, 1990
Troy Bain for U.S. House of Representatives, 1988

I recall participating in neighborhood canvassing for the following candidates:

John Hussey for Mayor, Shreveport, Louisiana, 1986
Carolyn Whitehurst for City Council, Shreveport, Louisiana, 1986

I have never held a paid position with a political campaign or political entity.

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 Chief Judge Henry A. Politz, United States Court of Appeals for the Fifth Circuit, from August 1980 to June 1981.

- 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.

1981 – 2005

Wiener, Weiss & Madison, APC

(also known as Wiener, Weiss, Madison & Howell from 1986 to 1996)

2350 AmSouth Bank Tower

333 Texas Street

Shreveport, Louisiana 71101

Partner (1985 – 2005)

Associate (1981 – 1985)

2005 – present

Phelps Dunbar, L.L.P.

365 Canal Street, Suite 2000

New Orleans, Louisiana 70130

Partner (2009 – present)

Counsel (2005 – 2008)

- 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.

- b. Describe:

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

After clerking for Judge Henry Politz, I joined a business law firm in Shreveport, Louisiana. I practiced there for 25 years focusing on complex civil litigation in state and federal courts. My areas of practice included ownership of minerals, disputes with respect to oil and gas operations, real property disputes and construction law disputes. The indigent defender office in Shreveport appointed private lawyers to represent criminal defendants to avoid conflicts. Over the years, I represented approximately 8 criminal defendants after appointment by the court under this system. I was also retained counsel for a criminal defendant in a federal case involving gaming and bookmaking.

In 2005 I relocated to New Orleans, Louisiana and joined a large Southeastern regional law firm and continued to focus on complex civil litigation. Hurricane Katrina occurred shortly after my move to New Orleans and I have spent much of the years since then involved in post-Katrina litigation. Most significantly, I represented the State of Louisiana in litigation involving the failure of the roof of the Louisiana Superdome in a case that lasted almost four years and was successfully resolved on the eve of trial. I also represent the State of Louisiana in lawsuits involving deaths at Memorial Medical Center and St. Rita's Nursing Home. Now that these suits are concluded or winding down, I am focusing on claims against directors and officers of banks closed by the Federal Deposit Insurance Corporation. I also represent an insurer of homebuilders in the Chinese Drywall Multi-District Litigation pending in the United States District Court for the Eastern District of Louisiana.

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

Over the years I have represented a wide variety of business and non-profit clients. In the thirty or so years of my practice, to the extent my work was concentrated in any one area it was centered on mineral law and real property. My typical clients were independent oil and gas producers and operators, as well as private and public landowners.

From 2006 through 2010 I spent most of my time representing the State of Louisiana in litigation involving the failure of the roof of the Louisiana Superdome during Hurricane Katrina. In 2011 I am representing the Federal Deposit Insurance Corporation with respect to claims against officers, directors and professionals in connection with failed banks. I am also representing homebuilders who built or repaired homes post-Katrina and unknowingly installed problematic Chinese drywall.

- 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 75 % of my practice has been in commercial litigation. Because of the nature of complex litigation, the cases ordinarily take years to advance through discovery and pre-trial exception and motion practice. This ordinarily results in infrequent trial appearances but frequent appearances for arguments and hearings. From 2006 through 2010, I appeared in court monthly and sometimes more often for hearings on discovery disputes, motions for summary judgment, and various exceptions.

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 five cases to final decision, one of which involved three separate bifurcated trials. I was sole counsel for my client in four cases and chief counsel for my client in one case.

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 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. *Louisiana Stadium Exposition District v. BFS Diversified*; Suit No. 2006-8927; Civil District Court for the Parish of Orleans, State of Louisiana; 2006 – 2010.

This litigation was the result of the catastrophic failure of the roof of the Louisiana Superdome during Hurricane Katrina. We represented the State of Louisiana and the insurer of the New Orleans Saints against the designers, manufacturer, suppliers and installers of the roof. The failure of the roof resulted in water intrusion that destroyed the entire interior of the facility causing over \$200,000,000 in damages. The case was litigated against fifteen defendants and took three and a half years to resolve. The numerous motions for summary judgment dealt generally with the design standards required for a unique structure such as the Louisiana Superdome constructed in a hurricane prone area, the standard of liability for the designers of the roof and whether the design was defective, the suitability of the roofing system manufactured and sold by Bridgestone Firestone for installation on the Superdome, the existence and terms of express and implied warranties, and the applicability of the Public Works Act. We eventually negotiated very favorable settlements with all defendants in the weeks prior to trial. I took the lead position in pre-trial discovery and trial preparation, including taking over 100 depositions of fact witnesses and approximately 25 expert witness depositions; identifying and working with plaintiffs' expert witnesses to gather and review the evidence and develop an effective deposition and trial strategy; handling all pre-trial discovery and developing a document management system for over one million documents; and researching and drafting extensive pre-trial exceptions and motions. The Honorable Rosemary Ledet presided.

I was one of two lead attorneys of record from my firm. The other lead attorney was Brent B. Barriere, Esq., Phelps Dunbar, L.L.P., 365 Canal Street, Suite 2000, New Orleans, LA 70130, (504) 566-1311. We represented the Louisiana Stadium Exposition District, the State of Louisiana, and St. Paul Travelers Insurance Company, as subrogee for the Louisiana Saints and SMG.

Co-counsel for the Louisiana Stadium Exposition District was Larry M. Roedel, Esq., Roedel, Parsons, Koch, Blache, Balhoff & McCollister, 8440 Jefferson Highway, Jefferson-Brentwood Building, Suite 301, Baton Rouge, LA 70809, (225) 341-4373.

Co-counsel for the State of Louisiana was Robert Harroun, Louisiana Department of Justice, Office of the Attorney General, 1885 North Third Street, Baton Rouge, LA 70802, (225) 326-6365.

Lead opposing counsel were:

Bridgestone Americas Holding, Inc.: Edward F. Kohnke, IV, Esq., Preis & Roy PLC, 601 Poydras Street, Suite 1700, New Orleans, LA 70130, (504) 581-6062.

Rooftech Consultants, Inc.: John A. Stewart, Jr., Esq., Baldwin Haspel Burke & Mayer LLC, 1100 Poydras Street, Floor 22, New Orleans, LA 70163, (504) 569-2900.

Shrenk & Peterson Consulting Engineers, Inc.: Michael A. Patterson, Esq., Long Law Firm, LLP, One United Plaza, Suite 500, 4041 Essen Lane, Baton Rouge, LA 70809, (225) 922-5110.

Professional Service Industries, Inc.: William Perry, Esq., William John Perry, PLC, 44084 Riverside Parkway, Suite 120A, Lansdowne, VA 20176, (571) 252-3518.

Horizon Group of New England, Inc.: Carl J. Hebert, Esq., Preis & Roy PLC, 601 Poydras Street, Suite 1700, New Orleans, LA 70130, (504) 581-6062.

National Fire Insurance Company of Hartford: Gary J. Rouse, Esq., Couhig Partners, LLC, 643 Magazine Street, Suite 300, New Orleans, LA 70130, (504) 588-1288.

State Farm Fire & Casualty Company: Raymond A. Pelleteri, Esq., Pelleteri & Wiedorn, 636 Carondelet Street, New Orleans, LA 70130, (504) 523-2650.

Admiral Building Products, Inc.: Patrick Fanning, Esq., 238 Huey P. Long Street, Gretna, LA 70053, (504) 368-7888.

Arthur Q. Davis: Alan Goodman, Esq., Lemle & Kelleher, Pan American Life Center, 21st Floor, 601 Poydras Street, New Orleans, LA 70130, (504) 586-1241.

JMN Specialties, Inc.: Eric B. Berger, Esq., Lobman, Carnahan, Batt, Angelle & Nader, 400 Poydras Street, Suite 2300, New Orleans, LA 70130, (504) 586-9292.

Eskew-Dumez-Ripple: Paul Andersson, Esq., Leake & Andersson, 1100 Poydras Street, Suite 1700, New Orleans, LA 70130, (504) 585-7500.

United States Fidelity & Guaranty Company: Reed Minkin, Esq., Lugenbuhl, Wheaton, Peck, Rankin & Hubbard, 601 Poydras Street, Suite 2775, New Orleans, LA 70130, (504) 568-1990.

North Carolina Foam Industries: Thomas L. Gaudry, Esq., Gaudry, Ranson, Higgins & Gremillion, 401 Whitney Avenue, Gretna, LA 70054, (504) 362-2466.

Barnhardt Manufacturing Company: Thomas L. Gaudry, Esq., Gaudry, Ranson, Higgins & Gremillion, 401 Whitney Avenue, Gretna, LA 70054, (504) 362-2466.

Tremco, Inc.: S. Gene Fendler, Esq., Liskow & Lewis, One Shell Square, 701 Poydras Street, Suite 6000, New Orleans, LA 70139, (504) 556-4122.

2. *City of Shreveport v. Noel Estate, Inc. and Quinn Red River, LLC*, 41,148 (La. App. 2 Cir. 9/27/06), 941 So. 2d 66, *cert. denied*, 2006-2774 (La. 1/26/07), 948 So. 2d 171; approximately 1990 – 2007.

In 1987, the City of Shreveport expropriated the Quinn family's lands at the intersection of the Red River and Cross Bayou in downtown Shreveport for the construction of the northern extension of a parkway. Ownership of the land and adequacy of compensation were at issue. The facts were incredibly complicated as the expropriated lands were located in subdivisions dedicated around 1905 but with streets that were never built, were inhabited at times by squatters, and were, at one time, covered and then uncovered by the waters of the adjacent Red River. Furthermore, the property had been acquired by the Quinns lot-by-lot over a number of years from many individual landowners. Finally, the City filed seventeen different expropriation actions naming multiple and overlapping defendants in each. Three trials were held (ownership of land taken, ownership of land damaged and compensation). My client prevailed at all three trials and on appeal. I was lead counsel in this case and was responsible for all aspects of the litigation. The trial judge was the Honorable Scott Crichton. The judges on the Second Circuit Court of Appeal were the Honorable Henry Brown, the Honorable Harmon Drew and the Honorable Larry Lolley.

I was chief counsel of record for Quinn Red River, LLC.

My co-counsel was Mark L. Hornsby, now a United States Magistrate Judge for the Western District of Louisiana. Magistrate Hornsby's current address is United States District Court Western District of Louisiana, 300 Fannin Street, Suite 1167, Shreveport, LA 71101, (318) 676 3265.

Opposing counsel were Charles G. Tutt and C. Gary Mitchell, both of whom represented the City of Shreveport. Mr. Tutt's address is 920 Pierremont Road, Shreveport, LA 71106, (318) 868-6633. Mr. Mitchell's address is 509 Milam Street, Shreveport, LA 71101, (318) 425-8155.

3. *Succession of Heck v. Amoco Prod. Co. and IP Petroleum Co., Inc.*, 2002-0448 (La. App. 1 Cir. 7/23/03), 852 So. 2d 1 (Table-Not reported); Case number 417,938, 19th Judicial District Court; East Baton Rouge Parish, Louisiana; 1995 – 2004.

The heirs of Mr. Heck brought suit against Amoco Production Company and IP Petroleum Co., Inc. claiming ownership of minerals underlying lands in the Tuscaloosa Trend. The heirs sought payment of past due royalties, interest, penalties and attorneys' fees. The litigation stemmed from a dispute over the proper interpretation of a mineral royalty deed executed in 1981. The Hecks contended that the deed conveyed their interest in production from only one well and that they retained the right to receive royalties on production from other wells in a reservoir-wide unit in the Tuscaloosa Trend. Amoco and IP contended that the deed conveyed the Heck interest in the entire

unit. The trial court judge granted summary judgment in favor of the Hecks, finding the Hecks were the owners of the mineral interest. Following a trial on damages, the trial judge held that the Hecks were entitled to over \$15,000,000 in damages. On appeal, the First Circuit Court of Appeals reversed the trial judge and ruled in my client's favor and remanded the case. The parties settled the matter favorably to my client after the remand. I was responsible for pre-trial discovery, trial preparation and trial of this matter. The trial court judge was the Honorable Janice Clark. The judges at the First Circuit Court of Appeal were the Honorable Vanessa Whipple, the Honorable Burrell J. Carter, and the Honorable Phillip C. Ciaccio.

I was sole counsel of record for IP Petroleum Co. Inc.

My co-counsel was James A. Barton, III who represented Amoco Production Company. Mr. Barton's address is 34 Glen Loop, Covington, LA 70435, (985) 871-8095.

Principal opposing counsel was Rudolph Estess, Jr. who represented the heirs of Mr. Heck. Mr. Estess' address is 5317 Trents Place, Baton Rouge, LA 70817, (225) 757-0696.

4. *Mathews v. Hixson Bros. Inc. and Central State Life Ins. Co.*; Suit No. 196,044; 9th Judicial District Court; Rapides Parish, Louisiana; 1999 – 2007.

Mrs. Mathews was the class representative for a class consisting of heirs and beneficiaries of decedents who purchased funeral benefits policies from Kilpatrick Life Insurance Company and who went to Hixson Brothers Funeral Home to make funeral arrangements. The benefits owed to the plaintiffs under the policies were at issue.

The first trial court judge (the Honorable Harry Randow) certified a class and his certification was upheld by the Third Circuit Court of Appeals. After Judge Randow recused himself, the Honorable Rae Swent stayed the case pending the Louisiana Supreme Court's ruling on the constitutionality of Act 589 of 2005 that dealt with benefits owed under funeral benefits policies. I submitted an amicus brief in the Supreme Court on behalf of Kilpatrick Life Insurance Company in that proceeding. The Louisiana Supreme Court's ruling was favorable to my client as the court held that funeral benefits policies of the type at issue in my client's case clearly and unambiguously limited the benefits owed to the dollar amount of coverage identified on the face of each policy. *Sims v. Mulhearn Funeral Home, Inc.*, 2007-0054 (La. 5/22/07), 956 So. 2d 583.

I was chief counsel of record for Kilpatrick Life Insurance Company, successor to Central State Life Insurance Company, and was responsible for all phases of this proceeding.

My co-counsel were Russell L. Potter and Andrew P. Texada who represented Hixson Brothers Funeral Home. The address for Mr. Potter is 1000 Windermere Boulevard, Alexandria, LA 71303, (318) 487-4910. The address for Mr. Texada is 5205 South Germain Boulevard, Alexandria, LA 71303, (318) 443-6304.

Opposing counsel were Robert John Diliberto and Linda S. Harang who represented the plaintiffs. The address for Mr. Diliberto is 3636 S-I 10 Service Road, Metairie, LA 70001, (504) 828-1600. The address for Ms. Harang is 5817 Citrus Boulevard, Suite H, Jefferson, LA 70123, (504) 734-2486.

5. *Hankamer v. Angelina Hardwood Lumber Co.*; Suit No. 89-5814-A; 14th Judicial District Court; Calcasieu Parish, Louisiana; 1992 – 2002.

The Hankamers filed a declaratory judgment action claiming that they had retained the ownership of minerals on a track they sold to Angelina Hardwood Lumber Company in Calcasieu Parish. Angelina Hardwood Lumber Company argued that the Hankamers had lost ownership of the minerals through the passage of time because the property was divided into separate tracts by the existence of navigable bodies of water the bottoms of which were owned by the State of Louisiana. As a result, Angelina argued that the Hankamers failed to preserve their right to the minerals by drilling a well on each separate tract prior to the end of the ten year period allowed under Louisiana law. I was responsible for historical research and locating and interviewing witnesses knowledgeable about the property at issue and identifying and working with expert witnesses, including geographers, hydrologists and archeologists, to establish that the streams crossing the property were remnants of the Sabine River and therefore were capable of being used in commerce, i.e., were navigable, at the time Louisiana became a state. I took over 30 depositions of lay witnesses and over 15 depositions of expert witnesses. I also was responsible for researching, drafting and arguing pretrial discovery and dispositive motions. On the eve of trial, we negotiated a settlement for Angelina whereby my client received a substantial portion of the proceeds in the registry of the court, as well as future production. The judge was the Honorable Gregory D. Lyon.

I was chief counsel of record for Angelina Hardwood Lumber Company. My co-counsel of record was Larry Feldman, Jr. Mr. Feldman's address is McGlinchey Stafford, PLLC, 601 Poydras Street, 12th Floor, New Orleans, LA 70130, (504) 596-2887. (Mr. Feldman is my husband.)

Chief opposing counsel of record were Philip N. Asprodites, who represented the plaintiffs, and Robert L. Cabes, who represented Union Oil Co. of California. Mr. Asprodites' address is 300 Catron Street, Suite B, Sante Fe, New Mexico 87501, (505) 629-4647. Mr. Cabes' address is 101 La Rue France, Suite 200, Lafayette, LA 70508, (337) 232-3929.

6. *Miss Universe, Inc. v. Pitts*, 714 F. Supp. 209 (W.D. La. 1989); 1989.

Miss Universe, Inc. filed suit against the defendants alleging violation of trademark and trade name statutes and seeking a preliminary injunction against the defendants from using the names "Mrs. USA, Mrs. Universe and/or Mrs. [State or Locality] USA." In the early 1980s, Mr. Pitts began hosting preliminary pageants to the Miss Universe pageant, with the appropriate licensing agreements. Mr. Pitts hosted his first

unauthorized pageant when he held the first and only Mrs. Louisiana USA pageant in 1988. The court held that Mr. Pitts' use of the name Mrs. Louisiana USA was an infringement of Miss Universe, Inc.'s registered marks. The court granted an injunction against the use of the name, finding that its use was likely to create confusion and cause irreparable harm and that Miss Universe, Inc. had established that it was likely to prevail on the merits at trial. I was responsible for witness identification, interviews and preparation for testifying at the trial on the injunction. In addition, I participated in research and drafting pre-trial and appeal briefs. The trial court judge was the Honorable Thomas Stagg.

I was co-counsel for Miss Universe, Inc.

Principal co-counsel was Michael A. Cardoza who also represented Miss Universe, Inc. He currently serves as Corporation Counsel of the City of New York and his contact information is 100 Church Street, New York, NY 10007, (212) 788-0303.

Principal opposing counsel was E. Ray Kethley who represented the defendant. His contact information is 6121 Line Avenue, Shreveport, LA 71106, (318) 868-1928.

7. *United States v. Regents of the Univ. of Cal. and the Biomedical Research Found. of Nw. La.*, 363 F.3d 398 (5th Cir. 2004); 2001 – 2004.

The relator filed a *qui tam* action on behalf of the United States in the District Court for the Northern District of California alleging violation of the False Claims Act. The United States Government eventually declined to intervene. After discovery and depositions, the court dismissed the action against the Regents of the University of California and transferred the claim against my client to Louisiana. The suit ultimately was dismissed in Louisiana. On appeal, the Fifth Circuit held that the California court and the Louisiana court acted appropriately. The Fifth Circuit found that the Regents are an arm of the state and that the False Claims Act does not provide a cause of action against state agencies. The Fifth Circuit also found that the Louisiana court did not abuse its discretion in dismissing the action filed against the Biomedical Research Foundation of Northwest Louisiana because the complaint failed to plead fraud with specificity and that the trial court was not obligated to give the relator additional time to file amended pleadings. I was responsible for investigation of witnesses and location of documents, pre-trial discovery and depositions, and research and drafting of trial and appeal memoranda and briefs filed on behalf of my client. I also participated in oral argument at the Fifth Circuit. The trial judge was the Honorable Thelton E. Henderson. The judges at the Fifth Circuit were the Honorable Emilio M. Garza, the Honorable Harold R. DeMoss and the Honorable Joy Clement.

I was lead counsel for the Biomedical Research Foundation of Northwest Louisiana.

My co-counsel was Malcolm A. Heinicke who represented the Regents of the University of California. His contact information is Munger Tolles & Olsen, 560 Mission Street, # 27, San Francisco, CA 94105, (415) 512-4000.

Principal opposing counsel was Brian Clay Leighton who represented the relator. His contact information is 701 Pollasky Avenue, Clovis, CA 93612, (559) 297-6190.

8. *Birdwell v. Jeffery*, 486 So. 2d 1094 (La. App. 4th Cir. 1986); 1984 – 1986.

Mr. Birdwell sued his two sisters and the children of a deceased brother to partition by licitation, i.e., sale, property located in Bossier Parish. My client agreed that two lots in Bossier City should be partitioned by sale but contested the partition of the 40 acre tract, a family homestead, by sale. The trial court found for Mr. Birdwell and held that the property could not be divided in kind because there was no road frontage and a division in kind would require a servitude of passage on one of the lots, causing an inconvenience and a loss in value to the owner of one tract. The Second Circuit Court of Appeal reversed the trial court, finding that partition in kind is favored and that Mr. Birdwell had failed to establish that the property could not be divided in kind. The appellate court found that the map produced by my client's appraiser showed a dirt road traversing the entire tract such that the trial court's finding that there was no access to the property was in error. Furthermore, the appellate court found that there was insufficient evidence that improvements and timber on the property made it indivisible in kind. I was responsible for all phases of this litigation. The trial court judge was the Honorable Cecil P. Campbell, II. The judges at the Second Circuit Court of Appeal were the Honorable Fred W. Jones, the Honorable Fred Sexton, and the Honorable Charles Lindsay.

I was sole counsel for one of the defendants, Ms. Middleton.

Sam A. Smith was counsel for Mr. Birdwell. His contact information is 1611 Jimmie Davis Highway, Bossier City, LA 71112, (318) 742-4713.

9. *In Re: Chinese-Manufactured Drywall Prods. Liab. Litig.*; MDL No. 2047; United States District Court for the Eastern District of Louisiana; 2010 – present.

On June 15, 2009, the Judicial Panel on Multi District Litigation transferred actions filed by homeowners in various United States District Courts to the District Court for the Eastern District of Louisiana. At least five omnibus complaints, and numerous individual actions, are pending in the MDL with respect to thousands of homes across the Southeastern part of the United States. Hundreds of manufacturers, distributors, homebuilders and installers have been named as defendants. Active hurricane seasons in the Southeast led to a shortage of domestic drywall. Suppliers turned to imported Chinese drywall to meet repair and rebuilding needs. Unfortunately, the drywall imported from China has been blamed for damage to homes in which it was installed. I have been actively involved in the litigation representing State Farm and its insureds monitoring discovery, creating and populating our electronic database, drafting cross-claims and, where appropriate, motions to dismiss. The Honorable Eldon E. Fallon is presiding.

I am one of two lead attorneys of record from my firm. The other lead attorney is Brent B. Barriere, Esq., Phelps Dunbar, L.L.P., 365 Canal Street, Suite 2000, New Orleans,

LA 70130, (504) 566-1311. We represent State Farm Ins. Co., as insurer for defendant homebuilders in Louisiana, Mississippi and Florida.

Plaintiffs Liaison Counsel is Russ Herman. The attorney in his office with whom I have had the most contact is Leonard Davis. His contact information is Herman, Herman, Katz & Cotlar, 820 O'Keefe Avenue, New Orleans, LA 70113, (504) 581-4892.

Defendants Liaison Counsel is Kerry Miller. His contact information is Frilot, LLC, 1100 Poydras Street, Suite 3700, New Orleans, LA 70163, (504) 599-8194.

Homebuilders and Installers Liaison Counsel is Phillip Wittman. His contact information is Stone Pigman Walther Wittman, 546 Carondelet Street, New Orleans, LA 70130, (504) 581-3200.

10. *Rosenstein v. Eastern Mushroom Mktg. Coop., Inc.*; Suit No. 06-00620; United States District Court for the Eastern District of Pennsylvania; 2006 – present.

The plaintiffs are a class of direct purchasers of agaricus mushrooms in a class action filed against a mushroom cooperative and the members of the cooperative. The plaintiffs allege that the defendants engaged in price fixing and the suppression of competition in violation of the antitrust laws of the United States. The trial court granted my client's motion for summary judgment, holding that the mushroom cooperative is not entitled to antitrust immunity under the Capper-Volstead law because one of its members is not a grower. The case is now on appeal to the United States Court of Appeals for the Third Circuit. I am responsible for gathering and analyzing Associated Grocer's invoices and other records to establish first-purchaser status and damages, for investigation and deposition of certain members of the cooperative, and for researching and drafting certain portions of trial and appellate memoranda and briefs. The trial court judge is the Honorable Thomas O'Neill, Jr.

I am one of two lead attorneys of record from my firm. The other lead attorney is Brent B. Barriere, Esq., Phelps Dunbar, L.L.P., 365 Canal Street, Suite 2000, New Orleans, LA 70130, (504) 566-1311. We represent Associated Grocers, Inc., class representative, and Robert Grocers.

Lead co-counsel is Bruce Gerstein, Garwin Gerstein & Fisher, 1501 Broadway, Suite 1416, New York, NY 10036, (212) 398-0055.

Principal opposing counsel is William A. Destefano, Buchanan, Ingersoll, Rooney PC, 50 South 16th Street, Suite 3200, Philadelphia, PA 19103, (215) 665-3887.

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.)

Legal Activities:

International Paper Divestiture: From 2005 until 2007, I represented International Paper with respect to mineral issues involved in its divestiture of hundreds of thousands of acres of its real property in North America.

Louisiana District Court Rules: I have served as Chair of the Louisiana Supreme Court's Court Rules Committee since 1997. My work with the Joint Committee from 1997 to 2002 resulted in a set of statewide trial court rules being drafted and ultimately adopted and implemented by the Louisiana Supreme Court. The Louisiana District Court Rules were adopted by the Supreme Court and put in practice in 2002. The Committee continues to revise and update the District Court Rules and to educate the bench and the bar on this important topic. I spend many hours speaking at judicial conferences and continuing legal education seminars and meeting with lawyers and judges from all over the state to continue to improve the content of the District Court Rules and compliance with the Rules. I have invested well over a thousand hours in this project.

Lobbying Activities:

Bossier Parish Police Jury (2005 – 2010). My activities included assisting with the incorporation of, gaining tax-exempt status for, and construction of a facility for the Cyber Innovation Center, a Louisiana non-profit corporation located in Bossier City, Louisiana. I assisted Bossier Parish in preparing requests for federal funding for research and development activities at the Cyber Innovation Center, work-force training for cyber activities at the Center, and requests for funding for transportation projects.

Caddo Parish Commission (2007 – 2010). I also assisted Caddo Parish in promoting educational opportunities and workforce development for cyber-related activities at Barksdale Air Force Base and at the Cyber Innovation Center. In addition, I assisted Caddo Parish in preparing requests to Louisiana's Congressional delegation for funding for water projects and transportation projects.

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 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 plans, commitments, or agreements to pursue outside employment.

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.

My husband, Larry Feldman, Jr., is a partner in the law firm of McGlinchey Stafford PLLC in New Orleans, Louisiana. If confirmed, I will recuse myself from any case in which he appears as an attorney.

As to all other potential conflicts – including in cases where former clients and other attorneys with whom I have had a prior relationship are involved – I would abide by the Code of Conduct for United States Judges and recuse myself and/or disclose relationships as appropriate.

- 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 recuse myself where necessary and/or disclose relationships as appropriate to the parties. I will

endeavor at the outset of each case to identify any potential conflict or appearance of conflict. I will also seek the advice of colleagues and the Judicial Conference as needed in handling such conflict or appearance of conflict.

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.

Louisiana District Court Rules

I have chaired the Louisiana Supreme Court's Court Rules Committee since 1997. My work with this Committee from 1997 to 2002 resulted in a set of statewide trial court rules being drafted and ultimately adopted and implemented by the Louisiana Supreme Court. As Chair of this Committee, I worked with the Louisiana State Bar Association Access to Justice Director Monte Mollere, Louisiana Legal Services Corporations, and local pro bono projects to develop a standard *In Forma Pauperis* affidavit to be used in all Louisiana trial courts. I am now working with the Supreme Court's Pro Se Litigant Task Force to ensure that the Louisiana District Court Rules are accessible to self-represented parties, that they are written in the clearest and easiest to understand language possible, and that explanations are provided that will be of assistance to self-represented parties. Over the last thirteen years I have spent over one thousand hours on the District Court Rules. I continue to expend approximately 100 hours a year on this project.

Post-Katrina Activities

After the devastation of Hurricanes Katrina and Rita, I assisted in forming the Katrinarita Gras Foundation and acquiring 501(c)(3) tax-exempt status for the organization. The Foundation raises funds to assist needy individuals in Louisiana and the Gulf South region. I estimate that I devoted approximately 30 hours to this activity.

Domestic Violence Issues

During the time that I was a Board member and President of the YWCA of Northwest Louisiana, the YWCA operated a shelter for battered women and their children. I developed a standard form for requesting restraining orders and ensured that local clerks of court made the form available to women requesting help. I also served from 1994 until 1997 on a Domestic Violence Task Force created by the Shreveport Police Department.

Pro Bono Cases

I am a volunteer for the New Orleans Pro Bono Project. Most significantly, during 2010 I represented the Community Center of St. Bernard in an eviction proceeding brought against it. I was successful in getting additional time for the Community Center to stay in

the premises and securing them the right to remove more of their property from the premises. I spent approximately 35 hours on this representation.

I have now accepted another assignment from the New Orleans Pro Bono Project, representing a homeowner on a fixed income in negotiations with her mortgage company, over recent excessive increases in her escrow obligations. I have just begun this representation.

I also am a volunteer at the Homeless Experience Legal Protection ("HELP") program to assist the homeless at the Ozanam Inn and at the St. Joseph's/Father Harry Thompson Center. Volunteers go to homeless shelters on a monthly basis to assist residents with legal problems. I estimate that I have devoted approximately ten hours to this activity thus far.

Miscellaneous

I have participated in various Law Day programs, "ask a lawyer" call-in programs for consumers, and judged moot court and other advocacy training programs for high school students. I also organized the first annual Easter Party for children in the YWCA's shelter for battered women and children.

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 February 2009, I wrote to Senator Mary Landrieu requesting consideration for nomination to a seat on the United States District Court for the Eastern District of Louisiana. I met with Senator Landrieu in New Orleans during June 2009 to discuss my interest in this seat. Senator Landrieu eventually recommended another candidate for this position.

In June 2010, I again wrote to Senator Landrieu requesting consideration for a nomination to the Eastern District of Louisiana in light of the fact that another seat was open on the bench. In July 2010, I was interviewed by three representatives of Senator Landrieu regarding my background and qualifications. In October 2010 I was interviewed by Senator Landrieu in New Orleans. In December 2010 I had a telephone conversation with Senator Landrieu during

which she informed me that my name had been submitted to the White House as a finalist for one of the open judicial positions in the Eastern District of Louisiana.

Since February 14, 2011, I have been in contact with pre-nomination officials at the Department of Justice. On March 17, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC. On June 7, 2011, the President submitted my nomination to the Senate.

There is no judicial selection commission in Louisiana.

- 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) Morgan, Donna S.	2. Court or Organization U.S. District Court, Eastern District of Louisiana	3. Date of Report 6/7/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Judge - Active Status	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 6/7/2011 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2010 to 6/6/2011
7. Chambers or Office Address Phelps Dunbar LLP 365 Canal St., Suite 2000 New Orleans, LA 70130-6534	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>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. Partner	Phelps Dunbar L.L.P.
2. Director	New Orleans Association for Women Attorneys
3. Board of Trustees	Louisiana State University Paul M. Hebert Law Center
4. Fellow and State Co-Chair for 2011	American Bar Foundation
5.	

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

☐ NONE (No reportable agreements.)

DATE	PARTIES AND TERMS
1. 1997	Wiener Weiss and Madison PC SIMPLE IRA Retirement Plan with former employer
2.	
3.	

FINANCIAL DISCLOSURE REPORT
 Page 2 of 8

Name of Person Reporting	Date of Report
Morgan, Donna S.	6/7/2011

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. 2009	Phelps Dunbar L.L.P. - salary	\$253,584.00
2. 2010	Phelps Dunbar L.L.P. - salary	\$384,559.00
3. 2011	Phelps Dunbar L.L.P. - salary	\$99,200.00
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 honoraria.)*
☐ NONE *(No reportable non-investment income.)*

<u>DATE</u>	<u>SOURCE AND TYPE</u>
1. 2010	McGlinchey Stafford - salary
2. 2011	McGlinchey Stafford - salary
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
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Name of Person Reporting	Date of Report
Morgan, Donna S.	6/7/2011

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
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Name of Person Reporting	Date of Report
Morghan, Donna S.	6/7/2011

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)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	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 mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
1. Keypoint Federal Credit Union Account	A	Interest	L	T	Exempt				
2. Iberia Bank checking accounts	A	Interest	L	T					
3. Fidelity Contrafund	A	Dividend	M	T					
4. Eaton Vance Large-Cap Value A	A	Dividend	L	T					
5. Franklin Growth Fund A	A	Dividend	L	T					
6. Franklin Growth A	A	Dividend	L	T					
7. American Funds EuroPacific Gr R6	A	Dividend	K	T					
8. T. Rowe Price Equity Income	A	Dividend	K	T					
9. Franklin Equity Income A	B	Dividend	L	T					
10. Artisan Mid Cap Inv		None	K	T					
11. Schwab Small Cap Index	A	Dividend	K	T					
12. Janus Overseas T	A	Dividend	K	T					
13. Harbor International Inv	A	Dividend	K	T					
14. BlackRock Global Allocation Inst	A	Dividend	K	T					
15. Hancock3 Small Company I		None	K	T					
16. Invesco Mid Cap Core Equity	A	Dividend	K	T					
17. American Funds New Perspective A	A	Dividend	J	T					

1. Income Code 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 P = \$25,000,001 - \$50,000,000	B = \$1,001 - \$3,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$7,501 - \$5,000 H1 = \$1,000,001 - \$5,000,000 L = \$30,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 R = Cash (Real Estate Only) V = Other	D = \$5,001 - \$15,000 H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$15,000,000 S = Assessment W = Palimmed	E = \$15,001 - \$50,000
2. Value Codes: (See Column C1 and D3)	J = \$15,000 or less N = \$250,001 - \$500,000 P = \$25,000,001 - \$50,000,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	H1 = \$1,000,001 - \$5,000,000 L = \$30,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000 R = Cash (Real Estate Only) V = Other	H2 = More than \$5,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$15,000,000 S = Assessment W = Palimmed	
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Book Value	R = Cash (Real Estate Only) V = Other	S = Assessment W = Palimmed	T = Cash Market	

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Morgan, Donna S.

Date of Report

6/7/2011

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)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	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 mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
18. Wells Fargo Advantage Spec SmCp Val A	A	Dividend	J	T					
19. Templeton Foreign A	A	Dividend	J	T					
20. Mutual Quest A		None	J	T					
21. Franklin Balance Sheet Investment A	A	Dividend	J	T					
22. American Funds Washington Mutual C	A	Dividend	J	T					
23. American Funds Invmt Co of Amer A	A	Dividend	J	T					
24. Franklin Balance Sheet Investment A	A	Dividend	J	T					
25. Templeton Foreign A	A	Dividend	J	T					
26. Templeton Growth A	A	Dividend	J	T					
27. Franklin Flex Cap Growth A		None	J	T					
28. Mutual Quest A	B	Dividend	J	T					
29. Franklin Small-Mid Cap Growth A		None	J	T					
30. Wells Fargo Advantage Spec SmCp Val A	A	Dividend	J	T					
31. Templeton Growth A	A	Dividend	J	T					
32. Fidelity Advisor New Insights C	A	Dividend	J	T					
33. Oppenheimer Developing Markets Y		None	K	T					
34. Franklin Flex Cap Growth A		None	J	T					

1. Income Gain Codes: (See Columns B1 and D4)	A ~\$1,000 or less F ~\$50,001 - \$100,000 J ~\$15,000 or less N ~\$250,001 - \$500,000 P3 ~\$25,000,001 - \$50,000,000	B ~\$1,001 - \$2,500 G ~\$100,001 - \$1,000,000 K ~\$15,001 - \$50,000 O ~\$100,001 - \$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 P2 ~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)					
3. Value Method Codes (See Column C2)	Q = Appraisal U = Bank Value	R = Cost (Real Estate Only) V = Other	S = Assessment W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT
 Page 6 of 8

Name of Person Reporting	Date of Report
Morgan, Donna S.	6/7/2011

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 mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Franklin Small-Mid Cap Growth A		None	J	T					
36. Midland Life Universal Life Policies	A	Interest	K	T					

1. Income Gain Codes: (See Column B1 and D4)	A = \$1,000 or less F = \$10,001 - \$100,000 J = \$15,000 or less (See Column C1 and D3)	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$30,001 - \$100,000 N = \$1,000,001 - \$5,000,000 P4 = More than \$10,000,000	D = \$5,001 - \$15,000 M2 = 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 = \$15,000,001 - \$50,000,000				
3. Value Method Codes (See Column C2)	Q = Appraisal U = Book Value	R = Cost (Real Estate Only) V = Other	S = Assessed W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Morgan, Donna S.	6/7/2011

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

FINANCIAL DISCLOSURE REPORT
Page 8 of 8

Name of Person Reporting	Date of Report
Morgan, Donna S.	6/7/2011

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

Donna A. Morgan

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		149	310	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		897	164	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		4	432
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - personal residence		317	737
Real estate owned - personal residence		750	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		115	000				
Cash value-life insurance		17	294				
Other assets itemize:							
				Total liabilities		322	169
				Net Worth	1	606	599
Total Assets	1	928	768	Total liabilities and net worth	1	928	768
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

American Funds Europacific Growth Fund	\$44,022
American Funds New Perspective Fund	12,355
American Funds Washington Mutual Inv. Fund	9,348
American Funds Investment Co. of America	8,931
Artisan Mid Cap Investment Fund	30,872
BlackRock Global Allocation Fund	22,017
Cash Money Market - Taxable	239
Eaton Vance Large-Cap Value Fund	79,505
Franklin Balance Sheet Investment Fund	17,285
Franklin Equity Income Fund	61,583
Franklin Flex Cap Growth Fund	10,230
Franklin Growth Fund	130,459
Franklin Small-Mid Cap Growth Fund	8,504
Fidelity Advisor New Insights Fund	8,895
Fidelity Contrafund	217,082
Harbor International Fund	28,589
Invesco Mid Cap Core Equity Fund	17,279
Janus Overseas T Fund	25,337
JHancock3 Small Company Fund	18,314
Mutual Quest Fund	17,289
Oppenheimer Developing Markets Fund	16,690
Schwab Small Cap Index Fund	29,761
T. Rowe Price Equity Income Fund	32,858
Templeton Foreign Fund	19,377
Templeton Growth Fund	13,400
Wells Fargo Advantage Spec SmCp Value Fund	16,943
Total Listed Securities	<u>\$897,164</u>

AFFIDAVIT

I, Donna Sue Morgan, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 6, 2011
(DATE)

Donna Sue Morgan
Donna Sue Morgan

Stephanie Villagomez Lemore
(NOTARY)



STEPHANIE VILLAGOMEZ LEMORE
NOTARY PUBLIC, ID #88295
STATEWIDE JURISDICTION
MY COMMISSION IS FOR LIFE

Senator LEE. I want to talk to you a little bit about dispositive motions in Federal court practice. Tell me what you think the role of dispositive motions is. How important a role do those play in the litigation process?

Ms. MORGAN. Well, the cases that I've ordinarily been involved in have been complex litigation where there's a great deal of motion practice, and I think the role is that we know that it's expensive for clients to go through protracted litigation, and if cases can be decided on the basis of dispositive motions, and appropriately so, then that is something that can give the parties certainty and keep it from taking years for a dispute to be resolved.

Senator LEE. Sometimes I have suspected there's a tendency on the part of some judges to say, well, when in doubt, if it's a difficult case and I'm not quite sure that I should grant this dispositive motion, maybe I should deny it because that "will allow the plaintiff to have her day in court." Do you agree with that assessment?

Ms. MORGAN. Well, I do respect that people do have a right to come into the judicial system and they should be respected and made to feel welcome, but I don't think we can let—that a judge can let that factor into whether to grant a dispositive motion if in fact it fits the facts and the law dictates that it should be granted.

Senator LEE. So in other words you could be depriving someone else of a right if you do that just for the sake of allowing someone to have their day in court.

Ms. MORGAN. That's right.

Senator LEE. They've had their day once they've submitted the dispositive motion. Yeah, I think that's correct.

Is it your sense that judges will occasionally deny a dispositive motion that might be warranted in part on the basis of what some might loosely refer to as defensive jurisprudence? In other words, it's easier to deny a summary judgment motion or a motion to dismiss. You don't—the order or opinion entailed in that usually is a lot shorter if it's a denial than if it's a grant, and normally it's not going to be subject to an immediate appeal if you deny it. A lot of the time the parties will settle if you just deny the motion and allow the case to proceed. Have you ever seen that happen?

Ms. MORGAN. Well, I'm not—not personally because I'm not—I haven't been privy to what the judge's thinking was, usually.

Senator LEE. Sure. Sure.

Ms. MORGAN. But I know that what my intent would be to not have that factor into my decisions, but instead to look at the law and the facts and make the decision and assume that the parties will take care of the settlement process themselves.

Senator LEE. Now, you've been an advocate throughout your career, and it looks like you've zealously and effectively represented your clients. Do you feel this would be a difficult transition for you at all going from being an advocate for discrete parties to just being a judge? Is that something you'll have any difficulty doing?

Ms. MORGAN. Well, I do recognize that there's a difference and I realize that there's also going to be a learning curve for me in learning how to be a judge. But I realize that there's no role for advocacy on the part of the judge, that the judge has to be impartial and fair and apply the law to the facts without regard to special consideration or advocacy for one side or the other.

Senator LEE. Let's talk about Federal power for a minute. Can you tell me, apart from the discrete facts of *United States v. Lopez* and *United States v. Morrison*, can you think of any real limits on Congress's power under the Commerce Clause?

Ms. MORGAN. Well, I know that the Supreme Court has clearly held that, even though the Commerce Clause is broad, that there are limits. I'm not an expert in that area of the law, have read some of those cases.

Senator LEE. What role do you think the courts ought to play in making sure that those limits exist and are enforced?

Ms. MORGAN. Well, I know for a District Court Judge what we do is look to the U.S. Supreme Court and follow the rulings of that court, and also to the Fifth Circuit Court of Appeal.

Senator LEE. OK.

And that's something that you'd be willing to do as a judge, if confirmed? Become familiar with those limits, as articulated in *Lopez* and *Morrison* and the other cases, to figure out where those limits are, understanding that the Supreme Court hasn't addressed every conceivable issue out there and so you'll have to glean something from the principles articulated in those cases.

Ms. MORGAN. Absolutely.

Senator LEE. OK. Thank you.

Thank you, Mr. Chairman.

Senator COONS. Thank you, Senator Lee.

In your 30-year career as a litigator, I note that you spent over 1,000 pro bono hours rewriting and streamlining procedural rules. Tell me something, if you would, about that level of engagement in pro bono work. Senator Landrieu referred to it. What were the challenges? Why did you undertake this much work? What were the benefits for the administration of justice in the State of Louisiana?

Ms. MORGAN. Well, I started working on the project about 13 years ago and my first words were, "I can't chair this project, but I'll help you get it started." And so 13 years later, it's been a real effort of love. I've enjoyed it. What we first did, these are the rules that govern the day-to-day operations of the court that have a big impact on litigants and the parties.

First, we gathered all the rules that the different District Courts had in Louisiana, and then we tried to fashion rules that would work for everyone, and where they wouldn't work for everyone we attached an appendix and said, in this court—at least you know where to go to look for it in this court. It took us about 5 years to draft.

In 2002, we went to the Louisiana Supreme Court. They adopted and implemented—we call the Louisiana Rules for District Court. And so since then my Committee has been involved in educating judges and attorneys about it and being the—accepting suggestions for changes, either amendments or new rules. And we believe we've really made a difference in the practice of law in Louisiana.

Some of the things we added, we got from the Federal rules. For example, now before parties file a Motion to Compel they have to confer and try to work out their differences, and before they submit a judgment to the court it has to be circulated among the parties.

Those are the kinds of just everyday, ordinary things that make the practice of law better and that the judges have told us reduced the burden on them because instead of having to handle a motion to compel, the parties work it out among themselves and only in extreme circumstances have to go to the court. So I'm proud of the work that I did on that committee. I really think it's made an improvement in the administration of justice.

Senator COONS. Thank you, Ms. Morgan. I have no further questions.

Senator.

Senator LEE. I notice you clerked on the Fifth Circuit right out of law school.

Ms. MORGAN. Yes.

Senator LEE. Tell me about that experience. Did you enjoy it?

Ms. MORGAN. Oh, I did. I worked for Hank Politz, who's from Napoleonville, Louisiana, and he's just a wonderful man and mentor to his clerks and to many young lawyers. And he's been a role model for me. He passed away a few years ago, but he was a wonder—it was a wonderful experience, and I think that's what made me, in the beginning, become interested in being a Federal judge.

Senator LEE. Anything in particular about his judicial philosophy that you'd try to emulate on the bench?

Ms. MORGAN. No, just that he was a very fair-minded person and, you know, he—he applied the facts to the law, but he also never forgot that decisions have an impact.

Senator LEE. Was he kind to his clerks?

Ms. MORGAN. He was.

Senator LEE. Good.

I've noticed your practice is overwhelmingly civil, about 95 percent civil. You've handled a few criminal cases. I don't view that as an impediment by any means. Sometimes it can be difficult if you've had no criminal experience at all, or if somebody is all criminal and they haven't had any civil experience. You feel comfortable with your ability to get up to speed quickly on the criminal standards?

Ms. MORGAN. I do. I know that the Federal Judicial Center has programs to help judges get up to date and up to speed in areas of law they're not familiar with, and I'm looking forward to participating in that. I've also talked to some of the judges who sit on the Eastern District of Louisiana currently who've offered to help get me up to speed.

Senator LEE. And it sounds like, within your civil litigation practice, it has been fairly diverse. In other words, you haven't been handling just one type of case. I suspect that would help you as well in gearing up toward the criminal cases.

I think that's all my questions. Thank you very much.

Ms. MORGAN. Thank you.

Senator COONS. Well, Ms. Morgan, thank you, to you, to Larry, to your friends. Thank you for your willingness to serve, for your long and dedicated service in the Louisiana Bar. Hopefully we will be able to proceed rapidly to consideration of your nomination on the floor of the Senate.

I will keep the—we will keep the record open for a week for any members of the Committee who were not able to join us today and

who may wish to submit letters or questions in writing to either of our witnesses today.

And with that, this hearing is adjourned.

[Whereupon, at 3:34 p.m. the hearing was adjourned.]

[Questions and answers and submissions follow.]

QUESTIONS AND ANSWERS

Questions for the Record of Chairman Patrick Leahy

For Michael E. Horowitz

Nominee to be Inspector General for the Department of Justice

October 26, 2011

1. On March 17, 2010, I wrote to Inspector General Glenn Fine and asked him to complete a number of audits of government surveillance authorized under the USA PATRIOT Act. Mr. Fine responded positively on June 15, 2010, and I believe those audits have been initiated by the Office of Inspector General. I have attached my exchange of letters with Mr. Fine. Will you formally commit to complete these audits if you are confirmed to serve as Inspector General?

Answer: If confirmed, I am committed to completing these audits which I understand are already underway in the Inspector General's office.

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Senator Chuck Grassley

Michael Horowitz

**Nominee, Inspector General, United States Department of Justice
Questions for the Record**

1. Section 552a(b)(9) of the Privacy Act permits the Executive Branch to provide information that would otherwise be protected by the Act to Congress or a “committee or subcommittee thereof.” Nevertheless, an Office of Legal Counsel (OLC) opinion of December 5, 2001, concludes that the Privacy Act prohibits the disclosure of Privacy Act-protected information to the ranking minority members. The OLC opinion cites no legal authority and does not address contrary authority, such as a Second Circuit Court of Appeals case decided a year and a half earlier. That opinion, *Devine v. United States*, held that information sent to a congressman in his official capacity as a member of a subcommittee fell “squarely within the ambit of § 552a(b)(9).” [See *Devine v. United States*, 202 F.3d 547, 551 (2nd Cir. 2000).]

- a. What is your view of the persuasiveness of the above OLC opinion?

Answer: While the OLC opinion is well written and its reasoning is clearly explained, it is difficult to provide an independent assessment of its persuasiveness given that I have not previously studied this issue myself and the Opinion does not provide comprehensive citations to the legal authorities supporting the principles enunciated. In order for me to reach a conclusion as to the Opinion’s persuasiveness, I would need to undertake a thorough legal analysis as well as understand the deliberations that led OLC to reach the conclusions outlined in its opinion. If I am confirmed to be Inspector General, I would ask the Office’s General Counsel to undertake that effort and provide me with that analysis. I believe it is important for the Inspector General to have that independent legal analysis before reaching a determination.

- b. How do you resolve the conflict between the OLC opinion and the Second Circuit case?

Answer: Given that I have not previously studied this issue myself, in order for me to determine whether there is a conflict to resolve, I would need to understand the legal authorities considered and relied upon by OLC in reaching its opinion, including whether it considered the *Devine* decision, as well as understand more fully the facts underlying the *Devine* case (particularly since the case involved the DOJ Inspector General). If confirmed as Inspector General, I would seek the advice of the Office’s General Counsel on the nature of the possible conflict and, if there is a conflict, as to how it should be resolved.

- c. Since the OLC opinion was written after the Second Circuit case, shouldn’t the case at least have been cited and analyzed in the opinion? Does the fact that it ignores relevant legal precedent make the OLC opinion less persuasive? Why or why not?

Answer: Yes, it would have been helpful for the OLC opinion to have expressly addressed the *Devine* decision. In order to determine, however, whether the OLC considered the decision in connection with its opinion, I would need to consult with the OLC about the deliberations it undertook before rendering its opinion. If the OLC failed to consider a relevant legal decision, it would have an impact on the persuasiveness of its opinion because it raises a question about the thoroughness of its decision-making process.

- d. Congress is capable of limiting its own access to records depending on the identity of an appropriate requestor. It does so in the context of tax return information under Section 6103 by allowing disclosure to Congress only upon request of the Chairman of the Finance or Ways and Means Committees or the staff director of the Joint Tax Committee. Given that no such restriction appears in the text of the Privacy Act, why should disclosure be conditioned on the identity of the requestor, as asserted in the OLC opinion?

Answer: The manner in which Congress drafted one statute may have relevance in evaluating its intent in drafting another statute, although that is not necessarily dispositive of the legal analysis. I would want to understand more fully the legal authorities that were relied upon by the OLC in reaching its opinion in order to determine the strength of its conclusion that disclosure should be conditioned on the identity of the requestor.

- e. The Privacy Act does not address the Congressional exemption in terms of the origin of a request. It does not even refer to any request from any source. Rather, it simply exempts disclosures *to a Committee*. In other words, the statutory structure conditions the exemption on the *recipient* alone. Given the plain words of the statute, do you agree that so long as the disclosure is made *to a Committee*, that it qualifies for the Congressional exemption? Why or why not?

Answer: The plain language of a statute clearly is an important factor in any legal analysis, although it may not necessarily be dispositive of the legal analysis. As noted previously, I have not studied this issue previously and would have to undertake substantial legal research and analysis before I was in a position to render a legal opinion. Among other things, I would need to more fully understand the basis for the contrary view reached in the OLC opinion. I appreciate the importance of this issue and, if confirmed, I will seek the advice of the Office's General Counsel as well as others in the Office who may have relevant experience before I come to any conclusion.

2. Section 6(a) of the Inspector General Reform Act of 2008 [P.L. 110-409] reads as follows:

Sec. 6 SEPARATE COUNSEL TO SUPPORT INSPECTORS GENERAL.

- (a) Counsels to Inspectors General of Establishment.--Section 3 of the Inspector General Act of 1978 is further amended by adding at the end the following:

“(g) Each Inspector General shall, in accordance with applicable law and regulations governing the civil service, obtain legal advice from a counsel either reporting directly to the Inspector General or another Inspector General.”

- a. Given these provisions requiring Inspectors General to seek legal advice from counsel independent of the agency, do you believe you would be bound by the above OLC opinion even if your own independent General Counsel disagreed?

Answer: In a situation where an OLC opinion on a matter of importance to the Office was determined to be incorrect by the General Counsel and the General Counsel also concluded that the Office was not bound by the opinion, I would concur in the determination assuming I agreed with the analysis.

- b. Would your General Counsel be required to abide by the OLC opinion even if there is contrary legal authority or if the OLC opinion is unpersuasive?

Answer: In a matter of importance to the Office, where there is contrary legal authority to an OLC opinion or the opinion is unpersuasive, my approach would be to ask the General Counsel to provide me with an independent legal analysis on the issue and to advise me on whether the Office was bound by the OLC opinion. As noted in response to Question 2(a), assuming that I agreed with the analysis, I would concur in the determination.

- c. If confirmed, how would you respond to a request from the Ranking Minority Member of this Committee that information otherwise covered by the Privacy Act be disclosed to the Committee? Would you provide the information?

Answer: If confirmed, I would ask the Office's General Counsel for independent advice on this legal question, including the persuasiveness of the OLC opinion, and then determine whether the Office was legally authorized to make the disclosure. If it was determined that we were legally permitted to provide the information, the Office would do so.

- d. Would you rely on the OLC opinion to claim that the Privacy Act prevents you from complying?

Answer: Same answer as to Question 2(c).

3. In the past, there have been occasions where congress and the IG are running investigations concurrently. Sometimes the relationship between the two investigations is less than collaborative. I'm aware that in May of 2010, you gave a presentation in London, and one of the topics was "How to Respond in the Event of Government Inquiries." It is important that the person who is appointed to serve as IG be willing and able to work with Congress in order to create a collaborative environment where fraud and fault can be quickly and effectively exposed.

- a. What did the presentation recommend regarding responding to government inquiries?

Answer: I do not recall the specific discussion or recommendations made during that presentation, although I believe that my particular presentation and comments were designed to address criminal and/or regulatory investigations, and not Congressional or Legislative investigations.

- b. Do you believe that you would be able to fully and effectively work with Congress complete investigations more quickly and successfully?

Answer: I do, but I would take the utmost care to ensure that I did not do anything to compromise the Office's obligation to conduct investigations independently and thoroughly.

- c. What experiences have you had that would support your contention that you are interested and able to work with the legislative branch to effectively carry out investigations?

Answer: During the course of my investigation into police corruption in the 30th Precinct, I worked in a collaborative environment with an independent Commission created by the Mayor to conduct public oversight hearings on police corruption in the New York City Police Department and to issue a public report. I recognized the importance of the oversight that the Commission was undertaking, and the need to provide the Commission with information during the course of the criminal investigation, although I took care to do so in a manner that was consistent with my legal obligations and that did not negatively impact our ability to successfully conclude the criminal investigation. The result was a highly successful criminal investigation and a highly successful set of oversight hearings by the Commission.

4. I'm concerned that you don't have any experience at all in the Inspector General community. As a prosecutor you litigated cases using evidence and information that was gathered for you by separate law enforcement agencies. However, as an Inspector General, it would be your job to directly supervise audits and investigations.

- a. Because you don't have any Inspector General experience, how are you qualified to supervise compliance with government auditing standards?

Answer: While I have not served previously as an employee of an Inspector General's office, as a corruption prosecutor in the Southern District of New York, I frequently worked closely with Inspectors General (including the DOJ Inspector General) and Internal Affairs investigators. In many of those matters, I played a critical role in overseeing and directing the criminal investigations for many months before any arrests were made. Moreover, frequently, the investigations involved working with agents and accountants to trace funds and determine how funds were being spent. A significant amount of financial analysis was undertaken in those matters.

In private practice for the past nine years, much of my work has involved working closely with forensic auditors to evaluate the books and records of clients in order to determine whether a fraud occurred. Additionally, I work regularly with internal auditors to review audit reports, and corporate books and records, for signs of weaknesses in financial accounting and controls. As part of that effort, I also have been involved in creating audit work plans. These experiences have resulted in my speaking on audit issues at conferences of the International Institute of Auditors and the Pharmaceutical Internal Audit Forum.

- b. What familiarity and/or experience do you have with the Comptroller General's Yellow Book auditing standards?

Answer: As noted above, I have substantial GAAP accounting experience over the past nine years from my work in the private sector, which is a part of the Generally Accepted Government Accounting Standards. Additionally, since my nomination, I have worked to familiarize myself with other aspects of the Yellow Book standards.

5. For the past ten years, the Inspector General has identified the grant award process and oversight of grant funding as major challenges to preventing fraud, waste, and abuse. Year after year, the Inspector General's audits of grantees point to unallowable and unsupported costs, awards to grantees and sub-grantees based upon connections and not merit, failure of grantees to comply with grant requirements, failed matching requirements, poor record keeping, failure of grantees to achieve program goals, and little or no oversight by the Office of Justice Programs (OJP), Office of Violence Against Women (OVW) , and Community Oriented Policing Services (COPS) —the three entities overseeing and awarding grants. With DOJ awarding billions of dollars a year in grants, any failure in adequately managing and monitoring grants could lead to millions of taxpayer dollars lost to fraud, waste, or abuse.
- a. Given the serious financial difficulties facing the Government, do you believe DOJ should revamp grant programs at DOJ by consolidating overlapping grant programs to ensure that federal funds expended by DOJ are free from duplication and waste?

Answer: To the extent that overlapping grant programs can be consolidated in a manner that eliminates duplication and waste, I believe that they should be. The OIG has made a number of important recommendations in its recent reports regarding grant management (most recently in March 2011), including avoiding duplication and waste. I will be committed, if confirmed, to following up on these recommendations and to undertaking further reviews, as necessary, to ensure that duplication and waste in the grant process is exposed and addressed.

- b. How do you plan to ensure accountability and transparency in the grant making process?

Answer: If confirmed, I would be committed to continuing the significant audit work

that has been performed by the OIG over the past several years on the grant-making process, which I believe has contributed to greater accountability and transparency. I also would discuss with the Office's staff what new and additional steps they believe the Office could undertake to ensure greater accountability and transparency. I believe that accountability and transparency in the grant making process is important.

- c. Do you have any specific recommendations for reforms?

Answer: At the present time, I do not have specific recommendations. I believe it is important, if confirmed, for me to consult first with the OIG staff before making specific recommendations for reforms. I am committed to continuing to have grant management as one of the DOJ's top management challenges, and to consider additional reforms that can be made in this area. If confirmed, I intend to have that discussion with the OIG staff.

- d. If you are confirmed, will you undertake a top to bottom review of all grant programs at DOJ to determine what works, what doesn't work, and where savings can be achieved? If not, why not?

Answer: I am particularly interested in grant management, how grant programs can be more effectively and efficiently managed, and what metrics can be applied to determine whether and how the programs are working. Before determining what specific approach should be undertaken, I would need to consult with the OIG staff and obtain their views and recommendations. If confirmed, I intend to have that discussion with the OIG staff.

- e. Each year the Inspector General audits only a handful of individual grant recipients to determine if they are in compliance with program requirements. For example, in the past decade the Inspector General has only reviewed twenty-two randomly selected individual grant recipients under the Violence Against Women Act (VAWA). However, twenty-one of those random audits uncovered some sort of fraud, waste, or abuse of the VAWA program grants. Will you commit to increasing the number of individual grantees audited annually? If so, how many additional audits will you undertake? If not, why not?

Answer: I believe the OIG should consider increasing the number of annual audits it conducts of grant recipients. I also believe it is important, however, before reaching a determination on this issue that I consult with the OIG staff and obtain their views and recommendations. If confirmed, I intend to have that discussion with the OIG staff.

Senator Chuck Grassley

Michael Horowitz
Nominee, Inspector General, United States Department of Justice
Follow-up Questions for the Record

- (1) In partial response to my previous question 1(a), you stated that “the OLC opinion is well written and its reasoning is clearly explained...” Why do you think that the page-and-a-half “legal opinion” with no citation to legal authority is “well written?”

Answer: My comment that the opinion was “well written” was a stylistic reference. As I noted in my response, it would have been helpful for the opinion to have included comprehensive legal citations.

- (2) What portion of the OLC opinion of December 5, 2001, in your view, clearly explains the statutory basis for distinguishing between disclosures in response to a certain requestor and disclosure to a *Committee* for purposes of the Congressional exemption?

Answer: The opinion first cites to the exception in the Privacy Act which authorizes disclosure “to either House of Congress, or, to the extent of a matter within its jurisdiction, any committee or subcommittee thereof” It then goes on to state, without citation, that “each House of Congress exercises its investigative and oversight authority through delegations of authority to its committees, which act either through requests by the committee chairman, speaking on behalf of the committee, or through some other action by the committee itself. As a general matter, ranking minority members are not authorized to make committee requests, act as the official recipient of information for a committee, or otherwise act on behalf of a committee.” The opinion finally notes, again without citation, that “[t]he disclosure still cannot be viewed as being made to the committee unless the disclosure has been authorized by the committee or its chairman.” Thus, in my view, while the opinion’s reasoning is clearly explained, it is not accompanied by legal citations.

- (3) In response to my previous question 2(a), you stated that “In a situation where an OLC opinion on a matter of importance to the Office was determined to be incorrect by the General Counsel and the General Counsel also concluded that the Office was not bound by the opinion, I would concur in the determination assuming I agreed with the analysis.”

- a. What would you do if you disagreed with the General Counsel’s opinion?

Answer: As the head of the Office, the Inspector General is obligated to make the final decision for the Office. Accordingly, if confirmed, I would make the decision that I personally believed was the correct decision.

- b. What would you do if you were unsure of the correct legal analysis?

Answer: If I was still uncertain about the correct legal analysis after receiving the General Counsel's opinion, I would ask to have conducted whatever additional legal analysis was necessary in order to give me sufficient comfort to reach the legally-correct decision.

- (4) Does your reference to "a matter of importance to the Office" mean that you would generally defer to OLC opinions rather than rely on your own counsel's independent legal analysis?

Answer: No, it does not.

- (5) Would you consider the interpretation of the Privacy Act exemption in the context of a disclosure to the Committee upon request of the Ranking Minority Member "a matter of importance to the Office?"

Answer: Yes, I would.

- (6) Although other Offices of Inspector General have disclosed Privacy Act information to Committees under the exemption at the request of the Ranking Member, the Justice Department's OIG has generally followed the OLC opinion's analysis in the past. What weight would you give to the Office's previous practice?

Answer: It would be one factor to consider, although, if confirmed, I would want to understand what the basis was for the Office's past practice.

- (7) In light of *Devine* and given the likelihood of requests for disclosure to the Committee (in contradistinction to requests for disclosure only to the Ranking Member), this issue will almost certainly recur with some frequency. Will you wait until the issue next arises or will you commit to re-evaluating this issue immediately, if confirmed?

Answer: If confirmed, I intend to ask the Office's General Counsel to promptly review this issue and to provide me with a legal analysis so that the Office can be prepared to respond if and when the issue arises.

- (8) In the event that you decide to follow the OLC opinion and the previous practice of the Justice Department OIG despite the plain language of the statute and the contrary legal authority in *Devine*, will you commit to assist in developing draft legislative language that

would provide enough additional clarity to the exemption that you would respond fully to future requests from the Ranking Members?

Answer: If confirmed, I would be prepared to have the Office provide that legislative drafting assistance as it related to requests made to the Office.

Senator Chuck Grassley

Michael Horowitz

**Nominee, Inspector General, United States Department of Justice
Additional Follow-up Questions for the Record**

(1) In follow-up question # 2, I asked you to identify the portion of the OLC opinion that you believe clearly explains the *statutory basis* for distinguishing between disclosures in response to a certain requestor and disclosures *to a Committee* for purposes of the Congressional exemption to the Privacy Act. Your answer quoted a portion of the opinion that makes unsupported assertions about how Congress “exercises its investigative and oversight authority” under the Constitution. However, that is unrelated to any *statutory basis* in the Privacy Act for conditioning the exemption upon receipt of request from a particular source.

- a. The statute conditions the exemption merely on the identity of the recipient (a Committee) without reference to a requirement for any request from any source. Accordingly, do you agree that the reasoning in the OLC opinion identifies no basis *in the statute* for conditioning an exempt disclosure upon a particular type of request?

Answer: The OLC opinion cites only to the Privacy Act generally and to the language of the congressional-disclosure exception in particular. I agree that the OLC opinion does not further identify a statutory basis for its conclusion.

- b. If not, which portion of the opinion identifies the statutory language requiring a Committee request in order for a disclosure to the Committee be exempt?

Answer: See answer to Question 1(a).

Responses of Susie Morgan
Nominee to be United States District Judge for the Eastern District of Louisiana
to the Written Questions of Senator Chuck Grassley

- 1. In your hearing you were asked to describe your judicial philosophy. You responded by describing the role of the judge, but didn't really give any insight as to your judicial philosophy. Would you please describe your judicial philosophy?**

Response: My judicial philosophy is that district court judges must demonstrate a respect for the rule of law and an understanding of the limited role of judges in our constitutional system. Federal courts are courts of limited jurisdiction. As a result, judges should decide only cases or controversies that are properly before their courts and those cases should be decided as narrowly as possible based on the law at issue and the decisions of the United States Supreme Court and Fifth Circuit Court of Appeals. Judges must decide all cases fairly and impartially without regard for the judge's personal views or opinions.

- 2. You have been very active in politics. Over the course of your career, you have volunteered time and donated money to many Democratic candidates. There is certainly nothing wrong with that. But, your political history may concern future litigants, should you be confirmed.**

- a. Do you think your political activity and contributions would be of concern to any litigant who might appear before you, if confirmed? If so, how would you respond to any concerns that might be raised?**

Response: I have never been employed by a political party or a particular candidate, and I have never had a management role in any campaign. My participation has been in a minor volunteer role, as my primary focus has always been on the full-time practice of law and my family responsibilities. I do not think that my previous activities or contributions will be of concern to any litigant who appears before me. If I am confirmed as a federal district judge, I will not be involved in any political activities and I will base my decisions only on the facts and the law without regard to personal opinion.

- b. Public records indicate you made campaign contributions during the time you were requesting consideration for nomination as a United States District Judge. Do you think that such contributions generally raise an issue of an appearance of impropriety or reduce public confidence in the integrity and impartiality of the judiciary?**

Response: I knew and supported Senator Landrieu for many years before I requested consideration for nomination. Under these circumstances, I do not think that my contribution to her would create an appearance of impropriety or would reduce public confidence in the judiciary.

- c. Can you assure this Committee that, if confirmed, your decisions will remain grounded in the precedent and the text of the law rather than any underlying political ideology or motivation?**

Response: Yes.

- 3. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?**

Response: I strongly believe that equal justice under the law is the cornerstone of our legal system and that the judge's personal views have no place in the decision-making process. Over the course of my career, through my paid legal work, my pro bono cases and my other volunteer work, I have demonstrated a commitment to treat all persons equally, with respect and dignity, and without regard to their political beliefs or personal status. I believe that I have the reputation in the legal community of being a polite and courteous person who treats opposing parties and counsel fairly and with respect. If confirmed, I will decide cases on an impartial basis based only on the facts and the law without regard to my personal views or opinions. I will remain open-minded and impartial throughout any cases assigned to me.

- 4. You have worked as a lobbyist, seeking earmarks for municipal projects. Will this present any type of conflict of interest for you?**

Response: I worked as a lobbyist for the governing bodies of Caddo Parish and Bossier Parish, Louisiana. In that capacity, I worked with the bipartisan Louisiana Congressional delegation to help these parishes seek funding for economic development projects. I also assisted with efforts in support of Barksdale Air Force Base, which is located in Bossier Parish. I have done no lobbying for either parish recently and I have no continuing professional relationship with either of them. Both parishes are located within the jurisdiction of the United States District Court for the Western District of Louisiana, and the seat for which I have been nominated is in the Eastern District of Louisiana. I do not believe that my work for these parishes will present any conflict of interest if I am confirmed.

- 5. During your hearing, you indicated you have talked to some of the judges who sit on the Eastern District of Louisiana currently who have "offered to help get me up to speed." What has been the general nature of those conversations? Did any of the conversations relate to your nomination hearing or the confirmation process? If so, please describe in detail.**

Response: I saw two of the current judges at separate social and/or bar association events. I mentioned to both of them that I had done some criminal cases while I lived in Shreveport, Louisiana but that the majority of my work has been in civil litigation. Each of them offered to assist me, if I am confirmed, by inviting me to observe criminal

proceedings in their courtrooms. These brief conversations did not relate to my nomination hearing or the confirmation process.

6. What is the most important attribute of a judge, and do you possess it?

Response: I believe that a judge must possess many attributes, including intellectual capacity, promptness, decisiveness, patience and respect for others. I believe the most important attribute of a judge is impartiality in his or her findings of fact and application of the law. I believe that I possess these characteristics.

7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: I believe that a good judicial temperament is one showing respect for others, patience, and humility. A judge must lead by example in the courtroom by demonstrating that all parties who come before the court will be treated fairly and with dignity and respect. I believe that I meet this standard.

8. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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. If confirmed, I will follow the precedents of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, regardless of my personal opinions.

9. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If I am confirmed and I am faced with a case of first impression, I will start by considering the plain language of the statute or other legal provision at issue. I will also look to controlling precedent of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit. If there are no cases on point, I will look to decisions on analogous issues from the federal and state courts for persuasive authority.

10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: If confirmed as a district court judge, I will faithfully adhere to the precedent established by the Supreme Court and the Fifth Circuit Court of Appeals without regard

for my own judgment or views of the precedent. It is never appropriate for the district court judge to substitute his or her own judgment for binding precedent.

11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: I believe that it is appropriate for a federal court to declare a statute enacted by Congress unconstitutional only if Congress has exceeded its constitutional authority or enacted a statute inconsistent with a provision of the Constitution. In making this decision, I would be guided by the Supreme Court's interpretation of the Constitutional provision and all applicable decisions of the Supreme Court and the Fifth Circuit Court of Appeals.

12. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: The Eastern District of Louisiana has established case management tools to assist in the efficient handling of cases and early resolution of disputes where possible. If confirmed, I will manage my caseload by using those case management tools to establish and enforce clear deadlines for pretrial discovery and motion practice. I will work closely with the magistrate judges for the Eastern District of Louisiana to ensure that all deadlines are being met and to intervene if they are not. I will rule expeditiously on matters before my court being always mindful of the cost and inconvenience of protracted litigation to the parties.

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, based on my experience as a litigator, I am aware that judges have an important role in controlling the pace and conduct of litigation. I will use those techniques outlined in answer to Question 12 above to facilitate the efficient and prompt resolution of cases. If confirmed, I will strive to hear and decide those matters before me in an expeditious manner. I will treat all litigants and attorneys with respect and require that others do the same to ensure that the conduct of the litigation remains professional.

14. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on Wednesday, October 26, 2011. I drafted responses to the questions on Thursday, October 27, 2011. I discussed my responses with an official from the Department of Justice, after which I finalized my responses. I then forwarded my responses to the Department of Justice for submission to the Senate Judiciary Committee.

15. Do these answers reflect your true and personal views?

Response: Yes.

SUBMISSIONS FOR THE RECORD



AMERICAN BAR ASSOCIATION

Standing Committee on
the Federal Judiciary740 Fifteenth Street, NW
Washington, DC 20005-1022
Facsimile: (202) 662-1762

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June 8, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510**Re: Nomination of Donna Sue "Susie" Morgan
To the United States District Court
for the Eastern District of Louisiana**

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Donna Sue "Susie" Morgan who has been nominated for a position on the United States District Court for the Eastern District of Louisiana. As a result of our investigation, the Committee is of the unanimous opinion that Ms. Morgan is "Qualified" for the position.

A copy of this letter has been provided to Donna Sue "Susie" Morgan.

Sincerely,

Benjamin H. Hill, III
Chair

cc: Donna Sue "Susie" Morgan
The Honorable Robert F. Bauer
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

June 8, 2011
Page 2

This letter was sent to the following members of the Committee on the Judiciary, United States Senate, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6275 on June 8, 2011.

Majority: Hon. Patrick J. Leahy, Chairman
 Hon. Herbert Kohl
 Hon. Dianne Feinstein
 Hon. Charles E. Schumer
 Hon. Richard J. Durbin
 Hon. Sheldon Whitehouse
 Hon. Amy Klobuchar
 Hon. Al Franken
 Hon. Christopher Coons
 Hon. Richard Blumenthal

Minority: Hon., Charles E. Grassley, Ranking Member
 Hon. Orrin G. Hatch
 Hon. Jeff Sessions
 Hon. Jon Kyl
 Hon. Lindsey O. Graham
 Hon. John Cornyn
 Hon. Mike Lee
 Hon. Tom Coburn

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October 5, 2011

Honorable Patrick Leahy
437 Russell Senate Bldg
United States Senate
Washington, DC 20510

Honorable Charles Grassley
135 Hart Senate Office Building
Washington, DC 20510

Dear Mr. Chairman and Senator Grassley:

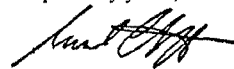
I write in strong support of the nomination of Michael Horowitz for the position of Inspector General for the Department of Justice.

When I assumed the position of Assistant Attorney General for the Criminal Division of the U.S. Department of Justice in June 2001, I retained Michael Horowitz as my Chief of Staff, continuing from his prior service under my predecessor. I worked closely with Michael for approximately a year and have since dealt with him both professionally and as a social friend.

Michael Horowitz is an outstanding attorney and public servant. He has broad experience as a line prosecutor and held a position of responsibility at Main Justice. Michael's broad prosecutorial experience prepares him well for the complex investigative challenges that face the Inspector General. His integrity is beyond approach. Having worked with Inspectors General, I have no doubt that he would be an outstanding Inspector General, vigorous but fair and with excellent judgment. Michael served in both Democratic and Republican administrations and demonstrated his absolute impartiality and independence during that service.

I strongly endorse his nomination and would be happy to answer any questions you may have.

Respectfully yours,



Michael Chertoff

MC:ams

JOHN G. DAVIES
UNITED STATES DISTRICT JUDGE (RET.)
POST OFFICE BOX 5310
SANTA BARBARA
CALIFORNIA 93150

OCT 14 11 41 AM '11

October 4, 2011

Senator Patrick J. Leahy
Chairman, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

Senator Charles Grassley
Ranking Member, Committee on the Judiciary
135 Hart Senate Office Building
Washington, D.C. 20510

Re: Michael E. Horowitz

Dear Senator Leahy and Senator Grassley:

I write this letter to each of you to state my unreserved support of Michael E. Horowitz for the office of Inspector General of the U.S. Department of Justice. I respectfully urge you to look favorably upon this nomination. A better, more qualified and totally suitable candidate for the office would be difficult to find.

In 1986 I was appointed to the bench of the United States District Court for the Central District of California. I had the good fortune of choosing Mr. Horowitz for a law clerk's position for the year of September 1987 to September 1988. He stood out among the approximately one hundred highly qualified candidates.

Your Committee's investigation has undoubtedly disclosed Michael's stellar accomplishments, first as a student at Brandeis University and at Harvard Law School, and then throughout his legal career. Although I am familiar with his success in the private sector, and with his services and contributions to government agencies, I shall not address them here, but instead will comment upon his personal qualities.

The relationship between a U.S. District Court judge and his or her law clerks is a close one. The clerks' responsibilities are demanding, the hours are long, and quality of the work product is expected to be of the highest caliber. These elements foster a judge's reliance upon the clerks and the development of a healthy and lasting relationship. It is

Senators Leahy and Grassley
Re: Michael Horowitz
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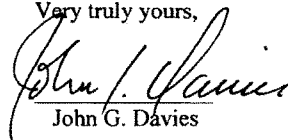
from this vantage I have observed and assessed Michael's personal and professional qualities. He and I have maintained contact since the termination of his clerkship, and I am familiar with the details of his legal and government-related career. I say with certainty that he meets the highest standards you seek in the nominee for this high office. He is a greatly-talented lawyer with broad experience. I know nothing that would dissuade me from my opinion that he possesses, and is guided by, the strictest ethical standards, and that he so conducts himself both professionally and personally. He is honest, intellectually and otherwise. He is diligent. He is stable. He is calm and even tempered. He is loyal. He is strong and can defend a position taken by him but not be antagonistic. He possesses a fine sense of fairness and common sense. He is a natural leader. Complex issues and difficult challenges neither intimidate nor deter him.

I surmise that the Inspector General of the U.S. Department of Justice administers and supervises a staff of investigators, attorneys, office personnel and others, and that among the duties is the oversight of the Department. Michael is, as I say above, a leader. I am confident he will be an exemplary representative of the office, and will lead it well. He has the ability to get along with all people, and harbors no ethnic, religious or social biases. Additionally he writes clearly and thoroughly. His legal writing has always been top quality. Undoubtedly the responsibilities of the office require the preparation of written reports, and perhaps testimony before the Congress. In both respects his performance will be superb.

I have described Michael as I know him. Letters of reference are at times puffing and overblown. But I assure you in this letter I have exaggerated nothing. Michael is a splendid person, and by virtue of his superior intellect, experience, abilities and temperament he is perfectly suited for the position of Inspector General of the U.S. Department of Justice.

I thank each of you for your attention to and consideration of my comments.

Very truly yours,



John G. Davies



October 12, 2011

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

Re: Confirmation of Michael E. Horowitz, US Department of Justice Nominee

Dear Chairman Leahy:

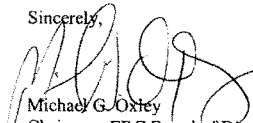
On behalf of the Ethics Resource Center, it is our great pleasure to support the confirmation of Michael E. Horowitz to serve as Inspector General of the US Department of Justice.

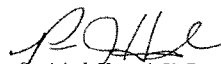
The Ethics Resource Center (ERC) is America's oldest nonprofit organization dedicated to independent research and the advancement of high ethical standards and practices in public and private institutions. Since 1922, ERC's expertise has informed the public dialogue on ethics and ethical behavior. ERC researchers analyze current and emerging issues, producing new ideas and benchmarks that matter for the public trust.

Michael has faithfully served as a member of the ERC Board of Directors since May of 2009. Michael has brought to our board a deep knowledge of the federal enforcement system and substantial experience in establishing internal controls to ensure compliance within organizations. We believe his experience will be invaluable to the Department of Justice, particularly as he works to ensure high standards of ethical conduct are observed within the agency. Additionally, we have found Michael to be an individual committed to personal and professional integrity.

It is our view that Michael will bring independence, experience and a commitment to ethics to the position of Inspector General at the US Department of Justice. He will be deeply committed to upholding the public trust in our government, and we therefore highly recommend his confirmation without delay.

Sincerely,


 Michael G. Oxley
 Chairman, ERC Board of Directors


 Patricia L. Hamed, Ph.D.
 President

October 10, 2011

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

The Honorable Charles E. Grassley
Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Michael Horowitz

Dear Chairman Leahy and Ranking Member Grassley:

I am writing this letter in support of Michael Horowitz's nomination to become the Inspector General of the Department of Justice.

I was the Inspector General of the Department of Justice from 2000 to 2011. Based on my experience and my knowledge of Mr. Horowitz's character and qualifications, I believe Michael has all the qualities, both professional and personal, to be an outstanding Inspector General.

Mr. Horowitz worked in the Department of Justice in various capacities and performed admirably in those roles. As an Assistant United States Attorney and Chief of Staff in the Criminal Division, he developed a deep knowledge of the Department's operations, which will help him immeasurably in the role of Inspector General. His work on the Sentencing Commission also will be useful when overseeing Office of the Inspector General (OIG) law enforcement operations.

The Honorable Patrick J. Leahy
The Honorable Charles E. Grassley
October 10, 2011
Page 2

Michael has also had a distinguished career in private practice and a stellar academic background.

Most important, Michael has the independence and tenacity to become a superb Inspector General. I believe he will not shy away from hard challenges or making tough judgments in the role of Inspector General, even when his decisions may be controversial or unpopular. Michael also has the strong interpersonal and management skills to successfully lead a large organization such as the OIG.

Knowing how difficult the job is, I believe it is essential for someone with outstanding qualities to fill the position. Michael is such a person, and I give him my unreserved recommendation.

Please let me know if you have any questions.

Sincerely,



Glenn A. Fine



October 14, 2011

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

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Dear Senator Leahy and Senator Grassley:

I am pleased and honored to endorse the nomination of Michael E. Horowitz for the position of Inspector General of the Department of Justice. I have known Michael for more than twenty years and I am confident that Michael is extremely well qualified for this critical and sensitive position. He possesses the experience, the temperament and, most of all, the independence and integrity required to uphold the high ethical standards required to fulfill the mission of the Justice Department's Office of Inspector General.

During a law enforcement career of more than 25 years, I served as the Inspector General for the New York City Department of Environmental Protection (1985-90), First Deputy Inspector General for the New York City School Construction Authority (1990-1993) and Deputy Commissioner of Investigation for the New York City Department of Investigation (1994-1998). As Deputy Commissioner, I was responsible for managing the City's entire Inspector General Program. From 1983 through 1993, I also had the honor to serve as a Special Assistant United States Attorney in the Southern District of New York in the Public Corruption Unit. It was in this capacity that I first met Michael when he joined the Unit in 1991. After I became Deputy Commissioner of Investigation in 1994, I had regular occasion to work with Michael on major public corruption investigations and prosecutions in which the Department of Investigation had a role.

During this period, Michael made significant contributions to a series of bribery and fraud cases involving corruption affecting vital programs of the City of New York. He displayed an admirable tenacity in pursuing these investigations matched with a high regard for the integrity of the process at every stage. He also demonstrated that he is a warm and decent person and someone with whom I was proud to work. In the Office of the United States Attorney for the Southern District Attorney, which is noted for the outstanding caliber of its attorneys, Michael was a standout, a status he has maintained during almost a decade of private practice.

RDC Risk Consulting Services LLC
125 Park Avenue, Suite 310
New York, NY 10017 USA

While Michael has a breadth of experience as a lawyer, I believe his experience in the Public Corruption Unit in Manhattan makes him particularly well qualified to be the Inspector General for the Justice Department. Throughout his career, Michael has demonstrated an ability to successfully manage difficult cases and challenges without compromising either his personal integrity or that of his office or client.

As a longtime friend and former colleague of Michael and someone who cares deeply about the integrity and reputation of the Justice Department, I applaud the nomination of Michael Horowitz and believe that President Obama could not have selected someone with better credentials, a deeper commitment to integrity or a more compelling vision of what is required to fulfill the mission of the Office of Inspector General.

I wholeheartedly support his nomination.

Sincerely,

Kevin J. Ford

Managing Director
RDC Risk Consulting Services LLC
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Email: kford@RDC.com



The City of New York
Department of Investigation

ROSE GILL HEARN
COMMISSIONER

October 24, 2011

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

Honorable Charles E. Grassley
United States Senator
Ranking Member, Committee on the Judiciary
135 Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Grassley,

I write in connection with the appointment of Michael E. Horowitz, candidate for the position of Inspector General ("IG") for the United States Department of Justice ("DOJ"). By way of introduction, I am the Commissioner of the Department of Investigation ("DOI") for the City of New York, having been appointed to that position by Mayor Michael R. Bloomberg in 2002. As DOI Commissioner, I am in essence the Inspector General for the City of New York. With approximately 400 employees, my Department serves as an external oversight agency with jurisdictional purview over New York City's 45 agencies, the 350,000 City employees, and all vendors doing business with the City. Prior to my appointment as DOI Commissioner, I was an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York ("SDNY") from 1991 through 2002, where I served as Deputy Chief of the Criminal Division for the last four years of my service in that office.

I have known Michael Horowitz since 1991, which is when we both became Assistant U.S. Attorneys in the SDNY. Thus, both because I have worked with Michael and because I have some experience at what a sizeable IG position involves, I believe I can provide you with some insights about Michael's suitability for the job. I wholeheartedly recommend him for the position. I do not do so lightly because of my appreciation for the importance of the work of your Committee in selecting and screening candidates of excellence. Michael is such a candidate in my view, and I will provide you with my basis for that position.

Senator Patrick J. Leahy

Senator Charles E. Grassley

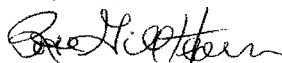
For almost then years, Michael was my colleague in the SDNY and I am able to report that he was very highly regarded by everyone at the U.S. Attorney's Office, the federal judges in our district, and defense attorneys who had cases with Michael. Those collective viewpoints speak to the professional manner in which Michael conducted himself with everyone. He is the consummate professional – a view universally held by people who know him and dealt with him. It was no surprise to people in the SDNY that he was promoted to the position of Deputy Assistant Attorney General for DOJ in Washington in 1999.

As to his substantive abilities, Michael has a keen intellect and was thorough and tenacious in the cases that he investigated/prosecuted, but he was also fair, reasonable and measured. Those are very important qualities for an IG in my experience. Michael has demonstrated his ability to handle sensitive matters of significance as Chief of the Public Corruption Unit in the SDNY. Michael investigated, supervised and tried public corruption cases involving city, state and federal subjects. Some of Michael's matters involved embezzlement where the city or federal government was a victim, others involved corruption, including by police officers. Michael did not shy away from any scenario. He went where the evidence led him. In my view that too is a quality that is desirable in serving the public as an IG.

Michael has worked with various Inspector Generals and Internal Affairs offices and so he understands the role. Indeed, Michael worked with my current department – DOI – on a case of significance. In all of his case work, Michael was effective, whether it was by weeding out corrupt officials or returning money to the City or federal government coffers stolen through fraudulent schemes.

If there is any further information that I can provide to your Committee, please do not hesitate to contact me.

Very truly yours,



Rose Gill Hearn
Commissioner
(212) 825-5913

Statement of Michael E. Horowitz

Chairman Leahy, Ranking Member Grassley, and Members of the Committee, thank you for the honor of appearing before you today as the nominee of President Obama to serve as Inspector General for the Department of Justice.

It is an extraordinarily important position, particularly at this moment in time where the need to eliminate waste, fraud, and abuse, and to promote integrity and efficiency has never been greater. I am confident that my investigative, audit, and management experience in the public and private sector will enable me to undertake these challenges successfully. I will, if confirmed, exercise my duties with the same independence I have demonstrated throughout my career and abide by the bedrock principle that District Judge John Davies instilled in me as his law clerk 24 years ago – that those involved in our justice system must faithfully follow the Constitution and the law, and that ideology, partisanship, politics, and favoritism have no role whatsoever.

That wisdom imparted by Judge Davies served me well as a prosecutor in the Southern District of New York, where I ultimately led the Public Corruption Unit. I was entrusted with some of the Office's most sensitive cases and worked regularly with federal, state, and local Inspectors General, including the Justice Department Inspector General. We tenaciously followed the evidence wherever it brought us – often exposing extraordinary abuses of the public trust. For example, in Manhattan's 30th Precinct, I helped uncover one of the largest instances of police corruption in the City's history. On another occasion, I used the RICO act to prosecute a company and its officers for defrauding the New York City school system and for putting children's health at risk by falsely claiming to be qualified to do asbestos abatement work. And at the then-Immigration and Naturalization Service, I led an investigation that arrested 33 people, including 7 INS employees for taking over \$100,000 in bribes in return for green cards.

The work in the Corruption Unit was not always popular, particularly when we arrested law enforcement officers who were working on other cases in our office. But I was not interested in winning popularity contests. I was told to doggedly pursue corruption and to be independent of the other Units in the Office – and I did just that.

In many instances, our cases relied heavily on the truth tellers – those honest employees willing to step forward to report on corruption in their midst. As a result, I understand the importance of encouraging employees to report suspicious activity, of taking whistleblower claims seriously, and of the need to protect them from retaliation. It is a respect that will serve me well if I am confirmed to be the Inspector General.

Over the past 9 years, my work in private practice has involved conducting independent internal investigations, working with compliance officers to investigate employee whistleblower allegations and to protect them from retaliation, and drafting compliance and ethics programs. Many of these matters involved financial fraud and corruption and, as a result, I worked closely with Internal Auditors, outside forensic accountants, and Audit Committees.

If confirmed, I will use this public and private sector experience to oversee an Office that aggressively pursues investigations, that makes decisions based solely on the facts and the law, that conducts thorough and comprehensive audits, and that issues reports that fairly, fully, and accurately reflect its findings. I also will work tirelessly to protect the Office's independence and to fulfill the Office's statutory dual reporting obligations to the Administration and the Congress by being responsive and by providing timely and reliable information.

My college alma mater, Brandeis University, has as its motto "Truth, Even Unto Its Innermost Parts." It is a creed that I intend to live by if confirmed as Inspector General.

I have been asked by family and friends why I am prepared to leave my law practice to return to the Department of Justice. The answer, for me, is easy – because of my love for public service and for our country, and because of my deep affection for the Department of Justice. The Department is much more than just another federal agency. It is a guardian of our system of justice, and is responsible for enforcing our laws fairly, without bias, and – above all – with the utmost of integrity. The Inspector General plays a critical role in fulfilling that mission, and I pledge that, if confirmed, these values will be the basis for any and all decisions that I make.

Thank you for your time, and I look forward to answering any questions you may have.



SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

October 5, 2011

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

FOR
RECORD

Dear Chairman Leahy:

I am pleased to be writing this letter in support of Michael Horowitz's nomination to serve as Inspector General of the United States Department of Justice.

As the CEO of the Society of Corporate Compliance and Ethics and the Health Care Compliance Association, two non-profit professional associations with nearly 10,000 combined members, I daily see the challenges faced in ensuring that organizations operate lawfully and with the highest levels of integrity. From this experience, and my years as a compliance officer, I firmly believe that Mr. Horowitz will prove a more than able Inspector General.

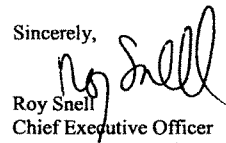
He has demonstrated outstanding leadership in the field of compliance on many levels. His service on the United States Sentencing Commission helped lead to the growth and further development of effective compliance programs globally, and helped him learn the challenges faced by those charged with leading them, a role he will hold if his nomination is approved.

He knows well the need for, difficulties in creating, and strategies for successful stewardship of cultures of compliance. He has been a leading voice in sharing strategies for fighting fraud, encouraging and valuing internal whistleblowers, and raising the standards of organizational behavior. He has not been shy about calling attention to issues, and he has done so in a way that provokes action.

He has also proven able to work collaboratively with other disciplines such as internal audit and HR. But, at the same time, he has never pandered to the audience, always speaking of what must be done, whether the audience wanted to hear the message or not.

In sum, I cannot recommend Michael any higher, and it would be of great value to this country to have him as the Department of Justice's Inspector General. I hope you will give him your support.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy Snell". The signature is fluid and cursive, with the first name "Roy" and last name "Snell" clearly distinguishable.

Roy Snell
Chief Executive Officer
Health Care Compliance Association and
The Society of Corporate Compliance and Ethics



DEPARTMENT OF PUBLIC SAFETY

200 E. Washington Street, Suite E-270, Indianapolis IN, 46204

Telephone: (317) 327-5090 ~ Fax: (317) 327-3446

October 4, 2011

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

The Honorable Charles E. Grassley
Ranking Member, Committee on the Judiciary
135 Hart Senate Office Building
Washington, DC 20510

Chairman Leahy and Senator Grassley:

I am writing to support President Obama's nomination of Mr. Michael E. Horowitz to be the United States Department of Justice's Inspector General. I have had the privilege of knowing and working with Mr. Horowitz since 1991, when he became an Assistant United States Attorney in the Southern District of New York.

By way of background, from 1990-1999, I served as a special agent, assistant special agent-in-charge, and special agent-in-charge in the Office of the Inspector General. I worked under Inspectors General Richard Hankinson, Michael Bromwich, and Glenn Fine. Subsequently, I served as the Executive Deputy Inspector General for the State of New York. Currently, I am the Public Safety Director for the City of Indianapolis, Indiana.

During my tenure in the DOJ-IG, I worked closely with Mr. Horowitz on a number of complex public corruption investigations. Mr. Horowitz distinguished himself among his peers through his tireless efforts, dedication, knowledge of the law and investigative methods. As our careers have progressed, I have remained in contact with Mr. Horowitz and continue to be impressed by his professional accomplishments and his personal integrity.

In my opinion, there is no position more important than protecting the integrity of the U.S. Department of Justice. I believe Mr. Horowitz would continue the tremendous leadership of his predecessors, and move the OIG forward as it fulfills this critical mission. Therefore, it is without reservation that I recommend Mr. Horowitz to be the Department of Justice's next Inspector General.

If I can be of further assistance or provide additional information please contact me at (317) 327-7650.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank G. Straub".

Frank G. Straub, Ph.D.
Director

October 17, 2011

The Honorable Patrick Leahy
Chairman
Senate Committee on Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Committee on Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Grassley, and Members of the Senate Judiciary Committee,

We write in strong support of Michael Horowitz as you consider his nomination for Inspector General at the Department of Justice. We have worked with Michael and observed his work for a long time, and commend him to you as an excellent choice for this important office. He has a rare combination of deep experience in the Department, intellectual rigor, and commands the respect of a broad range of professionals that rely on the Department to execute its important functions well.

Michael knows and understands the Department, and has significant relevant experience. With eleven years of service in both the U.S. Attorney's Office for the Southern District of New York and Main Justice, he has worked with senior leadership in the Bush and Clinton Administrations, virtually every division and component of the Department, and with state and local law enforcement. In the Southern District of New York, he was a line prosecutor, Deputy Chief of the Criminal Division, and Chief of the Public Corruption Unit. He prosecuted significant corruption cases, including with a variety of federal, state, and local Inspectors General.

Michael is nonpartisan, and independent. As an AUSA and Chief of the Public Corruption Unit, Michael was entrusted to handle some of the most important and high profile cases in the U.S. Attorney's office, and he gained a reputation for pursuing cases in a manner that was aggressive but also fair and non-partisan. He clerked for Federal District Judge John Davies, who was appointed by President Reagan, and was recruited to Main Justice by officials in both the Clinton and Bush Administrations. Additionally, Michael was twice nominated by President George W. Bush to a seat on the U.S. Sentencing Commission.

Michael has the requisite management experience. He served as Deputy Chief of the Criminal Division in the U.S. Attorney's Office, where he helped manage approximately 150 prosecutors. As Chief of Staff for the Main Justice's Criminal Division, he helped oversee over 700 employees, with a budget of approximately \$100 million. Currently, he serves on his law firm's Management Committee, overseeing hundreds of employees in eight offices worldwide.

Michael is a dedicated lawyer and professional. He brings to his work a precision, rectitude and thoughtfulness that make the profession proud. His work manifests that: on the Sentencing Commission, he focused on rewriting the ethics and compliance provisions in the Sentencing Guidelines; in the private sector, he drafts ethics and

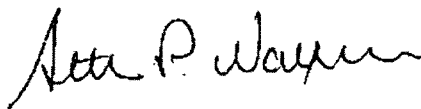
compliance programs for clients, he writes and speaks on the same, and his professional memberships -- on the Board of the Ethics Resource Center and the Advisory Board of the Society of Corporate Compliance and Ethics -- are all consistent.

We urge you to consider Michael Horowitz as a qualified and good candidate for the position of Inspector General at the Department of Justice. We are proud that he is before you, and we strongly endorse his nomination.

Sincerely,



George J. Terwilliger III
Deputy Attorney General (1992-1993)
U.S. Attorney, District of Vermont (1986-1990)



Seth P. Waxman
Solicitor General (1997-2001)
Acting Deputy Attorney General (1997)

Daniel J. Bryant
Assistant Attorney General, Office of Legal Policy (2003-2005)
Assistant Attorney General, Office of Legislative Affairs (2001-2003)

Benton J. Campbell
U.S. Attorney, Eastern District of New York (2007-2010)

Robert J. Cleary
U.S. Attorney, Southern District of Illinois (2002)
U.S. Attorney, District of New Jersey (1999-2002)

Alice S. Fisher
Assistant Attorney General, Criminal Division (2005-2008)

Matthew W. Friedrich
Acting Assistant Attorney General, Criminal Division (2008-2009)

David N. Kelley
U.S. Attorney, Southern District of New York (2003-2005)

Wan J. Kim
Assistant Attorney General, Civil Rights Division (2005-2007)

Stuart A. Levey
Under Secretary for Terrorism and Financial Intelligence (2004-2011)

Guy A. Lewis
U.S. Attorney, Southern District of Florida (2000-2002)
Director, Executive Office for U.S. Attorneys (2002-2004)

Daniel Marcus
Associate Attorney General (1999-2001)

William E. Moschella
Assistant Attorney General, Office of Legislative Affairs (2003-2006)

Randolph D. Moss
Assistant Attorney General, Office of Legal Counsel (2000-2001)

David W. Ogden
Deputy Attorney General (2009-2010)
Assistant Attorney General, Civil Division (1999-2001)

Robert Raben
Assistant Attorney General, Office of Legislative Affairs (1999-2001)

Charles P. Rosenberg
U.S. Attorney, Eastern District of Virginia (2006-2008)
U.S. Attorney, Southern District of Texas (2005-2006)

Richard A. Rossman
Executive Director and former President, National Association of Former U.S. Attorneys
U.S. Attorney, Eastern District of Michigan (2000-2001)

John R. Steer
Vice Chair, U.S. Sentencing Commission (1999-2007)

Donald K. Stern
U.S. Attorney, District of Massachusetts (1993-2001)

Johnny Sutton
U.S. Attorney, Western District of Texas (2001-2009)

Karen P. Tandy
Administrator, Drug Enforcement Administration (2003-2007)

Larry D. Thompson
Deputy Attorney General (2001- 2003)
U.S. Attorney, Northern District of Georgia (1982-1986)

Carlyle P. Thorsen
Deputy Assistant Attorney General, Office of Legislative Affairs (2001-2002)

Gregory A. Vega
U.S. Attorney, Southern District of California (1999-2001)

Alan Vinegrad
U.S. Attorney, Eastern District of New York (2001-2002)

Kenneth L. Wainstein
Assistant Attorney General, National Security Division (2006-2008)
U.S. Attorney, District of Columbia (2004-2006)
Director, Executive Office for U.S. Attorneys (2001-2002)

William W. Wilkens, Jr.
Chief Judge, U.S. Court of Appeals for the Fourth Circuit (2003-2007)
Circuit Judge, U.S. Court of Appeals for the Fourth Circuit (1986-2008)
District Judge, U.S. District Court for the District of South Carolina (1981-1986)
Chair, U.S. Sentencing Commission (1985-1994)

Christopher A. Wray
Assistant Attorney General, Criminal Division (2003-2005)

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Mary Jo White
Partner
Tel 212 909 6260
Fax 212 909 6836
mjwhite@debevoise.com

October 6, 2011

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

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

**Nomination of Michael E Horowitz
Inspector General of the Department of Justice**

Dear Senators Leahy and Grassley:

I write to express my strong support of the nomination of Michael E. Horowitz for the very important position of Inspector General of the Department of Justice. I have known Mr. Horowitz since 1988 when he was a litigation associate in my law firm. Thereafter, he worked very closely with me for six years when I served as United States Attorney for the Southern District of New York. I have also worked with him on several major matters in the private sector. In my opinion, there could not be a stronger or better choice for Inspector General. I recommend him highly without any reservation.

As his very impressive resume clearly reflects, Michael is an exceptional lawyer and public servant who has served in several administrations in important positions, both in the Department of Justice and on the United States Sentencing Commission. At every step of his career, Michael has been recognized for his tremendous abilities and judgment, work ethic and independence. He has excelled in every role, bringing high praise from every quarter of the bench, bar and public.

The Honorable Patrick J. Leahy
The Honorable Charles E. Grassley

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October 6, 2011

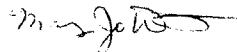
For the Committee's consideration, I would like to share my own experience with Mr. Horowitz when he served as an Assistant United States Attorney and Chief of the Public Corruption Unit in the Southern District of New York United States Attorney's Office, a position to which I promoted him. Of all of the functions in any prosecutorial office, none is more important in my judgment than the efforts devoted to root out public corruption. If our public officials break the law or fail to follow the rules, the entire system of justice is weakened and loses vital credibility. Choosing Michael as the Chief of the Public Corruption Unit is a testament to my very high regard for him, both as a prosecutor and as the kind of person who exhibits the requisite leadership and independence, as well as the strength of character, to carry out one of the most important jobs in any prosecutor's office. No one is better suited to fulfill that difficult responsibility than Michael Horowitz.

While Michael served in and later as Chief of the Public Corruption Unit, he was entrusted with the most sensitive cases and investigations in the Office. He performed superbly. One particular matter he handled which illustrates the strengths Michael would bring to the position of Inspector General was the investigation and prosecution of widespread police corruption. Mr. Horowitz received the Attorney General's Award for Distinguished Service for his work on this case, which has been accurately described as one of the largest police corruption cases in New York City history.

As is the case with any federal prosecutor's office, the Southern District of New York works closely with the Police Department and a number of other state and federal law enforcement agencies on a wide variety of cases. When the Office is called upon to investigate corruption in those same agencies, there is a need for tenacious investigation, clear-eyed independence and judgment. Michael displayed all of those qualities in all of his cases. He also consistently coordinated his efforts with state and federal inspector generals to maximize the effectiveness of all the available anti-corruption resources of law enforcement. That same leadership and effectiveness would serve him very well as Inspector General.

If confirmed as Inspector General of the Justice Department, I am confident that Mr. Horowitz will pursue his mandate without fear or favor, and do the nation and the Department proud. I would be pleased to provide any further information that would be helpful to the Committee.

Sincerely yours,



Mary Jo White

NOMINATION OF HON. JACQUELINE H. NGUYEN, OF CALIFORNIA, TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT; GREGG JEFFREY COSTA, OF TEXAS, TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS; AND HON. DAVID CAMPOS GUADERRAMA, OF TEXAS, TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS

WEDNESDAY, NOVEMBER 2, 2011

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 10:03 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Richard Blumenthal, presiding.

Present: Senators Blumenthal, Feinstein, Franken, and Grassley.

OPENING STATEMENT OF HON. RICHARD BLUMENTHAL, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator BLUMENTHAL. I am going to begin the hearing. We are waiting for some of the other Senators to arrive, but in the meantime I would like to welcome our three nominees and their families. I am pleased to call this hearing to order and thank Chairman Leahy, the Senator from Vermont, for giving me the chance to chair this very, very important hearing.

I am particularly glad to do my part in advancing your nominations. I am impressed by your backgrounds, qualifications, expertise, and experience, and I want to welcome Judge Nguyen as well as Gregg Costa. Judge Nguyen has been nominated to the Ninth Circuit Court of Appeals; Gregg Costa to be District Court Judge for the Southern District of Texas; and David Guaderrama to be the District Court Judge for the Western District of Texas.

I hear consistently when I am in Connecticut, which is my State, about the need for judicial nominations to move forward, and I am glad that we are going to be doing our part today to advance this process, and I am honored to be joined by the Ranking Member of the Judiciary Committee, Senator Grassley of Iowa.

We have a bipartisan interest on this Committee in advancing these nominations because justice should be completely without regard to party or partisan interests. We all have in common the

very strong national interest in filling judicial vacancies when they occur. We now have about one in ten judgeships open in the country, and I am encouraged and I have been encouraged in the time that I have been in the U.S. Senate, which has only been about 10 months, by the progress that we have made in filling those vacancies. But, of course, we need to do more because 161 million Americans live in districts or circuits that have a judicial vacancy that should be filled.

And I want to say to each of the nominees and your families that nothing is more important in the United States system of government than the jobs you are going to be hopefully filling if you are confirmed. You are going to be the face and voice of justice in this country.

I practiced law for about 30 years in the Federal as well as our State courts in Connecticut, and so I saw firsthand the importance of what you do as a prosecutor, as an Attorney General of the State, and want to commend you and thank you for your willingness to step forward and serve in this very, very important role.

So, again, welcome to you, to your families who are also making a sacrifice, and I would like to ask the Ranking Member, Senator Grassley, to now make his opening statement.

Senator GRASSLEY. If Senator Cornyn or Senator Feinstein have to leave after their statement, I would be glad to defer to either one of you now.

Senator BLUMENTHAL. Senator Feinstein.

**PRESENTATION OF HON. JACQUELINE H. NGUYEN, NOMINEE
TO BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT, BY HON.
DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF
CALIFORNIA**

Senator FEINSTEIN. You are very kind. Thank you very much, Senator Grassley. I very much appreciate that. And, Mr. Chairman, thank you very much.

I am very pleased today to introduce Judge Jacqueline Nguyen to become a circuit court judge for the Ninth Circuit Court of Appeals. Judge Nguyen has nearly a decade of experience as a trial court judge with a long record of success.

I recommended that the President nominate Judge Nguyen to the district court in 2009 after my bipartisan judicial selection Committee gave her its highest recommendation. I believed then that she would make an excellent district judge, and she has confirmed that belief, performing her duties as a Federal judge with distinction.

Her nomination is actually a historic one. Judge Nguyen was the first Vietnamese American on the Federal bench when she was confirmed in 2009. She will be the first Asian American female to serve as a Federal appellate judge. I do not doubt that she will make an outstanding addition to the Ninth Circuit.

Born in South Vietnam in the midst of the Vietnam War, Judge Nguyen came to the United States with her family at the age of 10 during the war's final days. The Nguyen family lived in a tent in a San Diego refugee camp for 3 months before moving to Los Angeles. Her parents worked two and three jobs at a time to provide for their family. Judge Nguyen and her five siblings labored along-

side their parents after school and on weekends until late at night, helping to clean dental offices, to peel and cut apples, and to help her parents run a small business—a donut shop that her parents saved every penny to open.

As she wrote to my selection committee, and I quote, “Like many refugees, my parents each worked two jobs, and my siblings and I were expected to do what we could to help the family.”

Judge Nguyen’s story and that of her family shows that hard work and determination can lead to success, and if I might add, really shows that this country still remains a major land of opportunity.

She wrote to my selection Committee that despite the difficulties her family faced, and I quote, “I nevertheless feel incredibly fortunate because those early years gave me invaluable life lessons that have shaped who I am today.” As Judge Nguyen said, she is living the American dream.

Judge Nguyen earned her bachelor’s degree from Occidental College in 1987 and her law degree from the University of California Los Angeles School of Law in 1991. Following law school, she practiced commercial law as a litigation associate for the prestigious firm of Musick, Peeler & Garrett for 4 years. Her caseload included complex contract disputes and intellectual property cases.

In 1995, she entered public service, becoming an Assistant U.S. Attorney in the U.S. Attorney’s Office in Los Angeles. As a Federal prosecutor, she prosecuted a broad array of crimes—violent crimes, narcotic trafficking, organized crime, gun cases, and all kinds of fraud. She handled all phases of these prosecutions from indictment through trial and ultimately on appeal. She tried ten cases to verdict, and she handled numerous appeals to the Ninth Circuit. She frequently helped prepare other Federal prosecutors in Los Angeles for their appellate arguments as well.

She spent about 5 years in the public corruption and government fraud section of the office, prosecuting complex fraud cases, including one case that was described by the United States Customs Service as its largest commercial smuggling case. She also spent 6 months in the organized crime strike force section, handling a Title II wiretap investigation of a Russian organized crime group responsible for smuggling sex slaves into the United States from the Ukraine.

In 2000, she received a special commendation from FBI Director Louis Freeh for obtaining the first conviction ever in the United States against a defendant for providing material support to a designated terrorist organization. The Justice Department recognized her with three additional awards for superior performance as an Assistant United States Attorney, and in 2000 she was promoted to deputy chief of the general crimes section.

Judge Nguyen is a distinguished jurist with nearly a decade of experience as a trial judge. She left the U.S. Attorney’s Office in 2002 when Governor Gray Davis appointed her to the Los Angeles Superior Court. She has served as a Federal district court judge since 2009 when she was nominated by President Obama and confirmed 97–0 by the Senate.

Over the course of her nearly 10-year-long judicial career, she has presided over thousands of cases, including 75 jury trials and

12 bench trials. Forty percent of her cases have been civil proceedings, and 60 percent have been criminal cases. On the bench, she prizes fairness and integrity. She believes in treating all parties with respect and deciding cases in a well-reasoned fashion based on the facts of the case and on the applicable law.

Her colleagues on the bench as well as attorneys from all sides of the bar have praised her for her first-rate legal mind and judicial temperament. In short, she has everything and all the experience to make an excellent addition to the Ninth Circuit. I urge my colleagues to support her nomination.

I thank you for this courtesy, Mr. Chairman. It is very much appreciated.

Senator BLUMENTHAL. Thank you, Senator.

I do not know whether Senators Cornyn and Hutchison would like to introduce their nominees before the Ranking Member makes his statement, but we would be glad to hear you.

PRESENTATION OF GREGG JEFFREY COSTA, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, AND HON. DAVID CAMPOS GUADERRAMA, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS, BY HON. KAY BAILEY HUTCHISON, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator HUTCHISON. Thank you very much, Mr. Chairman, and thank you, Senator Grassley, for allowing us to go forward. Nice to see you, Senator Feinstein.

Senator BLUMENTHAL. Thank you, Senator Feinstein.

Senator FEINSTEIN. Thank you.

Senator HUTCHISON. I am very pleased—and, of course, Senator Franken, thank you, too. We never want to forget Senator Franken.

Let me just say I am very proud of the two nominees that Senator Cornyn and I have put forward. First I want to introduce Mr. Gregg Costa, who has been nominated to serve as a Federal District Judge for the Southern District of Texas in Galveston. He was born in Baltimore, Maryland, but made his way to Texas as soon as he could at the age of 1. Mr. Costa attended Dartmouth where he graduated with a degree in government and then continued his studies at my alma mater, the University of Texas School of Law, where he was editor in chief of the Texas Law Review and received his juris doctorate with highest honors in 1996.

He started his professional career in Houston, where he resides today. He was a law clerk in 1999 and then continued as a fellow in the Department of Justice's Office of the Solicitor General in 2000. In 2001, he became a law clerk for Supreme Court Chief Justice William Rehnquist and then in 2005 became an Assistant U.S. Attorney. He is the co-lead counsel for the U.S. prosecution of Robert Allen Stanford. In addition, during the nearly 6 years as an Assistant U.S. Attorney, he has tried more than 15 cases in matters involving visa fraud, identity theft, human smuggling, and firearms.

His impressive professional career is complemented by his dedication to serve and teach others in the legal community. In addition to being an Assistant U.S. Attorney, he has taught in an adjunct professor position at the University of Houston Law Center

and currently is the co-chair of the Southern Texas chapter of the American Bar Association's White Collar Crime Subcommittee.

He has a wealth of experience and passion for his work, I think it is clear, and I believe he will be an asset to the Federal bench. His family has been with him every step of the way, and his wife, Jennifer, and two sons, Elijah and Joshua, who are here—I guess daughter Rebecca, age 1, is not here, but we understand why. We are glad to have all of you and recommend Mr. Costa to you for this judgeship.

Our second nominee is Judge David Campos Guaderrama, who has been nominated for the Western District bench in El Paso. He is originally from New Mexico, but he, too, realized that the other side of the State line was worthy and moved to El Paso at a young age. He attained two bachelor's degrees from New Mexico State University in political science and psychology and then earned his juris doctorate from the University of Notre Dame School of Law in 1979. Upon his graduation, he began his law career in law offices in El Paso, and after 6 years of private practice was appointed the first chief public defender of El Paso County in 1987.

In 1995, he was elected for the first of five successive terms to preside as judge of the 243rd judicial district court. In October of last year, he began serving as a magistrate in the U.S. District Court for the Western District where he is today.

During his three decades in the Texas legal system, he has earned many accolades. He helped launch the first adult criminal drug court in El Paso County. He co-chaired the Committee to implement a new jury selection plan and was assigned by Chief Justice of the Texas Supreme Court, Wallace Jefferson, to oversee several cases of the Eighth Court of Appeals. He has served in the Texas judicial system for 30 years, and I recommend him highly to the Committee.

Senator BLUMENTHAL. Thank you, Senator.

Senator Cornyn.

PRESENTATION OF GREGG JEFFREY COSTA, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, AND HON. DAVID CAMPOS GUADERRAMA, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS, BY HON. JOHN CORNYN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator CORNYN. Thank you, Mr. Chairman. Senator Grassley, thanks for the courtesy. Senator Franken. It is good to be sitting on this side of the bench today as a member of the Judiciary Committee to join my colleague Senator Hutchison in recommending two outstanding nominees to the Federal bench.

I am proud first to join Senator Hutchison in supporting Gregg Costa to serve as United States District Judge for the Southern District of Texas in Galveston. Just a word about the process. We have worked very closely with the White House and our bipartisan judicial evaluation Committee that is comprised of leading lawyers around the State, and Senator Hutchison and I have made it a point, with the advent of the Obama administration, to work very hard with the White House to, through our bipartisan judicial evaluation committee, recommend some of the best and brightest legal

minds for the White House's consideration, and clearly they have taken our advice on these two nominees.

I will mention Mr. Costa, who was selected for numerous honors and awards, including membership in the Chancellors Society, and his work on the Texas Law Review, two distinctions I am proud to say he shares with my older daughter, who is practicing law in Austin, Texas, now.

After law school, he went on to clerk both for Judge Randolph of the D.C. Circuit and, as Senator Hutchison has said, William Rehnquist at the Supreme Court. His most relevant legal experience, though, comes from his work as Assistant U.S. Attorney, as you have heard from Senator Hutchison.

As a former State district court judge myself, I can say with confidence that we need more trial judges that actually have trial experience. This should not be an on-the-job-training exercise, but in this case we certainly have in Mr. Costa's case somebody who has an outstanding record as a practicing lawyer, in this case a prosecutor, who now will take that knowledge with him to the bench.

This is especially a challenge in our State because of the extensive backlogs because of our relative proximity to the U.S.-Mexico border, immigration cases, drug cases, and the like. But I have no doubt that Mr. Costa will more than competently and efficiently administer his docket, increasing access to justice.

Let me just close by quoting one of Mr. Costa's colleagues. He said, "Mr. Costa has an outstanding work ethic. He is a skilled trial lawyer. He is highly respected by his colleagues and the judges, and he is the go-to lawyer in the U.S. Attorney's Office. He is really smart, and he is by far the most productive prosecutor in the office. I have no doubt that, if given the opportunity, Gregg will be a fine Federal judge."

So I join Senator Hutchison in congratulating Mr. Costa and his family for this great honor, and I have no doubt that the Committee will move expeditiously to recommend to the full Senate his nomination.

Now, if I may, let me say just a few words about our second nominee, David Guaderrama. Of course, as Senator Hutchison pointed out, Judge Guaderrama currently serves as a United States magistrate judge, so he has a very up close and personal view of the Federal dockets in one of our busiest districts in Texas and, indeed, in the United States. That is the Western District of Texas in El Paso.

Like Mr. Costa, Mr. Guaderrama was a consensus nominee recommended to the President by our bipartisan Federal judicial evaluation committee. Of course, Judge Guaderrama possesses a wealth of experience to qualify him for this honor, and he has learned the value of hard work at an early age, serving as a hand on his family's farm in New Mexico.

During college, Judge Guaderrama also worked a variety of jobs, including positions as a gas station attendant and furniture delivery man, and I mention those only because of my firm conviction that it is important that judges who preside over these very important cases understand not only the legal perspective but the perspective of the jurors and the people who seek access to justice in

our courts. And so I think the breadth of his legal experience and his personal experience will help him in that regard.

Like Judge Guaderrama, as I indicated earlier, I am both a former State district court judge and a former gas station attendant, and I cannot help but wonder whether the long days pumping gas in the Texas heat somehow uniquely prepared both of us for our jobs as judges. And to this day, I still have questions which job was actually better.

In all seriousness, Judge Guaderrama had bigger plans, and he went to school, as you have heard, at Notre Dame Law School. After law school, he gained extensive experience in El Paso, as you have heard, and I believe that given the large number of criminal and narcotics cases occupying the Federal docket in El Paso, coupled with the procedural complexities that they often present, Judge Guaderrama's experience with both of these types of cases will well qualify him.

So, Mr. Chairman, thank you for allowing Senator Hutchison and myself both to come before the Committee this morning and recommend these two consensus nominees. It is my sincere hope that Chairman Leahy will put these nominations after this hearing on a markup, that we can get them voted out of Committee, that we can get them to the floor of the Senate, and that Senator Reid will allow us the opportunity to confirm both of these outstanding nominees so they can go on to serve the people of our State and our country in these important positions.

Thank you very much.

Senator BLUMENTHAL. Thank you to both Senators for your very excellent introductions.

Senator Hutchison.

Senator HUTCHISON. Could I just mention that I failed to introduce Mr. Guaderrama's wife, Annalisa, who is with him, and I think it is so nice that both of them are there. So I wanted to put that in the record as well. Thank you.

Senator BLUMENTHAL. Thank you, Senator. Knowing how busy both of you are, thank you very, very much for being with us today.

And now I would like to turn to Senator Grassley for his statement.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Well, like the Chairman and our colleagues, I welcome the nominees appearing today as well as their proud families and friends.

A nominee's hearing is a very important event for the nominee, their families, and, of course, for this institution, the Senate, and for the public that expects us to be very careful about who gets on the bench with lifetime appointments.

The Committee takes this responsibility seriously. Today's hearing is the 17th nominations hearing held during this Congress, meaning during this year. After today, we will have reviewed the qualifications of 69 judicial nominees throughout this year. That means that after today's hearing nearly 92 percent of President Obama's judicial nominees have had a hearing. In total this year, we have made real progress in 86 of the 99 nominations submitted

during this Congress. We have confirmed 53 judicial nominees this year, making this session of Congress one of the most productive over the last 30 years. In total, more than 70 percent of President Obama's judicial nominees have been confirmed through this process, so that is real progress.

Mr. Chairman, today we have two nominees to be district judges in Texas: Mr. Gregg Costa, the Southern District of Texas, presently an Assistant U.S. Attorney in Houston; and Judge David Guaderrama, presently serving as U.S. magistrate judge, the Western District of Texas.

Judge Nguyen, nominated to be United States Circuit Judge of the Ninth Circuit, was confirmed by the Senate less than 2 years ago as district judge for the Central District of California. She was nominated for elevation just 41 days ago. Although she has trial court experience, I am less familiar with her appellate experience, so I will be asking questions about some of her decisions there.

I also hope to hear from each of the nominees regarding their basic judicial philosophy.

I am going to put the rest of my statement in the record which has the full biography of the nominees, and I welcome them once again.

Thank you, Mr. Chairman.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator BLUMENTHAL. Thank you, Senator Grassley.

Today, as we have mentioned, we have three nominees. We are going to consider them in two panels. The first will be Judge Nguyen, who, as you have heard, is currently on the United States District Court for the Central District of California. She has been nominated to be United States Circuit Judge for the Ninth Circuit.

On the second panel, we will consider the nominations of Gregg Costa to the United States District Court for the Southern District of Texas, and he has worked as a Supreme Court law clerk, a fellow in the Office of the Solicitor General at the Justice Department, and he is currently an Assistant United States Attorney in the Southern District of Texas.

And we will also consider on that panel the nomination of David Guaderrama to the United States District Court for the Western District of Texas. He has served as a magistrate judge in that district since 2009, and he previously served four terms as a Texas trial judge.

Judge Nguyen, if you could please come forward, I am going to ask you to raise your right hand. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Judge NGUYEN. I do.

Senator BLUMENTHAL. Welcome, Judge Nguyen, and if you would like to make some opening remarks and introduce your family, please feel free to do so.

**STATEMENT OF HON. JACQUELINE H. NGUYEN, NOMINEE TO
BE CIRCUIT JUDGE FOR THE NINTH CIRCUIT**

Judge NGUYEN. Thank you. Good morning, Mr. Chairman, Senator Grassley, and Senator Franken. It is nice to see you again. I

have no formal opening statement, but I would like to take this opportunity to express my appreciation to all of the members of the Judiciary Committee for considering my nomination to the U.S. Court of Appeals for the Ninth Circuit. I want to thank in particular you, Senator Blumenthal, for chairing today's hearing and Ranking Member Senator Grassley as well and Senator Leahy for scheduling today's hearing. I would like to thank also President Obama for my nomination.

I am joined today by my family, friends, and other supporters, and first, if it is all right with you, Mr. Chairman, I will ask them to stand as I do the introductions.

Senator BLUMENTHAL. Please go ahead.

Judge NGUYEN. First, my husband, Pio Kim, and my two children, 9-year-old Avery and 12-year-old Nolan; my brother, Charlie Nguyen; and I am especially proud to introduce to you today my parents, Binh and Hoa Nguyen.

I am especially happy to have my parents both be here with me today. My father was 41 years old when he was forced to leave everything behind and begin a new life here in the United States, and without all of the sacrifices that they both have done, I would not be sitting here before you today. So it is very meaningful for me that they are present. It is a very proud day for them.

Also, finally, I would like to acknowledge the presence of my three very talented law clerks who have all chosen to fly here from Los Angeles to support me, and that is Christine Golno, Ellen Landsben, and Steven Feldman, as well as numerous other colleagues and friends and family who are watching the webcast at home.

Thank you very much.

[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).

Jacqueline Hong-Ngoc Nguyen
Hong-Ngoc Thi Nguyen, 1965 – 1984 (birth name)

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

United States Circuit Judge for the Ninth 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 District Court
Central District of California
Roybal Federal Building
255 East Temple Street, Suite 7100
Los Angeles, California 90012

Residence: South Pasadena, California

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

1965; Dalat, Vietnam

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, UCLA School of Law; J.D., 1991

1983 – 1987, Occidental College; A.B., 1987

1985 – 1986, Waseda University (Tokyo, Japan); No degree (study abroad program)

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.

2009 – present
United States District Court
Central District of California
Roybal Federal Building
255 East Temple Street, Suite 7100
Los Angeles, California 90012
United States District Judge

2002 – 2009
State of California, Superior Court of the County of Los Angeles
Alhambra Courthouse
150 West Commonwealth Avenue
Alhambra, California 91801
Judge of the Superior Court
Site (supervising) Judge, Alhambra Courthouse (2008 – 2009)

1995 – 2002
United States Attorney's Office
312 North Spring Street
Los Angeles, California 90012
Deputy Chief, General Crimes Section (2000 – 2002)
Assistant United States Attorney, Organized Crime Strike Force (1999 – 2000)
Assistant United States Attorney, Public Corruption & Government Fraud
Section (1996 – 1999)
Assistant United States Attorney, General Crimes Section (1995 – 1996)

1991 – 1994
Musick, Peeler & Garrett
One Wilshire Boulevard
Los Angeles, California 90017
Associate Attorney

Summer 1990
Rosen, Wachtell & Gilbert
[now defunct]
Century City, California
Summer Associate

Fall 1990
Public Advocates
131 Steuart Street, Suite 300
San Francisco, California 94105
Intern

Summer 1989

The Honorable Richard A. Gadbois, Jr. (deceased)
United States District Court, Central District of California
312 North Spring Street
Los Angeles, California 90012
Extern

1987 – 1988

Los Angeles Unified School District
333 South Beaudry Avenue
Los Angeles, California 90017
Substitute Teacher

Other Affiliations (uncompensated):

Asian Pacific American Bar Association of Los Angeles County
c/o Asian Pacific American Legal Center
1145 Wilshire Boulevard, 2nd Floor
Los Angeles, California 90017
President-Elect (1998 – 1999)
President (1999 – 2000)
Board Member (2000 – 2001)
Advisory Board Member (2000 – 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 have not served in the military. I was not required to 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.

“Dream of Los Angeles” Award from Los Angeles Mayor Villaraigosa, 2011
Women’s Leadership Award, National Asian Pacific American Bar Association, 2010
Distinguished Jurist Award, Philippine American Bar Association, 2010
Trailblazer Award, National Conference of Vietnamese American Attorneys, 2009
Occidental College, Alumni Award, 2007
Trailblazer Award, National Asian Pacific American Bar Association, 2006
Various state and U.S. congressional certificates and recognitions as the first Vietnamese American woman judge in the State of California, 2002
Special Recognition Award, Asian Pacific American Legal Center, 2002
“Best Lawyer Under 40.” National Asian Pacific American Bar Association, 2002

Award from the Federal Law Enforcement Officers Association for outstanding contribution in the field of law enforcement, 2002
 Certificates of Appreciation, Public Counsel, Children's Rights Project, 2000 and 2001
 Director's Award from the Department of Justice for "Superior Performance as an Assistant United States Attorney," 2000
 Special Award in the prosecution of Operation Permit to Smuggle, the "largest commercial smuggling case in the history of the U.S. Customs Service," 2000
 Commendation from U.S. Attorney Alejandro N. Mayorkas for Efforts in Prosecution of Health Care Fraud, 2000
 Award from the U.S. Department of State, Bureau of Diplomatic Security for the prosecution of Operation Eastern Approach, 2000
 Special Commendation from FBI Director Louis J. Freeh for securing first conviction ever in the U.S. for providing support to a designated foreign terrorist organization, 2000
 Award from the Asian Pacific American Bar Association in recognition of leadership as President, 2000
 Special Achievement Award for Sustained Superior Performance as an Assistant United States Attorney, 1996 and 1997
 United States Attorney's Office "On-the-Spot" Award, 1997
 Commendation from United States Attorney, assistance in Out of District Prosecution of Corrupt Customs Employee, 1996

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 Inn of Court, Criminal Justice (2011 – present)
 Asian Concerns Committee
 Co-Chair (1994 – 1995)
 Asian Pacific American Bar Association
 Advisory Board Member (2000 – present)
 Board Member (2000 – 2001)
 President (1999 – 2000)
 President-Elect (1998 – 1999)
 Founding Member (1998)
 California Judges Association (2002 – 2009)
 Japanese American Bar Association
 Board of Governors (1995 – 1997)
 Korean American Bar Association (approx. mid-1990s)
 Los Angeles County Bar Association (on and off throughout early to mid-1990s)
 National Asian Pacific American Bar Association (approx. 1990s)
 National Association of Women Judges (2010 – present)
 Southern California Chinese Lawyers Association (early to mid-1990s)
 United States District Court for the Central District of California
 Court Services Committee (2009 – present)
 Vietnamese American Bar Association of Orange County (periodically in the 1990s)

Women Lawyers Association of Los Angeles County
 Board of Governors (2001 – 2002; 2010 – present)
 Co-Chair, Criminal Justice Section (2001 – 2002)
 Co-Chair, Appointive Office Committee (2000 – 2001)

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.

State of California, 1991

There has been no lapse in membership from the date I was admitted to the date I was appointed as a judge to the Superior Court of Los Angeles County. Under the Constitution of California, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office. See California Constitution Article 6, § 9.

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

United States Court of Appeals for the Ninth Circuit, 1995
 United States District Court for the Central District of California, 1991
 All state courts in the State of California, 1991

There has been no lapse in membership from the date I was admitted to the date I was appointed as a judge to the Superior Court of Los Angeles County. Under the Constitution of California, a person serving as a judge of a court of record is not considered to be a member of the State Bar while in office. See California Constitution Article 6, § 9.

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.

Art Docent Program, Co-Chair (approx. 2006 – 2007)

Parent Teacher Association (approx. 2005 – 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.

To the best of my knowledge, 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.

A Flight from Saigon to America, Gavel to Gavel, a Magazine of the Los Angeles Superior Court, Spring 2006. Copy supplied.

Sidebar, APABA Reporter, Oct./Nov. 2000 (Volume II, Issue 4). Copy supplied.

As President of the Asian Pacific American Bar Association ("APABA") from 1999-2000, I wrote short summaries of the organization's activities for APABA's newsletter, the APABA Reporter. I was unable to locate my articles other than the Oct./Nov. article supplied. I have no recollection of the content of the other articles that I may have written for the newsletter.

- 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.

On September 23, 2009, I testified before the United States Senate Committee on the Judiciary, in connection with my nomination to be a United States District Judge for the Central District of California. Transcript supplied.

- 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.

The following list represents my best efforts, through searches of my own records and publicly available databases, to identify speeches that I have delivered and panel discussions in which I participated. In connection with bar association activities throughout my career, I have frequently spoken to young attorneys and law students in organized but informal settings. I have also participated in many panel discussions or "question and answer" sessions on issues such as work/life balance and my experiences as a Vietnamese American attorney and judge. It is likely that I have given other remarks that I have been unable to recall or identify.

August 30, 2011: I spoke at a mentoring brunch hosted by the Asian Pacific American Women Lawyers Alliance. The topic was women in the law and the difficulties of career advancement and work/life balance. I have no notes, transcript or recording. The address of APAWLA is 655 South Flower Street, Los Angeles, CA 90017.

August 24, 2011: I spoke at the New Judges Orientation program sponsored by the Federal Judicial Center. Outline supplied.

June 4, 2011: I was a panel speaker at a seminar hosted by the Los Angeles County Bar Association on summary judgment practice. The seminar was on effective summary judgment practice. I have no notes, transcript or recording. The address of the Los Angeles County Bar Association is 1055 West Seventh Street, Suite 2700, Los Angeles, CA 90017.

May 31, 2011: I was a panel speaker at a "How to Have a Career and a Life" event hosted by the South Asian Bar Association of Southern California. The topic was generally about work/life balance. I have no notes, transcript or recording. The address of SABA-SC is P.O. Box 4587, Cerritos, CA 90703.

May 20, 2011: I was a speaker at the Asian American Pacific Islander Heritage Month celebration organized by the Federal Public Defender's Office, the U.S.

Attorney's Office, the United States District Court, and the United States Bankruptcy Court. Notes and Powerpoint supplied.

May 13, 2011: I delivered brief remarks while accepting the "Dream of Los Angeles" award from Mayor Antonio Villaraigosa at the City of Los Angeles Asian American Pacific Islander Heritage Month celebration. Notes and press coverage supplied.

April 28, 2011: I spoke at a Law Day event at the United States District Court, Central District of California. I spoke about my career path to the bench and took questions concerning the role of a judge in the legal system. I have no notes, transcript or recording. The court's address is 312 North Spring Street, Los Angeles, CA 90012.

March 9, 2011: I spoke at the New Judges Orientation program sponsored by the Federal Judicial Center. I used the same materials supplied in response to the Aug. 24, 2011 event.

February 9, 2011: I spoke informally to a group of students at Loyola Law School at the invitation of the Asian Pacific American Law Students Association. I spoke about my own experiences and how I became a judge, the types of cases on the federal docket, and what judges look for in a law clerk. I have no notes, transcript or recording. The address of Loyola Law School is 919 Albany Street, Los Angeles, CA 90015.

February 8, 2011: I was one of the speakers at a "Meet the Newest Federal Judges" event hosted by the Association of Business Trial Lawyers. The speakers answered the moderator's questions on various issues concerning federal court practice and how they preferred to run their dockets. I have no notes, transcript or recording. The address of ABTL is 8502 East Chapman Avenue, Suite 443, Orange, CA 92869.

January 20, 2011: I spoke to a group of elementary school children at a Kids in Court program at the United States District Court for the Central District of California. I spoke on my own life experiences and journey to the federal bench, and I encouraged the children to pursue their own dreams no matter the obstacle. I have no notes, transcript or recording. The court's address is 312 North Spring Street, Los Angeles, CA 90012.

December 9, 2010: I made introductory remarks at a holiday reception sponsored by the Women Lawyers Association of Los Angeles County. I congratulated newly appointed judges and thanked WLALA for its support of women in the law. I have no notes, transcript or recording. The address of WLALA is 634 South Spring Street, Suite 617, Los Angeles, CA 90014.

November 20, 2010: I spoke at a “Convincing the Judge: Best Practices” seminar hosted by the National Asian Pacific American Bar Association during its annual convention. I spoke on effective motion practice and took questions from the audience. I have no notes, transcript or recording. NAPABA’s address is 1612 K Street NW, Suite 1400, Washington, DC 20006.

October 7, 2010: I spoke at a brown bag lunch organized by the Vietnamese American Bar Association of Southern California. I spoke mainly about my own experiences and journey to the bench. I have no notes, transcript or recording. The court address is 255 East Temple Street, Los Angeles, CA 90012.

September 21, 2010: I spoke at an event hosted by the Oregon Asian Pacific American Bar Association. My remarks congratulated OAPABA and encouraged its members to continue to engage in community service. I have no notes, transcript or recording. The address of OAPABA is P.O. Box 1728, Portland, Oregon, OR 97207.

July 30, 2010: I was a panel speaker at a “Women in Power” luncheon hosted by the Center for Asian Americans United for Self Empowerment (CAUSE). The panel was conducted in a “question and answer” format and I have no recollection of the topics discussed. I have no notes, transcript or recording. CAUSE’s address is 260 South Los Robles Avenue, #118, Pasadena, CA 91101.

July 22, 2010: I co-hosted a brown bag lunch on federal court practice for the Young Lawyers Division of the Federal Bar Association. The topic was effective federal court practice and I took questions from the attendees. I have no notes, transcript or recording. The court address is 255 East Temple Street, Los Angeles, CA 90012.

June 5, 2010: I spoke at a mentoring lunch hosted by the Asian Pacific American Women Lawyers Alliance. The topic was my personal career path to the bench. I have no notes, transcript or recording. The address of APAWLA is 655 South Flower Street, Los Angeles, CA 90017.

April 15, 2010: I spoke at the annual installation dinner of the Philippine American Bar Association of Los Angeles. Notes supplied.

March 18, 2010: I delivered the keynote address during the annual installation dinner of the Vietnamese American Bar Association of DC. Notes and press coverage supplied.

March 12, 2010: I spoke at my investiture ceremony. Notes supplied.

January 27, 2010: I spoke at a reception honoring my appointment to the United States District Court, hosted by the Asian Pacific American Bar Association and other bar organizations. Notes supplied.

October 16, 2009: Recipient of Trailblazer Award, National Conference of Vietnamese American Attorneys. I may have given remarks as the recipient of this award, but I do not specifically recall. I have no notes, transcript or recording. The organization has no address that I was able to locate.

February 2009: I delivered the keynote address at the Annual Dinner of the Vietnamese American Employees Association of Los Angeles County. Notes supplied.

January 2009: I spoke at an event hosted by the Asian Pacific Islander Law Students Association of Southwestern Law School. Notes supplied.

July 24, 2008: I spoke at the annual installation dinner of the Vietnamese American Bar Association of Southern California. To the best of my recollection, I spoke about my experiences as a Vietnamese American woman in the legal profession and on the bench. I have no notes, transcript or recording. The association's address is 10517 Garden Grove Boulevard, Garden Grove, CA 92843.

2008: I was a panel speaker at the Annual National Conference of Vietnamese American Attorneys. The panel discussion concerned advice from judges regarding effective courtroom practice. I have no notes, transcript or recording. The organization has no address that I was able to locate.

October 12, 2007: I spoke at the annual installation dinner of the Vietnamese American Bar Association of Northern California. My remarks congratulated VABA-NC and shared my own personal experiences. I have no notes, transcript or recording. The address of VABA-NC is 1570 The Alameda, Suite 121, San Jose, CA 95126.

2007: I delivered remarks on the State of the Courts in Los Angeles County at Occidental College. Powerpoint slides supplied.

October 28-29, 2006: I may have participated in the "Virtual Reality" Trial Skills Workshop, Southern California Chinese Lawyers Association. I do not specifically recall this event or the substance of any remarks. I have no notes, transcript or recording. The address of the SCCLA is P.O. Box 861959, Terminal Annex, Los Angeles, CA 90086.

September 30, 2006: I was a panel speaker at the Annual National Conference of Vietnamese American Attorneys. The panel discussion concerned advice from judges regarding effective courtroom practice. I have no notes, transcript or recording. The organization has no address that I was able to locate.

February 21-22, 2004: I may have participated in the "Virtual Reality" Trial Skills Workshop, Southern California Chinese Lawyers Association. I do not specifically recall this event or the substance of any remarks. I have no notes, transcript or recording. The address of the SCCLA is P.O. Box 861959, Terminal Annex, Los Angeles, CA 90086.

2004: I spoke at the annual installation dinner of the UCLA Asian Pacific Islander Law Students Association. Notes supplied.

August 16, 2003: Afternoon Tea with the Judges, Asian Pacific American Women Lawyers Alliance. I do not specifically recall this event or the substance of any remarks. I have no notes, transcript or recording. The address of APAWLA is 655 South Flower Street, Los Angeles, CA 90017.

August 2003: I spoke at the annual Vietnamese American Youth Excellence Award Luncheon sponsored by the Vietnamese Culture and Science Association. The purpose of the luncheon was to honor Vietnamese American students who graduated as valedictorians of their high schools. My remarks celebrated the students' achievements and encouraged them to pursue their dreams regardless of the barriers they may face. I have no notes, transcript or recording. The organization's address is 4615 Belle Park Drive, Houston, TX 77072.

2003: I spoke at the annual installation dinner of the Vietnamese American Bar Association of Southern California. Partial notes supplied.

September 19, 2002: Reception honoring my appointment to the Los Angeles Superior Court, Asian Pacific American Bar Association. I have no notes, transcript or recording. The address of APABA is c/o Asian Pacific American Legal Center, 1145 Wilshire Boulevard, 2nd Floor, Los Angeles, CA 90017.

- 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 generally not given interviews as a United States District Judge. The list below represents my best efforts, through searches of the Internet and my records, to identify articles in which I was quoted or a remark was attributed to me. I do not believe that I gave direct interviews to all of these publications, and perhaps some of these articles lifted materials from other published articles. After my appointment to the Los Angeles County Superior Court in 2002, I gave several interviews to the Vietnamese language media and to other papers in the Asian Pacific American community. I am aware that there are a number of articles in the Vietnamese language newspapers about me, but other than what has already been provided, I do not have any other materials.

Ruth D. Kahn, *Women Lawyers Association of Los Angeles to Honor New Judicial Officers and Life Members at This Year's WLALA Holiday Reception*, Women Lawyers Association of Los Angeles Newsletter, Nov. 2010. Copy supplied.

Jackie Bong-Wright, *Judge Jacqueline Nguyen: A Milestone Appointment*, Asian Fortune, May 2, 2010. Copy supplied.

Megan O'Neil, *Her Passion Continues*, Glendale News-Press, Dec. 10, 2009. Copy supplied.

Jacqueline Nguyen '87 Appointed to Federal Bench, Occidental Magazine, Dec. 1, 2009. Copy supplied.

Kenneth Ofgang, *Obama Nominates Nguyen to U.S. District Court*, Metropolitan News-Enterprise, Aug. 3, 2009. Copy supplied.

Claran McEvoy, *Superior Court Judge Is Obama's First Pick for Federal Bench in California*, Los Angeles Daily Journal, Aug. 3, 2009. Copy supplied.

Sarah Garvey, *Former Refugee Helps Immigrants Understand Laws*, Daily Journal, Dec. 9, 2003. Copy supplied.

Andy Faught, *Justice is Served*, Occidental Magazine, Winter 2003. Copy supplied.

Nguyen Trung Tin, *Tan Chanh An Jacqueline H. Nguyen Ra Mat Dong Huong Quan Cam*, Dia Phuong, Oct. 7, 2002. Copy supplied.

Sam Chu Lin, *First Vietnamese American and Korean American Women Seated on State Judiciary*, Asian Week, Aug. 23-29, 2002. Copy supplied.

Sam Chu Lin, *First Vietnamese Am. Woman Named to California Bench*, The Rafu Shimpo, Aug. 23, 2002. Copy supplied.

Jean Guccione, *2 Asian American Women Named as Judges*, Los Angeles Times, Aug. 18, 2002. Copy supplied.

Robert Greene, *Davis Names Assistant U.S. Attorney Jacqueline Nguyen to Fill Vacancy on Los Angeles Superior Court*, Metropolitan News-Enterprise, Aug. 14, 2002. Copy supplied.

Kickback Scheme, City News Service, Feb. 4, 2002. Copy supplied.

Medicare Fraud, City News Service, Aug. 29, 2001. Copy supplied.

Ray Seo, *APABA's President Jacqueline Nguyen*, The APABA Reporter, Aug. 2000. Copy supplied.

Garlic, City News Service, Nov. 17, 1997. Copy supplied.

Greg Hardesty, *Four Charged with Fraud in Sales of Electronic Part to NASA*, Military, Orange County Register, Oct. 9, 1997. Copy supplied.

Rape Extradition, City News Service, July 15, 1996. Copy 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.

I was appointed by former California Governor Gray Davis to serve as a Superior Court Judge, State of California, in August 2002. As a Superior Court judge, I had the authority to preside over all lawsuits filed in the County of Los Angeles. I was assigned to hear primarily criminal law matters. As such, I presided over matters, including trials, filed and prosecuted by the District Attorney's Office in Los Angeles County.

I was appointed to serve as a United States District Judge for the Central District of California by President Obama on December 4, 2009, after unanimous confirmation by the United States Senate. As a United States District Judge, I have the authority to preside over civil and criminal matters filed in or removed to the Central District of California.

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

In the past nine years as a state and federal judge, I have presided over thousands of cases, including over 75 jury trials and over 12 bench trials.

- i. Of these, approximately what percent were:

jury trials:	90%
bench trials:	10%
civil proceedings:	40%
criminal proceedings:	60%

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

See attached list.

- 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. *Atlantic Inertial Systems, Inc. v. Condor Pacific Industries of California, Inc., et al.*, Case No. 2:08-cv-02947-JHN-PJWx; United States District Court, Central District of California. Order Granting in Part and Denying in Part Plaintiff's Motion for Terminating and Monetary Sanctions supplied.

This case arose from purported trademark infringement and misappropriation of trade secrets. Defendant Meltzner owned a gyroscope manufacturing company, Condor Pacific Industries, Inc. ("Condor I") which he founded and built into a \$57 million dollar business. Condor I supplied the gyroscopes to commercial businesses as well as the United States military for use on aircrafts and missiles. In 2002, Meltzner sold the company to BAE Systems Inertial Products. The sale included all of Condor I's intellectual property, including the name, designs and drawings. BAE was acquired by Plaintiff Atlantic Inertial Systems, Inc. in 2007. After the four-year non-compete clause expired, Meltzner formed Condor Pacific Industries of California, Inc. ("Condor II"), hired Condor I's former employees, operated out of the same location as Condor I, and began to conduct business with Condor I's old customers. Atlantic Inertial Systems sued Meltzner and Condor II, alleging that Defendants misappropriated trade secrets and intellectual property by using the same design drawings that were sold to Condor I. The case was hotly contested at every phase of the litigation and included numerous rounds of motions. Prior to trial, the Court granted termination sanctions on two claims against Defendants due to egregious discovery abuse by Meltzner. A jury trial was conducted in February 2011, and the jury returned a verdict on the remaining claims in favor of Defendants. Plaintiff moved for permanent injunction as to the claims on which they prevailed prior to trial, which the court denied.

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2. *United States v. Barajas, et al.*, Case No. 2:10-cr-00351-JHN; United States District Court, Central District of California.

This case involves the indictment of 50 Defendants who are alleged members and associates of the Black Angels gang. They are charged with Racketeer Influenced and Corrupt Organizations (“RICO”) conspiracy, drug distribution conspiracy, and numerous other criminal charges. The Black Angels gang is a multi-generational street gang that is alleged to be closely aligned with an organization known as the “Mexican Mafia” or “La Eme.” The indictment alleges that members and associates of the Black Angels gang are continuously engaged in criminal activity, including the distribution of narcotics, throughout the city of Ontario, California, and the collection of “taxes” from others distributing narcotics in their area. The gang allegedly uses firearms to enforce their activities, maintains close communication with members who are incarcerated, and distributes narcotics in the prison system. The case is related to another indictment in which 12 individuals were charged. All of the Defendants in the 12-person indictment have pleaded guilty and have been sentenced. Numerous Defendants in this case have pleaded guilty; some have been sentenced, and others await sentencing. Numerous motions, including motions to dismiss, were heard in September 2011. Trial in this matter is set for January 2012.

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(818) 781-1570
(for defendant Gil)

Antonio Yoon
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(for defendant Quiroz)

Yolanda Barrera
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(for defendant Castro)

3. *Smartmetric, Inc. v. MasterCard International Incorporated, et al.*, 2:10-cv-1864-JHN-FMO; United States District Court, Central District of California. Order re *Markman* Claim Construction Hearing supplied.

This action arose out of alleged infringement by Defendants MasterCard Incorporated ("MasterCard") and Visa, Inc. ("Visa") of a patent owned by Plaintiff. After two rounds of motions to dismiss, the Court ordered briefing and held a *Markman* hearing on claim construction. After the Court issued a 19-page claim construction order interpreting disputed terms in the patent, the parties stipulated to dismiss the case, reserving their right to appeal to the Court of Appeals for the Federal Circuit.

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4. *Dees v. City of Los Angeles, et al.*, 2:08-cv-05786-JHN-AGR; United States District Court, Central District of California. Order Granting in Part and Denying in Part Defendant City's Motion for Summary Judgment and Granting Defendant County's Motion for Summary Judgment supplied.

This case arose out of Plaintiff's arrest, incarceration pending trial, and prosecution for first degree murder of a victim who was killed in May 2004. Plaintiff was incarcerated for three years pending trial until the charges against him were completely dismissed in 2007. During that time, he was housed with a violent inmate who allegedly beat and stabbed Plaintiff in the eye. Plaintiff filed suit against the City and individual police officers, alleging that he was harassed, arrested without probable cause, deceived and coerced into confessing to a crime he did not commit, and placed in a "high risk" cell. After extensive summary judgment briefing, which the court granted in part and denied in part, the matter was settled out of court.

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Defendant's counsel: Geoffrey R. Plowden
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5. *United States v. Adzhemyan, et al.*, Case No. 2:09-cr-00783-JHN; United States District Court, Central District of California.

Defendants were indicted for conspiring to kidnap victim S.K. The parties contested the purpose of the kidnapping, and the court made key pretrial rulings regarding the relevancy of certain defenses and evidence. It was undisputed that during the kidnapping, the victim suffered a gunshot wound

that had punctured his bowel. During the five days that the victim was held, his condition worsened such that the wound became life-threatening. The victim was rescued by the Los Angeles Police Department SWAT team and required immediate surgery and hospitalization in the intensive care unit. One Defendant entered a guilty plea prior to trial and has been sentenced to 210 months of imprisonment. The first trial as to the remaining Defendants, which occurred in January 2010, resulted in a mistrial when the jury hung. The case was retried in May 2010 and resulted in the convictions of both remaining Defendants. Due to issues pertaining to discovery that arose following the verdict, the matter is pending for hearing on motions for a new trial and sentencing.

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 Christina M. Moreno
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Irwin Mark Bledstein (for defendant Garibyan)
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Barry B. Smith (for defendant Gibson)
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 Monterey Park, CA 91755
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6. *Wilson v. Farmers Group, Inc. Employees Profit Sharing Savings Plan Trust, et al.*, Case No. 2:10-cv-05089-JHN-AJW
 Related cases: *Folck v. Farmers Group, Inc. Employees Profit Sharing Savings Plan Trust, et al.*, Case No. 2:09-cv-02116-JHN-AJW and *Smith v. Farmers Group, Inc. Employees Profit Sharing Savings Plan Trust, et al.*, Case No. 2:09-cv-08288-JHN-AJW; United States District Court, Central District of California. Order Granting Plaintiff's Motion for Class Certification supplied.

This action stems from a state class action lawsuit brought by a group of employees of Farmers Insurance Exchange ("FIE") who sought overtime pay under California law on the ground that they were improperly classified as exempt. A jury trial in state court resulted in a multi-million dollar verdict in favor of Plaintiffs that led to various appellate challenges and modifications. The primary issue in these federal cases concerns the interaction between the overtime payments in the state court actions and how they affect the Employees' Profit Sharing Savings Plan Trust. FIE deposited monies into the individual accounts of employees based on compensation. However, FIE changed the definition of compensation to exclude overtime and made the change retroactive to January 1, 2004. Because the class members in the underlying state lawsuit were awarded retroactive overtime compensation to the time period prior to 2004, Plaintiffs now assert in these federal cases that the Plan should be adjusted to reflect the overtime payments prior to 2004. The court certified the *Wilson* case as a class action in February 2011, and the litigation is still pending.

Plaintiff's counsel: Ronald Dean
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Defense counsel: Mark A. Casciari
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Sheryl L. Skibbe
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7. *Barnes, et al. v. City of Pasadena, et al.*, Case No. 2:10-cv-00470-JHN-PJW; United States District Court, Central District of California. Order Granting Defendants' Motion for Summary Judgment supplied.

This lawsuit arose from the shooting and death of Barnes by City of Pasadena Officers Reep and Alvarado. The shooting occurred during a traffic stop of a car in which Barnes was a passenger. Plaintiffs are Barnes' children and his estate. The Officers contend that Barnes pulled a gun on them as they tried to remove him from the car, and they shot him in self-defense. A loaded gun was found near Barnes' body after the shooting. Plaintiffs contend that the gun was planted, and that the Officers used excessive force. On May 5, 2011, the Court granted Defendants' motion for summary judgment. The matter has been appealed to the Court of Appeals for the Ninth Circuit.

Plaintiffs' counsel: Edirissa Mohammad Omar Faal
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Los Angeles, CA 90017
(213) 534-0344

Defendants' counsel: Hugh Halford
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Kimberly E. Colwell
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8. *In re Freemont General Corporation Litigation*, Case No. 2:07-cv-02693-JHN-FFM; United States District Court, Central District of California. Order Granting Motion for Class Certification supplied.

This action was filed in April 2007 and was related to numerous other potential class actions. The matters were consolidated. Plaintiffs were employees or participants in the Freemont General Corporation's 401(k) and employee stock ownership plans. Defendants were the plans' fiduciaries. Plaintiffs claim Defendants breached their fiduciary duties to protect the plans under the Employee Retirement Income Security Act of 1974. Plaintiffs' primary allegation is that Freemont stock was an imprudent investment for the

plans' assets during the class period. After extensive litigation, the Court granted Plaintiffs motion for class certification in April 2010. In September 2010, the Court granted in part and denied in part Plaintiffs' motion for partial summary judgment on one of Defendants' affirmative defenses. The parties subsequently agreed to settle the matter for \$21 million. The Court approved the settlement and awarded class counsel 30% of the fund in attorney's fees due to the extensive nature of the litigation and the result that was achieved for the class plaintiffs.

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Defense counsel: Michael C. Lieb
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9. *People v. Young*, Case No. GA070636; Trial: October 2 to 29, 2008; Superior Court of California, County of Los Angeles.

Defendant was charged with multiple counts of oral copulation and sodomy on a child under 10 years old and lewd acts with a child under 14 years old. The victim was Defendant's stepdaughter. The evidence showed that Defendant repeatedly sexually abused his stepdaughter, including sodomizing her when she was only eight years old. He was eventually apprehended after percipient witnesses observed the child being forced to engage in a sex act with Defendant in a vehicle. Following a lengthy trial, Defendant was convicted of all counts. Due to Defendant's prior criminal history, on January 6, 2009, he was sentenced under the Three Strikes Law to a term of 250 years to life.

People's counsel: Ana Lopez
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District Attorney's Office
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(616) 356-5610

Defense counsel: Geoffrey Pope
1375 Elma Court
Ontario, CA 91764
(909) 983-3917

10. *People v. Carpenter*, GA066584; Trial: October 22-November 6, 2007;
Superior Court of California, County of Los Angeles.

Defendant was charged with attempted murder arising out of an incident in a local motel room in which Defendant stabbed a paraplegic victim multiple times. Defendant fled the scene while the victim lay bleeding. The evidence showed that the victim may have been invited to Defendant's motel room by other people in order to do drugs, although the victim denied that he used any drugs. The victim described the attack as unprovoked and rage-induced. Defendant, however, described the victim as the aggressor and testified that he vigorously defended himself after the victim attempted to slash his throat in order to rob him. Defendant testified that he fled from the scene because of his criminal history and the fear that the police would discount his version of events. Despite the severity of the victim's injuries, the victim's version was rife with inconsistencies, and the jury found Defendant not guilty.

People's counsel: Donna Hollingsworth
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Defense counsel: Eric Stanford
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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. *Dees v. City of Los Angeles, et al.*, 2:08-cv-05786-JHN-AGRx; United States District Court, Central District of California. (Order Granting in Part and Denying in Part Defendant City's Motion for Summary Judgment and Granting Defendant County's Motion for Summary Judgment; copy supplied in response to 13c.)

Plaintiff's counsel: C. Lisa Schafter
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2. *Atlantic Inertial Systems, Inc. v. Condor Pacific Industries of California, Inc., et al.*, Case No. 2:08-cv-02947-JHN-PJWx; United States District Court, Central District of California. (Order Granting in Part and Denying in Part Plaintiff's Motion for Terminating and Monetary Sanctions; copy supplied in response to 13c.)

Plaintiff's lead counsel: George B. Newhouse, Jr.
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Defense lead counsel: Susan K. Leader and Edward Woods
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3. *Barnes, et al. v. City of Pasadena, et al.*, Case No. 2:10-cv-00470-JHN-PJW; United States District Court, Central District of California. (Order Granting Defendants' Motion for Summary Judgment; copy supplied in response to 13c.)

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4. *Wilson v. Farmers Group, Inc. Employees Profit Sharing Savings Plan Trust, et al.*, Case No. 2:10-cv-05089-JHN-AJW; United States District Court, Central District of California. (Order Granting Plaintiff's Motion for Class Certification; copy supplied in response to 13c.)

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5. *Guengerich, et al. v. Baron, et al.*, Case No. 2:10-cv-01045-JHN-PLAx; United States District Court, Central District of California. (Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiffs' Motion for Summary Adjudication; copy supplied.)

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6. *Smartmetric, Inc. v. MasterCard International Incorporated, et al.*, 2:10-cv-1864-JHN-FMO; United States District Court, Central District of California. (Order *re Markman* Claim Construction Hearing; copy supplied in response to 13c.)

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7. *Spainhower v. U.S. Bank National Association, et al.*, Case No. 2:08-cv-00137-JHN-PJW; United States District Court, Central District of California (Order Denying Motion for Class Certification; copy supplied.)

Plaintiff's counsel: Arin Norjianian
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Defense counsel: Emilie Consuelo Woodhead
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333 South Grand Avenue, 38th Floor
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(213) 615-1873

8. *United States v. Wycoff, et al.*, Case No. 2:10-cv-05856-JHN-PLAx; United States District Court, Central District of California. (Order Granting Motion for Preliminary Injunction; copy supplied.)

Plaintiff's counsel: Brian Corcoran
 U.S. Department of Justice
 Tax Division
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 Washington, DC 20044
 (202) 353-7421

Darwin Thomas
 Office of United States Attorney
 300 North Los Angeles Street, Room 7211
 Los Angeles, CA 90012
 (213) 894-0115

Defendants are in pro per 2801 Ocean Park Boulevard, #296
 Santa Monica, CA 90064
 (310) 398-6370

9. *Perrin, et al. v. Southwest Water Company, et al.*, Case No. 2:08-cv-07833-JHN-AGR; United States District Court, Central District of California. (Order Granting Defendants' Motion to Dismiss Second Consolidated Amended Complaint; copy supplied.)

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Robert Meyer
Saul Brenner
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10. *Kratos Defense & Security, Inc. v. Federal Insurance Company, et al.*, Case No. 2:09-cv-03462-JHN-PJW; United States District Court, Central District of California. (Order Granting Defendant's Motion for Judgment on the Pleadings as to Plaintiff's Third Cause of Action for Breach of Implied Warranty; copy supplied.)

Plaintiff's lead counsel: Daniel Marino
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Mark J. Geragos
Geragos & Geragos
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Defense counsel: David Zubkoff
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- e. Provide a list of all cases in which certiorari was requested or granted.

I am not aware of any case of mine 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.

People v. Dorsey, 2009 WL 3208687 (Cal. App. 2 Dist. 2009). The Defendant was convicted of being a felon in possession of a firearm. I granted the Defendant's *Romero* motion, and sentenced him as a second "strike" offender to 7 years under the California Three Strikes Law rather than as a third "strike"

offender, under which the sentence was 26 years to life. The California Court of Appeal reversed and found that, under the particular facts of this case, it was an abuse of discretion to grant the Defendant's *Romero* motion.

Other than the above case, to my knowledge, I have not been reversed either by the California Court of Appeal or the Court of Appeals for the Ninth Circuit. Some of my decisions were affirmed with minor modifications by the California Court of Appeal.

- 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.

As a district judge, I have filed all my decisions with the federal judiciary's CM/ECF system, which makes all written decisions available to the public and attorneys online. Some of my decisions have been published electronically by Westlaw or Lexis. As a state court judge, I issued very few written decisions. The written decisions were unpublished and stored in the original court files.

- 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.

Guengerich, et al. v. Baron, et al., Case No. 2:10-cv-01045-JHN-PLAx; United States District Court, Central District of California. Copy supplied in response to Question 13d.

Barnes, et al. v. City of Pasadena, et al., Case No. 2:10-cv-00470-JHN-PJW; United States District Court, Central District of California. Copy supplied in response to Question 13c.

- 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.

As a state court judge, I reviewed each case to determine whether there was a basis for recusal or disclosure. To the best of my recollection, I was never asked to recuse on any case nor did I ever recuse sua sponte.

The District Court court has an automated conflict check system. I list in that system the names of persons who cannot appear before me due to close personal relationships and financial interests which would preclude me from presiding over those matters. The system automatically flags any conflict so that the case may be reassigned. In addition, my clerks and I review each case for potential conflict of interest. I have not recused myself in any case. In one criminal case, counsel for one of the defendants moved for my recusal on the ground that my husband is an Assistant United States Attorney and his Office was prosecuting the case. My court automatically referred the motion to another judge, as it does whenever a recusal motion is made. After the motion to recuse was heard and denied by another district judge, I continued to handle the matter. The case was *United States v. Adzhemyan, et al.*, Case No. 2:09-cr-00783-JHN.

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.

None.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, 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 did not serve as a clerk to a judge.

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

I have not practiced alone.

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

1991 – 1994

Musick, Peeler & Garrett
One Wilshire Blvd.
Los Angeles, CA 90017
Associate Attorney

1995 – 2002

United States Attorney's Office
312 North Spring Street
Los Angeles, CA 90012

Deputy Chief, General Crimes Section (2000 – 2002)

Assistant United States Attorney, Organized Crime Strike Force (1999 – 2000)

Assistant United States Attorney, Public Corruption & Government Fraud Section (1996 – 1999)

Assistant United States Attorney, General Crimes Section (1995 – 1996)

- 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 resolutions proceedings.

b. Describe:

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

Following graduation from law school in 1991, I worked as an associate attorney in the Litigation Department of Musick, Peeler & Garrett. I practiced civil litigation in various areas, including commercial disputes, intellectual property, and construction defect.

From 1995 to August 2002, I served as an Assistant United States Attorney in the United States Attorney's Office for the Central District of California. I served in various sections in the Criminal Division, including the Public Corruption and Government Fraud Section for approximately five years. I specialized in the prosecution of complex fraud matters involving smuggling offenses, immigration fraud, mail fraud and tax fraud. I handled all phases of the prosecution, including leading extensive grand jury investigations, complaints and arrests, indictments, trials, sentencings, appeals before the Ninth Circuit, and post-trial habeas corpus litigation. I prosecuted numerous significant matters, including a case that was described by the U.S. Customs Service as its largest commercial smuggling case. I was also the lead attorney in a multi-agency investigation that resulted in the first ever conviction in the United States for providing material support and resources to a designated terrorist organization.

I also served as the Department of Defense ("DOD") Fraud Coordinator, responsible for oversight of all DOD fraud prosecutions in the Central District of California. I met regularly with the managers of all federal agencies responsible for the investigation of DOD fraud, including the FBI, the Defense Criminal Investigative Service, the NASA Office of the Inspector General, and the Office of Investigations for the Air Force and Navy, in order to plan new prosecution initiatives and coordinate significant investigations and prosecutions. I provided training to agents from various federal agencies on various topics, including how to handle grand jury investigations.

In 2000, I served for six months in the Organized Crime Strike Force Section, handling organized crime cases including a Title III wiretap investigation of a Russian organized crime group responsible for the smuggling of sex slaves into the United States from the Ukraine. I left that section in order to accept a promotion to be a Deputy Chief with the General Crimes Section where I was responsible for the training and supervision of new AUSAs in the prosecution of a wide variety of cases, including violent crimes, narcotics trafficking, gun cases, and all types of fraud. In addition to supervision responsibilities, I frequently served as a

"moot court" judge to prepare AUSAs in the office for oral argument before the Court of Appeals for the Ninth Circuit.

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

In private practice, I represented organizations and individuals involved in commercial disputes, intellectual property, and construction defect matters.

As an Assistant United States Attorney, my client was the United States. I specialized in the prosecution of violent crimes, organized crime, narcotics trafficking, gun cases, and complex fraud 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.

All of my practice as an attorney has been in litigation. In private practice, I appeared in court occasionally. As an Assistant United States Attorney, 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: | 0% |
| 4. administrative agencies: | 0% |

ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 33% |
| 2. criminal proceedings: | 67% |

- 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 tried 10 cases to verdict as an attorney prior to becoming a judge. I was sole counsel representing the United States in seven trials, and co-lead counsel in three long trials.

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. Nunez*, CR 01-145-NM; United States District Court, Central District of California; Honorable Nora M. Manella; 2001

This was a complex health care fraud prosecution resulting from an extensive grand jury investigation. Defendant, a registered nurse, was the owner of a home health agency. From approximately 1995 to 1998, Defendant also owned or controlled several board and care facilities for primarily Medicare patients. Defendant orchestrated a scheme to defraud Medicare, resulting in a loss of millions of dollars. Defendant created numerous shell companies and false books in order to conceal illegal kick-backs and claims for non-existent services. I led the grand jury investigation which resulted in sufficient evidence to secure Defendant's guilty plea on February 26, 2001 to health care fraud and tax charges as well as her cooperation in connection with health care fraud perpetrated by other individuals.

Defense Counsel: Richard Steingard
 Lightfoot Steingard & Sadowsky LLP
 800 Wilshire Boulevard, Suite 1050
 Los Angeles, CA 90017
 (213) 260-9449

2. *United States v. Dev*, CR 01-224-RSWL; Related cases: *United States v. Yekrang*, CR 01-225-CBM, *United States v. Tabatabai*, CR 01-663-RSWL; United States District Court, Central District of California; Honorable Ronald

S.W. Lew (CR 01-224 and CR 01-663); Honorable Consuelo B. Marshall (CR 01-225); 2000 – 2001

This case involved acceptance of illegal kick-back payments by Defendants Yekrang and Tabatabai, employees at Allied Signal, Inc. (now Honeywell, Inc.), a government contractor. Defendant Dev was the owner of Object Foundry, Inc., a software company providing software-related consulting services to Allied Signal on a subcontract basis. Dev gave Yekrang and Tabatabai illegal kickback payments in exchange for subcontract awards, contract extensions, and for the approval of inflated labor claims submitted by Dev to Allied Signal. Defendants disguised the illegal payments, about \$250,000 in less than two years, by funneling the money through various corporate bank accounts and falsely reporting the nature of the payments to the IRS. I secured guilty pleas from all Defendants on kick-back and tax charges in 2001 after a one-year grand jury investigation. I was sole counsel for the United States.

Defense Counsel: Michael Artan (for defendant Dev)
One Wilshire Boulevard, Suite 2200
Los Angeles, CA 90017
(213) 688-0370

Martin Bakst (for defendant Yekrang)
15760 Ventura Boulevard, Floor 16
Encino, CA 91436
(818) 981-1400

David Conn (for defendant Tabatabai)
(deceased)

3. *United States v. Tabatabai, et al.*, CR 99-225-CAS; United States District Court, Central District of California; Honorable Christina A. Snyder; 1999

I led a team of agents from the FBI, State Department, INS, and LAPD during this complex, 2 ½-year investigation that led to the arrest of 35 individuals in several countries in 1999. The investigation targeted an international criminal network that spanned six states and four countries. Individuals in the network filed on behalf of their clients false applications for U.S. entry visas and asylum status in the United States, supporting the applications with false documents created by numerous independent document producers. These false documents, including identity cards, passports, bank and employment records, were also submitted at various U.S. Embassies or Consulates in numerous countries. Significantly, the targets of the investigation were able to change their clients' identities during the asylum process by changing their names, dates of birth, and if necessary, creating false fingerprint cards. These individuals' identities were changed if they had an arrest record, were

previously denied asylum under their true names, or were affiliated with a terrorist or subversive organization. In March of 1999, I coordinated over 40 searches, arrests and interview teams consisting of more than 250 law enforcement agents. Agents seized more than \$2 million in property and cash and confiscated weapons, narcotics, and hundreds of counterfeit identity documents. As a result of this investigation, four additional suspects were arrested in Turkey, Cyprus, and the Netherlands. On October 25, 1999, Tabatabai became the first individual ever in the United States to be convicted of providing material support and resources to a designated foreign terrorist organization in violation of Title 18, United States Code, Section 2339B. He also pleaded guilty to conspiracy to commit visa and asylum fraud. Further, 16 other individuals eventually pleaded guilty to various fraud and immigration-related offenses. I was lead counsel for the United States.

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Defense counsel: Jerry Caplan (for defendant Tabatabai)
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(phone number not available)

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David Chesnoff (for defendant Arefe)
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T. Louis Palazzo (for defendant Arefe)
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(702) 577-3997

Alex R. Kessel (for defendant Veiseh)
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Encino, CA 91436
(818) 995-1422

Laura C. Crawford (for defendant Noori)
Law Offices of Laura C. Crawford
10821 Wilkins Avenue
Los Angeles, CA 90024
(310) 560-4528

Ron Kaye (for defendant Haghighatgoo)
Kaye, McLane & Bednarski LLP
234 East Colorado Boulevard
Pasadena, CA 91101
(626) 844-7660

4. *United States v. Dennis, et al.*, CR 98-556-MMM; United States District Court, Central District of California; Honorable Margaret M. Morrow; 1998

In April and May of 1998, Defendants committed two armed, take-over style robberies of a Bank of America in Duarte, California. In the first robbery, Defendant Hunter guarded the door with a gun while Defendant Dennis vaulted over the counter and robbed the merchant teller of approximately \$13,000. One month later, Defendants returned to the same bank, joined by a third robber. Defendants were more violent during this robbery, forcing a guard and customers to the floor at gunpoint. Defendant Hunter jumped over the counter and robbed all of the tellers. The third robber pleaded guilty prior to trial. During the jury trial, I handled half of the witnesses, including the main victim teller, and the closing and rebuttal arguments. Defendants were convicted of conspiracy, armed bank robberies, and using and carrying a firearm during crimes of violence.

Co-counsel: Anthony Pacheco
Proskauer Rose
2049 Century Park East, Suite 3200
Los Angeles, CA 90067
(310) 284-5647

Defense counsel: Humberto Diaz (for defendant Hunter)
Deputy Federal Public Defender
Federal Public Defender's Office
321 East Second Street
Los Angeles, CA 90012
(213) 894-2854

Cornell Price (for defendant Dennis)
445 South Figueroa Street, # 2640
Los Angeles, CA 90071
(213) 489-6835

Marcia Brewer (for defendant Cotton)
400 Corporate Pointe, Suite 800
Culver City, CA 90230
(310) 670-5325

5. *United States v. Wang, et al.*, CR 98-455-RAP; United States District Court, Central District of California; Honorable Richard A. Paez, 1997 – 1999

This case, described by the U.S. Customs Service as the largest commercial smuggling case in the history of the Customs Service, involved the smuggling of goods from China and Hong Kong into the United States. The scheme was masterminded by Defendant Juang, who operated a Customs-bonded container freight station under various legal entities from approximately 1995 to 1997. Juang used the container freight station to smuggle goods such as apparel and luggage, subject to quota restrictions and high duty rates, as well as prohibited Asian medicines, into the United States. Juang successfully evaded detection by manipulating the Customs entry process and filing multiple false documents. The nature of the goods and the identities of the actual importers were concealed, and Juang or his co-conspirators falsely listed "shell" corporations he controlled as the importers in order to maintain control over the shipments. Juang was paid millions of dollars for his services by dozens of importers. The paper trail on the individual importers other than Juang was extremely thin because Juang and his employees controlled all the documentation submitted to Customs. Thus, the cases against these individual importers were built mainly on Juang's cooperation. I was co-lead counsel for the government during the jury trial, handling the opening statement, the examination of Juang, and numerous other witnesses.

Co-counsel: William Carter
Los Angeles City Attorney's Office
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Los Angeles, CA 90012
(213) 978-8347

Defense counsel: Michael Abzug (for defendant Juang)
 Judge, Los Angeles County Superior Court
 Metropolitan Courthouse
 1945 South Hill Street
 Los Angeles, CA 90007
 (213) 744-4073

Alex R. Kessel (for defendant Wang)
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Ed Robinson (for defendant Lu)
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 Torrance, CA 90503
 (310) 316-9333

David Reed (for defendant Chen)
 3699 Wilshire Boulevard, Suite 850
 Los Angeles, CA 90010
 (310) 854-5246

6. *United States v. Lam*, CR 99-454-RAP; United States District Court, Central District of California; Honorable Richard A. Paez; 1999

This was a spin-off investigation of the prosecution described above. Defendant, a large New York-based importer of apparel manufactured in China, conspired with Juang to smuggle defendant's goods into the United States. Defendant paid Juang a set fee per container to handle the importation and transportation of about 52 shipments and to file fraudulent documents with the Customs Service. In a two-year period, Defendant avoided paying over \$2 million in duties and saved millions more in quota fees. Following a 13-day jury trial, Defendant was convicted on all counts. I was co-lead counsel for the United States.

Co-counsel: William Carter
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 800 City Hall East
 200 North Main Street
 Los Angeles, CA 90012
 (213) 978-8347

Defense counsel: Joseph Vodnoy
643 South Olive Street, Suite 600
Los Angeles, CA 90014
(213) 893-7500

7. *United States v. Glushankoff*, CR 99-109-SVW; United States District Court, Central District of California; Honorable Stephen V. Wilson; 1995 – 1999

This investigation focused on the Foreign Trade Zone ("FTZ") set up to facilitate international commerce. Defendant and numerous co-conspirators smuggled millions of dollars of textiles from China into the United States through the port of entry in Long Beach and Los Angeles. Defendant transported the goods to Laredo, Texas and filed false documents with the U.S. Customs Service showing that the shipments were purportedly exported to Mexico. (There is no duty assessed, and no quota restrictions apply, to goods that merely transit through the United States.) Once the goods were inspected at the Texas-Mexico border, the goods were diverted back to Los Angeles. The fraud was difficult to detect because the Customs documents appeared legitimate. However, through the use of undercover agents and extensive surveillance for nine months, agents tracked the connection to the border in Laredo. Nevertheless, it was difficult to connect Defendant to the fraud. As a result, I spent considerable effort securing the cooperation of Defendant's co-conspirators in Laredo in order to build a case against Defendant. Defendant eventually pleaded guilty to smuggling and tax charges. I also prosecuted two co-conspirators in Laredo for their participation in the scheme. They pleaded guilty and were sentenced in Texas. I was sole counsel for the United States.

Defense counsel: Thomas Campbell
(currently inactive)
c/o Farmer & Ridley LLP
444 South Flower Street
Los Angeles, CA 90071
(213) 542-7026

8. *United States v. Osakue*, CR 96-431-R; United States District Court, Central District of California; Honorable Manuel L. Real; 1996

Defendant, a law student at Hastings Law School in San Francisco, fraudulently obtained a United States passport in 1989 by submitting a fraudulent birth certificate. Four years later, an investigation of Defendant's brother, who was the main suspect in a major Nigerian credit card fraud ring, led to a search of the home Defendant shared with his brother. Defendant presented the passport as proof of his identity. The evidence seized from Defendant's home also connected him to other illegal activities. I took the case to a jury trial and, through circumstantial evidence, including

inconsistencies between Defendant's passport application, his school records, and his brother's records, proved that Defendant applied for a passport in a false identity. Defendant was convicted by the jury and became a fugitive while his appeal was pending in the Ninth Circuit Court of Appeals. I was sole counsel for the United States.

Defense counsel: Derek Li
Equal Employment Opportunity Commission
255 East Temple Street, 4th Floor
Los Angeles, CA 90012
(213) 894-1077

9. *United States v. Orjuela, et al.*, CR 95-11-WJR; United States District Court, Central District of California; Honorable William J. Rea; 1995

This investigation focused on a cocaine trafficking organization headed by three individuals and numerous accomplices. The investigation relied heavily on wiretap interception of telephones and paging devices connected to Defendants' organization and extensive surveillance of Defendants' activities. Defendants were planning to distribute multiple shipments of cocaine to wholesale distributors throughout Los Angeles and other areas. Defendants were arrested when the organization received a shipment of approximately 50 kilograms of cocaine and attempted to deliver it to a distributor. After extensive pre-trial preparation, Defendants pleaded guilty in 1995 to conspiracy and drug trafficking charges on the eve of trial. I was co-counsel for the United States.

Co-counsel: Larry Cho
Judge, Los Angeles Superior Court
1725 Main Street
Santa Monica, CA 90401
(310) 260-1854

Defense counsel: Richard Callahan (for defendant Orjuela)
225 South Lake Avenue, Suite 300
Pasadena, CA 91101
(626) 202-4060

Robin R. Scroggie (for defendant Posso)
865 South Figueroa Street
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John Yzurdiaga (for defendant Silva)
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Gregory Nicolaysen (for defendant Calle)
27240 Turnberry Lane, Suite 200
Valencia, CA 91355
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Phillip Trevino (for defendant Bedoya)
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(213) 949-8000

Nadine Hettle (for defendant Quintero)
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321 East Second Street
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W. Michael Mayock (for defendant Longoria)
65 North Raymond Avenue, # 235
Pasadena, CA 91103
(626) 405-1465

10. *In re Extradition of Vachon*, SACV 96-672-GLT (BE); United States District Court, Central District of California; Honorable Elgin Edwards, United States Magistrate Judge; 1996 – 1997

Defendant fled to the United States in 1994 after kidnapping and torturing two female victims in Australia. Defendant lured the victims to a remote cabin where he and an accomplice hung the victims up by their hands and repeatedly tortured and assaulted them. I filed an extradition arrest warrant and litigated Defendant's extradition proceedings. Defendant vigorously fought extradition, challenging every stage of the proceedings, including his detention based on several serious medical conditions and the probable cause for each charge against him. I extensively researched California law in order to prepare the government's response. After a contested hearing, the court certified that Defendant was extraditable. Defendant then challenged the court's findings. When he lost, Defendant filed a petition for writ of habeas corpus, and subsequently, a motion for stay pending appeal in the Ninth Circuit Court of Appeals. After his remedies were exhausted, Defendant was extradited nearly a year after he was arrested. I served as sole counsel for the United States.

Defense Counsel: Neison Marks
 Federal Public Defender's Office
 1 East Broward Boulevard, Suite 1100
 Fort Lauderdale, FL 33301
 (954) 356-7436

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.)

Throughout my legal career, I have been involved in numerous bar associations, including the Asian Pacific American Bar Association and the Women Lawyers' Association of Los Angeles County. My activities have included serving as a board or committee member, planning and organizing events, and attending meetings and functions hosted by the association. I also have frequently served as a mentor to many young lawyers through these organizations, both formally and informally. I frequently speak to young students and lawyers concerning issues ranging from balancing family and work to the importance of community involvement.

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.

None.

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.

My husband is employed as an Assistant United States Attorney in the Major Frauds Section, Criminal Division of the United States Attorney's Office, and this presents a potential conflict of interest in cases prosecuted by the United States Attorney's Office, particularly by the Criminal Division.

Currently, I do preside over matters, civil and criminal, from the United States Attorney's Office, although not cases in which my husband has had any involvement, no matter how minor. Criminal matters comprise a small percentage of my overall docket. I have been assured by the current United States Attorney for the Central District of California that there is an ethical wall set up in his office to ensure that no information is communicated to my husband regarding any matters from that office that are assigned to me. To reinforce this wall, I do not discuss matters from that office pending before me with my husband. He also does not discuss with me matters in which he is involved, even though they will not come before me. Similar precautions will ensure no conflict of interest if I am confirmed to the position for which I have been nominated.

I have no financial arrangements that will likely present any potential conflict of interest. I have served in the public sector for most of my professional life, and neither my husband nor I have any business interests or arrangements that may pose a conflict 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.

To the extent that any potential conflict issue arises, my practice has always been to analyze each situation to determine whether the issue calls for disclosure or recusal. In all cases, I will follow the Code of Conduct for United States Judges.

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.

In law school, I volunteered at the Asian Pacific American Legal Center in Los Angeles. I met with indigent clients of APALC in order to conduct intake interviews. After I began practicing law, I consistently made time to provide free legal services. While in private practice, I asked my firm to authorize me to handle pro bono matters in the wake of the 1992 riots in Los Angeles, representing indigent Vietnamese speaking clients in small business disputes. As an attorney, I was always active in various Asian American bar associations, including the Asian Pacific American Bar Association, the Japanese American Bar Association and the Southern California Chinese Lawyers Association. These organizations have annual Law Days in their respective communities and I frequently participated in these events by meeting with indigent clients and giving them free legal advice on immigration, landlord-tenant and business disputes. From approximately 1997 to 2002, after I joined the U.S. Attorney's Office, I handled adoption cases through Public Counsel's Adoptions Program, representing foster parents in adoption proceedings to adopt their foster children. I handled the filings and appear in court on behalf of these parents. I also frequently volunteered to speak at various community and student-sponsored forums on issues of concern to the Asian Pacific American communities.

As a judge, I can no longer provide free legal services. However, I am still active in bar associations, particularly in the Asian Pacific American community. I attend their events and make myself available as a panel speaker and a mentor. I spend a substantial amount of time mentoring minority attorneys, both through formal bar association channels as well as on my own. I frequently meet with young attorneys in small groups or one-on-one to provide guidance and support.

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.

Senator Feinstein has established bipartisan Judicial Advisory Committees, which are overseen by her statewide Chair, David Casey. On June 17, 2011, I met with David Casey, Holly Fujie, chair of the committee for the Central District of California, and Louise Renne, chair of the committee for the Northern District of California. In early July, 2011, I met with Senator Feinstein. In August 2011, I was contacted by the White House Counsel's Office. Since August 5, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On August 23, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On September 22, 2011, 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. 1/2011

**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) Nguyen, Jacqueline H.	2. Court or Organization United States District Court, Central District of California	3. Date of Report 09/22/2011
4. Title (Article III judges indicate active or senior status; non-judicial judges indicate full- or part-time) United States District Judge - Active	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 9/21/2011 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2010 to 08/31/2011
7. Chambers or Office Address Royal Federal Building 255 E. Temple Street Los Angeles, CA 90012	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>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
 Page 2 of 7

Name of Person Reporting	Date of Report
Nguyen, Jacqueline H.	09/23/2011

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.		
2.		
3.		
4.		

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

☒ NONE (No reportable non-investment income.)

DATE	SOURCE AND TYPE
1.	
2.	
3.	
4.	

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

☐ NONE (No reportable reimbursements.)

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
 Page 3 of 7

Name of Person Reporting	Date of Report
Nguyen, Jacqueline H.	09/22/2011

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. 32-34 of filing instructions.)*
☐ NONE *(No reportable liabilities.)*

	<u>CREDITOR</u>	<u>DESCRIPTION</u>	<u>VALUE CODE</u>
1.	Wells Fargo Bank	Mortgage	M
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT
 Page 4 of 7

Name of Person Reporting	Date of Report
Nguyen, Jacqueline H.	09/22/2011

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 "NY" 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)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Asset Code 1 (A-H)	Type (e.g., div., rent, or loan)	Value Code 2 (J-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (J-P)	Gain Code 1 (A-H)	Identity of buyer/seller if private transaction
1. Perkins Mid-Cap Value Fund	A	Int./Div.	K	T					
2. Los Angeles Property #1 (Y) - Trust #1		None							
3. Orange County Property #2 - Trust #1	D	Rent	J	W					
4. Bank of America checking	A	Int./Div.	J	T					
5. Southland Federal Credit Union #1	A	Int./Div.	K	T					
6. Southland Federal Credit Union Account #2	A	Int./Div.	L	T					
7. Charles Schwab	A	Int./Div.	K	T					
8. Putnam MultiCap Growth -IRA#1 (formerly Bank of America IRA)	A	Int./Div.	J	T					
9. Los Angeles County 401(k) Retirement Plan		None	N	T					
10. -Stable Value Fund									
11. -Large Cap Equity Fund									
12. -Small Cap Equity Fund									
13. -2020 Target Date Fund									
14. -2030 Target Date Fund									
15. ScholarShare College Savings Plan-CA Portfolio 2021 age based	B	Int./Div.	J	T					
16. ScholarShare College Savings Plan-CA Portfolio 2018 age based	B	Int./Div.	K	T					
17. County of Los Angeles 457 Savings Plan		None	M	T					

1. Income Code Labels: (See Columns B1 and D2)	A = \$1,000 or less F = \$50,001 - \$100,000 J = \$15,000 or less N = \$250,001 - \$500,000 P1 = \$25,000.01 - \$50,000.00 Q = Appraisal U = Bank Value	B = \$1,001 - \$2,500 G = \$100,001 - \$1,000,000 K = \$15,001 - \$50,000 O = \$300,001 - \$1,000,000 R = Cash (Real Estate Only) V = Other	C = \$2,501 - \$5,000 H = \$1,000,001 - \$5,000,000 L = \$50,001 - \$100,000 P2 = \$1,000,001 - \$5,000,000 P3 = More than \$5,000,000 W = Contained	D = \$5,001 - \$15,000 M = \$100,001 - \$250,000 P4 = \$15,000,001 - \$25,000,000 T = Cash Market	E = \$15,001 - \$50,000 N2 = More than \$5,000,000 P5 = \$100,001 - \$250,000 P6 = \$15,000,001 - \$25,000,000
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Name of Person Reporting	Date of Report
Nguyen, Jacqueline H.	09/22/2011

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.	B.	C.	D.
Description of Assets (including trust assets)	Income during reporting period	Gross value at end of reporting period	Transactions during reporting period
Place "(X)" after each asset except from prior disclosure:	(1) Amount Code 1 (A-H)	(2) Type (e.g., div., rent, or sale)	(1) (2) (3) (4) (5) Date Value Gain Identity of <i>maturity</i> Code 2 Code 1 buyer/seller (J-P) (Q-W) (if private transaction)
18. -2010 Target Date Fund			
19. -Non-US Equity Fund			
20. -Small Cap Equity Fund			
21. -Large Cap Equity Fund			
22. -Stable Income Fund			
23. Putnam Multicap Growth-IRA#2	A	Int./Div.	J T
24. Janus Growth & Inc.	A	Int./Div.	J T
25.			
26.			

- | | | | | | |
|---|-----------------------------------|--|--|--|---|
| 1. Interest Cost Deduct | A = \$100,000 or less | B = \$100,000, \$250,000 | C = \$250,001 - \$500,000 | D = \$500,001 - \$1,000,000 | E = \$1,000,001 - \$10,000,000 |
| 2. Value (Columns B) and D/E | F = \$500,001 - \$100,000,000 | G = \$100,000,001 - \$1,000,000,000 | H = \$1,000,000,001 - \$10,000,000,000 | I = \$10,000,000,001 - \$100,000,000,000 | J = \$100,000,000,001 - \$1,000,000,000,000 |
| 3. Value Codes
(See Columns C1 and D3) | K = \$250,001 - \$100,000,000 | L = \$100,000,001 - \$1,000,000,000 | M = \$1,000,000,001 - \$10,000,000,000 | N = \$10,000,000,001 - \$100,000,000,000 | O = \$100,000,000,001 - \$1,000,000,000,000 |
| 4. Value Method Codes
(See Column C7) | U = Appraisal
V = Broker Value | R = Cost/Real Estate Method
W = Other | P = Appraisal
Q = Broker Value | S = Appraisal
T = Cash Market | |

FINANCIAL DISCLOSURE REPORT
 Page 6 of 7

Name of Person Reporting	Date of Report
Nguyen, Jacqueline H.	09/22/2011

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

Part I. Trust #1 is a personal family trust. My spouse and I are co-trustees and beneficiaries, together with our children.

FINANCIAL DISCLOSURE REPORT
 Page 7 of 7

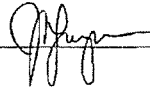
Name of Person Reporting	Date of Report
Nguyen, Jacqueline H.	09/22/2011

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)

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		133	382	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities -- see schedule		657	134	Notes payable to relatives			
Unlisted securities				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 -- see schedule	1	244	560
Real estate owned -- see schedule	2	041	600	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		20	775				
Cash value-life insurance							
Other assets itemize:							
Federal Thrift Savings Plan		379	364				
				Total liabilities	1	244	560
				Net Worth	1	987	696
Total Assets	3	232	256	Total liabilities and net worth	3	232	256
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor		10	000	Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	Yes		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT**NET WORTH SCHEDULES**Listed Securities

Applied Materials	\$ 495
Cisco	582
Microsoft	1,781
Janus Growth & Income Fund	4,396
Perkins Mid Cap Value Fund	15,647
Putnam Multi-Cap Growth Fund	15,537
ScholarShare College Savings Plan Portfolio 2018	28,853
ScholarShare College Savings Plan Portfolio 2021	13,509
County of Los Angeles Savings Stable Value Fund	29,307
County of Los Angeles Savings Large Cap Equity Fund	46,177
County of Los Angeles Savings Small Cap Equity Fund	54,243
County of Los Angeles Savings 2010 Target Date Fund	39,026
County of Los Angeles Savings 2020 Target Date Fund	90,925
County of Los Angeles Savings 2030 Target Date Fund	288,316
County of Los Angeles Savings Non-U.S. Equity Fund	28,340
Total Listed Securities	<u>\$ 657,134</u>

Real Estate Owned

Personal residence	\$ 1,400,000
Family residence	341,600
Rental property (50% interest)	295,000
Timeshare	5,000
Total Real Estate Owned	<u>\$ 2,041,600</u>

Real Estate Mortgages Payable

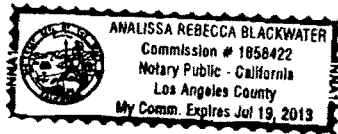
Personal residence	\$ 714,500
Home equity line of credit	54,912
Family residence	240,438
Rental property (50% interest)	234,710
Total Real Estate Mortgages Payable	<u>\$ 1,244,560</u>

AFFIDAVIT

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

September 27, 2011
(DATE)

[Signature]
(NAME) Jacqueline H. Nguyen



Analissa Rebecca Blackwater
(NOTARY)

Senator BLUMENTHAL. Thank you, Judge Nguyen, and a special welcome to your family and friends and most especially to your parents who are here today.

I have just a few questions for you. First, we have heard and I have read about your very powerful story, about your background and your achievements and your family's achievements, and I wonder if you could talk briefly about how those experiences would inform or shape your views of your role as a judge on the Ninth Circuit.

Judge NGUYEN. When I was appointed to the State court, mine was a historic appointment because I was the only Vietnamese American appointed to the Los Angeles County, and when you have a position like that, it carries with it tremendous privileges and responsibilities. So I do take my role as a role model for the community very seriously. But I do not believe that the background of judges changes the law. Regardless of gender or ethnicity, the law remains the same, and my task as a judge is to strictly adhere to the law and apply them to the facts of each case that comes before me. That is what I have done both at the State court level and have done for the past 2 years on the district court, and I will continue to do that as a Ninth Circuit judge if I am fortunate enough to be confirmed.

Senator BLUMENTHAL. Given the feelings that anyone has about litigants who come before him or her as a judge, do you find that difficult to do, that is, to apply the law dispassionately to cases that may have an impact on you emotionally?

Judge NGUYEN. I have always been able to set aside my personal feelings and beliefs and emotions and adhere to the law in every case. I attempt to do that. I think my background occasionally gives me an understanding as to the burdens and challenges that litigants may face as well as victims and witnesses who may appear before me, and I think that is appropriate to do that. But at the end of the day, it is really the law that controls the disposition of every single case.

Senator BLUMENTHAL. How do you view the role of a judge who sometimes encounters counsel who may be inferior or less than competent or not fully adequate to the case before you?

Judge NGUYEN. Well, certainly in my 9 years on the bench, I have had numerous situations where one side is better resourced or better represented than the other side, and I do not believe a judge's role is to assist one side or the other. I cannot in my capacity as a judge equalize resources, if you will. I attempt to be very clear to the parties early on as to what the court's expectations are in order to make sure that counsel for both sides are prepared, and so if I see an issue with an attorney, then I may schedule extra status conferences and really be very clear about communicating the court's expectation. I have written standing orders, and I also go through them if I believe it is necessary in court during status conferences to make sure that by the time we get to a dispositive motion or a trial that both sides are prepared.

Senator BLUMENTHAL. What has been for you the hardest part or the toughest aspect of being a judge?

Judge NGUYEN. I think that in my 9 years on the bench there are certainly cases that are more challenging than other, particu-

larly, for example, since taking the district court bench, the Central District of California has a high percentage of intellectual property cases in the area of patent litigation. I do not have an extensive background in that, so it is a challenge to get past the learning curve. But I find that very interesting, and that is part of the reason that I was very attracted and drawn to the district court.

I think sentencings are particularly difficult because it involves somebody's liberty interest, so I am always very careful to thoroughly review all of the relevant information before a sentencing hearing.

Senator BLUMENTHAL. Thank you very much.

Senator Grassley.

Senator GRASSLEY. Thank you very much. Welcome once again.

Judge NGUYEN. Thank you, Senator.

Senator GRASSLEY. I am going to refer to a couple cases, and then I have one question about Sentencing Guidelines.

In a case, I believe you pronounce it, *Guengerich v. Baron*, a pro-life group brought suit against Los Angeles City College alleging, among other things, that their First Amendment right to free speech, free exercise of religion, and to assemble peaceably were violated. You held on summary judgment for the college on grounds that the college campus was not a public forum, the ban on outside speech was viewpoint neutral, and the restriction supported the valid purpose of preserving the campus for its intended purpose. I have two or three questions on this case.

Why was this case disposed of on summary judgment rather than letting it go forward on the merits?

Judge NGUYEN. The moving party in that particular case filed a motion for summary judgment, and so when a motion is before me, I look at the standard on summary judgment, and if there are no triable issues of material fact in my view, given the case law at the time, then that is an instance when a motion for summary judgment would be granted.

Senator GRASSLEY. Has this case been appealed?

Judge NGUYEN. You know, Senator Grassley, I am not certain as to what the status of the case is. I do believe that the case is possibly pending before the Ninth Circuit so I want to be careful not to comment beyond what is reflected in the ruling. And it was a written decision where I attempted to very clearly lay out the court's rationale for review by the appellate court.

Senator GRASSLEY. OK. I have a case that you decided after you had appeared before us as a district court nominee but before you were confirmed by the Senate, so you might wonder why it is coming up now and did not come up then, but we were not aware of it at that time. While you were serving as a Superior Court Judge in 2009, a California appeals court held that you abused your discretion when you departed from the State's three-strikes law. In that case, *People v. Dorsey*, the defendant was arrested after being observed casing a liquor store. When he was arrested, the police discovered a number of robbery-related items in his car, including a ski mask, rubber gloves, handcuffs, and a loaded handgun. The defendant was a parolee who had been convicted of multiple armed robbery offenses in the past. Because it was his third conviction, the defendant would have been subject to a 26-years-to-life prison

term. You determined that the conduct was outside the spirit of the three-strikes law and that the 20-years-to-life sentence “does not match the crime” and “the defendant had been crime free for 2 years.” Therefore, you struck all but the defendant’s prior convictions.

Question: Why didn’t you apply the three-strikes law and sentence the defendant to a prison term called for by the statute?

Judge NGUYEN. In that particular case, Senator Grassley, the court has the discretion to impose either a two-strikes sentence or three-strikes sentence under California’s three-strikes law. There are certain factors that you look to in determining whether it is appropriate to exercise your discretion to strike the strikes in order for the defendant to be eligible for a second-strike sentencing. I had a number of discussions with lawyers from both sides and determined that it was appropriate for me to exercise that discretion. The California court of appeal held that under the particular factual circumstances of that case that it was an abuse of discretion. In my 9 years as a trial judge, that is the only reversal that I suffered, but in retrospect and in reviewing the California court of appeal decision, I do concur that it was error for me to do that.

Senator GRASSLEY. OK. So then my next question dealt with the court of appeals, and you just stated that you did know their decision. Do you recall the basis of their decision?

Judge NGUYEN. The basis of their decision is that it was an abuse of discretion under the factual circumstances of the case. There are many cases filed under the three-strikes law, and during the plea bargaining negotiation process, either the prosecution makes the call as to whether the defendant should be sentenced to a three-strike or a two-strike sentence, and the motion gets filed. It is called a Romero motion. And if the motion is filed, then the court has the discretion to make that determination.

Senator GRASSLEY. OK. You just answered my next question, so let me go on. Many jurisdictions, including the Federal Government, have enacted three-strike laws as a mechanism to remove violent criminals from the streets. Do you have any concern about the constitutionality of three-strike laws?

Judge NGUYEN. The three-strikes law has been enforced and upheld, and as a trial judge, I have imposed many, many sentences under the three-strikes law, including the 25-to-life sentence. Those cases come up with a fair degree of frequency if you sit in a heavy felony calendar, and I frequently applied that case law. That was the one instance where the court of appeal determined that it was abuse of discretion to do that. But I work with that law all the time and have imposed numerous sentences under that particular sentencing scheme.

Senator GRASSLEY. So I think it is fair for me to conclude, which was my next question, but it is fair for me to conclude that you do not have any personal reservations or views that would prevent you from enforcing three-strike laws.

Judge NGUYEN. I do not, Senator. The sentencing schemes are legislated determinations, and whatever the law is, I am comfortable applying that law.

Senator GRASSLEY. Senator, I have got three more questions. Do you care if I go on? And then I will not have to have a second round.

Senator BLUMENTHAL. That is fine.

Senator GRASSLEY. OK. A second issue in *People v. Dorsey* was the State's challenge that you engaged in improper plea negotiations with the defendant to discuss the possibility of dismissing the defendant's prior convictions if the prosecutor added an additional charge and the defendant pleaded guilty. The prosecutor did not add the charge, but over the objections of the prosecution, you dismissed all but one of the defendant's prior convictions anyway. The appellate court did not rule on this issue because it reversed you on other grounds. Nonetheless, the court said that it was "troubled" by the extent of the trial court's involvement in the plea bargaining process. This concerns me. The record seems to suggest that you were trying your best to find a way not to apply the statute, and at the end of the day you did not apply the statute.

Is that accurate? Were you trying to find a way around the three-strikes law? Do you think it was appropriate to engage in the plea negotiation process as you did?

Judge NGUYEN. No, Senator Grassley, it was not accurate. I was not trying to find my way around the application of that particular statute. If I may put it in context, unlike Federal court with the prohibition of Rule 11, in State court it is very common for judges to sit in chambers with the parties in order to discuss disposition of cases. And my practice was to do so if the parties requested such a chambers meeting. And part of the reason for that is because the volume of the cases in State court is so incredibly heavy that that is the most efficient way to resolve matters is to have that informal discussion.

I did so at the request of the parties in this case and held an in-chambers conference with them, and during those discussions, the parties each expressed their view as to what the appropriate sentence in this case may be. And when I take the bench again, I perhaps inarticulately attempted to reflect those discussions in chambers. Now, I do not discuss one case at a time because of the crushing caseload. I sit in chambers, and we may talk about five, six, seven cases at a time at the request of the parties. So when I take the bench, and there is all these people waiting, then I attempt to in a very brief and succinct way reflect what it was that we talked about.

One of the things discussed in chambers in the *Dorsey* case was whether there could be an amendment to the indictment such that the second-strike sentence would be enhanced, so something in between the second- and the third-strike sentence, and there were no charges that would be fairly reflective of the facts, and that is what I was attempting to do on the record.

Senator GRASSLEY. OK. Under the Supreme Court's decision, *U.S. v. Booker*, the Federal Sentencing Guidelines are now advisory rather than mandatory. In light of *Booker*, what do you see as the role of the guidelines in making sentencing determinations?

Judge NGUYEN. As a former Federal prosecutor at a time when the Sentencing Guidelines were mandatory—this is the pre-*Booker* era—I am very comfortable with the guidelines. I do believe in the

value of uniformity in sentencing. I do not think that defendants should be sentenced differently just because they happen to walk down the hallway and be in front of a different judge. In my 2 years as a district court judge, I start with the Sentencing Guidelines, and in the vast majority of cases, I end with the Sentencing Guidelines.

Now that *Booker* is in effect, obviously judges are directed to also look to factors that are set out by statute, 18 United States Code Section 3553, and if appropriate under the guidelines as well as looking at these factors, then judges may vary from the guidelines. But that is the exception and not the rule.

Senator GRASSLEY. OK. My last question deals with basic judicial philosophy, and I am going to refer to Justice Scalia's speech that he gave 5 or 6 years ago: "I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that is what it says, that is what it says."

So two questions. Do you agree with Justice Scalia? Second, do you believe a judge should consider his or her own values or policy preferences in determining what the law means? And if so, in the latter case, under what circumstances?

Judge NGUYEN. If I could answer your second question first, the answer is no, I do not believe that a judge should consider her own personal policy preferences in determining what the law is. My role, if confirmed to the Ninth Circuit, would be to apply the precedent that is within my circuit and precedent that is set forth by the Supreme Court.

As for Justice Scalia's comment, I am not familiar with that speech, and so I am not sure of the context in which that comment was made. But the Constitution provides certain core principles, and judges are called upon to interpret and apply those principles. Judges do not determine what the Constitution says. Those principles are enduring.

Senator GRASSLEY. OK. Thank you.

Thank you, Mr. Chairman. And thank you, Senator Franken.

Senator BLUMENTHAL. Thank you, Senator Grassley, and thank you, Senator Franken. Please proceed.

Senator FRANKEN. Thank you, Mr. Chairman and Mr. Ranking Member.

Judge Nguyen—and that is how you pronounce it, "win"?

Judge NGUYEN. Yes.

Senator FRANKEN. Is that always how you pronounced the spelling of your last name or are there different pronunciations?

Judge NGUYEN. I have heard various pronunciations over the years, but "win" is the most phonetically correct spelling, and so that is what I have stayed with.

Senator FRANKEN. OK. It is your name, so you are Judge Nguyen. And congratulations, by the way, for your nomination.

Judge NGUYEN. Thank you, Senator.

Senator FRANKEN. You know, I was here for your nomination to the district court, and—

Judge NGUYEN. You chaired that hearing.

Senator FRANKEN. I chaired it? Of course I did. I remember.

[Laughter.]

Senator BLUMENTHAL. He would have chaired this one if we let him.

Senator FRANKEN. I think that might have been the one where at the time the Ranking Member was Senator Sessions and he saw me chairing at that time, and he said, "A meteoric rise."

Judge NGUYEN. He was very complimentary, if I recall correctly.

Senator FRANKEN. Well, I said, "And well deserved."

[Laughter.]

Senator FRANKEN. "Right back at you."

Speaking of Senator Sessions, Senator Sessions would always ask judges or nominees who had talked about the need for diversity in court about what that meant. I was struck with Senator Cornyn talking about David Guaderrama, and he talked about his experience pumping gas. And he said that his breadth of personal experience will help him in that—I think he said "regard." I wrote "garage," but I know it could not be that. So I think it was "regard." You know, sometimes I am writing, and I do not—and it reminds me of something you said, and I think we talked about it the last time you were here. In a speech you gave before the Vietnamese American Bar Association, you said that a lack of diversity on the bench contributes to mistrust of the justice system in many minority communities. I agree with that. And so I guess it just—and then I think that whenever that was in a nominee's history of saying something about the importance of diversity, then-Ranking Member Sessions would always ask, "Well, doesn't that mean that"—you know, "Isn't every person who comes before a judge entitled to complete objectivity?" And the answer is always yes, of course. But I just want to maybe get in a little discussion with you about that because—I mean, Senator Cornyn is basically saying that the experience of pumping gas is important. One, you speak to the mistrust of the justice system if it is all—if the court does not reflect the community as a whole. Isn't that because, two, the quality of justice is different if all the judges have the same kinds of experiences?

Judge NGUYEN. Well, what I meant by that speech is that diversity obviously is very important. The judiciary is a public institution, and judges are public servants. And so if the judiciary does not better reflect the communities in which we serve, the credibility of the judiciary is hurt, and that is an issue that is important to all public institutions. And so that is what I meant by the value of diversifying not just the judiciary but other public institutions as well.

But as I indicated to Senator Sessions, who was then the Ranking Member the last time I was before this Committee, the law does not change merely by virtue of a judge's gender or ethnicity, background or experiences. Those principles of law remain the same.

Senator FRANKEN. Sure.

Judge NGUYEN. And a judge's role is to interpret that law and then apply it to the facts of each case that may come before the court.

Senator FRANKEN. And I think that is important, and that is the answer that Senator Sessions and all of us are looking for. But I think it is just unrealistic to think that a judge's personal experi-

ence does not in some way—I think Oliver Wendell Holmes said that experience is the law, or something to that extent. And that is going to inform his or her judgment. I mean, it is “judgment.” “Judge” must be the root word of “judgment.” Am I correct on that?

Judge NGUYEN. Well, I cannot really speak to other judges’ backgrounds or experiences. My background and experience I think has helped my judicial temperament. It gives me an appropriate sense of humility when I review the facts of each case. I have an understanding and appreciation of how intimidating the court system can be, and so I think it does inform my temperament and my sense that judicial restraint is the appropriate way to handle each and every case.

So I cannot divorce myself from my background. I think it does inform my conduct on the bench in that way. But, again, Senator Franken, I do not think it changes the law.

Senator FRANKEN. No, and I do not think anyone who suggests that a judge’s experience is important is at the same time saying that that changes the law. But I think that it would be defying common sense to think that a judge’s life experience does not inform how he or she judges. And I think that is a good thing to—that is why it is a good thing to have diversity on the bench because, otherwise, you know—I am sorry. Anyway, I think you know what I am saying, and I congratulate you on your nomination.

Judge NGUYEN. Thank you, Senator.

Senator FRANKEN. Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you, Senator Franken.

Thank you very much, Judge Nguyen. We appreciate your being here, and good luck to you, and thank you for your service to our Nation.

Judge NGUYEN. Thank you, Mr. Chairman.

Senator BLUMENTHAL. I would like to call the second panel: Mr. Costa and Judge Guaderrama. If you could stand. Do you affirm that the testimony you are about to give to the Committee is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. COSTA. I do.

Judge GUADERRAMA. I do.

Senator BLUMENTHAL. Thank you. We welcome you to the Committee and will give you a chance to make an introductory statement and introduce your family. I would like to say we appreciate having your families here, and, Mr. Costa, if you would like to begin.

STATEMENT OF GREGG JEFFREY COSTA, NOMINEE TO BE DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS

Mr. COSTA. Thank you, Senator Blumenthal, Ranking Member Grassley, Senator Franken, and the entire Committee for the opportunity to be here today and answer your questions.

I want to, of course, thank President Obama for the great honor of this nomination. I want to thank Senators Hutchison and Cornyn for their generous remarks today and for recommending me to the President and to their judicial evaluation Committee which has supported me in this process.

I also want to thank the Texas Democratic House delegation who first recommended me to the President, and in particular, to Rep-

representative Al Green from Houston and his judicial evaluation Committee who first contacted me about this position.

I am fortunate today to be joined by a few members of my family and friends who are really the people who are the reason I am here today because of the support and opportunities they have provided me with over the years. And I would start with my mother and father, Robert and Susan Costa, who are here from Texas. My father spent most of his career in public service as a Federal employee and has set a great example for me to try to live up to.

My wife, Jennifer, who is the kindest, most decent person I have ever met, is here today, along with my two sons, Elijah and Joshua. I am pretty sure they are far more excited about missing school today than they are about my nomination. But I do hope that by being here today they will learn something about how our great Constitution works. Also, my daughter, Rebecca, is at home, as Senator Hutchison mentioned. I say hello to her. And my sister, Allison, who lives in this area, is here as well.

Then I am also fortunate, I have a couple friends from probably the genesis of my legal career when I was a high school debater at Richardson High School outside of Dallas. And then I have two former colleagues who I taught with in the Mississippi Delta for 2 years before I attended law school. So I thank them for being here, and I again thank the Committee for the opportunity today.

[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).

Gregg Jeffrey Costa

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

United States District Judge for the Southern District of Texas

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 Texas
919 Milam
P.O. Box 61129
Houston, Texas 77208

Residence: Bellaire, Texas

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

1972; Baltimore, Maryland

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.

1996 – 1999, University of Texas School of Law; J.D., 1999

1990 – 1994, Dartmouth College; B.A., 1994

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.

2005 – present
United States Attorney's Office
Southern District of Texas
919 Milan
P.O. Box 61129
Houston, Texas 77208
Assistant United States Attorney

2002 – 2005
Weil, Gotshal & Manges
700 Louisiana, Suite 1600
Houston, Texas 77002
Associate

Spring 2004 and 2005
University of Houston Law Center
100 Law Center
Houston, Texas 77204
Adjunct Professor

2001 – 2002
Hon. William H. Rehnquist
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543
Law Clerk

2000 – 2001
United States Department of Justice
Office of the Solicitor General
950 Pennsylvania Avenue, NW
Washington, DC 20530
Bristow Fellow

1999 – 2000
Hon. A. Raymond Randolph
United States Court of Appeals for the D.C. Circuit
333 Constitution Avenue, NW
Washington, DC 20001
Law Clerk

Summer 1999
United States Department of Justice
Antitrust Division
600 E Street, NW
Washington, DC 20530
Summer Law Intern

Summer 1998
Susman Godfrey
1000 Louisiana, Suite 5100
Houston, Texas 77002
Summer Associate

Summer 1998
Baron & Budd
3102 Oak Lawn Avenue # 100
Dallas, Texas 75219
Summer Associate

Summers 1997, 1998
Mayor, Day, Caldwell & Keeton (now defunct, merged with Andrews Kurth)
700 Louisiana, Suite 1900
Houston, Texas 77002
Summer Associate

Summer 1997
Carrington, Coleman, Sloman & Blumenthal
200 Crescent Court, Suite 1500
Dallas, Texas 75201
Summer Associate

July 1996
Sar-el Volunteers for Israel
No physical address
Volunteer, Air Force base near Be'er Sheva, Israel

1994 – 1996
East Sunflower Elementary School (placement through Teach for America)
212 East Claiborne Street
Sunflower, Mississippi 38778
Third and fourth grade teacher

Other affiliations (uncompensated):

1999 – present
Sunflower County Freedom Project
120 Delta Avenue
Sunflower, Mississippi 38778
Board Member, Secretary

2004 – 2006
Congregation Beth Yeshurun 100 Jewish Men
4525 Beechnut
Houston, Texas 77096
Board 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.

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.

As Assistant United States Attorney:

Award from Immigration and Customs Enforcement for work on cases involving importation of counterfeit technology products from China (2010)
Houston Bar Association Bob Susman Scholarship (awarded annually to two prosecutors to fund attendance at ABA Annual White Collar Crime Conference) (2010)
Certificate of Appreciation from Director of the Secret Service for work on mortgage fraud prosecution (2009)
Certificate of Appreciation from Inspector General of the Department of Homeland Security for work on FEMA fraud cases (2008)

At University of Texas School of Law:

Graduated with highest honors (1999)
Vice Chancellor (ranked second in class after second year of law school) (1998)
Editor in Chief, *Texas Law Review*
Ellen Waters Olson Scholarship (three years full tuition) (1996)
One of two students selected by Dean to Task Force on the Future of the Law School
Elected Permanent Class Representative
First Place, Hutcheson First Year Moot Court Competition (Section 5, 1997)
First Place and Best Brief, Gibbs & Bruns Moot Court Competition (Fall 1997)

Dean's Achievement Award (top grade in class): Criminal Law; Constitutional Law II;
Free Speech; Constitutional Law II: Race & The Constitution; Labor Law;
Administrative Law; Professional Responsibility for Civil Litigators

At Dartmouth College:

Presidential citation for excellence in American government
Tucker Foundation Fellowship for semester spent working at parochial elementary school
in Jersey City, New Jersey

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
Co-Chair, White Collar Crime Subcommittee, South Texas Chapter (2008 – present)

Federal Bar Association

State Bar of Texas

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.

Texas, 2000.

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 Fifth Circuit, 2005
United States Court of Appeals for the Seventh Circuit, 2001
United States District Court for the Southern District of Texas, 2002

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.

Bellaire Little League (assistant baseball coach, 2010 – 2011)

Bellaire Recreation Center (youth soccer coach, 2008 – 2009)

Congregation Beth Yeshurun (2002 – present)
100 Jewish Men (Board Member, 2004 – 2006)

Houston Urban Debate League (2008 – 2009)

National Association of Assistant United States Attorneys (2009 – present)

Sunflower County Freedom Project (Board Member, 1999 – present)

Supreme Court Historical Society (2003 – present)

Teach for America (1994 - present)

United States Public Service Academy Task Force on Service Learning
Coordinator (2006 – 2007)

University of Texas School of Law, Reunion Committee (2004)

YMCA (youth soccer coach, 2006 – 2007)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, 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 the best of my knowledge, none of the organizations listed above discriminates or previously 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.

Honest Services at Skilling's One Year Anniversary, Co-written with David Issak, Presented at State Bar of Texas 37th Annual Advanced Criminal Law Course: Federal Workshop, Houston, Texas, July 2011. Copy supplied.

Amazed and Inspired, Sunflower County Freedom Project Newsletter, Oct. 1, 2008. Copy supplied.

E-mail quoted in Peter King, *Saints' Slide Continues*, cnnsi.com, Sept. 25, 2007. Copy supplied.

Current Antitrust Issues in Patent Law, Co-written with David J. Healey and Ed Chin, Presented at 2004 Advanced Patent Law Institute, Austin, Oct. 2004. Copy supplied.

Are the Standards Changing for Standard-Setting? Antitrust Issues in Standard-Setting and High-Tech Cases, Presented at University of Texas School of Law Continuing Legal Education "Computer and Technology Law Institute," May 2004. Copy supplied.

2004 Update on Antitrust in High Tech and IP Cases, 2004, Advanced Patent Law Institute, San Antonio. I have been unable to locate a copy of this paper, but its content is similar to the two antitrust articles listed above.

John Marshall, the Sedition Act, and Free Speech in the Early Republic, 99 Tex. L. Rev. 1099 (1999). Copy supplied.

I also recall writing two articles in *The Dartmouth* during college. One of the articles supported Senator Bob Kerrey's campaign in the 1992 New Hampshire Presidential Primary. The other discussed the United States' support of Saddam Hussein during the Iran-Iraq conflict. I have not yet been able to find copies of these articles.

In October 1990, I wrote a letter to the editor for the Dallas Morning News relating to an off-campus publication at Dartmouth that had published a quotation from Mein Kampf. I have been unable to obtain a copy of the letter.

- 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 as coordinator for the United States Public Service Academy Task Force on Service Learning. The Academy released a report in February 2007 that summarized the work of my task force as well as that of seven others. A copy of the report is supplied.

- 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.

July 19, 2011: *Honest Services at Skilling's One Year Anniversary*, State Bar of Texas 37th Annual Advanced Criminal Law Course: Federal Workshop, Houston, Texas (with David Issak). A copy of the PowerPoint we used at this presentation is supplied and the paper we presented is supplied in response to 12(a).

March 29, 2011: *Panel on Trying Counterfeit Trademark Cases*, Computer Hacking and Intellectual Property Coordinators' Conference, National Advocacy Center, Columbia, South Carolina. I have no notes, transcript or recording. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 24, 2011: *Panel on Alumni Lawyers: Pursuing Justice Through a Career in Law*, Teach for America's "What Comes Next" Event for Houston Corps Members. I have no notes, transcript or recording. The address of Teach for America is 4669 Southwest Freeway, Suite 600, Houston, Texas 77027.

January 26, 2011: Alumni Speaker, Induction Ceremony for Chancellors Honor Society, University of Texas School of Law. I have no notes, transcript or recording, but law school coverage is supplied. The address of the university is 727 East Dean Keeton Street, Austin, Texas 78705.

October 14, 2010: *Issues in International Financial Fraud Investigations*, Financial Fraud Enforcement Coordinators Conference, National Advocacy Center, Columbia, South Carolina (with Paul Pelletier). We used a PowerPoint for this presentation, but because the materials are law enforcement sensitive they are not provided. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

September 23, 2010: *Panel on Honest Services Law after Supreme Court Skilling Decision*, Federal Bar Association Southern District of Texas Chapter/ABA White Collar Crime Subcommittee, Houston, Texas. I have no notes, transcript or recording. The address of the FBA Southern District of Texas Chapter is 2726 Bissonnet #240-239, Houston, Texas 77005.

March 18, 2010: *Investigating and Prosecuting Complex Immigration Fraud Schemes*, Immigration Law Conference, National Advocacy Center (with ICE Agent Marcus Barton). We used a PowerPoint for this presentation, but because the materials are law enforcement sensitive they are not provided. The address of the NAC is 1620 Pendleton Street, Columbia, South Carolina 29201.

February 26, 2008: *Prosecuting Disaster Fraud Cases*, California Wildfires Disaster Fraud Conference, United States Attorney's Office for the Southern District of California (San Diego) (with Jonathan Rusch). We used a PowerPoint for this presentation, but because the materials are law enforcement sensitive they are not provided. The address for the U.S. Attorney's Office is 880 Front Street, Room 6293, San Diego, California 92101.

December 7, 2006: *Major Theft Cases: The Prosecutor's Perspective*, FBI Major Theft Conference, Houston, Texas. PowerPoint supplied.

May 21, 2004: *Are the Standards Changing for Standard-Setting? Antitrust Issues in Standard-Setting and High-Tech Cases*, Presented at University of Texas School of Law Continuing Legal Education "Computer and Technology Law Institute," Austin, Texas. A copy of the paper is supplied in response to 12(a).

2004: *Update on Antitrust in High Tech and IP Cases*, Advanced Patent Law Institute, San Antonio. I presented the paper noted in response to question 12a, which I have been unable to locate. The Advanced Patent Law Institute is sponsored by the University of Texas School of Law Office of Continuing Education, which is located at 727 East Dean Keeton Street, Austin, Texas 78705.

In addition to these specific talks I recall, I have participated in other Teach for America career panels for members interested in legal careers and have given talks to a number of summer law interns about judicial clerkships. I do not have records showing the dates of these talks.

- 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.

A number of articles have quoted statements I have made in court. The following are those articles I could find in which I spoke directly to a reporter.

Miriam Rozen, *A Zero-Tolerance Policy for Hurricane Disaster-Relief Fraud*, Texas Lawyer, Aug. 23, 2010. Copy supplied.

Darren Barbee, *Con Artist Given 10 Years in Prison, Ordered to Pay \$3.1 Million*, Fort Worth Star Telegram, May 13, 2010. Copy supplied.

Darren Barbee, *Houston-Area Woman Pleads Guilty in Swindling Case*, Fort Worth Star Telegram, Aug. 25, 2009. Copy supplied.

Darren Barbee, *Woman's Bail Revoked after Prosecutors Accuse Her of Continuing Fraud*, Fort Worth Star Telegram, June 16, 2009. Copy supplied.

Chris Vogel, *No Honest Players Among Human Smugglers*, Houston Press, Aug. 7, 2008. Copy supplied.

Staff, *Crime & Courts: Murder-for-Hire Case Spurs Arrest*, Houston Chronicle, Dec. 4, 2007. Copy supplied.

Rosanna Ruiz and Cindy George, *Brothers Behind Bogus Web Site Guilty*, Houston Chronicle, June 15, 2007. Copy supplied.

Cindy George, *3 Sentenced Over Storm Fraud*, Houston Chronicle, Mar. 31, 2007. Copy supplied.

Harvey Rice, *Life Term Possible on Gun Charge*, Houston Chronicle, Sept. 27, 2006. Copy supplied.

Laura Elder, *Flagship Operator Pleads Not Guilty*, Galveston Daily News, Mar. 9, 2006. Copy supplied.

On September 4, 2005, I was interviewed by Houston local television station KPRC the day after Chief Justice Rehnquist passed away. I have been unable to obtain a copy of the video.

Alumni News: Two Graduates Will Clerk at U.S. Supreme Court, Townes Hall Notes (UT Law Alumni Magazine), Fall 2000. Copy supplied.

Scholarship Opens Doors for Recipients, Townes Hall Notes (UT Law Alumni Magazine), Fall 1999. Copy 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.

I have never been 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:

I have never been a judge.

- 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.

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 any public offices. I have not had any 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.

Dartmouth College Democrats (Acting President, Vice President, 1991 – 1992)

Volunteer, campus coordinator, Bob Kerrey for President campaign (New Hampshire Primary, 1991 – 1992)

Volunteer, Clinton for President and Dallas County Democratic Party Coordinated Campaign (Fall 1992)

Intern, Democratic National Committee (summer 1991)

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 1999 through July 2000, I served as a law clerk to Judge A. Raymond Randolph, United States Court of Appeals for the D.C. Circuit.

From July 2001 through July 2002, I served as a law clerk to Chief Justice William Rehnquist, Supreme Court of the United States.

- 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.

2000 – 2001

United States Department of Justice, Office of the Solicitor General
950 Pennsylvania Avenue, NW
Washington, DC 20530
Bristow Fellow

2002 – 2005

Weil, Gotshal & Manges
700 Louisiana, Suite 1600
Houston, Texas 77002
Associate

2005 – present
 United States Attorney's Office
 Southern District of Texas
 919 Milam
 P.O. Box 61129
 Houston, Texas 77208
 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.

I have never served as 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.

As a Bristow Fellow, I authored numerous briefs in opposition to petitions for certiorari, recommended to the Solicitor General whether the United States should appeal adverse district court decisions, assisted permanent office attorneys with drafting Supreme Court merit briefs and preparing for oral arguments, and argued an appeal in the Seventh Circuit.

During summer 2002, I returned to Texas and joined the Houston office of Weil Gotshal as an associate. I had primary day-to-day responsibility for civil litigation matters including intellectual property litigation, class actions, international arbitration, bankruptcy litigation and general commercial disputes. I also worked on appellate matters and a number of pro bono cases.

In early 2005 I joined the Houston United States Attorney's Office as an Assistant United States Attorney. I have worked in the Major Offenders and Major Fraud sections of the office, investigating and prosecuting criminal matters in the following areas: mortgage fraud, investment fraud, securities fraud, government benefit fraud, public corruption, importation of counterfeit products, internet fraud, child pornography, human smuggling, hostage taking, postal crimes, and narcotics and firearms violations. I have also handled numerous appellate matters and argued six cases in the Fifth Circuit.

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

When working in private practice at Weil Gotshal, the typical clients I represented were corporations involved in complex civil litigation. In pro bono matters I handled during that time, I represented a defendant in a criminal case and a nonprofit organization in constitutional litigation.

As an Assistant United States Attorney, I have represented the United States in criminal prosecutions.

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

1. federal courts	90%
2. state courts of record:	10%
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.

Seventeen (this includes two cases that were tried twice because the jury hung on some counts). I tried all of these cases since joining the United States Attorney's Office. Two prosecutors typically handle a trial and evenly split the witnesses and jury addresses. (I may have tried one or two cases to magistrate judges in cases from the misdemeanor civil violations bureau docket, but I do not recall the specific cases and did not include those cases in the number of trials listed here.)

- i. What percentage of these trials were:

1. jury:	100%
2. nonjury:	0%
- 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.

As a Bristow Fellow in the Solicitor General's office, I drafted numerous responses to petitions for certiorari. The only one I recall by name is *United States v. Dusenberry*, 534 U.S. 161 (2002), because the Supreme Court granted the petition in that case. Copy supplied.

I also recall providing research and other assistance to permanent office attorneys for the merits briefs filed in the following cases: *Indianapolis v. Edmond*, 531 U.S. 32 (2000); *TrafFix Devices, Inc. v. Marketing Displays, Inc.*, 532 U.S. 23 (2001); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); and *Zadvydas v. Davis*, 533 U.S. 678 (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. Stanford, et al.*, No. H-09-242 (S.D. Tex.); Judge David Hittner. Court of Appeals decisions relating to Stanford's pretrial detention are reported at 2011 WL 867057, 395 Fed. App'x 72, 367 Fed. App'x 507, and 341 Fed App'x 979.

I am co-lead counsel for the United States in the prosecution of Stanford, other Stanford Financial Group executives, and the former head of the Antiguan Financial Services Regulatory Commission. The indictment alleges that the defendants engaged in a \$7 billion investment fraud relating to the sale of certificate of deposits by Antiguan-based Stanford International Bank. I have been involved in all aspects of the case including witness interviews; briefing; arguing at hearings; and working with foreign governments to extradite a defendant, obtain evidence and freeze assets. The CFO of Stanford Financial Group pled guilty. The other defendants are awaiting trial.

Co-counsel:

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Jack Patrick
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 Senior Litigation Counsel, Fraud Section
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Opposing Counsel:

Counsel for defendant Stanford:
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Counsel for defendant Davis:

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Counsel for defendant Pendergest:

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Counsel for defendant Lopez:

Jack B. Zimmermann
Jim Lavine
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Counsel for defendant Kuhrt:

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2. *United States v. Barnes, et al.*, No. H-10-787 (S.D. Tex.); Judge Sim Lake.

This case involves an alleged \$80 million dollar kickback and international money laundering scheme relating to the shipment of oil from Venezuela to a Houston area refinery. Barnes, who was the Marine Chartering Manager for LyondellBassell's Houston refinery, pled guilty to receiving more than \$20 million in kickbacks from oil traders in exchange for agreeing to pay inflated prices for the shipping that the traders were arranging through companies they controlled. Two of the traders are scheduled for trial in November. The investigation in this case involved obtaining evidence from authorities in Switzerland, France and the British Virgin Islands. We have also obtained forfeiture of nearly \$20 million of the fraud proceeds.

Opposing Counsel:

Counsel for defendant Barnes:

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Counsel for defendant Langley:
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Counsel for defendant Meltzer:
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David Gerger
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3. *United States v. Curtis, et al.*, No. H-08-323 (S.D. Tex.); Judge Nancy Atlas. The Court of Appeals decision affirming the convictions and sentences is available at 2011 WL 846703 (5th Cir. 2011).

This case involved nine defendants charged with conspiring to commit mortgage fraud in the Montrose neighborhood of Houston. The organizer of the scheme, Curtis, used his supposed investment company CLC Holdings to receive large profits from the sale of homes in which straw buyers were used to pay inflated amounts for the home. Some of the loan applicants used childrens' social security numbers, which were purchased from a Houston "credit repair" business. Eight of the defendants, including two mortgage brokers and the owner of the credit repair business, pled guilty and were sentenced to various terms of imprisonment. Curtis went to trial and a jury convicted him of conspiracy, wire fraud, and aggravated identity theft. Judge Atlas sentenced Curtis to twelve years in prison. I worked with the Secret Service in investigating the case, presented the case to the grand jury, negotiated the plea agreements of the eight defendants who pled guilty, and, along with a colleague, tried the case against Curtis.

Trial co-counsel:
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Opposing Counsel:

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For defendant Joubert:
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For defendant Narcisse:
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For defendant Lyons:
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For defendant Cherry:
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For defendant Johnson:
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For defendant Ly:
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For defendant Nunnerly:
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For defendant Nguyen:
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4. *United States v. Ashoor*, No. H-09-307 (S.D. Tex.); Judge David Hittner. The Court of Appeals decision affirming the conviction is reported at 2011 WL 1659780 (5th Cir. 2011).

The defendant, who had a company that serviced government contracts, imported counterfeit Cisco products from China which he intended to supply to the Marine Corps in Iraq. After a hung jury resulted in a mistrial of the first trial, a jury convicted the defendant of trafficking in goods with counterfeit trademarks, and he was sentenced to a fifty-one month prison term. I worked with ICE in the initial stages of this investigation, another AUSA completed the investigation and obtained an indictment in the case, and I then tried the case with the other AUSA.

Trial co-counsel:
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Counsel for Ashoor:
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McNabb Associates PC
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(202) 280-6370

5. *United States v. Stephens and Stephens*, H-06-242 (S.D. Tex.); Judge David Hittner. The Court of Appeals decision affirming the convictions and sentences is reported at 571 F.3d 401 (5th Cir. 2009).

I managed the investigation and prosecution of these two defendants charged with creating a fraudulent Salvation Army website shortly after Hurricane Katrina struck the Gulf Coast, which falsely purported to collect donations for hurricane victims. Hundreds of individuals across the country donated to the website before it was shut down. To

disguise their involvement with the website, the brothers used stolen identities, including Social Security numbers, to register the various PayPal accounts they used to collect money donated through the website. A jury convicted both defendants of conspiracy, wire fraud and aggravated identity theft. One defendant received a sentence of 111 months and the other received a sentence of 105 months.

Co-counsel:

Bret Davis

Federal Bureau of Investigation (then a Special Assistant United States Attorney)

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Opposing Counsel:

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Samy Khalil

Gerger & Clarke (then Office of the Federal Public Defender)

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Houston, TX 77002

(713) 224-4400

Counsel for defendant B. Stephens:

Jimmy Ardoin

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Houston, TX 77010

(713) 426-2244

6. *United States v. Trevino, et al.*, H-07-664 (S.D. Tex.); Judge Randy Crane.

This public corruption case involved tens of thousands of dollars paid in bribes to the City Manager and Director of Parks and Recreation for the City of Mission, Texas. The contractors paid the bribes in exchange for favorable treatment in the awarding of contracts for debris and sludge removal, the construction of a skateboard park, expansion of a city pool and the painting of a downtown parking lot. The case arose from a longstanding FBI undercover investigation in the Rio Grande Valley which another AUSA oversaw. I handled the prosecution of the two public officials and two contractors charged in this case. All four defendants pled guilty. The two public officials and one of the contractors were sentenced to various prison terms; the other contractor received a sentence of probation based on his cooperation.

Opposing Counsel:

Counsel for defendant I. Trevino:
 Jack Wolfe (deceased)
 Counsel for defendant Villegas:
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Counsel for defendant Cavazos:
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 McAllen, TX 78504
 (956) 687-6415

Counsel for defendant D. Trevino:
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 San Antonio, TX 78205
 (210)-225-7045

7. *United States v. Spezia*, H-07-31 (S.D. Tex.); Judge Ewing Werlein, Jr.

The defendant was associated with a human smuggling organization in Houston. A meeting was arranged at a gas station at which the smugglers planned to seek payment from the brother of one of the Mexican nationals who had been brought from the border to Houston. Upon learning that the brother did not have the smuggling fee, the defendant and others kidnapped him at gun point and took him to a motel room in the Houston area. Over the next few days, the defendant and his associates called relatives of the hostage and demanded payment of the smuggling fee, which they kept increasing. During the calls, the defendant tortured the hostage by, among other things, burning his forearms with an iron and hammering his toenails. The jury convicted the defendant of conspiracy, alien smuggling, and hostage taking. The defendant was sentenced to a 25-year prison term. Another AUSA investigated and charged the case. I joined him to prepare and try the case and then I handled the sentencing hearing.

Co-counsel:
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Opposing counsel:
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8. *United States v. Huang and Liu*, H-05-392 (S D. Tex.); Judge David Hittner. The Court of Appeals decision affirming Liu's conviction and sentence is reported at 288 Fed. App'x 193 (5th Cir. 2008).

A Houston lawyer and her legal assistant were charged with engaging in a complex visa fraud scheme. The fraud involved, among other things, intracompany transfer visas, which allow a foreign citizen to work in the United States as an executive at a foreign company's American subsidiary and can serve as a basis for permanent residence status. Chinese nationals paid large sums, up to \$60,000 each, to obtain such visas under fraudulent pretenses. The defendants created legal documents, such as stock certificates and Board of Director minutes, falsely showing that Chinese companies had purchased American subsidiaries, which they submitted to support the fraudulent visa applications. Defendant Huang, the attorney, was convicted of conspiracy and four counts of visa fraud and sentenced to fifty-one months in prison. Defendant Liu was convicted of one count of visa fraud, acquitted on the other counts, and sentenced to eighteen months in prison. This case was reassigned to me after it was charged. I then prepared and tried the case with another AUSA, handled the sentencing hearings, and argued Liu's appeal.

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Opposing Counsel:

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Counsel for defendant Liu:
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9. *Canatxx Energy Ventures, Inc. v General Electric Capital Corp.*, Case No. H-09-4425 (S.D. Tex.); Judge Kenneth Hoyt. The Fifth Circuit decision reversing the judgment and rendering judgment in favor of GE Capital is at 2008 WL 4601691 (5th Cir. 2008).

My firm represented GE Capital in this lawsuit concerning the termination of a power plant project. Canatxx was the project developer and signed a Dissolution Agreement with GE Power Systems in which the parties agreed to terminate the joint venture to build power plants. Canatxx then filed suit against GE Capital, which was a financial advisor on the project, raising state-law claims of breach of fiduciary duty, unfair competition fraud, and civil conspiracy. During the time I was involved in the case, I drafted the motions, argued at a court hearing, and managed discovery, including attending depositions in London. After I left my firm, another firm was hired to try the case. A jury returned a verdict of favor of Canatxx, but the Fifth Circuit reversed and rendered judgment in favor of GE Capital based on its holding that the Dissolution Agreement also applied to affiliates of GE Power Systems, which included GE Capital.

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Opposing counsel:
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(713) 355-4200

10. *Pataki v. Assembly and Silver v. Pataki*, 824 N.E.2d 898 (N.Y. Ct. App. 2005).

My firm represented the speaker of the New York assembly in litigation against Governor Pataki related to disputes over the budget process in New York. The case involved questions concerning whether the New York Constitution allowed the legislature to amend certain legislation proposed by the Governor and whether the Governor could exercise the line-item veto with respect to those bills. The two related cases reached the New York Court of Appeals, which ruled 5-2 in favor of the Governor. I had significant involvement in crafting the arguments and drafting the briefs in both the intermediate appellate courts and in the New York Court of Appeals.

Lead counsel:
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(212) 310-8000

Opposing counsel:
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 Cravath, Swain & Moore
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 (212) 474-1000

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 Weil Gotshal, in addition to the litigation I handled, I was involved in one antitrust counseling matter.

As an Assistant United States Attorney, in addition to prosecuting cases, I have served as the Deputy International Affairs Coordinator for the United States Attorney's Office. In that capacity I help coordinate incoming and outgoing requests for foreign evidence gathering under Mutual Legal Assistance Treaties with numerous countries. In addition to this oversight role, I have personally handled such requests on behalf of the governments of Malaysia, Turkey, Colombia, Lithuania, Greece, France, the United Kingdom, Trinidad and Tobago, Ireland, Norway and Brazil. I also handle and provide guidance to other AUSAs on extradition matters.

I also served as the Hurricane Fraud Coordinator for the Southern District of Texas, a position created in 2005 after Hurricanes Katrina and Rita. I coordinated a multi-agency task force that investigated fraud cases relating to the Hurricanes Katrina, Rita and Ike. Our office prosecuted more than 100 individuals for fraud relating to the hurricanes, including government-benefit fraud, identity theft offenses, charitable fraud, and investment fraud.

In addition, the Deputy Attorney General appointed the First Assistant United States Attorney and me to serve as special prosecutors in a public corruption matter arising out of another district in which the local U.S. Attorney's Office had a conflict.

I have not performed 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.

During the spring semesters of 2004 and 2005, I taught Federal Jurisdiction as an adjunct professor at the University of Houston Law Center. A copy of my 2005 syllabus is supplied.

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.

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 not hear cases brought by the United States Attorney's Office in which I had any participation as an AUSA. I would not preside over any cases involving the company that employs my wife. I also would not preside over cases involving the few companies in which my wife and I own stock.

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

I would follow the recusal statutes and the Code of Conduct for United States Judges, as well as other legal authority, in resolving any potential conflicts of interest. I would also consult with colleagues and with ethics officials from the Administrative Office of U.S. Courts.

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.

In 2003, I assisted the NAACP Legal Defense Fund in representing Timothy Towery, who was serving an 18-year sentence as one of the 38 individuals convicted as part of the Tulia drug sting. We prepared a motion for habeas corpus relief arguing that Towery's conviction should be overturned based on the ineffective assistance of his counsel who persuaded him to plead guilty. This involved investigating the case against Towery, researching the relevant legal issues and drafting the motion. On August 23, 2003, Governor Rick Perry pardoned our client and the other Tulia defendants.

In 2004, I assisted the Lawyers' Committee for Civil Rights Under Law in litigation involving two events that infringed on the voting rights of Prairie View A&M students in Waller County, Texas. One case was filed against the District Attorney who had warned college students that they were not allowed to vote in Waller County despite longstanding law (reflected in both case law and opinions from the state attorney general) that college students in Texas may choose to vote either where they attend school or where their parents reside.

The second case challenged Waller County's failure to seek approval under the preclearance provisions of Section 5 of the Voting Rights Act for attempts to reduce the number of hours that were available for early voting at the polling place closest to the Prairie View campus (the 2004 primary election took place during the school's spring break, making early voting the primary vehicle for student voting). After filing complaints seeking temporary restraining orders and preliminary injunctions against both practices, the defendants quickly settled and agreed to alter the challenged practices.

In Fall 2004, I assisted the Lawyers' Committee for Civil Rights Under Law in their nonpartisan voter protection project during the 2004 general election. We attended training on possible voting rights issues and manned a Houston phone bank on Election Day with a ready-response legal team.

While an associate at Weil Gotshal, I occasionally participated in the Houston Bar Association's Legal Lines program in which citizens could call a phone bank and receive assistance with general legal problems.

In addition to working on these legal matters, I am a co-founder and current board member of the Sunflower County Freedom Project, a nonprofit educational enrichment program created by Teach for America alumni in the Mississippi Delta county where I taught from 1994 to 1996. The program, which has been in existence for more than ten years, provides rigorous after-school and summer programs that prepare students from one of the nation's poorest regions for college. Graduates of the program have attended college at prominent institutions including the University of North Carolina, LSU, Berea College, and Mississippi State.

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 May 2009, I was contacted by one of the co-chairs of the Judicial Selection Committee that Representative Al Green established to recommend candidates for Houston-area judicial vacancies. The chair inquired whether I would be interested in being considered by the committee, which was then interviewing applicants for the vacancy created when Judge Samuel Kent resigned. I agreed to interview with the committee. I first met with four members and later with the entire committee. After that, I met with Representative Al Green. In June 2009, the chairs of the committee notified me that I was the committee's recommended candidate. Shortly after receiving that notification, however, I learned that the Fifth Circuit Judicial Council had decided to move the open judgeship to south Texas.

In July 2010, a chair of the same committee contacted me to discuss whether I was interested in the vacancy created by Judge John Rainey taking senior status. The chair stated that I remained the committee's recommended candidate. I stated that I remained interested and was asked to submit information to the Texas Democratic delegation through Representative Doggett's office, which I did.

In February 2011, I submitted an application to Senator Hutchison's and Senator Cornyn's Federal Judicial Evaluation Committee. I interviewed with the committee in May 2011.

Since April 21, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On May 24, 2011, I interviewed with

attorneys from the White House Counsel's Office and the Department of Justice in Washington, DC.

On July 12, 2011, I met with Senators Hutchison and Cornyn and members of their staff in Washington. On July 23, 2011, I met with Representative Sheila Jackson Lee in Houston.

On September 8, 2011, 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. 1/2010FINANCIAL DISCLOSURE REPORT
NOMINATION FILINGReport Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Costa, Gregg J.	2. Court or Organization Southern District of Texas	3. Date of Report 09/08/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) District Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 9/8/2011 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 1/1/2010 to 8/31/2011
7. Chambers or Office Address U.S. Attorneys Office 919 Milam, Suite 1500 Houston, TX 77208	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>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. Director and Secretary	Sunflower County Freedom Project
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 9

Name of Person Reporting	Date of Report
Costa, Gregg J.	09/08/2011

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.		
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. 2010	Noble Americas Energy Solutions LLC - salary
2. 2011	Noble Americas Energy Solutions LLC - salary
3.	
4.	

IV. REIMBURSEMENTS *- transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; see pp. 25-27 of filing instructions.)*
☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. Exempt				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT
 Page 3 of 9

Name of Person Reporting	Date of Report
Costa, Gregg J.	09/08/2011

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.				
2.				
3.				
4.				
5.				

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Costa, Gregg J.

Date of Report

09/08/2011

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 mm/dd/yy	(3) Value Code 1 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1. Bank of America Account		None	K	T	Exempt				
2. Apple Common Stock		None	L	T					
3. GE Common Stock	A	Dividend	K	T					
4. Bank of America Common Stock	A	Dividend	J	T					
5. Home Depot Common Stock	A	Dividend	J	T					
6. Janus Fund D Mutual Fund	A	Dividend	K	T					
7. Janus Contrarian Mutual Fund	A	Dividend	K	T					
8. Janus Global Select Mutual Fund	A	Dividend	K	T					
9. Janus Worldwide Mutual Fund	A	Dividend	J	T					
10. Vanguard 500 Index Mutual Fund	A	Dividend	K	T					
11. Invesco Charter Mutual Fund	A	Dividend	J	T					
12. Pioneer Mid Cap Value Mutual Fund	A	Dividend	J	T					
13. Columbia Schigmann Communications Mutual Fund		None	J	T					
14. Fidelity Advisor Equity Growth Mutual Fund		None	K	T					
15. Oppenheimer Main Street Small & Midcap Mutual Fund		None	J	T					
16. iShares S&P Small Cap 600 Mutual Fund	A	Dividend	J	T					
17. Texas 519 Large Cap Core Index Fund		None	J	T					

1. Income Code	A - \$1,000 or less (See Column B1 and D4)	B - \$1,501 - \$2,500 Q - \$100,001 - \$1,000,000	C - \$2,501 - \$5,000 H - \$1,000,001 - \$5,000,000	D - \$5,001 - \$15,000 I1 - \$1,000,001 - \$5,000,000	E - \$15,001 - \$50,000 I2 - More than \$5,000,000
2. Value Code (See Column C1 and D3)	J - \$15,000 or less N - \$250,001 - \$500,000 P3 - \$750,000 - \$1,000,000	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 \$5,000,000	M - \$100,001 - \$250,000 P2 - \$5,000,001 - \$25,000,000	
3. Value Method Code (See Column C3)	Q - Appraisal U - Bank Value	R - Cost (Risk Estate Only) V - Other	S - Assessment W - Estimated	T - Cash Market	

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Costa, Gregg J.

Date of Report

09/08/2011

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-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
18. Texas 529 Capital Appreciation Portfolio		None	J	T					
19. Texas 529 Main Street Small and Midcap Fund		None	J	T					
20. Virginia 529 Stock Index Fund		None	K	T					
21. Virginia 529 Aggressive Fund		None	K	T					
22. Virginia 529 International Fund		None	J	T					
23. Virginia 529 Real Estate Investment Trust		None	J	T					
24. American Funds EuroPacific Growth (401k)		None	J	T					
25. American Funds Growth Fund of America (401k)		None	K	T					
26. Ario International Equity Fund I (401k)		None	J	T					
27. Ario International Equity Fund II (401k)		None	J	T					
28. Dodge & Cox Stock Fund (401k)		None	J	T					
29. DWS S&P 500 Index Fund (IRA)		None	J	T					
30. DWS Capital Growth Fund (IRA)		None	J	T					
31. DWS World Dividend Fund (IRA)		None	J	T					
32. Fidelity Blue Chip Growth Fund (401k)		None	K	T					
33. Fidelity Fifty Fund (401k)		None	K	T					
34. Fidelity Freedom Income Fund (401k)		None	K	T					

1. Income Code Order (See Columns B1 and D4)	A – \$1,000 or less F – \$50,001 – \$100,000 J – \$15,000 or less N – \$150,001 – \$500,000 P1 – \$15,000,001 – \$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 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 I12 – More than \$5,000,000 M – \$100,001 – \$250,000 P2 – \$5,000,001 – \$25,000,000	E – \$15,001 – \$50,000
2. Value Code (See Columns C1 and D3)					
3. Value Method Code (See Column C7)	Q – Appraisal U – Bank Value	R – Cash (Real Estate Only) W – Other	S – Assessment V – Eminent Domain	T – Cash Market	

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Name of Person Reporting

Costa, Gregg J.

Date of Report

09/08/2011

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 1 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
35. Fidelity Growth & Income Fund (IRA)		None	J	T					
36. Fidelity Growth Company Fund (IRA)		None	J	T					
37. Fidelity Pacific Basin Fund (401k)		None	K	T					
38. Goldman Sachs Growth Opportunity Fund (401k)		None	J	T					
39. Janus Global Select Fund (IRA)		None	J	T					
40. Janus Growth and Income Fund (IRA)		None	J	T					
41. Janus Research Fund (IRA)		None	J	T					
42. Janus Worldwide Fund (IRA)		None	J	T					
43. JP Morgan Prime Money Market Fund (401k)		None	J	T					
44. JP Morgan Smart Retirement 2020 (401k)		None	K	T					
45. JP Morgan Smart Retirement 2030 (401k)		None	J	T					
46. JP Morgan Smart Retirement 2035 (401k)		None	J	T					
47. JP Morgan Smart Retirement 2040 (401k)		None	K	T					
48. Pyramis Select International Equity Commingled Fund (401k)		None	J	T					
49. Ramier Large Cap Equity Fund (401k)		None	J	T					
50. Sempra Energy Common Stock (401k)		None	J	T					
51. T. Rowe Price Growth Stock Fund (401k)		None	K	T					

1. Income Item Codes (See Columns B1 and D4)	A – \$1,000 or less F – \$10,001 – \$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 – \$100,001 – \$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 M1 – \$100,001 – \$250,000 P2 – \$5,000,001 – \$25,000,000	E – \$15,001 – \$50,000 I2 – More than \$5,000,000 M2 – \$250,001 – \$500,000 P3 – \$25,000,001 – \$50,000,000
2. Value Codes (See Columns C1 and D3)	M – \$250,001 – \$100,000 P3 – \$25,000,001 – \$50,000,000	U – Bank Value	R – Cost (Retail Equity Only) V – Other	S – Statement W – Estimated	Y – Cash Market
3. Value Method Codes (See Column C2)	Q – Appraised				

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Costa, Gregg J.

Date of Report

09/08/2011

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)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Amount Code 1 (A-H)	Type (e.g., div., rent, or int.)	Value Code 2 (I-P)	Value Method Code 3 (Q-W)	Type (e.g., buy, sell, redemption)	Date mm/dd/yy	Value Code 2 (I-P)	Gain Code 1 (A-H)	Identity of buyer/seller (if private transaction)
52. T. Rowe Price Small Cap Stock Fund (401k)		None	K	T					
53. Vanguard Institutional Index Fund (401k)		None	L	T					
54. Vanguard Mid-Cap Index Fund (401k)		None	J	T					
55. Vanguard Money Market Fund (401k)		None	J	T					
56. Wasatch Small Cap Growth Fund (401k)		None	J	T					
57. State of Israel Bonds	A	Interest	J	T					

1. Income Code Codes (See Columns B) and D4)	A = \$1,000 or less F = \$10,001 - \$100,000	B = \$1,001 - \$12,500 G = \$100,001 - \$1,000,000	C = \$12,501 - \$3,000,000 H = \$3,000,001 - \$5,000,000	D = \$5,001 - \$13,000 I = \$13,001 - \$50,000,000	E = \$15,001 - \$50,000
2. Value Codes (See Columns C1 and D3)	J = \$1,000 or less N = \$210,001 - \$100,000 P3 = \$21,000,001 - \$10,000,000	K = \$11,001 - \$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 = Cash (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
Costa, Gregg J.	09/08/2011

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

FINANCIAL DISCLOSURE REPORT

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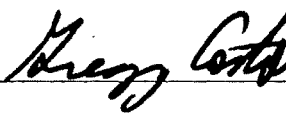
Name of Person Reporting	Date of Report
Costa, Gregg J.	09/08/2011

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		31	241	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		782	385	Notes payable to relatives			
Unlisted securities				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 - personal residence		376	840
Real estate owned - personal residence		600	000	Chattel mortgages and other liens payable		14	780
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		18	000				
Cash value-life insurance							
Other assets itemize:							
State of Israel Bonds		14	000				
Thrill Savings Plan		139	387				
				Total liabilities		391	620
				Net Worth	1	193	393
Total Assets	1	585	013	Total liabilities and net worth	1	585	013
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, cosigner 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

Apple stock	\$62,193
Bank of America stock	6,986
Columbia Seligmann Communications Fund	12,915
Fidelity Advisor Equity Growth Fund	20,367
GE stock	15,105
Home Depot stock	3,187
Invesco Charter Fund	14,797
iShares S&P Small Cap 600 Index Fund	12,757
Janus Fund D	31,621
Janus Contrarian Fund	30,220
Janus Global Select Fund	19,177
Janus Worldwide Fund	2,438
Oppenheimer Main Street Small & Midcap Fund	13,290
Pioneer Mid-Cap Value Fund	12,430
Vanguard 500 Index Fund	38,960

College Savings Plans

Texas 529 Large Cap Core Index Fund	\$9,740
Texas 529 Capital Appreciation Portfolio	8,359
Texas 529 Main Street Small & Mid-Cap Fund	10,567
Virginia 529 Real Estate Investment Trust	11,259
Virginia 529 Aggressive Fund	16,820
Virginia 529 Stock Index Fund	16,114
Virginia 529 International Fund	10,465

Retirement Holdings

American Funds Europacific Growth Fund	\$7,825
American Funds Growth Fund of America	18,379
Artio International Equity Fund I	15,525
Artio International Equity Fund II	5,776
Dodge & Cox Stock Fund	9,372
DWS Capital Growth Fund	1,874
DWS S&P 500 Index Fund	2,281
DWS World Dividend Fund	1,576
Fidelity Blue Chip Growth Fund	20,279
Fidelity Fifty Fund	23,471
Fidelity Freedom Income Fund	19,254
Fidelity Growth Company Fund	13,073
Fidelity Growth & Income Fund	6,965
Fidelity Pacific Basin Fund	19,986
Goldman Sachs Growth Opportunity Fund	10,541
Janus Global Select Fund	1,310
Janus Growth and Income Fund	1,454
Janus Research Fund	1,358

Janus Worldwide Fund	1,191
JP Morgan Prime Money Market Fund	6,158
JP Morgan Smart Retirement 2020	28,483
JP Morgan Smart Retirement 2030	12,189
JP Morgan Smart Retirement 2035	4,791
JP Morgan Smart Retirement 2040	15,759
Pyramis Select International Equity Commingled	14,110
Rainier Large Cap Equity Fund	5,982
Sempra Energy Stock	6,831
T. Rowe Price Growth Stock Fund	36,261
T. Rowe Price Small Cap Stock Fund	19,880
Vanguard Institutional Index	54,773
Vanguard Mid-Cap Index Fund	6,188
Vanguard Money Market Fund	7,435
Wasatch Small Cap Growth Fund	2,288
Total Listed Securities	\$782,385

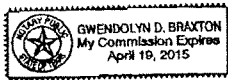
AFFIDAVIT

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

9/8/11
(DATE)

Gregg Costa
(NAME)

Gwendolyn D. Braxton
(NOTARY)



Senator BLUMENTHAL. Judge Guaderrama.

STATEMENT OF HON. DAVID CAMPOS GUADERRAMA, NOMINEE TO BE DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS

Judge GUADERRAMA. Thank you, Senator Blumenthal, Senator Grassley, and Senator Franken. I very much appreciate your inviting me to be here before you. I am truly honored to be in this room before this Committee. Thanks so much.

A very special thanks to President Obama for the tremendous honor he does me with his nomination. I would also offer a very warm thanks to Senator Hutchison and Senator Cornyn for their very kind and generous words of introduction.

I would also like to recognize my Congressman, Congressman Reyes, who is here in support. I am very grateful to him as well.

Senator Hutchison, Senator Cornyn, and Congressman Reyes and their staffs have been tremendously supportive of my efforts in this process, and I am very, very grateful to all of them for that.

I want to introduce to you my wife and sweetheart, Annalisa. We have been a couple and sweethearts for 12 years now. Annalisa is the deputy director of the State Probation Department in El Paso County. She has been extremely supportive of all the things that I have endeavored during the last 12 years and very supportive throughout this nomination.

I would also recognize numerous family members and friends, co-workers and colleagues who were unable to be here today, but they are following the proceedings on the webcast, and I thank them for a lifetime of support and for all the prayers they have offered during the nomination process.

Finally, Senators, I would like to dedicate my purpose here today to my parents, who were cotton farmers south of Deming, New Mexico. They had but an eighth-grade education, and they dedicated their lives to raising and educating their children. Today would have been a day of tremendous pride for the two of them.

Thank you for the opportunity to address you. I have no opening statement, and I look forward to answering your 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).

David C. Guaderrama
David Campos Guaderrama
David Guaderrama

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

United States District Judge for the Western District of Texas

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.

Albert Armendariz Sr. United States Courthouse
525 Magoffin Avenue, Suite 451
El Paso, Texas 79901

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

1954; Las Cruces, New Mexico

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.

1976 – 1979, University of Notre Dame Law School; J.D., 1979

1972 – 1975, New Mexico State University; B.A., 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.

2010 – Present

United States Courts

Albert Armendariz Sr. United States Courthouse

525 Magoffin Avenue, Suite 451

El Paso, Texas 79901

United States Magistrate Judge

1995 – 2010

State of Texas

500 East San Antonio, Suite 901

El Paso, Texas 79901

District Court Judge for the 243rd Judicial District

1987 – 1994

County of El Paso, Texas

500 East San Antonio

El Paso, Texas 79901

Chief Public Defender

1980 – 1986

Guaderrama and Guaderrama

407 East Nevada

El Paso, Texas 79902

Partner

1979 – 1980

David C. Guaderrama

300 East Main, Suite 640

El Paso, Texas 79901

Sole practitioner

Summer 1978

Southern New Mexico Legal Services

600 Montana Avenue #D

Las Cruces, New Mexico 88001

Law clerk

Spring 1978

University of Notre Dame

Hesburgh Library

Notre Dame, Indiana 46556

Research assistant to Professor Rudy Sandoval

Summer 1977
El Paso Legal Assistance Society
109 North Oregon
El Paso, Texas 79901
Law clerk

1975
Ponca Wholesale
3000 Harrelson, IN
Las Cruces, New Mexico 88005
Delivery/warehouseman

Other Affiliations (uncompensated):

2002 – Present
El Paso Criminal Law Group, Inc.
728 Camino Real
El Paso, Texas 79922
President and Board Member

1998 – 1999
El Paso Association for the Performing Arts
P.O. Box 512351
El Paso, Texas 79901
Board Member

1992 – 1993
El Paso Legal Assistance Society
1301 North Oregon Street
El Paso, Texas 79902
Board Member

1988 – 1990 (approximation)
Mexican American Bar Association
500 East San Antonio, Suite L-112
El Paso, Texas 79901
Board 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 U.S. military. I registered for selective service upon turning 18 years of age.

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.

Senate Proclamation No. 45, State of Texas Senate, sponsored by Senator Eliot Shapleigh of District 29, recognized me as "one of the hardest-working judges in the state" and my service to the community, *inter alia*, hosting deaf and hearing-impaired students in the Hillside Elementary School mock trial program (2010)

2004 Community Service Award, Texas Association of Parents and Educators for the Deaf (2004)

Young Lawyer's Jurist of the Year (2000)

Board Certified in Criminal Law by the Texas Board of Legal Specialization (1991)

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.

El Paso Bar Association
Federal Bar Association, El Paso Chapter
Mexican-American Bar Association
Board member (1988 – 1990) (approximation)
Probate Bar Association
State Bar of Texas
Texas Center for the Judiciary
Capital Crimes Bench Book Committee (2007 – 2008)

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.

Texas, 1979

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.

Supreme Court of the United States, 1993
United States Court of Appeals for the Fifth Circuit, 1982
United States District Court for the Western District of Texas, 1981

Courts of the State of Texas, 1979

My membership in the United States Court of Appeals for the Fifth Circuit lapsed in 2000. Apparently, the renewal application was sent to an old address; I never received it and thus did not renew my membership. Similarly, my membership in the District Court for the Western District of Texas lapsed in 2003. The renewal notice was again sent to an old address, and thus I did not renew my membership. There have been no other 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.

Ducks Unlimited (2002 – 2006) (approximation)

El Paso Association for the Performing Arts
Board Member (1998 – 1999)

El Paso Community College, Office Administration and Information Processing
Advisory Committee (1996 – 1997) (approximation)

El Paso Criminal Law Group, Inc.
President and Board Member (2002 – Present)

El Paso Justice Council (1995 – 2010) (approximation)

El Paso Legal Assistance Society
Board Member (1992 – 1993)

National Rifle Association (1998 – 2007) (approximation)

Notre Dame Club of El Paso (1980 – Present)

Project Safe Neighborhoods
Committee member (2004 – 2011)

- 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 the best of my knowledge, none of the organizations of which I am a member or have been a member 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

"The El Paso Criminal Defense Lawyers' 'Bar Association,'" EL PASO BAR JOURNAL, Feb./Mar. 2011, at 17. Copy supplied.

"Drug Courts Revisited." EL PASO BAR JOURNAL, Sept. 2009, at 18. Copy supplied.

David Guaderrama & Phillip Wischkaemper, "Pre-Indictment and Pre-Trial Management," in CAPITAL CASES BENCH BOOK (2008) (the Bench Book is put together by Texas Center for the Judiciary, Inc., an independent, non-profit 501(c)(3) organization that serves as the administrative arm of the Judicial Section of the State Bar of Texas and that provides judicial education and training opportunities for Texas judges). Copy supplied.

In 2008, I maintained a campaign web site while running for the 8th Court of Appeals. I have been unable to obtain a full copy of the web site, but I have supplied the available archived page.

Guest Column, "Race, Ethnic Background Needed for Jury Selection," EL PASO TIMES, Feb. 22, 1998, at 13A. Copy supplied.

With Matthew DeKoatz, "Recent Cases on Charging Instruments," VOICE FOR THE DEFENSE (published by Texas Criminal Defense Lawyers Association), vol. 24, no. 8, Oct. 1995, at 14. Copy supplied.

With Bruce Weathers, "Professional Conduct – When Should You Squeal on Your Client?. A View from the Defense," VOICE FOR THE DEFENSE (published by Texas Criminal Defense Lawyers Association), Jan. 1994, at 22. Copy supplied.

With Matthew DeKoatz, "Jury Charge." VOICE FOR THE DEFENSE (published by Texas Criminal Defense Lawyers Association), vol. 22, no. 5, June 1993, at 26. Copy supplied.

- 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.

On April 27, 1993, I submitted a brief titled "Duty of Candor v. Attorney-Client and Self-Incrimination Privileges" to the Professional Ethics Committee of the Supreme Court of Texas. Copy supplied.

- 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.

On August 12, 2010, I appeared before the El Paso County Commissioners Court to discuss proposed judicial budget cuts. Video is available at <http://www.epcounty.com/video/budget/archives.htm>.

On July 13, 2010, I spoke before the El Paso County Commissioners Court in support of a new position for a jail magistrate judge who would hear drug court cases. Video is available at <http://www.epcounty.com/video/special/archives.htm>.

I have made several other presentations to the Commission but do not have records of when I appeared. Furthermore, I have searched the Commission agendas and meeting minutes for mention of my appearances, but the documents do not detail whether I would have spoken or not. I have made these appearances while serving as a judge and as the El Paso County Public Defender.

- 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.

November 22, 2010: I addressed family and friends of and administered the oath of office to Judge Hicks in the courtroom of the 243rd Judicial District Court, El Paso, Texas. Notes supplied.

November 19, 2010: I addressed the gathering at the Naturalization Ceremony for new citizens at the El Paso Civic Center, El Paso, Texas. Notes supplied.

November 2, 2010: I addressed family and friends of late Judge Woodrow Bean, Jr., at a memorial service in the courtroom of the Eighth Court of Appeals of Texas, El Paso County Courthouse, El Paso, Texas. Notes supplied.

October 22, 2010: I addressed family, friends, and the local federal judiciary at my investiture ceremony in the Special Events Courtroom of the Albert Armendariz Sr. Federal Courthouse, El Paso, Texas. Notes supplied.

February 21, 2010: I spoke about drug courts during a reception dinner of the West Texas Area Chiefs Conference. I have no notes, transcript or recording. The address of the West Texas Community Supervision and Corrections Department is 800 East Overland, Suite 100, El Paso, Texas 79901.

September 21, 2009 (approximation): I addressed the crowd at the Chamizal National Memorial, El Paso, Texas, on the occasion of a candlelight vigil sponsored by the West Texas Community Corrections and Supervision Department, El Paso, Texas. Notes supplied.

April 14, 2009: I sat on a panel of judges discussing drug courts during an El Paso Bar Association meeting at the El Paso Club, El Paso, Texas. Notes supplied.

December 31, 2008: I swore in Richard Wiles as the Sheriff of El Paso County. I have no notes, transcript or recording. The address of the Sheriff's Office is 3850 Justice Drive, El Paso, Texas 79938.

September 7, 2008: I spoke about drug and alcohol abuse during the Rally for Recovery sponsored by the Recovery Alliance. I have no notes, transcript or recording. The address of the Recovery Alliance is P.O. Box 9669, El Paso, Texas 79995.

February 20, 2008: I spoke on drug courts for the East Side Civic Association. I have no notes, transcript or recording. The address of the East Side Civic Association is c/o Ray Graham, 10142 Stoneway Drive, El Paso, Texas 79925.

May 12, 2007 (approximation) I addressed students at El Dorado High School, El Paso, Texas. Notes supplied.

May 11, 2007 (approximation): I addressed the graduates of the "Substance Abuse Felony Punishment" program of the 384th Judicial District Court at the El Paso County Courthouse, 500 East San Antonio, El Paso, Texas. Notes supplied.

April 4, 2007: I addressed the Rio Grande Council of Governments regarding drug courts at 1100 North Stanton, Suite 610, El Paso, Texas. Notes supplied.

February 22, 2007 (approximation): I addressed the Appellate Section of the El Paso Bar Association on comparisons between advocacy decision making at trial and on appeal, at the El Paso County Courthouse, El Paso, Texas. Notes supplied.

March 18, 2005: I addressed and administered the oath of office to new probation officers at the El Maida Temple, 6331 Alabama, El Paso, Texas. Notes supplied.

May 14, 2004: I sat on a panel of judges discussing a judicial perspective on various practice aspects of appointed counsel at an event of the Texas Minority Counsel Program of the State Bar of Texas held in the Commissioner's Courtroom, El Paso County Courthouse, El Paso, Texas. Notes supplied.

April 27, 2004: I addressed the graduates of the "Cognitive Thinking" program at the Carolina Happiness Senior Center, 563 North Carolina Street, El Paso, Texas. Notes supplied.

October 4, 2002: On behalf of the El Paso Criminal Law Group, Inc., I presented a plaque to Joe Calamia honoring his service to the legal community. Notes supplied.

June 10, 2001: I administered the oath of office to City Councilman Larry Medina at the El Paso Civic Center, El Paso, Texas. Notes supplied.

December 13, 2000: I co-presented County Commissioner Charles Hooten with an award for his role in forming the El Paso County Public Defender's Office in the 1980s. Notes supplied.

May 19, 2000 (approximation): I sat on a panel of judges discussing a perspective from the bench on the do's and don'ts in courtroom practice at an event sponsored by the Texas Criminal Defense Lawyers Association in El Paso, Texas. Notes supplied.

May 11, 2000 (approximation): I addressed fifth-grade students at Collins Elementary School, El Paso, Texas. Notes supplied.

April 7, 2000: I addressed a group of state probation officers at their annual meeting in El Paso, Texas. Notes supplied.

July 15, 1999: I addressed the graduates of the "Back on Track" program of the West Texas Community Corrections and Supervision Department El Paso, Texas. Notes supplied.

June 13, 1999: I administered the oath of office to City Councilman Larry Medina at the El Paso Civic Center, El Paso, Texas. Notes supplied.

January 4, 1999: I administered the oath of office to Julie Gonzalez to be County Court at Law Judge in the Commissioner's Courtroom of the El Paso County Courthouse, El Paso, Texas. Notes supplied.

January 1, 1999: I administered the oath of office to Yvonne R. Guaderrama (now Bonnie Rangel) to be a Texas District Court judge. The ceremony was held in the Ceremonial Courtroom of the El Paso County Courthouse. I have no notes, transcript or recording. The address of the courthouse is 500 East San Antonio, El Paso, Texas 79901.

December 1996: On behalf of the Council of Judges, I presented retiring Commissioner Sanchez with a plaque honoring his service. Notes supplied.

1995 – 2001: I gave numerous addresses to students of the Peace Officer Certification Class at the Law Enforcement Training Academy, El Paso Community College, El Paso, Texas. Notes supplied.

1994 – 2011: I presided over annual mock trials for the Deaf Education Regional Day School Program. I have no notes, transcripts or recordings. The contact for the program is Mr. Douglas Jackson, 7024 Cielo Vista Drive, El Paso, Texas.

1994 – 2010: I gave numerous campaign speeches while running for the 243rd judicial district and the 8th Court of Appeals. I typically did not speak from a prepared text, outlines, or notes, but may have occasionally used push cards that contained my name, the position for which I was running, and my legal and judicial qualifications. The following are examples of the locations where, to the best of my recollection, such speeches might have been made:

At Democratic Party organizations in El Paso County, Texas, including:

The Executive Committee of the Democratic Party
1401 Montana Avenue, #C
El Paso, Texas 79902

Black El Paso Democrats
P.O. Box 371425
El Paso, Texas 79937

Paso Del Notre Tejanos
3000 East Yandell
El Paso, Texas 79903

Mexican American Democrats
824 Bolivia Street
El Paso, Texas 79903

At senior citizens centers in El Paso County, Texas, including:

Friendly West Senior Center
2215 Murchison Drive
El Paso, Texas 79923

El Paso Sacramento Senior Center
3134 Jefferson Avenue
El Paso, Texas 79930

Washington Park
322 Washington Street
El Paso, Texas 79905

Hilos de Plata
4451 Delta Drive
El Paso, Texas 79905

Carolina Happiness Senior Center
563 North Carolina Drive
El Paso, Texas 79915

South El Paso Senior Center
600 South Ochoa Street
El Paso, Texas 79901

Fabens Senior Citizens Center
201 Camp Street
Fabens, Texas 79838

Clint Senior Citizens Center
200 San Elizario Road
Clint, Texas 79836

- 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 searched my files as well as publicly available Internet sources to create as comprehensive a response to this question as possible, but I may have given other interviews that I am unable to recall or identify.

Ramon Bracamontes, "Love Fest: Thousands in EP are Loyal Backers of Irish," EL PASO TIMES, Dec 30, 2010. Copy supplied.

Adriana M. Chavez, "Guaderrama Appointed to Federal Magistrate Post," EL PASO TIMES, Sept. 21, 2010. Copy supplied.

Adriana M. Chavez, "Officials OK Drug-Court Magistrate Judge," EL PASO TIMES, July 13, 2010. Copy supplied

Adriana M. Chavez, "Judges Put to Use Videoconferencing," EL PASO TIMES, July 6, 2010. Copy supplied.

Adriana M. Chavez, "Judge Sets Relentless Courtroom Pace," EL PASO TIMES, Dec. 15, 2009. Copy supplied.

September 18, 2009: Spanish language interview with Jerry Smola on KVIV (AM 1340), regarding Drug Courts. I have been unable to obtain a copy of the interview.

Guadalupe Silva, "Drug Court Funded," WEST TEXAS COUNTY COURIER, Oct. 23, 2008. Copy supplied.

Cynthia Romero, "Addicts Get Support to Recover in Drug Court," EL PASO TIMES, Oct. 7, 2008. Copy supplied.

May 27, 2008: Spanish language interview with Jerry Smola on KXPL (AM 1060), regarding Drug Courts. I have been unable to obtain a copy of the interview.

April 2008: I gave an interview to someone who I now believe was with the Crystal Darkness 2008 Campaign on the subject of drug abuse in our community. I have been unable to obtain a copy of the interview

January – March 2008 (approximation): Interview with Paul Strelzin, Radio KHRO (AM 1650), regarding my campaign for the Eighth Court of Appeals of Texas. I have been unable to obtain a copy of the interview.

February 9, 2008: Interview with Professor Blevins for Perspectives. El Paso Community College, regarding my involvement in Mock Trials for hearing-impaired students. Video recording supplied. Although there are two separate interviews on the disc, I am only featured in the first.

February 2008: Greater El Paso Prosperity Project Voter's Guide, at 35 (self-prepared candidate information sheet). Copy supplied.

"Surfing the Courts; Low-Income Students Awarded Scholarships," County Insider, 2008. Copy supplied

2008 (approximation): Interview with Heidi Renpenning, KINT Univision Channel 26. I have been unable to obtain a copy of the interview.

February 2007: I provided a public service address about "El Paso Pride" carried on Time Warner cable channels in the local viewing area over the time period between February 2007 and December 2007. Script supplied and video available at http://www.youtube.com/watch?v=8AoEK62nn_0.

2006 (approximation): Interview with police spokesman Javier Sambrano on a cable channel, regarding Drug Courts. I have been unable to obtain a copy of the interview.

Tammy Fonce-Olivas, "Initiative Targets EP Gun Crimes," EL PASO TIMES, Apr. 8, 2005. Copy supplied.

Charles K. Wilson, "Commissioners Refuse to Hire Court Reporter," EL PASO TIMES, Jan. 11, 2005. Copy supplied.

Daniel Borunda, "7 Receive Diplomas for Graduating from Intense Drug Rehabilitation Program," EL PASO TIMES, Mar. 26, 2004. Copy supplied.

David Crowder, "Charged Demo is Asked to Quit," EL PASO TIMES, Feb. 14, 2004. Copy supplied.

Editorial, "Drug Court is a Success," EL PASO TIMES, Mar. 12, 2003. Copy supplied.

Louie Gilot, "Helping Hand: Program Offers Drug Users New Way of Dealing with Addiction," EL PASO TIMES, Mar. 11, 2003. Copy supplied.

Jennifer Shubinski and David Crowder, "Sex-Crime Penalties Questioned," EL PASO TIMES, Dec. 6, 2001. Copy supplied.

Jennifer Shubinski, "Court Puts Cases, Docket Online," EL PASO TIMES, July 20, 2001. Copy supplied.

Douglas Jackson, "Mock Trials for Deaf Students," Law Matters, Winter 2001. Copy supplied.

Jodi Garber. "Deaf Students Learn about Legal System at Mock Trial," EL PASO TIMES, Nov. 22, 2000. Copy supplied.

Jennifer Shubinski, "El Paso's Courts Have More Cases," EL PASO TIMES, Nov. 20, 2000. Copy supplied.

Press release, "First Virtual Corporation Wins I.T.C.A. Teleconferencing Excellence Award for County of El Paso Installation," FIRST VIRTUAL CORPORATION, June 30, 1997. Copy supplied.

Raul Hernandez. "No New Trial for Singleton," EL PASO TIMES, Aug. 14, 1996. Copy supplied.

Victor Venegas, "Your Jury Duty is About to Change," EL PASO HERALD-POST, Mar. 27, 1996. Copy supplied.

Juan A. Lozano, "El Pasoans Say Yes to Non-Runner," EL PASO HERALD-POST, Nov. 9, 1994. Copy supplied.

Editorial, "243rd District Court Clearly Needs Guaderrama as Judge," EL PASO TIMES, Nov. 4, 1994. Copy supplied.

David Sheppard, "Candidate and Wife in Dispute," EL PASO TIMES, Oct. 25, 1994. Copy supplied.

"Candidates Line Up for Judicial Seats," EL PASO CITIZEN, Dec. 16, 1993. Copy supplied.

"People to Watch – David C. Guaderrama: 'Thanks El Paso – You've Been Good to Me,'" EL PASO HERALD-POST, May 5, 1993. Copy supplied.

Raul Hernandez. "Public Defenders Taking on More Work," EL PASO HERALD-POST, Aug. 6, 1991. Copy supplied.

Raul Hernandez, "Appeals Court Rules against Magistrate," EL PASO HERALD-POST, Nov. 9, 1989. Copy supplied.

Berta Rodriguez, "Appeals Court Rules Magistrate Delayed Defendants Too Long," EL PASO TIMES, Nov. 9, 1989 (on or about). Copy supplied.

Allison Ring, "New Defender Addresses Challenges," LAS CRUCES SUN-NEWS, Jan. 28, 1988 (on or about). Copy supplied.

Michael Scanlon, "Ex-Crucan Defends El Paso's Poor," EL PASO TIMES, Jan. 26, 1987. Copy 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 November 8, 1994, I was elected Judge of the 243rd Judicial District Court of Texas, and I took office on January 1, 1995, for a four-year term. I was subsequently re-elected to this post on four occasions. The Court has general jurisdiction, state felony criminal jurisdiction, and civil jurisdiction. I resigned on September 30, 2010 to become a United States Magistrate Judge.

On October 1, 2010, I was appointed by the United States District Court for the Western District of Texas to serve an eight-year term as a United States Magistrate Judge. As set out in 28 U.S.C. § 636, the Court has jurisdiction to impose sentences in petty offenses and, upon the consent by the parties, in Class A misdemeanors; to determine bonds and order detention; and to conduct other criminal hearings when referred by the district court. In civil cases, the court can hear non-dispositive matters referred by the district court, and conduct trials and hear dispositive matters with the consent of the parties.

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

I presided over approximately 300 trials at the state court. I have not presided over a trial as a Magistrate Judge.

- i. Of these, approximately what percent were:

jury trials:	>99%
bench trials:	<1%
civil proceedings:	1%
criminal proceedings:	99%

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

I did not write any opinions as a state trial court judge. Below is a list of the opinions I have written either sitting by designation on the Texas Court of Appeals or as a Magistrate Judge.

Melendez v. Gutierrez, No. EP-11-CV-136-PRM (W.D. Tex. July 29, 2011), Docket No. 16 (recommending that the district court *sua sponte* dismiss inmate plaintiff's 42 U.S.C. § 1983 complaint).

Chung v. Bed Bath & Beyond, Inc., No. EP-09-CV-330-FM (W.D. Tex. July 7, 2011), Docket No. 47 (construing claims of U.S. Patent No. 6,511,199 in a patent infringement case).

Buzemore v. Castaneda, No. EP-10-CV-403-DB, 2011 WL 1675416 (W.D. Tex. Apr. 12, 2011) (recommending that the defendant's motion for summary judgment in a *Bivens* action filed by inmate plaintiff be granted).

United States v. Rodriguez, No. EP-08-CR-1865-PRM DB (W.D. Tex. Feb. 18, 2011), Docket No. 91 (recommending that the felon defendant's Federal Rule of Criminal Procedure 41(g) motion for return of seized firearms be granted in part and denied in part).

Parra-Mendez v. United States, No. EP-08-CR-1049-KC, 2011 WL 1101053 (W.D. Tex. Feb. 14, 2011) (recommending that the defendant's habeas corpus petition under 28 U.S.C. § 2255 be denied).

Villa-Escarcega v. United States, No. EP-08-CR-2643-PRM (W.D. Tex. Dec. 30, 2010), Docket No. 56 (recommending that the defendant's habeas corpus petition under 28 U.S.C. § 2255 be denied).

Hernandez v. United States, No. EP-07-CR-2399-KC (W.D. Tex. Dec. 7, 2011), Docket No. 42 (recommending that the defendant's habeas corpus petition under 28 U.S.C. § 2255 be denied).

Huerta-Lopez v. United States, No. EP-08-CR-1272-DB (W.D. Tex. Dec. 1, 2010), Docket No. 45 (recommending that the defendant's habeas corpus petition under 28 U.S.C. § 2255 be denied).

Valladolid-Lerma v. United States, EP-06-CR-1869-DB (W.D. Tex. Nov. 23, 2010), Docket No. 47 (recommending that the defendant's habeas corpus petition under 28 U.S.C. § 2255 be granted).

Zhao v. Holder, EP-10-CV-164-PRM (W.D. Tex. Nov. 12, 2010), Docket No. 15 (recommending that Respondent's Motion For Summary Judgment be granted in a § 2241 habeas petition involving an immigration issue).

Herrera-Rodriguez v. United States, No. EP-08-CR-0618-PRM (W.D. Tex. Nov. 8, 2010), Docket No. 44 (recommending that the defendant's habeas corpus petition under 28 U.S.C. § 2255 be denied).

State v. Alderete, 314 S.W.3d 469 (Tex. App.—El Paso 2010) (dissenting opinion) (Guaderrama, J. sitting by assignment).

- 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. *State v. Bradley*, Cause No. 950D01517 (243rd Dist. Ct., El Paso County, Tex.) (Murder)

The defendant was accused of killing his wife. For some time, the identity of the victim, whose body was dismembered and strewn all across the city, was unknown. The police asked the media to help by broadcasting a picture of the victim's face on the evening news. Shortly after the broadcast, the police received tips that revealed her identity and led to her husband, the defendant. I presided over pretrial motions hearings, jury selection, and the trial on the merits, rendering rulings on motions or objections raised by counsel. I denied the defendant's motion to suppress his confession, finding that he was not in custody when he gave the statement. The jury found the defendant guilty and sentenced him to life in the penitentiary, and the appellate court affirmed. *Bradley v. State*, 960 S.W.2d 791 (Tex. App.—El Paso 1997).

For the State:

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(915) 546-2059

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Texas Tech University Health Science Center
4801 Alberta Avenue, Suite B09
El Paso, Texas 79905
(915) 545-8839

For the Defendant:

Gary Hill
Attorney at Law
801 North El Paso Street, Suite 200
El Paso, Texas 79902
(915) 544-9459

Louis E. Lopez
Attorney at Law
416 North Stanton, Suite 400
El Paso, Texas 79901
(915) 543-9800

2. *State v. Singleton*, Cause No. 960D01611 (243rd Dist. Ct., El Paso County, Tex.) (Aggravated Assault)

The defendant, who was an outstanding college athlete and had been invited to try out with the Tampa Bay Buccaneers, was charged with aggravated assault for punching and breaking the jaw of a young man outside a bar for no apparent reason. The jury found the defendant guilty and sentenced him to twelve years in the penitentiary. I presided over pretrial motions hearings, jury selection, and the trial on the merits, rendering rulings on motions or objections raised by counsel. I denied a motion for new trial alleging that the verdicts as to guilt and punishment were invalid because my instructions to the jury in response to jury notes were confusing. The appellate court affirmed the judgment. *Singleton v. State*, 986 S.W.2d 645 (Tex. App.—El Paso 1998).

For the State:

Assistant District Attorney Rick Locke
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(915) 546-2059

Michael Pleters
Assistant Chief Counsel
Immigration and Customs Enforcement
1545 Hawkins Boulevard
El Paso, Texas 79925
(915) 782-7900

For the Defendant:

Danny Mena
Attorney at Law
3233 North Piedras Street
El Paso, Texas 79930
(915) 564-1336

3. *State v. Middaugh*, Cause Nos. 960D03375, 960D03497, 960D01341, 960D01342, 960D09894 (243rd Dist. Ct., El Paso County, Tex.) (Aggravated Robbery)

For a number of weeks, the defendant terrorized the city, targeting businesses operated by females. He would enter with a ski mask and hand gun, force the women to disrobe and turn over their valuables. Toward the end of his crime spree, he became bolder and progressed to fondling some of the women. He

was charged with multiple counts of aggravated robbery. I presided over pretrial motions hearings, jury selection, and the trial on the merits, rendering rulings on motions or objections raised by counsel. The jury found him guilty, but recommended a sentence of probation. No appeal was taken.

For the State:

Michael Pleters
Assistant Chief Counsel
Immigration and Customs Enforcement
1545 Hawkins Boulevard
El Paso, Texas 79925
(915) 782-7900

Tom Cloudt
Attorney at Law
P.O. Box 12548
Austin, Texas 78711
(512) 463-6588

For the Defendant:

Joe Spencer
Attorney at Law
1009 Montana Avenue
El Paso, Texas 79902
(915) 564-1336

4. *State v. Ortiz*, Cause No. 980D08993 (243rd Dist. Ct., El Paso County, Tex.) (Capital Murder)

The defendant, a “tank boss” at the county jail and with a long criminal history including a prior murder conviction, was charged with capital murder for killing another inmate by orchestrating an intentional heroin overdose of the victim. I presided over pretrial motions hearings and the trial on the merits, rendering rulings on motions or objections raised by counsel. The jury found the defendant guilty and assessed the death penalty, and the Texas Court of Criminal Appeals affirmed. *Ortiz v. State*, 93 S.W.3d 79 (Tex. Crim. App. 2002)

For the State:

Assistant District Attorney Rick Locke
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500 East San Antonio, 2nd Floor
El Paso, Texas 79901
(915) 546-2059

Joe Rosales
Attorney at Law
1400 Montana Avenue
El Paso, Texas 79902
(915) 542-0884

For the Defendant:

Jaime Gandara
El Paso County Public Defender's Office
El Paso County Courthouse
500 East San Antonio, Room 501
El Paso, Texas 79901
(915) 546-8185

Max Munoz
Attorney at Law
1413 Wyoming Avenue
El Paso, Texas 79902
(915) 838-7777

5. *State v. Berkley*, Cause No. 20000D05705 (243rd Dist. Ct., El Paso County, Tex.) (Capital Murder)

After staking out an ATM machine, the defendant attacked a young woman who came to withdraw \$20.00 for an evening on the town. He shot her in the face, ordered her to move into the passenger seat, and drove her to a desert where he repeatedly sexually assaulted her and shot and killed her. I presided over the pretrial motions hearings and the trial on the merits, rendering rulings on motions or objections raised by counsel. I overruled the defendant's objection to DNA profile evidence and photographs of the victim's body, and denied his motion to strike expert testimony about the DNA profile. The jury found the defendant guilty and assessed the death penalty. The Texas Court of Criminal Appeals affirmed. *Berkley v. State*, No. AP-74,336 (Tex. Crim. App. Apr. 16, 2005) (not designated for publication).

For the State:

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Kelly Dickson
Attorney at Law
6152 Strahan Road
El Paso, Texas 79932
(915) 877-4746

For the Defendant:

Matthew Dekoatz
Attorney at Law
718 Myrtle Avenue
El Paso, Texas 79901
(915) 626-8833

Francisco Macias
Attorney at Law
1001 North Campbell Street
El Paso, Texas 79902
(915) 544-9047

6. *State v. Sandoval*, Cause No. 20070D01400 (243rd Dist. Ct., El Paso County, Tex.) (Murder)

After having too much to drink, the defendant stumbled out of a bar and drove off in his pickup. On his errant path home, he sped up to make a red signal light, and in the process, hit and killed two pedestrians on the crosswalk. He continued driving until his vehicle gave out. The defendant, who had two prior convictions for driving while intoxicated, was charged with two counts of felony murder, with both counts alleging driving while intoxicated a third time as the underlying felony. I presided over the pretrial motions hearings, jury selection, and trial on the merits, rendering rulings on motions or objections raised by counsel. I denied the defendant's motion to quash the

felony-murder counts in the indictment. The jury found the defendant guilty and assessed a sentence of 40 years' confinement for each count of felony murder, and the appellate court affirmed. *Sandoval v. State*, 310 S.W.3d 73 (Tex. App.— El Paso 2010).

For the State:

Assistant District Attorney Andy Ortega
Assistant District Attorney Jennifer Vandenbosch
El Paso County Courthouse
500 East San Antonio, 2nd Floor
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(915) 546-2059

For the Defendant:

Louis E. Lopez
Attorney at Law
416 North Stanton, Suite 400
El Paso, Texas 79901
(915) 543-9800

7. *State v. Coutta*, Cause No. 20040D01265 (243rd Dist. Ct., El Paso County, Tex.) (Aggravated Promotion of Prostitution)

The defendant hired underage girls and promoted prostitution in a men's club. I presided over pretrial motions hearings, jury selection, and trial on the merits, rendering rulings on motions or objections raised by counsel. The jury found the defendant guilty of aggravated promotion of prostitution and assessed a sentence of 17 years' incarceration. The case is currently on appeal in Case No. 08-10-00039-CR at the Eighth Court of Appeals of Texas, and no opinion has been handed down as of this writing.

For the State:

Assistant District Attorney Rick Locke
Assistant District Attorney Sherri Shapleigh
El Paso County Courthouse
500 East San Antonio, 2nd Floor
El Paso, Texas 79901
(915) 546-2059

For the Defendant:

Gary Hill
 Attorney at Law
 801 North El Paso Street, Suite 200
 El Paso, Texas 79902
 (915) 544-9459

8. *State v. Torres*, Cause No. 20080D01730 (243rd Dist. Ct., El Paso County, Tex.) (Murder)

The defendant was charged with felony murder for shooting his friend (though not intentionally) while intending only to threaten him. At the moment he pointed his gun at his friend, the gun discharged, and the bullet struck his friend, killing him. I presided over pretrial motions hearings, jury selection, and trial on the merits, rendering rulings on motions or objections raised by counsel. I declined the defendant's request for a jury instruction on the lesser-included offense of manslaughter. The jury found the defendant guilty of felony murder and assessed his punishment at 8 years in the penitentiary, and the appellate court affirmed. *Torres v. State*, No. 08-09-00165-CR (Tex. App.—El Paso Sept. 1, 2010) (not designated for publication).

For the State:

Assistant District Attorney Rick Locke
 Assistant District Attorney Amy Monsivais
 El Paso County Courthouse
 500 East San Antonio, 2nd Floor
 El Paso, Texas 79901
 (915) 546-2059

For the Defendant:

Dolph Quijano
 Attorney at Law
 707 Myrtle
 El Paso, Texas 79901
 (915) 542-1051

9. *Chung v. Bed Bath & Beyond, Inc.*, No. EP-09-CV-330-FM (W.D. Tex. July 7, 2011), Docket No. 47, Report and Recommendation by the Magistrate Judge: The Claim Construction of U.S. Patent No. 6,511,199. Copy supplied.

Plaintiff brought this suit against defendant Bed Bath and Beyond, Inc., alleging infringement of his patent. The District Court referred this case to my court for a recommendation on construction of the asserted patent claim. I

held a hearing in accordance with *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), to construe four disputed terms or phrases of Claim 1 of the patent. In my Report and Recommendation to the District Court, I provided my recommended constructions along with my claim construction analyses. The case is currently pending before the District Court.

For the Plaintiff:

Rodolfo Mata
Rodolfo Mata, P.C.
1112 Montana Avenue
El Paso, Texas 79902
(915) 613-0780

For the Defendant:

Gerard F. Dunne
Law Offices of Gerard F. Dunne, P.C.
156 Fifth Avenue, Suite 1223
New York, New York 10010
(212) 645-2410

10. *United States v. Rodriguez*, No. EP-08-CR-1865-PRM DB (W.D. Tex. Feb. 18, 2011), Docket No. 91, Report and Recommendation by the Magistrate Judge. Copy supplied.

In this case, ATF agents executed a search warrant at the defendant's residence and seized approximately 100 weapons, including two modified pistols. The defendant had modified the two pistols by adding a plastic "butt stock" to allow shooting from the shoulder. The stock extension transformed each pistol into a "rifle" but with a barrel length less than sixteen inches, triggering his obligation to register the modified pistols with the National Firearms and Registration and Transfer Record, which he had not done. He was charged with possessing the two modified pistols without registration. The District Court adjudged him guilty and sentenced him to one year in prison. After serving his sentence, the defendant, now a convicted felon without the capacity to legally possess any firearm, moved the court, pursuant to Federal Rule of Criminal Procedure 41(g), for the return of the remaining firearms seized by the ATF. The District Court referred the motion to my court. In my Report and Recommendation to the District Court, I recommended that the defendant's motion be denied in part as to his request for the return of the firearms to him or his brother, and be granted in part as to allow a third-party independent trustee to sell the firearms and distribute the proceeds to the defendant. The District Court adopted my Report and Recommendations, approving an agreement reached by the parties consistent with my recommendations.

For the United States:

Gregory Edward McDonald
Assistant United States Attorney
700 East San Antonio Street, Suite 200
El Paso, Texas 79901
(915) 534-6884

For the Defendant:

Leon Schydlower
Attorney at Law
210 North Campbell Street
El Paso, Texas 79901
(915) 532-3601

- 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. *State v. Alderete*, 314 S.W.3d 469 (Tex. App.—El Paso 2010) (dissenting opinion) (Guaderrama, J. sitting by assignment).

For the State:

Joe Monsivais
Assistant District Attorney
El Paso County Courthouse
500 East San Antonio, 2nd Floor
El Paso, Texas 79901

For the Appellant:

Rafael Salas
Attorney at Law
Salas & Salas L.L.P.
1500 Montana Avenue
El Paso, Texas 79902
(915) 534-7252

2. *Chung v. Bed Bath & Beyond, Inc.*, No. EP-09-CV-330-FM (W.D. Tex. July 7, 2011), Docket No. 47, Report and Recommendation by the Magistrate Judge: The Claim Construction of U.S. Patent No. 6,511,199 (construing

claims of U.S. Patent No. 6,511,199 in a patent infringement case). Copy supplied in response to 13c.

For the Plaintiff:

Rodolfo Mata
Rodolfo Mata, P.C.
1112 Montana Avenue
El Paso, Texas 79902
(915) 613-0780

For the Defendant:

Gerard F. Dunne
Law Offices of Gerard F. Dunne, P.C.
156 Fifth Avenue, Suite 1223
New York, New York 10010
(212) 645-2410

3. *United States v. Rodriguez*, No. EP-08-CR-1865-PRM DB (W.D. Tex. Feb. 18, 2011), Docket No. 91, Report and Recommendation by the Magistrate Judge (recommending that the felon defendant's Federal Rule of Criminal Procedure 41(g) motion for return of seized firearms be granted in part and denied in part). Copy supplied in response to 13c.

For the United States:

Gregory Edward McDonald
Assistant United States Attorney
700 East San Antonio Street, Suite 200
El Paso, Texas 79901
(915) 534-6884

For the Defendant:

Leon Schydlower
Attorney at Law
210 North Campbell Street
El Paso, Texas 79901
(915) 532-3601

4. *Valladolid-Lerma v. United States*, EP-06-CR-1869-DB (W.D. Tex. Nov. 23, 2010), Docket No. 47, Report and Recommendation by the Magistrate Judge (recommending that the defendant's habeas corpus petition under 28 U.S.C. § 2255 be granted). Copy supplied.

For Petitioner Valladolid-Lerma:

Pro se (inmate): Eric Alberto Valladolid-Lerma
Last known address:
McRae Correctional Institution
P.O. Drawer 30
McRae, Georgia 31055

For Respondent United States:

Kristopher D. Jarvis
Assistant United States Attorney
700 East San Antonio, Suite 200
El Paso, Texas 79901
(915) 534-3481

5. *Melendez v. Gutierrez*, No. EP-11-CV-136-PRM (W.D. Tex. July 29, 2011), Docket No. 16 (recommending that the district court *sua sponte* dismiss inmate plaintiff's 42 U.S.C. § 1983 complaint). Copy supplied.

For the Plaintiff:

Pro se (inmate): Raymundo Melendez
(Last known address)
Huntsville Unit
815 12th Street
Huntsville, Texas 77348

For the Defendants:

No appearance (defendants were never served)

6. *Bazemore v. Castaneda*, No. EP-10-CV-403-DB, 2011 WL 1675416 (W.D. Tex. Apr. 12, 2011), Docket No. 28, Report and Recommendation by the Magistrate Judge (recommending that the defendant's motion for summary judgment in a *Bivens* action filed by inmate plaintiff be granted).

For Petitioner Bazemore:

Pro se (inmate): Vincent John Bazemore, Jr
Last known address:
FCI La Tuna
P.O. Box 8000
Anthony, New Mexico 88021

For Respondent Castaneda:

Dimitri N. Rocha
Assistant United States Attorney
601 North West Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7396

7. *Parra-Mendez v. United States*, No. EP-08-CR-1049-KC, 2011 WL 1101053 (W.D. Tex. Feb. 14, 2011), Docket No. 49, Report and Recommendation by the Magistrate Judge (recommending that the defendant's habeas corpus petition under 28 U.S.C. § 2255 be denied)

For Petitioner Parra-Mendez

Pro se (inmate): Raymundo Parra-Mendez
Last known address:
GW Dalby Correctional Facility
805 North Avenue F
Post, Texas 79356

For Respondent United States:

Michele C. Daly
Assistant United States Attorney
700 East San Antonio, Suite 200
El Paso, Texas 79901
(915) 534-6884

8. *Villa-Escarcega v. United States*, No. EP-08-CR-2643-PRM (W.D. Tex. Dec. 30, 2010), Docket No. 56, Report and Recommendation by the Magistrate Judge (recommending that the defendant's habeas corpus petition under 28 U.S.C. § 2255 be denied). Copy supplied.

For Petitioner Villa-Escarcega:

Pro se (inmate): Margarito Villa-Escarcega
Last known address:
BSCC Big Spring
2001 Rickabaugh Drive
Big Spring, Texas 79720

For Respondent United States:

Kristopher D. Jarvis
Assistant United States Attorney
700 East San Antonio, Suite 200
El Paso, Texas 79901
(915) 534-3481

9. *Hernandez v. United States*, No. EP-07-CR-2399-KC (W.D. Tex. Dec. 7, 2011), Docket No. 42, Report and Recommendation by the Magistrate Judge (recommending that the defendant's habeas corpus petition under 28 U.S.C. § 2255 be denied). Copy supplied.

For Petitioner Hernandez:

Pro se (inmate): Jose Francisco Hernandez
Last known address:
P.O. Box 5300
Adelanto, California 92301

For Respondent United States:

Michele C. Daly
Assistant United States Attorney
700 East San Antonio, Suite 200
El Paso, Texas 79901
(915) 534-6884

10. *Herrera-Rodriguez v. United States*, No. EP-08-CR-0618-PRM (W.D. Tex. Nov. 8, 2010), Docket No. 44, Report and Recommendation by the Magistrate Judge (recommending that the defendant's habeas corpus petition under 28 U.S.C. § 2255 be denied). Copy supplied.

For Petitioner Herrera-Rodriguez.

Pro se (inmate). Enrique Herrera-Rodriguez
Last known address:
2001 Rickabaug Drive
Big Spring, Texas 79720

For Respondent United States:

James C. Skillern
Assistant United States Attorney
700 East San Antonio, Suite 200
El Paso, Texas 79901
(915) 534-6884

- e. Provide a list of all cases in which certiorari was requested or granted.

State v. Berkley, Cause No. 20000D05705 (243rd Dist. Ct., El Paso County, Tex.), *aff'd*, No. AP-74,336 (Tex. Crim. App. Apr. 16, 2005) (not designated for publication). The Supreme Court denied the defendant's petition for writ of certiorari. *Berkley v. Texas*, 546 U.S. 1077 (2005) (mem).

State v. Ortiz, Cause No. 980D08993 (243rd Dist. Ct., El Paso County, Tex.), *aff'd*, *Ortiz v. State*, 93 S.W.3d 79 (Tex. Crim. App. 2002). The Supreme Court denied the defendant's petition for writ of certiorari. *Ortiz v. Texas*, 538 U.S. 998 (2003) (mem).

- 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.

I have had no reversal of an opinion I prepared. I have had rulings reversed, and I have described these instances below.

REPORTED REVERSALS

City of El Paso v. Granados, 334 S.W.3d 407 (Tex. App.—El Paso 2011). In a sexual discrimination and retaliation suit brought by a former city employee, I denied the defendant City's plea to jurisdiction on the ground that the plaintiff failed to timely exhaust her administrative remedies. Texas law requires that a complaint of unlawful employment discrimination be filed with the Texas Commission on Human Rights (TCHR) or the EEOC within 180 days after the alleged unlawful employment action occurs. After receiving a termination notice from the city, the plaintiff appealed that decision to the Civil Service Commission (CSC), which upheld the City's decision. Following that, and more than 200 days after she had received the termination notice, she filed her discrimination charges with the TCHR. After holding two hearings on the plea and considering extensive arguments by the parties, I ruled that the 180-day limitations period started to run from the date her termination was finalized on appeal at the CSC, not from the day she received her termination notice. The appellate court disagreed, reversing my ruling and rendering a judgment of dismissal.

Bustamante v. State, 109 S.W.3d 1 (Tex. App.—El Paso 2002). *See also Bustamante v. State*, No. 08-07-0008-CR (Tex. App.—El Paso Sept. 23, 1999) (not designated for publication), *rev'd*, 48 S.W.3d 761 (Tex. Crim. App. 2001)). At the defendant's trial for murder, the defense counsel asked a state witness about gangs in the defendant's neighborhood in an attempt to elicit testimony that the victim was a gang member. Over the state's objection on relevancy, the defense counsel argued that this evidence was relevant to show the defendant's state of mind. Presuming that the defendant's testimony would make the gang issue relevant, I responded: "Well, as soon as I hear the defendant, we'll get into it." The appellate court reversed and remanded for a new trial, holding that my comment was a comment made before the jury on defendant's failure to testify, thereby violating the defendant's privilege against self-incrimination.

Mercado v. State, 993 S.W.2d 815 (Tex. App.—El Paso 1999). *See also Mercado v. State*, 944 S.W.2d 42 (Tex. App.—El Paso 1997), *rev'd*, 972 S.W.2d 75 (Tex. Crim. App. 1998) (en banc) (per curiam). [Please note: Westlaw case synopsis for all three cases inaccurately attributes this case to another judge.] At a hearing on a motion to suppress, the state argued that the arresting police officers, pursuant to a valid inventory, properly seized cocaine and marijuana found in a zipped bank bag inside the defendant's car. Relying on *Autran v. State*, 887 S.W.2d 31 (Tex. Crim. App. 1994) (plurality opinion), which held that an inventory search does not authorize the search of an opaque, closed or locked container found in a car, I granted the defendant's motion. On appeal, the Eighth Court of Appeals reversed my ruling, declining to follow *Autran*.

UNREPORTED REVERSALS

State v. Lyman, No. 08-00-00383-CR (Tex. App.—El Paso Dec. 13, 2001). This involved my decision on a state habeas application. Previously, in another trial court before Judge Marsh, the applicant-defendant pleaded guilty to burglary, and he was granted deferred adjudication and placed on probation. However, at the time of his plea, Judge Marsh failed to admonish him as to the immigration consequences of his plea as required under Article 26.13 of Texas Code of Criminal Procedure. Years later, while still serving his probation, the defendant filed an application for writ of habeas corpus in my court. I noted that under *Ex parte Tover*, 901 S.W.2d 484 (Tex. Crim. App. 1995), an applicant must show harm in order to prevail on a post-conviction writ of habeas corpus, but I found that in this case the petitioner need not, reasoning that this was not a post-conviction attack because no judgment of guilt was ever entered against him as he was granted a deferred adjudication. In any event, I found that he was harmed by the trial court's failure to properly admonish him. Accordingly, I granted him habeas relief, set aside the judgment, and remanded the case. The appellate court disagreed and reversed.

State v. Johnson, No. 08-99-00018 (Tex. App.—El Paso Mar. 9, 2000). I granted the defendant's pre-trial motion, pursuant to Article 32.01 of the Texas Code of Criminal Procedure, seeking to dismiss the indictment for failure to timely indict. Citing *Brooks v. State*, 990 S.W.2d 278 (Tex. Crim. App. 1997) for the proposition that Article 32.01 is not applicable once an indictment is returned, the appellate court reversed and remanded, reasoning that the defendant failed to seek relief prior to the issuance of the underlying indictment.

Elias v. State, No. 08-98-00005-CR (Tex. App.—El Paso Dec. 9, 1999). At trial, I overruled defendant's hearsay objection to the state's questions on cross-examination concerning hypothetical statements by the other co-defendants. The appellate court reversed and remanded the case for a new trial, holding that the state's questions and comments contained inadmissible "backdoor hearsay" designed to inform the jury of the substance of the out-of-court statements made by the co-defendants.

State v. Aguirre, No. 08-98-00442-CR (Tex. App.—El Paso Oct. 28, 1999). I granted the defendant's pre-trial motion, pursuant to Article 32.01 of the Texas Code of Criminal Procedure, seeking to dismiss the indictment for failure to timely indict. Citing *Brooks v. State*, 990 S.W.2d 278 (Tex. Crim. App. 1997), the appellate court stated that once an indictment is returned, Article 32.01 is inapplicable. The court reversed and remanded, reasoning that the defendant failed to seek relief prior to the issuance of the underlying indictment. In a footnote, the court remarked that "the trial court did not have the benefit of the *Brooks* opinion at the time of [its] ruling."

State v. Leite, No. 08-98-00189-CR (Tex. App.—El Paso July 30, 1999). I granted the defendant's pre-trial motion, pursuant to Article 32.01 of the Texas Code of Criminal Procedure, seeking to dismiss the indictment for failure to timely indict. Citing *Brooks v. State*, 990 S.W.2d 278 (Tex. Crim. App. 1997), the appellate court stated that once the grand jury returns an indictment, the trial court is without authority to dismiss a prosecution pursuant to Article 32.01. The court reversed, reasoning that the defendant failed to seek relief prior to the issuance of the underlying indictment. In a footnote, the court remarked that "the trial court did not have the benefit of the Court of Criminal Appeals's opinion in *Brooks*, 990 S.W.2d at 285, when it dismissed the prosecution in this case."

State v. Walker, No. 08-98-00190-CR (Tex. App.—El Paso July 30, 1999). I granted the defendant's pre-trial motion, pursuant to Article 32.01 of the Texas Code of Criminal Procedure, seeking to dismiss the indictment for failure to timely indict. Citing *Brooks v. State*, 990 S.W.2d 278 (Tex. Crim. App. 1997), the appellate court stated that once the grand jury returns an indictment, the trial court is without authority to dismiss a prosecution pursuant to Article 32.01. The court reversed, reasoning that the defendant failed to seek relief prior to the issuance of the underlying indictment. In a footnote, the court remarked that "the

trial court did not have the benefit of the Court of Criminal Appeals's opinion in *Brooks*, 990 S.W.2d at 285, when it dismissed the prosecution in this case."

- 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.

All eleven of the opinions that I have issued as a U.S. Magistrate Judge are unpublished. They are filed and stored at CM/ECF, aka PACER, the federal courts' electronic case management system. I did not issue any opinions, published or unpublished, as a state trial court judge.

- 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.

State v. Alderete, 314 S.W.3d 469 (Tex. App.—El Paso 2010) (dissenting opinion) (Guaderrama, J. sitting by assignment).

- 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.

As a U.S. magistrate judge, I follow the federal recusal statutes and Code of Conduct for United States Judges. I maintain a standing recusal list that includes

authorities whose potential appearance before me would require my recusal. These authorities include all cases that were before me during my tenure as a state district court judge and all cases in which my former spouse Yvonne Rangel, a state district court judge, may have been involved. Our court utilizes an automated recusal system. Under that system, a weekly e-mail is generated indicating any potential conflicts in a case that is assigned to me and that involves a party listed on my standing recusal list. As a redundant precaution, my law clerk receives this email as well. After receiving such a notice, I would take whatever action is dictated by the recusal statutes and the Code of Conduct for United States Judges.

While on the bench of the 243rd District Court of Texas, I followed the recusal requirements of state law. Upon being elected, my practice was to review the file of any case before me to determine if that case had been filed prior to January 1, 1995. The purpose of my review was to determine if I had ever provided advice or representation to the defendant or if the Public Defender's Office was ever involved in the case. In cases where I provided any advice or representation as the Public Defender or a private practitioner, I *sua sponte* recused myself. In cases where my only involvement was as the head of the Public Defender's office, I informed the parties of my involvement, asked if they would like for me to recuse myself, and complied with their wishes.

I also recused myself in the following criminal matter in the state court:

State v. Renteria, Cause No. 67223-243 (243rd Dist. Ct., El Paso County, Tex.). The *El Paso Times* contacted me and asked me about new serious charges filed against the defendant who was on probation in my court. Some of my statements were reported in the newspaper as suggesting that I had formed an opinion about the defendant's guilt on the new charges. To avoid any impropriety, I *sua sponte* recused myself from the probation revocation matter that was before me.

In addition, I elected not to recuse myself in the following matter at the state court:

State of Texas v. Unknown Defendant Tagger (graffiti case) [I have been unable to recall or locate the defendant's name, the proper style of the case, or the cause number.]: The defense counsel filed a Motion to Recuse. The matter that counsel complained of dealt with the conditions of probation, not with whether I could consider granting probation. I determined that the motion did not raise any conflict of interest but rather asserted dissatisfaction with the court's judicial approach to sentencing, which is not a conflict so long as the court can consider the full range of punishment. I notified the parties that I would not recuse myself and followed the protocol to have a judge assigned to hear the motion. who, upon holding a hearing, denied the motion.

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.

1987 – 1994: El Paso County Public Defender I was appointed by majority vote of the El Paso County Commissioner's Court.

2008: Unsuccessful candidacy for Justice Place 3 on the Eighth Court of Appeals of Texas sitting in El Paso.

- 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.

On five occasions, as a candidate, I campaigned to be elected or re-elected the judge of the 243rd Judicial District Court sitting in El Paso County, Texas. The elections were held in 1994, 1998, 2002, 2006, and 2010. While my participation and political activities were most comprehensive during my first campaign, which included a primary election in addition to a general election, my duties and responsibilities in general were as follows: to file an application for a place on the ballot, recruit volunteers, raise money, delegate campaign duties, visit senior citizens' centers, and make appearances at political forums, meetings, and rallies.

I was the candidate in my campaign to be elected Justice, Place 3 on the Eighth Court of Appeals of Texas. The campaign from primary to general election lasted approximately from June 2007 to March 2008. My duties were to file for a place on the ballot, recruit volunteers, raise money, delegate campaign duties, and attend political forums and rallies.

I have not otherwise participated in a political party, election committee, or political campaign.

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 have never clerked for a judge.

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

I practiced on my own for about 9 months from approximately November 1979 to about August 1980, at 300 East Main, Suite 640, El Paso, Texas 79901.

- 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.

1979 – 1980
David C. Guaderrama
300 East Main, Suite 640
El Paso, Texas 79901
Sole practitioner

1980 – 1986
Guaderrama and Guaderrama
407 East Nevada
El Paso, Texas 79902
Partner

1987 – 1994
County of El Paso, Texas
500 East San Antonio
El Paso, Texas 79901
Chief Public Defender

- 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 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.

My law practice and legal experience after graduation from law school began in solo practice from about December 1979 to August 1980. During that time, my practice focused on criminal cases. From August 1980 until December 1986, my former wife, Yvonne, and I practiced together as partners in Guaderrama and Guaderrama at 407 East Nevada,

El Paso, Texas. I handled mostly criminal cases and some general civil, probate, and workers' compensation cases.

On January 1, 1987, I was appointed to serve as El Paso County's first Public Defender. My charge was to start up and develop an office that would be capable of handling at least 50% of all indigent felony cases. I supervised and managed the office as well as represented clients. My practice was entirely criminal.

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

In both my private practice and service as public defender, my typical clients were individuals (indigent persons while with the public defender's office) charged with a state misdemeanor or felony offense. I became board certified in criminal law by the Texas Board of Legal Specialization in December 1991.

- 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.

The bulk of my practice was litigation, and I appeared in court frequently. This held true from my admission to the bar until I became a judge.

- i. Indicate the percentage of your practice in:
1. federal courts: <1%
 2. state courts of record: >99%
 3. other courts:
 4. administrative agencies:

- ii. Indicate the percentage of your practice in:
1. civil proceedings: 5%
 2. criminal proceedings: 95%

- d. State the number of cases in courts of record, 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.

Approximately 60 cases – sole counsel in most cases, second chair in approximately 15 cases.

- i. What percentage of these trials were:
1. jury: 100%
 2. non-jury: 0%

- 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 never 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. *State v. Camacho*, Cause No. 46177 (210th Dist. Ct., El Paso County, Tex. 1986) (Murder)

I represented the defendant at trial and on appeal. The defendant, a maintenance man, lived in a small apartment behind his landlord's home. When the landlord was found strangled, the defendant was arrested and charged with murder. The case was tried in the 210th Judicial District Court, Judge Sam Paxson presiding. The state's primary evidence was an unsigned handwritten confession. A handwriting expert testified that in his opinion, the defendant wrote the confession. The jury returned a verdict of guilty. The conviction was reversed on appeal (on the basis of insufficient evidence) and remanded to enter a judgment of not guilty. *Camacho v. State*, No. 08-86-00111-CR (Tex. App.—El Paso Feb. 18, 1987) (not designated for publication), *aff'd*, 765 S.W.2d 431 (Tex. Crim. App. 1989).

Co-counsel:

Yvonne (Bonnie) Guaderrama (now Judge Bonnie Rangel)
500 East San Antonio, Suite 601
El Paso, Texas 79901
(915) 546-2100

Opposing counsel:

Assistant District Attorney Nick Martinez (deceased)

Gonzalo Garcia (now Judge Garcia)
 500 East San Antonio, Suite 1005
 El Paso, Texas 79901
 (915)546-2130

2. *State v. Pacheco*, Cause No. 39363 (171st Dist. Ct., El Paso County, Tex. 1983)
 (Burglary of Habitation)

I represented the defendant at trial and on appeal. The defendant knocked on a woman's door, and when she opened it, brushed passed her and went inside. The woman ran outside, and shortly thereafter her sister arrived and asked the defendant to leave. He responded that it was his house and that "God takes care of me in my house." After a few minutes, the defendant came out of the house carrying with him some inexpensive religious items, and sat outside until he was arrested. He was charged with burglary of habitation and tried in the 171st Judicial District Court, Judge Edwin Berliner presiding. Two psychiatrists examined the defendant but found him competent and sane. At trial, however, the homeowner and her sister testified that the defendant "was not right in his mind" and that he did not know what he was doing. Relying on this testimony, I requested jury instructions on the insanity defense, but the trial judge declined, reasoning that there was no medical evidence of insanity. The jury returned a verdict of guilty and assessed a sentence of five years confinement. The Eighth Court of Appeals affirmed, apparently because "[t]here was no expert testimony" on the issue of insanity. *Pacheco v. State*, No. 08-84-00131-CR (Tex. App.—El Paso Oct. 24, 1984) (not designated for publication). In a petition for discretionary review to the Texas Court of Criminal Appeals, I argued that the testimony of lay witnesses was sufficient to raise the defense of insanity and that medical testimony regarding mental disease or defect was not required. That Court, sitting *en banc*, agreed and vacated the judgment of the Eighth Court of Appeals. *Pacheco v. State*, 757 S.W.2d 729, 736 (Tex. Crim. App. 1988) (*en banc*). On remand, the Eighth Court of Appeals again affirmed the conviction, this time stating that the testimony of the lay witnesses here was purely speculative and insufficient to necessitate a jury instruction on the defense of insanity. *Pacheco v. State*, 770 S.W.834 (Tex. App.—El Paso 1989, *pet. ref'd*).

Opposing counsel at trial:

Assistant District Attorney Nick Martinez (deceased)

Opposing counsel on appeals:

Matthew Dekoatz
 Attorney at Law
 718 Myrtle Avenue
 El Paso, Texas 79901
 (915) 626-8833

3. *Reynosa v. Segall*, No. 08-89-00329-CR (Writ of Mandamus)

Members of my staff and I represented 32 individuals charged with various state felony offenses. These individuals were pre-indictment detainees in the El Paso Detention Facility. We endeavored to secure speedy examining trials for these clients before Judge Segall of the El Paso Criminal Law Magistrate Court. His office informed us that due to a heavy backlog in its docket, it could not provide examining trials in the near future. As time passed, indictments became imminent; an indictment would cut off my clients' right to an examining trial – a valuable right. Consequently, I sought out other courts for examining trials. Once Judge Segall discovered that we were filing motions for examining trials in other courts and securing settings for these hearings, he issued an order transferring these motions from those courts to his. On behalf of our clients, we filed a Writ of Mandamus with the Eighth Court of Appeals of Texas, seeking relief from Judge Segall's order, which we believed exceeded his authority. That Court granted relief, ordering Judge Segall to vacate some of his transfer orders.

Opposing counsel:

County Attorney Joe Lucas (deceased)

Debra Morgan
Assistant Attorney General
6090 Surety Drive, Suite 250
El Paso, Texas 79905
(915) 782-4202

4. *State v. Avila*, Cause No. 64290 (65th Dist. Ct., El Paso County, Tex. 1993) (Capital Murder)

I represented the defendant who was charged with two counts of capital murder of a mother and her adult son. The son dealt drugs to the defendant and others. On the day of the murder, my client, accompanied by two others, went to the victims' house to pay a visit to their drug dealer to steal some drugs. As they entered the house, the son's throat was immediately cut, and when his mother came to investigate the scuffle, she was stabbed and killed as well. The case was tried in the 65th Judicial District Court, Judge Edward Marquez (deceased) presiding. Our client had some cognition issues that formed the basis of our defense. A verdict of guilty of the lesser charge of murder on one count was handed down. The jury sentenced the defendant to 30 years in prison.

Co-counsel:

Bruce Weathers
Office of the Federal Public Defender
700 East San Antonio, Room D-401
El Paso, Texas 79901
(915) 534-6525

Opposing counsel:

Bill Juvrud
El Paso County Public Defender's Office
500 East San Antonio, Suite 501
El Paso, Texas 79901
(915) 546-8185

Frank Gonzalez
Texas Tech University Health Science Center
4801 Alberta Avenue, Suite B09
El Paso, Texas 79905
(915) 545-8839

5. *State v. Rodriguez*, Cause No. 920D01453 (34th Dist. Ct., El Paso County, Tex. 1992) (Attempted Murder)

I represented the defendant, a young man with the streetname "Gismo." His rival gangsters accused him of a drive-by shooting. After Gismo was arrested and jailed, his gang rivals reported another drive-by, again accusing Gismo. They were positive it was him, but of course Gismo was still in jail. Thus, my defense was that someone who looked exactly like Gismo was doing all these drive-bys and must have committed the drive-by of which they were accusing Gismo. The case was tried in the 34th Judicial District Court, Judge Bill Moody presiding. The jury returned a verdict of not guilty.

Opposing counsel:

Paul Escobar
Attorney at Law
1030 North Zaragoza Road, Suite J
El Paso, Texas 79907
(915) 858-1535

6. *State v. Burciaga*, Cause No. 62821 (65th Dist. Ct., El Paso County, Tex. 1992)
(Murder)

I represented the defendant in a case involving a strangulation death in the basement of an abandoned building. The defendant confessed that he strangled the victim from behind with his belt and that the victim foamed violently at the mouth while he died. The case was tried in the 65th Judicial District Court, Judge Edward Marquez (deceased) presiding. On cross-examination at trial, a medical examiner testified that what the defendant confessed to was physically impossible. The jury returned a verdict of not guilty.

Opposing counsels:

Robert Storch
El Paso County Public Defender's Office
500 East San Antonio, Suite 501
El Paso, Texas 79901
(915) 546-8185

Assistant District Attorney Dan Kopra (deceased)

7. *State v. Ramirez*, Cause No. 63228 (327th Dist. Ct., El Paso County, Tex. 1992)
(Habitual Burglary of Habitation)

I represented the defendant in 1992. The case involved an issue surrounding the identification of the perpetrator and the state's attempt to prove identity by a signature *modus operandi*. I do not recall having co-counsel. The case was tried in the 327th Judicial District Court, Judge Phillip Martinez presiding. The jury returned a verdict of not guilty.

Opposing counsel:

Christopher Driver (current address unknown)

8. *State v. Bernal*, Cause No. 7828 (327th Dist. Ct., El Paso County, Tex. 1984)
(Escape)

I represented the defendant. This was a juvenile case tried in the 327th Judicial District Court, Judge Enrique Pena (deceased) presiding. The defendant was charged with having escaped from the custody of the police. My client denied it was he who escaped from the police. Shortly before his escape, the escapee was observed by the police using and discarding a beer can, and from that they suspected that he was sniffing glue or paint. However, the police did not collect the beer can as evidence. The defense centered on the fact that the beer can should have had the perpetrator's fingerprints and that those fingerprints would not have been my client's. I do not recall having a co-counsel. The jury returned a verdict of not delinquent.

Opposing counsel:

Rebecca Rojo
Attorney at Law
6161 East Eastland Street
Tucson, Arizona 85711
(520) 514-2010

9. *State v. Orona*, Cause No. 35186 (205th Dist. Ct., El Paso County, Tex. 1980)
(Aggravated Assault)

I represented the defendant. The defendant was standing in a crowd that had gathered around a man who had been stabbed. When the police arrived, everyone ran except the defendant, who stayed with the victim. The defendant was charged with the aggravated assault of the victim, but he insisted that he was innocent. My investigation indicated that one "el guerro esponjas" from the south-side was the true culprit. I was never able to find this person, nor would anyone come forward and testify that it was this person who did it. The case was tried in the 205th Judicial District Court, Judge Sam Callan (deceased) presiding. The jury returned a verdict of not guilty.

Co-counsel:

Yvonne (Bonnie) Guaderrama (now Judge Bonnie Rangel)
500 East San Antonio, Suite 601
El Paso, Texas 79901
(915) 546-2100

Opposing counsel was Assistant District Attorney Leo Garcia (deceased)

10. *State v. Delgado*, Cause No. 52539 (41st Dist. Ct., El Paso County, Tex. 1989)
(Enhanced Burglary of Building)

I represented the defendant who was charged with a Burglary of a Building. He threw a rock through the window of a jewelry store and took some rings and watches. He was arrested fifteen minutes later, naked and masturbating. He had a long history of mental illness that was well documented into his childhood. In addition, if I recall correctly, my defense partially relied on a psychiatrist's testimony. The case was tried in the 41st Judicial District Court, Judge Mary Ann Bramblett presiding. The jury returned a verdict of not guilty by reason of insanity.

Co-counsel:

Joseph P. Pinon
1312 Montana Avenue
El Paso, Texas 79902
(915) 546-9190

Opposing counsel:

Robert Dinsmoor
Attorney at Law
5822 Cromo Drive
El Paso, Texas 79912
(915) 832-7200

Kelly Dickson
Attorney at Law
6152 Strahan Road
El Paso, Texas 79932
(915) 877-4746

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.)

In 1987, I was appointed to create the El Paso County Public Defender's Office. I began with one assistant and nothing else. As the courts became comfortable with appointing our office, we were assigned more cases and I would appear before the Commissioner's Court seeking more resources. The office grew steadily and consisted of 12 lawyers and various support staff when I left in 1994.

While at the Public Defender's Office, the County of El Paso went through some tough economic times and cut our funding for continuing legal education. We then started our own training program to provide our lawyers with some inexpensive CLE. After a few years of this, we formed the non-profit corporation the El Paso Criminal Law Group, Inc. This organization is now putting on its 19th annual seminar in criminal law and we have awarded more than \$50,000 in scholarships to local high school students seeking post-high school education.

While serving as judge of the 243rd Judicial District Court, I (in collaboration with many others) launched the 243rd Drug Court Program and the 243rd Access to Recovery Program. The Drug Court program was started to give the courts an additional

community resource to address drug addicts and abusers who were charged with felony crimes. My job was to recruit and assemble a team which would manage the clients as they moved through the program. This team consisted of an assistant district attorney, an assistant public defender, a sheriff's deputy, an El Paso police officer, probation officers, probation counselors, and community treatment providers. We met once a week to staff the week's cases and then proceeded in open court to address the clients.

The Access to Recovery program was similar in nature although not as intense in terms of court appearances and reporting for probation. It was also different from Drug Court in that treatment was paid for by federal funds administered by the state. The state used a voucher system making payments directly to the service provider.

While serving as Judge of the 243rd, I served on a committee to improve our jury selection process. I chaired a subcommittee whose function was to pilot a program to mail out juror questionnaires along with a summons. We were looking to see how compliant jurors would be with the questionnaire's instructions, which were to fill out the questionnaire and return it to the Jury Administrator within a certain time frame. This would allow the Jury Administrator to make copies available to the litigants a few days before the voir dire. The pilot program was very successful and grew into the process used today.

While serving as Judge of the 243rd, I also piloted a program using video conferencing technology to conduct arraignments. The inmates were located in the jail annex 20 miles from the courtroom while the lawyers and I remained in the courtroom. The idea was to save transportation and security costs.

I have not performed 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.

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 plans to pursue outside employment.

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 have any family members, persons, parties, litigation or financial arrangements that are likely to present potential conflicts of interest if I am confirmed. If any such conflict arose, I would address it in the manner instructed by the Code of Judicial Conduct for United States Judges, Canon 3.

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

The procedure I would follow in determining these areas of concern would be to use the conflict screening software provided by the Court, stay informed about my personal and financial interests and the financial interests of my spouse. Having done so, I would attend continuing legal education courses on ethics and would remain vigilant for any potential conflict that might arise and address it with the action required. If the conflict is one that can be solved by dispossessing myself of an asset, I would do that. If the conflict is one that can be waived by the parties, I would address it with the parties and resolve it in the manner they desired.

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 recall handling two cases referred to me by the El Paso Legal Aid Society pursuant to a plan adopted by the El Paso Bar Association. I do not remember the details of those cases as this occurred within the first eight years of my practice. After the first eight years of practice, I was prohibited by my employment from taking on pro bono cases.

In 1987, I was appointed to create the El Paso County Public Defender’s Office. I began with one assistant and nothing else. As the courts became comfortable with appointing our office, we were assigned more cases and I would appear before the Commissioner’s Court seeking more resources. The office grew steadily and consisted of 12 lawyers and various support staff by the time I left in 1994.

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 interviewed with Congressman Reyes’ Merit Selection Committee on or about March 7, 2009, however, I was not selected. On or about February 22, 2011, I responded to an announcement by Senator Hutchison and Senator Cornyn calling for applications for the position of District Court Judge for the Western District of Texas, El Paso Division. I submitted my application to both Senators’ offices. I was called for an interview and traveled to Houston, Texas, for a May 19, 2011 interview with the Senators Hutchison/Cornyn Merit Selection Committee. A few weeks later I was called by Enrique Moreno, on behalf of Congressman Reyes, who asked me for a copy of the application I had submitted to the Senators’ Committee, a resume, college and law school transcripts, and SAT scores. Since June 20, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On July 11, 2011, I interviewed with officials from the White House Counsel’s Office and the Department of Justice in Washington, D.C. On September 14, 2011, 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. 1/2011		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) Goaterrama, David C.	2. Court or Organization United States District Court-Western District of Texas	3. Date of Report 09/14/2011		
4. Title (Article III Judges indicate active or senior status; magistrate judges indicate full- or part-time) United States District Court Judge-active status	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 09/14/2011 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report		6. Reporting Period 01/01/2010 to 09/08/2011	
7. Chambers or Office Address Albert Armendariz Sr. United States Courthouse 525 Magoffin Avenue, Room 431 El Paso, Texas 79901		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>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. President and Board Member	El Paso Criminal Law Group, Inc.
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	Date of Report
Guaderrama, David C.	09/14/2011

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. 2009	County of El Paso, salary	\$15,000.00
2. 2009	State of Texas, salary	\$125,000.00
3. 2010	JRS-II retirement annuity	\$15,000.00
4. 2010	TCDRS retirement annuity	\$9,105.69
5. 2010	State of Texas, salary	\$93,750.00
6. 2010	County of El Paso, salary	\$11,250.00
7. 2011	JRS-II retirement annuity	\$45,000.00
8. 2011	TCDRS retirement annuity	\$27,312.00
9.		
10.		

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. 2010	State of Texas-salary
2. 2011	State of Texas-salary
3.	
4.	

IV. REIMBURSEMENTS - *transportation, lodging, food, entertainment.
(Includes those to spouse and dependent children; see pp. 21-27 of filing instructions.)*☐ NONE *(No reportable reimbursements.)*

SOURCE	DATES	LOCATION	PURPOSE	ITEMS PAID OR PROVIDED
1. exempt				

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting

Gauderrama, David C.

Date of Report

09/14/2011

2.

3.

4.

5.

FINANCIAL DISCLOSURE REPORT

Page 4 of 7

Name of Person Reporting

Gauderrama, David C.

Date of Report

09/14/2011

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

☐ NONE (No reportable gifts.)

	SOURCE	DESCRIPTION	VALUE
1.	exempl		
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.	NELNET Education Planning & Finance	student loan	K
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

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Name of Person Reporting	Date of Report
Guaderrama, David C.	09/14/2011

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.)

1	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 2 (J-P)	(4) Gain Code 1 (A-H)	(5) Identity of buyer/seller (if private transaction)
1	rental property #1, El Paso, TX	D	Rent	L	W	Exempt				
2	EP Employ Fed Cred Un El Paso, TX- Accounts	D	Interest	M	T					
3	EP Area Teachers FCU-El Paso, TX Accounts	C	Interest	M	T					
4	GovtEmploy FCU-El Paso, TX-Accounts	B	Interest	L	T					
5	Wells Fargo Advantage DJ Target Today Fund		None	N	T					
6	First Light FCU-El Paso, TX Accounts	A	Interest	L	T					
7	Texas County and District Retirement System	D	Interest	L	T					
8	Wells Fargo-El Paso, Texas Accounts	A	Interest	K	T					
9										
10										
11										
12										
13										
14										
15										
16										
17										

1. Income Gain Codes: (See Columns B) and (4)	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 Q = Appraisal U = Book Value	G = \$1,001 - \$2,500 H = \$250,001 - \$500,000 K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000 R = Cash (Real Estate Only) V = Other	C = \$2,501 - \$5,000 I1 = \$1,000,001 - \$1,000,000 L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$1,000,000 P4 = More than \$10,000,000 S = Assessment W = Exempted	D = \$5,001 - \$10,000 I2 = More than \$10,000,000 M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000 T = Cash Market	E = \$10,001 - \$50,000
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FINANCIAL DISCLOSURE REPORT
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Name of Person Reporting	Date of Report
Guaderrama, David C.	09/14/2011

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

FINANCIAL DISCLOSURE REPORT
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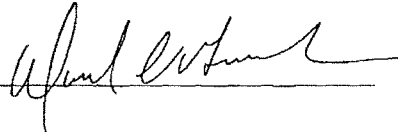
Name of Person Reporting	Date of Report
Guaderrama, David C.	09/14/2011

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)

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		392	751	Notes payable to banks-secured (auto)		9	709
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities - see schedule		266	393	Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due		1	701
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable			
Real estate owned - see schedule		418	486	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		30	000	Education loan		27	873
Cash value-life insurance							
Other assets itemize:							
Thrift Savings Plans		24	635				
Texas County & District Retirement System		90	352				
				Total liabilities		39	283
				Net Worth	1	183	334
Total Assets	1	222	617	Total liabilities and net worth	1	222	617
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 SCHEDULESListed Securities

Wells Fargo Advantage DJ Target Today	\$ 266,393
Total Listed Securities	\$ 266,393

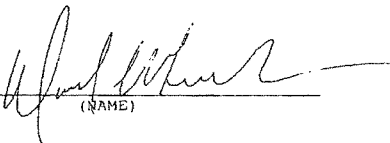
Real Estate Owned

Personal residence	\$ 342,124
Rental property	76,362
Total Real Estate Owned	\$ 418,486

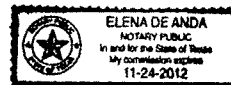
AFFIDAVIT

I, David C. Guaderrama, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

09/13/2011
(DATE)


(NAME)


(NOTARY)



Senator BLUMENTHAL. Thank you both, and I would just like to begin my questioning by observing that both of you have very distinguished careers of public service, even before your nomination—Mr. Costa as an Assistant United States Attorney, as a volunteer in Teach for America, also as a public servant in numerous bar association groups, and your pro bono activities, among other community activities; and Judge Guaderrama as chief public defender and as a judge magistrate. Both of you have served your community and State and country, and certainly I want to thank you, and I know the Committee appreciates all that you have done.

Let me begin by asking you, Mr. Costa, I know that your recent career has involved a good deal of prosecution in the white-collar public corruption area. Do you think that the laws of the United States need to be strengthened or toughened to really encourage or empower stronger prosecutions in those areas?

Mr. COSTA. Thank you, Senator, for the question. I think there are on the books a number of statutes that are available to Federal prosecutors, and I know in some recent Supreme Court decisions, the *Skilling* decision has cut back on one of those statutes, the honest services statute. I know there are proposals in Congress to make amendments in response to that decision. But I do think that the arsenal Federal prosecutors still have is broad, and it takes hard work and sometimes creativity to find the right statute that applies to criminal misconduct. But Congress obviously should continue to look at ways to meet new challenges that you often have out there because of technology and other things that are expanding even the global reach of some of these criminal networks.

Senator BLUMENTHAL. And I know you are involved in the Stanford case as the lead co-counsel and have written about the honest services fraud statute in the *Skilling* case. I wonder if you have any comments on that issue in particular which you have just mentioned without talking about any particular case.

Mr. COSTA. Right, and I do not want to recommend any particular legislation. I do think in the writings I have looked at, there has been a reduction in honest services prosecutions in the 15 months or so since *Skilling* was decided. And in cases I looked at, part of that is prosecutors are just using alternative statutes, but then there may be some instances in which prosecutions are not available at the Federal level in light of that decision.

Senator BLUMENTHAL. And would your experience as a prosecutor—I recognize you have also served as a pro bono defense attorney at the behest of the NAACP Legal Defense Fund, so you have experience on both sides. But how do you think those experiences would inform your service as a United States district court judge?

Mr. COSTA. I think obviously the criminal cases, in particular sentencing, is probably the most awesome responsibility a Federal judge has, and so I think the experience I have had prosecuting criminal cases will be helpful in that regard, but also, as you mentioned, before I had ever prosecuted anyone, I represented a defendant pro bono, along with some others, a defendant from—there was an infamous drug sting in a town called Tulia in the Texas Panhandle. We represented him pro bono in a habeas post-conviction matter. He was wrongfully convicted, and fortunately both our

defendant, Mr. Towery, and all the other defendants who were convicted in that sting were pardoned by Governor Perry.

So I think that one experience I have on the defense side is a great illustration of the imperfections that do exist in the criminal justice system, but I would certainly look forward to the criminal cases on my docket as well as the civil cases.

Senator BLUMENTHAL. Judge Guaderrama, how would your experience as a public defender, do you think, shape your views of your role as a United States district court judge?

Judge GUADERRAMA. Thank you, Senator, for that question. My role as a public defender I suppose would have some influence upon me if I were fortunate enough to be appointed to the bench. More influential would be my service as a State district court judge because there I served for 16 years and tried numerous cases of all different kinds. And so I feel like the influence of my service on the district court bench would influence my service on the Federal district court bench, if I were appointed to that, more so than my service as a public defender.

I had a great time serving as a public defender. I enjoyed that work, but it has been over 16 years since I represented a criminal defendant.

Senator BLUMENTHAL. And you have served as a magistrate judge, which in many respects is a similar role to the U.S. district court judge, isn't it?

Judge GUADERRAMA. Yes, sir. We play a minor role. We are a servant to the district court judge, and we see all the criminal cases that come into the district court come through the doors of magistrate court.

Senator BLUMENTHAL. And I do not know how it works in your district, but I know in Connecticut magistrate judges write opinions, they take pleas, they hear motions, pretty much—well, a great deal of the duties that a district court judge does.

Judge GUADERRAMA. Yes, Senator, that is correct. Every jurisdiction uses their magistrates differently. In our jurisdiction, because of the large number of criminal cases, we are used primarily for criminal matters, so we do the initial appearances, bail and detention hearings, preliminary hearings, those matters. We do take felony pleas for the district courts, and we write reports and recommendations for them on those matters as well.

Senator BLUMENTHAL. Thank you.

Senator Grassley.

Senator GRASSLEY. Mr. Costa, tell me what you learned from being a clerk for two distinguished judges, Chief Justice Rehnquist and Judge Randolph.

Mr. COSTA. Well, those were two of my first jobs in the law, two great mentors. Judge Randolph ran an incredibly efficient chambers, was a fantastic writer, and a brilliant judge. The experience with the Supreme Court was really the experience of a lifetime, and with respect to the Chief Justice, Chief Justice Rehnquist was probably the most efficient lawyer I have ever seen. He also had a wonderful sense of humor, and while he had serious disagreements with his colleagues, he never let those become personal disagreements and always interacted with his colleagues in a professional, civil manner and always with that great sense of humor.

Chief Justice Rehnquist also knew every single employee in that Supreme Court building. He did not just know their names. He knew about their families. He knew who their favorite football team was, and that was whether it was one of the other Justices or one of the cafeteria workers. I think that is also just a great lesson for all lawyers and all people to treat everyone with respect and understand the important role everyone plays in a courtroom or out in society.

Senator GRASSLEY. Do you think all those experiences have stayed with you and will help you be a good district judge?

Mr. COSTA. Absolutely. I hope so.

Senator GRASSLEY. I want to ask you something about Justice Rehnquist. He was often considered a conservative judge who relied heavily on the text of the Constitution and statutes to determine their meaning. And then we have Harvard law professor Larry Tribe taking this view: "All fundamental constitutional principles require an elaborate process of inference and construction far beyond anything that is simply deductible or even readily inferable from the fixed text."

So to what extent would you agree with Professor Tribe?

Mr. COSTA. I am not too familiar with all those remarks in their context. You mentioned Chief Justice Rehnquist's approach to constitutional analysis. He would give the text considerable deference and focus, but he would not exclusively look at that. He would consider certainly precedent, certainly the history of that constitutional provision, and the structure of the Constitution, how that provision might interact with other provisions.

So judges do have those different tools that Chief Justice Rehnquist and other Justices use to interpret constitutional provisions, and if I were fortunate enough to be confirmed, I would use those tools to try to come up with the most consistent ruling consistent with the intent of that provision.

Senator GRASSLEY. You sound closer to Justice Rehnquist than what I quoted from Larry Tribe. Is that a fair conclusion?

Mr. COSTA. I do not know where I would be on that spectrum. Again, I am not too familiar. But I obviously would use the commonly accepted tools of interpretation when faced with those types of issues.

Senator GRASSLEY. You told me a lot about Justice Rehnquist and his personal life and interrelations with other people. What influence did he have in the development of your views of constitutional and statutory interpretation?

Mr. COSTA. I think certainly seeing how the Court worked, I would say not just Chief Justice Rehnquist, but you get to interact as a clerk with other Justices. I learned a great deal from all of them, and certainly the seriousness which they all approached their job with. Bringing an open mind to cases and not having preconceived notions is something that I think the Justices all try to do, and it is certainly how I would hope to approach those issues if fortunate enough to be confirmed.

Senator GRASSLEY. Well, if confirmed—and you probably will be—what will you look to when interpreting provisions of the Constitution or Federal statutes?

Mr. COSTA. I think you start with the text. You also want to look at, again, the Constitution, the history behind that amendment or provision. You want to look at, concerning constitutional cases, the structure. In statutory cases you want to look, again, first at the text and the plain language. There are also well-accepted canons of statutory interpretation that should be applied if there is ambiguous language. And then, of course, you want to look—especially as a district court judge, you are bound by precedent from both the Supreme Court and the circuit court of appeals, and you would want to look at that precedent as well as perhaps authority from other courts that might not be binding precedent. They might be from other circuits or other district courts, but you would certainly look at that as persuasive authority.

Senator GRASSLEY. Judge, let me ask you a few questions. Prior to becoming a judge, you were primarily a defense counsel in your private practice as well as public defender. What was most difficult for you in transitioning from your role as an advocate to that of a neutral arbiter? Do you believe that you have successfully made that transition?

Judge GUADERRAMA. Yes, thank you, Senator. I do believe I have successfully made that transition, and I am not so sure that it was a hard thing to do, but I had to step out of my role as an advocate and step into the role of being a fair and neutral and detached magistrate or determiner of the law. So that was the most difficult thing, just to be able to give an opportunity to be heard to both sides and to consider both sides before reaching any kind of a decision. I did not find that particularly difficult. I thought it was actually fairly easy.

Senator GRASSLEY. OK. As chief public defender there in El Paso, you defended your office in one particular case where there were accusations that your office violated its duty of candor to the court. The Texas Committee on Professional Ethics agreed with you that there was no violation of duty. Having now been a judge, would you share with the Committee your perspective on the view you took as chief public defender?

Judge GUADERRAMA. Yes, sir, Senator. Thank you. In that particular case it involved a sentencing hearing in which the prosecution had a rap sheet of our client's criminal history, and that rap sheet did not include a prior conviction that our client had. So at the sentencing, I believe—I am going from memory here, and I am hoping this is correct. But I believe the court asked the prosecution whether or not he had a criminal history. The prosecutor, looking at the rap sheet, said, "No, he has no convictions." He turns to the lawyer from our office and says, "Right?" And our lawyer knew full well that he did have a prior conviction, and so he stood mute. He did not say anything. He just stood mute because he as a lawyer cannot give up his client's secrets and tell the prosecutor, "Yes, he does have these convictions." So in order to live by his oath as an attorney to hold his client's confidences, he stood mute, which is what he is required to do. He did not in any affirmative way assist in the misinformation that was being given to the court.

Once the case was over, the judge had heard about the client had a prior conviction, contacted me, and was concerned about that. So then we contacted the Ethics Commission, asking them for some

guidance, because we knew this situation would repeat itself. And we understood that the client's Fifth Amendment privilege, his right to counsel, and some Texas Code of Criminal Procedure sections would be violated if we were to give up the information that the Canons of Ethics required. And so we sought the advice of the Ethics Commission, and they decided that our position was correct, to stand mute and not encourage the misinformation.

Senator GRASSLEY. You sat by designation of the Texas Court of Appeals in *State v. Alderete*, I believe is the name of it.

Judge GUADERRAMA. Yes, sir.

Senator GRASSLEY. At issue in that case was whether officers had reasonable suspicion to make an investigatory stop of a suspected drunk driver. While the majority found reasonable suspicion, you dissented. The majority criticized your analysis for engaging in "a divide and conquer approach, arguing assumptions that were not presented to the trial court, which the United States Supreme Court and Court of Criminal Appeals have condemned."

Would you mind addressing the majority's criticism of your analysis?

Judge GUADERRAMA. Yes, Senator, thank you. That was the word that was used in the opinion. I certainly recognize that that is the majority opinion. I do not have any conflicting things to say about that.

My opinion was different. I do not believe that I engaged in a divide and conquer type of analysis; rather, I thought I was applying the Gates totality of circumstances test exactly the way the Supreme Court had set it out, which is you consider the entire circumstances, all the circumstances, not just one particular fact. And so the point of my dissent was considering the entirety of the circumstances, then there is not sufficient reasonable suspicion for the stop at the point they made the stop.

Senator GRASSLEY. I have one more question, and then I might submit a couple for answer in writing.

In 2000, you presided over a drunk driving case of David Renteria. This case was the third instance Mr. Renteria was caught driving under the influence while on probation for the previous crime, the fondling of a 6-year-old girl. Despite recommendations from the county's Adult Probation Department that Mr. Renteria be sent to prison to serve his 10-year sentence, you went along with the prosecutor's request for continued probation. Approximately 1 year later, Mr. Renteria was charged with the murder of a 5-year-old girl. Learning about that arrest, you stated, "Obviously our whole community feels terrible about the death of the 5-year-old girl, and those of us who were close to this case are losing sleep over it, wondering where did we go wrong and what would we do differently next time."

Could you explain your rationale behind letting the three-time parole violator continue his probation? Second, during this period of reflection, what, if anything, did you determine you did wrong? And, three, what did you change to ensure that a similar circumstance would not occur in a later case?

Judge GUADERRAMA. Yes, sir, thank you, Senator. First, I would like to say that to this day I am very regretful for what happened to Alexandra Flores as a result of that case. In that case, the pro-

bation that I extended to that defendant was recommended by the prosecution. This was a prosecutor's plea bargain with the defendant, and it was not a plea bargain that was outside the norm of those bargains that are given to defendants who are similarly situated. And so there was not anything unusual about that case that would somehow foretell to us that this drunk driver was going to be a future killer.

And looking back, I have had numerous cases that were similar in nature and similar circumstances where nothing bad happened. In this one case, a disaster happened.

I am not sure, looking back, that there is anything that we would change in that the plea bargaining process is something that is important to the criminal justice system. It is something that is freely engaged in by the prosecution and the defense. And I certainly regret what happened; however, I probably did the same thing in numerous other cases where we did not have these poor results.

Senator GRASSLEY. Thank you, Judge.

Judge GUADERRAMA. Thank you, sir.

Senator GRASSLEY. Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you, Senator Grassley.

Senator Franken.

Senator FRANKEN. Thank you, Mr. Chairman.

Mr. COSTA, as you might know, I am a copyright holder, and I care a tremendous amount about preventing and prosecuting intellectual property theft. You successfully prosecuted a case where two brothers in Texas were selling counterfeit Cisco products manufactured in China. As I understand it, you won an award for your work in that case, and I first just want to say thank you for that. We need more prosecutors like you who are aggressively pursuing intellectual property theft.

From where I sit, it seems that China has an entire segment of its economy dedicated to IP theft, and I fear we will never be able to halt this problem with prosecutions alone. Do you think that that is a fair statement? And do you have any ideas of what we could do to put more pressure on China to address its piracy problems?

Mr. COSTA. You are correct, Senator. It is a large problem that threatens Americans who own this intellectual property, a large number of American workers. The case you mentioned, it was a Cisco product. Cisco employs thousands of Americans in California. There are a number of tools to combat it, in the extreme cases criminal prosecution, and I think the customs officials have stepped up that enforcement. There is a new Federal task force the last couple of years. My prosecution was part of that.

I also had another prosecution where an individual in Houston was importing counterfeit Cisco parts again, and he was planning to fulfill a contract for the Marines in Iraq. And, fortunately, he was caught before he transmitted those to the Marines because in that situation it could have caused security harm for the Marines who were relying on that computer network and thinking they were getting genuine safe parts.

In addition to the criminal remedies, there are civil actions, obviously, that can be taken. It is difficult in China because—obviously, the reach of the law does not extend that far. In both of the cases

I prosecuted, we had some information about the Chinese manufacturers and suppliers. Obviously, we would like to bring them to justice, but China does not extradite—it does not have an extradition treaty with the United States.

So I think some of those challenges of actually reaching the manufacturers in China would really have to be dealt with at the diplomatic level and through maybe 1 day having extradition rights with China.

Senator FRANKEN. Thank you.

Judge, I am interested in learning about alternatives to a traditional adversarial criminal justice system, and I am a proud co-sponsor of Senator Webb's National Criminal Justice Commission Act, which I hope we take up again because it narrowly—it was filibustered. And that would provide us with a comprehensive review of the entire justice system.

I understand that you implemented the first drug court in El Paso. You wrote in the El Paso Bar Journal that drug courts "are successful in many cases." Can you elaborate on your experience in that and on your experience with drug courts?

Judge GUADERRAMA. Yes, sir, thank you, Senator. The drug court experience in the world of the State district court judge was very rewarding because in the drug court we are able to see successes that we did not normally see in the regular business that we did at the court. Drug courts, of course, are for—there is a national model, and there are some requirements for those individuals that come into drug court. One, they cannot have a violent criminal history. They cannot be drug dealers of any kind. They need to be drug abusers or addicts. And they have to have a criminal history of the nature that the district attorney would not feel uncomfortable in recommending those individuals for the drug court.

But once we have them in the drug court, as you mentioned, it is an alternative to the adversarial system. It is a therapeutic system where basically everyone on the team—and there is a team of an assistant district attorney and assistant public defender, a police officer or sheriff's deputy, a probation officer, and a number of treatment providers that come together to form a therapeutic unit where we are trying to address this individual's drug use.

We also try to address their life problems, which oftentimes dictate their drug use. We found often that many of the people in our drug courts were dually diagnosed and that they had mental illness as well as an addiction. And so we had a number of challenges in the drug court trying to address these things, but it was a very rewarding challenge.

One of the most rewarding things I did on the district court bench was to operate that drug court. When you saw successes, when you saw people turn their life around, when you saw people start to care about themselves again and their families that they had alienated before, start drifting back into their lives and making them whole and productive members of our society, it was a great thing.

They are time-consuming, they are expensive, but for those successes that we had, they were worth it.

Senator FRANKEN. You say they were time-consuming and expensive, but would you say that on balance the use of drug courts saves society money or is more expensive than not?

Judge GUADERRAMA. I would think we need more research into that. My gut feeling is that the money we would save from incarcerating this individual, which current estimates are between \$30,000 and \$50,000 to incarcerate that person for 1 year, if we spend \$6,000 or \$7,000 up front in treatment, we might be able to save society that extra cost on the back side. And so that basically was the premise that we were operating under, and I just do not have any hard facts—

Senator FRANKEN. How long were you involved in the drug court?

Judge GUADERRAMA. Ten years.

Senator FRANKEN. OK. Well, over a 10-year period, you must have taken some kind of—you must have an opinion on those. I am not asking you for data. I am asking you for your opinion.

Judge GUADERRAMA. My opinion is that drug courts work and do save society money. I do not have any hard facts about that. It would have been nice to have had the money to do that sort of study, but the few resources we had, we plowed them into services for our clients.

Senator FRANKEN. Well, thank you both, and you are both very impressive, and I thank you, Mr. Chairman.

Senator BLUMENTHAL. Thank you, Senator Franken.

Again, thank you both, and especially your families and friends for being here today. I want to just close by observing I was a law clerk to Justice Blackmun on the Supreme Court. Before that, I was a law clerk to a district court judge, and the clerkship on the Supreme Court was, as you have observed, Mr. Costa, life-changing. But the district court I think changed my perspective equally so and in my view is, without meaning any disrespect, as important a job as being a Supreme Court Justice because of the lives that you affect and the people you touch. So I join in the hope and belief that you will be confirmed, speaking just personally, and I wish you well and, again, thank you very much for your service and thank your families for being here. Thank you so much.

Mr. COSTA. Thank you, Senator.

Judge GUADERRAMA. Thank you, Senator.

Senator BLUMENTHAL. I am going to adjourn this hearing and leave the record open for 1 week in case there are additional questions from any of the Senators. Thank you very much.

[Whereupon, at 11:29 a.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Responses of Gregg Jeffrey Costa
Nominee to Be United States District Judge for the Southern District of Texas
to the Written Questions of Senator Chuck Grassley

1. **What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute is a commitment to the fair and impartial administration of justice, which is the principle that has made our independent federal judiciary one of the greatest strengths of our constitutional system and set an example that many other countries have sought to follow. I believe I possess that attribute.

2. **Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: The most important elements of judicial temperament are open-mindedness; respect for all parties, attorneys and other participants in the judicial process; and humility. I have strived to exhibit those qualities as a practicing attorney and would continue to try and demonstrate those qualities if confirmed to be a federal district court judge.

3. **In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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.

4. **At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: In interpreting a constitutional provision, statute or procedural rule, I would first analyze whether the plain language resolved the issue. If ambiguity existed, I would apply commonly accepted canons of construction, take into account the structure and purpose of the term at issue and related provisions, and consider case law interpreting analogous terms.

5. **What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?**

Response: I would apply binding precedents from the Supreme Court or the Court of Appeals for the Fifth Circuit regardless of my personal views about the correctness of those decisions.

6. **Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Supreme Court precedent counsels that a court should avoid declaring a federal statute unconstitutional when nonconstitutional grounds exist for resolving the case. When a nonconstitutional resolution does not exist, a federal court should declare a federal statute unconstitutional when the Act is beyond the scope of Congress's enumerated powers or violates a provision of the Constitution.

7. **As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: If confirmed as a district court judge, one of my main priorities would be ensuring that cases proceed in an expeditious manner because the effective administration of justice requires timely resolution of disputes. I would set firm deadlines and make clear to litigants, both at initial scheduling conferences and in published procedures, the court's expectation that cases will proceed in a timely manner. I would also promptly resolve discovery disputes or other motions that require court action for the case to move forward.

8. **Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: As a practicing trial lawyer, I am well aware that the need to resolve cases in an expeditious manner is one of the greatest challenges facing the federal judiciary. District court judges play an essential role in ensuring that cases are resolved in a timely manner. To achieve those timely resolutions, I would follow the practices discussed above in response to Question #7.

9. **Please describe with particularity the process by which these questions were answered.**

Response: On November 9, 2011, an attorney from the Department of Justice Office of Legal Policy emailed me the questions. The next day I provided responses, which I edited over the next couple days before submitting on November 14.

10. **Do these answers reflect your true and personal views?**

Response: Yes.

Responses of Gregg J. Costa
Nominee to be United States District Judge for the Southern District of Texas
to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy?
How do you see the role of the judge in our constitutional system?**

Response: Independent judges play an essential role in our constitutional system because it is their duty to impartially apply the law, including our constitutional rights. In a system like ours that is based on the rule of law, those decisions must be made without regard to the popularity of the result or the societal status of the litigants. Consistent with that role, rather than making decisions based on preconceptions or a fixed ideology, my judicial philosophy would be to make rulings after thoughtful evaluation of the facts and law of a particular case.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: From teaching elementary school in one of the poorest counties in the Mississippi Delta to handling *pro bono* matters while in private practice to serving as a federal prosecutor, I have spent most of my career in public service positions that have brought me into contact with diverse segments of our country. Through those experiences and others, I have developed a firm commitment to the principle of equal justice under law. If confirmed to be a district judge, I would seek to further that principle by making rulings without regard to the wealth, power or political beliefs of the litigants.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: The doctrine of *stare decisis* plays an important role in our legal system because (1) a system based on the rule of law requires consistent application and (2) individuals and businesses make decisions in reliance on prior court rulings. While there are extraordinary circumstances that sometimes compel the Supreme Court or *en banc* Courts of Appeals to reconsider prior decisions, district court judges are bound to follow controlling precedents.

Responses of David C. Guaderrama
Nominee to be United States District Judge for the Western District of Texas
to the Written Questions of Senator Chuck Grassley

1. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is humility. Humility will draw out the other important attributes such as respect for the time and opinion of others, courtesy to all who come before the court, patience, and the ability to hold the scales of justice on a level beam while deciding cases narrowly and promptly. I believe I possess these attributes.

2. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: My view of the appropriate temperament of a judge is that a judge must at all times demonstrate humility, respect for others, patience, courtesy, and restraint. I believe I meet this standard.

3. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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: Unequivocally, yes. I am committed to following the precedents of the higher courts and to faithfully giving such precedents their full force and effect.

4. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: The sources I would turn to for persuasive authority and the guiding principles and methodology I would employ would be to first consult the text involved and apply its plain meaning, if the text is unambiguous. If the text is ambiguous, I would look to any precedent of the United States Supreme Court, the Fifth Circuit Court of Appeals, and then the other United States circuit courts in the interpretation of similar text.

5. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: I would apply the decision of the higher court, regardless of my opinion about their decision or my judgment of the merits.

6. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: A federal court may appropriately declare a statute enacted by Congress unconstitutional only when it is contrary to the text of the United States Constitution or any United States Supreme Court precedential interpretation.

7. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would seek to manage my caseload by setting and enforcing firm deadlines for pretrial discovery, motions, and trial while encouraging mediation. I would utilize magistrate judges when available to hear referred pretrial matters. I would endeavor to decide all matters before the court as quickly as would be consistent with the ends of justice. Finally, I would make full use of all the business hours of the courthouse to conduct the court's business.

8. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes, I do believe that judges have a role in controlling the pace and conduct of litigation. I would employ scheduling orders in all cases and require adherence to the schedule except in exceptional circumstances for good cause.

9. Please describe with particularity the process by which these questions were answered.

Response: I received the questions on Wednesday, November 9, 2011. I prepared my responses overnight and the following day I reviewed my responses with representatives of the Department of Justice. I then finalized my responses and authorized their transmittal to the Committee.

10. Do these answers reflect your true and personal views?

Response: Yes

**Responses of David Campos Guaderrama
Nominee to be United States District Judge for the Western District of Texas
to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy?
How do you see the role of the judge in our constitutional system?**

Response: My judicial philosophy is that a judge should determine the law applicable to the case, provide the parties an opportunity to fairly develop the facts, apply the law to the facts in an opinion narrowly tailored to address only the issues raised, and render a decision as promptly as the ends of justice permit. I see the role of a judge in our constitutional system as using the Article III powers to apply the provisions of the Constitution and the laws of the United States in order to guarantee a nation ruled by law. In this role, a judge helps provide the checks and balances envisioned by the framers of the Constitution.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: I would give all parties my word to adhere to the oath of judicial office and then offer as evidence my record of fair treatment over the preceding 16 years of judicial service.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: In my opinion all judges are obligated to adhere to the very important principle of stare decisis.

**Responses of Jacqueline H. Nguyen
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Chuck Grassley**

- 1. You have frequently mentioned there are only about five Asian-Pacific American judges in California, and that you and one other judge are the only two of those who are female. In one speech, you commented that the lack of minority judges “contributes to profoundly different perceptions of justice” and “mistrust of the court system in minority communities.”**

- a. Would you elaborate on these comments? What did you mean by different perceptions of justice?**

Response: Some members of the public, particularly in minority communities, have the perception that justice is not fairly or evenly administered. My comments were meant to convey my belief that a judiciary that better reflects the diverse make-up of our society will enhance the public’s trust and faith in our system of justice.

- b. Do you believe a lack of diversity on a given court system contributes to a mistrust of it by minority members of the community?**

Response: I believe that the mistrust of our court system by some minority members of the community stems from many causes. I did not attempt or intend to discuss these complex root causes in the speeches that I have delivered. My point was simply that, regardless of the root causes of the mistrust, a judiciary that better reflects society will serve to enhance the public’s trust and faith in our system of justice.

- 2. You have also stated that you should not be understood to be saying that a minority defendant should appear only before a minority judge. However, despite your belief that minority defendants should not come before minority judges for fear of getting special treatment, there was an instance in your Senate Questionnaire where you answered as having taken a specific Vietnamese defendant’s race and “circumstances” into account. Here, you seem to be saying one thing and then doing another.**

- a. Can you please clarify your position?**

Response: At no time in my judicial career have I ever given any litigant special treatment due to his or her race, nor do I believe it is appropriate to do so. In criminal cases, determining the appropriate sentence involves consideration of the circumstances, including the nature and circumstances of the offense, the history and characteristics of the defendant, and myriad other considerations. I consider the appropriate factors in each case.

I believe this question refers to a case that I discussed in a keynote speech I delivered to the Vietnamese American Bar Association of DC on March 18, 2010. This case involved a Vietnamese defendant charged with theft offenses. She fled Vietnam by

boat and, after being adrift at sea for days, was raped and brutalized by pirates. The mere fact that the defendant happened to be of Vietnamese descent played no part in my decision as to the appropriate sentence. I did, however, take into account the nature and circumstances of her offenses, and her history and characteristics. Both the prosecution and the defense agreed on a negotiated plea agreement that took into account these factors. I agreed that the negotiated sentence was appropriate, and sentenced the defendant accordingly after she pleaded guilty.

- b. What was the consequence of taking the defendant's race and circumstances into account? Did it result in a legal outcome different than there would have been for a non-Vietnamese defendant?**

Response: I did not take the defendant's race into account. The outcome of the disposition would not be different for a non-Vietnamese defendant under the same circumstances.

- 3. In the case *People v. Cardona and Lario*, you granted the defendant's motion to suppress because the evidence obtained was not preceded by a warrant. You found that public employees had a reasonable expectation of privacy in their offices that was violated by placement of video cameras. While this case was affirmed on appeal, the question of whether public employees have a reasonable expectation of privacy in their offices remains somewhat unsettled under the precedents of the Supreme Court. In the Court's plurality opinion, Justice O'Connor concluded that the question of whether a public employee has a reasonable expectation of privacy in his or her office should be determined on a case-by-case basis. Should a case of this nature come before you on the Ninth Circuit, what standard would you apply to determine its outcome?**

Response: If confirmed, I would carefully review the precedent in the Court of Appeals for the Ninth Circuit and the United States Supreme Court, and the facts of the case before me. If there is no precedent on point, I would look to the most closely analogous cases within the circuit and the Supreme Court, and would also review cases from other circuits for guidance.

- 4. What is the most important attribute of a judge, and do you possess it?**

Response: The most important attribute of a judge is the commitment to adhere to the law and impartially apply it in each case. I believe that my judicial record shows that I possess this attribute.

- 5. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?**

Response: Above all, a judge should be fair and impartial. A judge should also be patient, diligent, and respectful to all who appear before the court. I believe that my judicial record shows that I meet this standard.

- 6. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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.

- 7. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Response: If the case involves statutory interpretation, I would start with the plain reading of the statute. If the statute is unambiguous, I would apply the statute as written. If the statute is ambiguous, I would look to legislative history to determine legislative intent. I would consider the most closely analogous precedent in the circuit and the Supreme Court for guidance. If the case involves constitutional interpretation, I would start with the text of the constitutional provision and consider the most closely analogous precedent in the circuit and the Supreme Court.

- 8. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own best judgment of the merits?**

Response: If confirmed, I would apply precedent even if I personally believe that it was wrongly decided.

- 9. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: Statutes are presumed to be constitutional. A federal court can declare a statute unconstitutional if it violates a clear constitutional provision or Congress clearly exceeded its authority as set forth in the Constitution in enacting the statute.

- 10. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?**

Response: An appellate court should overturn precedent within the circuit only through the en banc process. En banc review should be rare and, as set forth in Fed. R. App. P. 35, it is justified only if the matter "involves a question of exceptional importance" or review "is necessary to secure or maintain uniformity of the court's decisions[.]"

- 11. Please describe with particularity the process by which these questions were answered.**

Response: I reviewed the questions and drafted my answers in the late afternoon on November 9, 2011. I reviewed my answers with an attorney from the Department of Justice and asked that my answers be submitted to the Committee.

12. Do these answers reflect your true and personal views?

Response: Yes.

Responses of Jacqueline H. Nguyen
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy?
How do you see the role of the judge in our constitutional system?**

Response: I believe that a judge's role is to be fair and impartial, strictly apply the law to the facts of each case, and be dignified and respectful of every party or witness who appears before the court. That is my judicial philosophy and I have strived to conduct myself according to this standard during my entire judicial career.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: I believe strongly in the integrity of the justice system, and I can assure litigants coming into my courtroom that they will be treated fairly regardless of their beliefs or circumstances because that is how I have conducted myself during my nine years on the bench. I will continue to do so, if confirmed.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: Stare decisis is an important core principle in our system of justice. If confirmed, I intend to apply controlling precedent unless it is overturned by the United States Supreme Court or, in the instance of precedent within the circuit, by the court en banc. I do not believe that the commitment to stare decisis should vary depending on the court.

SUBMISSIONS FOR THE RECORD



Defending Liberty
Pursuing Justice

AMERICAN BAR ASSOCIATION

Standing Committee on

the Federal Judiciary

Attn: Denise A. Cardman

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September 8, 2011

VIA EMAIL AND FIRST CLASS MAIL

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

Re: *Nomination of Gregg J. Costa**To the United States District Court for the Southern District of Texas*

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Gregg J. Costa who has been nominated to the United States District Court for the Southern District of Texas. As a result of our investigation, the Committee is of the unanimous opinion that Mr. Costa is "Well Qualified."

A copy of this letter has been provided to Gregg J. Costa.

Sincerely,

Allan J. Joseph
Chair

cc: Gregg J. Costa, Esq.
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)



Please respond to:
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AMERICAN BAR ASSOCIATION

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VIA EMAIL AND FIRST CLASS MAIL

September 15, 2011

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

**Re: *Nomination of David Guaderrama*
*To the United States District Court for the Western District of Texas***

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of David Guaderrama who has been nominated to the United States District Court for the Western District of Texas. As a result of our investigation, a Substantial Majority of the Committee is of the opinion that Magistrate Judge Guaderrama is "Well Qualified." A Minority of the Committee is of the opinion that Magistrate Judge Guaderrama is "Qualified" for this position.

A copy of this letter has been provided to David Guaderrama.

Sincerely,

Allan J. Joseph
 Chair

cc: The Honorable David Guaderrama
 The Honorable Kathy Ruemmler
 Michael Zubrensky, Esq. (via email)
 ABA Standing Committee on the Federal Judiciary (via email)
 Denise A. Cardman, Esq. (via email)



AMERICAN BAR ASSOCIATION

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Email: ajoseph@rjo.comVIA EMAIL AND FIRST CLASS MAIL

September 23, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510**Re: Nomination of Jacqueline Nguyen
To the United States Circuit Court for the Ninth Circuit**

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Jacqueline Nguyen who has been nominated for a position on the United States Circuit Court for the Ninth Circuit. As a result of our investigation, the Committee is of the unanimous opinion that Judge Nguyen is Qualified for the position.

A copy of this letter has been provided to Jacqueline Nguyen.

Sincerely,

Allan J. Joseph
Chair

cc: Jacqueline Nguyen
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)

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Statement of Senator Chuck Grassley

Before the Committee on the Judiciary

On the Nominations of:

Jacqueline H. Nguyen, to be United States Circuit Judge for the Ninth Circuit

Gregg Jeffrey Costa, to be United States District Judge for the Southern District of Texas

David Campos Guaderrama, to be United States District Judge for the Western District of Texas

November 2, 2011

Mr. Chairman:

I welcome the nominees appearing before us today as well as their families and friends. A nominee's hearing is an important event for the nominee themselves, their families, and for this institution and for the public.

The Committee has taken this responsibility seriously. Today's hearing is the seventeenth nominations hearing held during this Congress. After today, we will have reviewed the qualifications of 69 judicial nominees during this year. That

means, after today, nearly 93% of President Obama's judicial nominees have had a hearing. In total, this year we have made real progress on 86 of the 99 nominations submitted during the 112th Congress. We have confirmed 53 judicial nominees this year, making this Session of Congress one of the most productive over the last 30 years. In total, more than 70% of President Obama's judicial nominees have been confirmed. That is real progress.

Mr. Chairman, today we have two nominees to be District Judges in Texas. Mr. Gregg Costa, for the Southern District, is presently an Assistant United States Attorney in Houston. Judge David Guaderrama is presently serving as a United States Magistrate Judge for the Western District of Texas, in El Paso.

Judge Jacqueline Nguyen, nominated to be United States Circuit Judge for the Ninth Circuit, was confirmed by the Senate less than two years ago as United States District Judge for the Central District of California. She was

nominated for elevation just 41 days ago. Although she has trial court experience, I am less familiar with her appellate experience. I hope to hear about that at today's hearing. Furthermore, she has at least two cases that give me concern, and I will be asking about those. I also hope to hear from each of the nominees regarding their judicial philosophy.

I will not repeat the full biographies of the nominees, but will insert my full statement into the record. Again, I welcome the nominees and look forward to their testimony.

Jacqueline H. Nguyen is nominated to be United States Circuit Judge for the Ninth Circuit. Judge Nguyen received her A.B. from Occidental College in 1987 and her J.D. from the University of California, Los Angeles (UCLA) School of Law in 1991. She began her legal career as an associate in the Litigation Department at the Los Angeles law firm of Musick, Peeler & Garrett.

From 1995 until 2002, Judge Nguyen was an Assistant U.S. Attorney in the U.S. Attorney's Office for the Central District of California. She was assigned to various criminal divisions, including the Organized Crime Strike Force and the Public Corruption and Government Fraud Section. She was also selected to become Department of Defense Fraud Coordinator, where she oversaw all Department of Defense fraud prosecutions in the Central District of California. In 2000, Judge Nguyen became Deputy Chief of the General Crimes Section. In that position, she handled the training and supervision of all new Assistant U.S. Attorneys and various types of criminal cases involving violent crimes, drug trafficking, firearms violations, and fraud.

In 2002, Governor Gray Davis appointed Judge Nguyen to the Superior Court for the County of Los Angeles. The California State Superior Court is a trial court with general jurisdiction over all civil and criminal matters brought within the county where it sits. In 2009, she was appointed by President Obama as a United States District Judge for the Central

District of California. The Senate approved her nomination on December 1, 2009 by a vote of 97 –0.

Gregg Jeffrey Costa is nominated to be United States District Judge for the Southern District of Texas. He is a 1994 graduate of Dartmouth College and received his law degree from the University of Texas School of Law in 1999.

Following graduation from law school, Mr. Costa clerked for the Honorable A. Raymond Randolph on the D. C. Court of Appeals from August 1999 to July of 2000 and then for Chief Justice Rehnquist from July 2001 to July 2002. Between his two clerkships, he worked as a Bristol Fellow in the United States Department of Justice, Office of the Solicitor General.

In 2002, Mr. Costa joined the law firm Weil Gotshal & Manges as an associate. In 2005, he joined the United States Attorney's Office for the Southern District of Texas (Houston Office) as an Assistant United States Attorney. Mr. Costa has worked in the criminal division of the office in the Major Offenders and Major Fraud sections, investigating and

prosecuting matters in the areas of: mortgage fraud, investment fraud, securities fraud, public corruption, internet fraud, human trafficking, child pornography, and narcotics and firearms violations. As an AUSA, Mr. Costa also has handled numerous appellate matters before the United States Court of Appeals for the Fifth Circuit.

In addition to prosecuting cases for the office, Mr. Costa serves as the Deputy International Affairs Coordinator for the United States Attorney's Office. In this capacity, he helps coordinate incoming and outgoing requests on behalf of the governments of Malaysia, Turkey, Columbia, Greece, France and the United Kingdom. Mr. Costa also helps and provides guidance to other AUSAs on extradition matters. And in 2005, after Hurricane's Katrina and Rita, Mr. Costa served as the Hurricane Fraud Coordinator for his office that investigated fraud cases relating to the Hurricanes. Mr. Costa's office prosecuted more than 100 individuals for crimes such as government-benefit fraud, identify theft offenses, charitable fraud and investment fraud.

David Campos Guaderrama is nominated to be United States District Judge for the Western District of Texas. After graduation from New Mexico State University in 1975, and Notre Dame Law School in 1979, Judge Guaderrama worked as a solo practitioner from December 1979 to August 1980. He then formed a partnership practice with his then wife. In 1987, he was appointed to serve as El Paso County's first public defender and was charged with starting up and developing an office that would be capable of handling at least 50% of all indigent felony cases. He served in that capacity until his election to the State bench in 1994.

In November 1994, Judge Guaderrama was elected Judge of the 243rd Judicial District Court of Texas. He was elected for a four-year term and subsequently re-elected on four occasions. During his term as a Texas District Court Judge, he was instrumental in establishing the 243rd Drug Court Program and Access to Recovery Program. Both programs are aimed at helping rehabilitate defendants guilty of minor drug offenses through counseling and supervision, rather

than incarceration. Also while on the 243rd Judicial District he served as chairman of a subcommittee that oversaw reform of the jury selection process that implemented mailing jury qualification questionnaires to potential jurors. He also piloted a program to use video conference technology to conduct arraignments.

In 2008, Judge Guaderrama was an unsuccessful candidate for Justice, Eight Court of Appeals of Texas. In 2010, he was appointed by the United States District Court of the Western District of Texas to serve an eight-year term as a United States Magistrate Judge.

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The Honorable Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
152 Senate Dirksen Office Building
Washington, DC 20510
(202) 224-9516 (fax)

Dear Senators Leahy and Grassley:

On behalf of the Japanese American Bar Association (JABA), I write to express our strongest support for United States District Judge Jacqueline H. Nguyen, who recently has been nominated for elevation to the United States Circuit Court of Appeals for the Ninth Circuit. Judge Nguyen's diverse professional and life experiences, her long track record of community involvement and service, and her overall reputation for excellence clearly demonstrate that Judge Nguyen possesses the qualities necessary to serve as a United States Circuit Court Judge with great distinction.

Judge Nguyen's life story embodies the American Dream. She was born in Vietnam and immigrated to the United States as a young child by way of airlift in 1975. For a few months, she and her family lived in a refugee camp at Marine Corps Base Camp Pendleton in San Diego County, California and then settled in the Los Angeles area. Her parents worked day and night, often holding down multiple jobs, to provide a better life in the United States. Eventually, Judge Nguyen's parents came to own and operate several donut shops, where, as a youth and through college, Judge Nguyen frequently worked to support the family's business.

Judge Nguyen eventually earned a full, four-year scholarship to Occidental College, from which she received a Bachelor of Arts degree in English. She later graduated from UCLA's School of Law. Upon graduation from law school, Judge Nguyen worked for several years as a commercial litigator at Musick,

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Peeler & Garrett LLP, a well-known, Los Angeles-based law firm, where she represented clients in a wide array of matters ranging from standard business disputes to intellectual property and construction defect cases. She then joined the United States Attorney's Office for the Central District of California as an Assistant United States Attorney, where she prosecuted a wide array of crimes ranging from public corruption to commercial smuggling. On multiple occasions, she represented the Government in appeals before the Ninth Circuit. Eventually, Judge Nguyen rose to Deputy Chief of the General Crimes Section of her office, where she trained and mentored younger prosecutors. During her time as a federal prosecutor, Judge Nguyen received multiple awards recognizing her for her outstanding performance as an Assistant United States Attorney. In 2002, Judge Nguyen was appointed to the Superior Court of Los Angeles County. In 2009, she was nominated and confirmed as a United States District Judge in the Central District of California. During her tenure as a judge, she has earned a well-deserved reputation for intelligence, fairness, pragmatism, hard work, and excellent temperament.

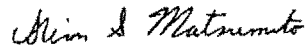
All along the way, Judge Nguyen always has made it a priority to give back to the community. From 1995 to 1997, Judge Nguyen served as a Board member of JABA. During her tenure on JABA's Board, Judge Nguyen was active in JABA's Community Concerns Committee, a committee dedicated to addressing issues facing the Japanese American and Asian American communities. JABA members fondly remember Judge Nguyen's impressive work ethic and warm congeniality. Notwithstanding her appointment to the bench, Judge Nguyen has continued to give to JABA. In early 2010, Judge Nguyen returned to JABA as a then-newly-confirmed United States District Judge (and the first Vietnamese American federal judge in history) to officially administer the oath of office to JABA's incoming Board at JABA's annual installation gala dinner. That moment was, and will forever be, a great source of pride for JABA and its members.

Besides JABA, Judge Nguyen is a founding member of the Asian Pacific American Bar Association of Los Angeles (APABA) and has served as APABA's President. She currently serves on APABA's Advisory Board. She also has served on the Board of the Women Lawyers Association of Los Angeles and has been a member of the Vietnamese American Bar Association of Orange County, the Southern California Chinese Lawyers Association, and the Korean American Bar Association of Southern California. Needless to say, Judge Nguyen enjoys the broad support of a very wide swath of the community at large.

JAPANESE AMERICAN BAR ASSOCIATION
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Judge Nguyen deeply impresses, inspires, and touches all whom she encounters. No doubt, Judge Nguyen's vast life experiences, which she concedes has made her the person she is today, has helped to contribute to her impressive character. As an organization with direct personal experience with Judge Nguyen, JABA can safely attest that our nation would be most fortunate indeed to have Judge Nguyen serving on the Circuit Court of Appeals. Accordingly, JABA proudly and wholeheartedly endorses Judge Nguyen and urges the United States Senate to speedily confirm her as a Judge on the United States Circuit Court of Appeals for the Ninth Circuit.

Sincerely,

A handwritten signature in cursive script that reads "Alison S. Matsumoto".

Alison S. Matsumoto

President

JONES DAY

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3075785

October 3, 2011

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

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: *Jacqueline Hong-Ngoc Nguyen*, Nominee to the
United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Sessions:

I write in support of the confirmation of District Judge Jacqueline Nguyen to the Ninth Circuit. Judge Nguyen is an outstanding jurist who has served with distinction on the Central District of California and on the Los Angeles Superior Court. She is highly regarded by the bench and bar in Southern California. She had a distinguished career as a lawyer in private civil practice in Los Angeles from 1991-1995 before joining the United States Attorney Office. During her seven years of service at the United States Attorney's Office, she served in the Public Corruption and Government Fraud sections eventually becoming Deputy Chief of the General Crimes Section and responsible for training new prosecutors who joined the office.

In August 2002, she was appointed the Superior Court, becoming the first Vietnamese American woman to serve on that court. She received an assignment as a trial judge in the Alhambra branch of the court. She was nominated to be a District Judge by President Obama and confirmed by the full senate in December 2009 by a vote of 97-0.

Judge Nguyen's commitment to public service and to the community is steadfast. I had the pleasure of reviewing her candidacy as a member of Senator Feinstein's Advisory Committee for the Central District. I also served as the chair of the Central District of California Bi-Partisan Judicial Screening Committee under President George W. Bush and for similar committees for several California Governors. Based on her qualifications, I am confident that Judge Nguyen, if confirmed, will serve with distinction. She has lived the American dream as an immigrant to our

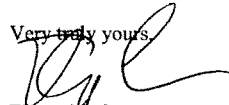
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IRVINE • LONDON • LOS ANGELES • MADRID • MEXICO CITY • MILAN • MOSCOW • MUNICH • NEW DELHI • NEW YORK • PARIS
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JONES DAY

The Honorable Patrick J. Leahy
The Honorable Jeff Sessions
October 3, 2011
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country because she has worked hard to gain the educational and professional success that she has experienced. She is an exemplary judge who is deserving of your vote for confirmation. I know you will be proud to be one of her supporters. I would be pleased to provide you with any further information that you deemed necessary. Thank you for consideration of my letter of support.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Elwood Lui', with a stylized flourish extending to the right.

Elwood Lui



NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

November 1, 2011

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

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter of Support for The Honorable Jacqueline H. Nguyen,
Nominee for the United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the National Asian Pacific American Bar Association ("NAPABA"), we strongly endorse and urge the prompt confirmation of Judge Jacqueline H. Nguyen for the United States Court of Appeals for the Ninth Circuit. Judge Nguyen has the experience, intellectual capacity, integrity, and judicial temperament to be an excellent United States Circuit Court Judge. The Senate Judiciary Committee reviewed Judge Nguyen's qualifications two years ago, and unanimously agreed that Judge Nguyen was qualified to be a federal district court judge. The United States Senate then confirmed her unanimously by a vote of 97 to 0. This Committee and the Senate should follow a similar course and confirm Judge Nguyen to the Ninth Circuit.

NAPABA is a national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. Now in its 23rd year, NAPABA represents the interests of over 60 affiliate organizations and over 40,000 Asian Pacific American attorneys. NAPABA is deeply committed to supporting the appointment of qualified Asian Pacific Americans to the federal bench, especially where Asian Pacific Americans are significantly underrepresented.

1612 K STREET, NW, SUITE 1400 • WASHINGTON, DC 20006
PHONE: (202) 775 9555 • FAX: (202) 775 9333 • WWW.NAPABA.ORG

The Honorable Patrick J. Leahy
The Honorable Charles Grassley
November 1, 2011
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Notably, out of the approximately 175 active federal appellate court judges, there is only one who is Asian Pacific American – Judge Denny Chin of the United States Court of Appeals for the Second Circuit, who was confirmed in April 2010. The lack of an Asian Pacific American federal appellate jurist on the Ninth Circuit is especially distressing. From 1971 to 2004, there had been at least one active Asian Pacific American Ninth Circuit judge, but none since 2004. The presence of an Asian Pacific American jurist on the Ninth Circuit is vital – Asian Pacific Americans constitute approximately 10% of the population under the jurisdiction of the Ninth Circuit, and constitute approximately 15% of the population in California. If the number of Asian Pacific American federal appellate court judges reflected the general population, then there would be 3 Asian Pacific American judges in the Ninth Circuit alone, and 9 federal appellate court judges overall.

In addition, if confirmed, Judge Nguyen would be the *first* Asian Pacific American female federal appellate court judge in the history of the United States. She already holds the distinction of being the first Vietnamese American Article III judge in U.S. history, and the first Asian Pacific American female Article III judge in California.

Most importantly, Judge Nguyen would be an excellent federal appellate court judge. In her two years as a federal district court judge, she has issued scores of substantive written opinions, presided over numerous trials, and has not had any case reversed on appeal. The American Bar Association has rated her Unanimously Well Qualified for both the current nomination and her previous one.

Prior to her service on the federal district court bench, Judge Nguyen served as a judge on the California Superior Court for Los Angeles County. As a testament to her scholarship and precision in her application of the law, Judge Nguyen was never reversed on appeal in the several thousand cases over which she presided during her seven year tenure on the state superior court.

Judge Nguyen also has significant experience already before the Ninth Circuit. As an Assistant United States Attorney for the Central District of California, Judge Nguyen argued several appeals before the Ninth Circuit and drafted briefs in several other cases. She served for a total of six years in the U.S. Attorney's Office, including two years as a Deputy Chief. Unsurprisingly, several of her former colleagues – including former U.S. Attorney (during the George W. Bush Administration) Thomas O'Brien and former U.S. District Court Judge Stephen Larson (also nominated by President George W. Bush) – have expressed their strong support for her nomination.

The Honorable Patrick J. Leahy
The Honorable Charles Grassley
November 1, 2011
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NAPABA's support for Judge Nguyen is also based on her strong record of leadership in the Asian Pacific American and legal communities. Judge Nguyen was a co-founder and former president of the Asian Pacific American Bar Association of Los Angeles, and she also has served on the board of directors of the Women Lawyers' Association of Los Angeles County and the Japanese American Bar Association of Los Angeles. She has served as a pro bono attorney for foster adoption projects and other community efforts.

For all of these accomplishments, Judge Nguyen has received several awards and recognitions. In 2006, NAPABA awarded Judge Nguyen its Trailblazer Award, which is NAPABA's highest award and bestowed upon lawyers whose professional achievements have paved the way for other Asian Pacific American lawyers. In addition, Judge Nguyen has been recognized by a wide variety of organizations nationwide. These awards include: Alumni Award, Occidental College (2007); Outstanding Contribution in the Field of Law Enforcement, Federal Law Enforcement Officers Association (2002); Special Recognition Award, Asian Pacific American Legal Center (2002); Best Lawyers Under 40, NAPABA (2002) (inaugural list); Superior Performance as an Assistant United States Attorney Director's Award, U.S. Department of Justice (1996, 1997, 2000); commendations and awards from FBI Director Louis J. Freeh (2000), U.S. Customs Service (2000), U.S. Department of State (2000), and U.S. Attorney's Office (1997, 2000).

Judge Nguyen's personal story is one of grace, fortitude, hard-work, and determination and that exemplifies the quintessential American Dream. Judge Nguyen was born in Dalat, South Vietnam, the daughter of a South Vietnamese Army major who worked closely with U.S. intelligence officers. She escaped the fall of South Vietnam with her family in a harrowing trip, starting with a terrifying toss over a fence, to a plane ride filled wall to wall with people, temporary separation from her father, through a chaotic Saigon, to the Philippines, to Guam, and eventually, to Camp Pendleton, California. Having been born into a life of privilege, then to lose it all to the chaos of war, Judge Nguyen embraced her new life in America with the excellence, strength, and resilience that has defined Americans since the founding of our nation. She assisted her mother in cleaning dental offices growing up, eventually earned a four-year full tuition scholarship to Occidental College, and then graduated from UCLA School of Law, continuing all the while to help her mother in the family donut shop on the weekends.

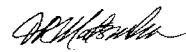
The Honorable Patrick J. Leahy
The Honorable Charles Grassley
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Based on her qualifications, intellect, integrity, and commitment to justice, NAPABA strongly endorses the Honorable Jacqueline H. Nguyen to serve as a Circuit Judge for the United States Court of Appeals for the Ninth Circuit. From NAPABA's perspective, there is no question that Judge Nguyen would make an immediate positive contribution to the Ninth Circuit and NAPABA urges that the Senate act quickly to confirm her.

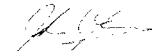
Sincerely,



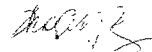
Paul O. Hirose
President



Tina R. Matsuoka
Executive Director



John C. Yang
Co-Chair, Judiciary Committee



Wendy Wen Yun Chang
Co-Chair, Judiciary Committee

**PAUL
HASTINGS**

1(213) 683-6146
thomasobrien@paulhastings.com

October 13, 2011

VIA FACSIMILE

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Senate Dirksen Office Building
Washington, D.C. 20510
Fax: (202) 224-9102

The Honorable Charles Grassley, Ranking Member
Committee on the Judiciary
United States Senate
152 Senate Dirksen Office Building
Washington, D.C. 20510
Fax: (202) 224-9516

Re: The Nomination of Judge Jacqueline Nguyen to the United States Court of Appeals for
the Ninth Circuit

Dear Chairman Leahy and Ranking Member Sessions:

I have been asked by the National Asian Pacific Bar Association to express my view of the nomination of Judge Jacqueline Nguyen, now of the Central District of California, to the Court of Appeals for the Ninth Circuit. While serving as the former United States Attorney for the Central District of California under President George W. Bush, I strongly endorsed Judge Nguyen for her current position as District Judge, and it is my privilege and honor to do so again for her confirmation to the Ninth Circuit.

I met Judge Nguyen when she and I were both Assistant United States Attorneys in the Criminal Division in the United States Attorney's Office in Los Angeles. She was assigned to the Organized Crimes Strike Force and the Public Corruption and Government Fraud Section before rising to the position of Deputy Chief of the General Crimes Section. She supervised me when I joined the office as a prosecutor in 2000, and I had a first-hand opportunity to observe the depth of her legal reasoning, her thoughtful and calm demeanor during stressful situations, and her excellent leadership skills. Based on that experience, I believe her to be a highly qualified nominee who is intelligent, skilled, and exercises sound judgment. She has handled complex and controversial cases with technical finesse and grace. Additionally, Judge Nguyen has an outstanding reputation here in the Southern California, where she has been a leader and role model in the legal community. She will bring to the appellate bench a wealth of expertise, intellect, and integrity.

Paul Hastings LLP | 515 South Flower Street | Twenty-Fifth Floor | Los Angeles, CA 90071
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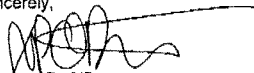
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HASTINGS

The Honorable Patrick Leahy, Chairman
The Honorable Charles Grassley, Ranking Member
October 13, 2011
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I have every confidence that Judge Nguyen will be an excellent appellate judge, and she has my complete and personal recommendation for immediate confirmation. If there is any further information I can provide, please do not hesitate to contact me.

Sincerely,



Thomas P. O'Brien
of PAUL HASTINGS LLP

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
 333 South Grand Avenue
 Los Angeles, CA 90071-3197
 Tel 213.279.7000
 www.gibsondunn.com

Debra Wong Yang
 Direct: +1 213.229.7472
 Fax: +1 213.229.6472
 DWongYang@gibsondunn.com

October 17, 2011

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

The Honorable Charles Grassley
 Ranking Member
 Committee on the Judiciary
 United States Senate
 152 Dirksen Senate Office Building
 Washington, DC 20510

Re: The Honorable Jacqueline H. Nguyen,
Nominee for the United States Court of Appeals for the Ninth Circuit

Dear Chairman Leahy and Ranking Member Grassley,

I write in support of the confirmation of Judge Jacqueline H. Nguyen for the United States Court of Appeals for the Ninth Circuit. I have known Judge Nguyen for over 10 years and our professional careers have crossed over the years. Based on my personal knowledge of her experience, dedication and demeanor, I can say that she would make an excellent federal appellate court judge.

Judge Nguyen and I have worked for the same offices on several occasions, though not always at the same time. Judge Nguyen served as a Los Angeles Superior Court Judge from 2002 to 2007, whereas I served from 2000 to 2002 (and before that I served as a Los Angeles Municipal Court Judge). Judge Nguyen served as an Assistant U.S. Attorney for the Central District of Los Angeles from 1996 to 2002. I served in that office both prior to her arrival and after her appointment as a judge (at which time I re-joined the office as the United State Attorney in 2002). Her reputation among our colleagues is tremendous. She was known for her strong work ethic, unfailing integrity, and fair approach to matters.

I also know Judge Nguyen from our common interest in the Asian Pacific American legal community. She has served on the boards of the Asian Pacific American Bar

GIBSON DUNN

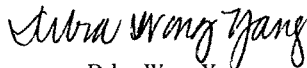
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Association of Los Angeles and the Japanese American Bar Association of Los Angeles. I have served, meanwhile, on the board of the Southern California Chinese Lawyers Association and was a founding member and officer of the Asian American Bar Association of Chicago. Thus, I can also testify to her dedication to community service.

In everything that she has done, Judge Nguyen has provided excellent leadership, sound intellect, and balanced and even temperament. She has dedicated most of her professional life to ensuring the fairness of the justice system. I have seen Judge Nguyen's qualities personally and support her current nomination without hesitation.

For all of these reasons, I strongly support Judge Nguyen and urge the Senate to confirm her promptly. Thank you very much for your consideration of my views.

Sincerely,



Debra Wong Yang

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**NOMINATIONS OF KATHRYN KENEALLY,
NOMINEE TO BE AN ASSISTANT ATTORNEY
GENERAL; AND, BRIAN C. WIMES, NOMINEE
TO BE UNITED STATES DISTRICT JUDGE
FOR THE EASTERN AND WESTERN DIS-
TRICTS OF MISSOURI**

WEDNESDAY, NOVEMBER 16, 2011

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

The Committee met, pursuant to notice, at 2:34 p.m., Room 226,
Dirksen Senate Office Building, Hon. Herb Kohl, presiding.

Present: Senators Schumer and Grassley.

**OPENING STATEMENT OF HON. HERB KOHL, A U.S. SENATOR
FROM THE STATE OF WISCONSIN**

Senator KOHL. Good afternoon. Today we meet regarding two important nominations before this committee.

Ms. Kathryn Keneally, nominated to be the Assistant Attorney General in the Tax Division at the Department of Justice, and Brian Wimes, nominated to be District Court Judge for the Eastern and Western Districts of Missouri.

We welcome these distinguished nominees and their families and friends who have come here in support. We also thank Senator McCaskill, and possibly Senators Schumer and Blunt, who will be here to introduce them.

We can all agree on the importance of the tax division.

Senator SCHUMER. It is more possible than you think, Mr. Chairman.

Senator KOHL. It sure is. Ever present.

[Laughter.]

Senator KOHL. We can all agree on the importance of the tax division. It carries out a critical mission on behalf of all taxpayers to fairly and consistently enforce our tax laws. In doing so, the division collects hundreds of millions of dollars in restitution and fraudulent refunds every year. It also promotes voluntary compliance with the law and maintains the public's confidence and the integrity of our tax system.

The division has been without a confirmed head for more than 2 years now. And so we look forward, Ms. Keneally, to hearing from you about the values you will bring to the division and the priorities that you will set.

Judge Wimes, just as our top Department of Justice officials are charged with maintaining public confidence and the enforcement of our laws, judges have a solemn duty to uphold the public's trust in our justice system.

Day in and day out, our Federal district court judges are the faces of the justice system for all types of litigants, from businesses with commercial disputes to victims and defendants in criminal cases.

Judge Wimes, this will be our only opportunity to hear from you and learn about what sort of judge you will be, should you be confirmed for this lifetime appointment to the Federal bench.

The Senate takes its duty seriously to advise and consent on executive and judicial nominees and to ensure that each nominee possesses the qualifications, the integrity, and the intellect to carry out his or her responsibilities.

This hearing is an important step in that process. We thank you for being here. We look forward to your testimony.

We turn now to my friend and colleague, Senator Grassley, for his remarks.

Senator GRASSLEY. You know what I am going to do? I am going to let our two colleagues go ahead of me, if that is OK with you, Mr. Chairman, Senator McCaskill, and you have a nominee you want to introduce. So why do not either one of you go ahead of me?

Senator KOHL. Terrific. Senator McCaskill? And then Senator Schumer.

PRESENTATION OF BRIAN WIMES, NOMINEE TO BE U.S. DISTRICT JUDGE FOR THE EASTERN AND WESTERN DISTRICTS OF MISSOURI BY HON. CLAIRE MCCASKILL, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator MCCASKILL. Thank you, Mr. Chairman. And thank you, Senator Grassley. It is a pleasure to be with you today.

I was reviewing the nominee's resume and it brought back such pleasant memories for me, because what jumped out at me, looking at his resume, was the fact that in 1995 he received the Rookie of The Year Prosecutor Award in the Jackson County prosecutor's office, and I remember deciding that Brian Wimes should be the Rookie of the Year and why he got that award. And it was because he stood out immediately as a very young prosecutor as a leader; as someone who his fellow prosecutors looked to even though he was a brand new attorney in the office; and, someone who I could rely on and be confident of his judgment. And, clearly, his character was reflected in the work that he did.

He went on from being an assistant line prosecutor in the office, having major felony responsibility, to being a Drug Abatement Response Team coordinator, which meant that I put him out in the community, where he worked with communities trying to identify and use creative strategies to shut down drug houses and make neighborhoods whole again that had been decimated by unfortunate, too frequent occurrences of drug houses in our community.

He then went on to be a community prosecutor, where he worked with communities doing even more than shutting down drug houses, looking at all of the concerns a neighborhood had that related to crime and public safety; a senior prosecuting attorney; and,

then, by judges of the circuit, he was selected to be a drug court commissioner. And that is important because he had appeared in front of all these judges as a prosecutor.

And for the judges to select Brian Wimes to be a commissioner to run the drug court was a very high honor, because it meant that they saw in him his ability to be fair and have the right kind of demeanor and attitude on the bench.

From drug court commissioner, he went on to be appointed a circuit judge in Kansas City, where he has been a trial judge for a number of years, presiding over a trial docket and having some 300 different cases that may be going at one time; obviously, presiding over dozens and dozens and dozens and dozens of jury trials.

So this will be a Federal judge that knows what it is like to be in the courtroom and knows what it is like to be on the bench, letting the lawyers try their cases, being swift and efficient, but also very fair.

He is here with his wife, Michelle, who is the brains of the operation. She is also an attorney and has a very successful law practice in Kansas City. And their three beautiful daughters—I cannot believe they are this grown up—Sydney, Gabby & Saige are all here with them today.

This is a great family. This is a good man. He will wear a lifetime appointment with the kind of humble attitude that we so desperately need on the Federal bench. This is not someone who will ever get robeitis. This is not someone who will ever take his position for granted. This is someone who will treat a lifetime appointment with the respect that it deserves.

I am so thrilled that he is here today, and I hope the Committee gives him very quick and favorable consideration.

Thank you Mr. Chairman.

Senator KOHL. Thank you for that great introduction.

Senator SCHUMER.

Senator SCHUMER. Thank you. And I want to thank my friend and colleague from Missouri for her wonderful introduction. I always learn something. I have never heard of the expression “Robeitus.” I guess that is a prosecutor’s term. I guess you take Robitussin to get rid of it.

[Laughter.]

Senator McCASKILL. Change of judge.

Senator SCHUMER. Change of judge, we cannot do that in Washington at the Federal level. So that is why your comments are so important. But thank you, and I welcome your nominee here and his beautiful family, including those beautiful girls here, as well.

And now it is my honor to introduce a great New Yorker, Kathryn Keneally. She is a lifelong New Yorker, unless you count her first 6 months of life when her father was stationed at the Wright Patterson Air Force Base near Dayton, Ohio. And her roots are deep.

Her mother—her grandmother was a garment worker. So was mine. Her grandfather was a taxi driver. So was my father-in-law. So we are sort of a little similar that way.

Ms. Keneally’s mother retired from teaching sixth grade in Hicksville, Long Island, which is a great school district, and now has become the minister of the Unity Church of Christianity in

Valley Stream, where we are trying to get the flood zones changed, I want to let you know, Ms. Keneally, so they do not have to pay in their houses.

I do not know if it is in your part of Valley Stream where your church is, but the flood insurance was just tacked onto a whole lot of people there, and we are working to get it back.

Her father, who has passed away, I am sure he is looking down from Heaven very proud of his daughter, was an engineer at Sperry Rand on Long Island. So you were really a vintage Long Islander to have a mother as a school teacher, a father an engineer at Sperry Rand, now your mother a minister, that is great.

Anyway, Ms. Keneally stayed in New York for her higher education from two of the best institutions in New York and the country. She graduated from Cornell University and was first in her class at Fordham Law School, and that is a very competitive law school. So that is extremely impressive.

Although New York will miss her, though we hope you keep your legal residence in New York, Ms. Keneally is imminently qualified to head DOJ's tax division, and I am proud to support her. She received her LLM in tax law from New York University School of Law, another outstanding New York institution; has spent over 25 years representing clients in tax controversies.

She is currently a partner in Fulbright & Jaworski's New York office. She serves as vice chair of the ABA taxation section. She has represented clients in every area of tax law from making presentations to the IRS on tax treatment issues to try in criminal tax enforcement matters.

Now, maybe more than ever as we face these difficult economic times, it is really important to have someone in this position who is fully dedicated to making sure that our tax laws are enforced firmly and evenly and who has the expertise to make it happen.

I look forward to Ms. Keneally's leadership in this important area, when she is confirmed, as I am sure she will be.

Thank you, Mr. Chairman, Mr. Ranking Member, for the opportunity to introduce her today.

Senator KOHL. Thank you. Thank you very much for that great introduction.

Senator Grassley? I am sorry. Senator Schumer, now we turn to Senator Grassley.

STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Well, of course, like everybody else, I welcome the nominees before us today, and I particularly enjoyed a conversation with Ms. Keneally yesterday in my office. She is nominated to be an assistant attorney general.

I am pleased that Chairman Leahy and I were able to reach an agreement on the timing and format for her hearing today. I express my appreciation to Chairman Leahy for the way that we are proceeding on the nomination.

If confirmed, Ms. Keneally will head the tax division. The mission of that division is to enforce the Nation's tax laws fully, fairly, consistently, through both criminal and civil litigation. It has a duty to ensure compliance with the tax laws, maintain public con-

fidence and the integrity of our system, and promote the sound development of law.

The assistant attorney general for tax is an important and unique position. In order to be effective, this person must have a strong command of the tax laws and maintain a strong working relationship with the IRS.

Given the severe debt and deficit situation facing our country, it is imperative that the IRS collect every dollar of tax that is owed to the government.

I have always said that taxpayers should pay what they owe, not a penny more, not a penny less. The assistant attorney general for tax plays an important role in helping the IRS collect their taxes.

It is disappointing that we have not been able to get a qualified candidate into this position for 3 years. The first nominee for this position, while very qualified for any number of other legal positions, had no tax experience and was wholly unqualified for this tax position.

After her nomination was withdrawn, it took over a year for the President to submit Ms. Keneally's nomination. In contrast to the first nominee, Ms. Keneally has significant tax experience and will hopefully be a valuable addition to the Department of Justice.

I was pleased to meet with her yesterday, as I just said. We had a good visit, and I will look forward to her testimony and my opportunity to question her.

In addition, we will be considering the nomination of Brian Wimes, nominated to be a U.S. District Judge for the Eastern and Western Districts of Missouri.

I would note that we are making real progress with regard to the nominations of President Obama, to the Federal judiciary. Today marks the 18th nominations hearing held in this Committee this year, and we will have heard from 70 judicial nominees.

All in all, nearly 89 percent of President Obama's judicial nominees have received a hearing. The Senate has confirmed 20 Article 3 judicial nominees during the past month and a half, and we have now confirmed 58 judicial nominees in this Congress alone.

With the confirmation of two judges yesterday, over 70 percent of the President's nominees have been confirmed.

I am going to have a full statement for the record, and I yield the floor.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator KOHL. Thank you very much.

Ms. Keneally, will you step forward, please? Raise your right hand and take the oath.

[Witness sworn.]

Senator KOHL. So we will now accept your recognition and introduction of your family, as well as a statement, and then we will get on to the questions.

STATEMENT OF KATHRYN KENEALLY, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL

Ms. KENEALLY. Thank you, Senator Kohl and Senator Grassley.

I just want to state that I am appreciative of the comments, the very, very kind and generous comments that Senator Schumer

made. I'm deeply grateful, also, to my wonderful husband, Tom Marshall, who is here today, for his constant love and support. He is joined here today by my mother, Reverend Joanna Keneally, who's constant guidance is central in my life.

I'm also grateful for this moment to acknowledge my father, who we lost many years ago, but who I know would be proud today.

I would also appreciate the opportunity to acknowledge my sister, Theresa Palmisano, who is a charter school teacher in Florida, and my nephew, Billy, and my niece, Katie. I believe that they are watching with some of my students—my sister's students at the Franklin Academy on the committee's Webcast.

And I would like to express my gratitude to my colleagues at Fulbright & Jaworski who I also believe are watching the committee's Webcast.

I also want to express my profound gratitude to the President for his confidence and the confidence he's shown in nominating me to the attorney general, for his strong support, and to the members of the Committee for holding this hearing and for considering my nomination.

If I am confirmed, I will do my very best to be worthy of the privilege of serving as the assistant attorney general for the tax division. And I look forward to the committee's questions.

Thank you.

Senator KOHL. Thank you so much.

[The biographical information follow.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

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

Assistant Attorney General, Department of Justice, Tax Division
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: Fulbright & Jaworski, L.L.P.
666 Fifth Avenue
New York, NY 10103
4. **Birthplace:** State date and place of birth.

1958; Dayton, Ohio
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.

New York University School of Law
1988 - 1993 (evening division)
LL.M. in Taxation, 1993

Fordham University School of Law
1979 - 1982
J.D., 1982

Cornell University
School of Industrial and Labor Relations
1975 - 1979
B.S., 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.

Partner
Fulbright & Jaworski L.L.P.
666 Fifth Avenue
New York, NY 10103
December 2002 to present

Member
Owen & Davis PC
805 Third Avenue
New York, NY 10022
2000 - 2002

Partner
Kostelanetz & Fink, LLP
Address from 1999 - 2000:
530 Fifth Avenue
New York, NY 10036
Address from 1994 - 1999:
230 Park Avenue
New York, NY 10017
1994 - 2000

Partner
Kostelanetz Ritholz Tighe & Fink
80 Pine Street
New York, NY 10005
1990 - 1994

Associate
Kostelanetz & Ritholz
(name changed to Kostelanetz Ritholz Tighe & Fink in 1990)
80 Pine Street
New York, NY 10005
1985 - 1990

Associate
Skadden Arps Slate Meagher & Flom
919 Third Avenue
New York, NY 10022
1983 - 1985

Law Clerk
Hon. Edward R. Neaher, United States District Judge
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201
1982 - 1983

Research Assistant
Skadden Arps Slate Meagher & Flom
919 Third Avenue
New York, NY 10022
Fall, 1981

Summer Associate
Skadden Arps Slate Meagher & Flom
919 Third Avenue
New York, NY 10022
Summer, 1981

Teaching Assistant
Professor Daniel Capra
Fordham University School of Law
140 West 62nd Street
New York, NY 10023
1981 - 1982

Research Assistant
Professor Abraham Abramovsky
Fordham University School of Law
140 West 62nd Street
New York, NY 10023
Fall, 1980

Intern (non-paid)
Hon. Marie G. Santagata
Nassau County Criminal Court
460 Old Country Road
Mineola, NY 11501
Summer, 1980

Intern
New York State Department of Labor
303 West Old Country Road
Hicksville, NY 11801
Summer, 1979

1. **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 was I required to register for selective service.

1. **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.

Cornell University, Dean's List (two semesters)

Fordham University School of Law, J.D. awarded *magna cum laude*
Chapin Award, 1982

American Jurisprudence Awards:

Contracts (1980)
Torts (1980)
Civil Procedure (1980)
Evidence (1981)
Labor (1981)
Remedies (1981)

The Thurgood Marshall Award, in recognition of exemplary service to the cause of justice in the United States, awarded by The Association of the Bar of the City of New York, April 27, 1998

Chambers USA: America's Leading Lawyers for Business, listed in
National - Tax Controversy (2008 - 2011), National - Tax Fraud (2010 - 2011), and New York Tax (2008 - 2011)

"Super Lawyers," Criminal Defense: White Collar, New York, *Law & Politics* magazine (2007 - 2011); Top Fifty Women Lawyers in New York (2009)

The Legal 500 United States, Tax Controversy (2010 - 2011)

Marquis Who's Who in the Law, in America, and in the World

1. **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.

Practitioners' Advisory Group of the U.S. Sentencing Commission
Member, approx. 1993 to 2008

American Bar Association, Section of Taxation
 Member, 1985 - current
 Vice Chair, Committee Operations, 2010 - current
 Liaison to the Director of the IRS Office of Professional Responsibility, 2009 - current
 Council Director, 2007 - 2010
 Committee on Civil and Criminal Tax Penalties:
 Chair, 2001 - 2003
 Vice-chair, 1999 - 2001
 Subcommittee Chairperson:
 Department of Justice Procedures, 1994 - 1999
 Current Developments, 1993 - 1994
 Sentencing Guidelines, 1992 - 1993
 Committee on Standards of Practice:
 Chair, 2005 - 2007
 Vice-chair, 2003 - 2005
 Liaison, CLE and Membership, 1997 - 1999
 Committee on Employment Taxes, Member, 1994 - current
 Committee on Appointments to the Tax Court, 2009 - 2011
 Nominating Committee, 2006 - 2009
 Liaison, ABA Commission for Women in Profession (dates unknown, not current)
 Liaison, ABA Committee on Attorney-Client Privilege (dates unknown, not current)

American Bar Association, Section of Litigation
 Member, approx. 1983 - 2003

American Bar Association, Criminal Justice Section
 Member, approx. 1983 - current

National Institute on Criminal Tax Fraud, Co-chair, 2010 - current
 National Institute on Tax Controversy, Co-chair, 2011

American College of Tax Counsel, Fellow, 2003 - current

New York City Bar Association
 Member, 1993 - current
 Member, Taxation of Business Entities Committee, 2008 - 2009
 Member, Criminal Courts Committee, 2004 - 2007
 Member, Litigation Committee, 1993 - 1999

National Association of Criminal Defense Lawyers, Member, 1983 - current; Life
 Member, approx. 1995 - current

New York Council of Defense Lawyers, Member, approx. 1999 - current

New York County Lawyers Association, Member, approx. 1983 - 1993; 2010 - current

Litigation Counsel of America, approx. 2009 - 2011

New York Women's Bar Association, Member, approx. 1997 - 1998

New York State Bar Association, Member, 1983 - 1992

0. 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 – Admitted 1983 – present. There have been no lapses 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.

New York, Appellate Division, First Department – Admitted 1983 - present
 U.S. District Court, Southern District of New York – Admitted 1983 - present
 U.S. Eastern District, Eastern District of New York – Admitted 1983 - present
 U.S. Court of Appeals for the Eleventh Circuit – Admitted 1984 - 2004 (I allowed my membership to lapse due to inactivity.)
 U.S. Tax Court – Admitted 1985 - present
 U.S. Court of Appeals, Second Circuit – Admitted 1995 - present
 U.S. Court of Appeals, Third Circuit – Admitted 1995 - present

1. 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.

Journal of Tax Practice and Procedure, CCH, Advisory Board, Columnist, Approx. 1998 – current

National Association of Criminal Defense Lawyers, Advisory Board, Columnist, 1994 – current

Cornell Club, Approx. 1986 – 2009, member

Fordham Law Alumni Association, 1982 – current, member

In addition, I have from time to time been listed on luncheon or dinner committees for the Fordham Law Alumni Association, the New York Council of Defense Lawyers, the National Association of Criminal Defense Lawyers, and the Feerick Center for Social Justice.

I have made financial contributions to other organizations over the years. I have not included in the list above any organization to which I gave funds and did not otherwise participate in programmatic activities, although the organization may label me as a member.

- b. Please 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 these organizations has discriminated or does discriminate.

2. 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.

I have done my best to identify published materials, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

"Criminal Tax Cases" chapter in O. Obermaier and R. Morvillo, *White Collar Crime: Business and Regulatory Offenses*, Law Journal Press (co-authors Elliott Silverman, Peter Fucci), 2011. Copy supplied.

"New IRS Requirement to Report Uncertain Tax Positions: The Need to Safeguard Confidential Analysis," *Fulbright Briefing - Fulbright & Jaworski, LLP* (co-authors James K. Dreyfus and Jeffrey M. Marks), February 2011. Copy supplied.

"The FBAR Penalty: One Court Pushes Back Against the IRS,"
<http://blogs.forbes.com/irswatch>. Copy supplied.

"New IRS Holistic Audit Program." *Trust & Estates* (co-authors Stephanie Heilborn and Lindsay Brown). July 2010. Copy supplied.

"HIRE Act: Congress Targets Foreign Institutions, Foreign Financial Assets and Foreign Trusts," *Fulbright Briefing – Fulbright & Jaworski, LLP* (co-authors Stephanie E. Heilborn and Michelle Schwartz). April 2010. Copy supplied.

"The Tax Man Cometh." *The New York Law Journal*, White-Collar Crime. February 2010. Copy supplied.

"IRS Announces New Broad Disclosure Requirements for Uncertain Tax Positions," *Fulbright Briefing – Fulbright & Jaworski, LLP* (co-authors Nancy T. Bowen, Brent Gardner, Charles W. Hall, Richard Lee Hunn, William S. Lee, Gregory M. Matlock, Robert C. Morris, Shawn R. O'Brien, Susan Virginia Sample and Jasper G. Taylor). January 2010. Copy supplied.

"IRS Announces Criteria Used to Determine Disclosure of Swiss Accounts." *Fulbright Briefing – Fulbright & Jaworski, LLP* (co-authors Shawn R. O'Brien, Jasper G. Taylor, III, Gregory M. Matlock, and Matthew T. Theurer). November 2009. Copy supplied.

"IRS Extends Deadline for Voluntary Disclosure Program Until October 15, 2009." *Fulbright Alert – Fulbright & Jaworski, LLP* (co-authors Andrius R. Kontrimas, Shawn R. O'Brien, Jasper G. Taylor III, Lisa Rossmiller, Gregory M. Matlock, Jennifer A. Morgan and Robert C. Morris). September 2009. Copy supplied.

"IRS Extends FBAR Filing Deadline for Certain U.S. Persons Until June 30, 2010," *Fulbright Alert – Fulbright & Jaworski, LLP* (co-authors Andrius R. Kontrimas, Shawn R. O'Brien, James K. Dreyfus, Jasper G. Taylor III, Lisa Rossmiller, Gregory M. Matlock and Jennifer A. Morgan). August 2009. Copy supplied.

"Foreign Bank and Financial Accounts Must be Reported by June 30, 2009." *Fulbright Briefing – Fulbright & Jaworski, LLP* (co-authors Nancy T. Bowen, Richard Lee Hunn, Andrius R. Kontrimas, William S. Lee, Robert C. Morris, Shawn R. O'Brien, Lisa Rossmiller and Jasper G. Taylor III). May 2009. Copy supplied.

"Eager for the Battle." *Careers in Tax Law*. ABA Section of Taxation, 2009. Copy supplied.

"In Remembrance," *ABA Section of Taxation Newsquarterly*, Volume 25, Number 4, Summer 2006 (memorial for Boris Kostelanetz). Copy supplied.

"The Impact of Changes to the U.S. Sentencing Guidelines on Corporate Compliance Programs." *Legal Update -- Fulbright & Jaworski, LLP*, May 2004. Copy supplied.

"Civil and Criminal Tax Penalties," *The Tax Lawyer*, Summer 2003. Copy supplied.

"Fraud Offenses Under The Federal Sentencing Guidelines" chapter in *Practice Under the Federal Sentencing Guidelines*, American Bar Association, Criminal Justice Section, Prentice Hall Law & Business (co-author Scott Fenstermaker), 1998. Copy supplied.

"The U.S. Prosecutes Foreign Tax Evasion As A Domestic Crime - With Far-Reaching Consequences," *Journal of Taxation*, April 1998. Copy supplied.

"Congress Loosens Supreme Court's Interpretation of 'Specific Intent'," *Journal of Taxation*, February 1995. Copy supplied.

"Supreme Court Raises 'Specific Intent' Threshold for Some Criminal Violations," *Journal of Taxation*, July 1994. Copy supplied.

"Civil and Criminal Tax Penalties," *The Tax Lawyer*, Summer 1994. Copy supplied.

"Partial Limitation on the Risk of RICO Liability," *CPA Journal*, February 1994. Copy supplied.

"State Regulation of Casino Gambling: Constitutional Limitations and Federal Labor Law Preemption," *Fordham Law Review*, 1981. Copy supplied.

I authored or co-authored a column entitled "White Collar Crime," which appeared in *The Champion*, the magazine of the National Association of Criminal Defense Lawyers, from January 1996 to 2010. Specific articles that appeared in this column include:

"FCPA Enforcement Update: DOJ Targets the Health Care Industry" (co-authors John E. Kelly, Kimberly S. Walker, and Richard C. Smith), March 2010. Copy supplied.

"*Textron* and Work Product Immunity: The First Circuit Makes Bad Law," November 2009. Copy supplied.

"The Next Wave: Finding the Line Between Puffery And Securities Fraud" (co-author Jonathan S. Abernethy), July 2009. Copy supplied.

"The Second Circuit's Decision in *U.S. v. Stein*: The End of the Holder-Thompson-McNulty Era," November 2008. Copy supplied.

"Supreme Court Holds Prosecution to the Elements of the Crime," June 2008. Copy supplied.

"Bells Tolling for Selective Waiver," April 2008. Copy supplied.

"Aggressive Enforcement of the Foreign Corrupt Practices Act," January-February 2008. Copy supplied.

"Important Lessons in the Attorney-Client Privilege For Corporate Counsel," November 2007. Copy supplied.

"Ethical Considerations in Seeking the Truth" (co-author Mark N. Mutterperl), August 2007. Copy supplied.

"Responding to Government Leaks" (co-authors Kenneth Breen and Thomas Fallati), June 2007. Copy supplied.

"The Threat to a Witness's Right to Counsel" (co-author Kenneth Breen), April 2007. Copy supplied.

"Courts Push Back Against More Aggressive IRS Tactics" (co-author Kenneth Breen), November 2006. Copy supplied.

"Foreign Corrupt Practices Act: Growing Teeth" (co-authors Kenneth Breen and Scott Maberry), August 2006. Copy supplied.

"Defining and Defending Obstruction Charges in the Wake of Arthur *Anderson* and *Quattrone*" (co-author Kenneth Breen), June 2006. Copy supplied.

"Tax Crimes: More Aggressive Government Policies and Practices" (co-author Kenneth Breen), April 2006. Copy supplied.

"New Life for Selective Waiver" (co-author Kenneth Breen), January-February 2006. Copy supplied.

"The KPMG Deferred Prosecution: Warning Flags for Defense Rights" (co-author Kenneth Breen), November 2005. Copy supplied.

"Keeping the Government to its Promises Again," June 2005. Copy supplied.

"Destruction of A Business by the Destruction Of Documents," January-February 2005. Copy supplied

"Some of the Distortions to Justice Caused by the Sentencing Guidelines," August 2004. Copy supplied.

"Corporate Compliance Programs: From the Sentencing Guidelines to the Thompson Memorandum and Back Again," June 2004. Copy supplied.

"E-mails Sent During the Business Day May Not be Admissible as Business Records," January 2004. Copy supplied.

"Fourth Circuit Upholds Wire Fraud Conviction Based on a Scheme to Evade Foreign Tax," November 2003. Copy supplied.

"Direct Harm to the Privilege from Complying with Government Policy: The *McKesson* case," August 2003. Copy supplied.

"Section 1348: What is 'in connection with' the Sale of Securities?" June 2003. Copy supplied.

"High-Profile Cases and the Media," April 2003. Copy supplied.

"The Sarbanes-Oxley Act: An Overview for Defense Lawyers," March 2003. Copy supplied.

"District Court Grants Rule 41(e) relief Upon Findings of Material False Statements by Special Agent," November 2002. Copy supplied.

"Second Circuit Limits Mail and Wire Fraud Prosecutions," June 2002. Copy supplied.

"The USA Patriot Act: More Statutes that Reach Beyond Their Purpose," April 2002. Copy supplied.

"Second Circuit Fails to Recognize the Right to Timely Disclosure of Impeachment Materials," January 2002. Copy supplied.

"Asserting the Fifth Amendment on a Tax Return," November 2001. Copy supplied.

"Meet the New IRS Criminal Investigation Before it Knocks on Your Client's Door," June 2001. Copy supplied.

"Recent Decisions Threaten to Collapse Money Laundering into the Underlying Specified Unlawful Activity," April 2001. Copy supplied.

"Threat to the Corporation's Attorney-Client Privilege and Work Product Immunity." January 2001. Copy supplied.

"Reversing a Conviction When the Government's Witness Lied," November 2000. Copy supplied.

"Supreme Court Upholds Derivative Use Immunity for the Act of Production," August 2000. Copy supplied.

"Two Trial Courts Differ on the Requirements for Timely Disclosure of Impeachment Materials," June 2000. Copy supplied.

"Sentencing Proceedings May Not Preclude Subsequent Civil Litigation," April 2000. Copy supplied.

"More Harm Done by the Harmless Error Rule," January 2000. Copy supplied.

"The Line Between a Bargain and Extortion," November 1999. Copy supplied.

"District Court Relies on Rule 41(e) to Set Limits Upon the Government's Retention of Seized Evidence," August 1999. Copy supplied.

"Supreme Court Extends Trial Court Role for Nonscientific Experts," June 1999. Copy supplied.

"Ill Advised Government Theories," April 1999. Copy supplied.

"Two Courts Allow Substantial Assistance Downward Departures in the Absence of a Government Motion," January 1999. Copy supplied.

"At a Loss for an Explanation," November 1998. Copy supplied.

"Independent Counsel Overreaches in the Hubbell Indictment," August 1998. Copy supplied.

"Second Circuit Defines Reach of the Work Product Immunity for Corporate Counsel," June 1998. Copy supplied.

"What Montana Needs To Know," April 1998. Copy supplied.

"*Tenzer* Decision: The IRS and its Public Promises," January 1998. Copy supplied.

"Outside-In on Insider Trading," November 1997. Copy supplied.

"Hard Facts & Tax Protestors," August 1997. Copy supplied.

"Extraterritoriality," June 1997. Copy supplied.

"Problem of Sophistication," April 1997. Copy supplied.

"Ins and Outs of Insider Trading," January 1997. Copy supplied.

"A New Look at Criminal Tax Enforcement," November 1996. Copy supplied.

"New Cop on the Corner: Your Bank," August 1996. Copy supplied.

"Importance of an Independent Judiciary," June 1996. Copy supplied.

"Willful Evasion of Payment and Willful Non-Payment of Taxes," April 1996. Copy supplied.

"Increased Use of Search Warrants by the IRS," January 1996. Copy supplied.

I authored or co-authored a column entitled "Practice," for the *Journal of Tax Practice & Procedure*, a publication of CCH, Inc., from 1999 to 2011. Specific articles that appeared in this column include:

"The Last, Best Chance to Disclose Foreign Financial Accounts and Assets – the 2011 Offshore Voluntary Disclosure Program and Beyond!" (co-author Charles P. Rettig), February-March 2011. Copy supplied.

"The FBAR Penalty: One Court Disagrees with the IRS" (co-author Charles P. Rettig), December 2010-January 2011. Copy supplied.

"Final Uncertain Tax Positions Filing Requirements: IRS Addresses Key Concerns" (co-author Charles P. Rettig), October-November 2010. Copy supplied.

"Basic Audit Techniques: Taxpayer Interviews" (co-author Charles P. Rettig), August-September 2010. Copy supplied.

"Holistic Audits: The Price of Being Rich" (co-author Charles P. Rettig), June-July 2010. Copy supplied.

"The IRS Takes a Controversial Position on Uncertain Tax Positions" (co-author Charles P. Rettig), April-May 2010. Copy supplied.

"IRS Return Preparer Strategy: Leveraging Limited Tax Enforcement Resources Through the Registration and Education of the Return Preparer Community" (co-author Charles P. Rettig), February-March 2010. Copy supplied.

"Epilog: The IRS Penalty Memos and the Voluntary Disclosure of Offshore Accounts" (co-author Charles P. Rettig), December 2009-January 2010. Copy supplied.

"*Textron* and Work Product Immunity: A Misguided Decision" (co-author Charles P. Rettig), October-November 2009. Copy supplied.

"Meet the New Director of the Office of Professional Responsibility: An Interview with Karen L. Hawkins" (co-author Charles P. Rettig), August-September 2009. Copy supplied.

"Continuing IRS Guidance for the Voluntary Disclosure of Offshore Accounts" (co-author Charles P. Rettig), June-July 2009. Copy supplied.

"The End of an Era: The IRS Closes in on Offshore Bank Accounts" (co-author Charles P. Rettig), April-May 2009. Copy supplied.

"*Textron* Affirmed: Dual Purposes-Financial Reporting and Anticipating Litigation-Will Not Defeat the Work Product Privilege... in the First Circuit" (co-author Charles P. Rettig), February-March 2009. Copy supplied.

"Undisclosed Foreign Bank Accounts Make Recent News" (co-author Charles P. Rettig), December 2008-January 2009. Copy supplied.

"*United States v. Stein*: The Second Circuit Affirms!" (co-author Charles P. Rettig), October-November 2008. Copy supplied.

"The *Sala* Decision: The IRS's Son-of-BOSS Loss" (co-author Charles P. Rettig), August-September 2008. Copy supplied.

"Liechtenstein Accounts, German Spies and Now the IRS?" (co-author Charles P. Rettig), June-July 2008. Copy supplied.

"Supreme Court Emphasizes Limits on Criminal Tax Enforcement: The *Boulware* Decision" (co-author Charles P. Rettig), April-May 2008. Copy supplied.

"Worker Classification: IRS Launches Questionable Employment Tax Practice Initiative" (co-author Charles P. Rettig), February-March 2008. Copy supplied.

"*Textron: Careful Reasoning for a Challenging Issue*" (co-author Charles P. Rettig), December 2007-January 2008. Copy supplied.

"The Increasingly Risky Business of Tax Gap Evasion and Voluntary Disclosure" (co-author Charles P. Rettig), October-November 2007. Copy supplied.

"Another Troublesome Indictment" (co-author Charles P. Rettig), August-September 2007. Copy supplied.

"Currency Reporting Requirements: Everyone into the Pool!" (co-author Charles P. Rettig), June-July 2007. Copy supplied.

"IRS Enforcement: The Pendulum has Swung Too Far" (co-author Charles P. Rettig), April-May 2007. Copy supplied.

"Expedited Fraud Examinations: A Call for the Return to the Rack and Screw?" (co-author Charles P. Rettig), February-March 2007. Copy supplied.

"The Loss of a Leader, and Look to His Legacy in Tax Ethics" (co-author Charles P. Rettig), December 2006 – January 2007. Copy supplied.

"The KPMG Tax Shelter Indictment: Misguided on the Merits," August-September, 2006. Copy supplied.

"Nonfilers: The Next Enforcement Initiative," February-March 2006. Copy supplied.

"Obstruction of Justice Offenses: Some Lessons from the *Arthur Andersen* Case," February-March 2005. Copy supplied.

"Supreme Court Casts Doubt on Federal Sentencing Guidelines," August 2004. Copy supplied.

"The Government's Clear Focus: Abusive Tax Shelters," February 2004. Copy supplied.

"A New Twist on *Kovel*," August 2003. Copy supplied.

"The Sarbanes-Oxley Act: A Primer," December 2002. Copy supplied.

"Document Retention, Destruction and the Obstruction of Justice," August 2002. Copy supplied.

"Taking the Fifth on a Tax Return," February 2002. Copy supplied.

"Mark Matthews on IRS Criminal Investigation After the Webster Commission," October 2001. Copy supplied.

"When the IRS Sends You Money by Mistake, May You Keep It?" August 2001. Copy supplied.

"Targeting Offshore Activities: The IRS's Next Step." February 2001. Copy supplied.

"A New Chief for IRS Criminal Investigation." August 2000. Copy supplied.

"IRS Collection Cannot be Avoided Through Evasion or Contempt," February 2000. Copy supplied.

"IRS: Back to its Mission, But With a New Bag of Tricks." August 1999. Copy supplied.

- 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 done my best to identify any reports, memoranda or policy statements I prepared or contributed in the preparation of, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

In my capacity as Chair of the Standard of Tax Practice Committee for the American Bar Association Section of Taxation, I contributed in the preparation of the following:

Letter dated June 18, 2007, regarding Recommendations for 2007-2008 Guidance Priority List, addressed to Eric Solomon, Assistant Secretary (Tax Policy), Department of the Treasury and Donald L. Korb, Chief Counsel, Internal Revenue Service. Copy supplied.

Letter dated June 6, 2006, regarding Comments Regarding the Proposed Amendments to Circular 230, addressed to Mark W. Everson, Commissioner, Internal Revenue Service. Copy supplied.

In my capacity as Council Director of the Standard of Tax Practice Committee of the American Bar Association Section of Taxation, I participated as a primary contributor to the following:

Letter dated May 28, 2010, regarding Comments on Announcements 2010-9, 2010-17 and 2010-30, addressed to Douglas Shulman, Commissioner, Internal Revenue Service. Copy supplied

In my capacity as Council Director of the Standard of Tax Practice Committee, I participated as a reviewer of the following comments prepared on behalf the American Bar Association Section of Taxation:

Letter dated July 15, 2010, regarding Comments on Circular 230 Section 10.27, addressed to Douglas Shulman, Commissioner, Internal Revenue Service. Copy supplied.

Letter dated June 4, 2009, regarding Comments on Proposed Amendments to Circular 230 § 10.34, addressed to Douglas Shulman, Commissioner, Internal Revenue Service. Copy supplied.

Letter dated November 15, 2007, regarding Legislative Changes Impacting Standards for Imposition of Penalties, addressed to Max Baucus, Chairman, Senate Finance Committee, and Charles Grassley, Ranking Member, Senate Finance Committee. Copy supplied.

Letter dated October 5, 2007, regarding Comments in Response to IRS Notice 2007-39, on the Application of Monetary Penalties in Disciplinary Procedure under Section 822 of the American Jobs Creation Act of 2004, addressed to Linda Stiff, Acting Commissioner, Internal Revenue Service. Copy supplied.

In my capacity as Council Director of the Civil and Criminal Tax Penalties Committee, I participated as a reviewer of the following comments prepared on behalf the American Bar Association Section of Taxation:

Statement of Policy Favoring Reform of Federal Civil Tax Penalties, finalized on April 21, 2009. Copy supplied.

Letter dated August 26, 2008, regarding Comments on Proposed Regulations Under Section 6694 and 6695, addressed to Douglas Shulman, Commissioner, Internal Revenue Service. Copy supplied.

Letter dated April 3, 2008, regarding Comments on the 2007 Amendment to Section 6694 Preparer Penalty, addressed to Douglas Shulman, Commissioner, Internal Revenue Service. Copy supplied.

- 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.

Letter dated March 30, 2010, regarding the Voluntary Disclosure Program, addressed to Douglas Shulman, Commissioner and John DiCicco, Acting Assistant Attorney General, Department of Justice, and signed by thirty-two private practitioners. Copy supplied.

Letter dated March 18, 2009, regarding Fraud Enforcement and Recovery Act of 2009 (S. 386), addressed to U.S. Senators Patrick Leahy, Charles Grassley, Edward E. Kaufman, Charles E. Schumer, Max Baucus, U.S. Representatives Charles B. Rangel, Dave Camp, and Eric H. Holder, Jr., U.S. Attorney General, Timothy F. Geitner, U.S. Secretary of the Treasury, Douglas Shulman, Commissioner of Internal Revenue, and signed by thirty-six private practitioners. Copy supplied.

- 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 done my best to identify transcripts or recordings of all speeches or talks delivered, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

Speaker, "Compliance with the New Schedule UTP Regime: Ethical Issues concerning the Privileges." Continuing Professional Education Presentation given at Marks Paneth & Shron, New York, NY, February 15, 2011, and Anchin Block & Anchin, New York, NY, May 11, 2011. Power point presentation supplied.

Panelist, "Façade Easement Donation - From Drafting through Trial." New York, NY, March 8, 2011. Power point presentation and written materials supplied.

Panelist, "Voluntary Disclosure, Structuring, Forfeitures and Criminal Tax," Paramus, NJ, March 1, 2011. Written materials supplied.

Moderator, "Schedule UTP, Privilege, and Tax Risk Management: Preserving Privilege While Satisfying Tax Compliance." American Bar Association, Section of Taxation, Boca Raton, FL, January 21, 2011. Power point presentation

supplied. A recording that was made of the meeting at which this panel program was presented is also supplied.

Moderator, "Smokin' Hot Issues in IRS Enforcement," American Bar Association, Section of Taxation, Boca Raton, FL, January 22, 2011. Outline supplied. A recording that was made of the meeting at which this panel program was presented is also supplied.

Moderator, "Hot Issues and Priorities in IRS Examination and Appeals," 27th National Institute on Criminal Tax Fraud, American Bar Association, San Francisco, CA, December 3, 2010. Written materials supplied.

Panelist, "From the Experts: Tax Controversy and Tax Litigation Update," 69th Institute on Federal Taxation, New York University School of Continuing and Professional Studies, New York, NY, October 17, 2010. Written materials, power point presentation, and outline supplied.

Panelist, "Evasion, Avoidance, or What? Ethically Navigating the Modern Tax Fraud Case Post-UBS," 46th Annual White Collar Seminar, National Association of Criminal Defense Lawyers, New York, NY, October 1, 2010. Written materials and outline supplied.

Moderator, "Trends in Criminal Tax Enforcement - Exploring Recent Investigative and Trial Issues," 2nd Annual Tax Controversy Forum, New York University School of Continuing and Professional Studies, New York, NY, June 18, 2010. Written materials supplied.

Speaker, "IRS Takes a New Approach with High Wealth Taxpayers: What You Need To Know," New York, NY, June 2, 2010. Power point presentation and outline supplied.

Moderator, "The Prosecution and Defense of Offshore Bank Accounts," American Bar Association, Section of Taxation, San Antonio, TX, January 23, 2010. Outline supplied. A recording that was made of the meeting at which this panel program was presented is also supplied.

Moderator, "The Prosecution and Defense of Offshore Bank Accounts," American Bar Association, CLE Teleconference & Live Audio Webcast, March 3, 2010. Outline and recording supplied.

Panelist, Panel Presentation by Practitioners at the Conference for IRS Special Agents-in-Charge, Washington, D.C. January 28, 2010.

Moderator, "The Ever-Expanding Foreign Corrupt Practices Act: Risk Management, Due Diligence and Compliance Strategies," New York, NY, September 10, 2009. Outline supplied.

Speaker, "Dealing With an Uncooperative Client," American Bar Association, Section of Taxation, Tax Link Live Teleconference & Live Audio Webcast, June 3, 2009. Written materials and recording supplied.

Moderator, "Light at the End of the Tunnel or an Oncoming Train - Special Civil Penalties and Voluntary Disclosures of Undeclared Accounts," American Bar Association, Section of Taxation, New Orleans, LA, January 10, 2009. Written materials supplied. A recording that was made of the meeting at which this panel program was presented is also supplied.

Moderator, "Emerging Issues in U.S. Foreign Corrupt Practice Act," New York, NY, March 14, 2008.

Panelist, "Strategies and Techniques in Tax Controversy and in Tax Court Litigation," 66th Institute on Federal Taxation, New York University School of Continuing and Professional Studies, New York, NY, October 21, 2007. Outline supplied.

"Tax Shelter Prosecution Update," American Bar Association, Section of Taxation, Vancouver, Canada, September 29, 2007. A recording that was made of the meeting at which this presentation was presented is also supplied.

"Tax Shelter Prosecution Update," American Bar Association, Section of Taxation, Lake Las Vegas, January 19, 2008. A recording that was made of the meeting at which this presentation was presented is also supplied.

Moderator, "Ethics Lessons From the Shelter Wars: What All Practitioners Can Learn From the IRS's Increased Disciplinary and Criminal Enforcement Efforts," 54th Annual Taxation Conference, University of Texas School of Law, Houston, TX, November 1, 2006. Outlines supplied.

Program Chair, "Document Retention & Discovery in an E-World: How to Avoid Ethical, Civil & Criminal Penalties," New York City Bar Association, New York, NY, January 19, 2006. Meeting materials supplied. A recording was made of this presentation. I have made a search of my personal files and I have made inquiries through the New York City Bar Association, but I have not been able to locate or obtain a copy.

Panelist, "The Impact of *U.S. v. Pasquantino*," American Bar Association, Section of Taxation, San Francisco, CA, September 17, 2005. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, "New Circular 230 Written Opinions and Advice Regulations," American Bar Association, Section of Taxation, Washington, D.C., May 21, 2005. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Moderator, "Recent Developments in Tax Shelters," American Bar Association, Section of Taxation, San Diego, CA, January 20, 2005. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, "Whistle While You Work: The Neutral as Whistleblower," American Bar Association, Section of Dispute Resolution, New York, NY, April 15, 2004.

Panelist, "The Tax Lawyer's Dilemma: The Intersection of Non-Enforcement and Ethics," American Bar Association, Section of Taxation, Orlando, FL, January 30, 2004. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Faculty, "Securities Fraud," Seventeenth Annual National Institute on White Collar Crime, American Bar Association, San Francisco, CA, March 6, 2003.

Panelist, "A View from Wall Street: Investor Relations Concerns in the Midst of High-Profile Litigation," NorthStar Conference on Effectively Managing Public Relations for High-Profile Litigation, New York, NY, January 27, 2003. Outline supplied.

Moderator, "Enron and Ethics: What Tax Lawyers Need To Know," American Bar Association, Section of Taxation, Washington, D.C., May 11, 2002. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Faculty, "Nuts & Bolts II – Pre-Trial and Trial Techniques," Sixteenth Annual National Institute on White Collar Crime, American Bar Association, Miami, FL, March 1, 2002.

Faculty, "Here Today – Gone Tomorrow: Seizing, Freezing and Forfeiting Assets," Fifteenth Annual National Institute on White Collar Crime, American Bar Association, CA, March 8, 2001.

Moderator, "Ethics and Crime – What Tax Practitioners Need To Know," American Bar Association, Section of Taxation, Scottsdale, AZ, January 13, 2001. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, "Hot Developments in Money Laundering, Currency Transactions, and International Enforcement," American Bar Association, Section of Taxation, Los Angeles, CA, October 14, 2000. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, "Expert Witnesses - Getting Inside the Defendant's Mind: Intent, Good Faith and Mental Capacity Issues," American Bar Association, Section of Taxation, Atlanta, GA, August 7, 1999. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Faculty, "Collateral Consequences of Criminal Investigations and Convictions," Thirteenth Annual National Institute on White Collar Crime, American Bar Association, San Francisco, CA, March 4, 1999.

Moderator, "When the Defendant or the Money Crosses the Border: Selected Issues in International Law Enforcement," American Bar Association, Section of Taxation, Toronto, Canada, August 1, 1998. I have located a partial recording of this presentation, which is supplied.

Moderator, "How to Keep Your Civil Employment Tax Case from Becoming a Criminal Matter," American Bar Association, Section of Taxation, Washington, D.C., May 15, 1998. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Faculty, "A Good Offense Is the Best Defense: Available Defenses in the '90s," Twelfth Annual National Institute on White Collar Crime, American Bar Association, San Francisco, CA, March 5, 1998.

Panelist, "International Discovery in Criminal Cases," The Association of the Bar of the City of New York, April 7, 1997.

Panelist, "Trial Practice I: Mock Trial Presentation, Section 6672, Trust Fund Recovery Penalty," American Bar Association, Section of Taxation, Orlando, FL, August 2, 1996. Recording supplied.

Panelist, "Employee or Independent Contractor," American Bar Association, Section of Taxation, Washington, D.C., May 11, 1996. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Moderator, "Trial Practice – Examining the IRS Special Agent," American Bar Association, Section of Taxation, Washington, D.C., May 20, 1995. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, "Ethics for the Tax Practitioner," Mini-Program, American Bar Association, Section of Taxation, Washington, D.C., May 15, 1994. Recording supplied.

Speaker, "Ethics in Tax Practice," National Association of State Bar Tax Sections, Annual Conference, Washington, D.C., October 30, 1993.

Panelist, "Ethics in Tax Practice," American Bar Association, Section of Taxation, New York, NY, August 7, 1993. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

Panelist, Panel on Immunity, American Bar Association, Section of Taxation, San Diego, CA, February 6, 1993. A recording was made of the meeting at which this panel program was presented. I have made a search of my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain a copy.

In addition to the above, I served as the chair for three subcommittees of the ABA Section of Taxation Committee on Civil and Criminal Tax Practice, specifically, the Subcommittee for Department of Justice Procedures, August 1994 to July 1999; the Subcommittee for Current Developments, August 1993 to July 1994; and the Subcommittee for Sentencing Guidelines, August 1992 to July 1993. The Committee on Civil and Criminal Tax Practice met three times annually in conjunction with the ABA Section of Taxation conferences, and for each of the three subcommittees, I gave reports on recent legal developments at most if not all of the meetings. In most instances, there would have been written materials distributed to the audience, which I can no longer locate. A recording was made of the meetings at which these reports were presented. I have made a search of

my personal files and I have made inquiries through the ABA Section of Taxation, but I have not been able to locate or obtain copies.

Also, I served as the chair of the ABA Section of Taxation Committee on Civil and Criminal Tax Penalties from August 2001 through July 2003, and as the chair of the ABA Section of Taxation Committee on Standards of Tax Practice from August 2005 through July 2007. Each committee met three times annually in conjunction with the ABA Section of Taxation conferences, and I conducted all such meetings during my tenure as chair of each of these committees. I did not make substantive presentations at any of these committee meetings.

- 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 done my best to identify all interviews given, including through a review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials I have been unable to identify, find or remember. I have located the following:

“‘Mayo’ Ruling Raises Bar for Challenges To Tax Regulations, Practitioners Say,” BNA Daily Tax Report, February 14, 2011. Copy supplied.

“IRS Reduces Penalties For Tax Cheats,” Associated Press, February 8, 2011, and reprinted in other media outlets, including Houston Chronicle, February 8, 2011; CBSNews.com, February 8, 2011; MSNBC.com, February 8, 2011, Yahoo! Finance, February 8, 2011; Everett Leader-Herald News Gazette, February 9, 2011; Courier-Post Online, February 13, 2011; Virginia Pilot and Ledger-Star, February 21, 2011. Copies supplied.

“A Wish List for the Possible Second Offshore Voluntary Disclosure Program,” Tax Analysts, January 13, 2011. Copy supplied.

“NYCLA, Law Firm Program Aids Taxpayers Before U.S. Tax Court,” New York Law Journal, November 16, 2010. Copies supplied.

“IRS Help for Struggling Taxpayers Contrasts with Enforcement Push,” Tax Notes, April 5, 2010. Copy supplied.

“Scorched Earth in Son-of-Boss Cases,” Tax Analysts, July 7, 2008. Copy supplied.

“Free: Legal Consequences Uncertain,” reported by New York Law Journal, March 12, 2008, and reprinted in Connecticut Law Tribune, March 12, 2008. Copies supplied.

"Judge Ponders Dismissing KPMG Case: Experts," reported by Reuters, May 31, 2010, and reprinted in other media outlets, including on May 31, 2010: KSUT-FM Radio (Ignacio, CO); Earth Times (NY); Yahoo! Finance Singapore; Fidelity+; New York Times; WRVO-FM Radio (Oswego, NY); WXXI NewsRadio AM (Rochester, NY); Washington (DC) Post; CNBC World Network; WOOD-TV Channel 8 (Grand Rapids, MI); Boston Globe; WAMC-Radio 90.3 FM (Albany, NY); Oregon Public Broadcasting (Portland, OR); and Yahoo! Finance; and on June 1, 2010: Money Central (Redmond, WA); WUSF 89.7 FM Radio (Tampa, FL); WNED-AM 970 Radio (Buffalo, NY); KWGS Radio 89.5 FM (Tulsa, OK); KIAL AM 1450 Radio (AK); APTI NewsRoom (Anchorage, AK); KENW-TV; KERA 90.1 Radio (Dallas, TX); Earthtimes.org; MSN Money (UK); Canada.com; KPLC-TV; WISN. Copies supplied.

"IRS Aims High: Enforcement spotlight to focus on high-profile CPAs, Attorneys." Accounting Today, May 1, 2006. Copy supplied.

"IRS Aims High." Accounting Today, April 27, 2006. Copy supplied.

"Transparency at the IRS Office of Professional Responsibility: A Two-Way Street?" Tax Analysts, February 6, 2006. Copy supplied.

"Networking for Women Lawyers." Strategies: The Journal of Legal Marketing, January 2006. Copy supplied.

"Government Officials Take on Tax Bar Over Circular 230 Changes." Tax Analysts, May 24, 2005. Copy supplied.

"Of Motives and Memos: The Supreme Court Will Hear The Tale of Arthur Andersen's Fall." The National Pulse, April 2005. Copy supplied.

"U.S. Offers A Tax Amnesty on Undisclosed Offshore Income." The International Herald Tribune, January 15, 2003. Copy supplied.

"IRS Weighs a Deal for Tax-Dodge Participants." Wall Street Journal, January 14, 2003. Copy supplied.

"G.E. Perks Raise issues About Taxes." The New York Times, September 9, 2002. Copy supplied.

"Police Oppose 'Attempted' Crimes," reported by Associated Press Online, June 23, 2002, and reprinted by multiple media outlets, including additional articles in the Associated Press, July 23, 2002 and July 24, 2002, and the Philadelphia Inquirer, July 24, 2002. Copies supplied.

"The IRS Out of Control." The Wall Street Journal, June 17, 2002. Copy supplied.

"IRS Looking Into the Use of Offshore Bank Accounts to Avoid Paying Taxes." Marketplace, March 26, 2002. Recording supplied.

"Legal Experts not Surprised D.A. Escaped Charges." The Journal News, February 25, 1999. Copy supplied.

"Judge in Crazy Eddie Case is Taken Off Civil Suit." The Philadelphia Inquirer, November 29, 1995. Copy supplied.

"Dial-A-Mattress Number Up? Fraud Taxes Bedding Firm's Future." Crain's New York Business, September 26, 1994. Copy supplied.

3. Public Office, Political Activities and Affiliations:

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 never been a candidate for public office, nor have I been nominated unsuccessfully for appointed office.

- a. 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 2008, I was a volunteer poll watcher in Pennsylvania for the Obama / Biden Presidential Campaign.

While in high school, I was a member and may have been an officer of the Nassau County Young Democrats. Prior to and during high school and college, I worked as a volunteer for the Nassau County Democratic Party, and did volunteer work on a number of political campaigns.

4. 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
Hon. Edward R. Neaher, United States District Judge
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201
September 1982 to August 1983

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

I have not practiced as a solo practitioner.

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

Skadden Arps Slate Meagher & Flom
919 Third Avenue
New York, NY 10022
(Current Address: 4 Times Square, NY, NY 10036)
Associate, 1983 – 1985

Kostelanetz & Ritholz
(name changed to Kostelanetz Ritholz Tigie & Fink in 1990)
80 Pine Street
New York, NY 10005
Associate, 1985 – 1990
Partner, 1990 - 1994

Kostelanetz & Fink, LLP
Address from 1999 – 2000:
530 Fifth Avenue
New York, NY 10036
Address from 1994 – 1999:
230 Park Avenue
New York, NY 10017
(Current address: 7 World Trade Center, NY, NY 10007)
Partner, 1994 - 2000

Owen & Davis PC
805 Third Avenue
New York, NY 10022
Member, 2000 - 2002

Fulbright & Jaworski L.L.P.
666 Fifth Avenue
New York, NY 10103
Partner, December 2002 to 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 have never served as 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.

From 1983 through 1985, I was an associate with Skadden Arps Slate Meagher & Flom. My practice included complex commercial litigation and pro bono criminal defense matters.

From 1983 through 1994, I was an associate and, starting in 1990, a partner of the Kostelanetz & Ritholz firm, which changed its name in 1990 to Kostelanetz Ritholz Tigie & Fink. My practice included criminal tax defense, other white collar criminal defense, and tax controversy, as well as complex commercial litigation matters involving fraud, civil RICO, securities, and similar issues. In 1994, the firm of Kostelanetz Ritholz Tigie & Fink dissolved, and I became a partner of Kostelanetz & Fink. My practice remained the same.

From 2000 through 2002, I was a member in the firm of Owen & Davis PC. My practice was primarily commercial litigation, as well as tax controversy and criminal tax defense.

From 2002 through today, I have been and am a partner of Fulbright & Jaworski, LLC. In 2003 and 2004, my practice was commercial litigation, tax controversy and criminal tax defense. From 2004 through today, my practice is primarily tax controversy and criminal tax defense.

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

In all periods of my legal career, I have represented a wide array of clients, including large and small corporations, financial institutions, non-profit organizations, and individuals.

- 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 consisted entirely of representation in tax controversies, criminal tax defense, and commercial litigation. In all periods of my legal career, I have appeared in court either occasionally or frequently, depending on the demands of the specific cases.

- i. Indicate the percentage of your practice in:
 - 1. federal courts -- 60% (including U.S. Tax Court, grand jury)
 - 2. state courts of record -- 10%
 - 3. other courts -- none
 - 4. administrative agencies -- 30% (including IRS)
- ii. Indicate the percentage of your practice in:
 - 1. civil proceedings -- 65% (including IRS, civil fraud, RICO, and similar)
 - 2. criminal proceedings -- 35%

- 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 chief counsel for two trials. I was associate counsel in trial on four cases, ranging in duration from two weeks to three months. I was also associate counsel on two additional cases for which I had primary responsibility for all motions and jury charge requests, but did not participate at trial.

- i. What percentage of these trials were:
 - 1. Jury -- 67%;
 - 2. non-jury -- 33%.

- e. Describe your practice, if any, before the Supreme Court of the United States. 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 U.S. Supreme Court as counsel of record on the merits. I served as counsel in a pro bono death penalty matter captioned *Stephens v Kemp*, 464 U.S. 1027 (1983) and 469 U.S. 1043 (1984), for which petitions for a stay of execution and one or more petitions for certiorari were filed. I do not have copies of these petitions.

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

1. *Pierre v. Commissioner*, 133 T.C. 24 (2009) and T.C. Memo 2010-106, U.S. Tax Court, Hon. Diane L. Kroupa. I was lead trial counsel for the taxpayer Suzanne Pierre. The taxpayer was the sole member of a limited liability corporation. She gave gifts of interests in the LLC to trusts that she had established for her son and granddaughter, and then sold the remaining interests in the LLC to each of the trusts. The threshold issue in the case was one of first impression: in a precedent-setting decision by the full Tax Court, reported at 133 T.C. 24 (2009), the Tax Court held that the transfer of an interest in a single member LLC should be treated as a gift for tax purposes. In a separate decision, the trial judge resolved all remaining issues, and held substantially in the taxpayer's favor on the value of the gifts and the interests that she sold. Counsel for the Commissioner of the Internal Revenue Service was Lydia Branche, whose current title and address are Associate Area Counsel, Office of Chief Counsel, Internal Revenue Service, One Newark Center, Suite 1500, Newark, NJ 07102, 973-645-2462.

2. *Gross v. Commissioner*, T.C. Memo. 2008-221, U.S. Tax Court, Hon. James S. Halpern. I was lead trial counsel for the taxpayer Bianca Gross. The taxpayer gifted interests in a family partnership to her daughters. The Internal Revenue Service contended that the parties had failed to form a limited partnership under New York law. The trial judge held that the parties had agreed orally to form a partnership on the same terms as a limited partnership, and upheld the tax treatment of the gifts. Counsel for the Commissioner of the Internal Revenue Service was Gerard Mackey, Esq., Internal Revenue Service, Office of Chief Counsel, 33 Maiden Lane, 14th Floor, New York, NY 10038, 917-421-4736.

3. *Wedelstedt v. United States*, U.S. District Court for the District of Colorado, Hon. Richard Matsch. I was lead counsel for the plaintiff. The Internal Revenue Service contended that the plaintiff was not the true owner of his business, but that he was acting as a nominee for a third party who had been convicted of tax evasion and other offenses. The IRS commenced a levy action against the taxpayer's business, and plaintiff filed a wrongful levy action. Following discovery, the IRS conceded in full. This matter was commenced in 1994 and concluded in approximately 1995. I have been unable to locate or to recall any information concerning the docket number or the name of counsel for the United States. To the best of my recollection, there was no reported decision in the case.

4. *Barr v. United States*, 89-2 U.S. Tax Cas. (CCH) P9543 (E.D.N.Y. 1989), Hon. Eugene Nickerson. The plaintiff in this case had previously been convicted in connection with certain state crimes. The Internal Revenue Service asserted that he was liable for penalties as a tax shelter promoter based on the prior conviction. I was lead counsel in opposition to the Government's motion for summary judgment, on which the court ruled in favor of my client. Counsel for the United States was M. Lawrence Noyer, Jr., then-Assistant United States Attorney. I have no information concerning current address or telephone number.

5. *United States v. Marcos*, No. SSSS 87 Cr. 598 (JFK), U.S. District Court, Southern District of New York, Hon. John F. Keenan. In 1988, the United States indicted Ferdinand Marcos, the former President of the Philippines, his wife, former Philippines First Lady Imelda Marcos, and Adnan Khashoggi, on RICO and other charges. The central allegation in the case was that the defendants had engaged in acts to loot the treasury of the Philippines and other wrongful acts, and that they had invested the funds in real estate in New York and in other assets. I was associate counsel during the grand jury investigation and trial. I had substantial responsibility for pretrial submissions to the U.S. Department of Justice on behalf of President Marcos and Mrs. Marcos. President Marcos died prior to trial. I had primary responsibility for all motions, discovery, and jury charge requests submitted on behalf of Mrs. Marcos. Mrs. Marcos and Mr. Khashoggi were acquitted on all counts. Reported decisions that I have been able to locate are at 1990 U.S. Dist. LEXIS 6541; 1990 U.S. Dist. LEXIS 5023; 1990 U.S. Dist. LEXIS 3280; 1990 U.S. Dist. LEXIS 2678 1990; U.S. Dist. LEXIS 2317; 1990 U.S. Dist. LEXIS 2049; 1990 U.S. Dist. LEXIS 1684; 1990 U.S. Dist. LEXIS 1603. The senior partner at my firm representing Mrs. Marcos was John J. Tighe, Jr., who is now deceased. Trial counsel for Mrs. Marcos was Gerry Spence, The Spence Law Firm, LLC, 15 South Jackson Street, Jackson, Wyoming 83001, 800-967-2117, 307-733-7290. Counsel for defendant Adnan Khashoggi was James P. Linn, who is now deceased. Lead counsel for the United States was Charles G. LaBella, whose current address is Office of the U.S. Attorney, 880 Front Street, Suite 6293, San Diego, CA 92101.

6. *Bingham v. Zolt*, U.S. District Court, Southern District of New York, Hon. Kenneth Conboy. The plaintiff in this matter was the Administrator of the Estate of Robert Marley, the reggae performer. The claims, which included civil RICO and fraud allegations, were brought against two attorneys, an accountant, and their respective firms, alleging that certain documents had been backdated to transfer valuable royalty rights from the Estate to third-party defendant Rita Marley. My client, Martin Oliner, was a tax attorney. The allegedly backdated documents were used to implement tax planning. The complaint was filed in approximately 1986, and the case was tried in 1992. At the inception, I was associate counsel. Over time, I took primary responsibility for all discovery, motions, and jury charge requests, and I was associate counsel at trial. Mr. Oliner was found not liable following a three-month jury trial. The reported decision that I have located is at 683 F. Supp. 965 (SDNY 1988). Lead trial counsel for Mr. Oliner was Robert S. Fink, whose current address is Kostelanetz & Fink LLP Seven World Trade Center, New York, NY 10007, 212-808-8100. Lead counsel for the plaintiff was

Robert Brundige, Jr., Hughes Hubbard & Reed, whose current address I understand to be 101 Hudson Street, Suite 3601, Jersey City, NJ 07302-3910, 201-946-5701. Counsel for co-defendant Marvin Zolt, was Ray Beckerman, whose current address I understand to be Ray Beckerman, P.C., 108-18 Queens Boulevard, 14th Floor, Forest Hills, NY 11375, 718-544-3434. Counsel for co-defendant David Steinberg was Jeremy Mishkin, Montgomery, McCracken, Walker & Rhoads, 123 South Broad Street, Philadelphia, PA 19109, 215-772-1500. Counsel for co-defendant Coudert Brothers was Paul D. Friedland, whose current address is White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036, 212 819 8917. Counsel for co-defendants Greenstein Gorelick et al. and Bluestein Rutstein et al. were John V. Fabiani, 570 Lexington Avenue, New York, NY 10022, 212-644-4420, and James Nunemaker, whose current address I do not have. Counsel for third-party defendant Rita Marley was Kaare Phillips, whose current address is Deloitte Consulting LLC, 1633 Broadway, New York, NY 10019, 212-492-4149.

7. *Securities and Exchange Commission v. Antar*, U.S. District Court, District of New Jersey, Hon. Nicholas Politan. This matter involved SEC enforcement action concerning the business Crazy Eddie, Inc. I was associate counsel for defendant Sam M. Antar from approximately 1992 through 1994, and lead counsel from 1994 through approximately 1996. My client had been a one-third owner of Crazy Eddie prior to its initial public offering. In a decision reported at 71 F.3d 97 (1995), which I argued, the Third Circuit ordered the disqualification of the trial judge. At some point following that decision, I withdrew from the matter by mutual agreement with my client. Counsel for Securities and Exchange Commission was Richard Simpson, whose current address I understand to be 100 F Street, N.E., Washington, D.C. 20549-4030, (202) 551-4492. Counsel for co-defendant Alan Antar was Gerald Krovatin, Esq., whose current address I understand to be Krovatin Klingeman, LLC, 744 Broad Street, Suite 1903, Newark, NJ 07102 973-424-9777.

8. *Guess?, Inc. v. Spiegelman*, U.S. District Court, Central District of California. This matter involved an action for civil RICO and other claims brought by Guess?, Inc. against counsel for Jordache Enterprises. It was related to other actions that were brought between and among the shareholders of Guess?, Inc. and Jordache Enterprises. I had primary responsibility for all legal briefing, and participated in all discovery. The matter began in the mid-1980s, and was settled in approximately 1990. Lead counsel for the defendant was Edward M. Spiro, whose current address is Morvillo Abramowitz et al., 565 5th Avenue, New York, NY 10017, 212-856-9600. Lead counsel for Guess?, Inc. was Howard Weitzman, whose current address is Kinsella Weitzman Iser Kump & Aldisert LLP, 808 Wilshire Blvd, 3rd Floor, Santa Monica, CA 90401, 310-566-9800.

9. *United States v. Miller*, Docket No. 95-5404 and 95-5426, Eleventh Circuit Court of Appeals. I was appellate counsel in this matter in 1996 and 1997. The central issue was whether the defendant should be resentenced due to a breach of the plea agreement by the United States. Following full briefing on appeal, the Government conceded the issue, and the appeal was dismissed and the case was remanded. I can no longer recall the names of counsel for the United States.

10. *Hevesi v. Metropolitan Transportation Authority*, 827 F. Supp. 1069 (S.D.N.Y. 1993), Hon. Kimba M. Wood. This matter was an injunction action in which a candidate for public office challenged the policy of a billboard company not to negotiate rate discounts with political candidates. I was responsible for briefing and participated in all discovery in the action on behalf of the defendant billboard company. The court denied the preliminary injunction, and plaintiffs did not proceed with the case. Counsel for the plaintiff was Daniel R. Bright. I do not have his current address or contact information.

16. **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.)

The most significant part of my practice since joining Fulbright & Jaworski LLP, in addition to the litigation matters discussed above, has been the representation of taxpayers in IRS civil examinations and criminal matters. For example, from 2004 through 2011, I headed a team representing over one hundred high net worth individuals before the Internal Revenue Service relating to investments in "listed transactions," including presentations to the IRS personnel drafting a global settlement initiative, representation before IRS Examination and Appeals and guidance to taxpayers concerning settlement proposals. I have also represented numerous individuals in connection with voluntary disclosures to the Internal Revenue Service, including in connection with the IRS's recent enforcement initiative concerning offshore bank accounts, and in other matters.

Throughout my career, I have represented individuals who were identified as witnesses, subjects, or targets of state and federal grand jury investigations in criminal tax and other white collar criminal investigations. I have also represented individuals in plea negotiations and sentencing. In addition to the items listed in response to question 15, I have participated as associate counsel for the defendant in three criminal tax prosecutions, and one criminal prosecution for obstruction of justice, that were tried to verdict. I was also lead counsel in one appellate case involving criminal tax issues and two additional criminal appeals. I have also represented numerous individuals and companies before IRS Examination and IRS Appeals, and I have represented a number of taxpayers in several Tax Court matters that were resolved prior to trial. I have also represented individuals and companies in state and local civil and criminal tax matters in New York.

As examples of other significant tax matters, I negotiated with the IRS for a civil resolution of corporate, personal and income tax liability in a complex matter that resulted from omitted income and a cash payroll. I have been and am currently representing a not-for-profit entity in connection with IRS examinations of its donors.

and in connection with the preparation of its officers and employees who have been called as witnesses in trials in several trials.

I have represented clients in a range of white collar criminal defense matters. In addition to tax matters, I have participated in internal corporate investigations involving securities, Foreign Corrupt Practices Act, and other financial crimes issues. As examples, I participated in the representation of a major defense contractor in a securities investigation, which resulted in a decision not to prosecute. I represented a family of prominent South American business owners and negotiated the release of more than \$50 million in bank accounts that had been frozen by the United States under civil forfeiture statutes. I was part of a team of attorneys who represented defendants in a civil RICO matter brought by the United States concerning the private sanitation industry. I have also represented clients in commercial litigation matters.

I do not engage and have not engaged in lobbying activities on behalf of any clients.

17. **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.

Faculty, Course on fraud and criminal tax issues in IRS examinations, National Tax Practice Institute, Las Vegas, Nevada, July 11-13, 2001.

Instructor, "Civil and Criminal Tax Penalties and Monetary Offenses," New York State Society of Certified Public Accountants/Foundation for Accountant Education, presented in New York, New York, November 14, 1995, and August 22, 1996. Copy of course materials supplied.

Instructor, "Civil and Criminal Liability: What The Accountant Needs To Know," The Center for Professional Education, Inc., presented in Saddle Brook, New Jersey, June 3, 1994, Clark, New Jersey, July 12, 1995, and Philadelphia, Pennsylvania, October 20, 1994, May 1, 1995, and September 1, 1995.

18. **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.

If I am confirmed, I will resign as a partner of Fulbright & Jaworski LLP. Pursuant to the terms of the partnership agreement, I will receive a refund of my capital account. Under the terms of the partnership agreement, a payment of approximately 80% of the refund of my capital account will be made within six months of my resignation from the firm. The remaining portion of my capital account will be paid in April 2012 after a final

accounting is completed. I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of Fulbright & Jaworski LLP to meet its obligations to make these payments to me, unless I first obtains a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

Under the partnership agreement, within 90 days of withdrawal from Fulbright & Jaworski LLP, I will receive compensation for calendar year 2011 based on an objective formula, prorated for the number of days for which I was a member of the firm. Under this formula, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of Fulbright & Jaworski LLP to pay this compensation, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

I will continue to participate in the Fulbright & Jaworski LLP Defined Benefit Plan. Accordingly, I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the ability or willingness of Fulbright & Jaworski LLP to meet its obligations to me under the defined benefit plan, unless I first obtains a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption pursuant to 18 U.S.C. § 208(b)(2).

I also have a Fulbright & Jaworski LLP Cash Balance Defined Benefit Plan. I will rollover this plan into non-conflicting assets in a qualifying IRA within 120 days of my withdrawal from the firm. I also participate in the Fulbright & Jaworski LLP Profit Sharing Plan. I will rollover the assets in this plan into non-conflicting assets within 120 days of my withdrawal from the firm.

Pursuant to the terms of the partnership agreement, I will receive a payment of the amount in my Fulbright & Jaworski LLP 401(k) Account which I will roll over into non-conflicting assets. This payment will be made within 30 days of my withdrawal from the firm.

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

I have no plans for outside employment.

20. **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 SF-278 Financial Disclosure Report.

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

See attached Net Worth Statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors 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.

In connection with the nomination process, I have consulted with the Department of Justice's ethics office to identify potential conflicts of interest. The Department of Justice's ethics office works with the Office of Government Ethics when identifying these potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

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

In connection with the nomination process, I have consulted with the Department of Justice's ethics office to identify potential conflicts of interest. The Department of Justice's ethics office works with the Office of Government Ethics when identifying these potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I participate in the Tax Court Calendar Call project that is conducted by the New York County Lawyers Association. As part of this project, I attend the Tax Court calendar calls in New York, and offer consulting services to pro se petitioners. I have devoted approximately forty hours to this program, both through attendance at the Tax Court and in related organizational activity, over the last twelve months.

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	400,000	Notes payable to banks-secured	0
U.S. Government securities-add schedule*	1,540,000	Notes payable to banks-unsecured	0
Listed securities-add schedule	0	Notes payable to relatives	0
Unlisted securities-add schedule	0	Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	0
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid income and interest	0
Doubtful	0	Real estate mortgages payable-add schedule	0
Real estate owned-add schedule Hartsdale, NY	629,000	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts-itemize:	0
Autos and other personal property	260,000		
Cash value-life insurance	0		
Other assets itemize:			
Fulbright & Jaworski LLP capital account	336,000		
Fulbright & Jaworski LLP Defined Benefit Plan *estimated	336,000		
Fulbright & Jaworski LLP Cash Balance Plan	16,000		
		Total liabilities	0
		Net Worth	3,457,000
Total Assets	3,457,000	Total liabilities and net worth	3,457,000
CONTINGENT LIABILITIES		GENERAL INFORMATION	

As endorser, comaker or guarantor	0	Are any assets pledged? (Add schedule)	No
On leases or contracts	0	Are you defendant in any suits or legal actions?	No
Legal Claims	0	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	0		
Other special debt	0		

Kathryn Keneally- Financial Statement Attachment		
Name	Account	Value to Nearest \$1000
SPTN 500 Index Inst	401(k)	88,000
Fid Contrafund K	401(k)	50,000
Fid Puritan K	401(k)	47,000
Fid Small Cap Value	Fulbright profit-sharing account	86,000
Fid Contrafund K	Fulbright profit-sharing account	29,000
Oreyfus Appreciation	Fulbright profit-sharing account	28,000
Fid Dividend Gr K	Fulbright profit-sharing account	27,000
Fid Dividend Intl K	Fulbright profit-sharing account	16,000
ML Bank Deposit Program	Money Market	109,000
Blackrock Equity Dividend Trust	Mutual Fund	18,000
FIA Card Svs NA RASP	Money Market (IRA)	10,000
First MetLife Class XC Variable Annuity # 110019869	Annuity (spouse IRA)	132,000
American Growth Fund of America CL A	Mutual Fund (spouse IRA)	108,000
Calamos Growth Fund CL A	Mutual Fund (spouse IRA)	27,000
Delaware Diversified Income CL C	Mutual Fund (spouse IRA)	27,000
Delaware Invest Extended Duration Bond FD CL A	Mutual Fund (spouse IRA)	47,000
Eaton Vance Large Cap Value Fund Class A	Mutual Fund (spouse IRA)	112,000
Franklin Managed Trust Rising Divs Port Class A	Mutual Fund (spouse IRA)	13,000
JP Morgan Intl Equity FD CL C	Mutual Fund (spouse IRA)	22,000
Pimco Total Return FD CL A	Mutual Fund (spouse IRA)	37,000
FIA Card Svs NA RASP	Money Market	17,000
First MetLife Class XC Variable Annuity # 1100193851	Annuity (IRA)	93,000
Citigroup Inc Com New	Stock (IRA)	1,000
Disney (Walt) Co Com Stk	Stock (IRA)	9,000
Imax Corp	Stock (IRA)	4,000
American Growth Fund of America CL A	Mutual Fund (IRA)	17,000
Eaton Vance Large Cap Value Fund Class B	Mutual Fund (IRA)	30,000
Eaton Vance Large Cap Value Fund Class A	Mutual Fund (IRA)	19,000
JP Morgan Intl Equity FD CL C	Mutual Fund (IRA)	10,000
PIMco Total Return Instl	Mutual Fund (spouse 401(k)IRA)	105,000
Schwab Institutional Large Cap Value Retirement	Mutual Fund (spouse 401(k)IRA)	47,000
Harbor Capital Appreciation Instl	Mutual Fund (spouse 401(k)IRA)	29,000
Royce Fund Total Return/ Instl	Mutual Fund (spouse 401(k)IRA)	42,000
Vanguard Explorer / Admrl	Mutual Fund (spouse 401(k)IRA)	34,000
Harbor International Instl	Mutual Fund (spouse 401(k)IRA)	50,000
		TOTAL 1,540,000

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AFFIDAVIT

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

Sept 23, 2011
(DATE)

Kathryn Keneally
(NAME)

Christina DeCarmine
(NOTARY)
INDIA DECARMINA
Notary Public, State of New York
No. 035494041
Qualified in Suffolk County
Commission Expires May 20 2014

Ms. Keneally, the tax division has been operating, as you know, without a confirmed head for more than 2 years now. What challenge does this pose? And should you be confirmed, what priorities will you set for the division?

Ms. KENEALLY. Thank you, Senator, for that question. I have the greatest of respect for the tax division. I believe it is doing very good work today.

In terms of priorities, my very first priority will be to listen and to learn what the tax division is currently doing, if I'm fortunate enough to be confirmed.

I do understand that a current priority is offshore tax compliance and the offshore tax compliance initiative, and I think that is a very important priority. And if I'm fortunate enough to serve, I would be very supportive of that priority.

In addition, I think it is always important that the tax division pursue enforcement against fraudulent tax schemes and those who promote fraudulent tax schemes, including professionals who lead taxpayers into false returns or fraudulent positions. And if I'm fortunate enough to serve, I would see that as a priority. And I understand it is always a priority that we enforce the laws against tax defiers.

Senator KOHL. What is your background that brings you here today in terms of your professional experience?

Ms. KENEALLY. My practice area is in representing taxpayers both in civil and criminal tax matters. I've been doing that for well over 25 years.

My education is in tax law. I have an LLM in tax. I've also served in various capacities at the ABA tax section. I chaired the Committee on Civil and Criminal Tax Penalties. I chaired the Committee on Standards of Tax Practice, which is the ethics Committee of the tax section. And I'm now a vice chair of the tax section. And in those capacities, I have worked with the IRS, with the tax division, with the Treasury Department in terms of making recommendations on tax enforcement policies.

Senator KOHL. Ms. Keneally, last year, the tax division collected \$566 million in unpaid taxes, and, yet, the IRS data suggested that the annual tax gap between taxes paid and the amount of remaining unpaid tax revenue in this country is close to \$300 billion a year.

I understand now that the tax division's role is limited to certain civil litigation and criminal cases that are referred to you or to it by the IRS.

Nevertheless, what more can or would your division do, working with the IRS, to help close that tremendous tax gap?

Ms. KENEALLY. I appreciate that issue, Senator, very much. I believe that it is important that the tax laws be enforced so that those taxpayers who are in compliance have confidence in the integrity of the tax system and that it is—that they are treated fairly because those who are not in compliance are pursued.

I believe that the selection of cases, in order to get the message out and to create the deterrence and voluntary compliance by everyone else, is a very effective way to close the tax gap.

So if I am fortunate enough to be confirmed, I believe a commitment to full enforcement is important and priority.

Senator KOHL. How many lawyers are there in this part of the DOJ?

Ms. KENEALLY. My understanding is that it is—I've seen numbers that say between 350 and 400, if the numbers that I've seen—

Senator KOHL. Well, you have a great staff there, at least in terms of numbers and, I am sure, quality to pursue collection of unpaid taxes.

Ms. KENEALLY. Senator, I've had the privilege of representing taxpayers in matters where—well, I've been on the other side of the table from the Department of Justice tax division. I know them to be great and dedicated lawyers.

Senator KOHL. All right. The tax division has recently made a major push to prosecute individuals and corporations that hide their income and assets in offshore bank accounts to avoid paying taxes.

This costs the government, according to some estimates, up to \$100 billion a year in lost revenue.

In written commentary, you've been critical of certain enforcement efforts against citizens and corporations accused of hiding profits in foreign tax shelters.

Given these views, can we count on you to continue the division's efforts and to do an even better job in aggressively pursuing offshore tax shelters?

Ms. KENEALLY. Absolutely, Senator. I applaud the work done by the Internal Revenue Service and by the tax division in its offshore enforcement. I have made some comments that were directed to certain aspects of how matters were handled, some of which have resulted—both the IRS and the division have made certain changes over time in the practices as result of some things that the private bar has called to its attention, but I absolutely applaud that effort and would be committed, absolutely, to the enforcement in the offshore tax matters. I view that as an absolute priority.

Senator KOHL. Thank you. Finally, what leads you to this job possibly here today? You have been a successful practitioner in private litigation and, I am sure, making a lot more than you are going to make as a public servant.

So what brings you here today?

Ms. KENEALLY. It is an absolute privilege to serve one's country and I would value that privilege, if I am fortunate enough to be confirmed. This is an area that has been the heart of my career and it is a place where I think I can bring experience and skill to serve my country, and I would welcome that opportunity.

Senator KOHL. Thank you.

Senator Grassley.

Senator GRASSLEY. Thank you once again for coming to my office yesterday. A couple questions I am going to ask you first are questions that I ask every assistant attorney general and maybe other people in other departments.

Would you commit to working with Congress, the Government Accountability Office, and any inspector general, where applicable, in a timely and constructive manner, to address the oversight and other needs of Congress and would you also encourage others to do

so, even in, in encouraging others to do so, yo might not get them to do it?

Ms. KENEALLY. I am sorry, Senator, I——

Senator GRASSLEY. Maybe I should not have ad libbed the details.

[Laughter.]

Ms. KENEALLY. I am sorry, Senator. I just want to make sure I understand the question, because I would take any Committee seriously.

Senator GRASSLEY. Let me just repeat it, please. Will you commit to working with Congress, the Government Accountability Office, and any IG, where applicable, in a timely and constructive manner to address the oversight and other needs of Congress, and will you encourage others to do so?

Ms. KENEALLY. Senator, I understand this question from our discussion yesterday. I would certainly, as I said to you yesterday, be responsive to any inquiries, absolutely, from your office or from the Senate or any other branch of the government, as appropriate.

Senator GRASSLEY. Thank you. The second question that I ask everybody is along the same lines, but be a little more specific, because a lot of times, we do not get correct answers; sometimes, not ever, but generally not in the first response.

Would you respond in a timely and substantive manner to any requests that I make?

Ms. KENEALLY. Senator, I cannot imagine that I would not respond to an inquiry that would come from a Senator.

Senator GRASSLEY. Why not stop there?

[Laughter.]

Senator GRASSLEY. As we also discussed yesterday, for more than 10 years as Chairman and then Ranking Member of the Senate Finance Committee, I joined Chairman Baucus to close the tax gap.

In addition to closing loopholes, we also provided the IRS with tools to root out tax evasion, including mandatory disclosure of possible tax shelters. In the April-May 2007 edition of the *Journal of Tax Practices and Procedures*, you expressed concern that, “The war on tax shelters will give rise to entrenched enforcement mindset.”

Later that year, in the October-November 2007 edition of the same publication, you published another article titled, “The Increasing Risky Business of Tax Gap Evasion and Voluntary Disclosure.”

I would like to better understand your position, so I would ask these questions. One, over the course of your long career as a tax professional, apart from your tax controversy work, did you ever conduct tax planning for clients?

Ms. KENEALLY. No, sir.

Senator GRASSLEY. No, sir. You said no.

Ms. KENEALLY. No, Senator. I did not conduct tax planning and——

Senator GRASSLEY. That is OK. Did you help develop any tax shelters or advise your clients to participate in them or in any listed transactions?

Ms. KENEALLY. Certainly not, Senator.

Senator GRASSLEY. It seems from the April-May 2007 article that you believe that the IRS is focusing too much on tax shelters and listed transactions. How would you reconcile this position with the fact that many of us in Congress and, particularly, the public at large, believe just the opposite?

Ms. KENEALLY. Senator, thank you for the opportunity to clarify. I believe that the IRS and the tax division accorded necessary resources to the enforcement against the tax shelter industry. I believe that that was an essential battle for tax enforcement and that the IRS and the tax division should be commended for the very good work that they did.

My article was directed at the need for fairness to all taxpayers who come before the IRS. There were certain mechanisms that were put in place that were important and useful in tax shelter enforcement that may be a bit much in the average examination of the ordinary taxpayer, and my article was intended to get at that. And we have recently seen that the IRS has made some changes along the lines that were suggested in that article. But I am firmly committed to tax shelter enforcement and, frankly, it has been my experience as a private practitioner that you see it arise in the vacuum of enforcement, and I think there always needs to be diligent enforcement in that area.

Senator GRASSLEY. Do you want your second round now?

Senator KOHL. Go ahead.

Senator GRASSLEY. Thank you. I would like to ask about the Internal Revenue Service whistleblower program. While there is a longstanding whistleblower reward program at the IRS, I authored changes to those provisions in 2006. The changes were made to incentivize whistleblowing on big dollar tax fraud.

A recent Government Accountability Office report indicates that my efforts were successful. The IRS has received tips on more than 9,500 taxpayers from 1,400 whistleblowers in just 5 years.

However, I remain concerned that the IRS, like the Justice Department, with the False Claims Act revisions that I did in 1986, continue to treat whistleblowers kind of like skunks at a picnic.

For example, the IRS' offshore compliance program likely would not have achieved the success it has without the knowledge it received from foreign bank employees. Yet, as I stated in a letter to the IRS commissioner, June last year, I have serious doubts that the IRS effectively utilized the information provided to it by a UBS whistleblower.

Information from whistleblowers should result in easy money for the IRS, which is really easy money then for the Federal Government.

My first question. Many practitioners and corporations are opposed to the IRS whistleblower program. Do you support the IRS whistleblower program? What concerns, if any, would you have about it, if you have any concerns?

Ms. KENEALLY. Senator, I support the IRS whistleblower program. I have actually had the privilege of doing at least one panel presentation on the whistleblower program. I think it is an excellent program and I think we will see rewards in the years to come from it.

Senator GRASSLEY. In the *UBS* case, the Department of Justice sat on the information provided by the whistleblower for a very long time before acting on it. The IRS has a policy that whistleblower cases will not be prioritized over other audits.

Do you agree with this policy?

Ms. KENEALLY. Senator, I am not familiar with that policy.

Senator GRASSLEY. OK. Then could you study it and answer it in writing?

Ms. KENEALLY. I would be delighted to take a look at that policy and to respond in writing, yes, Senator.

Senator GRASSLEY. OK. I think we will submit two more subsets to that. I think I will have you answer each of them in writing. OK?

Ms. KENEALLY. I look forward to that. Thank you.

Senator GRASSLEY. The IRS is currently in the midst of a historic enforcement action against offshore tax evasion and the Justice Department is playing a key role. These questions, I think, are a little more pointed than what Senator Kohl just asked.

Is your opinion regarding the offshore voluntary compliance effort the same as your opinion regarding efforts regarding the disclosure of tax shelters and listed transactions? If not, please explain why they should be considered differently.

Ms. KENEALLY. As with tax shelters and listed transactions, I believe that the IRS' initiatives and the tax division's initiatives in offshore voluntary compliance are important, vital, and have been very effective to date.

Senator GRASSLEY. In other words, I think you just answered then, in regard to my last statement, that you do not—that they should not be considered differently.

Ms. KENEALLY. I view them as equally important goals for the Service and tax enforcement.

Senator GRASSLEY. Another pointed question. Are you now representing or have you represented any clients that are participating or have participated in the IRS amnesty program?

Ms. KENEALLY. Yes, I have.

Senator GRASSLEY. Last year, this Committee considered a bill to reauthorize an earmark for the Boys' and Girls' Club of America, the national umbrella group for hundreds of clubs around the country.

After learning about the executive compensation of the organization's CEO, I joined some of my colleagues on this Committee in asking questions about this organization's activity.

As a result, we learned that this National umbrella group held tens of millions of dollars offshore to avoid taxes on the income generated by these investments.

Let me say, parenthetically, here that that is specifically what the organization said that they—that they put the money offshore to avoid taxes. So, question.

Have you set up any offshore blocker entities or advised clients to invest in such vehicles?

Ms. KENEALLY. Never, Senator.

Senator GRASSLEY. Do you believe it is appropriate for Federal grants to be awarded to entities that utilize such blocker entities? And let me say, in regard to that, Boys' and Girls' Clubs get a lot

of Federal money. So, obviously, we are asking the question, why should we give Federal money to them if they have got money offshore, \$50 million or \$60 million offshore, that is not paying taxes or why would they not be using that for the good of the organization. But you heard my question.

Ms. KENEALLY. Yes, Senator.

Senator GRASSLEY. Do you want me to re-read it?

Ms. KENEALLY. No. I understand the question. I am a very firm believer in tax compliance. In my representation of clients with offshore bank accounts, my efforts have been to bring them back into tax compliance. I do not feel qualified to comment either specifically on the situation that you are describing or—

Senator GRASSLEY. And I am not asking you to comment on the Boys' and Girls' Club. I just was using that as an example.

Ms. KENEALLY. It is also outside my own experience or expertise, I believe, to comment on how grant money should be accorded. But I do believe that tax compliance is important and that offshore—the use of offshore accounts and offshore assets for non-tax compliance is something that is vital to law enforcement.

Senator GRASSLEY. And I can understand maybe why you would want to not comment on the Federal grant.

This will be my last question. It involves revolving door and conflict of interest.

In your discussion yesterday, you mentioned that you have good working relationships with many at the IRS and the Department of Justice Tax Division. The Committee has also received letters of support from a distinguished group of bipartisan tax attorneys, including several who have served in the position for which you are nominated.

I have been concerned for many years about the revolving door at the Securities and Exchange Commission. Professionals frequently move from industry to the SEC and then back to the industry where they came from.

I am increasingly concerned about the phenomenon at IRS, Justice Tax Division, and, also, the Treasury Department. I appreciate that the government benefits from the experience of the professionals that are on the ground and vice versa. However, I remained concerned about equal enforcement of the laws; in this case, the tax laws.

It is difficult for individuals to set aside prior relationships when they move into government positions. I would appreciate your thoughts on how you intend to balance the demands of this new position that you are going to with your longstanding relationships with the tax practitioner community.

Ms. KENEALLY. Senator, I appreciate that question. Thank you. I am aware of the ethical obligations. I have been an advocate my entire career. I will be as strong or stronger an advocate, if I am given the opportunity to serve my country in this position.

I have served in the past, as I stated, as the chair of the Standards of Tax Practice Committee of the ABA tax section, which is the ethics Committee of the tax section.

I will remain very aware of all conflict issues, both the written ones and the others that come up through personal relationships,

and will always remain conscious, if I am given this opportunity, that my duties lie toward law enforcement and to the division.

Senator GRASSLEY. Thank you, Ms. Keneally.

Thank you, Mr. Chairman, for your courtesy.

Senator KOHL. Thank you, Senator Grassley.

Ms. Keneally, as a defense attorney for tax and white collar crime, you will bring a unique perspective to the division's criminal enforcement activities.

How will this experience inform your decisions and your strategy to make you even better at the job than someone without your experience might be?

Ms. KENEALLY. Senator, I have had a large number of years of knowing the cases from the other side. I believe I will have an appreciation for what arguments will be made, what strategies may be taken in cases, and, frankly, an appreciation for how tax evasion and tax avoidance occurs, because I have been deep in it for many, many years.

Senator KOHL. All right. Ms. Keneally, effective enforcement of tax laws requires close coordination between the IRS and the tax division. From your perspective, having represented individuals and businesses on tax matters both before the IRS and the tax division, do you think that current coordination between these two organizations is sufficiently effective?

How can it be better and what will you intend to do to see that the coordination is better?

Ms. KENEALLY. Senator, I am neither at the IRS nor the tax division at the moment, so I can't speak directly to what their coordination efforts are.

As a private practitioner, it appears to be a very good working relationship. I have every understanding that there is mutual respect and cooperation between the Service and the tax division. I would do everything in my power, if I am fortunate enough to be confirmed, to foster that.

I have, through both my practice and my role at the ABA tax section, developed some very good relationships with various people at the Internal Revenue Service, as well as in the tax division, and I would work to encourage those relationships and good working relationships.

Senator KOHL. All right. At this time, I would like to ask consent to add to the record a statement in support of Ms. Keneally's nomination from Senator Gillibrand, and, also, a letter from top tax officials from previous Democratic and Republican administrations.

[The letters appears as a submission for the record.]

Senator KOHL. You have done a very good job here today. We appreciate your coming, and we will allow you to leave the stand at this time.

Ms. KENEALLY. Thank you.

Senator KOHL. Now, we would like to ask Judge Wimes to step forward, please. Please raise your right hand and repeat after me.

[Witness sworn.]

Senator KOHL. Thank you. You may be seated.

Judge Wimes, we will be happy to take your introductions of your family members who are with you, as well as your statement, before we ask you questions.

STATEMENT OF BRIAN C. WIMES, NOMINEE TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN AND WESTERN DISTRICTS OF MISSOURI

Mr. WIMES. Thank you, Senator. First, I would like to thank this body, the Judiciary Committee, Senator Kohl, Senator Grassley, for holding this hearing. I am truly grateful and honored to be here and look forward to answering your questions.

I would like to thank the President, President Obama, for the nomination. Again, I am truly grateful and humbled by that.

I want to acknowledge my home State Senators, Senator Claire McCaskill for her introduction. She's had an impact on my career. Also, I would like to acknowledge Senator Blunt for his support and whose family has had an impact.

His son, former Governor Matt Blunt, appointed me to my current position I hold now.

I'd like to introduce my family. I have my wife here. I have my youngest right next to her, Saige, she's 7 years old. I have my middle child, Gabrielle, who is 12. Here, also, Sydney, my oldest, she's 14, a freshman. Thank you.

I'd like to acknowledge my dad, who's here with me; my great uncle, Charles Wimes; my great uncle, Uncle John, he turned 90 this May and he made it down from New York this morning. Him and my cousin, Jill, his daughter, and they're representing our family from New York.

Further, I'd like to acknowledge I have my other cousin, who is here locally from Virginia, our good friend, Patricia Campbell, who sits on the bench. She's here with her daughter, supportive.

And, last, here with me, my current law clerk, Matthew Sparks, who wanted to make this trip and I'm glad he did, and my incoming law clerk, Maggie, or Margaret, Boyd, who also joined us here today.

And, last, Senators, I want to thank those family and friends and colleagues who are viewing on the Webcast.

Thank you.

Senator KOHL. Would you like to make any remarks, a statement of any sort?

Mr. WIMES. None other than those, Senator.

Senator KOHL. All right.

Mr. WIMES. Thank you.

[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.)

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

United States District Judge for the Eastern and Western Districts of Missouri
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

Jackson County Courthouse
415 East 12th Street, Division 18
Kansas City, Missouri 64106
4. **Birthplace:** State year and place of birth.

1966; Kansas City, Missouri
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.

1991 – 1994, Thurgood Marshall School of Law, Texas Southern University;
J.D., 1994
1988 – 1989, University of Kansas; Bachelor of General Studies, 1990
1986 – 1987, Longview Community College; Associate's Degree, 1987
1984 – 1986, University of Missouri – Columbia; no degree received
1984, University of Central Missouri; no degree received
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 – Present

16th Judicial Circuit Court of Jackson County, Missouri
415 East 12th Street, Division 18
Kansas City, Missouri 64106
Circuit Court Judge

2001 – 2007

16th Judicial Circuit Court of Jackson County, Missouri
415 East 12th Street, Division 50
Kansas City, Missouri 64106
Drug Court Commissioner

1995 – 2001

Jackson County Prosecutor's Office
415 East 12th Street
Kansas City, Missouri 64106
Assistant Prosecuting Attorney

1994 – 1995

Federal Bureau of Prisons
320 First Street, NW
Washington, DC 20534
Attorney Advisor, Litigation Branch

1992 – 1994

Thurgood Marshall School of Law
3100 Cleburne Street
Houston, Texas 77004
Teaching Assistant

Summer 1993

Jackson County Prosecutor's Office
415 East 12th Street
Kansas City, Missouri 64106
Intern

Summer 1992

Chicago Title Insurance Company
1100 Main Street
Kansas City, Missouri 64105
Intern

Summer 1992
 Larry Delano Coleman, PC
 818 Grand Avenue
 Kansas City, Missouri 64106
 Law Clerk

1990 – 1991
 Kansas City, Missouri School District
 Longan Elementary School
 3421 Cherry Street
 Kansas City, Missouri 64109
 Para-Professional

Other Affiliations (uncompensated):

2008 – Present
 University of Missouri – Kansas City School of Law
 Kansas City Youth Court
 500 East 52nd Street
 Kansas City, Missouri 64110
 Board Member

1999 – Present
 Penn Valley Community College
 Criminal Justice Advisory Board
 3201 Southwest Trafficway
 Kansas City, Missouri 64111
 Board Member

2002 – 2007
 Hope House Domestic Violence Shelter
 Location confidential due to subject matter
 Board Member

2002 – 2007
 Missouri Association of Drug Court Professionals
 Office of State Court Administrator
 2112 Industrial Drive
 Jefferson City, Missouri 65109
 President (2005 – 2007)
 Board Member (2002 – 2005)

2002 – 2007
Mental Health Association of the Heartland
739 Minnesota Avenue
Kansas City, Kansas 66101
Board Member

2005 – 2006
Kansas City, Missouri School District
King Middle School
4201 Indiana Avenue
Kansas City, Missouri 64130
Truancy Court Judge

1996 – 1997
Union Hill Neighborhood Association
No physical address
Treasurer, Board Member

1993
Thurgood Marshall School of Law
3100 Cleburne Street
Houston, Texas 77004
Research Assistant

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 United States Military. I registered for the selective service upon turning 18.

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.

Selected to participate in the Advanced Science & Technology Adjudication Resource Center (ASTAR) Program (2010)

Recognized by The Call Newspaper as one of the 25 most influential African American Kansas Citians (2009)

Recognized by the Jackson County legislature for six years of distinguished service to the Jackson County Drug Court (2007)

Mental Health Community Service Award, Jackson County Mental Health Court Commission (2006)

Community Service Award, United Services Community Action Agency (2003)

Ingram Magazine's "Forty Under Forty" (2002)

One of 60 Prosecutors selected nationwide to participate in advanced DNA training at the national headquarters of the National District Attorney's Association (2001)

Meritorious Service Award, Kansas City Missouri Police Department (1999)

Service Award, Santa Fe Neighborhood Association (1998)

Rookie of the Year Award, Jackson County Prosecutor's Office (1995)

Dean's List (1993 -- 1994)

Scholarship Recipient, Black Entertainment and Sports Law Association (1993)

Regional Semi-finalist, Frederick Douglas Moot Court Competition (1993)

Semi-finalist, Henry Doyle Moot Court Competition (1993)

American Jurisprudence Award, Appellate Litigation (1992)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences or 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

Jackson County Bar Association

Judge for the Kit Carson Roque Scholarship (2001 -- Present)

Missouri Bar Association

National Bar Association Judicial Council

16th Judicial Circuit Court of Jackson County Committees:

Budget Committee (2011 -- Present)

Rules Committee (2009 -- Present)

Municipal Courts Committee (2001 -- Present)

Executive Management Committee (2008 -- 2010)

Communications Committee (2001 -- 2008)

Selection Committee for Family Court Commissioner (2008)

Strategic Planning Committee (2008)
 Ad Hoc Criminal Justice Committee (2001 – 2007)
 Selection Committee for Drug Court Commissioner (2007, 2011)

Supreme Court of Missouri
 Alternative Courts Rules Committee
 Civic Education Committee
 Drug Court Coordinating Commission

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.

Missouri, 1994

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.

Missouri Supreme Court, 1994

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.

American Cancer Society's Hope in The Heartland Gala
 Co-Chair (2006)

Big Brothers Big Sisters of Greater Kansas City
 Big Brother (1996 – 2000)

Greenway Fields Home Owners Association (1999 – Present)

Hope House Domestic Violence Shelter
 Board Member (2002 – 2007)

Jackson County Mental Health Court
Committee Member (2001 – 2007)

Kansas City Youth Court
Board Member (2008 – Present)

King Middle School, Kansas City, Missouri School District
Truancy Court Judge (2005 – 2006)

Mental Health Association of the Heartland
Board Member (2002 – 2007)

Missouri Association of Drug Court Professionals
President (2005 – 2007)
Board Member (2002 – 2005)

National Center for Fathering WATCH D.O.G.S. (Dads of Great Students)
(2010 – Present)

Northeast Middle School Job Shadow Program, Kansas City, Missouri
School District
Participant (2001)

Penn Valley Community College, Criminal Justice Advisory Board
Board Member (1999 – Present)

Phi Beta Sigma Fraternity Incorporated (2009 – present)

St. Monica's Catholic Church
Lector (2009 – Present)
Pledge Committee Member (2000 – 2001)

St. Peter's School
Cultural Bazaar Committee (2009 – Present)
Volleyball Coach (2008 – 2009)

Union Hill Neighborhood Association
Board Member, Treasurer (1996 – 1997)

University of Missouri – Kansas City School of Law
Board Member (2008 – 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.

My neighborhood association had restrictive covenants in their rules excluding African Americans from home ownership. Those exclusions have been ruled by courts to be unenforceable and no longer exist. The covenants were removed from the by-laws by Missouri Statute in 2006.

I am a member of the Phi Beta Sigma Fraternity, an organization that I pledged in college. The fraternity is an all male organization at the chapter I pledged and at the national level.

To the best of my knowledge, none of the other organizations listed in question 11(a) 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.

Short introduction in the Missouri Association of Drug Court Professionals 10th Annual Drug Court Training Conference agenda, April 2007 and 2008. Copies supplied.

- 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.

In 2008, I was a member of the 16th Judicial Circuit Court Strategic Planning Committee, which met regularly to work on a strategic plan for our judicial circuit. In October of 2008, the committee produced a document titled *2009-2012 Strategic Plan*. Copy supplied.

In 2004, I was interviewed by the Center for Court Innovation for a report entitled *The Future of Drug Courts*. I do not recall the specifics of the questions or my answers. While I did not write the report and my ideas are not specifically credited to me, a copy of the report is supplied

In 2003, I was part of a focus group of Drug Court professionals that specifically addressed law enforcement's role in Drug Courts. I do not have a specific memory of all items that were discussed, but the ideas were published by the National Association of Drug Court Professionals in partnership with the United States Department of Justice, Office of Community Oriented Policing Services, in a report entitled *Drug Courts, Chiefs of Police and Sheriffs: A Broader Look at Law Enforcement*. A copy of the report is supplied.

- 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 that I have been able to recall or identify.

- d. Supply four (4) copies, transcripts or recordings or 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 sought to list all speeches, talks, and presentations I have delivered based on searches of my files and of publicly available information. There may, however, be others I have been unable to remember or identify. Since becoming a prosecutor and a judge, I have made it my practice to be active in the community, giving speeches and talks, and presenting to various groups as time has permitted. Since becoming a judge my speaking engagements with groups have centered primarily on different aspects of the judiciary.

August 17, 2011 – Presented along with other judges on the topic of DWI Courts in the State of Missouri, Missouri Judicial College (2011). The presentation was to other judges in the State of Missouri and included relevant DWI laws, the purpose and structure of the DWI Court, and additional considerations including admission program parameters and limitations to a court should a DWI Court be established. PowerPoint supplied.

June 1, 2011 – Speaker at summer law school camp, University of Missouri Kansas City School of Law (UMKC). I spoke with undergraduate students from across the United States who had an interest in the legal profession. I spoke to the students about the legal profession and my background and experiences as a lawyer and a judge. I also provided time for a question and answer session. I

have no notes, transcript or recording. The address of the law school is 500 East 52nd Street, Kansas City, Missouri 64110.

May 26, 2011 – Swore in the newly appointed Jackson County Prosecutor. I spoke briefly on our professional and personal relationship as it related to her qualifications for the position. I have no notes, transcript or recording. The address of the Jackson County Courthouse is 415 East 12th Street, Kansas City, Missouri 64106.

May 20, 2011 – Presented along with other judges “Lessons from the Bench.” The presentation focused on practice tips for young lawyers including the need for civility and professionalism. Bench-Bar & Boardroom Conference, Kansas City Metropolitan Bar Association. I have no notes, transcript or recording. The address of the KCMBA is 2300 Main Street, Suite 100, Kansas City, Missouri 64108.

April 5, 2011 – Prepared students of St. Peter’s School for a mock trial competition. I have no notes, transcript or recording. The address of the school is 6400 Charlotte Street, Kansas City, Missouri 64131.

March 10, 2011 – Guest speaker at University of Missouri Kansas City, Criminal Justice & Criminology class. I spoke to the students about the criminal justice system and had a question and answer session. I have no notes, transcript or recording. The address of the university is 5215 Rockhill Road, Kansas City, Missouri 64110.

February 9, 2011 – Instructed Kauffman Foundation and Operation Breakthrough students on trial practice in preparation for a mock trial competition. I have no notes, transcript or recording. The address of the Kauffman Foundation is 4801 Rockhill Road, Kansas City, Missouri 64110.

January 29, 2011 – Presentation to Jack and Jill of America. I spoke about the trial process and the students presented a mock trial. I have no notes, transcript or recording. The Jack and Jill of America, Missouri Chapter does not have a physical address.

January 28, 2011 – Swore in a newly appointed Jackson County Circuit Court Judge. I have no notes, transcript or recording. The address of the Jackson County Courthouse is 415 East 12th Street, Kansas City, Missouri 64106.

November 19, 2010 – Judge at the 61st Annual Moot Court Competition, sponsored by the University of Missouri Kansas City Law School. I have no notes, transcript or recording. The address of the school is 500 East 52nd Street, Kansas City, Missouri 64110.

October 7, 2010 – Panelist with other recently appointed 16th Circuit judges, Missouri Organization of Defense Lawyers. We spoke generally about our own practices and procedures in our particular courtrooms. We also provided time for a question and answer session. I have no notes, transcript or recording. The address of MODL is 101 East High Street, Suite 200, P.O. Box 1072, Jefferson City, Missouri 65102.

September 15, 2010 – Speaker, Waldo-area Business Association, Kansas City, Missouri. I spoke about different aspects of the court system. I also provided time for a question and answer session. I have no notes, transcript or recording. The address of the association is 6814 Troost Avenue, Kansas City, Missouri 64131.

September 2010 – Speaker, Penn Valley Community College. I spoke to an undergraduate class about different aspects of the court system. I also provided time for a question and answer session. I have no notes, transcript or recording. The address of the college is 3201 Southwest Trafficway, Kansas City, Missouri 64111.

May 22, 2010 – Panel discussion with members of the National Bar Association, “Disappearing Act: The Decline of African Americans on the Bench.” I have no notes, transcript or recording. The address of the NBA is 1225 11th Street NW, Washington, DC 20001.

May 18, 2010 – Panel discussion with Ad Hoc Group Against Crime. I spoke to the group about the court’s role in trial. I have no notes, transcript or recording. The address of the group is 3116 Prospect Avenue, Kansas City, Missouri 64128.

May 2010 – Speaker, Cedar Creek Elementary School. I spoke to an elementary school class about different aspects of the court system. I also provided time for a question and answer session. I have no notes, transcript or recording. The address of the school is 2600 Southwest 3rd Street, Lees Summit, Missouri 64081.

April 9, 2010 – Panelist for a “Meet the New Circuit Court Judges” event, Kansas City Metropolitan Bar Association. We spoke generally about our practices and procedures in our particular courtrooms. We also provided time for a question and answer session. I have no notes, transcript or recording. The address of the KCMBA is 2300 Main Street, Suite 100, Kansas City, Missouri 64108.

February 6, 2010 – University of Missouri Kansas City School of Law, “So You Want To Be A Lawyer” Annual Law School Recruitment Day. I spoke with prospective law students about my background and my experiences as a lawyer and a judge. I also provided time for a question and answer session. I have no notes, transcript or recording. The address of the school is 500 East 52nd Street, Kansas City, Missouri 64110.

February 2010 – Panel discussion for the Missouri Bar, Young Lawyer Section annual meeting, Kansas City, Missouri. I spoke about my path to the bench along with my fellow colleagues. We provided time for a question and answer session. I have no notes, transcript or recording. The address of the Missouri Bar is 326 Monroe, P.O. Box 119, Jefferson City, Missouri 65102.

January 30, 2010 – Presentation to Jack and Jill of America. I spoke about the trial process and observed the students present a mock trial. I have no notes, transcript or recording. The Jack and Jill of America, Missouri Chapter does not have a physical address.

January 16, 2010 – Panelist at Urban Summit Conference, Kansas City, Missouri. I spoke with a group about opportunities for jobs relating to public service and those jobs which require appointment. I have no notes, transcript or recording, but press coverage is supplied. The Urban Summit does not have a physical address.

January 5, 2010 – Spoke with mock trial team from Operation Breakthrough. I spoke with the students about the trial process. I have no notes, transcript or recording. The address of Operation Breakthrough is 3039 Troost Avenue, Kansas City, Missouri 64109.

December 5, 2009 – Guest speaker at St. Augustine's Episcopal Church. I spoke about churches and issues facing the community. Notes supplied.

December 2009 – Speaker at the Imani House substance abuse treatment center. A member of the Imani house was celebrating Kwanzaa and I spoke about one of the seven principles of Kwanzaa, "self-determination." I have no notes, transcript or recording. The address of the center is 3950 East 51st Street, Kansas City, Missouri 64130.

October 29, 2009 – Spoke at Diversity Recruitment forum, University of Missouri Kansas City School of Law. I have no notes, transcript or recording. The address of the law school is 500 East 52nd Street, Kansas City, Missouri 64110.

October 9 – 10, 2009 – Judge for Thomas Tang National Moot Court final rounds, Asian American Bar Association of Kansas City. I sat as a judge for the oral arguments. At the conclusion of the arguments, I gave a critique of the participants' performance. I have no notes, transcript or recording. The bar can be contacted through Seema Chawla, Bryan Cave LLP, 1 Kansas City Place, 1200 Main Street, Suite 3500, Kansas City, Missouri 64105.

October 2009 – Panelist in Civil Court forum on the litigation process, National Business Institute (NBI) Video recording supplied.

September 2009 – Spoke to litigation attorneys about discovery issues. The presentation was sponsored by Polsinelli, Shughart PC. I have no notes, transcript or recording. The address of Polsinelli, Shughart is Twelve Wyandotte Plaza, 120 West 12th Street, Kansas City, Missouri 64105.

June 27, 2009 – Panelist, judicial forum, Missouri Association of Trial Attorneys. I spoke with attorneys and members of the judiciary about a variety of subjects involving the court. I have no notes, transcript or recording. The address of MATA is 240 East High Street, Suite 300, P.O. Box 1792, Jefferson City, Missouri 65102.

June 6, 2009 – Spoke with students from the Center Alternative School about the trial process, Jackson County Courthouse. I have no notes, transcript or recording. The address of the school is 8434 Paseo, Kansas City, Missouri 64131.

May 1, 2009 – Panelist, “How Judges Are Handling the Difficult Financial Decisions Regarding Property, Debts, and Child Support in These Challenging Financial Times,” Kansas City Metropolitan Bar Association. We spoke with attorneys about how we are handling issues related to domestic cases. I have no notes, transcript or recording. The address of the KCMBA is 2300 Main Street, Suite 100, Kansas City, Missouri 64108.

April 9, 2009 – Prepared students of St. Peter’s School for a mock trial competition. Jackson County Courthouse. I have no notes, transcript or recording. The address of the school is 6400 Charlotte Street, Kansas City, Missouri 64131.

April 4, 2009 – Speaker at the Investiture of Family Court Commissioner, Family Court. I have no notes, transcript or recording. The address of the court is 625 East 26th Street, Kansas City, Missouri 64108.

March 3, 2009 – Guest speaker at the University of Missouri Kansas City Criminal Justice & Criminology class. I spoke to the students about the criminal justice system and had a question and answer session. I have no notes, transcript or recording. The address of the university is 5215 Rockhill Road, Kansas City, Missouri 64110.

February 7, 2009 – University of Missouri Kansas City School of Law, “So You Want To Be A Lawyer” Annual Law School Recruitment Day. I spoke with prospective law students about my background and my experiences as a lawyer and a judge. I also provided time for a question and answer session. I have no notes, transcript or recording. The address of the law school is 500 East 52nd Street, Kansas City, Missouri 64110.

January 13, 2009 – Judge, Missouri State High School Mock Trial Competition, Jackson County Courthouse. I have no notes, transcript or recording. The address of the courthouse is 415 East 12th Street, Kansas City, Missouri 64106.

April 2008 – As the immediate past president, I presented the Family Drug Court Commissioner with the Claire McCaskill Award from the Missouri Association of Drug Court Professionals. My comments acknowledged the Commissioner for her contributions to the Missouri Drug Courts. I have no notes, transcript or recording, but a press release covering the event is supplied. The Association does not have a physical address.

August 31, 2007 – Sworn in as Jackson County Circuit Court Judge, Jackson County Courthouse. Transcript supplied.

August 2007 (approx.) – Keynote speaker at the Kansas City Missouri Police Academy Graduation. Copy of speech supplied.

March 13, 2007 – Panel discussion sponsored by Greater Kansas City Federal Executive Board Education & Training Subcommittee, “Mid-Career and Life Planning” Seminar. I have no notes, transcript or recording. The address of the board is 1500 East Bannister Road, Suite 1176, Kansas City, Missouri 64131.

March 13, 2007 – Kansas City Metropolitan Bar Association, Young Lawyer Section, Interview and Resume Program. I spoke with students about interviewing and resume writing. Notes supplied.

August 2006 – Co-chair, American Cancer Society’s Hope in the Heartland Gala, Intercontinental Hotel. My wife and I made opening remarks and comments related to the topic. I have no notes, transcript or recording. The address of the society is 1100 Pennsylvania Avenue, Kansas City, Missouri 64105.

May 21, 2005 – Commencement speaker at Westport High School Graduation. Speech supplied.

April 23, 2005 – Welcome address for Drug Court Conference and moderator for a panel entitled “Alcohol and Drugs: Pathological Impact on the Body.” From my time (2002-2007) on the Board of the Missouri Association of Drug Court Professionals, I may have moderated other sessions but have been unable to identify the dates. I have no notes, transcript or recording. The Association does not have a physical address.

September 22, 2003 – Presentation to fifth grade students at St. Monica’s School, Kansas City, Missouri 64130. Outline supplied.

June 23, 2003 – Keynote speaker at the Third Judicial District Drug Court Graduation Ceremony, Topeka, Kansas. Notes supplied.

August 3, 2001 – Sworn in as Jackson County Drug Court Commissioner, Jackson County Courthouse. Video recording supplied.

2001 – 2007 – Speaker at bimonthly Drug Court graduation ceremonies and annual Drug Court conferences, Kansas and Missouri. I have no notes, transcripts or recordings. The graduations were sponsored by the Jackson County Courts, which are located at 415 East 12th Street, 9th Floor, Kansas City, Missouri 64106.

2001 – 2007 – Presented to various groups around Jackson County, Missouri about the Jackson County Drug Court. A PowerPoint presentation that I often used is supplied. The presentations were sponsored by the Jackson County Drug Court, located at 415 East 12th Street, 10th Floor, Kansas City, Missouri 64106.

1999 – 2006 – Regular speaker at Grandview Senior High School. Over the years I have spoken on various subjects related to the legal field. More particularly, I spoke about the criminal justice system. I have no notes, transcripts or recordings. The address of the school is 2300 High Grove Road, Grandview, Missouri 64030.

1997 – Performed seminars sponsored by the Community Backed Anti-Drug Tax (COMBAT) on landlord-tenant issues relating to drug activity on rental property. The seminars occurred throughout Jackson County, Missouri. I have no notes, transcripts or recordings. The program is overseen by the Jackson County Courts, which are located at 415 East 12th Street, 9th Floor, Kansas City, Missouri 64106.

- 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.

Over the years, I have given a number of interviews. I have searched my memory, files, and available internet databases to assemble the list of interviews below, but there may be others that I have been unable to identify or recall.

Convicted Rapist Sentenced to 18 More Years, KANSAS PUBLIC RADIO (July 3, 2008) [re-printed in multiple outlets]. Copy supplied.

Tony Rizzo, *Judge's Ban on the Use of the Word "Rape" at Trial Reflects Trend*, KANSAS CITY STAR (June 7, 2008). Copy supplied.

Joe Lambe, *Man Sentenced to 25 Years for Sexual Assault*, KANSAS CITY STAR (Jan. 12, 2008)[re-printed in multiple outlets]. Copy supplied.

Eric Adler, *Scrooge vs. the Grinch. Which One is Meaner?*, KANSAS CITY STAR (Dec. 24, 2007). Copy supplied.

Jennifer Kopp-Dameron, *Brian Wimes Appointed to 16th Judicial Circuit*, ASSOCIATION FOR WOMEN LAWYERS OF GREATER KANSAS CITY LINK (Nov. 2007). Copy supplied.

Interview with Ty Chandler, KCUR-FM PUBLIC BROADCASTING, Kansas City, Missouri (July 23, 2007), available at http://www.publicbroadcasting.net/kcur/news.newsmain?action=article&ARTICLE_ID=1118172.

Charles Emerick, *Newest Member of Jackson County Circuit Court Bench Connects Passion to Dream*, KANSAS CITY DAILY RECORD (July 20, 2007). Copy supplied.

Eric L. Wesson, *Commissioner Wimes Makes Circuit Judge Panel*, CALL (Kansas City) (June 22-28, 2007). Copy supplied.

Charles Emerick, *Two Candidates for Jackson County Circuit Court Reappear on Panel for Opening*, KANSAS CITY DAILY RECORD (June 13, 2007). Copy supplied.

Debbie Coleman-Topi, *StandUp Tackles OTC and Prescription Drug Abuse*, THE EXAMINER (Apr. 23, 2007). Copy supplied.

Charles Emerick, *Kansas City Courthouse Roundup*, KANSAS CITY DAILY RECORD (Apr. 16, 2007). Copy supplied.

Kendrick Blackwood, *Crack Down, Jackson County is High on Its Low Drug-Prosecution Numbers*, PITCH (June 16, 2005). Copy supplied.

Chris Becicka, *Fighting the Good Fight*, COMMUNITY CARE (July 2003). Copy supplied.

Linda Man, *Drug Court Helps Many Graduate to a Better Life*, KANSAS CITY STAR (May 4, 2002). Copy supplied.

Forty Under Forty: Brian Wimes, INGRAM'S FOR SUCCESSFUL KANSAS CITIANS (Apr. 1, 2002). Copy supplied.

Press release, *Court Appoints Brian Wimes as Jackson County Drug Court Commissioner*, 16TH JUDICIAL CIRCUIT COURT (June 15, 2001). Copy supplied.

Television interview with Kris Ketz, reporter, KMBC channel 9 television station, in Kansas City, Missouri (1999-2000) (regarding the Community Justice Unit). Video copy supplied.

Christine Vendel, *Burglary Rate Up 22% in the City. Brunt of Increase Hits Wealthy Areas*, KANSAS CITY STAR (Mar. 6, 1999). Copy supplied.

Christine Vendel, *Into the Neighborhood, Crime-Fighting Plan Adds Prosecutors and Parole Officers*, KANSAS CITY STAR (May 3, 1998). Copy supplied.

Television interview for Alvin Brooks Small Segment. I do not recall and have been unable to determine the specific date, but I believe it was between 1995 and 1998. I have not been able to obtain a copy of the recording.

Glenn E. Rice, *Jury Acquits Man, 23, in Fatal '94 Shooting, Witness Immunity is Granted to Two Under New State Law*, KANSAS CITY STAR (Dec. 19, 1997). Copy supplied.

Lynn Horsley, *Anti-Truancy Effort Sees Improvement, KC Schools' Program Leads to Small but Solid Results*, KANSAS CITY STAR (Apr. 29, 1997). Copy supplied.

Duane Retzlaff, *Black Student Union Sponsoring Pageant*, LAWRENCE JOURNAL-WORLD (Dec. 8, 1989). Copy supplied.

RaKeisha M. Brown, *Fewer Drug Offenders is Goal of Court Official*, KANSAS CITY ASSOCIATION OF BLACK JOURNALISTS JOURNAL (date unknown). Copy 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.

In 2001, I was appointed to serve as the Drug Court Commissioner for Jackson County Missouri. I was appointed by the Judges of the 16th Judicial Circuit to a four year term. In 2005, I was re-appointed to serve another four years as Drug Court Commissioner. I served in this capacity until my appointment as a Circuit Judge. As a Commissioner, I had jurisdiction to hear misdemeanor and felony drug cases.

In July 2007, I was appointed by then-Governor Matt Blunt to serve as Circuit Court Judge for the Sixteenth Judicial Circuit, Jackson County, Missouri. I was retained as a Circuit Court Judge in the 2008 election cycle. My present term expires in 2014. The Circuit Court is Missouri's general jurisdiction trial court. I was assigned to the Family Court Division from August of 2008 to December of 2009.

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

As a Circuit Court Judge, I have presided over approximately 29 criminal trials that have gone to verdict or judgment, 25 civil trials that have gone to verdict or

judgment, and 509 domestic cases that have gone to verdict or judgment (pursuant to Missouri law, all domestic cases are tried before a judge without a jury).

As Drug Court Commissioner, I presided over approximately 450 cases that were assigned to me. Additionally, I handled approximately 600 probation cases that were assigned to me from all divisions of the 16th Judicial Circuit. Due to the nature of the Drug Court program, I conducted no bench trials or jury trials.

i. Of these, approximately what percent were:

jury trials:	59 %
bench trials:	41%
civil proceedings:	43%
criminal proceedings:	57%

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

In my capacity as a state court trial judge, I have entered hundreds of decisions in civil, criminal, and domestic matters. For each case before me, I entered a judgment or order, and those judgments and orders are not assigned a citation. Those judgments and orders are entered into the record and then distributed to the attorneys and parties. They are stored within the case file and it would be impossible to create a list of every judgment or order that I have entered. They are not published in an official reporter, such as Westlaw or Lexis.

In my capacity sitting as a Special Judge for the Missouri Court of Appeals, Western District, I did not write any opinions but I did concur with the following opinions:

In re H.A.D. v. J.L.B., 319 S.W.3d 557 (Mo. Ct. App. 2010) (per curiam).

City of Kansas City v. Shirazi, 326 S.W.3d 96 (Mo. Ct. App. 2010) (per curiam).

State v. Harding, 323 S.W.3d 810 (Mo. Ct. App. 2010).

In re Estate of Schiro v. George, 325 S.W.3d 554 (Mo. Ct. App. 2010) (per curiam).

On September 14, 2011, I sat as a Special Judge for the Missouri Supreme Court En Banc. We heard oral arguments and took those matters under advisement. The opinions of the Court will be published at a later date. The two cases heard were:

Simpson v. Simpson, SC91498 (Sept. 14, 2011).

St. Louis Association of Realtors v. City of Ferguson, SC91640 (Sept. 14, 2011).

- 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. State of Missouri v. Tillman, 0616-CR04512 (Feb. 7, 2008, *unreported*).

The victim was found dead in her home in 1987, and the case remained unsolved for over fifteen years. At the time of death, the victim lived alone. The defendant and his wife were neighbors of the victim. Investigators recovered evidence of sexual assault from the victim's body. The Kansas City crime lab tested the evidence for DNA in 2003 and 2004, and it matched in the DNA database to the defendant. The defense moved to exclude testimony of the current medical examiner regarding the autopsy report and findings of the deceased medical examiner who conducted the autopsy of the victim. I ruled that the current medical examiner could testify as to her opinion formed upon reviewing the autopsy, photographs, and other materials. The jury found the defendant guilty of second degree murder, rape, and forcible sodomy. The jury recommended three life sentences, and I sentenced the defendant to three life sentences in prison. The defendant appealed, and the conviction was affirmed. State v. Tillman, 289 S.W.3d 282 (Mo. Ct. App. 2009).

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Carie M. Allen, attorney for Defendant
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(816) 889-2099

2. State of Missouri v. Jackson, 0616-CR07116-01 (Aug. 2, 2010, *unreported*).

A nine year-old boy watched his mother get shot to death, and then four years later testified in court as to what he saw. The mother's boyfriend was also killed that night. As part of his testimony, the boy described how the defendant was ordered by another conspirator to get money out of the male victim's pockets. Defendant's liability for the two deaths was submitted to the jury under the felony-murder doctrine based upon the robbery felony. The jury found the defendant guilty of two counts of second degree murder, three counts of armed criminal action, and one count of first degree assault. I sentenced the defendant to twenty-five years in prison.

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Patrick W. Peters, attorney for Defendant
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3. Allen v. Four B Corp., 0816-CV07014 (April 22, 2010, *unreported*).

This case involved a slip and fall in water at a Price Chopper grocery store. The defense did not dispute that there was water present on the floor, but argued instead that it did not have notice of the floor's condition. The jury awarded plaintiff \$75,000 for damages, and they found the plaintiff 50% at fault and the defendant 50% at fault.

Brandon D. Mizner, attorney for Plaintiff
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Robert J. Luder, attorney for Defendant
9401 Indian Creek Parkway, Suite 800
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(913) 491-9300

4. Shamrock Hills, Inc. v. James Cape & Sons, Co., 0716-CV24773 (March 14, 2008, *unreported*).

The plaintiff sued the defendants for failure to follow erosion and sedimentation controls as specified by the contract between Cape and Sons Company and the Missouri Highway and Transportation Commission. Due to such failure, the defendants' contract obligations were not performed. The jury awarded the plaintiff \$395,250 for damages, and they found for the plaintiff on the claims for breach of contract and for inverse condemnation.

Charles E. Weedman, Jr., attorney for Plaintiff
117 South Lexington
P.O. Box 280
Harrisonville, Missouri 64701
(816) 380-3238

Larry J. Tyrl, attorney for Defendant Cape & Sons, Co.
7045 College Boulevard, Suite 800
Overland Park, Kansas 66211
(913) 825-4650

James M. Stone, attorney for Defendant Missouri Highway &
Transportation Commission
600 Northeast Colbern Road
Lee's Summit, Missouri 64086
(816) 607-2087

5. Washington v. State of Missouri, 0916-CV24797 (Oct. 21, 2010, *unreported*).
Opinion supplied.

As the defendant drove by a parked car, someone fired a gun five times from the defendant's car. I denied the defense's motions to suppress the defendant's in-custody statement and to suppress the defendant's identification. The defense argued that the death resulted from harmless gunfire between friends and that the shooter was a passenger in defendant's car and was high on drugs and alcohol. The jury found that even if the defense theory was true, the defendant was an accomplice. The jury found the defendant guilty of second degree murder and armed criminal action. The jury recommended a life sentence for the murder count and five years for the armed criminal action count and I sentenced the defendant to a life sentence in prison. The defendant appealed, and the convictions were affirmed. State v. Washington, 282 S.W.3d 890 (Mo. Ct. App. 2009). Opinion supplied.

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Jackson County Prosecutor
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6. State of Missouri v. Baldwin, 0616-CR00032-01 (Nov. 29, 2007, *unreported*).

The victim was working as a prostitute when a customer attacked her with a knife, causing lacerations. DNA tests linked the defendant to evidence of sexual assault recovered from the victim's clothing. There was a jurisdictional issue that was raised in the case because the crime took place near the Missouri/ Kansas state line. The jury found the defendant guilty of forcible rape, forcible sodomy, and two counts of assault. I sentenced the defendant to a twenty-five year sentence.

The Missouri Court of Appeals reversed and vacated the Count II assault conviction on double jeopardy grounds, and affirmed my judgment in all other respects. State v. Baldwin, 290 S.W.3d 139 (Mo. Ct. App. 2009).

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Molly Hastings, attorney for Defendant
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7. State of Missouri v. Qamaan, 0716-CR06666-01 (Nov. 14, 2008, *unreported*).

The defendant was a cab driver who picked up a customer, the victim. The victim had just left a bar and was intoxicated. The defendant took the victim to a hotel and sexually assaulted her. The jury found the defendant guilty of attempted deviate sexual assault, not guilty of deviate sexual assault, and not guilty of kidnapping. The defendant appealed, and the conviction was affirmed. State v. Qamaan, 331 S.W.3d 368 (Mo. Ct. App. 2011).

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Molly Hastings, attorney for Defendant
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Kansas City, Missouri 64106
(816) 889-2099

8. State of Missouri v. Wainwright, 16CR97008547-02 (Aug. 21, 2009, *unreported*).

In 1997, the defendant overheard his wife talking on the phone with her former husband and then attacked her. The defendant's fifteen year-old stepdaughter picked up a knife to help her mom. The defendant killed his stepdaughter, killed his wife, and shot his ten year-old stepson. Another jury had convicted the defendant of first degree murder for killing his stepdaughter, but that conviction was overturned on appeal. In this case, the defendant did not dispute that he killed his stepdaughter, but argued instead that he should be found guilty of only second degree murder because he lacked mental capacity. The jury found the defendant guilty of first degree murder, first degree assault, and two counts of

armed criminal action. I sentenced the defendant to life in prison without parole and an additional ninety years in prison. The defendant's appeal is pending.

Michael Hunt, attorney for State
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Horton Lance, attorney for Defendant
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(816) 889-2099

9. Wynn, et al. v. Kansas City, Missouri Police Dep't, 01CV201764 (April 8, 2011, *unreported*).

The plaintiffs sued the Kansas City, Missouri Police Department (defendants) in a class action lawsuit. The plaintiffs alleged the defendants violated the Missouri Criminal Activity Forfeiture Act when they transferred criminal defendants' property to federal authorities without first obtaining a transfer order from state court. My rulings throughout the litigation process focused on the decertification and exclusion of class members. Early on in the litigation I denied defense counsel's motion to decertify the class or to exclude members of the class and allowed the discovery process to move forward. I later scheduled a hearing after discovery was complete on the issue of decertification and/or exclusion of class members. Before the hearing, the parties reached a settlement agreement that I approved.

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Russell S. Jones, Jr., attorney for Defendant
120 West 12th Street
Kansas City, Missouri 64105
(816) 421-3355

10 State of Missouri v. Jones, 0616-CR04889-01 (Oct. 8, 2010, *unreported*).

The defendant shot and killed the victim with a shotgun, which was not disputed by the defense. Instead, the defense argued that the defendant lacked the requisite intent at the time of the shooting. The jury found the defendant guilty of first degree murder, second degree assault, and two counts of armed criminal action. I sentenced the defendant to life in prison without parole. The defendant's appeal is pending

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Missouri Attorney General
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Jefferson City, Missouri 65102
(573) 751-3321

John P. O'Connor, attorney for Defendant
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Kansas City, Missouri 64112
(816) 701-1100

- 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. Washington v. State of Missouri, 0916-CV24797 (Oct. 21, 2010, *unreported*), *aff'd*, 282 S.W.3d 890 (Mo. Ct. App. 2009). Opinion supplied in response to 13(c).

Honorable James F. Kanatzar, attorney for State
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Daniel J. Ross, attorney for Defendant
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(816) 931-5000

2. State of Missouri v. Muslet, et al., 01CV220664-02 (Sept. 12, 2008, *unreported*). Opinion supplied

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Eugene J. Twellman, attorney for Defendant
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Kansas City, Missouri 64105
(816) 472-5244

Jay D. Haden, attorney for Defendant
415 East 12th Street, Suite 200
Kansas City, Missouri 64106
(816) 881-3150

3. Farrington v. Williams, 0716-CV27002 (Mar. 11, 2009, *unreported*) Opinion supplied.

Lyle Odo, attorney for Plaintiff
249 Main Street
Platte City, Missouri 64079
(816) 858-4100

Dana Tippin Cutler, attorney for Defendant
21 West Gregory Boulevard
Kansas City, Missouri 64114
(816) 471-8575

4. Lane v. State of Missouri, 0616-CV23875 (Apr. 8, 2010, *unreported*). Opinion supplied.

S. Chase Higinbotham, Jr., attorney for Plaintiff
117 Bradford Lane
Belton, Missouri 64012
(816) 322-5297

Michael Hunt, attorney for Defendant
415 East 12th Street
Kansas City, Missouri 64106
(816) 881-3555

5. G. Mand & Associates, Inc. v. Kasten, 0716-CV03024 (Dec. 9, 2009, *unreported*). Opinion supplied.

Thomas E. Thompson, attorney for Plaintiff
911 Main Street
Kansas City, Missouri 64105
(816) 842-0851

Paul V. Herbers, attorney for Defendants
1100 Main Street
Kansas City, Missouri 64105
(816) 474-0777

6. City of Kansas City, Missouri v. Hoe Ku, et al., 0716-CV31695 (June 18, 2008, *unreported*). Opinion supplied.

Theodore T. Anderson, attorney for Plaintiff
414 East 12th Street
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(816) 513-3114

Rhonda E. Smiley, attorney for Defendants
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(816) 753-5400

Chad A. Stewart, attorney for Defendant
414 East 12th Street
Kansas City, Missouri 64106
(816) 513-3145

7. Wynn, et al. v. Kansas City, Missouri Police Dep't, 01CV201764 (Apr. 8, 2011, *unreported*). Opinion supplied.

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(816) 300-6250

Russell S. Jones, Jr., attorney for Defendant
120 West 12th Street
Kansas City, Missouri 64105
(816) 421-3355

8. Johnson v. State of Missouri, 1016-CV12813 (June 14, 2011, *unreported*).
Opinion supplied.

Karon D. Ransey, attorney for Plaintiff
1115 East 65th Street, Suite 100
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Jean Peters-Baker, attorney for Defendant
415 East 12th Street, 11th Floor
Kansas City, Missouri 64106
(816) 881-3555

Alison D. Dunning, attorney for Defendant
308 West Kansas Avenue, Suite 220
Independence, Missouri 64050
(816) 881-3888

9. Fritzie v. Phi Gamma Delta Chapter House Ass'n. et al., 1016-CV39235
(June 24, 2011, *unreported*). Opinion supplied.

Michael S. Ketchmark, attorney for Plaintiff
2345 Grand Boulevard, Suite 2110
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(816) 842-1515

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(913) 345-0100

John E. Franke, attorney for Defendant
8900 Ward Parkway
Kansas City, Missouri 64114
(816) 421-7100

10. McNeal Jr. v. State of Missouri, 1016-CV19690 (June 14, 2011, *unreported*).
Opinion supplied.

Molly Hastings, attorney for Plaintiff
324 East 11th Street
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(816) 889-2099

Jean Peters-Baker, attorney for Defendant
415 East 12th Street, 11th Floor
Kansas City, Missouri 64106
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- e. Provide a list of all cases in which certiorari was requested or granted.

I am not aware of any case over which I presided in which certiorari was requested from or by the Supreme Court of the United States.

- 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.

State of Missouri v. Baldwin, 0616-CR00032-01 (Nov. 29, 2007, *unreported*).

As part of the underlying offense of rape, the defendant attacked the victim with a knife and cut her on two areas of her body. I submitted to the jury separate counts for assault. The Appeals Court ruled that I should have submitted on one count of assault because the two injuries the victim sustained were the result of one continual act. I was reversed and the Court vacated Count II and affirmed me in all other respects. 290 S.W.3d 139 (Mo. Ct. App. 2009).

- 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 almost four years as a Circuit Judge, I have written hundreds of orders that were not published in official reporters. These orders would be available through the Courts Administrative office. However, some of the domestic orders may be sealed.

- 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 have not had significant opinions on federal or state constitutional issues.

- 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 or interest or to cure any other ground for recusal.

Our court does not employ an automatic recusal system. Recusals are determined on a case by case basis taking into consideration the facts and circumstances of the case and the applicable rules.

I do not maintain a list of cases in which I have recused myself or in which recusals were requested of me. However, to the best of my knowledge, I have never been asked to recuse myself from a case. And to the best of my knowledge I have recused myself sua sponte from two cases:

Estate of Clem v. Yonke, 0816-CV38300. One of the defendants in the case is a close personal friend and I recused myself sua sponte.

State v. Hayde, 1016 - CR01943-01. The criminal defendant in this case was my daughter’s pre-school teacher. I notified the attorneys and recused myself sua sponte.

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.

In 2004, I had an unsuccessful candidacy for Circuit Judge of the 16th Judicial Circuit of Missouri.

In 2006, I had an unsuccessful candidacy for Circuit Judge of the 16th Judicial Circuit of Missouri.

- 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 never held an office in a political party or been a member of an election committee. I have not held a position or played a role in a political campaign.

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 have not served as a clerk to a judge.
 - ii. Whether you practiced alone, and if so, the addresses and dates;

I have not been in practice alone.
 - iii. The dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1994 – 1995
Federal Bureau of Prisons
320 First Street, NW
Washington, DC 20534
Attorney Advisor, Litigation Branch

1995 – 2001
Jackson County Prosecutor's Office
415 East 12th Street
Kansas City, Missouri 64106
Trial Attorney, Drug Unit (1995 – 1997)
Drug Abatement Response Team Coordinator (1997)
Community Prosecutor (1997 – 1999)
Senior Trial Attorney, Drug Unit (1999 – 2001)

- 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 an alternative dispute resolutions proceeding

b. Describe:

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

From 1994 to 1995, I represented the Bureau of Prisons in civil actions brought against the Bureau by inmates throughout the nation and in the District of Columbia. Commonly, these actions were brought three ways, either by way of the Federal Tort Claims Act, Section 1983 Bivens actions or Habeas Corpus actions. I filed briefs in defense of these actions and assisted in trial preparation. I handled many civil cases during this time.

From 1995 to 2001, I was a prosecutor in the Jackson County Prosecutor's Office. In addition to trying cases in the courtroom, I was actively involved in the community. I, along with two other prosecutors, created and coordinated a pilot truancy program involving six middle and senior high schools in the Kansas City, Missouri, School District. I worked closely with school officials advising on legal issues related to school truancy in an effort to actively encourage parents to be more accountable for their children's school attendance.

In March 1997, I was promoted to the position of Drug Abatement Response Team (D.A.R.T.) Coordinator where I served until October

1997. In this position, I supervised a staff of six dedicated to the closure of drug houses in the Jackson County area. In extreme cases of drug activity on properties, my office instituted civil forfeiture actions against property owners. Additionally, as D.A.R.T. Coordinator, I gave seminars to community groups and organizations on issues involving drug use, specifically the detection of drug use on properties.

In October 1997, I was promoted to the position of East Patrol Community Prosecutor where I served until January 1999. I acted as a liaison between the Prosecutor's Office and the community at large assisting in developing crime prevention initiatives. A few of the initiatives I helped to develop included the targeting and monitoring of business owners involved in criminal activities. I also developed the "red file," which focused on career criminals. I started an initiative that focused on abandoned buildings where criminal activity took place. Much of my role in this position involved coordination and cooperation with local, state, and federal agencies to develop anti-crime strategies. I maintained a trial case load during my time at East Patrol and prosecuted cases that originated out of that area. Because of my efforts, I was awarded a Meritorious Service Award by the Kansas City, Missouri, Police Department.

Finally, from January 1999 to July 2001, I served as a Senior Trial Attorney in the Drug Unit. In this capacity, I prosecuted cases involving major crimes with an emphasis on drug-related homicides. I served as a member of the Homicide Committee, which reviewed most homicides in the Prosecutor's office and made determinations on filing decisions. As part of that committee, I rotated with other prosecutors who were assigned to the Violent Crimes Unit of the Kansas City, Missouri, Police Department. I assisted them in the review and filing of violent felonies in the Kansas City area. I was also selected to serve on the Capital Crimes Committee. I, along with other senior trial attorneys, reviewed and made individual recommendations to the Prosecutor relating to death penalty cases. Additionally, I assisted in the training of newer attorneys in trial practice and commonly sat as co-counsel during their trials. Furthermore, I was the only prosecutor assigned to handle all police shootings that occurred in Kansas City, Missouri and Grandview, Missouri. In that position, I was on call and commonly responded to crime scenes. My role was to provide oversight and ensure the integrity of police investigations of other police officers related to the shooting. I also reviewed these cases, presented them to grand juries and prosecuted them when necessary.

From 2001 to the present, I have served in a judicial capacity

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

As an attorney advisor from 1994 to 1995, I represented the Bureau of Prisons. I worked in the litigation branch and defended the Bureau against Habeas Corpus, Federal Tort Claims, and *Bivens* actions.

As a prosecutor from 1995 to 2001, I represented the State of Missouri. I was a trial attorney and prosecuted criminal cases specializing in drug possessions, robberies, murders, criminal forfeitures, and cases involving DNA evidence.

- 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.

Much of my practice was in litigation requiring frequent court appearances from 1995 to 2001.

- i. Indicate the percentage of your practice in:

- | | |
|-----------------------------|-----|
| 1. federal courts: | 0% |
| 2. state courts of record: | 95% |
| 3. other courts: | 0% |
| 4. administrative agencies: | 5% |

- ii. indicate the percentage of your practice in:

- | | |
|--------------------------|-----|
| 1. civil proceedings: | 10% |
| 2. criminal proceedings: | 90% |

- d. State the number of cases in courts of record, 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 41 cases to verdict. I was chief counsel in 29 of the cases, and associate counsel in all other cases.

- i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 97% |
| 2. non-jury: | 3% |

- 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 the participation in the litigation and the final disposition of the case. Also state as to each case:

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

In the below-listed cases, I represented the State as the assistant prosecuting attorney of record. Typically, in cases where there was co-counsel, the case was divided equally with the lead counsel making the final call on trial strategy decisions.

1. State of Missouri v. Irvin, CR1994-1982, 16th Judicial Circuit Court of Jackson County, Missouri, Division 8, Honorable Lee E. Wells presiding (1994).

In the above case, the defendant was charged with robbery in the first degree, assault in the first degree, and two counts of armed criminal action. During the trial, there was an issue of whether the crimes merged so I proceeded with the robbery charge and the armed criminal action charge. The victim, a kitchen manager, arrived at work early to open the restaurant. The defendant was a cook at the same restaurant. He was not scheduled to work that day but told the victim he was filling in for another cook. Once inside the restaurant, the defendant attacked the victim and a struggle ensued. After being stabbed several times, the victim was able to reach a phone to call the police. When the police arrived, there was blood all around the restaurant, cash missing from a locked file cabinet, and the defendant's coat. The case was submitted to the jury, and the defendant was found guilty on both counts. The defendant was sentenced to two concurrent fifteen year terms in prison. On appeal, the defendant argued that the trial court erred by admitting the victim's torn and bloody clothes and that a portion of the State's closing argument was improper. The State commented in closing argument that the defense counsel acted improperly in the cross-examination of the victim. The appellate court affirmed the conviction. State v. Irvin, 944 S.W.2d 592 (Mo. Ct. App. 1997). The court held that the admission of the clothes was not highly prejudicial or misleading because it was necessary to prove the element of serious physical injury for the crime of robbery in the first degree and it did not deprive the defendant of a fair trial. The court also held that the State's closing argument was not plain error because the defense counsel did not object during the trial, it did not affect the rights of the defendant, and it did not result in a miscarriage of justice.

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2. State of Missouri v. Alvarez, CR1995-6663, 16th Judicial Circuit Court of Jackson County, Missouri, Division 12, Honorable Edith L. Messina presiding (1995).

In the above case, the defendant was charged with assault in the first degree and armed criminal action. The case centered on identification testimony and an alibi defense. The crime occurred after an altercation at a local park between the defendant and the victim, who were members of rival gangs. After the initial altercation occurred, the defendant and other members of the gang sought out and eventually found the victim when he was driving in his car. As evidence, the victim was able to identify the defendant in his rearview mirror before the shots were fired at him from the defendant's car. The case was submitted to the jury, and the jury found the defendant guilty on both charges of assault in the first degree and armed criminal action. The defendant was sentenced to consecutive terms of ten and five years in prison. The appellate court affirmed the conviction. State v. Alvarez, 945 S.W 2d 80 (Mo. Ct. App. 1997).

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3. State of Missouri v. Brummall, CR1998-00786, 16th Judicial Circuit Court of Jackson County, Missouri, Division 11, Honorable J.D. Williamson Jr presiding (1998).

In the above case, the defendant was charged with murder in the first degree and armed criminal action. This case was the first "cold hit" DNA case in the State of Missouri.

The victim was watching TV at home when her mother left that afternoon for work. When the mother returned, she found her daughter dead in her bedroom, having been stabbed multiple times. The investigating police officers found a trail of blood leading all over the house. An analysis of the DNA revealed that the defendant was the likely source of some of the blood at various locations in the house. The defendant was charged based upon the blood at the scene and circumstantial evidence but with little additional physical evidence from the house. Hairs recovered from the victim's body did not match the defendant's hair, and the defendant's fingerprints were not found in the house. The murder charge was submitted to the jury in the first degree and in the second degree, but the trial court refused to instruct the jury on the offenses of voluntary or involuntary manslaughter. The jury found the defendant guilty of murder in the second degree and armed criminal action. The defendant was sentenced to life in prison for the murder in the second degree count and fifty years in prison for the armed criminal action count. On appeal, the defendant argued that the trial court erred by refusing to submit instructions on the lesser-included offenses of voluntary and involuntary manslaughter and by permitting the State to introduce testimony of a witness, which the defendant claimed was inadmissible hearsay. The appellate court affirmed the conviction. State v. Brummall, 51 S.W.3d 113 (Mo. Ct. App. 2001).

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4. State of Missouri v. Charles, CR1998-06847, 16th Judicial Circuit Court of Jackson County, Missouri, Division 15, Honorable Kenneth P. Dean II presiding (1998).

In the above case, the defendant was charged with murder in the second degree and armed criminal action. The case centered on a self-defense theory. It involved multiple defendants and members of rival gangs from the same neighborhood. There had been several altercations between members of the gangs. The defendant and other members of the gang saw the victim at a location. They then gathered other members of the gang and committed a "drive by shooting" as the victim, a friend, a girlfriend and a small child were attempting to leave a home in a car. The case was tried to the bench, and the judge found the defendant guilty on all counts. The defendant was sentenced to consecutive terms of life in prison for the murder in the second degree count and ten years in prison for the armed criminal action count. The appellate court affirmed the conviction. State v. Charles, 50 S.W.3d 343 (Mo. Ct. App. 2001).

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5. State of Missouri v. Golatt, CR1996-71684, 16th Judicial Circuit Court of Jackson County, Missouri, Division 18, Honorable Jon R. Gray presiding (1996).

In the above case, the defendant was charged with murder in the first degree and armed criminal action. The whole theory of the case centered on accomplice liability. The defendant and an accomplice bought drugs from the victim. Shortly thereafter, the defendant pulled the victim down to the apartment complex's boiler room, stabbed him multiple times, and then took cash from his pockets. After witnessing these events, the accomplice fled to a friend's apartment nearby, and the defendant joined him shortly later. Before this trial began, the accomplice entered into a plea agreement with the State and agreed to cooperate fully at the defendant's trial as part of the plea agreement. At trial, the accomplice testified, and the jury found the defendant guilty on both counts. The defendant was sentenced to life in prison without the possibility of parole or probation for the murder in the first degree count and ten years in prison for the armed criminal action count. On appeal, the defendant argued that the trial court erred by allowing the State to refer to the accomplice during voir dire and by finding that the defendant was a prior offender. The appellate court affirmed the conviction but reversed the finding that the defendant was a prior offender and remanded the case for re-sentencing. State v. Golatt, 81 S.W.3d 640 (Mo. Ct. App. 2002).

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6. State of Missouri v. Garner, CR1996-0285, 16th Judicial Circuit Court of Jackson County, Missouri, Division 3, Honorable Thomas C. Clark presiding (1996).

In the above case, the defendant was charged with robbery in the first degree and armed criminal action. The defendant approached the victim as he stood next to his car, held the victim at gunpoint, and then drove off in the victim's car. The victim informed the police

of the incident, and a high speed chase ensued. After crashing the victim's vehicle into a retaining wall and a telephone poll, the defendant attempted to flee on foot but was apprehended by the police. At trial, the defendant denied robbing the victim. The defendant claimed that the victim wanted to buy a set of chrome wheels from him, but did not have the money to pay for them at the time. Instead, he gave the defendant the car as collateral until he could acquire the money. The jury found the defendant guilty of both counts. The defendant was sentenced to concurrent terms of twenty years in prison for the robbery in the first degree count and ten years in prison for the armed criminal action count. The appellate court affirmed the convictions. State v. Garner, 976 S.W.2d 57 (Mo. Ct. App. 1998).

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7. State of Missouri v. Gardner, CR1995-3862, 16th Judicial Circuit Court of Jackson County, Missouri, Division 10, Honorable Gene R. Martin presiding (1995).

In the above case, the defendant was charged with robbery in the second degree for stealing a truck from a hospital. The defendant was a patient at the Truman Medical Center. He left the hospital, forced the driver of a tractor-trailer out of his truck, and led the police on a chase through multiple counties. The defendant was charged in Jackson County with robbery in the second degree, and in the adjacent county with multiple counts of assault on a law enforcement officer for attempting to run officers off the road with the tractor-trailer. At trial, the defendant claimed that he was in a drug-induced psychosis at the time of the offense and lacked the requisite mental capacity for robbery. The jury found the defendant guilty of robbery in the second degree in Jackson County, and he was sentenced to five years in prison. To my knowledge, this case was not appealed.

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8. State of Missouri v. Avise-Rouse, CR1997-07910, 16th Judicial Circuit Court of Jackson County, Missouri, Division 1, Honorable David W. Shinn presiding (1997).

In the above case, the defendant was charged with robbery in the first degree and armed criminal action. The theory of the case centered on accomplice liability. The defendant and co-defendant attempted to rob a local convenience store. During the course of the robbery, the police were called and responded to the scene. The co-defendant, who was inside and armed, ran from the store and entered a car with the defendant. They initially avoided apprehension but were later arrested. The defendant alleged that she did not know that the co-defendant was robbing the store and that she left only because she was instructed to do so. The jury found the defendant guilty of robbery in the first degree but not guilty of the armed criminal action count. The defendant was sentenced to ten years in prison. The sentence was suspended, and she was placed on probation for five years. To my knowledge, this case was not appealed.

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9. State of Missouri v. Lenley, CR1996-2060, 16th Judicial Circuit Court of Jackson County, Missouri, Division 1, Honorable David W. Shinn presiding (1996).

In the above case, the defendant was charged with first degree murder, assault in the first degree, and two counts of armed criminal action. The defendant and a co-defendant robbed a cab driver, and then shot and killed him. A second person, who was in the car with the cab driver, was shot but lived. In order to obtain a conviction, we offered a reduced sentence to the co-defendant in exchange for truthful testimony against the defendant. The evidence in the case and the testimony of the surviving witness established that the defendant was the shooter. The jury found the defendant guilty of first degree murder, first degree assault, and two counts of armed criminal action. The defendant was sentenced to life in prison without the possibility of parole or probation. The appellate court affirmed the conviction. State v. Lenley, 1998 Mo. App. LEXIS 2303 (Mo. Ct. App. Dec. 22, 1998)

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10. State of Missouri v. Allen, CR1998-05972, 16th Judicial Circuit Court of Jackson County, Missouri, Division 10, Honorable Gene R. Martin presiding (1998).

In the above case, the defendant was charged with robbery in the first degree and armed criminal action. The defense alleged that the victim initially attacked the defendant when he rebuffed his advances. The case centered on the credibility of the witnesses and the defendant. The victim was at a gay bar. Upon leaving the bar, the defendant approached him and demanded money at gunpoint. The defendant alleged that the victim propositioned him and when he refused, the victim attacked him. The defendant testified that he gained control of the victim and took his money but he never possessed a gun. The police who responded to the scene and arrested the defendant found the gun that was utilized in the robbery. The case was tried to the bench, and the judge found the defendant guilty on both counts. The defendant was sentenced to twenty years for the robbery in the first degree count and three years in prison for the armed criminal action count. The appellate court affirmed the conviction. State v. Allen, 53 S.W.3d 250 (Mo. Ct. App. 2001).

Willis Toney, opposing counsel
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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 organization(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The time I spent in the Jackson County Prosecutor's Office from 1995 to 2001 provided me with the typical experience of a prosecutor but also afforded the opportunity for me to be involved in various significant legal activities in the community.

I along with two of my colleagues created and coordinated a truancy program administered through the Jackson County Prosecutor's Office. The program focused on

six middle and senior high schools in the Kansas City, Missouri School District. I was one of the assistant prosecutors charged with enforcing the truancy laws. I worked with local school officials advising on legal issues related to school truancy. I also worked with and encouraged parents to be more accountable for their children's school attendance.

In 1997, I was charged with the task of closing down drug houses in Jackson County. I coordinated with federal, state, and local officials in an effort to deter drug activity in and around neighborhoods. Further, in this role I helped educate community groups and organizations on issues involving drug use, specifically the detection of drug use on rental properties. I was one of the first prosecutors in the state to initiate and bring an action against a tenant for an expedited eviction utilizing a newly created statute aimed at curtailing drug use on rental properties.

From 2001 through 2007, I was the Commissioner of the Drug Court. The Drug Court is a diversion program that offers non-violent first-time drug offenders the opportunity to participate in an outpatient-based treatment program for a minimum of twelve months rather than face prosecution through more traditional routes. Drug Court takes a global approach to treating individuals by focusing on lifestyle changes, criminal thinking, social skills, and substance abuse treatment. The ultimate goal is to have a participant back in the community who is drug-free, crime-free and a productive taxpaying citizen.

As Commissioner, my role was direct, personal, and ongoing. When a person was doing well, it was commonplace for Drug Court participants to receive incentives to reinforce program compliance, by way of fee reductions on court costs, movie tickets, gift certificates, and/or less frequent court reviews. On the other hand, when a participant failed to comply, I might sanction the participant by requiring more frequent court reviews, issuing verbal reprimands, or imposing inpatient treatment, jail or termination from the program. Sanctions were intended to be therapeutic and were designed to improve the participant's chances for success. Every other month, I presided over a Drug Court graduation for those participants who had successfully completed the requirements of the program.

I presided over 400 cases assigned to Drug Court, with a caseload of 120 to 150 docketed cases per week. Additionally, I, along with others, established a mental health docket to address the needs of those participants who suffer from substance abuse and mental illness.

I have not performed lobbying activities on behalf of any client or organization

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

I do not have any plans or commitments to pursue outside employment.

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 am not aware of any family members or other persons, parties, categories of litigation or financial arrangements that would present potential conflicts of interest.

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

I would resolve any conflicts in accordance with Canon 3 of the Code of Judicial Conduct for United States Judges. I would recuse myself *sua sponte* on any

matter which presented an appearance of impropriety or any matter where my impartiality might be questioned.

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 have spent the entirety of my career working in the public sector and I was not permitted to represent clients. However, I have had significant involvement with the community over the span of my career and have associated with groups and organizations who, as a matter of their mission, serve those individuals who are disadvantaged. Some examples are time spent serving on the Board of Directors for Hope House Domestic Violence Shelter. This is an organization dedicated to services for battered women and children affected by domestic violence. I have also served on the Board of Directors of the Mental Health Association of the Heartland. The Association is dedicated to the education, advocacy, and support of those suffering from mental illness. I have also participated in Kansas City's Big Brother/Big Sister Program since 1998. I have had the rewarding experience of mentoring, counseling, and developing an ongoing relationship with a young male.

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 our jurisdiction to recommend candidates for nomination to the federal courts.

In the summer of 2010, I contacted Senator Claire McCaskill's office to express my interest in the position. I met with a member of Senator McCaskill's staff and provided information pertaining to my qualifications. On October 5, 2010, I interviewed with Senator McCaskill at her Kansas City, Missouri office.

On November 19, 2010, I was contacted by Senator McCaskill's office and informed that my name would be submitted to the White House in regards to a judgeship in the Western District of Missouri. Since March 3, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of

Justice. On April 12, 2011, I interviewed with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On September 22, 2011, 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. 1/2010

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) Wimes, Brian C.	2. Court or Organization District Court Judge for the Western District of Missouri	3. Date of Report 09/22/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) U.S. District Court Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nonannual, Date 09/22/2011 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2010 to 08/31/2011
7. Chambers or Office Address U. S. Courthouse 400 East Ninth Street Kansas City, Missouri 64106	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. Board Member	Kansas City Youth Court
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	Date of Report
Wines, Brian C.	09/22/2011

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. 2009	State of Missouri (Judiciary)-salary	\$120,484.08
2. 2010	State of Missouri (Judiciary)-salary	\$120,484.08
3. 2011	State of Missouri (Judiciary)-salary	\$80,322.72
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	Shook, Hardy & Bacon law firm-salary
2. 2011	Shook, Hardy & Bacon law firm-salary
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	Date of Report
Winters, Brian C.	09/22/2011

V. GIFTS. *(Includes those to spouse and dependent children; see pp. 25-31 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. Bank of America		K
2. United States Department of Education	Educational loan	L
3. American Education Service	Educational loan	K
4.		
5.		

FINANCIAL DISCLOSURE REPORT

Page 4 of 6

Name of Person Reporting

Wines, Brian C.

Date of Report

09/22/2011

VII. INVESTMENTS and TRUSTS -- Income, value, transactions (includes those of spouse and dependent children; see pp. 31-50 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-I)	(2) Type (e.g., div., rent, or int.)	(1) Value Code 2 (J-P)	(2) Value Method Code 3 (Q-W)	(1) Type (e.g., buy, sell, redemption)	(2) Date month/day	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-I)	(5) Identity of buyer/seller (if private transaction)
1. Moravia Credit Union	A	Interest	J	T	Exempt				
2. Community America Credit Union	A	Interest	J	T					
3. Missouri 2030 Fund	E	Dividend	K	T					
4. Vanguard 529-aggressive plan	A	Dividend	J	T					
5. Vanguard 529-moderate plan	A	Dividend	J	T					
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income Gain Codes (See Columns B1 and D4)	A = \$1,000 or less F = \$10,001 - \$100,000 J = \$10,000 or less (See Columns C1 and D3)	B = \$1,001 - \$2,500 G = \$2,500.01 - \$12,500.00 K = \$12,500.01 - \$100,000 Q = \$100,001 - \$1,000,000	C = \$2,501 - \$5,000 H = \$5,000.01 - \$10,000.00 L = \$10,000.01 - \$100,000 P = \$100,000.01 - \$1,000,000 R = More than \$10,000,000	D = \$1,001 - \$15,000 I = \$15,000.01 - \$100,000 M = \$100,000.01 - \$1,000,000 N = \$1,000,000.01 - \$10,000,000 O = More than \$10,000,000	E = \$15,001 - \$100,000 J2 = More than \$100,000 K1 = \$100,000.01 - \$1,000,000 L1 = \$1,000,000.01 - \$10,000,000 M1 = More than \$10,000,000	F = \$100,001 - \$1,000,000 G1 = \$1,000,000.01 - \$10,000,000 H1 = More than \$10,000,000
2. Value Method Codes (See Column C2)	P1 = Appraisal Q = Book Value	R = Cost (if it is not only) V = Other	S = Acquisition W = Redemption	T = Cash Transfer		

FINANCIAL DISCLOSURE REPORT
Page 5 of 6

Name of Person Reporting	Date of Report
Whites, Brian C.	09/22/2011

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

FINANCIAL DISCLOSURE REPORT
Page 6 of 6

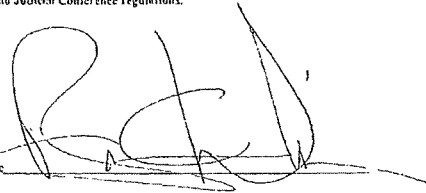
Name of Person Reporting	Date of Report
Whites, Brian C.	09/22/2011

IX. CERTIFICATION.

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

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

Signature



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

FILING INSTRUCTIONS

Mail signed original and 3 additional copies to:

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

FINANCIAL STATEMENT

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks		20	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities -- see schedule		32	309	Notes payable to relatives			
Unlisted securities				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 -- see schedule		303	247
Real estate owned -- see schedule		391	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize			
Autos and other personal property		151	850	Bank line of credit		32	542
Cash value-life insurance				Education loan		108	813
Other assets itemize:				Auto loans		52	786
				Total liabilities		497	388
				Net Worth		97	771
Total Assets		595	159	Total liabilities and net worth		595	159
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor on leases or contracts				Are any assets pledged? (Add schedule)	No		
Legal Claims				Are you defendant in any suits or legal actions?	No		
Provision for Federal Income Tax				Have you ever taken bankruptcy?	No		
Other special debt							

FINANCIAL STATEMENT

NET WORTH SCHEDULES

Listed Securities

Missouri 2030 Fund	\$29,417
Vanguard 529 Age-Based Aggressive Plan	2,358
Vanguard 529 Age-Based Moderate Plan	534
	<u>\$32,309</u>

Real Estate Owned

Personal residence	\$361,000
Time share	30,000
Total Real Estate Owned	<u>\$391,000</u>

Real Estate Mortgages Payable

Personal residence	\$239,857
Home equity loan	63,390
Total Real Estate Mortgages Payable	<u>\$303,247</u>

AFFIDAVIT

I, Brian C. Wimes, do
swear that the information provided in this statement is,
to the best of my knowledge, true and accurate.

9/23/2011
(Date)

(NAME)



(NOTARY)

Senator KOHL. Judge Wimes, as you know, district court judges are bound by precedent of their circuit and the precedent established by the Supreme Court.

Should you be confirmed, from time to time, you will be called upon to decide cases where there is no precedent or where there is no Supreme Court decisions in the matters that you would have under your consideration.

So how do you intend to approach these kinds of cases where there is no clear precedent?

Mr. WIMES. Well, thank you for the question, Senator Kohl. First, you would look to the plain language of the statute, if that's the case. Then, certainly—and see if you can determine from the plain language of the statute.

Then you would look to an analogous situation from the United States Supreme Court. Then I would look to what would be the eighth circuit, where the district court for Missouri sits, to analogy in terms of the law. And, last, Senator, you would look to persuasive law from any of the other circuits in terms of making a determination on your decision-making process.

Senator KOHL. Is it fair to say you would try just as hard as you can in every case to find precedent to work with?

Mr. WIMES. Yes. I would say that. I can tell you, I've sat on the bench for 10 years on the state court, 6 years as a commissioner, and 4.5 years as a general jurisdiction judge, and I think that's incumbent upon lower courts, district courts, to rely on the precedent of higher courts. And if I was so fortunate to be confirmed, I would do the same on the Federal bench.

Senator KOHL. Good. How would you describe your judicial philosophy in a very general way?

Mr. WIMES. I think it's very important for a judge to have integrity. That means they're fair, impartial. I think some characteristics of judges, they are open-minded, even temperament, decisive. But overall, the philosophy is you apply the facts of the case, the particulars, to the applicable law, and I think that would sum up how I approach it and how I believe I've been on the bench.

Senator KOHL. What is it about being a judge that appeals to you?

Mr. WIMES. Senator, that's a good question. I think from a very young age, my parents taught me the value in public service. I always took the public service interest in our government. I think as I grew and developed, I really had enthusiasm and a passion for the law, and I think because of that, I knew that public service and I knew that sitting on the bench was something I wanted to do. And I think to serve—if I'm fortunate enough to serve on the Federal level, that would be the highest honor for me in representing the citizens of the United States and doing it is something that I've always had an enthusiasm and a passion for doing.

Senator KOHL. Judge Wimes, I believe that life experiences do influence the decisions that people make, but judges, more than anyone else, have a duty to ensure that they do not cross the line to allow their background to inappropriately influence the outcome of cases.

Where do you draw this line and at what point does personal experience, in your opinion, improperly impact judging? How have

you and how will you ensure that your personal experiences do not improperly influence your judicial decisions?

Judge WIMES. Well, thank you for the question, Senator. I don't believe—in my 10 years that I have sat on the bench, I don't think my personal views or any biases I may have play any role in my decision-making process.

Certainly, having a background in certain areas brings a certain level of sensitivity to a particular issue, if you have a background. But I think, ultimately, what rules the day is the facts and circumstances of the particular case and the law that applies.

Again, I would like to think over my time on the bench that I have done that and, if confirmed, I would continue to do that on the Federal bench.

Senator KOHL. All right. Before I turn it over to Senator Grassley, I would like to ask your three daughters a question and they could just raise their hand. Is your daddy a fair man? Could we count on him to be a fair judge? Raise your hand if it is yes. All right. That is the strongest affirmation of your candidacy.

Judge WIMES. Well, thank you, Senator.

Senator KOHL. Senator Grassley.

Senator GRASSLEY. Yes, and congratulations, sir.

Judge WIMES. Thank you, Senator.

Senator GRASSLEY. As a circuit court judge, you served on a 16th judicial district strategic planning committee. In 2008, this Committee produced a strategic plan, including factors which the Committee believed would affect the successful implementation of the plan.

One factor identified was, “challenges to the judiciary and oversight by the Supreme Court.”

You and the Committee expressed concern regarding the Supreme Court noting it will, “increasingly attempt to influence and become more heavily involved in local state court matters, decreasing autonomy of Missouri courts.”

I am not sure which Supreme Court you were referring to, of the State of Missouri or the U.S. But regardless, I would like to have you explain how either Supreme Court is, “increasingly attempting to influence courts in the Missouri 16th judicial district.”

And let me follow-up with a second question, and answer both of them at the same time, of whether or not you think it is inappropriate for a Supreme Court to influence lower appellate or trial courts.

Judge WIMES. Senator, I will attempt to answer your last question first. No, I don't think it's improper for a Supreme Court, because that is the governing body for the judiciary and the State of Missouri.

I think in the context of that report which we put out, it was a report that not only the judges who were involved or one of the Committee members that were involved, it also involved the other judges of the circuit. It involved our stakeholders, who we believe and we interviewed, the public at large. We also interviewed attorneys who utilized the court system.

And what we attempted to do throughout that report is to put together a plan that encompassed all those different individuals.

Now, more specifically to your question of the influence, I'm not sure, Senator, the context of how we represented that. I'd be more than happy to look at that report.

Senator GRASSLEY. Why do we not make it easy for you—

Judge WIMES. Sure.

Senator GRASSLEY [continuing]. And ask you to respond to that point in writing.

Judge WIMES. That would be fine. I'd be more than happy to do so.

Senator GRASSLEY. A follow-up of the second question I asked you, which you have answered already. How would you describe the proper relationship between a Federal district court and the circuit court of appeals, a Federal district court and the Supreme Court of the United States? So that is kind of two questions, the Federal district court and the circuit court of appeals, and the Federal district court and the Supreme Court of the United States.

Judge WIMES. And the question is how would I describe or how would I see that relationship?

Senator GRASSLEY. Yes. Yes.

Judge WIMES. I would see it—I suspect I would see it in much the same way that I see the relationship on the state court in terms of our district court, our appeals court, and our Supreme Court, and that is this. I believe, those three bodies, we have a great working relationship, but I will tell you, Senator, with respect to the Supreme Court and procedure and rules, that is the body—and I think they do or at least in Missouri they do so in communication with the other courts, promulgate rules and whatever rules they establish, obviously, as a lower court, we would follow that.

So we have a great amount of respect, and, obviously, the Supreme Court in the State of Missouri, I think, in putting together rules and procedures, they work with the lower courts and, ultimately, their decisions the lower courts would follow.

Senator GRASSLEY. Would that statement you just made apply to the Federal district court and the courts of appeal and the Supreme Court?

Judge WIMES. Most certainly, Senator.

Senator GRASSLEY. You and the Committee also listed as a concern that, "hostility towards criticism and the politicization of the judiciary by legislatures."

How do legislatures show hostility toward a judiciary?

Judge WIMES. I think in terms of that report and the State of Missouri, I think the focus was—in the State of Missouri, there's the nonpartisan court plan and there had been some criticism of the nonpartisan court plan.

The urban areas or larger area in the State of Missouri are appointed. The out-state of Missouri are elected. There has been a movement in terms of that all the positions in the State of Missouri should be elected, and they have—they have looked at the nonpartisan court plan or eliminating the nonpartisan court plan.

So in the context of the bigger scheme, that's what we were referring to. And I don't believe it refers to the legislature itself, because there are a great number of the legislature that is supportive of the current court plan that we have, Senator.

Senator GRASSLEY. Is it your view that the U.S. Congress has politicized the Federal judiciary, and, if so, how?

Judge WIMES. That's not my belief.

Senator GRASSLEY. In your view, what is the proper relationship between the Federal judiciary and the Congress?

Judge WIMES. Senator, I believe three branches of government. I think the judiciary certainly is one branch, the legislative is another branch, and, obviously, the executive is their branch.

There is a relationship to the extent that funding for the judiciary is through Congress. So there is that relationship in that sense in terms of appropriations.

But I think in terms of—legislators make the law and the court follows the law.

Senator GRASSLEY. I am concerned by your lack of Federal court experience. According to your questionnaire, you have practically no Federal court experience in your legal career.

As a state court judge in Missouri, you do have the opportunity to review Federal issues. What assurances can you provide to this Committee and to future litigants that your judgment on Federal law and procedure will be sound and informed?

Judge WIMES. Senator, I appreciate that question. Starting my legal career, I worked in the Department of Justice Bureau of Prisons. At that time, I handled actions that were filed against the Bureau of Prisons by way of Federal Tort Claim Act, habeas corpus actions, and Bivens actions.

As a circuit judge, you are correct, Senator, I do have issues that involve Federal issues, whether it's Title 7 in some of the employment cases that I have; certainly, in criminal cases, the Fourth Amendment and the Sixth Amendment. And I can tell you this, Senator. When I took the bench on the state court, there were certainly those matters which, coming from the background in criminal court, some matters civilly I hadn't dealt with.

But I've had the opportunity to interpret Missouri statutes. I had the opportunity to interpret provisions of the Missouri constitution, and I have done so. I have ruled and those rulings have been reviewed by higher courts and I have been affirmed on those decisions.

So I believe I would take that same competence level to the issues that I face on the Federal level in terms of the preparedness on those matters and issues that appear in front of me.

Senator GRASSLEY. This is my last question. There are a number of different theories explaining how judges should interpret the Constitution. Some theories emphasize original understanding. Some emphasize literal meaning, and some focus on general principles underlying the Constitution and applying a contemporary meaning to those principles.

While all nominees recite the mantra that they will apply the law to the facts, I am looking for an answer with a little bit more thought behind it. So this question.

What constitutional interpretation model will guide you when faced with constitutional questions?

Judge WIMES. Thank you, Senator. That's an important question and I'll try and answer it as thoughtful—

Senator GRASSLEY. Would you like to answer it in writing?

Judge Wimes. If you'd like me to, I would.

Senator GRASSLEY. I want to do what you want to do. Do you want to answer it now or do you want to answer it in writing?

Judge WIMES. Well, I could answer it now and—

Senator GRASSLEY. Go ahead and answer it now, then.

Judge WIMES. OK. Well, I'll attempt to answer it now. Senator, I think it's important, especially as a district judge, when you're asked, "What is your interpretation," I follow precedent. I follow the precedent of the Supreme Court of—it would be of the eighth circuit. And as a circuit judge, that's my determination on what the law—the applicable law to facts and circumstances of any particular case that I may have in front of me, and I think that the work of a district judge is just that.

The decisions you make are based upon precedent and based upon the higher courts.

Senator, I don't know if that addressed your question. I can still address it maybe fuller in writing, if you like.

Senator GRASSLEY. When I review the record and if it does not answer, I will ask you a question for answer in writing.

Thank you, Mr. Chairman.

Judge WIMES. Thank you, sir.

Senator KOHL. Thank you very much, Senator Grassley.

Judge Wimes, Federal judges serve a meaningful role in their communities beyond hearing and deciding cases. Our vision of a trial court judge today is a person who is actively involved beyond his courtroom and understands the importance of such things as drug diversion programs and alternative punishments for juvenile offenders, as you well know.

Would you take a moment to discuss your own vision of what it means to be a Federal judge with a focus on the importance of each judge in their community?

Judge WIMES. Thank you for the question, Senator.

I have always tried in my career to be involved in the community as a prosecutor, as a drug court commissioner, and as a circuit judge.

I think to the extent—and I would carry that over, if I'm fortunate enough to be confirmed on the Federal district court, I think that is important for the bench to be active within the community, obviously, within the—nothing that would create an appearance of impropriety.

So I can tell you, if confirmed, I would continue to be and I think it's important to be active in the community, visible in the community, to the extent I could.

Senator KOHL. Tell us a little bit about some of your activities, visibility in your community right now.

Judge WIMES. Well, I've been involved in many things over time. The Hope House, which is a domestic violence shelter, the mental health, Association of the Heartland, I have been a Big Brother, I'm a watchdog at my kids' school, which means a dad of great students and it gets dads involved.

Overall, what I've attempted to do is to, one, especially as it relates to students and students in school, to inspire them to maybe think beyond what—their possibilities.

So oftentimes I talk to students. I have students in my courtroom. I prepare and have them put mock arguments. And I've done that because the influence in my life are those folks who took the time—took the time to talk with me, and I want to make sure, to the extent I can, to continue to be actively involved, especially in young people's lives, to get them to maybe aspire to do what I do or to aspire to do something bigger than what they thought.

Senator KOHL. All right. I would like to ask that Chairman Leahy's statement be inserted in the record.

[The prepared statement of Chairman Leahy appears in the appendix.]

Senator KOHL. And this hearing will remain open for a week for any follow-up, written questions and responses.

Judge Wimes, you have done a great job. We appreciate you being here today, and we look forward, should you be confirmed, to a long and honorable career in the Federal judiciary.

Thank you so much.

Judge WIMES. Thank you, Senator Kohl.

Senator KOHL. The hearing is adjourned.

[Whereupon, at 3:34 p.m., the hearing was concluded.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

Written Questions of Senator Tom Coburn, M.D.

Nomination of Kathryn Keneally to be Assistant Attorney General, Tax Division

Department of Justice

United States Senate Committee on the Judiciary

November 22, 2011

1. What will be your strategy regarding the Department of Justice's approach to offshore tax evasion?

Answer: The Tax Division has stated that its top litigation priority is civil and criminal enforcement against non-compliance with U.S. tax laws by taxpayers who use secret offshore bank accounts. I fully support the Tax Division's Offshore Compliance Initiative. It is important to encourage taxpayers to remedy past non-compliance through voluntary disclosure, and to pursue criminal prosecution and civil penalties against those in non-compliance. The public efforts by the Tax Division to obtain the disclosure of U.S. account-holders by foreign banks, through negotiations and enforcement, have resulted in record numbers of voluntary disclosures and a significant number of convictions. These efforts should be continued. In addition, the Internal Revenue Service has recently begun several initiatives to improve its examinations of international corporate tax matters and global high wealth taxpayers. If confirmed, I will work to further a strong relationship with the IRS, and thereby enable the Tax Division to continue to engage in effective civil and criminal tax enforcement in offshore and international matters.

2. How will the Department structure its negotiations with countries that are havens for tax evasion in order to gain important information to initiate criminal prosecutions?

Answer: I understand and respect that the role of the Tax Division is to enforce tax laws, and that negotiations with other countries are the purview of the Treasury and State Departments. If I am confirmed as the Assistant Attorney General for the Tax Division, I will support initiatives that will aid civil and criminal enforcement against offshore tax evasion. If called upon, I will support efforts to improve the disclosure of information to combat offshore tax evasion.

3. The Tax Division employs over 350 attorneys in 14 civil, criminal and appellate sections. What management experience in your background has prepared you to lead the Tax Division? Please provide specific examples.

Answer: I currently serve as the Vice Chair for Committee Operations for the American Bar Association Section of Taxation. In this position, I am responsible for overseeing the operations of over thirty committees that address issues concerning all areas of substantive tax and tax procedure, as well as the Section's committees on diversity, low income taxpayers, and pro bono services. In addition to the management experience that I have gained in this position, I have participated in meetings with and submissions of

comments to the Internal Revenue Service and the Treasury Department, as well as the Tax Division.

I previously served as chair of the ABA Section of Taxation's Committee on Standards of Tax Practice, which addresses ethical standards in tax practice, and as chair of the Section's Committee on Civil and Criminal Tax Penalties, which addresses issues relating to all aspects of criminal and civil tax controversy. During my tenure in as chair of each of these committees, membership participation increased by significant numbers.

I have also managed cases with large teams of lawyers. For example, I was the leader of a team of attorneys that represented over one hundred high-networth individuals in examinations before the Internal Revenue Service relating to listed transactions (tax shelters). The IRS examinations of these clients were conducted throughout the country over a period of several years. As part of this representation, I coordinated and led presentations to IRS personnel in connection with the drafting of a global settlement initiative, and led the legal team in representations before IRS Examinations and Appeals and in providing guidance to clients concerning settlement proposals. I would like to note that, although I have represented taxpayers before the IRS and in litigation concerning listed transactions or tax shelters, I have never structured, promoted, or advised a client to participate in these types of transactions, and I have instead advised strongly against participation in such transactions.

4. The Tax Division has an office under its civil section focused on the Court of Federal Claims, which "defends all tax suits filed in the United States Court of Federal Claims."

- a. Have you ever practiced before the Court of Federal Claims?

Answer: I have not practiced before the Court of Federal Claims. I have represented taxpayers before the U.S. Tax Court and in U.S. district courts in matters involving tax issues that also fall within the jurisdiction of the Court of Federal Claims.

- b. If so, how many times have you appeared before the Court of Federal Claims?

Answer: I have not practiced before the Court of Federal Claims.

- c. How many briefs or other documents have you filed with the Court of Federal Claims?

Answer: I have not practiced before the Court of Federal Claims.

**Senator Chuck Grassley
Kathryn Keneally
Nominee, Assistant Attorney General (Tax), U.S. Department of Justice
Questions for the Record**

1. In 2006, I authored changes to the longstanding whistleblower provisions at the IRS. The changes were made to incentivize whistleblowing on big-dollar tax fraud. A recent GAO report indicates that my efforts were successful. The IRS has received tips on more than 9,500 taxpayers from 1,400 whistleblowers in just five years. However, I remain concerned that the IRS, like the Justice Department with the False Claims Act revisions I authored in 1986, continues to treat whistleblowers like skunks at a picnic. For example, the IRS's offshore compliance programs likely would not have achieved the success it has without the information it received from a foreign bank employee. Yet, as I stated in a letter to the IRS Commissioner in June, 2010, I have serious doubts that the IRS effectively utilized the information provided to it by the UBS whistleblower. Information from whistleblowers should result in easy money for the IRS – which is really easy money for the federal government. In the UBS case, the Department of Justice sat on the information provided by the whistleblower for a very long time before acting on it. The IRS has a policy that whistleblower cases will not be prioritized over other audits.

a. Do you agree with this policy?

Answer: The legislative changes enacted as part of the Tax Relief and Health Care Act of 2006 made important changes to the IRS whistleblower policy, most significantly by requiring the creation of an IRS Whistleblower Office and mandating payment to whistleblowers under the conditions set out in Section 7623(b) of the Internal Revenue Code. I believe that these provisions greatly strengthened the policy concerning whistleblowers, and created a valuable tool for tax enforcement. While I am not familiar with an IRS policy not to give whistleblower cases priority treatment, I believe that information provided to the IRS Whistleblower Office is very valuable to tax enforcement.

b. What steps will you take to ensure the success of the IRS whistleblower program?

Answer: While I understand that the IRS whistleblower program functions as part of the IRS and not as part of the Department of Justice Tax Division, I believe that the whistleblower program is an important part of tax enforcement. If I am given the opportunity to serve as the Assistant Attorney General of the Tax Division, I will work diligently to further a strong working relationship between the Department of Justice Tax Division and the IRS, including the IRS Whistleblower Office.

c. Attorney General Holder is aware of my concerns about whistleblower claims languishing at the Justice Department. Will you work with him to prioritize tax whistleblower cases?

Answer: If I am so fortunate as to be confirmed, I will communicate within the Department of Justice my respect for the IRS Whistleblower Office, and for the important role of whistleblower cases in tax enforcement.

2. On several occasions you have expressed opposition to the federal sentencing guidelines. In an article you wrote in the August 2004 edition of *White Collar Crime*, you used the sentence given to an executive of Dynergy Inc., who was indicted for accounting fraud, to argue that the sentencing guidelines have failed in their objective to create uniformity and proportionality in sentencing. You further argued that the "the current guideline system is not honest." Do you continue to have concerns about the sentencing guidelines? Please explain.

Answer: I do not continue to have the concerns about the U.S. Sentencing Guidelines that I expressed in the August 2004 edition of *White Collar Crime*. I believe that judicial decisions since that time have remedied these concerns. I am in agreement with the original objective of the Guidelines to create uniformity and proportionality in sentencing. I began my practice before the enactment of the Guidelines, and had personal experience with the extreme variation in sentencing that occurred between similarly situated defendants prior to the Guidelines. I believe that the Guidelines as currently interpreted and applied strike a good balance between the pre-Guidelines failure of sentences to be uniform and proportionate, and the post-Guidelines anomalies discussed in my August 2004 article. I served for many years as a member of the Practitioners' Advisory Group to the U.S. Sentencing Commission. I have not been in general opposition to the Guidelines, but have instead worked for the improvement of the Guidelines.

3. As the Assistant Attorney General for the Tax Division will your views on the Guidelines inhibit you in any way from prosecuting suspected tax evaders to the full extent of the law?

Answer: If I am confirmed, I will use and encourage the use of the tools available for effective tax enforcement, including the Guidelines. I hold no views, either with regard to the Guidelines or any other aspect of tax enforcement, that would inhibit me in any way from prosecuting suspected tax evaders to the full extent of the law.

4. You have been highly critical of DOJ Directive No. 128, which provides guidance for charging individuals with mail and wire fraud conspiracy in lieu of, or in addition to, criminal tax charges. As the Assistant Attorney General for the Tax Division will you seek to modify this directive? If so, how?

Answer: I am in agreement with the general principles stated in Directive 128, and with the examples provided in Directive 128 concerning the types of circumstances that might warrant the authorization of charges in lieu of or in addition to tax charges. It is my view that, in the seven years since the issuance of Directive 128, the standards set out in Directive 128 have been applied with careful regard to the principles and goals of tax enforcement. I do not believe that the concerns that I expressed in the early period following the issuance of Directive 128 have been borne out by its implementation. In general, I do not believe in fixing something that does not appear to be broken. While there may be some extraneous language in

Directive 128 that could be stated more clearly, if I am confirmed as Assistant Attorney General for the Tax Division, I would not seek to change the core principles of Directive 128.

5. All federal agencies are facing budget cuts. As a result, these agencies, including the IRS and the Department of Justice, need to do a better job of allocating their resources to ensure the best bang for the buck. What are your recommendations for targeting these limited resources?

Answer: It is of central importance that the Tax Division focus enforcement activity in a manner that fosters voluntary compliance with tax laws by all taxpayers. The Tax Division's Offshore Compliance Initiative is an excellent example of a program that has relied on civil and criminal tax enforcement to encourage large numbers of taxpayers to make voluntary disclosures of past wrongdoing. This initiative should be continued, and looked to as a model. It is also always important to pursue tax professionals who engage in tax evasion or abusive tax avoidance, for example through the promotion of fraudulent schemes, the preparation of false tax returns, or personal non-compliance. Civil and criminal enforcement against such tax professionals can have a broad impact in general and specific deterrence.

The Tax Division must look to the IRS for case development and referrals. If I am confirmed, I will make every effort to foster a strong relationship between the Tax Division and the IRS, and to encourage the development of those cases that will have the greatest impact. In this regard, as previously stated, I will remain aware of the potential benefits of cases that can be developed through the IRS whistleblower program.

6. If confirmed, what will be your biggest challenges? How will you address those challenges?

Answer: I believe that the previous question identified what will likely be the biggest challenge for the Tax Division: the effective allocation of increasingly limited resources for the greatest impact on tax compliance. If I am given the opportunity to serve as Assistant Attorney General for the Tax Division, I will work to prioritize those enforcement efforts, such as the Offshore Compliance Initiative, that will further this goal. If confirmed, I will also work to strengthen the good relationship between the Tax Division and the IRS, and to take the greatest advantage of IRS activities, such as its whistleblower program, to further tax enforcement.

7. What goals will you set for the first year on the job?

Answer: If I am so fortunate as to be confirmed, my first goal will be to listen and to learn about the current enforcement efforts of the Tax Division. The Tax Division has currently identified the Offshore Compliance Initiative as its top litigation priority, and I agree with that position. I also believe that enforcement against tax professionals who promote fraudulent schemes, prepare false tax returns, or personally commit tax crimes, should be an enforcement priority, through criminal prosecution and civil enforcement, including injunction actions. I also recognize and, if confirmed, will be committed to enforcement against those who seek to undermine our tax system by wrongly denying the legitimacy of our tax laws.

8. Do you think that IRS Criminal Investigations should be permitted to work directly with US Attorneys instead of having DOJ Tax approval in most cases?

Answer: I strongly support the policy by which the Tax Division reviews and authorizes criminal tax charges. The tax system touches all U.S. citizens, residents, and those who earn income in this country. Ensuring that the tax laws are enforced fairly and consistently is central to the mission of the Tax Division. I have practiced in the Southern District of New York, where it is my understanding and has been my experience that there are many instances in which IRS Criminal Investigation works directly with the U.S. Attorney's Office in grand jury investigations of criminal tax cases. In jurisdictions, such as the Southern District of New York, that develop local prosecutorial tax expertise, this cooperative effort can be a valuable and efficient use of resources. I believe it remains important that the Tax Division retain the final authority to approve tax charges even in such circumstances.

9. How much time do you think is appropriate for IRS CI agents to spend on assisting Justice Department prosecutions that are not tax-related? What benefit does the Justice Department derive from using such assistance when such resources may be better used for tax enforcement? Aren't we robbing Peter to pay Paul by using resources for non-tax issues?

Answer: The United States faces great challenges as a result of the tax gap, and IRS agents are on the front line of addressing this challenge. The first priority for IRS agents should be the fair and consistent enforcement of tax laws, to address the tax gap challenge and to ensure that those taxpayers who are in tax compliance can have confidence that there will be enforcement against those who are not in compliance. I believe, based on my experience, that IRS Criminal Investigation special agents are by training and experience among the very best in the world at investigating financial transactions and developing evidence of financial crime. There may be exceptional circumstances, such as anti-terrorism enforcement, when it may be appropriate that the skills of IRS agents be used to meet other national needs.

10. Do you believe that dual purpose summonses are appropriate?

Answer: Yes. The Supreme Court determined in *Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310 (1985), that dual purpose summonses do not need to meet the requirements for John Doe summonses set out in Internal Revenue Code section 7609(f).

11. Due to the controversy surrounding the use of the term "tax protester", a recent Assistant AG for Tax coined the term "tax denier." Do you agree with this terminology and do you expect to use it?

Answer: I agree wholeheartedly that enforcement against individuals who willfully refuse to accept the legitimacy of U.S. tax laws must be a priority. I also believe strongly that it is essential to use criminal and civil enforcement, including injunction actions, to stop those who promote schemes to encourage non-compliance with U.S. tax laws. I recognize the issues concerning the term "tax protester." In my view, the individuals who fall into the category defined as "tax deniers" or "tax defiers" are simply tax cheats. The terms "tax deniers" or "tax defiers" are fine terms. The important issue is that there be enforcement against such individuals, who are engaged in wrongful conduct, not free speech. I would like to note that while I have represented many individuals and companies in civil and criminal tax litigation,

because “tax deniers” or “tax defiers” insist on making arguments that have no basis in law, I have never represented anyone who falls in this category.

12. What changes would you suggest to the civil injunction program to combat abuse by preparers?

Answer: Enforcement against tax professionals who promote fraudulent schemes, prepare false tax returns, or personally commit tax crimes, should be an enforcement priority, through criminal prosecution and civil enforcement, including injunction actions. The past decade has seen a significant increase in the Tax Division’s use of civil injunctions against tax fraud promoters and fraudulent return preparers. I understand that the Tax Division participates in IRS training classes and conferences to help IRS agents and attorneys learn how to conduct an investigation that leads to a successful injunction referral. Fostering this strong working relationship between the Tax Division and the IRS will benefit the civil injunction program and other areas of tax enforcement.

13. Do you believe the current number of such injunctions has a sufficient deterrent effect?

Answer: Civil injunctions have a strong deterrent effect, by shutting down the activities of tax fraud promoters and fraudulent return preparers, and also by sending a message that deters others from ever engaging in such activity. It is my understanding that the Tax Division is strongly committed to this enforcement tool, and I support that commitment. Because I am not at the Tax Division, I cannot say whether the current number of injunctions is sufficient, or whether more resources can and should be directed at this effort.

14. What role should the DOJ Tax Division have in distinguishing aggressive tax planning from obstruction of justice, i.e., KPMG and UBS?

Answer: The fair and consistent enforcement of the tax laws is a central part of the stated mission of the Tax Division. To meet this mission, the Tax Division must determine whether tax violations should be pursued through criminal or civil enforcement, or a combination of both. When aggressive tax planning results in the underpayment of tax, there should be civil enforcement to recover tax, interest, and appropriate penalties. When aggressive tax planning crosses the line into fraudulent activity, criminal prosecution may be appropriate, depending on the evidence and available prosecutorial resources. In either circumstance, the use of civil injunctions can be an effective general and specific deterrent. Obstruction of justice is a crime, and should be prosecuted as such.

15. How would you coordinate the activities of the Southern District of New York and other U.S. Attorneys’ offices that are outside the direct supervision of the AAG for Tax? Do you think the tax function of the Southern District of New York should be placed under the supervision of the AAG for Tax?

Answer: If I am given the opportunity to serve as the Assistant Attorney General for the Tax Division, I would commit myself to fostering strong working relationships with local U.S. Attorney Offices. I have practiced in the Southern District of New York, and it has been my experience and observation that the U.S. Attorney’s Office has a respectful and cooperative

relationship with the Tax Division in civil and criminal tax matters. In jurisdictions, such as the Southern District of New York, that develop local prosecutorial tax expertise, this cooperative effort can be a valuable and efficient use of resources. In these jurisdictions, the Tax Division currently retains the final authority to approve criminal tax charges, and I believe that it is important that the Tax Division continue to exercise this authority.

16. What is your view of the *Cheek* defense? Do you believe that willful ignorance should ever be a defense to a criminal charge?

Answer: The principal criminal tax statutes include a requirement that it be shown that the defendant acted willfully, which the Supreme Court reiterated in *Cheek v. United States*, 498 U.S. 198 (1990), “requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty.” I believe that it is important that criminal sanctions be imposed for criminal conduct. However, given the complexity of the tax laws, criminal sanctions should not be imposed as a result of a good faith mistake or ignorance with regard to the tax laws. For this reason, I agree with the inclusion of the willfulness element in the criminal tax laws, and the definition of willfulness in *Cheek*. Subsequent to *Cheek*, several Circuit Courts have held that *Cheek* does not preclude that the jury be instructed that a defendant cannot make himself “willfully blind” (or in other words, “willfully ignorant”) to the requirements of the tax laws. Further, the Supreme Court in *Cheek* also held that willfulness did not permit a defendant who objectively understood the tax law to assert his disagreement with the tax law as a defense.

17. Please describe with particularity the process by which these questions were answered.

Answer: I reviewed each question. When appropriate, I reviewed publicly available materials relating to the questions. As examples, I reviewed the legislation and the IRS statements concerning its whistleblower program, information available on the Tax Division's website, and case law discussed in these answers. I prepared a complete first draft of answers to these questions. I received and considered comments from representatives of the Department of Justice. I prepared my final answers and forwarded them to the Department. I understand that the Department will submit my answers to the Committee.

18. Do these answers reflect your true and personal views?

Answer: Yes.

Questions for the Record from Senator Carl Levin
to
Kathryn Keneally, Esq., Nominee for
Assistant Attorney General for Tax Division, Department of Justice

1. For the past several years, the Department of Justice (DOJ) Tax Division has been engaged in a sustained effort to curtail offshore tax evasion, using civil and criminal proceedings to identify U.S. taxpayers with unreported accounts at foreign financial institutions. Among other measures, the Tax Division has prosecuted taxpayers with unreported accounts and unpaid taxes as well as bankers, attorneys, and other professionals who facilitated U.S. tax evasion.

a. If confirmed as Assistant Attorney General for the Tax Division, what priority would you place on that ongoing legal effort?

Answer: The Tax Division has currently identified the Offshore Compliance Initiative as its top litigation priority, and I agree with that position. I fully support the Tax Division's Offshore Compliance Initiative. It is important to encourage taxpayers to remedy past non-compliance through voluntary disclosure, and to pursue criminal prosecution and civil penalties against those in non-compliance. The public efforts by the Tax Division to obtain the disclosure of U.S. account-holders by foreign banks, through negotiations and enforcement, have resulted in record numbers of voluntary disclosures and a significant number of convictions. The Tax Division has also correctly and effectively focused enforcement efforts on the bankers, attorneys and other professionals who facilitated U.S. tax evasion. If confirmed, I will advocate that these efforts should be continued and must remain a priority.

b. What is your view of efforts by some foreign jurisdictions to provide a cash settlement in place of providing the names of U.S. taxpayers with unreported accounts in their jurisdictions?

Answer: The only information that I have concerning efforts by any foreign jurisdictions to provide a cash settlement in place of providing the names of U.S. taxpayers with unreported accounts comes from press reports. It is my view that cash settlements cannot serve the same law enforcement goals as obtaining the names of U.S. taxpayers with unreported accounts. It is essential that the Tax Division focus on enforcement that fosters voluntary compliance by taxpayers. When it became known that foreign banks would provide names of U.S. taxpayers with unreported accounts, a record number of taxpayers came forward to make voluntary disclosures. It was the fact that names might be disclosed that enabled the IRS to bring many thousands of taxpayers, and hundreds of millions of dollars, back into the tax system. It is also through the provision of names of U.S. taxpayers with unreported foreign bank accounts that the Tax Division has been able to prosecute criminal tax evasion.

2. In October 2000, a federal court approved a request by the Internal Revenue Service (IRS) to issue a John Doe summons to credit card companies to obtain the names of the holders of credit

cards issued by banks in three offshore tax havens, Antigua and Barbuda, the Bahamas, and the Cayman Islands. In 2001, you authored an article entitled, "Targeting Offshore Activities; The IRS's Next Step." In that article, you wrote that the IRS summons was unprecedented in scope and purpose and that the court's approval of the summons was "perfunctory," criticizing the court's determination that the IRS had met the three legal criteria for approval: that the IRS had identified an ascertainable class; the IRS had established that a reasonable basis existed to believe that the persons within that class may have violated tax laws; and the information sought by the subpoena was not readily available from other sources. You also noted the "extreme deference of the court in yielding to the IRS assertions," and called the summons a "fishing expedition," because it sought the records of all credit card holders at banks in the three offshore jurisdictions.

a. Do you still believe that the court's approval of the summons was perfunctory?

Answer: I believe that subsequent events proved the correctness of the John Doe summons in the investigation of the use of credit cards affiliated with offshore bank accounts to evade U.S. taxes. The October 2000 summons led to effective and significant tax enforcement. I also believe that the more recent use of John Doe summonses in connection with the enforcement efforts by the IRS and the Tax Division against the use of offshore bank accounts has been appropriate and highly effective.

b. You characterized the court as giving "extreme deference" to the IRS's assertions presented in its petition to the court. Do you believe that such deference was incorrect?

Answer: I believe that subsequent events proved the correctness of the John Doe summons in the investigation of the use of credit cards affiliated with offshore bank accounts to evade U.S. taxes. The October 2000 summons led to effective and significant tax enforcement. I also believe that the more recent use of John Doe summonses in connection with the enforcement efforts by the IRS and the Tax Division against the use of offshore bank accounts has been appropriate and highly effective.

c. You noted in the article that the IRS is required to petition and obtain approval for the issuance of a John Doe summons. Internal Revenue Code (IRC) Section 7609(h)(2) directs the IRS to proceed ex parte in the proceeding, and the statute expressly provides that the court shall make its determination "solely on the [IRS] petition and supporting affidavits." Do you disagree with the process established in IRC 7609(h)(2)? If so, what changes would you recommend in the statute?

Answer: I have no disagreement with the process established in IRC 7609(h)(2).

d. Do you still believe the summons issued by the IRS was a "fishing expedition"?

Answer: I believe that subsequent events proved the correctness of the John Doe summons in the investigation of the use of credit cards affiliated with offshore bank accounts to evade U.S. taxes. The October 2000 summons led to effective and significant tax enforcement. I also believe that the more recent use of John Doe summonses in connection with the enforcement efforts by the IRS and the Tax Division against the use of offshore bank accounts has been appropriate and highly effective.

e. If you were confirmed as Assistant Attorney General for the Tax Division, would you advocate against the issuance or use of similar types of summonses by the IRS?

Answer: No. If I am given the opportunity to serve as Assistant Attorney General for the Tax Division, I will use and encourage the use of the tools available for effective tax enforcement. The John Doe summons issued in October 2000 in connection with U.S. taxpayers who used credit cards affiliated with offshore bank accounts to evade U.S. taxes, and the more recent use of John Doe summonses in connection with the enforcement efforts by the IRS and the Tax Division against the use of offshore bank accounts, have demonstrated that such summonses can be highly effective in tax enforcement.

f. If confirmed as Assistant Attorney General for the Tax Division, would you advocate against DOJ supporting in court the IRS issuance of similar subpoenas?

Answer: No. If I am given the opportunity to serve as Assistant Attorney General for the Tax Division, I will use and encourage the use of the tools available for effective tax enforcement. The John Doe summons issued in October 2000 in connection with U.S. taxpayers who used credit cards affiliated with offshore bank accounts to evade U.S. taxes, and the more recent use of John Doe summonses in connection with the enforcement efforts by the IRS and the Tax Division against the use of offshore bank accounts, have demonstrated that such summonses can be highly effective in tax enforcement.

g. Do you believe that the John Doe summonses issued by the IRS against UBS Bank and HSBC Bank (subsequently withdrawn) were appropriate in scope? Were the reviews by the courts perfunctory? Did the courts give too much deference to IRS assertions contained in the petitions to the courts in support of those summonses?

Answer: I believe that John Doe summonses have been one of the most effective tools in the enforcement efforts by the IRS and the Tax Division against tax evasion through offshore bank accounts, and that John Doe summonses are a vital tool in tax enforcement. I have only a general familiarity with public reports concerning the proceedings surrounding the John Doe summonses against UBS Bank and HSBC Bank, and therefore cannot comment specifically concerning those proceedings. In conjunction with these John Doe summonses and other enforcement activities, the IRS announced two voluntary

disclosure initiatives, in 2009 and 2011, to provide U.S. taxpayers with offshore bank accounts an opportunity to avoid criminal liability and minimize penalties through voluntary disclosure. Based on my experience as a private practitioner representing taxpayers in the voluntary disclosure programs, I know that the publicity surrounding the John Doe summons proceedings, and the disclosure of account-holder names by foreign banks, was highly effective in motivating taxpayers to come into compliance.

h. As Assistant Attorney General for the Tax Division, would you advocate that any additional criteria or procedures be added to internal reviews by the IRS or DOJ before determining to seek judicial approval to serve, or seek enforcement of, a John Doe summons in a tax matter?

Answer: I have no reason to believe that additional criteria or procedures are necessary.

i. In the same article you were critical of IRS efforts to use Currency Transaction Reports (CTRs) and Cash Monetary Instrument Reports (CMIRs) to obtain information that could identify U.S. taxpayers who are failing to report offshore accounts, as required by law. The article suggested that the CTRs and the CMIRs were being misused by the IRS: "Now the IRS clearly hopes to use evidence developed through the debit and credit card records to tie taxpayers to currency transfers and foreign bank accounts. Instead of using the various reporting requirements to detect crime, the failure to have reported the transactions and the existence of offshore accounts will become the basis for criminal charges." Do you view the failure to report the existence of a foreign bank account on a federal tax form as a potential crime? Do you view the use of CTRs and CMIRs by the IRS to obtain information about unreported offshore accounts as inappropriate?

Answer: The willful failure to report the existence of a foreign bank account on a federal tax form is a crime. The willful failure to file CTRs and CMIRs, and willful conduct to cause CTRs and CMIRs not to be filed, are crimes. The use of CTRs and CMIRs has proven valuable to the IRS in tax enforcement, including in obtaining information about unreported offshore accounts.

It was not my intention that the referenced article suggest that CTRs and CMIRs were being misused by the IRS. The article was intended to alert the practitioner community of a change in the focus of the use of these forms in tax enforcement. To put the article in context, in 1999, the Webster Report had made significant findings that the IRS Criminal Investigation Division had moved from its core mission of tax enforcement, and that instead its resources had been diverted to drug enforcement. In 2000, IRS Criminal Investigation was reorganized and re-dedicated to tax enforcement as its primary mission. I am in general agreement with the conclusions of the Webster Report and the steps that were taken in response. The discussion in the article concerning CTRs and CMIRs was intended to report that these forms, which had previously been used to trace funds in

illegal activity such as drug enforcement, would now be the focus of criminal charges in tax cases.

j. As Assistant Attorney General for the Tax Division, would you advocate that the IRS not use information obtained through CMIRs and CTRs as a basis for bringing charges against taxpayers who fail to report offshore accounts?

Answer: No. If I am given the opportunity to serve as Assistant Attorney General for the Tax Division, I will use and encourage the use of the tools available for effective tax enforcement. CTRs and CMIRs have proven to be valuable law enforcement tools.

k. As Assistant Attorney General for the Tax Division, would you advocate against DOJ supporting in court charges brought by the IRS against taxpayers based upon information obtained through CTRs or CMIRs?

Answer: No. If I am given the opportunity to serve as Assistant Attorney General for the Tax Division, I will use and encourage the use of the tools available for effective tax enforcement. CTRs and CMIRs have proven to be valuable law enforcement tools.

3. In the late 1990s and early 2000s, the IRS initiated a concerted effort to stop the marketing and use of abusive tax shelters. The IRS targeted a particularly abusive class of shelters, called "Son of Boss," which were mass marketed, had no economic substance, and in some instances were supported by boiler plate tax opinions that contained blank spaces to fill in the names and details of the taxpayer. The IRS aggressively pursued taxpayers that used the shelters, as well as the lawyers and tax professionals who designed them and issued supportive opinions. In 2004, the IRS implemented a settlement initiative that enabled taxpayers who used the shelters to pay back taxes, interest and, if assessed, penalties and avoid litigation and possibly higher penalties. Those taxpayers who declined to participate in the initiative were denied access to the IRS appeals process and would have to contest tax and penalty assessments through litigation in the courts. In 2008, you co-authored an article that was critical of the IRS settlement initiative. The article characterized it as "a settlement initiative that deprived taxpayers of the right to go to IRS Appeals," stating that the IRS had taken "a broad brush approach to tax shelter enforcement" over the previous years. The article also accused the IRS of putting "a gloss ... on a range of transactions without consideration to the specific merits of any taxpayer's activities." It was also critical of DOJ's indictments of tax professionals who marketed the transactions. Yet, a number of those tax professionals -- including some attorneys -- subsequently pleaded guilty to, or were convicted of, criminal offenses. In addition, the IRS position on those shelters has been upheld in all cases tried through the Appellate level in the federal courts.

a. Do you still believe, in light of the facts associated with the "Son of Boss" shelters, and the IRS' record of success in court, that the IRS settlement initiative put "a gloss ... on a range of transactions without consideration to the specific merits of any taxpayer's activities"?

Answer: I believe that the IRS settlement initiative, followed by the criminal prosecutions and civil litigation efforts of the Department of Justice and the IRS, proved highly effective in addressing the challenges to the tax system created by the “Son of BOSS” shelters. The IRS faced a serious enforcement challenge in connection with the recent era of tax shelters, as documented by two significant and detailed reports of the Permanent Subcommittee on Investigations of the U.S. Senate Committee on Homeland Security and Government Affairs. Prominent accounting firms and law firms had put thousands of clients into structured transactions that were ultimately shown to serve no purpose other than tax avoidance or evasion. The IRS settlement initiatives were in general an effective means to resolve a large number of these cases. The IRS and the Tax Division have also engaged in significant and effective litigation against taxpayers who participated in abusive tax shelters, as well as civil injunction and penalty enforcement against tax shelter promoters, including attorneys and other tax professionals. It was also important that criminal charges be brought against the tax professionals, including lawyers and accountants, who engaged in fraudulent activity in developing, promoting, and implementing abusive tax shelters. These combined enforcement efforts addressed a serious challenge to the tax system, resulted in the recovery of billions of dollars in taxes, penalties and interest, and served general and specific deterrence goals.

While the language in the referenced article could have made the point more clearly, my main concern with the IRS settlement initiative was the IRS decision to eliminate review by IRS Appeals in “Son of BOSS” cases. IRS Appeals serves a vital, independent review function. In a number of settlement initiatives subsequent to the “Son of BOSS” settlement initiative, taxpayers were permitted to make presentations at IRS Appeals, in particular on penalty issues. It was my experience as a practitioner that this opportunity allowed taxpayers to feel that their positions had been given a fair hearing, and engendered confidence in the integrity of the tax system. Allowing taxpayers to proceed to IRS Appeals to address unique or unusual circumstances may also have had the beneficial effect of reducing the number of taxpayers who rejected settlement initiatives outright and elected engage in litigation, which imposed additional burdens on the IRS, the Tax Division, and the courts. If confirmed, I would respect the discretion of the IRS to determine its settlement initiatives, and would keep an open mind and give careful consideration to the use of settlement initiatives at all stages in cases handled by the Tax Division. I believe that my experience as a practitioner who has represented taxpayers before the IRS and the Tax Division may provide a helpful perspective on this and other issues.

I would like to note that, although I have represented taxpayers before the IRS and in litigation concerning listed transactions or tax shelters, I have never structured, promoted, or advised a client to participate in these types of transactions, and I have instead advised strongly against participation in such transactions.

b. As Assistant Attorney General for the Tax Division, would you advocate that the IRS await a judicial ruling regarding the validity of a tax shelter -- no matter how abusive that shelter may be -- before offering a settlement initiative like the "Son of Boss" settlement?

Answer: No. Settlement initiatives are a useful mechanism to resolve tax disputes, and can be used effectively at any stage in a proceeding, or at successive stages in a proceeding. If confirmed, I would respect the discretion of the IRS to determine the best use of this tool in its cases, and would keep an open mind and give careful consideration to the use of settlement initiatives at all stages in cases handled by the Tax Division.

c. As Assistant Attorney General for the Tax Division, would you advocate that DOJ not indict or take other legal action against tax professionals or attorneys who designed and marketed a tax shelter -- no matter how abusive that shelter may be -- before a judicial ruling on the validity of the shelter itself?

Answer: No. When there is evidence of criminal conduct, there is no reason to wait for the outcome of civil litigation concerning a tax shelter. Additionally, civil injunctions can be an important tool to stop such activities and to protect taxpayers and the public. In such cases, criminal and civil enforcement against tax professionals and attorneys serves important goals of general and specific deterrence. If confirmed, I will be guided by these principles.

d. As Assistant Attorney General for the Tax Division, would you advocate against the IRS establishing similar settlement conditions in the future? Would you oppose any settlement initiative that required a taxpayer to waive the right to an IRS appeal?

Answer: No. Settlement initiatives are a useful mechanism to resolve tax disputes, and can be used effectively at any stage in a proceeding, or at successive stages in a proceeding. The tax shelter industry posed a grave threat to the tax system, and the settlement initiatives served an important function in resolving a large number of cases in a challenging area of tax enforcement. If confirmed, I would respect the discretion of the IRS to determine the best use of this tool in its cases, and would keep an open mind and give careful consideration to the use of settlement initiatives at all stages in cases handled by the Tax Division.

IRS Appeals serves a vital, independent review function, and plays a valuable role in facilitating settlements. I believe that my experience as a practitioner who has represented taxpayers before the IRS and the Tax Division may provide a helpful perspective on this and other issues. If confirmed, I would keep an open mind and listen to and consider all views.

e. Would you advocate against DOJ supporting in court similar IRS settlement initiatives in the future?

Answer: No. The tax shelter industry posed a grave threat to the tax system, and the settlement initiatives served an important function in resolving a large number of cases in a challenging area of tax enforcement. If confirmed, I would respect the discretion of the IRS to determine the best use of this tool in its cases, and would keep an open mind and give careful consideration to the use of settlement initiatives at all stages in cases handled by the Tax Division.

4. In 2009, you co-authored an article that was highly critical of the First Circuit's decision in Textron Inc. and the IRS' approach to gaining access to corporate tax accrual work papers.

a. Do you still view corporate tax accrual work papers as attorney work product that should not be requested by the IRS?

Answer: I have never viewed corporate tax accrual work papers as attorney work product per se. In some circumstances, corporate tax accrual work papers may contain material that constitutes attorney work product. I am in agreement with the general principles set out in the IRS "Policy of Restraint," which is part of the Internal Revenue Manual.

b. If confirmed as Assistant Attorney General for the Tax Division, would you advocate that the IRS not request access to corporate tax accrual work papers or advocate that DOJ decline to enforce such a request in court?

Answer: No. If I am given the opportunity to serve as Assistant Attorney General for the Tax Division, I will use and encourage the use of the tools available for effective tax enforcement, including access to corporate tax accrual workpapers in the appropriate case. I also recognize that the issue of whether to enforce a request in court concerning corporate tax accrual work papers must include consideration of legal precedent on this issue, including the *Textron* decision.

c. As Assistant Attorney General for the Tax Division, would you advocate that any additional criteria or procedures be added to internal reviews by the IRS or DOJ before making a request for corporate tax accrual work papers or defending requests for such papers in court? If so, what changes would you advocate?

Answer: If I am given the opportunity to serve as Assistant Attorney General for the Tax Division, my first priority will be to listen and to learn about the current policies, practices, and enforcement efforts of the Tax Division. I am in agreement with the general principles set out in the IRS "Policy of Restraint," which is part of the Internal Revenue Manual. I am also aware that the litigation needs of the Tax Division may differ from and be broader than the needs of the IRS in an examination. I have an open mind on this and all issues.

5. The articles cited above are highly critical of IRS efforts to combat tax abuse and suggest that the reviewed IRS initiatives were too aggressive. If confirmed as Assistant Attorney General for the Tax Division, would you attempt to rein in those initiatives or similar future initiatives and, if so, in what ways?

Answer: Through my experience as a tax practitioner representing clients in matters before the IRS and the Tax Division, and in my review of public information available about the IRS and the Tax Division's current initiatives, I am familiar with a number of current tax enforcement initiatives. I am not aware of any on-going initiatives by the IRS or the Tax Division that I would seek to "rein in." I have the highest regard for the IRS and the Tax Division, and have expressed this regard many times in my writings and in public presentations. While I have had disagreements with specific actions taken by the IRS from time to time, I welcome this opportunity to state in the strongest terms that the role of the IRS is vital to the functioning of the United States. It has been my experience that IRS agents, IRS leadership, and the attorneys and leaders of the Tax Division are dedicated professionals who act with the best of intention in the service of the tax system. The tax gap is a serious challenge to the United States. The failure of some taxpayers to meet their obligations serves as a great unfairness to the majority of taxpayers who are in compliance. It is a privilege to be considered for the position of Assistant Attorney General for the Tax Division. To be given this opportunity to work with the dedicated professionals in the IRS and the Tax Division in this capacity would be a high responsibility and a true honor.

Responses of Brian C. Wimes

**Nominee to be U.S. District Judge for the Eastern and Western Districts of Missouri
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: I do not agree with the perspective that the Constitution is a “living” document constantly evolving as society interprets it. The Constitution is a document that can only be changed by the amendment process set forth in the document itself.

- 2. Justice William Brennan once said: “Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.” Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

Response: No.

- 3. Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: No.

- 4. Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge’s consideration of a case?**

Response: No, I believe an unbiased and impartial view is essential for arriving at just decisions. Therefore, empathy would not be an essential ingredient or play a role in the judicial decision-making process.

- 5. Is any transaction involving the exchange of money subject to Congress’s Commerce Clause power?**

Response: The Supreme Court has held that Congress has broad but limited power under the Commerce Clause. If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would follow precedent established by the Supreme Court and the Eighth Circuit Court in determining the breadth of congressional power under the Commerce Clause.

- 6. The U.S. Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (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. Leaving aside the *McDonald v. Chicago* decision, do you personally believe the right to bear arms is a fundamental right?

Response: The Supreme Court held in *Heller* that the Second Amendment protects an individual's right to bear arms and *McDonald* held that right to be fundamental and therefore applicable to the States. I have not reviewed the relevant legal issue sufficiently enough to have formed a personal view or belief. If confirmed as a district judge for the Eastern and Western Districts of Missouri, my personal view or belief on this issue would not play a role in my analysis and decision-making process. I would be bound by and follow precedent established by the Supreme Court in the *Heller* and *McDonald* decisions and any other applicable precedent bearing on this issue by the Supreme Court or the Eighth Circuit Court.

- 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 have not reviewed the relevant legal issues sufficiently enough to have formed a personal view or belief on this question. My personal view or belief would not play a role in my analysis and decision-making process as a judge. If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would be bound by and follow any applicable precedent in this area established by the Supreme Court and the Eighth Circuit Court.

- 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, I do recognize that the Supreme Court has held that certain fundamental rights embodied in the Bill of Rights are in fact applicable to the States. If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would be bound by and follow any applicable precedent with regard to these fundamental rights and any other applicable precedent established by the Supreme Court and the Eighth Circuit Court.

- c. The *Heller* Court 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: I have not reviewed the relevant legal issues sufficiently enough to have formed a personal view or belief on this question. My personal view or belief would not play a role in my analysis and decision-making process as a judge. Further, consistent with the Supreme Court's holding in *Heller*, I would

follow the Supreme Court and the Eighth Circuit Court precedent and any other applicable precedent bearing on the issue.

7. **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: The decision of the Supreme Court in the *Heller* case was based in part upon the Court's reading of the plain text of the Second Amendment. I have not reviewed the relevant legal issues sufficiently enough to have formed a personal view or belief on this question. My personal view or belief would not play a role in my analysis and decision-making process as a judge. If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would be bound by and follow *Heller* and any other applicable precedent in this area established by the Supreme Court and the Eighth Circuit Court.

- a. **Similarly, 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: I have not reviewed the relevant legal issues sufficiently enough to have formed a personal view or belief on this question. My personal view or belief would not play a role in my analysis and decision-making process as a judge. If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would be bound by and follow the Supreme Court's holding in *Citizens United*.

8. **What limitations remain on the individual Second Amendment right now that it has been incorporated against the States?**

Response: The Supreme Court in *Heller* and *McDonald* held that the Second Amendment protects an individual's right to bear arms. The rulings in the two cases do not preclude all limitations on the right to bear arms. For example, in *Heller* the Court stated that there are limitations to this right as it relates to convicted felons, the mentally ill, carrying weapons in sensitive places, and imposing conditions and qualifications on the commercial sale of arms. However, the Supreme Court's ruling did not undertake a full analysis of the Second Amendment and the extent of these limitations. If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would be bound by and follow any applicable precedent in this area established by the Supreme Court and the Eighth Circuit Court.

- a. **Is the Second Amendment limited only to possession of a handgun for self-defense in the home, since both *Heller* and *McDonald* involved cases of handgun possession for self-defense in the home?**

Response: In *Heller* and *McDonald* the Supreme Court did not define the limits of an individual's right to bear arms nor address the issue in this question. If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would be bound by and follow the precedent established in *Heller* and *McDonald* and any other applicable precedent of the Supreme Court and the Eighth Circuit Court.

- 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 as a district judge for the Eastern and Western Districts of Missouri, my personal views or belief would not play a role in my analysis and decision-making process. I would be bound by and follow the precedent established by the Supreme Court in *Roper*.

- a. **Do you agree that the Constitution's prohibition on cruel and unusual punishment "embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual?"**

Response: If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would follow Supreme Court and Eighth Circuit Court precedent when determining what constitutes cruel and unusual punishment.

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

Response: If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would follow the analytic framework established by the relevant Supreme Court and Eighth Circuit Court precedent.

- 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: If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would follow Supreme Court and Eighth Circuit Court precedent. The Supreme Court has held that the death penalty is constitutional except in limited circumstances, and I would follow that precedent.

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

Response: Given that the Supreme Court has held that the death penalty is constitutional except in limited circumstances, that analysis would be inappropriate.

e. When determining what the "evolving standards of decency" are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states,¹ in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries.² Do you believe either standard has merit when interpreting the text of the Constitution?

Response: If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would be bound to follow precedent, including precedent established by Supreme Court decisions in *Roper* and *Graham*. To that end, my analysis of any Supreme Court and Eighth Circuit Court holding in this area would be consistent with precedent.

i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.

Response: Please see response to question 9e above.

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

Response: No, unless directed to do so by Supreme Court precedent.

a. Is it appropriate for judges to look for foreign countries for "wise solutions" and "good ideas" to legal and constitutional problems?

Response: No, I do not believe it is appropriate unless directed to do so by Supreme Court precedent.

b. 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 unless directed to do so by Supreme Court precedent.

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

¹*Roper v. Simmons*, 543 U.S. 551, 564-65.
²*Graham v. Florida*, 130 S.Ct. 2011, 2033-34.

Response: I believe it is inappropriate to adopt ideas and solutions to legal problems from foreign nations unless directed to do so by Supreme Court precedent.

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

Response: No, unless required to do so by Supreme Court precedent.

Responses of Brian C. Wimes
Nominee to be U.S. District Court Judge for the Eastern and Western Districts of Missouri
to the Written Questions of Senator Chuck Grassley

1. **As a Circuit Court Judge, you served on the Sixteenth Judicial District Strategic Planning Committee. In 2008, this Committee produced a strategic plan, including factors which the committee believed would affect the successful implementation of the plan. One factor identified was “Challenges to the Judiciary and Oversight by the Supreme Court.” You and the committee expressed concern regarding the “Supreme Court” noting it “will increasingly attempt to influence and become more heavily involved in local state court matters, decreasing the autonomy of Missouri courts.”**

- a. **Was the use of the term “Supreme Court” in reference to the Missouri Supreme Court or to the Supreme Court of the United States?**

Response: The Missouri Supreme Court.

- b. **Would you please explain how either the Missouri Supreme Court or the Supreme Court of the United States is “increasingly attempting to influence” courts in Missouri’s Sixteenth Judicial District?**

Response: I participated as a committee member of the Sixteenth Judicial Circuit Strategic Planning Committee. I was one of eighteen members who served on that committee. In preparation of the strategic plan, eleven focus groups were conducted with partners, stakeholders, and court staff. One hundred and ten people participated in those sessions. Additionally, input was solicited from all judges, selected court staff, a 2007 judge’s retreat, court en banc meetings, and a web based survey. The Strategic Planning Committee developed the strategic direction and priorities utilizing the information gathered from all of the groups mentioned previously. The strategic plan published was not a plan developed solely by the planning committee, but it was a comprehensive plan utilizing information from a wide range of court stakeholders.

To the best of my recollection in making the quoted statement, the committee was acknowledging that the Missouri Supreme Court would be increasingly exercising its constitutionally mandated authority and responsibility to supervise lower courts. The Missouri Supreme Court was establishing statewide rules in an attempt to bring uniformity to all of the judicial circuits across the State of Missouri. The committee recognized that the implementation of rules could have an impact on the Sixteenth Judicial Circuit Court’s ability to achieve its local goals set forth in the strategic plan.

The committee did not suggest that the Missouri Supreme Court's increased exercise of its supervisory authority was improper. Instead, the committee was acknowledging the Supreme Court's mandate to oversee the administrative functions of the lower courts. The committee recognized that local courts are limited and subject to the authority of the Missouri Supreme Court.

c. Do you think that the Supreme Court of the United States attempts to influence federal trial courts?

Response: Yes, I believe the Supreme Court influences federal trial courts through its rulings and binding precedent.

2. At your hearing, I asked you the following questions, but wanted you to have an opportunity to provide a more complete answer, having had the opportunity to review the Strategic Plan. In that plan, you and the committee also listed as a concern the "hostility toward, criticism, and the politicization of the judiciary by legislators."

a. How do legislators show hostility toward the judiciary?

Response: During that period of time there was an attempt by some in the legislature to eliminate the Non-Partisan Court Plan in the State of Missouri. The Non-Partisan Court Plan is one method by which judges are selected in the State of Missouri.

b. Is it your view that the United States Congress has politicized the federal judiciary? If so, how?

Response: No, that is not my view.

c. In your view, what is the proper relationship between the federal judiciary and Congress?

Response: The United States government is divided into three branches. Each branch has its own independent powers and areas of responsibility. It is Congress's responsibility to make the law and it is the federal judiciary's responsibility to follow the law.

d. If confirmed, what will you do to ensure that you maintain appropriate respect and deference to the legislature throughout your lifetime appointment?

Response: I have always adhered to our form of government and if confirmed, I would continue to give all branches of government the appropriate respect and

deference. In particular, in interpreting federal statutes, I would faithfully apply laws enacted by Congress.

3. **From press accounts (for example *Kansas City Star*, March 31, 2001, *see* http://blogs.kansascity.com/crime_scene/files/20010331_judge_considers_whether_murder_charges_can_be_refiled.txt), you appear to have been involved with the prosecution of Richard Buchli. Please provide the following information related to that case:**

- a. **What was your role in the investigation?**

Response: I was the lead prosecutor assigned to the case. The local police department conducted the investigation.

- b. **What was your role in the case preparation?**

Response: I was the lead prosecutor assigned to the case and was responsible for the case preparation from May of 2000 until March of 2001. I had a limited role after March of 2001 and no role in the case after I left the office in June of 2001.

- c. **What was your role in representing the Prosecuting Attorney's office before the court?**

Response: As the lead prosecutor on the case, I had several responsibilities, including appearing in court for any hearings related to the case. I also filed motions on behalf of the State, and I produced witnesses for depositions and also deposed witnesses.

- d. **Is it fair to say you were the lead prosecutor on this case during 2000 and 2001?**

Response: I was the lead prosecutor on the case when it was filed in May 2000 until March of 2001.

4. **A key issue that later surfaced in the *Buchli* case concerned the existence and content of certain evidence. The Missouri Court of Appeals later found the evidence to be *Brady* material, and as a result, the Court vacated the defendant's murder conviction in 2006 and remanded for a new trial. I recognize that additional discovery disputes compromised the second trial. I am interested in your involvement in 2000 and 2001. In particular, your involvement with respect to the video surveillance tape later found to be *Brady* material.**

- a. **During the time you served with the Jackson County Prosecuting Attorney's Office, what was the full extent of your knowledge about this evidence?**

Response: I became aware of a video surveillance tape in May of 2000. Following my usual practice, I requested a copy of the video surveillance tape from local law enforcement, and I provided a copy of what I received to the defense counsel. I believed the tape I received from the local law enforcement was the entire surveillance tape, and it was not until 2006, five years after leaving the Prosecutor's office, that I learned there was an issue regarding the tape.

b. If applicable, when did you learn about this information?

Response: Please see response to question 4a above.

c. If applicable, as an Assistant Prosecutor, did you ever make, or permit another to make, any material misrepresentation about the tape's existence or content? If so, please explain.

Response: I never made or permitted another to make any material misrepresentation or any misrepresentation of the tape's existence or content.

5. In March 2001, on behalf of the Jackson County Prosecuting Attorney's Office, you filed a motion requesting a continuance. The press reports indicate the court denied your motion because, according to the Court, it was "woefully inadequate" and "flimsy." What reasons did you offer the court in support of this request?

Response: In my request for a continuance filed, I listed several reasons in support of the request.

First, the defense never responded to the State's request for discovery filed May 30, 2000. The trial was scheduled to begin on April 16, 2001. On March 7, 2001, the defense represented to the State that they would only call five witnesses to testify at trial. On March 9, 2001, the defense filed "defendants witness list" that listed 188 witnesses who could potentially be called for trial. On March 16, 2001, the defense amended the "witness list" and listed twenty four witnesses who could potentially be called for trial, including an out of state expert witness who the State wanted to depose.

Second, as of the date I filed the motion, the defense indicated that they needed to depose ten more State witnesses.

Third, before the motion was filed, the State sent a blood sample to an expert witness in Chicago, Illinois in order to determine an unknown substance found in the sample. The blood test was not completed as of the date I filed the motion.

Fourth, on March 7, 2001, the victim's spouse informed me that she had additional items that might be of evidentiary value. Those items were collected by members of

the local police department on March 14, 2001, and they were being examined for evidentiary value as of the date I filed the motion.

6. What is the most important attribute of a judge, and do you possess it?

Response: I believe the most important attribute of a judge is integrity. A judge that possesses integrity is fair minded, unbiased, principled, and willing to make tough decisions. I believe I possess these qualities.

7. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: I believe a judge's temperament should be one that instills faith, trust, and confidence in the judicial system to those who appear in the courtroom. The judge should be even tempered, impartial, courteous, patient, and display humility. I believe I meet this standard.

8. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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.

9. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: First, I would look to the plain text of the relevant statute or provision at issue. I would then look to the legislative history enacting the statute. Next, I would look to analogous precedent of the Supreme Court and the Eighth Circuit Court. Finally, I would look to analogous precedent of other Circuit Courts as persuasive authority in deciding the case.

10. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own judgment of the merits, or your best judgment of the merits?

Response: If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would be bound to follow precedent established by the higher courts. I would follow the Supreme Court's or the Eighth Circuit Court's decision.

- 11. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?**

Response: It is appropriate for a federal court to declare a statute enacted by Congress unconstitutional when that statute violates the Constitution or if Congress exceeds its authority under the Constitution in enacting the statute. If confirmed as a district judge for the Eastern and Western Districts of Missouri, I would be guided by the Supreme Court's and the Eighth Circuit Court's precedent in determining whether a statute was constitutional.

- 12. As you know, the federal courts are facing enormous pressures as their caseload mounts. If confirmed, how do you intend to manage your caseload?**

Response: As a state court judge for the last four years, I have had to face the challenge of managing a heavy caseload of criminal, civil, and domestic cases. I employ a case management schedule that ensures the prompt and efficient resolution of cases. Near the beginning of any litigation, I hold a case management conference. At that conference, I issue a scheduling order which sets forth deadlines for certain matters to be completed at significant stages of the litigation process. The dates scheduled are with the parties' agreement, which ensures that deadlines are met. Further, at the conference I discuss with the attorneys the proper procedures to follow to have discovery issues addressed quickly and promptly by the court. If confirmed as a district court judge, I would take the steps described above to manage my caseload.

- 13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?**

Response: Yes, I do believe that judges play a role in controlling the pace and conduct of litigation. Please see response to question 12 above as to the specific steps I would take to control my docket if confirmed as a district court judge.

- 14. Please describe with particularity the process by which these questions were answered.**

Response: I reviewed the questions and prepared my responses after receiving these questions on November 23, 2011. I discussed my responses with a Department of Justice official. I finalized my responses and authorized their submission to the Judiciary Committee.

- 15. Do these answers reflect your true and personal views?**

Response: Yes.

Responses of Brian C. Wimes

**Nominee to be U.S. District Judge for the Eastern and Western Districts of Missouri
to the Written Questions of Senator Amy Klobuchar**

- 1. If you had to describe it, how would you characterize your judicial philosophy?
How do you see the role of the judge in our constitutional system?**

Response: A judge should be fair, impartial, open-minded, and even tempered with parties that appear before the court and apply the facts of the case to the applicable law. A judge's role is to resolve disputes between parties in a just, timely, efficient, and professional manner in accordance with the law and rules of procedure.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: I believe that a judge's demeanor should instill trust, confidence, and faith in our legal system. Having had the privilege of sitting on the bench for ten years, I believe I have always treated all parties appearing before me equally, respectfully, and in a fair and impartial manner. If confirmed, I will continue to perform my duties in a manner that instills trust, confidence, and faith in our legal system.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: I believe judges should commit themselves to the legal principle of stare decisis. I believe it promotes stability and predictability in our legal system. I believe this commitment should not vary depending on the court.

SUBMISSIONS FOR THE RECORD

September 28, 2011

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

The Honorable Charles E. Grassley, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Kathryn Keneally to be Assistant Attorney General for the Tax
Division of the Department of Justice

Dear Chairman Leahy and Ranking Member Grassley:

We have served as Assistant Attorney General for the Tax Division (or Acting Assistant Attorney General for the Tax Division), as Deputy Assistant Attorney General for the Tax Division, as the Assistant Secretary for Tax Policy at the U.S. Department of the Treasury, as Commissioner of the Internal Revenue Service, or as the Chief Counsel for the Internal Revenue Service (or as Acting Chief Counsel for the Internal Revenue Service) in the administrations of Presidents John F. Kennedy, Lyndon B. Johnson, Jimmy Carter, Ronald Reagan, George H.W. Bush, William Clinton, and George W. Bush. We write in strong support of the nomination of Kathryn Keneally to be Assistant Attorney General for the Tax Division of the Department of Justice.

Some of us have worked alongside Kathryn Keneally as co-counsel; some have appeared opposite her in cases; some have worked with her in various professional organizations; each of us is personally familiar with and attest to her capabilities to lead the Tax Division, her exceptional work ethic, her calm demeanor, and her well-deserved reputation as a leading member of the civil and criminal tax bar in the United States.

Kathryn Keneally can and, if confirmed, will carry out the crucial mission assigned to the Tax Division, chiefly to enforce the nation's tax laws fully, fairly, and consistently, through both criminal and civil litigation. Her leadership will promote voluntary compliance with the tax laws, maintain public confidence in the integrity of the tax system, and promote the sound development of the law. Kathryn Keneally will encourage and maintain the integrity, credibility and traditions of the office that the Assistant Attorney General for the Tax Division leads. We each endorse and fully support the confirmation of Kathryn Keneally and urge the Senate to *promptly* confirm her appointment as the next Assistant Attorney General for the Tax Division.

Respectfully Submitted,

**THE FOLLOWING INDIVIDUALS HAVE SIGNED ON TO THIS LETTER IN THEIR
INDIVIDUAL CAPACITIES - CURRENT AND PRIOR LISTED AFFILIATIONS ARE
SOLELY NOTED FOR PURPOSES OF IDENTIFYING THEIR RELEVANT
BACKGROUND OR PROFESSIONAL EXPERIENCE**

Loretta C. Argrett

Assistant Attorney General, Department of Justice, Tax Division, 1993-1999

James A. Bruton III

Williams & Connolly

Acting Assistant Attorney General, Department of Justice, Tax Division, 1992-1993

Principal Deputy Assistant Attorney General, Department of Justice, Tax Division, 1989-1991

Mortimer M. Caplin

Caplin & Drysdale, Chartered

Commissioner, Internal Revenue Service, 1961-1964

N. Jerold Cohen

Sutherland Asbill & Brennan LLP

Chief Counsel, Internal Revenue Service, 1979-1981

Chair, ABA Taxation Section, 1995-1996

Member and Former Chair, Board of Regents, American College of Tax Counsel

Michael C. Durney

Law Offices of Michael C. Durney

Acting Assistant Attorney General, Department of Justice, Tax Division, 1987-1988

Principal Deputy Assistant Attorney General, Department of Justice, Tax Division, 1986-1987

Gerald A. Feffer

Deputy Assistant Attorney General, Department of Justice, Tax Division, 1979-1981

Assistant United States Attorney, Southern District of New York, 1971-1976

Lawrence Gibbs

Miller & Chevalier Chartered

Commissioner, Internal Revenue Service, 1986-1989

Assistant Commissioner, Internal Revenue Service, 1973-1974

Acting Chief Counsel, Internal Revenue Service, 1973

Kenneth W. Gideon

Skadden, Arps, Slate, Meagher & Flom, LLP

Assistant Secretary for Tax Policy, U. S. Department of the Treasury, 1989-1992

Chief Counsel, Internal Revenue Service, 1981-1983

Fred T. Goldberg, Jr.

Skadden, Arps, Slate, Meagher & Flom, LLP
 Assistant Secretary for Tax Policy, U. S. Department of the Treasury, 1992
 Commissioner, Internal Revenue Service, 1989-1992
 Chief Counsel, Internal Revenue Service, 1984-1986

Nathan J. Hochman

Bingham McCutchen LLP
 Assistant Attorney General, Department of Justice, Tax Division, 2008-2009
 Assistant U.S. Attorney, Central District of California, Criminal Division, 1990-1997

Paula M. Junghans

Zuckerman, Spaeder LLP
 Acting Assistant Attorney General, Department of Justice, Tax Division, 1999-2001
 Principal Deputy Assistant Attorney General, Department of Justice, Tax Division, 1998-1999

Mark E. Matthews

Morgan, Lewis & Bockius, LLP
 Deputy Commissioner (Services & Enforcement), Internal Revenue Service, 2003-2006
 Chief, Criminal Investigation Division, Internal Revenue Service, 2000-2002
 Deputy Assistant Attorney General, Department of Justice, Tax Division, 1993-1998

Cono R. Namorato

Caplin & Drysdale, Chartered
 Director, Office of Professional Responsibility, Internal Revenue Service, 2004-2006
 Deputy Assistant Attorney General, Department of Justice, Tax Division, 1977-1978
 Chief, Criminal Section, Department of Justice, Tax Division, 1975-1977
 Special Agent, Intelligence (now Criminal Investigation Division), Internal Revenue Service,
 1963-1968
 Former Chair, Subcommittee on Criminal Tax Policy, Committee on Civil and Criminal Tax
 Penalties, ABA Section of Taxation

Eileen J. O'Connor

Pillsbury Winthrop Shaw Pittman LLP
 Assistant Attorney General, Department of Justice Tax Division, 2001-2007

Roger M. Olsen

Assistant Attorney General, Department of Justice, Tax Division, 1983-1987
 Deputy Assistant Attorney General, Department of Justice, Tax Division, 1981-1983

Pamela F. Olson

Skadden, Arps, Slate, Meagher & Flom, LLP
Assistant Secretary for Tax Policy, U. S. Department of the Treasury, 2001-2004
Former Special Assistant to the Chief Counsel, Internal Revenue Service
Chair, ABA Section of Taxation, 2000-2001
Regent, American College of Tax Counsel

Emily A. Parker

Thompson & Knight, LLP
Acting Chief Counsel, Internal Revenue Service, 2003-2004
Deputy Chief Counsel, Internal Revenue Service, 2002-2003
Vice-Chair, ABA Section of Taxation, Professional Services, 2010-2011
Regent, American College of Tax Counsel

B. John Williams, Jr.

Skadden, Arps, Slate, Meagher & Flom, LLP
Chief Counsel, Internal Revenue Service, 2002-2003
Judge, United States Tax Court, 1985-1990
Deputy Assistant Attorney General, Department of Justice, Tax Division, 1983-1984
Special Assistant to the Chief Counsel, Internal Revenue Service, 1981-1983

STATEMENT FOR THE RECORD
Senator Kirsten E. Gillibrand

November 15, 2011

Mr. Chairman, I am pleased to offer my support for the confirmation of a highly talented and accomplished New Yorker, Kathryn Keneally who has been nominated by President Obama to serve as the Department of Justice Assistant Attorney General for the Tax Division. As a partner of Fulbright & Jaworski L.L.P. in New York, Kathryn has over twenty-five years of experience in representing clients in tax controversy, white collar criminal defense, commercial litigation, trials and appeals. With this experience, she will bring a wealth of knowledge on tax policy to the Department of Justice. I commend the President on this excellent nomination.

Kathryn is an alumna of New York University School of Law where she received a LL.M in Taxation. She also received her Juris Doctorate from Fordham Law School where she graduated Magna Cum Laude. At Fordham, she was selected to serve as Associate Editor of the Fordham Law Review and received the Chapin Award for ranking first in her class.

Kathryn began her legal career in 1982 as the law clerk for the Honorable Edward R. Neaher, U.S. District Judge for the Eastern District of New York. She then made partner at both Kostelanetz Ritholz Tighe and Kostelanetz & Fink LLP.

She has defended a variety of corporate and individual clients involving numerous tax and financial matters including tax fraud, money laundering, securities fraud, and bank fraud. She previously served as Chair of the Section's Standards of Tax Practice Committee, which addresses ethical standards in tax practice, and Chair of the Civil and Criminal Tax Penalties Committee, which addresses issues relating to all aspects of criminal and civil tax controversy. She also chaired subcommittees on the Department of Justice Procedures and the U.S. Sentencing Guidelines.

Because of her expertise on tax matters, Kathryn is currently the Vice Chair for Committee Operations for the American Bar Association Section of Taxation. She is responsible for overseeing the operations of over thirty committees that address issues concerning all areas of substantive tax and tax procedure, as well as the Section's committees on diversity, low income taxpayers and pro bono services. She has participated in meetings with the Internal Revenue Service, the U.S. Department of the Treasury, and the U.S. Department of Justice Tax Division on behalf of the Section. She is also currently serving as the Section's liaison to the Director of the IRS Office of Professional Responsibility.

She is an avid supporter of Carnegie Hall and a fellow supporter for The Museum of Modern Art. Kathryn has written over thirty pieces of written work for publication and serves on the President's Council for City Center. Because of her successful legal career, Kathryn was listed in Chambers USA as one of America's Leading Lawyers for Business and has been awarded The Thurgood Marshall Award in recognition of exemplary service by the Association of the Bar of the City of New York.

Thank you, Mr. Chairman for your leadership on this Committee in this effort to confirm highly qualified individuals such as Kathryn Keneally. Kathryn is deeply committed to upholding fairness within our legal system with respect to tax policy. I strongly support this nomination and believe that if confirmed, Kathryn will be an excellent Assistant Attorney General in the Department of Justice and I urge the Committee to favorably report her confirmation to the full Senate for an up and down vote.

**Statement of Senator Charles E. Grassley
Before the Committee on the Judiciary**

On the Nominations of:

Kathryn Keneally, to be an Assistant Attorney General

*Brian C. Wimes, to be United States District Judge for the Eastern and Western
Districts of Missouri*

November 16, 2011

Mr. Chairman,

I join you in welcoming the nominees before us today. Today we will first hear from Kathryn Keneally, nominated to be Assistant Attorney General, Department of Justice. I am pleased that Chairman Leahy and I were able to reach agreement on the timing and format for her hearing today. I express my appreciation to the Chairman for the way we are proceeding on this nomination.

If confirmed, Ms. Keneally will head the Tax Division of the Department. The Tax Division's mission is to enforce the nation's tax laws fully, fairly, and consistently, through both criminal and civil litigation. It has a duty to ensure compliance with the tax laws, maintain public confidence in the integrity of the tax system, and promote the sound development of the law.

The Assistant Attorney General for Tax is an important and unique position. In order to be effective, this person must have a strong command of the tax laws and maintain a strong working relationship with the Internal Revenue Service. Given the severe debt and deficit situation facing our country, it is imperative that the IRS collect every dollar of tax that is owed to the government. I have always said that taxpayers should pay what they owe – not a penny more, not a penny less. The Assistant Attorney General for Tax plays an important role in helping the IRS collect these taxes.

It is disappointing that we have not been able to get a qualified candidate into this position for three years. The first nominee for this position, while qualified for any number of other legal positions, had no tax experience and was wholly unqualified for this position. After her nomination was withdrawn in August of 2010, it took over a year for the President to submit Ms. Keneally's nomination. In contrast to the first nominee, Ms. Keneally has significant tax experience and will hopefully be a valuable addition to the Department of Justice. I was pleased to meet with Ms. Keneally yesterday. We had a good visit and I look forward to her testimony today.

In addition, we will be considering the nomination of Brian C. Wimes, nominated to be United States District Judge for the Eastern and Western Districts of Missouri.

I would note that we are making real progress with regard to the nominations of President Obama to the federal judiciary. Today marks the 18th nominations hearing held in this committee this year, and we will have heard from 70 judicial nominees. All in all, nearly 89% of President Obama's judicial nominees have received a hearing.

The Senate has confirmed twenty Article III judicial nominees during the past month and a half. We have now confirmed 58 judicial nominees in this Congress alone. With the confirmation of two judges yesterday, over 70% of President Obama's nominees have been confirmed.

Kathryn Keneally is nominated to be Assistant Attorney General, Department of Justice. After obtaining her J.D. from Fordham University in 1982, Ms. Keneally served as a law clerk for Judge Edward R. Neaher of the U.S. District Court for the Eastern District of New York. She then worked as an associate attorney at Skadden Arps Slate Meagher & Flom from 1983 – 1985. Her

practice there consisted of complex commercial litigation and pro bono criminal defense matter. In 1985, she became an associate at Kostelanetz & Ritholz and was made a partner in 1990. At this firm her practice included criminal tax defense, other white collar criminal defense, and tax controversy, as well as complex commercial litigation matters involving fraud, civil RICO, securities, and similar issues.

In 2000, she became a member in the firm of Owen & Davis where she primarily handled commercial litigation, as well as tax controversy and criminal tax defense. In 2002, she joined Fulbright & Jaworski, LLC., where she is a partner. She initially practiced commercial, tax controversy and criminal tax defense, but since 2004 has primarily handled only tax controversy and criminal tax defense.

Brian C. Wimes is nominated to be United States District Judge for the Eastern and Western Districts of Missouri. Upon graduation from law school in 1994, Judge Wimes became an Attorney Advisor in the Litigation Branch of Federal Bureau of Prisons in Washington, D.C. Judge Wimes represented the Bureau in civil actions by inmates throughout the country.

In 1995, Judge Wimes left the Bureau and became an Assistant Prosecuting Attorney for the Jackson County Prosecutor's Office in Kansas City, Missouri until 2001. During his time there, Judge Wimes specialized in drug prosecutions. Additionally, as Coordinator for the Drug Abatement Response Team, he supervised a staff that was focused on closing drug houses in the Jackson County area. In 1999, Judge Wimes became the Senior Trial Attorney for the Drug Unit, prosecuting cases involving major crimes with an emphasis on drug-related homicides.

In 2001, Judge Wimes became the Drug Court Commissioner for the Court for Jackson County, Missouri. He was appointed for two, four year terms. Judge Wimes presided over 400 assigned cases to Drug Court, with a caseload of 120 to 150 docketed cases per week.

After serving as the Drug Court Commissioner for Jackson, Judge Wimes was appointed by then-Governor Matt Blunt to serve as the Circuit Court Judge for the 16th Judicial District, Jackson County, Missouri. He was appointed in 2007, and was retained in the 2008 election cycle.

As a Circuit Court Judge, Judge Wimes has presided over approximately twenty-nine criminal trials that have gone to judgment and twenty-five civil trials that have done the same. From 2008 to 2009, Judge Wimes was assigned to the Family Court Division and heard over 500 domestic cases to judgment as well.

Again, I welcome the nominees, their family members and guests. I look forward to the testimony.

**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Nominations
November 16, 2011**

Today the Judiciary Committee welcomes Kathryn Keneally, President Obama's second nominee to be an Assistant Attorney General in charge of the Tax Division at the Justice Department, and Brian Wimes, President Obama's nominee to fill a vacancy on the Eastern and Western Districts of Missouri. I thank Senator Kohl for chairing the hearing today. I know that Senator McCaskill, who is here to introduce Mr. Wimes, and Senator Blunt, who supports the nomination, are glad we are having this hearing today, as is Senator Schumer, who is here to introduce Ms. Keneally.

We hold this hearing today so that we can continue to fulfill our constitutional duty to ensure that the Federal courts across the country have the judges they need to provide justice for the American people. At a time when nearly one in 10 Federal judgeships remains vacant, the Committee and the Senate must continue to work to address the serious judicial vacancies crisis on Federal courts around the country. We must also ensure that the Justice Department has the people and resources it needs to enforce the law.

I have thanked Senator Grassley numerous times for working with me throughout the year so that the Committee could make progress on nominations, and I have tried to accommodate him when I can. Indeed, at his request, we have not have not pressed forward with hearings including multiple circuit court nominees, something the Republican chairman did during George W. Bush's administration. I have not held hearings on back-to-back weeks, as the Republican chairman did. Instead, we have proceeded only every other week. I am now accommodating Senator Grassley's request to slow down our schedule for the remainder of the year. At his request, I have agreed not to hold another nominations hearing this month after today, although our agreement would call for another hearing on November 30. I am also accommodating him by scheduling only one nominations hearing in December despite the fact that the Senate is likely to be in session for more than three weeks.

As a result of these accommodations, including today's hearing, the Committee has held 18 hearings this year for 78 of President Obama's nominees, 70 of them judicial nominees. Our hearing in December will bring that total to 19 hearings for the year. In contrast, during the third year of the Bush administration, the Republican chairman proceeded to hold 29 nominations hearings for 109 of President Bush's nominees, over 90 of them judicial nominees. That year, the Republican chairman held nine nominations hearings after the August recess and before adjourning in November. We will end the year holding only seven hearings after the August recess, although the Senate will have been in session an extra month this year, and several of those have been with a less than full slate of nominees.

Throughout the year and now I would have preferred if more nominations had been cleared and available to be included in hearings. When nominees were not cleared I urged that additional efforts be made, but I did not force the issue. No one looking at our schedule could claim we

have moved too quickly or that we have not given Republican and Democratic Senators enough time to consider each nominee thoroughly.

The hearing today involves only two nominees, one a judicial nominee and the other the nominee to head the Tax Division. Unfortunately, Senate Republicans opposed and would not vote on the President's initial nominee to serve as the Assistant Attorney General for the Tax Division. Ms. Keneally is an experienced lawyer with a long and distinguished career in private practice handling complex tax issues. I hope that the Committee and the Senate will consider her nomination without delay, so that the Tax Division will finally have a Senate confirmed leader after more than two years.

This hearing schedule Senator Grassley and I have worked out provides the Judiciary Committee and the Senate with the opportunity before we adjourn in December to consider and confirm the nominations we will consider in all of our hearings, including this one. There are 23 judicial nominees stalled before the Senate awaiting consent from the Senate Republican leadership for final consideration. Most were approved by all Republican and Democratic Senators on the Judiciary Committee unanimously. There are four additional judicial nominees who can be reported by the Judiciary Committee by mid-December who participated in our hearings in November. Senate action on those 27 nominees before adjournment would go a long way to helping resolve the longstanding judicial vacancies that are delaying justice for so many Americans in our Federal courts across the country.

I welcome the nominees and their families to the hearing today.

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September 28, 2011

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

The Honorable Charles E. Grassley, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Kathryn Keneally to be Assistant Attorney General for the Tax
Division of the Department of Justice

Dear Chairman Leahy and Ranking Member Grassley:

We write in enthusiastic support of the appointment of Kathryn Keneally to be Assistant Attorney General for the Tax Division of the Department of Justice. We write as lawyers who are deeply familiar with the work of the Tax Division and also with the exemplary career, strong reputation, personal integrity, work ethic and character of Kathryn Keneally. Some of us have worked jointly with her in cases, some of us have appeared opposite her in cases and others have participated alongside her in various professional organizations.

The Tax Division is charged with promoting public compliance with the internal revenue laws by ensuring strict and even-handed enforcement. This charge covers a broad spectrum of civil litigation in United States District Courts, United States Bankruptcy Courts, United States Court of Federal Claims and state courts. It also includes representation before the United States Courts of Appeals and the various state appellate courts as well as the criminal investigation and prosecution of individuals and corporations. She has a deep knowledge and understanding of the Internal Revenue Code, the Treasury Regulations and relevant case authorities involved in a wide range of civil and criminal tax related issues. She knows, understands and respects the history and traditions of the Tax Division and its relationship with the Internal Revenue Service. Ms. Keneally previously served as a law clerk for a Judge of the U.S. District Court for the Eastern District of New York and has since represented clients in litigation matters for more than 25 years. With her long, distinguished career in both civil and criminal tax controversies and litigation, Ms. Keneally is unusually experienced in the vast range of tax, criminal and legal issues for which the Tax Division is responsible.

The successful functioning of the Tax Division requires strong leadership skills and an ability to see the effects of particular arguments on the overall interests of the United States. Shaping

arguments to respect those interests, and to protect the special credibility the Tax Division has acquired over the decades of its existence, while maintaining clarity and force in presentations, demands the entire range of knowledge, intelligence, judgment, and other capacities that Kathryn Keneally has in abundance. She is a quick study, careful listener, and acute judge of legal arguments. Ms. Keneally's approach to practicing law throughout her career - her meticulousness in understanding and presenting facts accurately and her insistence on coherently providing the foundation for the positions she is urging - clearly demonstrate that she will appropriately and fully protect and promote the rule of law served by the Tax Division.

Ms. Keneally is open-minded and courteous while engaging in well-reasoned, thoughtful discussions on often complex, technical issues. Her outstanding character and integrity, coupled with her leadership and team-building skills, will serve the highest traditions of the Tax Division.

Finally, we take special note of Ms. Keneally's long-term efforts and strong desire to support the integrity of our system of tax administration by her diligent efforts to enhance the ethics, credibility and knowledge of both private and government practitioners throughout the United States. She not only gives her time and expends significant personal effort to participate in professional organizations and conferences, she leads those organizations and conferences. She regularly authors or co-authors well-respected articles in national journals. It is no exaggeration to state that she is one of our nation's leading authors and thinkers regarding tax administration and tax litigation.

We anticipate that the Senate, after full inquiry, will see all the virtues that Ms. Keneally possesses which we know and appreciate from our firsthand experience. She is the consummate professional with a stellar personal and professional reputation. We urge the Senate to *promptly* confirm the appointment of Kathryn Keneally to serve as the next Assistant Attorney General for the Tax Division.

Respectfully Submitted,

**THE FOLLOWING INDIVIDUALS HAVE SIGNED ON TO THIS LETTER IN THEIR
INDIVIDUAL CAPACITIES - CURRENT AND PRIOR LISTED AFFILIATIONS ARE
SOLELY NOTED FOR PURPOSES OF IDENTIFYING THEIR RELEVANT
BACKGROUND OR PROFESSIONAL EXPERIENCE**

Stuart E. Abrams

Frankel & Abrams

Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 2003-2005

Associate Independent Counsel (Iran-Contra), 1989-1990

Assistant U.S. Attorney, Southern District of New York, 1982-1989

Chief Appellate Counsel, Southern District of New York, 1985-1986

Chief Major Crimes Unit, Southern District of New York, 1986-1988

Frank Agostino

Agostino & Associates

Former District Counsel, Internal Revenue Service, Springfield, IL and Newark, NJ

Former Special Assistant U.S. Attorney, Springfield, IL and Newark, NJ

David D. Aughtry

Chamberlain, Hrdlicka, White, Williams & Aughtry

Chair, Southern Federal Tax Institute, Board of Trustees, 2011

Trial Attorney, Internal Revenue Service, 1978-1982

David F. Axelrod

Axelrod Laliberte LLC

Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 1999-2001

Assistant U. S. Attorney, Southern District of Florida, 1987-1991

Trial Attorney, U.S. Department of Justice, Tax Division, 1984-1987

Stanley Blend

Oppenheimer, Blend, Harrison and Tate, Inc

Chair, ABA Section of Taxation, 2007-2008

Chair, State Bar of Texas, Section of Taxation, 1987-1988

Assistant Branch Chief, Tax Court Litigation Division, Chief Counsel, Internal Revenue Service,
Washington, DC 1971-1972

Staff Attorney, Chief Counsel, Internal Revenue Service, Washington, DC, 1967-1971

Megan L. Brackney

Kostelantz & Fink, LLP

Secretary, ABA Section of Taxation, 2010-2011

Chair, ABA Section of Taxation, Individual Income Tax Committee, 2008-2010

Assistant United States Attorney, Southern District of New York, 2000-2004

Thomas Callahan

Thompson Hine LLP

Regent, American College of Tax Counsel

Council Director, ABA Section of Taxation, 2008

Chair, ABA Section of Taxation, Administrative Practice Committee, 2005-2007

Larry A. Campagna

Chamberlain, Hrdlicka, White, Williams & Aughtry
 Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 2011-2013
 Former Chair, Subcommittee on IRS Investigations and Procedures
 Former Chair, ABA Section of Taxation, Employment Taxes

Caroline Ciraolo

Rosenberg Martin Greenberg, LLP
 Vice-Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 2011-2013
 Chair, Taxation Section, Maryland State Bar Association, 2008-2009

John M. Colvin

Chicoine & Hallett, P.S.
 Vice-Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 2011-2013
 Chair, ABA Taxation Section, Civil and Criminal Penalties Committee, Subcommittee for
 Legislative and Administrative Developments, 2008-2011
 Co-Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, Subcommittee
 on Civil Penalties, 2010-2011

Ian M. Comisky

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 Assistant U.S. Attorney, Southern District of Florida, General Crimes, Fraud & Public Corruption
 Divisions, 1979-1980

Elizabeth Copeland

Oppenheimer, Blend, Harrison and Tate, Inc.
 Former Chair, Committee on Appointments to the U.S. Tax Court
 Attorney Advisor, U.S. Tax Court, Washington, D.C., 1992-1993

Thomas A. Cullinan

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 Co-Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, Subcommittee
 on Civil Penalties, 2010-2011

Michael J. Desmond

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 Tax Legislative Counsel, U.S. Department of Treasury, 2005-2008
 Trial Attorney, Tax Division, U.S. Department of Justice, 1995-2000
 Law Clerk, U.S. District Court for the Central District of California, 1994-1995

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Dean Mead
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Former Chair, Florida Bar, Tax Section
Former Chair, Southern Federal Tax Institute, Board of Trustees

Niles Elber

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W. Curtis Elliott, Jr.

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Former Chair, ABA Taxation Section, Committee on Court Practice and Procedure
Former Chair, ABA Taxation Section, Committee on Appointments to the U.S. Tax Court

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Lawrence S. Feld

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Assistant U.S. Attorney, Southern District of New York, 1972-1975

Robert S. Fink

Kostelantz & Fink, LLP
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Special Assistant to the Assistant Attorney General, Department of Justice, Tax Division, 1989-1991

Gersham Goldstein

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Former Council Director, ABA Section of Taxation

Armando Gomez

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Special Trial Judge, United States Tax Court, 1980-1983
Assistant District Counsel-Senior Trial Attorney, Internal Revenue Service, and Special Assistant
U.S. Attorney, Seattle, WA, 1973-1980
Trial Attorney, U.S. Department of Justice, Tax Division, 1968-1972

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Assistant U.S. Attorney, District of New Jersey, 1971-1978
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Co-Chair, ABA Section of Criminal Justice, White Collar Crime Committee, Tax Enforcement
Subcommittee

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Senior Trial Attorney, Internal Revenue Service, 1975-1979
Executive Committee, New York State Bar Association, Tax Section, 2001-2005

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Council Director, ABA Section of Taxation, 1998-2001
Former Chair, ABA Section of Taxation, Employment Tax Committee

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Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 1997-1999
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Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 1991-1992
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Jeffrey A. Neiman

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Trial Attorney, U. S. Department of Justice, Criminal Division, Fraud Section, 2005-2008
Trial Attorney, U. S. Department of Justice, Tax Division, 2002-2005

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Court Appointed U.S. Attorney (and Acting U.S. Attorney), District of Connecticut, 1973-1974
Chief Assistant U.S. Attorney and Chief of Special Prosecutions, District of Connecticut, 1973-1986
Trial Attorney, U.S. Department of Justice, Criminal Division, 1970-1972

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Skadden, Arps, Slate, Meagher & Flom, LLP
Special Counsel to the Chief Counsel for the Internal Revenue Service, 2002-2005
Tax Counsel and Minority Tax Counsel, Senate Finance Committee, 1999-2002

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Chair, ABA Section of Taxation, Court Procedure and Practice Committee, 2009-2011

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Chief, Tax Division, United States Attorney's Office, Central District of California, 1994-2004

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Chair, Beverly Hills Bar Association, Taxation Committee, 1969

Richard J. Sapinski

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Special Trial Attorney, Internal Revenue Service, Philadelphia, PA, 1985-1987

Trial Attorney, Internal Revenue Service, Newark, NJ, 1977-1984

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Trial Attorney, Internal Revenue Service, San Francisco, CA, 1964-1969

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Chair, ABA Section of Taxation, Committee on Civil and Criminal Tax Penalties, 2007-2009

Co-Chair, NYU Tax Controversy Forum

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Trial Attorney, U.S. Department of Justice, Tax Division, 1979-1983

Revenue Agent, Internal Revenue Service, 1974-1976

Past-Chair, Los Angeles County Bar Association, Taxation Section

Josh Ungerman

Meadows Collier Reed Cousins Crouch & Ungerman, LLP

Attorney-Advisor, U.S. Tax Court, 1990-1992

Senior Trial Attorney, Internal Revenue Service, 1992-1994

Special Assistant U.S. Attorney, Northern District of Texas, 1992-1994

Todd Welty

SNR Denton

Past Chair, ABA Taxation Section, Standards of Tax Practice Committee, Subcommittee for Summons Enforcement

Thomas E. Zehnle

Miller & Chevalier Chartered

Chief, Criminal Enforcement Section (Southern), Tax Division, U.S. Department of Justice,
2001-2004

Counsel to Assistant Attorney General, Tax Division, U.S. Department of Justice, 2000-2001

Trial Attorney, Criminal Enforcement Section (Southern), Tax Division, U.S. Department of Justice,
1990-2000

**NOMINATION OF PAUL J. WATFORD, NOMI-
NEE TO BE U.S. CIRCUIT JUDGE FOR THE
NINTH CIRCUIT**

TUESDAY, DECEMBER 13, 2011

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

The Committee met, pursuant to notice, at 10:01 a.m., Room 226, Dirksen Senate Office Building, Hon. Sheldon Whitehouse, presiding.

Present: Senators Feinstein and Grassley.

**OPENING STATEMENT OF HON. SHELDON WHITEHOUSE,
A U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator WHITEHOUSE. Good morning. The hearing will come to order.

We are here today to consider the nomination of Paul J. Watford to the United States Court of Appeals for the Ninth Circuit. I welcome Mr. Watford and his family and friends to the U.S. Senate.

We have a statement for the record from Senator Boxer in support of the nominee, and she has mentioned to me her confidence in him. But given the week that we are about to have and the role of the Environment and Public Works Committee, which she chairs, and trying to defend against some, what many of us consider, extremely ill-advised attacks on our pollution control regimes, our environmental policies, she is unable to be here. So with unanimous consent, her statement will be admitted to the record.

[The prepared statement of Senator Boxer appears as a submission for the record.]

Senator WHITEHOUSE. I will simply say that voting to confirm an individual to the Federal bench is one of the most important decisions that a Senator can make. Every day of our lives, Federal judges make decisions that affect Americans' lives in all walks of life.

In doing so, judges must respect the role of Congress as representatives of the American people. They must decide cases based on the law and the facts, and not prejudge any case. They must listen to every party that comes before them fairly. They must respect precedent, and they must limit themselves to the issues that are before the court to decide.

Judicial nominees also must have the requisite legal skill to serve as a Federal judge. Mr. Watford has an impressive record of

achievement that has earned him a unanimous Well Qualified rating from the American Bar Association.

It is important to fill this seat on the Ninth Circuit in a timely manner. There are currently four judicial emergency vacancies on the Ninth Circuit. The Chief Judge of the Ninth Circuit, Alex Kozinski, along with the members of the Judicial Council of the Ninth Circuit, have written to this Committee, describing the Ninth Circuit's "desperate need for judges" and urging the Senate to "act on judicial nominees without delay." Chief Judge Kozinski wrote of the extensive vacancies on the Ninth Circuit: "We fear that the public will suffer unless our vacancies are filled very promptly."

In the interest of efficiency, let me outline how this hearing will proceed. The Ranking Member will make his remarks, Senator Feinstein will then introduce Mr. Watford, and Senators who are here for the hearing will have 5-minute rounds for questioning of the nominee.

With that, I turn to our distinguished Ranking Member, Senator Grassley.

**STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR
FROM IOWA**

Senator GRASSLEY. Thank you to Chairman Leahy, because he worked very closely with us on scheduling this hearing and the agenda for the hearing, and I am pleased that we were able to reach an agreement. Today as you have said, Paul Watford is before our Committee as a nominee for the Ninth Circuit. We have gone over his biography so I am not going to go into that, but I am going to have a full statement I am going to put in the record.

Before that statement goes in the record, I would note that we are making real progress in regard to the nominations of President Obama to the Federal judiciary. Today marks the 19th nomination hearing held in this Committee this year, and we will have heard from 71 judicial nominees. That would be nearly 88 percent of President Obama's judicial nominees that have received a hearing. We have confirmed 63 judicial nominees in this Congress alone, and in total that would be 72 percent of President Obama's nominees being confirmed on the Senate floor.

Again, I welcome the nominee, his family, and look forward to the testimony. I will have a few questions, and maybe some questions to submit in writing. But I would like to have a full statement put in the record.

Senator WHITEHOUSE. Without objection, that will be so.

[The prepared statement of Senator Grassley appears as a submission for the record.]

Senator WHITEHOUSE. Now to introduce the nominee from her home State, I turn to the distinguished Chairman of the Intelligence Committee and a senior member of this Committee, Senator Dianne Feinstein.

PRESENTATION OF PAUL WATFORD, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE NINTH CIRCUIT BY HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. Thank you very much, Mr. Chairman. Welcome, Mr. Watford.

I am very pleased to express my strong support for the nomination of Paul Watford to the United States Court of Appeals for the Ninth Circuit. If confirmed, Mr. Watford would be only the fourth African-American ever to sit on the Ninth Circuit. He would also be one of only two African-American active judges on a 26-member court.

He has a distinguished record that has prepared him well for the Circuit: he served as a Federal prosecutor in Los Angeles, and has over a decade of appellate experience in private practice. He has earned the respect from attorneys on both sides of the aisle, and I am confident that, if confirmed, he is going to serve with distinction on the court. I urge my colleagues to support his nomination.

He is a native Californian, born in Garden Grove, and has had a 17-year legal career. He has earned degrees from two of California's finest public universities: his bachelor's from U.C. Berkeley in 1989, and his law degree from the University of California Los Angeles School of Law in 1994. He was an editor of the UCLA Law Review and graduated Order of the Coif.

After finishing law school, Mr. Watford clerked for Ninth Circuit Judge Alex Kozinski, an appointee of President Reagan's, and he then clerked for Justice Ruth Bader Ginsburg on the Supreme Court.

Following his two clerkships he spent a year in private practice at a very prestigious law firm, Munger, Tolles & Olson, and then moved into public service as a Federal prosecutor in 1997. He has prosecuted a broad array of crimes, including bank robberies, firearms offenses, immigration violations, alien smuggling, and various types of fraud.

He has served in the Major Fraud section of the Criminal Division, focusing on white collar crime. Among his many cases, he successfully prosecuted the first case for online auction fraud on Ebay in California. As a Federal prosecutor, he tried seven cases to verdict. He appeared in court frequently, typically several times a week.

He also argued for cases before the Ninth Circuit. In one such case, a cocaine dealer had already convinced a State court that a drug seizure had violated his Fourth Amendment rights. But Mr. Watford prevailed on appeal, forcing the dealer to forfeit over \$100,000 in drug proceeds.

In 2000, he rejoined the firm Munger, Tolles & Olson, where he is a current partner. This is one of the premier appellate law firms in California. Mr. Watford has focused on appellate litigation at Munger for the last 10 years. In total, he has argued 21 cases in the appellate courts. He has also appeared as counsel in over 20 cases in the United States Supreme Court.

Like most law firms, Munger's docket is dominated by business litigation, thus, the focus of his work has been appellate litigation for business clients. For example, Mr. Watford represents Verizon

Communications in a consumer class action that has already seen one appeal to the Ninth Circuit.

He represented the technology company Rambus in two complex patent infringement cases, including on appeal. He also represented Shell Oil in an antitrust case. After Shell lost in the Ninth Circuit, Watford and his colleagues at Munger won a 9–0 reversal in the United States Supreme Court.

He has also represented numerous other American businesses: the Coca-Cola Company, Berkshire Hathaway, as well as business executives, nonprofits, and municipal government agencies. His extensive appellate experience will serve him well on the Ninth Circuit.

Beyond his legal practice he has shown an admirable dedication to the community, as well as to the judiciary. He has been a board member and treasurer of Neighborhood Legal Services of Los Angeles County, an organization that provides legal representation to more than 100,000 people each year.

He has been an active member of the American Bar. He was co-chair of the ABA's Appellate Practice Committee, and he served on the Amicus Committee, as well as the Practitioners' Reading Group of the Standing Committee on the Federal Judiciary.

For 6 years, he served on the Magistrate Judge Merit Selection Panel in the Central District of California, assisting the District Court in choosing highly qualified lawyers to serve as magistrate judges. He is also well-regarded by attorneys on both sides of the aisle.

Jeremy Rosen, former president of the Los Angeles chapter of the Federalist Society says that Watford is "open-minded and fair" and that he is "a brilliant person and a gifted appellate lawyer."

Daniel Collins, a colleague of Mr. Watford, clerked for Justice Antonin Scalia and worked in the Justice Department during the administration of President George W. Bush. Mr. Collins says Watford is "incredibly intelligent and has solid integrity and great judgment." He says that Watford "embodies the definition of judicial temperament: very level-headed and even-keeled." I believe that Paul Watford will make an excellent addition to the Ninth Circuit and I urge my colleagues to support his nomination.

Thank you very much, Mr. Chairman.

Senator WHITEHOUSE. Thank you, Senator.

May I ask now for Mr. Watford to come forward to be sworn?

[Whereupon, the nominee was duly sworn.]

Senator WHITEHOUSE. Please be seated.

We have the happy tradition in these hearings of beginning by allowing the nominee to make introduction of family and friends who are present, and I would invite you, Mr. Watford, to do that now.

STATEMENT OF PAUL T. WATFORD, NOMINEE TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH DISTRICT

Mr. WATFORD. Thank you very much, Mr. Chairman.

Senator WHITEHOUSE. Is your microphone on?

Mr. WATFORD. Thank you very much. I would like to first thank Senator Feinstein for that very kind introduction. I would like to

thank Senator Feinstein, as well as Senator Boxer, for their strong support of my nomination. I am very grateful for that.

I would like to thank the Committee for scheduling this hearing. It is a tremendous honor to be here. And I would of course also like to thank the President for nominating me for this position.

I have a couple of introductions I would like to make, if I could. I have several close friends and two of my former partners, in fact, who are here with me at the hearing. I'm very grateful for their support. I have a number of family members, friends, and colleagues who are watching via the webcast that are up early in California this morning to watch. I am happy that they were able to see the proceedings.

But most significantly, I would like to introduce my wife Sherry, who is seated just to my right. We have been married for 22 years now and she is just the most supportive spouse anyone could ask for. I am very lucky to be married to her and I am thrilled that she could be here.

And other than that, I don't have any further introductory remarks. I'd be happy to answer the Committee's questions.

Senator WHITEHOUSE. Thank you, Mr. Watford. Well, you certainly come with a gold-plated appellate resume, from an editor of your *Law Review*, to the Order of the Coif, to clerking for a Circuit Court of Appeals judge, to clerking for a Supreme Court judge, to co-chairing the ABA Appellate Practice Committee. It would be hard to quarrel with those qualifications, and so I am very delighted that you're here. I note that there is not a significant attendance, which for somebody in your position is a very good sign.

Senator FEINSTEIN. Yes, it is.

Senator WHITEHOUSE. Non-conversy. That's what you want. You want the Chairman, the Ranking Member, and the member on the Committee from your home State, and that is what you have and no more. So, don't be discouraged by the fact that you haven't attracted a bigger crowd, be encouraged by that fact.

I want to just ask you two questions. One has to do with the role of appellate courts with respect to findings of fact. Could you describe what role appellate courts have in making findings of fact, and if an appellate court does make findings of fact, what sort of deference those findings are entitled to higher up in the appellate spectrum or on review or with respect to later precedent?

Mr. WATFORD. Sure. Well, I think as a general matter appellate courts don't have any role in finding facts. The facts are usually found at the District Court level and the appellate court would typically review the record when it comes up on appeal and, again, typically would give great deference to the factual findings that the trial court made.

I can't think of really any circumstance where an appellate court in the first instance would be called upon to make its own findings of fact.

Senator WHITEHOUSE. At least not properly.

Mr. WATFORD. At least not properly. That's exactly right.

Senator WHITEHOUSE. Very good.

The other thing I'd like to ask you about is the role of the jury, not just as a fact finder—and it is one of the ways in which finding of fact takes place in our judicial system—but also more broadly

within the constellation of government institutions that are constitution established. What is your view about the role of the jury as an institution of government, of liberty, of protecting rights, as a part of the Constitutional process, not just a part of the legal process?

Mr. WATFORD. Well, I think the jury has an extremely important role to play in our system of government. It is one of the reasons why the right to jury trial was protected in the Bill of Rights. The Founders viewed it as an essential protector of liberty. I, you know, had the privilege of appearing before juries on behalf of the United States and have seen the jury system work up close, and it's one of the most awesome institutions to see in action because you take, literally, 12 random people from the community who don't know one another, don't know any of the parties involved, and at least in criminal cases are charged with a very significant responsibility of deciding whether somebody should be deprived of their liberty.

And it's—again, as you—as you indicated, it's one of the real foundational protections our system of government provides for—especially for people accused of crimes, that there is this intermediary between the government and them being deprived of their liberty, and that's the jury.

Senator WHITEHOUSE. Good. Well, I can't ask you to make any promises or pledges about what you will do as a member of the Ninth Circuit, but given what I think is that common and accepted understanding of the role of jury, I hope that as you serve the people of the Ninth Circuit in this role, assuming that you are confirmed, that you will not view with equanimity efforts that deprive people of access to the jury, given its core constitutional role.

Can you just say a quick word about what you did as an AUSA? I was a U.S. Attorney and I always admired the professional staff that I had the chance to work with. Where did you work, and what were you assigned to, and what did you do?

Mr. WATFORD. Well, I was an Assistant U.S. Attorney in Los Angeles for the Central District of California. The rotation we have in that office, is you spend a year on what's called Rookie Row, handling just pretty much anything that comes in the door, all post-indictment cases.

Senator WHITEHOUSE. Yes.

Mr. WATFORD. So I handled a wide, wide variety of—

Senator WHITEHOUSE. Gun cases, drug cases, the sort of standard—

Mr. WATFORD. Exactly.

Senator WHITEHOUSE. Yes.

Mr. WATFORD. We then at that time moved into a section called Complaints, where pretty much for about 6 months all you did were search warrants, arrest warrants, indictments, that kind of thing. You didn't actually try any cases. And after that, I moved to the Major Fraud section, where I focused primarily on white collar crime.

Senator WHITEHOUSE. As a line prosecutor, not as an appellate advocate?

Mr. WATFORD. That's right. That's right. We did have a separate appellate section within the office, but I was not a member of that section. I got to know the people quite well in that section because

I had a real strong interest even then in appellate work and often asked to be assigned to additional appeals.

Senator WHITEHOUSE. Good. Well, I wish you well as you go forward. I will ask unanimous consent that Chairman Leahy's statement in support of your nomination be incorporated into the record. Without objection, it will be.

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

Senator WHITEHOUSE. I turn to the distinguished Ranking Member, Senator Grassley.

Senator GRASSLEY. You signified you don't have any more questions. If I take more than 10 minutes, or I mean more than 5 minutes, is that OK?

Senator WHITEHOUSE. OK.

Senator GRASSLEY. OK. Thank you.

Senator WHITEHOUSE. We can have multiple rounds and I'll just have not much in my round.

Senator GRASSLEY. OK. OK. Well, I'm not saying you shouldn't have. I just wanted to know. I know we want to get this done quickly.

I want to ask some of your thinking about some of the immigration cases that you've argued. On July 14th last year you gave a speech on why the notable Arizona statutes were unconstitutional.

This was in addition to your work as pro bono counsel for the plaintiffs of *Friendly House v. Whiting* that opposed that Arizona law. You also worked on a brief for Friendly House plaintiffs in *U.S. v. Arizona*. In *Friendly House v. Whiting* you argued the statute violated the First Amendment by making it illegal for persons in the U.S. unlawfully to apply for work, solicit employment, or accept any work in Arizona.

The District Court dismissed the claim, stating "individuals who are unlawfully present in the United States and unauthorized to work do not have a right to solicit work." So I have four questions that follow on this entry.

Could you explain your legal reasoning behind the argument that prohibiting people here illegally from soliciting work is a First Amendment violation?

Mr. WATFORD. Sure, Senator. I'd be happy to address that. The work solicitation provisions there that we challenged in the lawsuit were—they were in fact directed just at immigrants who were unauthorized to work, but the arguments that were presented there actually overlapped quite a bit with another Ninth Circuit case.

The *City of Redondo Beach* case was another case directed not specifically at people who were in the country unauthorized to work, but who would gather at day laborer sites to try to solicit work. There was quite an ongoing battle within the Ninth Circuit over whether those types of laws, as a general matter, violated the First Amendment.

Initially a panel of the Ninth Circuit ruled that those laws were OK, and in fact when we first filed the complaint in the *Friendly House* case we actually withdrew the First Amendment claims in light of this recent Ninth Circuit panel decision that came down.

What happened, though, was that the Ninth Circuit granted en banc review in that case and ultimately reversed the three-judge

panel's decision. At that point we asked the judge to reinstate the First Amendment claims, and I believe those claims are now still pending.

I will be honest with you, Senator, my involvement in the case lasted pretty much only through the filing of the preliminary injunction motion. I was brought in at the request of one of our senior partners at the firm, really to help him think through the legal issues and to help edit that particular brief.

Once we filed the preliminary injunction motion, however, as you know, the United States filed its own action and at that point the District Court really paid—focused all of its attention on the Federal Government's suit.

Senator GRASSLEY. OK. My second question in regard to that opening I gave: what constitutional protections do you think that undocumented persons should be afforded in U.S. courts?

Mr. WATFORD. Well, as a—I guess I won't try to offer any kind of a personal view. I would obviously have to follow whatever binding precedent was established by the Supreme Court or the Ninth Circuit in addressing that question.

I don't know—I can't tell you off the top of my head the full range of constitutional rights undocumented immigrants might have, but I do know that at least with respect to the preemption arguments that we made in the *Friendly House* suit, that there is, at least under existing Supreme Court precedent—I think there are strong arguments that an individual State doesn't have the authority to set its own immigration policy, and those are really—the preemption arguments were the main focus of the lawsuit.

Senator GRASSLEY. I think the most important part of the answer you just gave me, if I could bring emphasis to it, is that you feel very much compelled to follow Ninth—or Supreme Court precedents as a member of the Ninth Circuit Court of Appeals?

Mr. WATFORD. Absolutely.

Senator GRASSLEY. And the reason I might say that, as you probably know, and I don't know the exact figures, but one time it was 37 out of 39 appeals from the Ninth Circuit went to the Supreme Court that were overturned.

Mr. WATFORD. Yes.

Senator GRASSLEY. And I would think people in the Ninth Circuit wouldn't be particularly proud of that. But I don't know how they feel about it, but that's just how I view it as a non-lawyer.

Mr. WATFORD. Sure.

Senator GRASSLEY. Following up then on the same introduction I gave, do you believe States lack the right to police their own borders and detain or investigate persons who may be residing there illegally?

Mr. WATFORD. Well, again, let me just speak in terms of what existing law provides. There are certain respects in which States can cooperate with the Federal Government in enforcing Federal immigration law. There's no question about that. Congress has enacted several statutes that provide for the mechanisms through which that kind of cooperation can take place.

I think the arguments that we were making in the *Friendly House* case, though, turned on the fact that Arizona was not attempting to cooperate with the Federal Government, Arizona felt—

perhaps rightly—I don’t take any position on that—that the Federal Government’s immigration policy was not working for the State and therefore attempted to establish its own immigration policy.

That is really the focus of the argument we made, is that immigration policy has to be established at the national level. That’s what Congress has directed. It has allowed the States to participate in the enforcement of immigration law, but only in certain very narrow circumstances that didn’t apply in the *Friendly House* case.

Senator GRASSLEY. OK. Following on the same introduction I gave to this series of questions and getting to the point of your decision to recuse or not recuse, the Supreme Court recently agreed to hear the appeal on *U.S. v. Arizona*. Justice Kagan recused herself, assumedly due to her work as Solicitor General when the Federal Government originally filed the case.

If a challenge to a State immigration statute or practice were to come before you in the Ninth Circuit, how would you handle it, considering your past experiences litigating and commenting on these cases? Would you recuse yourself?

Mr. WATFORD. Well, certainly if any aspect of the Arizona law came back before the Ninth Circuit, and it may well, I would certainly have to recuse myself from any involvement in that case, I have no doubt about that. If another State passed a very similar law that raised the same sorts of preemption issues, I would have to consider very carefully whether to recuse myself.

I know that there are statutes and codes of conduct that govern that. The main question would be whether my impartiality could reasonably be subject to question, and if it could I would have no hesitation in recusing myself. I know that there is a Committee within the Ninth Circuit that one can consult on questions of that sort, and I would certainly take advantage of that if the question came up.

Senator GRASSLEY. Now I will defer to the Chairman. I’ve got—

Senator WHITEHOUSE. Go ahead.

Senator GRASSLEY. I’ve only got one other series of questions.

Senator WHITEHOUSE. Go ahead.

Senator GRASSLEY. Go ahead?

Senator WHITEHOUSE. Proceed.

Senator GRASSLEY. OK.

The brief filed by your client, *Friendly House v. Whiting*, cited reaction from the international community to the passage of the Senate bill—or this Arizona bill 1070. Specifically, it noted two travel advisories enacted by Mexico and El Salvador that said SB 1070 “threatens basic notions of justice.”

So three follow-up questions to that introduction: do you think the opinions of foreign leaders should have an impact on judicial decisions in U.S. Federal courts?

Mr. WATFORD. No. As a general matter, no.

Senator GRASSLEY. OK.

Then let me follow up then. Why did you include statements by those foreign governments in your brief?

Mr. WATFORD. Well, I'm hesitating only because when you say "why did I include them"—

Senator GRASSLEY. OK.

Mr. WATFORD. My role really was to edit that brief.

Senator GRASSLEY. OK.

Mr. WATFORD. I was not the principal drafter of it, so I don't want to take responsibility, I guess, in my own right for including them. But I can tell you that one of the arguments that the United States made in its own motion and that echoed—or our arguments echoed some of the arguments the United States made, was that the reason immigration law needs to be established at the national level is that it has very serious foreign affairs or foreign relations implications, some of those being, how are our citizens treated when they're in a foreign country and don't have legal status, obviously, to be here.

The concern, I think, was that if Arizona's law were applied to the maximum extent it could be, there were folks who were here in the country lawfully, right, who we had allowed from other countries to come here and stay, either temporarily or as permanent residents, who would be subjected to adverse treatment under the law, and in return that could cause foreign countries to retaliate against our citizens when our citizens were in their countries.

Senator GRASSLEY. OK.

Then I could add to that part of my question, taking off on what you said. I'm sorry, I lost my train of thought.

Mr. WATFORD. OK.

Senator GRASSLEY. So I may come back to it.

C, here. If the international community had an overwhelmingly negative reaction to a challenge to a Federal or State statute that found its way to your court, how strongly would you consider the international community's opinion in your decision-making process?

Mr. WATFORD. I would not consider the international community's reaction in any way. What I would consider, however, is if the United States itself, the Federal Government, came in and said this law, or at least applications of this law, are going to have serious foreign affairs implications for our Nation, if the Federal Government expressed that concern I think that is a relevant consideration that needs to be taken into account in some situations, some circumstances. But I don't think the fact that foreign leaders themselves are voicing concerns, standing on its own, should have any impact on a United States judge—a United States judge—judge's decision.

Senator GRASSLEY. I will submit some questions for answer in writing, please.

Mr. WATFORD. OK.

Senator GRASSLEY. And let me suggest to you, you'll probably do it anyway, and answer them as forthrightly as you can and as completely as you can. But sometimes, needlessly, nominees are held up just because they don't answer questions or answer them fully. So try to get that done. And even after your nomination might go to the floor, you need to consider that for members that maybe aren't on this Committee.

Mr. WATFORD. OK.

Senator GRASSLEY. Although it doesn't happen too often, but it does happen sometimes.

[The questions appear under the questions and answers.]

Senator WHITEHOUSE. So just to—I'd like to just follow-up briefly on the exchange that you just had with Senator Grassley. Would it be fair to characterize your answer as saying that as a judicial matter the opinion of foreign governments carries no weight, but to the extent that as a judge you would be evaluating the position, the authorities, the determinations made by the executive branch of government, you could take into account as a fact what the executive branch is telling you about the consequences of actions or the importance of whatever is happening internationally to the discharge of executive authorities?

Mr. WATFORD. Yes. That is an exact summary of the position I tried to articulate—

Senator WHITEHOUSE. Yes.

Mr. WATFORD [continuing]. Maybe not as well as you did. And Senator—Mr. Chairman, I would just add to that, I've been involved in cases in which the courts have actually invited the State Department to submit its views when a particular issue came up that seemed to have very serious foreign affairs implications. That's something that I've seen the courts do, and it does seem to me that it's appropriate in that circumstance.

Senator WHITEHOUSE. Because there are times when the Constitution obliges the judiciary to defer to the executive branch of government, and at those times the opinion of the executive branch of government is of significance, of relevance.

Mr. WATFORD. That's exactly right.

Senator WHITEHOUSE. And with respect to constitutional rights for undocumented persons, when you were prosecuting folks as an AUSA there was no separate standard for undocumented persons with respect to their constitutional right to a trial, the constitutional right to have search and seizure restrictions, the various constitutional boundaries that prosecutors operate within.

Mr. WATFORD. That's correct.

Senator WHITEHOUSE. OK.

Senator GRASSLEY. I remember now what I wanted to ask you on that second part. You said you edited that document and didn't write it. I don't know what authority editors have, but would you have thought about at the time of saying that these statements in regard to foreign points of view and foreign law shouldn't have been—or in this case was travel advisories—maybe shouldn't have been referenced?

Mr. WATFORD. I certainly could have. If that's what you're asking, yes, I certainly could have in my role as an editor.

Senator GRASSLEY. Yes. But you didn't find it important to do that?

Mr. WATFORD. No, Senator, I did not. And as I said, the reason for that is that the United States itself had asserted there that there were foreign affairs implications that arose from enforcement of this law and those statements that we referenced, I think, in the brief were indicative of that.

Senator GRASSLEY. OK. Thank you. And I'll appreciate answers in writing.

Mr. WATFORD. Thank you, Senator.

Senator WHITEHOUSE. Well, Mr. Watford, thank you. I appreciate this. I would highlight, emphasize, and double underline what Senator Grassley warned you about the importance of prompt answers. The more quickly the written answers can be provided to us, the more quickly your nomination can move forward.

Let me congratulate you on your period of service to our country. Let me hope that it is precedent to a longer period of service to our country as a judge on the Ninth Circuit Court of Appeals. As I said, you are as gold-plated on the record and on your resume a candidate as one could hope for for United States Circuit Court of Appeals judge. I think you've acquitted yourself very well in this hearing and I look forward to supporting your nomination as we go forward. May the rest of it be as uneventful as today's hearing.

Thank you very much. We'll keep the record open for 1 week in the event of any further questions or statements that anybody wants to put into the record, but subject to that, the hearing is adjourned.

[Whereupon, at 10:40 a.m. the hearing was adjourned.]

[The Biographical information, questions and answers and submission follow.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Paul Jeffrey Watford

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

United States Circuit Judge for the Ninth 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.

Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071

Residence: Pasadena, California

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

1967; Garden Grove, California

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.

1991 – 1994, UCLA School of Law; J.D., 1994

1985 – 1987, 1988 – 1989, University of California, Berkeley; B.A., 1989

Fall 1987, Georgetown University; No degree received

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.

2001 – present
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071
Partner (2003 – present)
Associate (2001 – 2002)

Fall 2007, 2008, 2009
University of Southern California
Gould School of Law
699 Exposition Boulevard
Los Angeles, California 90089
Lecturer-in-Law

2000 – 2001
Sidley & Austin LLP
555 West Fifth Street
Los Angeles, California 90013
Associate

1997 – 2000
United States Attorney's Office for the Central District of California
312 North Spring Street
Los Angeles, California 90012
Assistant United States Attorney

1996 – 1997
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071
Associate

1995 – 1996
Hon. Ruth Bader Ginsburg
United States Supreme Court
One First Street, N.E.
Washington, D.C. 20543
Law Clerk

1994 – 1995
Hon. Alex Kozinski
United States Court of Appeals for the Ninth Circuit
125 South Grand Avenue
Pasadena, California 91105
Law Clerk

Summer 1993
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071
Summer Associate

Summer 1993
Gibson Dunn & Crutcher
333 South Grand Avenue
Los Angeles, California 90071
Summer Associate

Summer 1992
Hughes, Hubbard & Reed
350 South Grand Avenue, Suite 3600
Los Angeles, California 90071
Summer Associate

1989 – 1990; 1990 – 1991
Bar Association of San Francisco
Lawyer Referral Service
685 Market Street, Suite 700
San Francisco, California 94105
Legal Interviewer

Summer 1990
Bantam Doubleday Dell Publishing Group
666 Fifth Avenue
New York, New York 10103
Contracts Assistant

Other Affiliations (uncompensated):

2007 – present
Neighborhood Legal Services of Los Angeles County
1102 Chevy Chase Drive
Glendale, California 91205
Board Member (2007 – present)
Treasurer (2010 – present)

2005 – 2007
Federal Bar Association, Los Angeles Chapter
210 North Glenoaks Boulevard, Suite C
Burbank, California 91502
Board 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 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.

Southern California Rising Stars (2005 – 2007)

Order of the Coif, UCLA School of Law (1994)

Editor, UCLA Law Review (1992 – 1994)

Joseph P. Drown Scholar (1992)

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 (2005 – present)

Co-Chair, Section of Litigation, Appellate Practice Committee (2005 – 2008)

Amicus Curiae Committee (2007 – 2010)

Standing Committee on the Federal Judiciary, Practitioners' Reading Group (2009, 2010)

Federal Bar Association, Board Member, Los Angeles Chapter (2005 – 2007)

Los Angeles County Bar Association (2009, 2011 – present)

State Appellate Judicial Evaluation Committee (2011 – present)

Magistrate Judge Merit Selection Panel (C.D. Cal.) (2005 – 2011)

Ninth Circuit Judicial Conference, Appellate Lawyer Representative (2009 – 2011)

State Bar of California (1996 – present)

Committee on Appellate Courts (2004 – 2006)

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.

California, 1996

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.

Supreme Court of the United States, 2001
 United States Court of Appeals for the Second Circuit, 2004
 United States Court of Appeals for the Third Circuit, 2011
 United States Court of Appeals for the Ninth Circuit, 1996
 United States Court of Appeals for the Eleventh Circuit, 2007
 United States Court of Appeals for the Federal Circuit, 2002
 United States District Court for the Central District of California, 1996
 United States District Court for the Northern District of California, 2000

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.

Break the Cycle

Host Committee, Savor the Season fundraiser (2009 – 2010)

California Academy of Appellate Lawyers (2010 – present)

Diversity Committee of Munger, Tolles & Olson LLP (2002 – 2007)

Chair (2005 – 2007)

Neighborhood Legal Services of Los Angeles County (2007 – present)

Board Member (2007 – present)

Treasurer (2010 – present)

Chair, Finance Committee (2010 – present)

Development Committee (2009 – present)

Recruiting Committee of Munger, Tolles & Olson LLP (2001 – 2008)

Co-Chair (2007 – 2008)

- 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 the best of my knowledge, none of the organizations listed above discriminates or previously 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.

Paul J. Watford & Todd A. Holleman, *A Message from the Co-Chairs*, APPELLATE PRACTICE JOURNAL (Winter 2008). Copy supplied.

Paul J. Watford & Larry Rosenberg, *A Message From the Co-Chairs*, APPELLATE PRACTICE JOURNAL (Summer 2007). Copy supplied.

Paul J. Watford & Larry Rosenberg, *A Message From the Co-Chairs*, APPELLATE PRACTICE JOURNAL (Winter 2007). Copy supplied.

Paul J. Watford & Daniel L. Geyser, *Key Developments in the Law – 2005*, CALIFORNIA LITIGATION REVIEW (July 2006). Copy supplied.

Paul J. Watford & Larry Rosenberg, *A Message From the Co-Chairs*, APPELLATE PRACTICE JOURNAL (Spring 2006). Copy supplied.

Paul J. Watford & Larry Rosenberg, *A Message From the Co-Chairs*, APPELLATE PRACTICE JOURNAL (Winter 2006). Copy supplied.

State Lines: Redefining the Reach of the Commerce Clause May Be One of the Important Legacies of the Rehnquist Court, LOS ANGELES LAWYER (Nov. 2005) [re-printed in multiple outlets]. Copy supplied.

Blakely's Promise for Federal Sentencing Reform, LOS ANGELES LAWYER (Oct. 2004). Copy supplied.

The Watch List, SIDLEY & AUSTIN'S SUPREME COURT BUSINESS REPORT (Feb. 2001). Copy supplied.

The Watch List, SIDLEY & AUSTIN'S SUPREME COURT BUSINESS REPORT (Dec. 2000). Copy supplied.

Contractual Liability in Intellectual Property Disputes – A Case Study: Buchwald v. Paramount Pictures Corp., 18 COLUM.-VLA J. L. & ARTS 269 (1994). Copy supplied.

- 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 Practitioners' Reading Group for the ABA's Standing Committee on the Federal Judiciary during 2009 and 2010. Members of this reading group review writings of U.S. Supreme Court nominees and draft confidential memoranda for the Standing Committee regarding these nominees.

- 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.

Letter to Hon. Ellen Corbett, Chair, Senate Judiciary Committee, California State Senate re: AB 2764 (Aug. 30, 2010). Copy supplied.

Letter to Hon. Arnold Schwarzenegger, Governor, State of California re: AB 590 (Oct. 7, 2009). Copy supplied.

Letter to Hon. Peter G. McCabe, Secretary of the Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts re: Proposed Federal Rule of Appellate Procedure 32.1 (Jan. 8, 2004). Copy supplied.

Letter to the UCLA Academic Senate Committee on Teaching in support of Professor Julian Eule's nomination for the Distinguished Teaching Award (Jan. 7, 1997). Copy supplied.

- 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.

July 20, 2011 – Brown bag lunch discussion on law firm practice with judicial externs at the Ninth Circuit courthouse in Pasadena, California. I have no notes, transcript, or recording. The address of the courthouse is 125 South Grand Avenue, Pasadena, California 91105.

June 21, 2011 – Panel discussion on brief writing at the Federal Bar Association, Los Angeles Chapter's Ninth Circuit Appellate Practice Workshop in Pasadena, California. I have no notes, transcript, or recording. The address of the Los Angeles Chapter is 210 North Glenoaks Boulevard, Suite C, Burbank, California 91502.

April 30, 2011 – Panel discussion on law firm practice as part of the UCLA Law Fellows Program, a program sponsored by the UCLA School of Law that assists minority undergraduates in applying to law school. I have no notes, transcript, or recording. The address of the law school is P.O. Box 951476, Los Angeles, California 90095.

March 24, 2011 – Panel discussion entitled "Best Practices in the Federal Court" sponsored by the Asian Pacific American Bar Association, among other organizations. The panel offered tips to young lawyers on practicing in federal court. I have no notes, transcript, or recording. The address of the Asian Pacific American Bar Association is 1145 Wilshire Boulevard, Second Floor, Los Angeles, California 90017.

March 8, 2011 – Guest lecturer for Professor Jean Rosenbluth's Appellate Advocacy class at the University of Southern California's Gould School of Law. Former California Court of Appeal Justice Margaret Grignon and I discussed civil appellate practice at our respective firms and answered student questions. I gave similar remarks as a guest lecturer for Professor Rosenbluth's class on March 8, 2008, March 19, 2007, and February 27, 2006. I have no notes, transcript, or recording. The address of the law school is 699 Exposition Boulevard, Los Angeles, California 90089.

February 5, 2011 – Presentation entitled "Challenging and Defending Decisions of the California Public Utilities Commission: The Arcane World of CPUC Appellate Practice" at the winter meeting of the California Academy of Appellate Lawyers in San Francisco, California. A copy of my outline is supplied.

October 26, 2010 – I moderated a panel discussion entitled "The Future of the California Judiciary: The Potential Effects of a New Justice and a New Governor"

at a lunch meeting of the Federalist Society's Los Angeles Lawyers Chapter. A copy of my notes is supplied.

October 14, 2010 – Presentation entitled “Justice Kagan’s Expected Impact on the Supreme Court” at a lunch meeting of the Greater Inland Empire Municipal Law Association in Colton, California. A copy of my notes is supplied.

August 6, 2010 – Mock argument and panel discussion entitled “Celebrating Women on the Appellate Bench: A Mock Argument Examining Potential Gender Influences on Decision Making” at the American Bar Association’s Annual Meeting in San Francisco, California. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

July 14, 2010 – Presentation on the status of litigation challenging the constitutionality of Arizona’s SB 1070 at a lunch meeting of Neighborhood Legal Services of Los Angeles County in Pacoima, California. A copy of my notes is supplied.

February 8, 2010 – Panel discussion entitled “Strategies for Success at Big Law: First Hand Experiences of Women and People of Color” at UCLA School of Law. The panel provided tips to law students on achieving professional success at large law firms. I have no notes, transcript, or recording. The address of the law school is P.O. Box 951476, Los Angeles, California 90095.

December 10, 2009 – Presentation entitled “Justice Sotomayor’s Expected Impact on the Supreme Court” at a lunch meeting of the Greater Inland Empire Municipal Law Association in Colton, California. A copy of my notes is supplied.

April 13, 2007 – Panel discussion entitled “Writing a Winning Legal Argument” at the American Bar Association’s Section of Litigation Annual Conference in San Antonio, Texas. The panel provided tips on writing persuasive briefs. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

July 13, 2006 – Presentation entitled “Justice Alito’s Impact on the Supreme Court: A First Term Assessment” at a weekly firm lunch for Munger, Tolles & Olson attorneys and summer associates. A copy of the PowerPoint slides for the presentation is supplied.

June 6, 2006 – I moderated a panel discussion on judicial clerkships at an orientation for the Los Angeles participants in the American Bar Association’s Judicial Intern Opportunity Program. I have no notes, transcript, or recording. The address of the American Bar Association is 321 North Clark Street, Chicago, Illinois 60654.

January 12, 2006 – I gave a presentation on the impact then-Judge Alito might have on the Supreme Court, were he to be confirmed, at a lunch meeting of the Litigation Section of the Riverside County Bar Association in Riverside, California. I have no notes, transcript, or recording. The address of the Riverside County Bar Association is 4129 Main Street, Suite 100, Riverside, California 92501.

October 26, 2005 – Panel discussion on brief writing at the Federal Bar Association's Ninth Circuit Court of Appeals Appellate Practice Workshop in Pasadena, California. I have no notes, transcript, or recording. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

February 21, 2004 – Panel discussion on federal appellate practice as part of the Federal Bar Association's "Taking the Step to Federal Court" program in Los Angeles, California. A copy of my outline is provided. I participated on the same panel as part of the program in 2002 and 2003 but have been unable to locate any records relating to those presentations. The address of the Federal Bar Association is 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

November 13, 2003 – Presentation entitled "Supreme Court Review: 2002-2003 Term" at an informal lunch for in-house attorneys at Mattel, Inc. in El Segundo, California. A copy of the PowerPoint slides for the presentation is supplied.

July 8, 2003 – Presentation entitled "Business Law Highlights from the 2002-2003 Supreme Court Term and Beyond" at an informal lunch for in-house attorneys at 20th Century Fox in Los Angeles, California. A copy of the PowerPoint slides for the presentation is supplied.

January 2, 2003 – Panel discussion with former law clerks at the Judicial Clerkship Institute of Pepperdine University's School of Law. The panel provided tips to law students who had accepted clerkships with federal judges. I have no notes, transcript, or recording. The address of the law school is Pepperdine University, School of Law, Malibu, California 90263.

- 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.

Lawrence Hurley, *Call for Court Consensus Builder May Be Overrated*, LOS ANGELES DAILY JOURNAL (May 7, 2010). Copy supplied.

Lawrence Hurley, *Former Clerks Are Sitting Pretty*, LOS ANGELES DAILY JOURNAL (Jan. 4, 2010) [quote published in multiple outlets]. Copy supplied.

Lawrence Hurley, *Prosecutors May Lose Some Immunity*, LOS ANGELES DAILY JOURNAL (Nov. 5, 2009). Copy supplied.

Appellate Lawyers' Roundtable, LOS ANGELES DAILY JOURNAL (Oct. 5, 2009). Copy supplied.

Polly Moore, *The Vondjedis View of Holder Due Diligence*, KEANOTES (Keane's Unclaimed Property Services Division) (Spring 2009). Copy supplied.

Emily Heller, *Gibson Dunn Keeps Its Eye on the Horizon*, NATIONAL LAW JOURNAL (Apr. 7, 2008). A version of this article also appeared in the RECORDER on April 17, 2008. Copies provided.

Correy E. Stephenson, *The Verdict Is Only the Beginning*, LAWYERS WEEKLY USA (Apr. 10, 2006). Copy supplied.

William F. Stute, *Movement to Divide Ninth Circuit Gains Momentum*, LITIGATION NEWS (Mar. 2006). Copy supplied.

Mary S. Diemer, *Unpublished Federal Opinions May Become Uniformly Citable*, LITIGATION NEWS (Nov. 2005) [quote published in multiple outlets]. Copy supplied.

David F. Pike, *Ginsburg: Collegiality, Moderation, Tradition*, LOS ANGELES DAILY JOURNAL (July 21, 2003). Copy supplied.

Judy Peres, *Top Court to Revisit Key Affirmative-Action Case*, CHICAGO TRIBUNE (Oct. 31, 2001). Copy supplied.

Greg Stohr, *High Court to Hear Case on Minority Contracting*, MILWAUKEE JOURNAL SENTINEL (Oct. 29, 2001). Copy supplied.

Jeremy Harrell, *Supreme Court to Decide Fate of Affirmative Action*, DAILY REPORTER (Oct. 1, 2001). Copy supplied.

Tamara Scott, *Judge Has Grit, Lawyering Genes*, LOS ANGELES DAILY JOURNAL (Aug. 29, 2001). Copy supplied.

David Houston, *Watford Joins Sidley & Austin's Appellate Group*, LOS ANGELES DAILY JOURNAL (Oct. 10, 2000). Copy supplied.

Tax Evasion, CITY NEWS SERVICE (Apr. 17, 2000). Copy supplied.

Gail Diane Cox, *Online Auction Fraud Brings Federal Prison Sentence in California*, LEGAL INTELLIGENCER (Nov. 5, 1999). Copy supplied.

eBay Sentencing, CITY NEWS SERVICE (Nov. 1, 1999). Copy supplied.

Stuart Pfeifer & Leslie Gornstein, *Ex-Anaheim Man Bilks E-Bidders*, ORANGE COUNTY REGISTER (July 15, 1999). Copy supplied.

Christina Binkley, *Ex-Director Wohl of Koo Koo Roo Indicted By Jury*, WALL STREET JOURNAL (June 24, 1999). Copy supplied.

Edmund Sanders, *SEC Cracks Down on Insider Trading in State*, LOS ANGELES TIMES (June 24, 1999). Copy supplied.

Former Koo Koo Roo Inc. Director Indicted on Securities Fraud Charges, ASSOCIATED PRESS (June 24, 1999). Copy supplied.

David Houston, *Insider Trading Charges Filed Against Ex-Koo Koo Roo Director*, CITY NEWS SERVICE (June 23, 1999). Copy supplied.

Aaron Brown, *A Closer Look – Affirmative Action*, ABC WORLD NEWS TONIGHT (June 12, 1997). I do not have a video recording of this broadcast but have provided the transcript I was able to locate online.

Cassandra Smith, *Peter L. Arenella*, LOS ANGELES DAILY JOURNAL (Aug. 22, 1994). Copy 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.

I have not held a 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:

I have not served as a judge.

- 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.

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 had no unsuccessful candidacies for elective office or unsuccessful nominations for appointed office. I have not held any elective office, or any appointed office as I understand that term to be used in this question.

- 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 do not recall holding any position or playing any role in a political campaign, political party, or election committee.

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 Judge Alex Kozinski, United States Court of Appeals for the Ninth Circuit, from 1994 to 1995.

I served as a law clerk to Justice Ruth Bader Ginsburg, United States Supreme Court, from 1995 to 1996.

- 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.

1996 – 1997
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
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Associate

1997 – 2000
United States Attorney's Office for the Central District of California
312 North Spring Street
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Assistant United States Attorney

2000 – 2001
Sidley & Austin LLP
555 West Fifth Street
Los Angeles, California 90013
Associate

2001 – present
Munger, Tolles & Olson LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071
Partner (2003 – present)
Associate (2001 – 2002)

- 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.

b. Describe:

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

After completing my clerkships, I began private practice in September 1996 at Munger, Tolles & Olson LLP in Los Angeles. As an associate in the Litigation Department, I worked on a mix of trial court and appellate matters. I spent most of my time on those matters performing legal research and drafting briefs.

In June 1997, I joined the United States Attorney's Office in Los Angeles as an Assistant United States Attorney in the Criminal Division. I handled a wide range of criminal prosecutions during my service in the office, including immigration and drug offenses, firearms trafficking, bank robbery, computer fraud, mail and wire fraud, and securities fraud. I was eventually assigned to the Major Frauds Section where I focused on white-collar crime, although I spent nearly a year conducting an investigation into the shooting death of Tyisha Miller by officers of the Riverside Police Department.

In October 2000, I left the United States Attorney's Office and returned to private practice at Sidley & Austin LLP in Los Angeles. I was a member of the firm's appellate practice group and focused primarily on Supreme Court and appellate litigation.

I rejoined Munger, Tolles & Olson in May 2001. My practice focuses primarily on appellate litigation, with some trial-level work involving briefing of significant legal issues. Virtually all of the matters I handle are civil, and most involve business or commercial disputes.

- 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 clients are typically large companies. I have also represented law firms, individual lawyers and business executives, municipal government agencies, and non-profit organizations. My work has involved a wide range of subject matters, including administrative law, antitrust law, arbitration, business torts, consumer class actions, state and federal constitutional issues, insurance coverage issues, land use law, products liability, professional liability, and federal securities law.

At the United States Attorney's Office, I represented the United States in criminal prosecutions and handled cases involving a variety of federal criminal offenses. For example, the cases I tried to verdict involved alien smuggling, assault on a federal officer, bank robbery, drug trafficking, firearms trafficking, and theft of government property.

- 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.

The entirety of my practice has been in litigation. As an associate at Munger, Tolles & Olson (1996 – 1997, 2001 – 2002) and Sidley & Austin (2000 – 2001), I appeared in court infrequently, on perhaps two or three occasions. As a partner at Munger Tolles (2003 – present), I have appeared in court typically three or four times per year, usually for appellate oral arguments. As an Assistant United

States Attorney (1997 – 2000), I appeared in court frequently, typically several times per week and, when in trial, every day.

i. Indicate the percentage of your practice in:

1. federal courts: 60%
2. state courts of record: 40%
3. other courts:
4. administrative agencies:

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 tried seven cases to verdict as an Assistant United States Attorney, one of which involved a retrial of several counts on which the jury hung during the first trial. All of those were jury trials; I was sole counsel in five of them and co-lead counsel in the other two. I have also tried one civil case to verdict. That was a bench trial in which I was sole counsel.

i. What percentage of these trials were:

1. jury: 87%
2. non-jury: 13%

- 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 argued before the United States Supreme Court but have appeared as counsel in the following cases:

Mohamed v. Jeppesen DataPlan, Inc., No. 10-778 (Apr. 13, 2011) (brief in opposition). Copy provided.

Banjo v. Ayers, No. 10-803 (Dec. 14, 2010) (petition for certiorari and reply brief). Copies provided.

Schwarzenegger v. Entertainment Merchants Ass'n, No. 08-1448 (Sept. 17, 2010) (amicus brief on behalf of Activision Blizzard, Inc. in support of respondents). Copy provided.

Von Saher v. Norton Simon Museum of Art, No. 09-1254 (June 16, 2010) (brief in opposition). Copy provided.

Palmer v. Valdez, No. 09-6429 (Jan. 6, 2010) (reply brief in support of petition for certiorari). Copy provided.

Travelers Indem. Co. v. Bailey, 129 S. Ct. 2195 (2009) (Feb. 2, 2009) (amicus brief on behalf of Resolute Management Inc. in support of petitioners). Copy provided.

Baze v. Rees, 553 U.S. 35 (2008) (amicus brief on behalf of Critical Care Providers and Clinical Ethicists in support of petitioners). Copy provided.

Bolin v. McDaniel, No. 07-688 (Nov. 19, 2007) (petition for certiorari). Copy provided.

Crown Paper Liquidating Trust v. PricewaterhouseCoopers, No. 06-870 (Jan. 22, 2007) (brief in opposition). Copy provided.

Fuller-Austin Insulation Co. v. Highlands Ins. Co., No. 06-94 (Aug. 21, 2006) (brief in opposition). Copy provided.

Kelava v. Gonzales, No. 05-1312 (Apr. 12, 2006) (petition for certiorari and reply brief). Copies provided.

Texaco Inc. v. Dagher, 547 U.S. 1 (2006) (petition for certiorari and reply brief; petitioner's brief and reply brief). Copies provided.

Cleveland v. Viacom Inc., No. 03-917 (Jan. 29, 2004) (brief in opposition). Copy provided.

Kayser v. Roadway Package System, Inc., No. 01-422 (Sept. 4, 2001) (petition for certiorari and reply brief). Copies provided.

Moore v. AFTRA Health & Retirement Funds, No. 00-1539 (May 29, 2001) (brief in opposition). Copy provided.

Adarand Constructors, Inc. v. Mineta, 534 U.S. 103 (2001) (amicus brief on behalf of the Minority Business Enterprise Legal Defense and Education Fund, Inc., *et al.* in support of respondents). Copy provided.

Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health and Human Resources, 532 U.S. 598 (2001) (amicus brief on behalf of the National Conference of State Legislatures *et al.* in support of respondents). Copy provided.

United States v. Hatter, 532 U.S. 557 (2001) (amicus brief on behalf of the Los Angeles County Bar Association *et al.* in support of respondents). Copy provided.

Haggar Apparel Co. v. United States, No. 00-1171 (Jan. 17, 2001) (petition for certiorari). Copy provided.

Levi Strauss & Co. v. United States, No. 00-1156 (Jan. 17, 2001) (petition for certiorari). Copy provided.

Also, as noted in question 9 above, I served on the ABA's Amicus Curiae Committee from 2007 to 2010. This is not technically part of my practice, as the briefs considered by this Committee are drafted by outside counsel and Committee members' names are not listed on the briefs. Members of this Committee review and edit Supreme Court briefs filed by the ABA to assure that they are consistent with ABA policy.

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.

I have listed the cases below in reverse chronological order.

1. *Mohamed v. Jeppesen DataPlan, Inc.*, 614 F.3d 1070 (9th Cir. 2010) (en banc), *cert. denied*, 131 S. Ct. 2442 (2011). We represented Jeppesen in a tort action brought by subjects of the U.S. government's extraordinary rendition program. The plaintiffs alleged that Jeppesen provided flight planning and logistical support to the Central Intelligence Agency in connection with the rendition flights on which they were transported. The United States intervened and moved to dismiss the action on the basis of the state secrets privilege. The district court granted that motion and dismissed the action with prejudice. The Ninth Circuit affirmed the district court's ruling in a 6-to-5 decision, and the U.S. Supreme Court denied the plaintiffs' petition for certiorari. I assisted in preparing Jeppesen's briefs in the Ninth Circuit and the Supreme Court.

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2. *Lewis v. Verizon Communications, Inc.*, 627 F.3d 395 (9th Cir. 2010). We represent Verizon in an ongoing consumer class action seeking recovery of allegedly unauthorized charges for services rendered by third parties. Verizon removed the case to federal court under the Class Action Fairness Act of 2005 (CAFA), but the district court remanded on the ground that CAFA's amount-in-controversy requirement had not been satisfied. I drafted the briefs and argued Verizon's appeal. The Ninth Circuit held that Verizon had met CAFA's jurisdictional threshold by showing that the total charges generated by the billing practices at issue exceeded \$5 million, and that there was no need for Verizon to show that more than \$5 million in charges were in fact unauthorized, as the district court had held. Judge Schroeder wrote the opinion, which Judges Tallman and Milan Smith joined.

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3. *Taylor v. Elliott Turbomachinery Co.*, 171 Cal. App. 4th 564 (2009). We represented Leslie Controls Inc., a manufacturer of valves used on Navy ships, in a products liability action brought by a former Navy sailor injured by exposure to asbestos. The trial court granted summary judgment to Leslie and several co-defendants, holding that the defendants owed no duty to warn about the hazards posed by asbestos-containing products manufactured by others which were used in conjunction with the defendants' own products. I drafted Leslie's appellate brief defending the trial court's ruling. The California Court of Appeal affirmed in an opinion written by Justice Dondero and joined by Justices Simons and Needham. (I briefed and argued the same issue in *Merrill v. Leslie Controls, Inc.*, formerly published at 179 Cal. App. 4th 262 (2009), *review granted*, 105 Cal. Rptr. 3d 181 (Cal. 2010), where a different division of the Court of Appeal also ruled in Leslie's favor on the same issue. That case is currently pending before the California Supreme Court; oral argument in a related case is set for November 2011.)

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4. *United States v. Berger*, 587 F.3d 1038 (9th Cir. 2009). We represented Berger in an appeal challenging the eight-year prison sentence imposed for bank and securities fraud convictions. I briefed and argued the appeal in the Ninth Circuit. The appeal challenged the standard of proof applicable to large sentencing enhancements and the causation requirement necessary to support shareholder loss findings in criminal securities fraud cases. The Ninth Circuit remanded the case for recalculation of the loss amount on the securities fraud counts but affirmed the district court's use of a preponderance of the evidence standard. Judge Milan Smith wrote the opinion, which Judges William Fletcher and Clifton joined.

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5. *Samsung Electronics Co. v. Rambus Inc.*, 523 F.3d 1374 (Fed. Cir.), *cert. denied*, 129 S. Ct. 279 (2008). We represented Rambus in a patent infringement action against Samsung. After the district court denied Rambus's motion to transfer the action to the Northern District of California, Rambus voluntarily dismissed its claims against Samsung. In response to Samsung's motion for attorneys' fees, Rambus also offered to pay Samsung's fee request in full. The district court held that Rambus's offer did not moot the attorneys' fees motion and, in the course of disposing of that motion, rendered factual findings adverse to Rambus on issues relevant in other pending actions. I was substantially involved in drafting Rambus's appellate briefs in the Federal Circuit. The court of appeals held that the district court lacked subject-matter jurisdiction to issue the challenged order because Rambus's offer to pay Samsung's attorneys' fees in full rendered the fee motion moot. Judge Rader wrote the opinion, which Judges Schall and Farnan (D. Del.) joined.

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Houston, Texas 77002
(713) 546-5000

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6. *Mendoza v. State of California*, 149 Cal. App. 4th 1034 (2007). We represented parents of Los Angeles Unified School District (LAUSD) students who sought to defend the constitutionality of a state statute that altered the governance structure of the LAUSD by transferring greater power to the mayor of Los Angeles. The case raised novel issues under the California Constitution concerning the scope of the Legislature's authority to control administration of the public schools. I was substantially involved in drafting the briefs defending the statute in both the trial court and on appeal. Superior Court Judge Janavs ruled against our clients and invalidated the statute on various state constitutional grounds. The California Court of Appeal affirmed in an opinion authored by Justice Croskey and joined by Justices Klein and Kitching.

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7. *Texaco Inc. v. Dagher*, 547 U.S. 1 (2006). We represented Shell Oil Company in an antitrust action brought by gasoline service station owners alleging that Shell and Texaco had engaged in price fixing when they formed a joint venture to sell gasoline in the western United States. The district court granted summary judgment for Shell and Texaco but the Ninth Circuit reversed, rejecting the defendants' argument that the joint venture should be assessed under the rule of reason rather than subjected to a *per se* rule of invalidity. I was substantially involved in drafting Shell's petition for certiorari and assisted in drafting Shell's merits briefs. The Supreme Court reversed the Ninth Circuit in a unanimous opinion authored by Justice Thomas.

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8. *Fuller-Austin Insulation Co. v. Highlands Ins. Co.*, 135 Cal. App. 4th 958, *cert. denied*, 549 U.S. 946 (2006). We represented Stonewall Insurance Company on appeal from a large jury verdict rendered against it and several other insurers. The case involved issues of first impression under California law relating to the obligations of an excess insurer to provide indemnity after an insured settles future asbestos claims by transferring those claims to a trust under 11 U.S.C. § 524(g). I drafted Stonewall's appellate briefs and argued the appeal. The California Court of Appeal reversed the judgment and ruled that a bankruptcy court's order confirming a plan of reorganization under section 524(g) constitutes a settlement rather than a judgment, and that an excess insurer's obligation to provide indemnity is therefore triggered only if the insurer consents to the plan. Justice Doi Todd wrote the opinion, which Justices Boren and Ashmann-Gerst joined.

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9. *Viner v. Sweet*, 30 Cal. 4th 1232 (2003). We represented Williams & Connolly and one of its former partners on appeal from an adverse jury verdict in a legal malpractice action. The issue on appeal was whether the same causation standard applicable in malpractice actions involving litigation attorneys also applies in actions against transactional attorneys – i.e., whether, but for the attorney’s negligence, the client would have achieved a better result. In a unanimous opinion authored by Justice Kennard, the California Supreme Court agreed with our clients that the same causation standard should govern in both types of cases. On remand, the Court of Appeal held that under the proper causation standard only a small fraction of the jury’s original award could be upheld. 117

Cal. App. 4th 1218 (2004). I was substantially involved in drafting our reply brief in the California Supreme Court and subsequent briefs in the case thereafter.

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10. *Rambus Inc. v. Infineon Technologies AG*, 318 F.3d 1081 (Fed. Cir.), *cert. denied*, 540 U.S. 874 (2003). We represented Rambus on appeal from an adverse jury verdict in a complex patent infringement case. The district court granted judgment as a matter of law against Rambus on its patent infringement claims, and the jury ruled in Infineon's favor on its counterclaim for fraud based on Rambus's failure to disclose pending patent applications to fellow members of a standard-setting organization. I was substantially involved in drafting portions of Rambus's appellate briefs in the Federal Circuit. The court of appeals reversed the district court's claim constructions and remanded for a new trial on infringement. A divided panel also ruled in Rambus's favor on the fraud claim, concluding that Rambus did not breach any applicable disclosure duty as a matter of law. Judge Rader wrote the majority opinion, which was joined by Judge Bryson. Judge Prost dissented in part.

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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.)

Both in private practice and while serving in the United States Attorney's Office, my legal activities have focused almost entirely on litigation. Occasionally, however, I have pursued legal activities that either did not involve litigation or did not progress to trial. In private practice, I have provided advice to clients that involved counseling rather than litigation. For example, we recently provided advice to a non-profit organization concerning options for pursuing school reform measures by analyzing the strength of various legal challenges that might be brought against such measures were they to be

enacted. At the United States Attorney's Office, I spent nearly a year involved in an investigation into the shooting death of Tyisha Miller by officers of the Riverside Police Department. None of the officers involved in the shooting ultimately was charged.

I have also been active in the legal community outside the practice of law. I have served on a number of bar association committees and judicial-related panels. For example, I served for six years as a member of the Magistrate Judge Merit Selection Panel of the U.S. District Court for the Central District of California, which assists the court in vetting candidates for positions as federal magistrate judges, and I served for two years as an Appellate Lawyer Representative to the Ninth Circuit Judicial Conference. Since 2007, I have been a board member of Neighborhood Legal Services of Los Angeles County, a non-profit organization providing free legal assistance to the poor, where I currently serve as Treasurer and a member of the Development Committee.

I have never performed lobbying activities for any client or organization.

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.

During the fall semester of 2007, 2008, and 2009, I taught Judicial Opinion Writing at the University of Southern California's Gould School of Law. The course explored the different approaches to judicial opinion writing that have been developed in the American legal system and analyzed the elements essential to good opinion writing. The students applied those principles by drafting both a majority opinion and a dissent based on the briefing and oral argument in a pending United States Supreme Court case. Copies of the syllabus provided.

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.

Munger, Tolles & Olson does not provide pension or retirement benefits. Upon withdrawal from the partnership, a partner is entitled to receive a "fair share" of firm net income for the current year, reflecting the partner's contributions to date, less amounts previously drawn. In addition, a partner withdrawing from the partnership is entitled to a return of the partner's capital contributions. The current value of my capital contributions to the firm is reflected in the attached Net Worth Statement.

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 am not aware of any potential conflicts of interest likely to be presented by family members. I would recuse myself, at least for some initial period, from any case being handled by my current law firm. I would also recuse myself from any case on which I worked while at my current law firm, as well as any case where, due to a current or past professional or personal relationship with a party or attorney involved, my impartiality might reasonably be questioned.

- 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 handle all matters involving actual or potential conflicts of interest by applying the Code of Conduct for United States Judges and any other relevant ethical canons or statutory provisions.

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 have devoted a significant portion of my time to representing clients who are disadvantaged or otherwise unable to pay for legal representation. Those activities have taken a variety of forms. For example, I have filed amicus briefs in the U.S. Supreme

Court in pro bono matters on behalf of non-profit organizations, such as a brief on behalf of local bar associations supporting a Compensation Clause challenge to the constitutionality of a new tax that adversely affected sitting federal judges. I have also assisted in trial court litigation representing the interests of those who are disadvantaged, such as the litigation seeking a preliminary injunction against enforcement of Arizona's SB 1070 immigration law, on preemption and other grounds. And I regularly supervise associates who agree to handle appeals on behalf of pro se litigants through the Ninth Circuit's pro bono program, such as an appeal involving the tax court's authority to order a remedy for the IRS's failure to sell levied property.

I have also served for the past four years as a board member of Neighborhood Legal Services of Los Angeles County, a non-profit organization devoted to providing free legal assistance to low-income persons residing in Los Angeles County.

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 United States Court of Appeals for the Ninth Circuit.

On January 18, 2011, I met with a lawyer from the White House Counsel's Office and discussed a potential nomination to the Ninth Circuit. Since April 6, 2011, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On May 11, 2011, I interviewed with attorneys from the White House Counsel's Office and the Department of Justice in Washington, D.C. On June 16, 2011, I met with members of Senator Dianne Feinstein's judicial advisory committee. On July 8, 2011, I met with Senator Feinstein and two members of her staff. On October 17, 2011, 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. 1/2010FINANCIAL DISCLOSURE REPORT
NOMINATION FILINGReport Required by the Ethics
in Government Act of 1978
(5 U.S.C. app. §§ 101-111)

1. Person Reporting (last name, first, middle initial) Watford, Paul J.	2. Court or Organization Ninth Circuit	3. Date of Report 10/17/2011
4. Title (Article III judges indicate active or senior status; magistrate judges indicate full- or part-time) Circuit Judge	5a. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 10/17/2011 <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final 5b. <input type="checkbox"/> Amended Report	6. Reporting Period 01/01/2010 to 09/30/2011
7. Chambers or Office Address 355 South Grand Avenue, 35th Floor Los Angeles, CA 90071	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. Partner	Munger, Toiles & Olson LLP
2. Director	Neighborhood Legal Services of Los Angeles County
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	Date of Report
Watford, Paul J.	10/17/2011

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. 2011	Munger, Tolles & Olson LLP	\$435,000.00
2. 2010	Munger, Tolles & Olson LLP	\$730,505.00
3. 2009	Munger, Tolles & Olson LLP	\$774,623.00
4. 2009	University of Southern California	\$5,940.00

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. _____	_____
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. _____	_____	_____	_____	_____

FINANCIAL DISCLOSURE REPORT
 Page 3 of 6

Name of Person Reporting	Date of Report
Watford, Paul J.	10/17/2011

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.	City National Bank	Line of credit	J
2.			
3.			
4.			
5.			

FINANCIAL DISCLOSURE REPORT

Page 4 of 6

Name of Person Reporting

Watford, Paul J.

Date of Report

10/17/2011

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 "XY" after each asset except from prior disclosure	B Income during reporting period		C Gross value at end of reporting period		D Transactions during reporting period				
	(1) Amount Code 1 (A-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 mm/dd/yy	(3) Value Code 2 (J-P)	(4) Gain Code 1 (A-I)	(5) Identity of buyer/seller (if private transaction)
1. Schools First Federal Credit Union Accounts	B	Interest	M	T	Exempt				
2. Retirement Plan	F	Dividend	N	T					
3. Vanguard Index 500 Signal									
4. Munger, Tolles & Olson Capital Account		None	M	T					
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									

1. Income (Gain) Codes: (See Columns B1 and D1)	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 H1 = \$1,000,001 - \$3,000,000	D = \$5,001 - \$15,000 H2 = More than \$3,000,000	E = \$15,001 - \$50,000
2. Value Codes: (See Columns C1 and D2)	I = \$15,000 or less N = \$250,001 - \$500,000	K = \$15,001 - \$50,000 O = \$500,001 - \$1,000,000	L = \$50,001 - \$100,000 P1 = \$1,000,001 - \$5,000,000	M = \$100,001 - \$250,000 P2 = \$5,000,001 - \$25,000,000	
3. Value Method Codes: (See Column C2)	Q = Appraisal U = Hook Value	R = Cost (Real Estate Only) V = Other	P4 = More than \$50,000,000 S = Assessed W = Estimated	T = Cash Market	

FINANCIAL DISCLOSURE REPORT
 Page 5 of 6

Name of Person Reporting	Date of Report
Watford, Paul J.	10/17/2011

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS. *(Indicate part of Report.)*
FINANCIAL DISCLOSURE REPORT
 Page 6 of 6


Name of Person Reporting	Date of Report
Watford, Paul J.	10/17/2011

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		82	300	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities				Notes payable to relatives			
Unlisted securities				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends		8	000	Unpaid income tax			
Due from others				Other unpaid income and interest			
Doubtful				Real estate mortgages payable - see schedule	1	532	000
Real estate owned - see schedule	2	000	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		150	000				
Cash value-life insurance							
Other assets itemize:							
MTO Capital Account		180	000				
Vanguard Index 500 Signal		407	500				
Certificate of Deposit		36	900	Total liabilities	1	532	000
				Net Worth	1	332	700
Total Assets	2	864	700	Total liabilities and net worth	2	864	700
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)	No		
On leases or contracts				Are you defendant in any suits or legal actions?	No		
Legal Claims				Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax							
Other special debt							

FINANCIAL STATEMENT
NET WORTH SCHEDULES

Real Estate Owned	
Personal residence	\$800,000
Vacation home	1,200,000
Total Real Estate Owned	<u>\$2,000,000</u>

Real Estate Mortgages Payable	
Personal residence	\$535,000
Vacation home	997,000
Total Real Estate Mortgages Payable	<u>\$1,532,000</u>

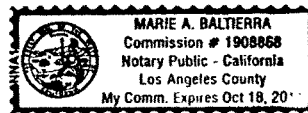
AFFIDAVIT

I, Paul J. Watford, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

10/17/11
(DATE)

Paul J. Watford
(NAME)

Marie A. Baltierra
(NOTARY)



QUESTIONS AND ANSWERS

Responses of Paul J. Watford
 Nominee to be United States Circuit Judge for the Ninth 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, I do not agree with that view.

- a. **If not, please explain.**

Response: I think the Constitution’s text expresses core principles that do not change over time. Some of the Constitution’s provisions use broad and general language to describe principles that the framers knew would need to be applied in different circumstances confronting succeeding generations. But the principles themselves are enduring and constant.

2. **Justice William Brennan once said: “Our Constitution was not intended to preserve a preexisting society but to make a new one, to put in place new principles that the prior political community had not sufficiently recognized.” Do you agree with him that constitutional interpretation today must take into account this supposed transformative purpose of the Constitution?**

Response: I do not understand the point Justice Brennan was attempting to make in this passage well enough to state whether I agree or disagree with it.

- a. **Please explain.**

Response: In the passage immediately following the language quoted above, Justice Brennan stated, “Thus, for example, when we interpret the Civil War amendments – abolishing slavery, guaranteeing blacks equality under the law, and guaranteeing blacks the right to vote – we must remember that those who put them in place had no desire to enshrine the status quo.” That observation seems to me to be obviously correct. But it is not clear to me what impact Justice Brennan believed this observation should have on interpretation of the amendments in question. Understanding the purpose the drafters sought to achieve is surely an important tool in constitutional interpretation. If Justice Brennan intended to convey something beyond that basic proposition, it is not apparent what he meant, and thus is not something I am in a position to evaluate.

3. **Do you believe judicial doctrine rightly incorporates the evolving understandings of the Constitution forged through social movements, legislation, and historical practice?**

Response: No, I do not agree, with two small caveats noted below.

- a. **If not, please explain.**

Response: As stated in my answer to Question 1 above, I do not believe the core principles of the Constitution change over time; they are enduring and constant. I cannot think of any instance in which the Supreme Court has held that social movements were relevant to interpreting the meaning of the Constitution. But when interpreting the Cruel and Unusual Punishments Clause, the Court has found an examination of legislative changes to be relevant, and in the realm of substantive due process the Court has found an examination of historical practice to be relevant.

4. Do you believe empathy is an essential ingredient for arriving at just decisions and outcomes and should play a role in a judge's consideration of a case?

Response: No.

a. If not, please explain.

Response: I think it is important for a judge to have the capacity to understand an issue from another person's point of view, because that helps ensure the judge has fully and fairly understood each litigant's position before arriving at the correct legal decision in a case. But judges cannot be guided by their personal feelings or sympathies in deciding cases. They must decide cases based solely on what the law requires.

b. Can you provide an example of a case where you had to set aside your feelings of empathy for the litigant and, instead, pursue a result that was consistent with the law?

Response: I cannot think of any case I have litigated that fits this description.

5. In 2005, you wrote an article entitled: "State Lines: Redefining the Reach of the Commerce Clause May Be One of the Important Legacies of the Rehnquist Court," which traced the evolution of the Supreme Court's commerce clause jurisprudence from our nation's founding through the post-*Raich* decisions.

Given your familiarity with the Court's commerce clause jurisprudence, what would you say are the limitations on the federal government's power under the commerce clause?

Response: This of course is a subject on which the Supreme Court may provide further guidance in the near future. Under current precedent, the primary limitations on Congress's Commerce Clause power are set forth in the Supreme Court's decisions in *Lopez* and *Morrison*. Those cases hold that Congress may regulate in only three areas: "First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (citations omitted); *see also United States v. Morrison*, 529 U.S. 598, 608-09 (2000). In addition, the Court has held, in *Printz v. United States*, 521 U.S. 898 (1997), and *New*

York v. United States, 505 U.S. 144 (1992), that principles of state sovereignty inherent in the Constitution place limits on Congress's power under the Commerce Clause.

- a. Is any transaction involving the exchange of money subject to Congress's commerce clause power?**

Response: No. The transactions would still need to fall within one of the three categories mentioned above and regulation of those transactions could not violate principles of state sovereignty.

- b. In the 2005 article, you state: "The *Raich* decision calls into question the notion, widely accepted until now, that the Rehnquist Court has initiated a dramatic realignment of the legislative powers held by Congress and those reserved to the states." Prior to *Raich* did you see the *Lopez* and *Morrison* decisions as a "dramatic realignment of the legislative powers held by Congress and those reserved to the states?"**

Response: No. But I did regard *Lopez* and *Morrison* as significant developments in the Court's Commerce Clause jurisprudence.

- i. In what sense was it dramatic?**

Response: Those two decisions marked the first time in 60 years that the Supreme Court had invalidated a federal statute on the ground that the statute was beyond Congress's Commerce Clause power to enact.

- c. Which do you believe is closer to the original meaning of the commerce clause, the decisions in *Lopez* and *Morrison* or the Supreme Court's decisions in *NLRB v. Jones & Laughlin Steel Corp.* and *U.S. v. Darby*?" Please explain.**

Response: All four decisions remain binding precedent, and I would be bound to faithfully follow all of them if confirmed. Given that fact, I do not believe it would be appropriate for me to comment on whether *Lopez* and *Morrison* better reflect the original meaning of the Constitution than do *Jones & Laughlin* and *Darby*.

- d. In the 2005 article, you state: "In the late 1930s the Court responded to the exigencies created by the Great Depression by relaxing the limits it had earlier placed on Congress' authority to legislate under the commerce clause." Do you believe this was an appropriate and justified response by the Court?**

Response: I do not believe it would be appropriate for me to critique the Court's work in that fashion. The Court's cases from that era have not been overruled and remain binding precedent. If confirmed, I would be bound to apply those decisions faithfully whether I agreed or disagreed with their underlying rationale.

- i. Do national emergencies justify judges deviating from the text of the Constitution?**

Response: No. I think that is the principal lesson to be drawn from *Korematsu v. United States*, 323 U.S. 214 (1944).

1. If so, in what specific circumstances?

Response: I cannot think of any such circumstances.

- ii. **In Federalist Paper No. 78, Alexander Hamilton states: “[T]he courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It, therefore, belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.”**

Are justices who relax limits on legislative power during exigent circumstances treating the constitution as fundamental law?

Response: No. If they are relaxing limits imposed by the Constitution, they are not treating the Constitution as fundamental law.

6. What principles of constitutional interpretation would you look to in analyzing whether a particular statute infringes upon some individual right?

Response: The Supreme Court itself has never articulated a single approach to constitutional interpretation; it has instead emphasized different approaches in different contexts and cases. With respect to any given provision, absent contrary direction from the Supreme Court, I would focus most closely on the text of the constitutional provision, the historical context in which the provision was adopted, the drafting history of the provision, the provision’s relationship with the broader constitutional scheme, and prior precedent interpreting the scope of the rights protected by the provision.

- 7. The U.S. Supreme Court held in *District of Columbia v. Heller*, 554 U.S. 570 (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. Leaving aside the *McDonald v. Chicago* decision, do you personally believe the right to bear arms is a fundamental right?**

Response: I do not believe it would be appropriate for me to offer my personal views on that subject; any such views would play no role in any decision I would be called upon to make if confirmed as a judge. The Supreme Court clearly held in *McDonald* that the

individual right to bear arms protected by the Second Amendment is a fundamental right, and I would have no difficulty faithfully applying that decision.

- 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 held that almost all of the substantive rights guaranteed in the Bill of Rights are fundamental rights enforceable against the States. As to the handful of rights that have not yet been declared fundamental, I would not feel comfortable expressing an opinion on whether they should be declared fundamental outside the confines of a concrete case providing the benefit of briefing and argument from opposing parties on both sides of the 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, that is my understanding. The Supreme Court has followed a policy of selective incorporation, pursuant to which those rights found to be fundamental are enforceable against the States under the Fourteenth Amendment.

- c. The *Heller* Court 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 Supreme Court has held that the Second Amendment codified a pre-existing right. As the Court explained, “[t]he very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it ‘shall not be infringed.’” *Heller*, 554 U.S. at 592.

- d. What limitations remain on the individual, Second Amendment rights now that the amendment has been incorporated against the States?**

Response: That will have to be resolved by the lower courts in the first instance and, ultimately, by the Supreme Court. If past experience involving other fundamental rights is any indication, I suspect the process of determining permissible limitations on the scope of the right to bear arms will be ongoing for some time. In the Ninth Circuit, litigation is still pending to determine the standard of review that applies when restrictions on the right to bear arms are challenged as unconstitutional. *See Nordyke v. King*, 644 F.3d 776 (9th Cir. 2011), *rehearing en banc granted*, ___ F.3d ___, 2011 WL 5928130 (9th Cir. Nov. 28, 2011). Some of the substantive questions that remain open relate to the types of firearms protected, which classes of persons may be prohibited from possessing firearms, and whether there are sensitive locations in which the possession of firearms may be restricted. *See Heller*, 554 U.S. at 626.

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 and you are obliged to follow it, but do you agree with Justice Kennedy’s analysis?

Response: I do not believe it would be appropriate for me to state whether I agree or disagree with Justice Kennedy’s analysis in *Roper*. Justice Kennedy wrote the opinion for the Court and the decision in *Roper* remains binding precedent. Regardless of whether I agreed or disagreed with that decision, if confirmed I would faithfully follow it.

- a. When determining what the “evolving standards of decency” are, justices have looked to different standards. Some justices have justified their decision by looking to the laws of various American states,¹ in addition to foreign law, and in other cases have looked solely to the laws and traditions of foreign countries.² Do you believe either standard has merit when interpreting the text of the Constitution?

Response: In some cases, as in *Roper* and *Graham*, the Supreme Court has found the practices of American States and foreign countries relevant to its analysis. I do not believe it would be appropriate for me to comment on whether the Court’s approaches have merit; if confirmed I would be bound to follow the Supreme Court’s precedent in this area whether I agreed or disagreed with it.

- i. If so, do you believe one standard more meritorious than the other? Please explain why or why not.

Response: Please see my answer to Question 8(a) above.

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

Response: As a general rule, I think our Constitution should be interpreted in accordance with U.S. law. However, in some cases the Supreme Court has held that foreign or international law may be relevant when determining the meaning of the Cruel and Unusual Punishments Clause. I am not aware of any other context in which the Court has held that it is permissible to consider foreign or international law in determining the meaning of a constitutional provision, and absent direction from the Supreme Court, I would not do so.

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

Response: I would do so only as directed by the Supreme Court, as in certain of its cases interpreting the meaning of the Cruel and Unusual Punishments Clause.

¹ *Roper v. Simmons*, 543 U.S. 551, 564-65.

² *Graham v. Florida*, 130 S.Ct. 2011, 2033-34.

- 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.

Responses of Paul J. Watford
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Chuck Grassley

- 1. At your hearing I inquired into your views on the constitutional rights enjoyed by illegal aliens. You replied that you couldn't respond "off the top of my head the full range ..." which is understandable. Would you please take this time to review appropriate materials and provide a response?**

Response: There are fewer definitive answers in this area than one might have expected. In part, that is because the Supreme Court has often been asked to decide whether aliens possess the same constitutional rights as citizens, but has done so in the context of aliens who are *lawfully* present in this country. See, e.g., *Almeida-Sanchez v. United States*, 413 U.S. 266, 273-74 (1973) (Fourth Amendment); *Bridges v. Wixon*, 326 U.S. 135, 148 (1945) (First Amendment). In contrast, the focus of this question is on the constitutional rights possessed by those who are *unlawfully* present in this country, a subject on which the Supreme Court has provided less guidance.

Nonetheless, I can offer a few observations. The Supreme Court has held that even aliens who are unlawfully present in the country are entitled to certain constitutional rights. Those rights include the due process and equal protection guarantees afforded by the Fifth and Fourteenth Amendments. *Plyler v. Doe*, 457 U.S. 202, 210-11 (1982); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). The Court has also held that those unlawfully present in this country are entitled to the criminal procedure protections afforded by the Fifth and Sixth Amendments. *Wong Wing v. United States*, 163 U.S. 228, 237-38 (1896).

As far as my research has disclosed, the Court has not yet decided whether other provisions of the Bill of Rights, such as the First Amendment, the Fourth Amendment, and the Fifth Amendment's Takings Clause, also apply to aliens who are unlawfully present in the country. For example, in the case referenced in the next question, *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), the Court held that a foreign national with no voluntary connection to this country could not claim the protections of the Fourth Amendment with respect to a search of property located in a foreign country. The Court left unresolved the question relevant here – whether the Fourth Amendment would apply to those who are unlawfully (but voluntarily) present in this country with respect to a search of property located in the United States. *Id.* at 272-73.

- 2. In addition, you stated that you would follow Supreme Court and Ninth Circuit precedent in addressing the question of constitutional protections that undocumented persons should be afforded in U.S. Courts. Please review relevant precedent and address the following questions.**
 - a. In *U.S. v. Verdugo-Urquidez*, 494 U.S. 259 (1990), the Supreme Court overturned the Ninth Circuit and held that DEA agents did not violate the Fourth Amendment when they searched a Mexican citizen's residence in Mexico. In coming to this decision, the majority relied on the use of the term**

“the people” saying that “the people protected by the Fourth Amendment ...refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” In your view, would the term “the people” as used in other parts of the Constitution and amendments also be read as a limitation on the scope of who is protected by such rights?

Response: The Supreme Court suggested in *Verdugo-Urquidez* (494 U.S. at 265) that its interpretation of the term “the people” in the Fourth Amendment may also apply to the First, Second, Ninth, and Tenth Amendments. And the Court made the same point more recently in *District of Columbia v. Heller*, 554 U.S. 570 (2008), where the Court noted that “in all six other provisions of the Constitution that mention ‘the people,’ the term unambiguously refers to all members of the political community, not an unspecified subset.” *Id.* at 580. I would note that the majority opinion in the case mentioned in Question 2(c) below reached a different conclusion, at least with respect to use of the term “the people” in the Second and Fourth Amendments. See *United States v. Portillo-Munoz*, 643 F.3d 437, 440-41 (5th Cir. 2011) (“[W]e do not find that the use of ‘the people’ in both the Second and the Fourth Amendment mandates a holding that the two amendments cover exactly the same groups of people. The purposes of the Second and the Fourth Amendment are different.”).

- b. The Court references “community” in *Verdugo-Urquidez*. In your view, could an illegal alien ever develop a sufficient connection with the U.S. to be considered part of its community? Please explain.**

Response: The Supreme Court stated in *Verdugo-Urquidez* that “the people” refers to “a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” *Verdugo-Urquidez*, 494 U.S. at 265. The Court has not specified in subsequent cases, however, what sorts of “connections” would suffice to render someone part of our national community. Thus, I do not think a definitive answer to this question can be given on the basis of existing Supreme Court (or Ninth Circuit) precedent, and I would not feel comfortable attempting to resolve this question in the abstract, outside the confines of a concrete case providing the benefit of briefing and argument from opposing parties on both sides of the issue.

- c. In *U.S. v. Armando Portillo-Munoz*, 643 F.3d 437 (2011), the Fifth Circuit upheld a federal law making it a crime for an illegal alien to possess a firearm, holding that the use of the phrase “the people” in the Second Amendment did not include aliens illegally in the United States. Do you agree with this holding? Please explain.**

Response: Because this is an issue that has not yet been resolved by the Supreme Court or the Ninth Circuit and will almost certainly arise in the future, it would

not be appropriate for me to opine on whether the Fifth Circuit's resolution of that issue is correct or not. I know that the Eighth Circuit recently adopted the Fifth Circuit's holding (*United States v. Flores*, __ F.3d __, 2011 WL 6266033 (8th Cir. Dec. 16, 2011)), and I am not aware of any circuit that has reached a contrary conclusion. If I were confirmed and confronted with a case in which no controlling Supreme Court or Ninth Circuit precedent was on point, I would carefully consider the reasoning of other circuits on the same issue.

- d. In your brief you argued that the Arizona statute prohibiting illegal aliens from soliciting work violated the First Amendment. The First Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of *the people* peaceably to assemble, and to petition the Government for a redress of grievances." Please explain in your view why the use of the term "the people" in this amendment should not also be read to limit the free speech rights of illegal aliens.¹**

Response: It is possible that use of the term "the people" in the First Amendment will be read to exclude aliens who are unlawfully present in this country. Resolution of that issue will depend on whether the Supreme Court ultimately concludes that the term "the people" means the same thing in both the First and Fourth Amendments, and if it does, whether those unlawfully present in the United States have sufficient "connections" to this country to be deemed part of the national community under the standard articulated in *Verdugo-Urquidez*. Neither the Supreme Court nor the Ninth Circuit has resolved those questions. Because it is entirely foreseeable that those questions could arise in the future, it would not be appropriate for me to try to answer those questions here.

3. Can you please clarify your role in the *Friendly House v. Whiting* case.

Response: My role on the case was a limited one, both with respect to my role on the team of Munger, Tolles & Olson lawyers who worked on the case and with respect to our firm's role as part of the legal team representing the plaintiffs in the case.

One of my partners brought the *Friendly House* case into the firm and assembled a team of five or six lawyers from our firm to work on it with him. He asked if I would be willing to join the team to help analyze the legal issues raised by the preliminary injunction motion our clients intended to file and to assist in editing that brief once a draft was prepared. I agreed to help in that capacity and my involvement has thus far been limited to those tasks, which included providing editing suggestions on the brief in support of the preliminary injunction motion. I have not been substantively involved in the case since that motion was filed in June 2010, although our firm continues to play an active role in the litigation. (The *Friendly House* case has proceeded in the district court

¹ See 494 U.S. 259, 266 ("Excludable alien is not entitled to First Amendment rights, because [h]e does not become one of the people to whom these things are secured by our Constitution by an attempt to enter forbidden by law") citing *United States ex rel. Turner v. Williams*, 194 U.S. 279, 292, (1904) (internal quotations omitted)

notwithstanding the ongoing appellate proceedings in the related case, *United States v. Arizona*.)

The legal team representing the plaintiffs in the *Friendly House* case included more than 30 lawyers in total. Most of those lawyers were affiliated with the three co-lead counsel in the case: the ACLU's Immigrants' Rights Project; the Mexican American Legal Defense and Educational Fund; and the National Immigration Law Center. Our firm was substantially involved in drafting and editing the preliminary injunction motion and handled the logistics of filing the motion and supporting declarations. But the three co-lead counsel took the lead in drafting the preemption arguments and had final say over the substance of the brief as a whole.

a. You indicated your role was to edit the brief. What editing authority did you have?

Response: I was one of three or four Munger, Tolles lawyers who were involved in editing a draft of the brief in support of the preliminary injunction motion. I do not remember the specifics of how the process worked internally, but in some fashion we compiled our collective edits to the brief and sent them to the three co-lead counsel. As noted in my answer to Question 3, our firm did not have final say over the substance of the brief.

b. Why were the statements of foreign leaders included in the brief?

Response: The brief contains two references to statements by President Calderon of Mexico, but there are no references to statements by any other foreign leaders. President Calderon's statements were included in the brief to emphasize the foreign affairs implications of Arizona's enactment of S.B. 1070. Those implications were relevant to the merits of our clients' preemption argument; the Supreme Court had noted similar foreign affairs concerns in past cases holding state immigration laws preempted. And the statements were relevant to the equitable showing our clients needed to make in order to obtain preliminary injunctive relief, particularly the likelihood that irreparable harm would result in the absence of injunctive relief. Secretary of State Clinton had already indicated that Arizona's S.B. 1070 was straining our country's relations with Mexico. President Calderon's criticism of the law supported that view.

c. Your response indicated that part of the reason for that "is that the United States itself had asserted that there were foreign affairs implications..." Can you please identify those assertions by the United States?

Response: Secretary of State Clinton appeared on "Meet the Press" on May 2, 2010. During that appearance she discussed the strains on U.S.-Mexico relations caused by Arizona's S.B. 1070, particularly with respect to America's efforts to secure the ongoing cooperation of President Calderon in fighting cross-border crime associated with drug and arms trafficking. On May 19, 2010, President

Obama and President Calderon appeared at a Rose Garden ceremony during President Calderon's state visit. President Obama acknowledged that the two leaders had discussed Arizona's S.B. 1070 during their visit; among other things, President Obama described the law as "a misdirected expression of frustration over our broken immigration system, and which has raised concerns in both our countries."

After the *Friendly House* preliminary injunction motion was filed, the United States filed its own preliminary injunction motion, which was accompanied by declarations from officials at the State Department and Department of Homeland Security explaining in detail the negative foreign affairs implications of Arizona's S.B. 1070. See *United States v. Arizona*, Plaintiff's Motion for Preliminary Injunction, Exhs. 1 & 6.

4. You co-authored an amicus brief in *Baze v. Rees* and on another occasion represented a death row inmate in a habeas petition.

a. Do you hold any personal convictions or religious beliefs that would impact the way you rule in a death penalty case?

Response: No, I do not. If confirmed, I would have no difficulty ruling fairly and impartially in cases involving the death penalty.

b. Do you believe that the death penalty is an acceptable form of punishment?

Response: Yes. The Supreme Court has held that the death penalty is an acceptable form of punishment in all but a handful of circumstances. If confirmed, I would have no difficulty faithfully applying that precedent.

5. In *Baze v. Rees*, you filed an amicus brief on behalf of a number of medical professionals and ethicists. That brief focused on the medical and ethical issues surrounding the use of a paralytic in Kentucky's three-drug lethal injection protocol. The brief lent support to petitioner's legal argument that the protocol posed an "unnecessary risk" of pain sufficient to constitute cruel and unusual punishment under the Eighth Amendment. In a fractured 7 to 2 ruling, Kentucky's protocol was upheld. The plurality opinion of Roberts, Alito, and Kennedy announced a "substantial risk of serious harm" standard. Three other justices, including Justice Breyer, who concurred in the judgment, and two dissenters, would have applied a lower standard of "untoward" risk.

a. Most, if not all, courts since *Baze* have applied the Robert's plurality opinion as the holding of the Court. Do you agree that the standard announced in the plurality opinion is the correct standard to be applied by lower courts?

Response: Yes, I agree. The Ninth Circuit has explicitly held that the plurality opinion in *Baze* provides the governing standard under the rule established in *Marks v. United States*, 430 U.S. 188 (1977), because the plurality's standard represents the narrowest ground "necessary to secure a majority in any given challenge to a method of execution." *Dickens v. Brewer*, 631 F.3d 1139, 1145 (9th Cir. 2011). And, as the court noted in *Dickens*, the Supreme Court itself cited the plurality's standard in a subsequent order that vacated a temporary restraining order barring an execution from proceeding in Arizona. *Brewer v. Landrigan*, 131 S. Ct. 445 (2010).

- b. In his concurring opinion, Justice Alito warned that a "[m]isinterpretation of the standard set out in the plurality opinion or adoption of the standard favored by the dissent and Justice Breyer would create a grave danger of extended delay." In your view, does the holding in *Baze* set a high bar or a low bar for those challenging a mode of execution? What does an individual challenging a method of execution have to show in order to succeed?**

Response: I think it would be fair to say that the plurality opinion in *Baze* sets a higher bar than Justice Breyer and the two dissenting Justices would have imposed, but a lower bar than that favored by Justices Thomas and Scalia. Under the plurality's standard, an inmate seeking to prevail on a method-of-execution challenge must show the existence of an alternative procedure that is "feasible" and "readily implemented," and which will "in fact significantly reduce a substantial risk of severe pain." *Baze*, 553 U.S. at 52. The plurality explained that "[i]f a State refuses to adopt such an alternative in the face of these documented advantages, without a legitimate penological justification for adhering to its current method of execution, then a State's refusal to change its method can be viewed as 'cruel and unusual' under the Eighth Amendment." *Id.*

- 6. You filed an amicus brief in *Adarand v. Mineta* arguing in favor of the constitutionality of the Transportation Department's Disadvantaged Business Enterprise program. One of the key issues in the debate was whether findings of discrimination by Congress were sufficient to demonstrate a compelling interest. Your brief argued for a very high degree of deference to congressional findings contending that "a reasonable congressional finding of discrimination" is sufficient under strict scrutiny.**

- a. Is it your view that a "reasonable" finding of fact as to discrimination satisfies the stringent doctrine of strict scrutiny?**

Response: When Congress enacts race-conscious measures to remedy the effects of racial discrimination, the degree of deference owed to its findings of discrimination remains unsettled. In *Fullilove v. Klutznick*, 448 U.S. 448

(1980), Justice Powell concluded that “a reasonable congressional finding of discrimination” satisfies strict scrutiny, given the unique remedial powers Congress exercises under Section 5 of the Fourteenth Amendment. *Id.* at 503 n.4 (Powell, J., concurring). The Court itself has not yet expressly adopted or rejected that view. It did not address the issue in *Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103 (2001), because the Court ultimately dismissed the writ as improvidently granted. The Court’s subsequent decisions in *Grutter v. Bollinger*, 539 U.S. 306 (2003), *Gratz v. Bollinger*, 539 U.S. 244 (2003), and *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007), all involved race-conscious measures adopted at the state or local level.

Because the question whether a reasonable congressional finding of discrimination satisfies strict scrutiny remains open, and is likely to be a subject of litigation in cases that could come before the Ninth Circuit, I do not believe it would be appropriate for me to offer any additional views on that question here.

- b. While the Supreme Court ultimately dismissed cert in this case, the Tenth Circuit held that congressional findings of discrimination must be supported by a “strong basis in evidence.” This was the standard used by the Supreme Court in evaluating state and local government findings of discrimination in *Wygant v. Jackson Board of Education* and *City of Richmond v. Croson*. Is it your view that while the Supreme Court has held that strict scrutiny applies to all government classifications based on race, Congress is afforded a greater degree of deference than state and local governments? Please explain.**

Response: That is the position I argued on behalf of my clients in the amicus brief filed in *Adarand Constructors, Inc. v. Mineta*, but the Supreme Court has not yet resolved the question. For the same reason stated in my answer to Question 6(a), it would not be appropriate for me to offer any views on the resolution of that question here.

- 7. In 2003, you conducted a presentation focused on 2002 – 2003 Supreme Court term. Your presentation included a discussion of the Supreme Court’s decisions in *Gratz* and *Grutter*, which concerned affirmative action policies at the University of Michigan. In your slides you pose three questions relating to the implications of these rulings:**

- (1) “What do the decisions mean for colleges and universities throughout the country?”**
- (2) What is their “effect on affirmative action policies in the business sector?”**
- (3) “Does the decision to uphold affirmative action have 25 year expiration?”**

Would you please address each of these questions in turn?

Response: In our presentation in 2003, we raised these questions solely to highlight the potential implications of *Grutter* and *Gratz* going forward, rather than to offer definitive answers of our own. Even today no definitive answers can be given. Many state colleges and universities modified their admissions policies in response to the rulings in *Grutter* and *Gratz*, and litigation challenging the legality of some of those modifications remains pending. See, e.g., *Fisher v. University of Texas*, 631 F.3d 213 (5th Cir. 2011), *petition for cert. filed*, No. 11-345 (U.S. Sept. 15, 2011). The Supreme Court has not addressed the applicability of *Grutter* and *Gratz* to affirmative action policies in the business sector, so the impact the decisions may have in that area remains unclear. As for the durational limit applicable to the use of race in university admissions programs, only the Supreme Court can decide whether 25 years, or some shorter or longer period, is appropriate. It is clear, however, that to satisfy strict scrutiny, a race-conscious admissions program “must be limited in time.” *Grutter*, 539 U.S. at 342. The Court has repeatedly held that “all governmental use of race must have a logical end point.” *Id.*

8. In 2004, you wrote an article on the Supreme Court’s ruling in *Blakely v. Washington*. In that article you argued that Congress should make the federal guidelines voluntary and “restore to district judges some of the sentencing authority they should rightfully possess.” Of course, under the Supreme Court’s decision in *United States v. Booker*, the federal sentencing guidelines are now advisory, rather than mandatory.

- a. In light of *Booker*, what do you see as the role of the guidelines in making sentencing determinations? Do district judges have unfettered discretion?

Response: Even after *Booker*, the Sentencing Guidelines continue to play a key role in sentencing determinations because they provide “the starting point and the initial benchmark” for every sentencing decision. *Gall v. United States*, 552 U.S. 38, 49 (2007). Although the Guidelines are now advisory, district judges do not have unfettered discretion in selecting an appropriate sentence. They must begin by correctly calculating the applicable Guidelines range; they must explain and justify any decision to depart from the prescribed range; and they must consider all of the sentencing factors specified in 18 U.S.C. § 3553(a), one of which is “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” Courts of appeals, in turn, have an obligation to review the substantive reasonableness of sentences imposed by district judges, and to reverse sentences that are unreasonable. *Rita v. United States*, 551 U.S. 338, 354 (2007).

- 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, I agree. The principal defect of the pre-Guidelines regime was that it permitted tremendous sentencing disparities for similarly situated defendants based on the sentencing proclivities of the individual judge assigned to

a case. In addition to producing sentences that were sometimes either unfairly lenient or unfairly harsh in a given case, the disparities permitted under the pre-Guidelines regime undermined the public's confidence in the integrity of the federal criminal justice system.

c. Do you believe that the guidelines are unnecessarily harsh on certain offenders?

Response: No. I am not aware of any category of cases in which the Guidelines produce sentences that are unnecessarily harsh.

d. If so, which offenders do you believe the guidelines treat unfairly?

Response: I am not aware of any category of offenders that the Guidelines treat unfairly.

9. Interpretation of the Commerce Clause is a longstanding cause for debate and dissent among constitutional scholars. The Supreme Court placed judicial limits on Congress' Commerce Clause power in *United States v. Lopez*. Other Supreme Court precedent has taken a more expansive view, relying on *Wickard v. Filburn*, to find a broad congressional power to regulate commerce on even non-economic activity as long as it relates to a wider and proper federal scheme. Currently unanswered questions, such as whether Congress can mandate individual behavior and/or regulate economic inactivity, leave a lot of room for lower court interpretation.

a. If assessing a commerce clause issue where Congress has mandated action from a group of previously inactive citizens, what case precedent would you apply? Assume that this is an economic activity that plainly affects interstate commerce.

Response: I am not aware of any decision in which the Supreme Court or the Ninth Circuit has addressed a Commerce Clause challenge to a statute that mandated action from previously inactive citizens. A lower court faced with such a fact situation would look primarily to the Supreme Court's most recent Commerce Clause decisions (*Lopez*, *Morrison*, and *Raich*) as well as *Wickard v. Filburn* and the Court's other relevant precedents for guidance. Those cases supply the analytical framework relevant to determining the scope of Congress's Commerce Clause power.

b. Are there any scenarios you can think of where Congress may mandate private citizens to purchase certain goods or services under penalty of fine and/or jail time?

Response: I do not think it is possible, or appropriate, to answer that question in the abstract, outside the confines of a concrete case. Congress has recently

mandated that private citizens purchase a minimum level of health insurance on pain of paying a financial penalty, and the Supreme Court may soon decide whether that mandate is within Congress's power to enact. I am not aware of any other instance in which Congress has mandated that private citizens purchase goods or services under penalty of fine or imprisonment, nor any prior decision of the Supreme Court addressing the constitutionality of such a mandate.

- c. **Under current Court precedent, the Court aggregates intrastate economic activity to determine whether it substantially affects interstate commerce. This has allowed the Court to find that a farmer growing wheat for his own personal consumption substantially affected interstate commerce. Under this theory of the Commerce Clause, are you able to give me an example of purely intrastate economic activity that Congress could not regulate?**

Response: As with Questions 9(a) and (b), I do not think it would be appropriate for me to answer this question outside the context of a concrete case or previous guidance from the Supreme Court. I am not aware of any cases in the post-*Wickard* era in which the Supreme Court has determined that a particular intrastate activity constituted economic activity but nonetheless held that Congress lacked the power to regulate it.

- d. **Is there any justiciable limit to Congress' power to regulate purely intrastate economic activity?**

Response: Under current precedent, the primary limitations on Congress's Commerce Clause power are set forth in the Supreme Court's decisions in *Lopez* and *Morrison*. Those cases hold that Congress may regulate in only three areas: "First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i.e.*, those activities that substantially affect interstate commerce." *United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (citations omitted); *see also United States v. Morrison*, 529 U.S. 598, 608-09 (2000). In addition, the Court has held, in *Printz v. United States*, 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144 (1992), that principles of state sovereignty inherent in the Constitution place limits on Congress's power under the Commerce Clause.

10. **At a speech in 2005, Justice Scalia said, "I think it is up to the judge to say what the Constitution provided, even if what it provided is not the best answer, even if you think it should be amended. If that's what it says, that's what it says."**

- a. **Do you agree with Justice Scalia?**

Response: Yes, I agree. In that passage, Justice Scalia rejected the notion that a judge's role is to arrive at what the judge believes to be the "correct" answer, irrespective of what the Constitution provides. I agree that judges have no authority to do that. As Justice Scalia put it in the passage quoted above, if the Constitution provides the answer to a question, a judge is bound by that answer whether the judge agrees with it or not.

b. Do you believe a judge should consider his or her own values or policy preferences in determining what the law means? If so, under what circumstances?

Response: I do not believe there are any circumstances in which a judge should consider his or her own values or policy preferences in determining what the law means. Under the Constitution, elected officials are charged with making value judgments and policy choices as part of the legislative process. A judge's role is to ensure that the legislature remains within the limits of its assigned authority under the Constitution. Judges have no authority to second-guess the wisdom of the value judgments and policy choices the legislature has made.

11. Do you think judges should consider the "current preferences of the society" when ruling on a constitutional challenge? What about when seeking to overrule longstanding Supreme Court or circuit precedent?

Response: As a general rule, I do not think judges should consider current societal preferences when ruling on constitutional challenges. However, when interpreting the meaning of the Cruel and Unusual Punishments Clause of the Eighth Amendment, the Supreme Court has considered current societal preferences (as reflected in legislative enactments) in evaluating whether a particular punishment should be deemed unconstitutional. If confirmed, I would be bound to faithfully follow that precedent.

I think the circumstances in which precedent should be overruled are rare. The Supreme Court has held that relevant considerations in deciding whether precedent should be overruled include the soundness of the reasoning supporting the precedent in question, the reliance interests that have developed around the precedent, and whether the rule established by the precedent has proved unworkable in practice. I do not think current societal preferences would ordinarily be a relevant consideration.

12. What is your judicial philosophy on applying the Constitution to modern statutes and regulations?

Response: I do not have a judicial philosophy that would call for applying the Constitution any differently to modern statutes and regulations than to statutes and regulations of older vintage. In either scenario, a judge's task would be to interpret the meaning of the Constitution based on the text of the provision involved, its history, and the precedent interpreting it. The meaning of the Constitution would not vary based on when the challenged statute or regulation was enacted.

13. What role do you think a judge's opinions of the evolving norms and traditions of our society have in interpreting the written Constitution?

Response: As a general rule, I do not think a judge's opinions of the evolving norms and traditions of our society have any role in interpreting the meaning of the Constitution. However, the Supreme Court has considered evolving norms and traditions (as reflected in legislative enactments) when interpreting the Cruel and Unusual Punishments Clause, and I would faithfully follow that precedent if confirmed.

14. What would be your definition of an "activist judge"?

Response: I would define an "activist judge" as a judge who invalidates the will of the people as expressed through their democratically elected representatives based not on what the law requires but on the judge's own moral values or policy preferences.

15. What is your understanding of the current state of the law with regard to the interplay between the establishment and free exercise clause of the First Amendment?

Response: During the course of my career, I have not had occasion to litigate or research issues involving the interplay between the two clauses. This is not a subject on which I could speak with any authority at this point.

16. Do you believe there is a right to privacy in the U.S. Constitution?

Response: Yes, the Supreme Court has so held in a line of cases that includes *Griswold v. Connecticut*, 381 U.S. 479 (1965).

a. Where is it located?

Response: The Court's cases since *Griswold* have held that the right to privacy is encompassed within the "liberty" interest protected by the Due Process Clause of the Fifth and Fourteenth Amendments.

b. From what does it derive?

Response: The Court's post-*Griswold* cases have explained that the Due Process Clause protects certain fundamental rights and that the right to privacy is one of those rights.

c. What is your understanding, in general terms, of the contours of that right?

Response: The Court has described the right to privacy as protecting "personal decisions relating to marriage, procreation, contraception, family relationships,

child rearing, and education.” *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 851 (1992).

17. In *Griswold*, Justice Douglas stated that, although the Bill of Rights did not explicitly mention the right to privacy, it could be found in the “penumbras” and “emanations” of the Constitution.

a. Do you agree with Justice Douglas that there are certain rights that are not explicitly stated in our Constitution that can be found by “reading between the lines”?

Response: The Court has long held that the Constitution protects certain fundamental rights that are not explicitly enumerated in the Constitution’s text, while at the same time emphasizing that courts must proceed with great caution in recognizing such rights. I do not think judges should attempt to find such rights by “reading between the lines” of the Constitution. Instead, judges should determine whether a claimed unenumerated right is “ ‘deeply rooted in this Nation’s history and tradition.’ ” *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

b. Is it appropriate for a judge to go searching for “penumbras” and “emanations” in the Constitution?

Response: No. I do not believe the Court’s more recent substantive due process cases have followed the mode of reasoning Justice Douglas employed in *Griswold*.

18. You acted as counsel on an amicus brief submitted by Blizzard/Activision in the Supreme Court case, *Brown v. Entertainment Merchants Association*. In this brief, you argued a voluntary video game rating system, intended to inform parents and prevent children from purchasing games rated for mature ages and adults, was so effective that a state regime instituting a mandatory ratings scheme and a prohibition on the sale of certain video games to minors was a violation of the First Amendment.

The Court agreed and found that video games qualify as speech and are entitled to the protections of the Constitution. Would you apply this same standard to all corporate speech, such as product advertising, political donations and the content of movies, even those which may have inherent political motives?

Response: The legal principle that formed the basis of the amicus brief in *Brown* applies when strict scrutiny governs, as was the case in *Brown* (131 S. Ct. at 2738). In that context, a statute that “effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another ... is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.” *Ashcroft v. ACLU*, 542 U.S. 656, 665 (2004)

(internal quotation marks omitted). If confirmed, I would faithfully apply Supreme Court and Ninth Circuit precedent governing all forms of corporate speech.

I have not had occasion to thoroughly research the law governing each of the other categories of speech identified in the question. I know that the Supreme Court has applied strict scrutiny to regulations burdening speech in some of those categories, including the movie at issue in *Citizens United v. Federal Election Comm'n*, 130 S. Ct. 876, 898 (2010). Regulations of product advertising, in contrast, are generally reviewed under the more deferential standard applicable to commercial speech. See, e.g., *Thompson v. Western States Medical Center*, 535 U.S. 357, 366-67 (2002).

19. In *Brown*, Justice Breyer supplemented his opinion with appendices comprising scientific articles on the sociological and psychological harm of playing violent video games.

a. When, if ever, do you think it is appropriate for judges to conduct research outside the record of the case?

Response: I do not think it would be appropriate for a judge to conduct research outside the record with respect to adjudicative facts – i.e., the facts of a particular case – unless perhaps the facts concerned matters of which the court could take judicial notice. See Federal Rule of Evidence 201. I think it is appropriate, and sometimes necessary, for judges to supplement the research conducted by the parties when legislative facts are at issue. The Advisory Committee Note to Rule 201 explains that, with respect to legislative facts, a judge “ ‘may make an independent search for persuasive data or rest content with what he has or what the parties present.’ ”

b. When, if ever, do you think it is appropriate for judges to base their opinions psychological and sociological scientific studies?

Response: I think the circumstances in which it would be appropriate for a judge to do so are quite limited, but it would depend on the nature of the issues raised in the case. For example, in determining the admissibility of certain types of expert testimony under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), it might well be appropriate for a judge to base his or her decision on peer-reviewed psychological or sociological scientific studies.

20. Many states frequently engage in the practice of “direct democracy” by allowing people to pass laws through ballot propositions. What do you believe the role of courts should be in reviewing these decisions?

Response: I do not believe federal courts should review state laws enacted through the initiative process any differently from laws enacted by the legislature. In either context, a federal court’s role is to determine whether the law violates a provision of the federal

Constitution, not to second-guess the wisdom of the policy choices the legislature or the voters have made.

21. What is the most important attribute of a judge, and do you possess it?

Response: I think the most important attribute a judge should possess is open-mindedness: the ability to approach each case from a position of neutrality and a willingness to listen carefully but skeptically to what both sides have to say. To be truly open-minded, I think a judge must have a measure of self-doubt. One of my favorite quotes from Learned Hand is his statement, "The spirit of liberty is the spirit which is not too sure that it is right." He was speaking on a different subject there but I think that quote applies in this context as well. A judge convinced that he or she already has all the right answers will not be able to listen with an open mind to what both sides have to say. I believe I am open-minded in the sense described here.

22. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: In my view the most important elements of judicial temperament are courage, integrity, independence, humility, and collegiality. I believe I meet that standard.

23. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. 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. Respect for precedent is essential to maintaining a legal system based on the rule of law. If confirmed, I would faithfully follow and apply Supreme Court and Ninth Circuit precedent regardless of whether I agreed or disagreed with the precedent in question.

24. At times, judges are faced with cases of first impression. If there were no controlling precedent that dispositively concluded an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: In a statutory case of first impression, I would first look to the text of the provision. If the text were ambiguous, I would also consider the historical context in which the provision was adopted, the drafting history of the provision, and the provision's relationship with the broader statutory scheme as a whole. I would also review relevant decisions of the Supreme Court and the Ninth Circuit. In my experience as a litigator, even when there is no controlling precedent that dispositively resolves the issue at hand, there is virtually always precedent to which a court can and should look for guidance. Often past cases have dealt with similar issues in an analogous context, or at

least provide the basic analytical framework a court should use to resolve issues of the same general nature. If the issue were one on which neither the Supreme Court nor the Ninth Circuit had spoken, but which other circuits had addressed, I would also look to such out-of-circuit authority for guidance.

25. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your own best judgment of the merits?

Response: I would apply that decision faithfully, as indicated in my response to Question 23 above. I do not think a judge presented with binding precedent is free to disregard that precedent and render his or her own best judgment on the merits, even if the judge believes the precedent in question was erroneously decided.

26. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Federal statutes bear a strong presumption of constitutionality, and I believe the circumstances in which it would be appropriate for a court to declare a federal statute unconstitutional are rare. Such action would be justified only if the statute exceeds the powers granted to Congress by the Constitution or infringes a right protected by the Constitution.

27. Under what circumstances, if any, do you believe an appellate court should overturn precedent within the circuit? What factors would you consider in reaching this decision?

Response: Only the court sitting en banc can overrule circuit precedent, and I think the circumstances in which the court would be justified in taking a case en banc to overrule a prior decision are very limited. One obvious circumstance that comes to mind would involve the unlikely scenario in which two prior panel decisions are in direct and irreconcilable conflict, such that only one of the decisions can stand. Otherwise, some of the factors the court should consider in deciding whether to grant en banc review to overrule prior circuit precedent include: whether the issue involved is of exceptional importance; whether other circuits have uniformly rejected the rule announced by the precedent in question; the reliance interests that have developed around a previously settled rule; and whether the rule has proved unworkable in practice.

28. Please describe with particularity the process by which these questions were answered.

Response: I prepared a draft of the answers to these questions. I sent the draft to a lawyer at the Department of Justice for review and made additional revisions to the answers after receiving his comments.

29. Do these answers reflect your own views?

Response: Yes.

... ..

Responses of Paul J. Watford
Nominee to be United States Circuit Judge for the Ninth Circuit
to the Written Questions of Senator Amy Klobuchar

- 1. If you had to describe it, how would you characterize your judicial philosophy?
 How do you see the role of the judge in our constitutional system?**

Response: I believe judges should play a very modest role in our constitutional system. Elected officials are responsible for making the policy choices and value judgments that shape the law, and the primary function of courts is to ensure that the executive and legislative branches remain within the limits of their assigned authority under the Constitution. That is certainly an important function, but under the guise of exercising it a judge has no authority to second-guess the wisdom of choices made by the elected branches based on the judge's own moral values or policy preferences.

- 2. What assurances can you give that litigants coming into your courtroom will be treated fairly regardless of their political beliefs or whether they are rich or poor, defendant or plaintiff?**

Response: Resolving cases based solely on what the law requires and without regard to the identity of the parties is the most solemn obligation a judge undertakes upon assuming judicial office. Any judge who did otherwise would be violating his or her oath of office, which requires judges, among other things, to "administer justice without respect to persons, and do equal right to the poor and to the rich." If confirmed, I would faithfully abide by that oath in every case I was called upon to decide.

- 3. In your opinion, how strongly should judges bind themselves to the doctrine of stare decisis? How does the commitment to stare decisis vary depending on the court?**

Response: I think that judges should be strong adherents to the doctrine of *stare decisis*, and that the circumstances in which a court should overrule its prior precedent are rare. The factors a court should consider in making that decision include the soundness of the reasoning supporting the precedent in question, the reliance interests that have developed around a previously settled rule, and whether the rule established by the precedent in question has proved unworkable in practice.

Judges who serve on the courts of appeals will seldom be called upon to overrule precedent because they have no authority to overrule Supreme Court precedent and three-judge panels have no authority to overrule circuit precedent. Only the court sitting en banc may overrule circuit precedent, and as just noted I think the circumstances in which that would be justified are rare.

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VIA EMAIL AND FIRST CLASS MAIL

October 17, 2011

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

Re: *Nomination of Paul J. Watford
To the United States Court of Appeals for the Ninth Circuit*

Dear Chairman Leahy:

The ABA Standing Committee on the Federal Judiciary has completed its evaluation of the professional qualifications of Paul J. Watford who has been nominated for a position on the United States Court of Appeals for the Ninth Circuit. As a result of our investigation, the Committee is of the unanimous opinion that Mr. Watford is "Well Qualified" for the position.

A copy of this letter has been provided to Paul J. Watford.

Sincerely,

Allan J. Joseph
Chair

cc: Paul J. Watford, Esq.
The Honorable Kathy Ruemmler
Michael Zubrensky, Esq. (via email)
ABA Standing Committee on the Federal Judiciary (via email)
Denise A. Cardman, Esq. (via email)



**Senator Barbara Boxer (D-CA) – Statement for the Record
Senate Judiciary Committee
Confirmation Hearing of Paul Watford for U.S. Ninth Circuit
Court of Appeals
December 13, 2011**

Mr. Chairman, I am honored to support Paul Watford, a well-qualified California nominee for the Ninth Circuit Court of Appeals who is appearing today before the Judiciary Committee.

I want to join in welcoming him and his wife, Sherry, to the hearing today.

I was pleased when President Obama nominated Mr. Watford to serve on the U.S. Ninth Circuit Court of Appeals. He has a breadth of experience, ranging from public service to the private sector, and he will make an excellent addition to the federal appellate bench.

Let me say a few words about his background.

Mr. Watford was born in Garden Grove, California. His parents, Tom and Virginia, are watching the hearing via webcast, and as a mother and a grandmother, I share in their pride on this important day for their son.

Mr. Watford is a graduate of the University of California at Berkeley, and received his law degree from the University of California at Los Angeles, where he graduated with honors and was an editor of the UCLA Law Review.

Following law school, he clerked for Judge Alex Kozinski on the Ninth Circuit Court of Appeals, then clerked for Justice Ruth Bader Ginsburg on the United States Supreme Court.

From 1997 through 2000, Mr. Watford served as a federal prosecutor in the United States Attorney's Office for the Central District of California, where he handled a variety of criminal trial and appellate matters for the office, including major fraud investigations.

After his tenure as a prosecutor, Mr. Watford entered private practice – first with Sidley & Austin, then with his current law firm, Munger Tolles. He is a partner at Munger Tolles, specializing in appellate casework and complex commercial litigation.

In addition to his record as a lawyer, Mr. Watford has served in bar associations and professional committees. He has served as Co-Chair of the American Bar Association's Appellate Practice Committee, and he is a member of the Central District Court's Magistrate Selection Panel.

The American Bar Association has given him their highest rating – unanimously well qualified.

Mr. Watford has earned the respect of attorneys who know his work. For example, Daniel Collins, who clerked for Justice Scalia and served as an attorney in both Bush administrations, said this about Mr. Watford:

"He just embodies the definition of judicial temperament — very level-headed and even-keeled. ... I don't think he'll approach the job with any kind of agenda other than to do what is right and consistent with precedent as he understands it."

And Jeremy Rosen, a partner at Horvitz & Levy and former president of the Los Angeles Lawyers Chapter of the Federalist Society, said Mr. Watford is a nominee many conservatives could support:

"I know he has the respect of anyone who has come into contact with him. He is exceptionally bright and well qualified."

In conclusion, Mr. Watford is a talented lawyer who has earned the respect of his peers for his work in the public and private sectors. He will be a great addition to the federal bench, and we should act quickly to confirm him.

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**Statement of Senator Charles E. Grassley
Before the Committee on the Judiciary**

On the Nominations of:

Paul J. Watford, to be United States Circuit Judge for the Ninth Circuit

December 13, 2011

Mr. Chairman,

I join you in welcoming the nominee before us today. I want to express my appreciation to Chairman Leahy for working with me on the schedule and agenda for today's hearing. I am pleased that we were able to reach an agreement.

Today we will hear from Paul J. Watford, nominated to be United States Circuit Judge for the Ninth Circuit. We have heard his biography, so I will not repeat that, but will include it in my full statement for the record.

I would note that we are making real progress with regard to the nominations of President Obama to the federal judiciary.

Today marks the 19th nominations hearing held in this committee this year, and we will have heard from 71 judicial nominees. All in all, nearly 88% of President Obama's judicial nominees have received a hearing.

We have confirmed 63 judicial nominees in this Congress alone. In total, over 72% of President Obama's nominees have been confirmed.

Again, I welcome the nominee, his family members and guests. I look forward to the testimony.

Mr. Watford received his B.A. from University of California, Berkeley in 1989 and his J.D. from the University of California, Los Angeles (UCLA) School of Law in 1994. Upon graduation, he clerked for Judge Alex Kozinski on the Ninth Circuit and then for Justice Ginsburg on the Supreme Court. In 1996, he began working as an associate in the Litigation Department at the Los Angeles law firm of Munger, Tolles & Olsen. From 1997-2000, Mr. Watford was an Assistant United States Attorney in the U.S. Attorney's Office for the Central District of California, in Los Angeles, handling a variety of criminal prosecutions, such as immigration, narcotics, firearms trafficking, bank robbery, computer fraud, mail and wire fraud, and securities fraud.

In 2000, Mr. Watford returned to private practice as an associate in the appellate practice group at Sidley & Austin's Los Angeles office. In 2001, he rejoined Munger, Tolles & Olsen as an associate, becoming a partner there in 2003. His practice focuses primarily on appellate litigation, specifically business and commercial disputes. Mr. Watford has also taught a course on Judicial Opinion Writing at the University of Southern California's Gould School of Law for three semesters (2007, 2008, and 2009).

The American Bar Association's Standing Committee on the Federal Judiciary has given Mr. Watford a Unanimous "Well Qualified" rating.

**Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Nominations
December 13, 2011**

Today, as the Judiciary Committee holds its final confirmation hearing of 2011, 21 judicial nominations reported favorably by the Committee remain pending on the Senate Calendar awaiting a confirmation vote. The Senate could act today to fulfill our constitutional duty to ensure that the Federal courts across the country have the judges they need to provide justice for the American people by voting on these 21 nominations. Seventeen of these stalled nominees were reported by the Committee unanimously, with the support of every Democrat and every Republican on the Committee.

There is no good reason to further delay for months votes on these nominations, all of which had hearings like the one we are holding today, and many of which were reported last summer and early in the fall. At a time when nearly one in 10 Federal judgeships remains vacant, further delays are not only unnecessary, they are damaging. Judicial vacancies have remained at or above 80 for over two and a half years. Leaving them artificially high hurts the millions of Americans who live in those districts and circuits and rely on our Federal courts.

I thank Senator Whitehouse for chairing today's important hearing on the nomination of Paul Watford of California, President Obama's highly-qualified nominee to fill one of four judicial emergency vacancies on the Ninth Circuit. We are holding today's hearing to try to make progress in addressing the serious needs of that circuit, the busiest in the country. Frankly, I offered to include the other Ninth Circuit nomination now pending before the Committee at this hearing, that of Justice Andrew Hurwitz of Arizona to that court. Despite the support of Senator Kyl, Committee Republicans are not ready to proceed on that nomination.

I do trust that the hold up on Ninth Circuit nominees will be ended and that Senate Republicans will allow the Senate to move forward with a final vote on the nominations of Judge Morgan Christen of Alaska, reported by the Committee in September, and of Judge Jacqueline Nguyen of California, reported by the Committee earlier this month, to the Ninth Circuit before the Senate completes its work for the year. Judge Nguyen is nominated to fill the judicial emergency vacancy that remains open after the Republican filibuster of Goodwin Liu. I have repeatedly urged the Senate to take up and consider these nominations, yet Republicans have refused.

I have thanked Senator Grassley numerous times for working with me throughout the year so that the Committee could make progress on nominations, and I have tried to accommodate him. I accommodated his request that this be the only confirmation hearing during this work period. As a result of those accommodations, the Committee has held only 19 confirmation hearings this year for 79 of President Obama's nominees, 71 of them judicial nominees. In contrast, during the third year of the Bush administration, the Republican chairman proceeded to hold 29 nominations hearings for 109 of President Bush's nominees, over 90 of them judicial nominees. That year, the Republican chairman held nine nominations hearings after the August recess and before adjourning in November. We will end the year holding only seven hearings after the August recess, although the Senate will have been in session an extra month this year, and

several of those hearings have been with a less than full slate of nominees, including today's hearing.

I am disappointed that even after delaying this hearing from last week at Senator Grassley's request we are proceeding on only one nomination rather than a full hearing to include five judicial nominations, including nominees to fill district court vacancies in Arkansas, Illinois, and Maryland. The reason we are not proceeding on those nominations is that the Republicans have yet to review the materials available to them on those nominees.

Throughout the year and now I would have preferred if more nominations had been available to be included in hearings at considered by the Committee. In addition to the judicial nominees on which the other side is not prepared to proceed, there are executive branch nominees to the Privacy and Civil Liberties Oversight Board, a Deputy Administrator of the Drug Enforcement Administration, a U.S. Parole Commissioner and two members of the Foreign Claims Settlement Commission who are not ready for Committee and Senate consideration because the Republicans have not reviewed their files.

Paul Watford has been nominated to fill one of four judicial emergency vacancies on the Ninth Circuit. At a time when judges on the Ninth Circuit, a Circuit serving more than 61 million Americans, are handling double the caseload of the other Federal circuit courts, the Senate should be moving forward to consider these nominations and to fill these vacancies. The Chief Judge of the Ninth Circuit, Judge Alex Kozinski, a Reagan appointee, along with the members of the Judicial Council of the Ninth Circuit, have written to the Senate emphasizing the Ninth Circuit's "desperate need for judges," urging the Senate to "act on judicial nominees without delay," and concluding "we fear that the public will suffer unless our vacancies are filled very promptly."

The judicial emergency vacancies on the Ninth Circuit are harming litigants by creating unnecessary and costly delays. The Administrative Office of U.S. Courts reports that it takes nearly five months longer for the Ninth Circuit to issue an opinion after an appeal is filed, compared to all other circuits. The Ninth Circuit's backlog of pending cases far exceeds other Federal courts. As of March 2011, the Ninth Circuit had 13,913 cases pending before it. The second closest – the Sixth Circuit – has 5,231 cases pending before the court.

If caseloads were really a concern of Republican Senators as they contended when they filibustered the nomination last week of Caitlin Halligan to the D.C. Circuit they would not be delaying consideration of four Ninth Circuit nominees the President has sent to us, three of them to fill emergency vacancies.

Mr. Watford's credentials are outstanding. He is currently a partner specializing in appellate litigation at the law firm Munger, Tolles & Olson in Los Angeles. He previously served as a Federal prosecutor in Los Angeles, handling a range of prosecutions and specializing in major frauds. Over his 17-year legal career, he has authored or edited briefs in nearly 20 cases before the United States Supreme Court, as well as numerous cases before the Ninth Circuit and other Federal appellate courts. He has worked on criminal and civil matters, representing plaintiffs and defendants. He clerked for Justice Ruth Bader Ginsburg of the United States Supreme Court

and Judge Alex Kozinski, a conservative appointee of President Ronald Reagan, on the Ninth Circuit. The ABA's Standing Committee has rated Mr. Watford "unanimously well qualified," the highest rating available from its non-partisan peer review.

Mr. Watford's nomination was greeted by support from legal professionals from across the political spectrum. Daniel Collins, a partner at Munger Tolles who clerked for Justice Scalia and who served in the Bush administration as Associate Deputy Attorney General, has said that Paul Watford is "incredibly intelligent and has solid integrity and great judgment." Conservative law professor Orin Kerr called Mr. Watford, "extremely bright, a moderate, and very much a 'lawyer's lawyer,' concluding in his online post, "I hope he will be confirmed." The former president of the Los Angeles Chapter of the Federalist Society has said that Mr. Watford "has the respect of anyone who has come into contact with him. He is exceptionally bright and well qualified."

I look forward to Committee consideration of Mr. Watford's nomination when the Senate returns in January. I hope that before the Senate completes its work for the year this month, it makes long overdue progress considering the 21 judicial nominations already considered by the Committee and now stalled before the Senate awaiting consent from the Senate Republican leadership for final consideration.

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